

23rd January, 1923

THE  
LEGISLATIVE ASSEMBLY DEBATES  
(Official Report)

VOL. III.

PART II

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

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THIRD SESSION

OF THE

LEGISLATIVE ASSEMBLY, 1923.

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# LEGISLATIVE ASSEMBLY.

Tuesday, 23rd January, 1923.

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

**Secretary of the Assembly:** I have to inform the House of the unavoidable absence of Mr. President at to-day's meeting.

Mr. Deputy President then took the Chair.

## STATEMENTS LAID ON THE TABLE.

**Mr. J. Hullah** (Revenue and Agriculture Secretary): Sir, I lay on the table the information promised in reply to a question by Khan Bahadur Sarfaraz Husain Khan, on the 16th January, 1923, regarding the Pusa Institute.

The reply to

(a) is—17 years since the foundation stone was laid in 1905, but the Institute came into full working order from 1908.

(b) The chief objects of the Institute are (i) research with a view to evolution of principles and methods likely to be of general application in agricultural improvements; (ii) Post-graduate instruction.

Care has been taken to avoid dealing directly with cultivators where the Provincial Departments can do the work, but the Institute assists local Agricultural Departments, when called upon, mainly with regard to measures for the suppression of diseases and insect pests, in supplying seed of improved varieties of crops, in the testing of improved methods, in the supply of pedigree cattle, etc.

The work of the Institute is described in its Annual Reports from which it will be seen that the research aims mainly at establishing general principles which can be put into practice with the necessary modifications to suit local conditions. Amongst results which have been adopted directly in the provinces, however, the following may be cited:

1. The evolution of superior strains of wheat which are fast replacing the country varieties in the United Provinces, parts of the Punjab and Bihar;
2. The successful production of a superior type of tobacco suitable for Indian made cigarettes;
3. The use of phosphate manures combined with green manuring as a method of maintaining the fertility of soils which are being depleted through overcropping;
4. Improvement of India: cattle from the point of view of the production of milk;
5. Successful campaign bud-rot disease of palms in the Godavari delta;
6. Methods of storage of grain and potatoes against insect attack;
7. Improvement of agricultural implements.

As regards (c), the total expenditure up to 1921-22 is as follows:

	Ra.
Recurring since 1903-04	76,46,000
Non-recurring—	0
(being the cost of buildings, etc., constructed by the Public Works Department)	15,38,000

( 1881 )

As regards (d) and (e) the Institute offers facilities for post-graduate work in the laboratories. A statement is enclosed showing the number of students trained (total 369) including short course students. Most of the students, especially of the long course (123) are those who are deputed by the Provinces and Indian States for special training and are absorbed in the respective Departments after the training. Out of the students trained at Pusa, 4 are now in the Imperial Agricultural Service, 12 in the Provincial Agricultural Service and 4 are employed in Pusa as Research Assistants. Definite information regarding others is not available but the majority of them are employed in the subordinate service of the Provincial and Indian States Agricultural Departments.

*Statement showing the number of students who received a training at Pusa from 1908-1921 and how they are employed.*

Subjects in which trained.	No.	HOW EMPLOYED.					REMARKS.
		In I. A. S.	In Provincial Agricultural Service.	In Native States and Foreign Governments.	In Pusa.	By private bodies.	
<i>Post-graduate training</i>							
Agricultural Chemistry . . . . .	16	...	1	3	2	...	Majority of other students are employed in the subordinate service of the Provincial Departments of Agriculture.
Mycology . . . . .	14	1	3	2	1	2	
Entomology . . . . .	23	..	4	4	...	...	
Bacteriology . . . . .	14	...	1	3	1	...	
Botany . . . . .	8	...	1	...	...	1	
Agriculture . . . . .	15	3	2	1	...	...	
General training in laboratory methods and farming.	33	...	...	...	...	...	
<b>Total</b>	<b>123</b>		<b>4</b>	<b>12</b>	<b>18</b>	<b>4</b>	<b>3</b>
<i>Short course training.</i>							
Sericulture . . . . .	116	...	...	...	...	...	
Lac culture . . . . .	54	...	...	...	...	...	
Fruit culture . . . . .	53	...	...	...	...	...	
<b>Total</b>	<b>223</b>						
<i>Special study in laboratories.</i>							
Worked in laboratories on special subjects.	23	...	...	...	...	...	
<b>Total</b>	<b>23</b>						
<b>GRAND TOTAL</b>	<b>369</b>						

**Mr. J. Hullah:** Sir, I lay on the table in pursuance of the provisions of sub-section (2) of section 10 of the Indian Emigration Act, 1922, a draft notification specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to the Straits Settlements, the Federated Malay States and the Unfederated Malay States.

No.

GOVERNMENT OF INDIA.

DEPARTMENT OF REVENUE AND AGRICULTURE.

(EMIGRATION.)

Delhi, the January 1923.

## NOTIFICATION.

In exercise of the powers conferred by section 10 of the Indian Emigration Act, 1922 (VII of 1922), hereinafter referred to as "the Act", the Governor General in Council is pleased to issue the following Notification in the form in which it has been approved by both Chambers of the Indian Legislature:—

Emigration to the Straits Settlements, the Federated Malay States of Perak, Selangor, Negri-Sembilan and Pahang and to the Unfederated Malay States of Kedah, Perlis, Johore, Kalantan, Trengganu and Brunei for the purpose of unskilled work shall be lawful on the following terms and conditions, namely:—

- (1) The emigrant shall
  - (a) have been recruited by a person licensed for that purpose by and responsible to an officer (hereinafter called the Emigration Commissioner) appointed by the Government of the Straits Settlements and by the Governments of the Federated and Unfederated Malay States, or
  - (b) have applied direct to the Emigration Commissioner for an assisted passage and have been accepted by him.
- (2) The emigrant shall not before leaving British India, have entered into any engagement to labour for a period exceeding one month.
- (3) Engagements to labour entered into by an emigrant in Malaya for a period exceeding one month shall be void.
- (4) The Government of the Straits Settlements shall at any time when so desired by the Governor General in Council admit and give all facilities to an Agent appointed under section 7 of the Act.
- (5) Within one year of his arrival in the Colony any emigrant who has been assisted to emigrate at the cost of the Indian Immigration Fund shall, on satisfying the Agent appointed under section 7 of the Act that his return to his home is desirable either on the ground of the state of his health or on the ground that the work which he is required to do is unsuitable to his capacity, or that he has been unjustly treated by his employer or for any other sufficient reason, be repatriated free of cost to the place of recruitment and the costs of such repatriation shall be defrayed by the Government of the Straits Settlements, Federated Malay States and Unfederated Malay States.
- (6) If at any time there is no Agent appointed under section 7 of the Act, the Government of the Straits Settlements shall appoint a person to perform the duties of the Agent as set forth in Clause 5.
- (7) There shall be no evasion of the provisions of the Act by the conveyance through foreign ports in the Peninsula of India of persons who would be emigrants for the purpose of unskilled work if they departed from British ports.
- (8) The Government of the Straits Settlements, Federated and Unfederated Malay States shall furnish such periodical reports and returns as may be required from time to time by the Government of India in respect of the welfare of the persons emigrating to the colony in accordance with this Notification.

**Mr. J. Hullah:** I lay on the table in pursuance of the provisions of sub-section (2) of section 10 of the Indian Emigration Act, 1922, a draft notification specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to Ceylon.

No.

GOVERNMENT OF INDIA.

## DEPARTMENT OF REVENUE AND AGRICULTURE.

(EMIGRATION.)

Delhi, the *January 1923.*

## NOTIFICATION.

In exercise of the powers conferred by section 10 of the Indian Emigration Act, 1922 (VII of 1922), hereinafter referred to as "the Act", the Governor General in Council is pleased to issue the following Notification in the form in which it has been approved by both Chambers of the Indian Legislature :—

"Emigration to Ceylon for the purpose of unskilled work shall be lawful on the following terms and conditions, namely :—

(1) The emigrant shall—

(a) have been recruited by a person licensed for that purpose by and responsible to an officer (hereinafter called the Emigration Commissioner) appointed by the Government of Ceylon, or

(b) have applied direct to the Emigration Commissioner for an assisted passage and have been accepted by him.

(2) The emigrant shall not, before leaving British India, have entered into a contract of service for a period exceeding one month.

(3) Within six months from the issue of this Notification, or within such further period as the Governor General in Council may by notification appoint, the Legislature of Ceylon shall have enacted that any contract of service for a period exceeding one month entered into by an emigrant shall be void.

(4) No part of the cost of his recruitment, subsistence during transport, or transport shall be recoverable from any emigrant and all expenses in this connection shall be defrayed from a common fund to be raised in such manner and managed by such agency as may appear suitable to the Colonial Government.

(5) The Government of Ceylon shall at any time when so desired by the Governor General in Council admit and give all facilities to an Agent appointed under section 7 of the Act.

(6) Within one year of his arrival in Ceylon any emigrant who has been assisted to emigrate at the cost of the common fund referred to in clause (4) shall, on satisfying the Agent appointed under section 7 of the Act that his return to his home is desirable either on the ground of the state of his health or on the ground that the work which he is required to do is unsuitable to his capacity, or that he has been unjustly treated by his employer, or for any other sufficient reason, be repatriated free of cost to the place of recruitment, and the costs of such repatriation shall be defrayed by the Government of Ceylon or the Ceylon Planters' Association.

(7) If at any time there is no Agent appointed under section 7 of the Act, the Government of Ceylon shall appoint a person to perform the duties of the Agent as set forth in clause (6).

(8) Within six months from the issue of this Notification, or within such further period as the Governor General in Council may by notification appoint, the Legislature of Ceylon shall have enacted that no payment made in India by a recruiter to an emigrant to enable him to pay off debts before emigrating shall be recoverable.

(9) The Government of Ceylon shall furnish such periodical reports and returns as may be required from time to time by the Government of India in respect of the welfare of persons emigrating to Ceylon in accordance with this Notification.

## QUESTIONS AND ANSWERS.

### RUINED MOSQUES, MONUMENTS ETC: IN MALDAH.

211. \*Mr. K. Ahmed: (i) Are the Government aware that in the District of Maldah in Bengal there have been many 'mosques', 'monuments', 'tombs', 'dargas' and sacred buildings of the Mogul Emperors of Gour and Pandua (ancient capital) under rack and ruin and their bricks, stones and other materials are being stolen and carried away as *res-nullius* by the people without any interference by the Government and that many brick-built houses are being constructed by the people of the district with the materials thereof?

(ii) Will the Government be pleased to enquire how much of the properties has been taken away and usurped by the people for their personal uses, explaining in full and giving their particulars as regards the actual price of the same at the market rate if possible?

(iii) Will the Government be pleased to state how much money has been spent by Government for the preservation of the ruins of Gour and Pandua under the Ancient Monument Act?

(iv) Will the Government be pleased to inquire how much land appertaining to them has been settled with tenants by the Khas-Mahal and other local Zamindars having landed properties at and near the ancient capital of Gour and Pandua?

(v) Do Government propose to take proper step for the recovery of those properties, movable and immovable immediately, or in the alternative consider advisable to make over the present tombs, monuments, mosques, dargas and sacred buildings including all the lands appertaining to them left by the Mogul Emperor to the Mohammedan Community of the District with the necessary costs for the recovery of those lost properties in question as stated above?

**The Honourable Mr. A. C. Chatterjee:** The Government of India are not responsible for all mosques, monuments, etc., as suggested in the Honourable Member's question, but only for such as have been placed in the charge of the Archæological Department as being of archæological, historical, or artistic interest. In the circumstances it is not possible to give any reply to the Honourable Member's extensive enquiries. If the Honourable Member will specify clearly the buildings, etc., about which he needs information an endeavour will be made to get it.

**Mr. K. Ahmed:** What is the meaning of the Ancient Monuments Preservation Act? What are the provisions, what is the object of that Act, Sir?

**The Honourable Mr. A. C. Chatterjee:** They are as well known to the Honourable Member as to myself.

**Mr. K. Ahmed:** Is it not a fact that in the opening era of the present century His Excellency Lord Curzon went to inspect those Gour and Pandua tombstones, dargas and other sacred and holy places, and that for the preservation of these he brought out a certain scheme and made a large grant of money and that there has not been any substantial benefit from it?

(There being no answer to this question, Mr. Deputy President called upon Mr. K. Ahmed).

**Mr. K. Ahmed:** Is it not a fact, Sir, that there are . . . .

**Mr. Deputy President:** I have called upon the Honourable Member to put his question No. 212.

**Mr. K. Ahmed:** I am ready to put question No. 212 and I put it if I am not entitled to put the above supplementary question to question No. 211.

#### ACCESS TO HOWRAH RAILWAY STATION.

212. **\*Mr. K. Ahmed:** (i) Are the Government aware that the gates leading to the platforms in the Howrah Railway Station are opened for the third and inter-class passengers only five minutes or so before the train starts and several barriers have been constructed near the platform gates preventing easy access of the passengers to the platforms?

(ii) Are the Government aware that in consequence of these restrictions great inconvenience is caused to the third and inter-class passengers especially women and children, who owing to rush often fail to catch the trains?

(iii) Do Government propose to consider the desirability of opening the platform gates at least half an hour before the starting of the trains and to remove the barriers near the platform gates for the convenience of the passenger public?

**Mr. C. D. M. Hindley:** (i) and (ii) Inquiry has been made from the East Indian Railway Administration and it is understood that the gates leading to the platforms at Howrah station are opened for intermediate and third class passengers an hour before the departure time in the case of main lines trains, and half an hour before the departure time in the case of local trains. Barriers are erected so as to prevent a rush of passengers against the entrance gates to the platforms. These measures have been taken in order to prevent passengers from boarding trains without tickets a practice from which the railway revenues have suffered considerably in the past.

(iii) In the circumstances, Government do not propose to take any action.

#### PURCHASE OF TICKETS ON E. B. RAILWAY.

213. **\*Mr. K. Ahmed:** (i) Are the Government aware that on the Eastern Bengal Railway line in most stations passengers are not allowed to purchase tickets until the train leaves the previous Railway station, in consequence of which many passengers are unable to buy tickets owing to the great rush of passengers attempting to buy the tickets and many passengers thus fail to catch the trains?

(ii) Do Government propose to consider the advisability of arranging to sell the tickets in those Railway stations at least one hour before the arrival of trains and thereby removing the inconvenience of the travelling public?

**Mr. C. D. M. Hindley:** (i) This question was referred to the Agent, Eastern Bengal Railway, who reports that the booking offices at important stations are kept open day and night for the issue of tickets. At all other stations the booking offices are opened half an hour before the advertised time of departure of trains and closed five minutes before starting time. No complaints have been received from passengers that

they have not been allowed sufficient time to purchase their tickets, but if specific cases are reported to the Railway authorities they will be looked into.

(ii) In the circumstances, Government do not propose taking any action in the matter.

**RAILWAY AND STEAMER RATES.**

214. **\*Mr. K. Ahmed:** Do the Government intend to take immediate steps to reduce the passenger and goods rates on the Indian Railways and Steamers plying in Indian Waters?

**Mr. O. D. M. Hindley:** Government have no control over steamer freights, and see no reason at present to make any change in the Schedules of maxima fares and rates laid down for Railways in India.

**Mr. K. Ahmed:** Is it not a fact that in England there has been a great deal of reduction in the fares of steamers plying both inside and outside the Thames in England as well as in the fares of goods trains carrying goods there in England managed by private companies?

**Mr. O. D. M. Hindley:** Government are not in possession of complete facts relating to the question which the Honourable Member has put.

**Mr. K. Ahmed:** If there are such reductions in England why should there not be reductions here in this country?

**EASTERN BENGAL RAILWAY CONTRACT.**

215. **\*Mr. K. Ahmed:** (1) Will the Government be pleased to state:—

(i) How many times the contract with the Eastern Bengal Railway Company has been renewed and extended and the respective periods for which such extension was granted, and

(ii) Whether it was not declared that at the expiration of each period the management of the State-owned Line would be taken over by the State?

(2) Are the Government aware that at the expiration of each period, reasons were brought forward to which the Government agreed, why Company Management should be allowed to continue?

(3) Is it the intention of the Government to give a further extension of Company Management at the expiration of the present period?

(4) If any such reasons are likely to be brought forward either by the Railway Board or by the Company Directors, do the Government propose in the interest of the public, to place such reasons before the Assembly at least nine months before the expiry of the Contract with the East Indian Railway Company?

**Mr. O. D. M. Hindley:** (1) (i) It is assumed that the question relates to the East Indian Railway Company referred to in the latter part of Honourable Member's question and not to the Eastern Bengal Railway which is a State-worked line.

The East Indian Railway was purchased by Government in 1879 and the contract then entered into was to run for 50 years unless terminated by either party with two years' notice at the end of the 20th year, 1899, or any subsequent fifth year.

This contract was terminated in 1899 and a fresh contract entered into for 20 years on slightly different terms. At the end of this contract a fresh contract was entered into for five years which will expire on 31st December 1924.

(ii) So far as Government are aware no such declaration was made at the time of the earlier renewals of the contract.

The Honourable Member is, however, referred to the proceedings of the Imperial Legislative Council on 7th March 1919 when in reply to a question by the Honourable Rao Bahadur B. N. Sarma Government stated that the Secretary of State had agreed that on the termination of the contract on 31st December 1924 the direction would be transferred to India either under State or efficient Company management.

(2) Before deciding to renew the contract on each occasion Government took all relevant facts into consideration.

(3) and (4) Government are not prepared to make a statement on the matter at the present juncture but the Assembly will shortly have an opportunity of expressing its opinion on this subject.

**Sir Deva Prasad Sarvadhikary:** Has the five-year limit of agreement been found to be attended with any difficulties either by the Company or by the Government, or has it been considered necessary by either side that the period of renewal must be larger?

**Mr. C. D. M. Hindley:** I think that is a question of opinion.

**Sir Deva Prasad Sarvadhikary:** Has any opinion been expressed by either side?

**Mr. C. D. M. Hindley:** I am not prepared to enter into a discussion on this subject at present as the House will have a full opportunity of discussing it later on.

**Mr. K. Ahmed:** Is the answer to the question asked by my Honourable friend in the negative or in the positive?

**Mr. T. V. Seshagiri Ayyar:** That is the decision given with reference to the Honourable Mr. Sarma's question that the Board of management should be transferred. Does it hold good even now with regard to all railways whose contracts may come to an end?

**Mr. C. D. M. Hindley:** I understand that the declaration of the Secretary of State is still in force.

#### CLERKSHIP APPOINTMENTS, ETC., ON E. B. RAILWAY.

216. **\*Mr. K. Ahmed:** (1) With reference to my question dated the 15th September, 1921, will the Government be pleased to explain in full how the register of qualified candidates is kept in the Eastern Bengal Railway and how the names of the candidates for clerkship and other appointments are registered and by what officers-in-charge of the Railway Administration?

(2) Will the Government be pleased to state the names and designation of Members of the Selection Committee and explain in full their different grades of the officers and clerks of the department appointed since 1921 to

December, 1922, giving their names, explaining in full the reasons of their selection in comparison to others who were not selected?

**Mr. C. D. M. Hindley:** (1) The Government do not think it necessary to call for a report from the Agent on these points.

(2) As explained to the Honourable Member in the reply to his previous question No. 222 put on 15th September 1921—the Selection Committee is intended to deal with appointments of officers only. It has not yet been constituted as the existing arrangements will apply in the case of students passing out of the Engineering College up to the end of the year 1923.

OFFICIALS AND CLERKS ON E. I. AND B. N. RAILWAYS.

217. **\*Mr. K. Ahmed:** (i) In continuation of my question put on the 15th September, 1921, being the question No. 207, will the Government be pleased to state the number of officials and clerks of different grades respectively appointed since then up to December, 1922, and how many among them are Hindus, Muhammadans, Europeans and Anglo-Indians in the East Indian and Bengal Nagpur Railway office?

(ii) Will the Government be pleased to state how many applications were made by writing or otherwise for such appointment to the Railway office and disposed of giving full particulars regarding the test for their selection in comparison to others who were not selected?

(iii) Will the Government be pleased to state whether all the applications for appointment are received by any responsible officer or officers or the chief clerk (Bara Babu).

(iv) Do Government propose, in the interest of the public to find out method or methods by which all the applicants' names without any prejudice may be written in some office book ensuring easy access without any interference to applicants whether any post is vacant or not and whenever vacancies occur, claims of all the applicants may be considered duly and equitably so that proper men may get the appointment?

**Mr. C. D. M. Hindley:** Government has no information in respect to individual appointments on Company managed railways which are made at the discretion, and in accordance with the rules of the Company concerned.

**Mr. K. Ahmed:** Will the Government of India be pleased to take proper steps to introduce methods which will allow the people of India to get justice done to them for the purpose of getting service or for the purpose of being taken into the service of the company?

(There was no reply from the Government Benches).

EXPENSES OF INCHOAPE COMMITTEE.

218. **\*Mr. K. Ahmed:** Will the Government be pleased to state in full giving all the details of the expenses incurred up to 31st December, 1922, from the very beginning on account of the Inchoape Committee item by item and the purpose for which the money was spent including the allowance given to each member of the Committee and to each of the witnesses examined with their respective names?

The Honourable Sir Basil Blackett: A statement is laid on the table giving the information asked for.

*Statement showing details of the expenses incurred up to 31st December 1922, in connection with the appointment of the Inchcape Committee.*

SUMMARY OF THE EXPENSES.

	Rs.
(1) Retrenchment Office . . . . .	30,108
(2) Special Officer, Finance Department (O. B.) . . . . .	23,409
(3) Finance Department (Military Branch) . . . . .	15,000
(4) Military Estimates . . . . .	12,000
(5) Retrenchment Committee proper . . . . .	39,556
Total	<u>1,20,073</u>

*Expenditure incurred in connection with the preliminary work of the Committee (i.e., Retrenchment Office).*

	Rs.
Pay of Secretary to the Government of India, Retrenchment Office, from 6th July to 31st December 1922 at Rs. 4,000 per mensem . . . . .	23,355

Establishment—	Rs.
1 Stenographer from 3rd July to 31st December at Rs. 306 a month . . . . .	1,816
1 Assistant and Cashier from 7th July to 31st December at Rs. 125 a month . . . . .	726
1 Typist from 31st October to 31st December at Rs. 80 a month . . . . .	163
5 Peons . . . . .	379
	<u>2,984</u>

Allowances—

Travelling allowance from Delhi to Bombay and back . . . . .	1,224
Travelling allowance from Simla to Delhi . . . . .	790
Other allowances . . . . .	399
	<u>2,413</u>

Contingencies—

Service Stamps . . . . .	809
Other charges . . . . .	1,047
	<u>1,856</u>
Total	<u>30,108</u>

*Special Officer in the Finance Department (Ordinary Branch).*

Rs.

Pay of the Special Officer in the Finance Department at Rs. 2,250 from 22nd May to 19th October and at Rs. 2,350 from 20th October to 31st December 1923 . . . . . 17,596

Rs.

**Establishment—**

1 Assistant from July to October 1922 . . . . .	1,122	
2 Stenographers (1 from 15th June to 31st December and 1 from 5th September to 24th October) at Rs. 175 per mensem each . . . . .	1,430	
1 Clerk for October . . . . .	156	
2 Typists . . . . .	449	
2 Peons . . . . .	261	8,418

**Allowances—**

**Travelling allowance from Simla to Delhi—**

(i) Officer on Special Duty . . . . .	265	
(ii) Office establishment . . . . .	836	
Simla House Rent . . . . .	540	
Separation allowance . . . . .	300	
Grain Compensation allowance . . . . .	13	1,953

**Contingencies—**

Stationery and Printing . . . . .	250	
Carriage of records . . . . .	132	
Postage and telegrams . . . . .	20	
Other charges . . . . .	50	452
<b>Total . . . . .</b>		<b>23,409</b>

*Finance Department (Military Branch).*

Rs.

Expenditure due to appointment of additional Financial Adviser, while Mr. Mitra was engaged on preparation of case for Committee . . . . . 15,000

Total . . . . . 15,000

*Military Estimates.*

Rs.

Additional cost incurred in connection with special duty of Colonel Charles and Colonel Wigram . . . . . 12,000

Total . . . . . 12,000

*Retrenchment Committee proper.*

	Rs.	A.	P.	
<b>I. Subsistence allowance at Rs. 1,500 a month—</b>				
1. Sir Thomas Catto (does not require any allowance)				
2. Sir Alexander Murray from 8th November to 31st December	3,401	9	0*	
3. Sir R. N. Mookerjee from 9th November to 31st December	2,356	4	0*	
4. Hon'ble Mr. Purshotandas Thakurdas from 5th November to 31st December	2,537	8	0*	
5. Mr. D. M. Dalal from 8th November to 31st December	2,800	0	0	
6. Mr. J. Milne from 5th November to 31st December	2,800	0	0	
7. Mr. H. F. Howard from 5th November to 31st December	2,800	0	0	
8. Salary of Colonel J. C. Harding-Newman from 12th to 31st December 1922. (Pay at Rs. 2,200 plus special pay at Rs. 10 per diem)	3,837	7	0*	
				19,533
Subsistence allowance to Messrs. Dalal, Milne and Howard during the period of voyage to India (15 days) at £100 a month	2,250	0	0	
Salary of Mr. J. Milne to be re-imburged by the India Office to Great Western Railway from 15th October to 31st December at £1,750 per annum	5,470	0	0	
				7,720
<b>II. Travelling allowances—</b>				
(a) Three first class passages from England to India for Messrs. Dalal, Howard and Milne at £78-10-0 each	3,533	0	0	
(b) One single first class fare each from Bombay to Delhi to Messrs. Dalal, Purshotandas Thakurdas, Milne and Howard, who travelled by Special Train.	430	0	0	
(c) Double 1st class fare to Sir Alexander Murray and Sir R. N. Mookerjee from Calcutta to Delhi	420	0	0	
(d) Haulage of motor cars of the President and Members of the Committee from Bombay and Calcutta to Delhi.	1,308	0	0	
				5,686
<b>III. Office establishment from 27th October to 31st December 1922—</b>				
	Rs.	A.	P.	
<b>(a) Ministerial establishment—</b>				
1 Superintendent at Rs. 400				} 2,680 0 0
1 Assistant and Cashier at Rs. 300				
1 General Clerk at Rs. 125				
4 Typists at Rs. 120 each				
2 Typists at Rs. 100 each				
<b>(b) Menial establishment—</b>				
1 Duffry at Rs. 24				} 614
1 Jamadar for President at Rs. 25				
1 Dafadar for Secretary at Rs. 20				
15 Peons at Rs. 16 per mensem each				
(c) Travelling allowance of Superintendent to and from Bombay	180			
<b>IV.—Contingencies—</b>				
Service Stamps			95	} 3,483
Telephone charges			625	
Liveries, etc.			615	
Stationery and Printing			384	
Furniture			750	
Other charges			655	
				3,134
Total				30,556

\* Amounts actually drawn after deduction of Income-tax.

Note.—No expenses have been incurred in connection with witnesses except travelling allowance to officers of Government under the Ordinary Rules.

SCOPE OF INCHCAPE COMMITTEE'S REPORT.

219. \*Mr. K. Ahmed: (i) Is it a fact that the Inchcape Committee has not been empowered to report on all the subjects fit for retrenchment and that the Secretary of State has not given the Members of the Committee entire discretion to submit their independent report in the matter of retrenchment in all the departments under the Government of India?

**The Honourable Sir Basil Blackett:** The terms of reference to the Committee were published in the press and were as follows:

"To make recommendations to the Government of India for effecting forthwith all possible reductions in the expenditure of the Central Government, having regard especially to the present financial position and outlook. In so far as questions of policy are involved in the expenditure under discussion, these will be left for the exclusive consideration of the Government, but it will be open to the Committee to review the expenditure and to indicate the economies which might be effected if particular policies were either adopted, abandoned, or modified."

It will be seen that these terms of reference are substantially identical with those adopted for the Geddes Committee which recently sat in the United Kingdom.

There is no limitation whatever on the Committee's powers of investigation.

**Mr. W. M. Hussanally:** May I ask when this Report will be out or likely to be out.

**The Honourable Sir Basil Blackett:** I am afraid I cannot answer that absolutely categorically but there is every expectation that it will be in the hands of the Government before the Budget.

**Mr. W. M. Hussanally:** Will the Report be placed before the Assembly for discussion?

**The Honourable Sir Basil Blackett:** That question was answered, I think, in an unstarred question that was asked on the 15th instant. The question was whether the Report of the Inchcape Committee will be placed for discussion in the Assembly before any final orders are passed by the Government. The answer was that the Government regret that this course is not practicable.

**Mr. N. M. Joshi:** May I ask whether the Inchcape Committee will consider the railway expenditure of both State managed railways as well as Company managed railways.

**The Honourable Sir Basil Blackett:** There is no limitation whatever on the terms of reference of the Committee's powers of investigation.

**Mr. N. M. Joshi:** May I ask whether the Committee propose to consider railway expenditure?

**The Honourable Sir Basil Blackett:** They are, I believe, considering railway expenditure.

**Mr. K. Ahmed:** Have the Committee examined any witnesses or representatives from the Assembly?

**The Honourable Sir Basil Blackett:** My answer must be in the interrogative.

## SECRETARY OF STATE'S INSTRUCTIONS RE INCHEAPE COMMITTEE.

220. \***Mr. K. Ahmed:** Will the Government be pleased to lay on the table a copy of each of the instructions given to the Government of India or to the Inchcape Committee and the Members of it regarding the scope of the work and the departments of the Government on which the report for retrenchment is asked for by the Secretary of State?

**The Honourable Sir Basil Blackett:** There are no instructions other than those given in the terms of reference.

**Mr. K. Ahmed:** Will the Government of India be pleased to lay on the table the subject matter of the discussion?

**The Honourable Sir Basil Blackett:** The Honourable Member has anticipated question No. 221, the answer to which is that the Government regret that they cannot comply with this request.

**Mr. K. Ahmed:** Why is good money thrown out? Are the representatives of the people of India in this Assembly entitled to know?

**The Honourable Sir Basil Blackett:** I am afraid I did not succeed in quite catching the question.

**Mr. K. Ahmed:** Will the Government of India be pleased to lay on the table the subject matter of the discussion so that the Honourable Members of this House who are elected and nominated may know the exact situation with regard to recommendations of the Inchcape Committee who are holding meetings in camera and the public are not to see what is happening there?

**The Honourable Sir Basil Blackett:** I trust that every opportunity will arise in this House during the Budget to discuss in this camera the whole question.

**Mr. K. Ahmed:** That is like the reply which Mr. Hindley gave to the question on the North Bengal flood. We want a precise answer to the question.

**The Honourable Sir Basil Blackett:** I have done my best to give a precise answer, and if I have followed the admirable example of Mr. Hindley, I do not think I can do better.

## RETRENCHMENT PROPOSALS.

221. \***Mr. K. Ahmed:** Will the Government be pleased to lay on the table all the communication by wireless, cable, and post passed on the subject of retrenchment between the Secretary of State and the Government of India?

**The Honourable Sir Basil Blackett:** Government regret that they cannot comply with this request.

## LEAGUE OF NATIONS.

222. \***Mr. K. Ahmed:** (1) Will the Government be pleased to state the names of all the people who as members of the League of Nations, representing India, are now engaged in the Conference held abroad and why not a single Mohamedar representing the Muslim population of India?

is being hitherto selected to take part in the discussions concerning their community both religious and political and otherwise?

(2) Is it a fact that the Government of India have selected non-Mohamedan Members from India to take part in the discussions of the Conference of the League of Nations abroad and thereby have categorically left off the Mohamedan interest to be protected thereto?

(3) Are the Government aware that a Conference of the representatives of Islam to settle questions regarding the khilafat is under contemplation by the Kemalists and that the Mohamedans of India will be invited to send in their representatives immediately to take part in the discussions which would be held at Angora?

(4) Do Government propose immediately to select suitable Mohamedan Member or Members having the confidence of the community and send them to take part in the League of Nations?

**The Honourable Sir Malcolm Hailey:** (1) India's representatives on the 3rd Assembly of the League of Nations at Geneva were—

- (1) Lord Chelmsford,
- (2) His Highness the Maharaja of Nawanagar, and
- (3) Sir Sivaswamy Aiyar.

I must emphasise that the Indian representatives are chosen to represent India as a whole and not any particular community.

(2) No.

(3) Government are aware that there have been reports to this effect in the press but the suggested Conference has of course no connection with the League of Nations.

(4) The 3rd Assembly of the League has now closed. The Honourable Member will understand that when representatives are again nominated the same criterion must be employed as before, namely, fitness to represent India as a whole, but I need not add that should any topic of particular interests to Muhammadans be likely to come up for discussion the advisability of including a representative from among Indian Muslims will not be overlooked.

**Mr. K. Ahmed:** Are the Government of India aware that in London the Moslem League claimed that at least there should be two representatives elected by the Council of State and the Assembly and it wanted that the Government of India will accede to that and send the representatives?

**The Honourable Sir Malcolm Hailey:** I am aware of the facts mentioned by Mr. Kabir-ud-din Ahmed. But I am also aware that when the matter was discussed in this Assembly, it was not of the same opinion as the Moslem League regarding representative by election.

**Mr. K. Ahmed:** Was there an article ten days ago published on the 13th by the Allahabad paper 'Independent' in which it was said that General Wali Khan who is not an Indian was alleged to have represented India?

**The Honourable Sir Malcolm Hailey:** If there was such an article, it is entirely inaccurate. No General Wali Khan was sent to represent India.

**Mr. K. Ahmed:** That is what the article said and I wanted to ascertain and verify the facts.

## RESIGNATION OF MR. BHURGRI.

228. \***Mr. K. Ahmed:** Will the Government be pleased to state the reason or reasons why the Honourable Mr. Bhurgri has tendered his resignation refusing to act as a member of the Council of State any longer and lay on the table the whole correspondence that has passed between him and the Government of India or the Governor General or the Viceroy and the references which are available from the office of the Home Department?

**Sir Henry Moncrieff Smith:** Mr. Bhurgri addressed no communication to the Government of India on the subject of his resignation. There is, therefore, no correspondence between the Government of India and Mr. Bhurgri which can be laid on the table. Mr. Bhurgri tendered his resignation by means of a telegram addressed to His Excellency the Viceroy. The Government of India are not in a position to lay a copy of this telegram on the table.

**Mr. K. Ahmed:** On the 14th of November last a paper called "The Servant," a Calcutta paper, Sir, published this: "Mr. Bhurgri, while in England, resigned his Membership of the Council of State as a protest against Mr. Lloyd George's pro-Greek policy and his resignation was held by the anti-war Press as a timely warning reflecting the Indian position."

**Mr. Deputy President:** That is not a question.

**Mr. K. Ahmed:** Is not that the reason, Sir?

**Sir Henry Moncrieff Smith:** I would suggest to the Honourable Member that he should ask Mr. Bhurgri.

**Mr. K. Ahmed:** I am sorry, but I am entitled to an answer, according to the rules of this Assembly, from the Honourable Member representing the Government.

## ACCOMMODATION FOR LASCARS.

224. \***Mr. K. Ahmed:** (i) Are the Government aware that in the House of Commons on the 11th December, 1922 Mr. Gilbert, National Liberal Member of Southwark asked the President of the Board of Trade whether Steamship Companies who bring Lascar Crews to British Home ports are under liability to provide house accommodation and food to either discharged or waiting crews of Eastern Origin, and the reply was given by the Under Secretary of State, Earl Winterton, stating that there is room for considerable improvement in the accommodation available for Lascar Seamen at the London Docks?

(ii) Do Government propose amending their answer in answer to my question No. 878 dated the 8th March, 1921 at page 591 put in the Assembly, in view of the reply given by Earl Winterton, the Under Secretary of State in the House of Commons as above?

(iii) Will the Government be pleased to state or otherwise consider whether they will follow the same course in the case of Indian Seamen, regarding house accommodation for them in all the ports of India including Home or foreign as was promised by the Under Secretary of State for white seamen in various ports?

**The Honourable Mr. C. A. Innes:** (i) Yes.

(ii) and (iii) The Government have nothing to add to the answer referred to by the Honourable Member.

**Mr. K. Ahmed:** Will the Honourable Member make a statement to this House showing that he is ready and willing to place on the table of this Assembly for the benefit of the public any account or description they might come to have, after enquiry is made with regard to the subject in question involved in No. 224, (i), (ii) and (iii)?

**The Honourable Mr. C. A. Innes** (Commerce and Industries Member): The Government of India do not propose to make any enquiry.

WAGES, ALLOWANCES, ETC., OF INDIAN AND EUROPEAN SEAMEN.

225. **\*Mr. K. Ahmed:** Will the Government be pleased to state giving full particulars, the difference between Indian Seamen and European Seamen regarding their monthly wages, allowances, outfits, accommodations and quality, quantity and prices of food supplied to them per day and the number of hours they work on board the vessels both Mercantile and those chartered by the Government?

**The Honourable Mr. C. A. Innes:** The Honourable Member will find the information he wants regarding Indian seamen in section 70 of the Indian Merchant Shipping Act, 1859, and in the Lascar Agreements. I am afraid that I cannot undertake to supply him with the required information regarding European seamen but if he desires to study the subject, I shall be happy to place at his disposal such books of reference as the Commerce Department Library contains.

**Mr. K. Ahmed:** I am very much obliged to my Honourable friend, but will he be good enough to take the trouble to ameliorate the condition of the poor Indian seamen through the Department of which my Honourable friend is the Member?

**The Honourable Mr. C. A. Innes:** We are always prepared to consider specific grievances brought to our notice.

**Mr. K. Ahmed:** Will my Honourable friend explicitly say how and when he is going to do that?

DEMANDS OF INDIAN SEAMEN.

226. **\*Mr. K. Ahmed:** (i) Is it a fact that Indian Seamen engaged in Indian ports while going to foreign ports in vessels frequently visiting ports which are much colder than Indian ports, ask for warm clothing, rich food, cabin and saloon accommodations similar to those provided for European Crews along with their higher salaries and that in spite of promises made by the Captains and other persons in authority, their requirements have not been complied with?

(ii) Will the Government be pleased to state on enquiry from the Calcutta Shipping Office how many cases or instances have occurred mentioning the names of vessels and their agents during the last five years up to 1922 in which the demands mentioned as above have been made by the Indian Seamen and in spite of promises of Captains and other persons in authority specially regarding the increment of pay, the said demands have not been complied with?

**The Honourable Mr. C. A. Innes:** The Honourable Member is probably referring to the fact that Indian seamen may not be taken during the winter months to ports on the East Coast of America North of 38°

North latitude except under special agreements voluntarily undertaken. These special agreements provide for special clothing and special heating of the Seamen's quarters. In the circumstances the Government are not prepared to make the enquiry suggested in part (ii) of the question.

**Mr. K. Ahmed:** May I state one or two names of steamers in which Indian seamen have been engaged through men registered under the Shipping Act both in Calcutta and Bombay and elsewhere also and when they arrived at the foreign ports and ask for higher wages. . . .

**Mr. Deputy President:** I am afraid I cannot allow the Honourable Member to make a speech.

**Mr. K. Ahmed:** I am not making a speech, Sir—and the Captain of the steamer, it was the Steam Ship s. s. *Hatipura* or *Hatinara*; there is another steamer, Sir, under the agency of Messrs. Shaw Wallace and Co., a big office in Calcutta,—they entered into a fresh contract only last year that they will pay 50 per cent. more than the salary. . . .

**Mr. Deputy President:** I think, I asked the Honourable Member to abstain from making a speech. If, after hearing the reply to his question, he thinks that the statement is of great importance, I think it might well form the subject matter of another question.

(Mr. K. Ahmed again rose.)

**Mr. Deputy President:** Order, order.

#### SEAMEN RECRUITMENT COMMITTEE'S REPORT.

227. **Mr. K. Ahmed:** (i) Are the Government aware of the Report of a meeting of the Indian Seamen's Union, Calcutta, published in the issues of the *Statesman* and the *Amrita Bazar Patrika* dated the 5th December last in which the Union urged the Government to take immediate steps to give effect to the Recommendations contained in the Reports of the Seamen's Recruitment Committee in non-compliance of which it has been declared that there will be a Seamen's Strike?

(ii) (a) Do Government propose in the interest of the country to expedite the enforcement of the Recommendations of the Seamen's Recruitment Committee immediately during this Session without waiting any longer?

(b) If the answer be in the affirmative, will the Government be pleased to state whether they are going to introduce Legislation embodying the Recommendations of the Committee in this Session?

**The Honourable Mr. C. A. Innes:** (i) Yes.

(ii) The attention of the Honourable Member is invited to the answer given on the 7th September last to a similar question asked by Mr. Joshi. The Government of India are still awaiting the views of the Governments of Bengal and Bombay on the recommendations of the Committee and until these have been received they are unable to make any statement on the subject.

**Mr. K. Ahmed:** Is it not a fact, Sir, that in the report submitted last May and published in the *Gazette of India* dated May 27th 1922, the majority of the Committee Members state this; "The proposals of the Committee will be examined at once in consultation with the Maritime Local Governments?"

**The Honourable Mr. C. A. Innes:** They were examined at once, and they were referred after a very short period of time to the two maritime Local Governments whose names I have given.

**MR. S. K. GHOSE, SHIPPING BROKER.**

228. **\*Mr. K. Ahmed:** (a) Is it a fact that the Government of Bengal after the termination of the sittings of the Seamen's Recruitment Committee in March 1922 appointed a new Shipping Broker in the person of Mr. S. K. Ghose in contravention of the recommendations of the said Committee and that the said new Shipping Broker of Calcutta is a relation of one of the nominated Labour Members of the Bengal Council who had recommended him?

(b) Will the Government be pleased to state whether they received any resolution of protest from the Indian Seamen's Union, Calcutta against the appointment of Mr. S. K. Ghose as the new Shipping Broker in the port of Calcutta by the Government of Bengal?

(c) If so, what steps the Government have taken for his removal?

**The Honourable Mr. C. A. Innes:** The attention of the Honourable Member is invited to the answer given on the 26th September 1922 to a somewhat similar question (No. 230) asked by Mr. Hussanally, Mr. S. K. Ghose was recommended by a Member of the Bengal Council, but the Government of India do not know whether they are in any way related. As already explained, the new broker was appointed purely as a temporary measure by the Government of Bengal, pending a decision on the recommendations of the Seamen's Recruitment Committee. The appointment was made by the Government of Bengal in the interests of the seamen themselves in order to break an existing monopoly, and the Government of India do not propose to take any action.

**Mr. K. Ahmed:** Will the Honourable Member explain the reasons why the Government of Bengal made this temporary appointment?

**The Honourable Mr. C. A. Innes:** I have nothing to add to what I have already said.

**Mr. K. Ahmed:** Will the Government of India take steps, Sir, for the removal of that broker according to the terms of the Committee's report?

**The Honourable Mr. C. A. Innes:** No, Sir.

#### EMPLOYMENT OF LASCARS AND CASUALTIES IN THE GREAT WAR.

229. **\*Mr. K. Ahmed:** Will the Government be pleased to answer my question No. 198 re Indian Seamen and lascars put in the Assembly on the 7th September 1922 as early as possible giving all the particulars in full?

**The Honourable Mr. C. A. Innes:** The answer to question No. 198, dated the 7th September 1922, was sent to the Honourable Member on the 11th January 1923, and will now be laid on the table.†

† The statement will be printed in the next issue of these Debates.

**Mr. K. Ahmed:** I want a ruling from the Chair. Suppose, certain questions are put by an Honourable Member. The Honourable Member gets a demi-official letter written by a certain Department of the Government of India saying "would you be good enough to withdraw the question,—I shall be very much thankful in case you approve of the terms set forth in the letter" instead of his answering the question publicly in the open Assembly for the benefit of the country?

**Mr. Deputy President:** I am afraid the Chair can take no notice of private correspondence between the two Honourable Members.

**Mr. K. Ahmed:** No, Sir. I think you have caught hold of the wrong end of the stick. What I am asking is whether a starred question put by an Honourable Member of this Assembly should not be answered openly in the Assembly for the benefit of the Members and the country and not in a demi-official letter, in which the Department writes to the individual and asks him to be good enough to withdraw the question instead of troubling the Honourable Member in charge of the Department to answer it.

**Mr. Deputy President:** I can add nothing to what I have said before.

**Mr. N. M. Joahi:** I want to inquire from Government whether they approve of the practice which is growing in this House of not answering questions in the House but sending the information to the Member?

**The Honourable Mr. G. A. Innes:** May I say, Sir, that that practice has been adopted solely in the interests of economy and to avoid printing charges. In regard to this particular question, I am certainly prepared to lay the answer on the table in order that Honourable Members may see it in the printed proceedings; but I may point out to the Honourable Member that if I had taken that course it would not have enabled him to ask the supplementary questions on which he was so keen.

**Mr. K. Ahmed:** I think this point has already been decided. Mr. K. C. Neogy met the argument of my Honourable friend, Sir William Vincent, and it was decided by this Assembly that all the questions would be answered in the House. The excuse brought forward by my Honourable friend, Mr. Innes, therefore, will not hold water. It is not a question of space but the irregularity and error which my Honourable friend's Department committed, and they were accused of the same thing by Mr. Neogy. So far as printing charges are concerned, they have printed this long syllabus instead of taking the trouble of answering the question. I think we come within the four corners of the principle then decided and are entitled to have everything published in the proceedings; there is no getting out of it. May I ask, Sir, that the answer read out by my Honourable friend from his papers and the demi-official letter written to me by one Mr. E. Rogers of his Department. . . .

**Mr. Deputy President:** I think the Honourable Member has already intimated his intention of having the answer published and laid on the table.

**Mr. K. Ahmed:** When Sir? Will that question be put down again for answer?

**Mr. W. M. Hussanally:** May I ask if it is a fact, as stated by my Honourable friend, Mr. Ahmed, that he was asked by demi-official letter to withdraw his question?

**The Honourable Mr. C. A. Innes:** I understand that one of the officers of my Department got this question after the information required by Mr. Ahmed had been sent to him, and he wrote to Mr. Ahmed and asked whether in those circumstances he still wished the question answered. Those are the facts of the case.

**Mr. K. Ahmed:** Sir, I place the letter in the Assembly.

**Mr. Deputy President:** I am afraid I cannot allow the Honourable Member to go into that question.

**Mr. K. Ahmed:** Could not that question be threshed out in this Assembly, so that we may have a ruling from the Chair?

**The Honourable Sir Malcolm Hailey:** Might I suggest that a general question of this nature could better be brought up on a motion, or by special leave at a convenient time and need not delay the House during question time.

**Mr. Deputy President:** I hope the Honourable Member will take the advice of the Leader of the House and bring this matter up on a formal motion or through a separate question.

#### LICENSED SHIPPING BROKERS.

230. **\*Mr. K. Ahmed:** Will the Government be pleased to state how many Licensed Shipping Brokers are there in the ports of Calcutta, Bombay, Rangoon, Madras and Karachi and the time when the licenses of these brokers commenced and terminated during the years of 1918, 1919, 1920, 1921 and 1922 giving full particulars of any period when their licenses were in abeyance and they had acted as broker or brokers; and how many licenses were renewed each year and who renewed them giving full particulars of the same? 1

**The Honourable Mr. C. A. Innes:** Since the licensed brokers system has recently been the subject of enquiry by a special committee and since the question of discontinuing that system is now under correspondence with Maritime Local Governments, the Government of India do not think it necessary to put those Local Governments to the trouble of collecting and supplying the information required by the Honourable Member.

**Mr. K. Ahmed:** Was it not illegal for a broker without a licence to supply seamen?

**The Honourable Mr. C. A. Innes:** If a shipping broker committed any illegal act the person aggrieved had a remedy in the Courts of law.

**Mr. K. Ahmed:** Is it not for the Government of India to prosecute them, Sir, without leaving it to other people?

**The Honourable Mr. C. A. Innes:** No, Sir. The Mercantile Shipping Acts are administered by Local Governments.

#### DEPUTY SHIPPING MASTER, CALCUTTA—DISSATISFACTION AGAINST.

231. **\*Mr. K. Ahmed:** (a) Are the Government aware that the Indian Seamen's Union, Calcutta, dated 8rd December 1922 passed a resolution declaring that the present Deputy Shipping Master, Calcutta be immediately recalled Home, removed or transferred as his office was not for

the purpose of facilitating appointments of Seamen and also for their interest and benefit?

(b) If the answer be in the affirmative, will the Government be pleased to state the reasons for such dissatisfaction of the Seamen?

(c) Will the Government be pleased to state what action the Government have taken in the matter, if there be any?

#### COMPLAINT AGAINST DEPUTY SHIPPING MASTER.

232. \***Mr. K. Ahmed:** (a) Will the Government be pleased to state whether they received a petition signed by some 400 Seamen of Calcutta complaining against the Deputy Shipping Master for his treatment towards the seamen in general?

(b) If so, what action the Government have taken or propose to take in the matter.

**The Honourable Mr. C. A. Innes:** (a) Yes. I will answer the preceding question at the same time as this.

(b) and (c) The Government of India recently received an English translation of a petition signed by certain seamen in Calcutta in which it was alleged that the Shipping Master and the Deputy Shipping Master were unsympathetic and took the side of the shipping brokers. The petition has been returned for submission through the prescribed channel, i.e., the local Government.

#### INDIAN SEAMEN IN THE GREAT WAR.

233. \***Mr. K. Ahmed:** In continuation of my question No. 198, dated the 7th September, 1922, regarding the number of Indian Seamen engaged from all the Indian ports in foreign ships registered from the United Kingdom, as well as in ships registered under the Indian Registration of Ships Act, 1841 and the Indian Steam Vessels Act, 1917, will the Government be pleased to state how many seamen were engaged in 1921-1922 from each of the ports in India including the number of Indian Seamen who were killed during the last European War in the Merchant Ships as well as the ships chartered by the Government?

**The Honourable Mr. C. A. Innes:** Particulars of the numbers of Indian seamen killed during the European War and also of the number of such seamen shipped from Bombay and Calcutta during 1921-22 were supplied to the Honourable Member on the 11th instant in response to question No. 198, dated the 7th September 1922. They will now be laid on the table.† Information relating to recruitment from Karachi and from the other ports (except Bombay) in the Bombay Presidency is not available, while there was no recruitment either from Rangoon or from Madras.

**Mr. K. Ahmed:** Sir, with reference to the demi-official letter in connection with this question No. 233, it states that there were 1,200 seamen captured and imprisoned in the enemy countries. I want to ask a test question. You see, Sir, there are two double zeros after the figure 12. Whether it would not be a few less or a few more than 1,200 if the Honourable Member is prepared to answer?

**The Honourable Mr. C. A. Innes:** I understand, Sir, that the information supplied to the Honourable Member was correct to the best of the Commerce Department's knowledge.

† The statement will be printed in the next issue of these Debates.

COMPENSATION TO INDIAN SEAMEN.

284. \***Mr. K. Ahmed:** (a) Are the Government aware that the dependants of seamen in England killed in the War received pensions and compensations and that in addition they are getting a share of German Reparation Award?

(b) Do Government propose to follow the same principle in dividing the same Reparation Award among the dependants of the Indian Seamen instead of transferring the same to the different funds?

GERMAN REPARATION AWARD FOR SEAMEN.

285. \***Mr. K. Ahmed:** Will the Government be pleased to lay on the table all the correspondence that may have passed between the Government of India and the Secretary of State regarding the German Reparation Award for Seamen and the matters ancillary thereto?

**The Honourable Mr. C. A. Innes:** I will answer the preceding question at the same time as this.

The suggestion in part (a) of the Honourable Member's question is not correct; and as a report appears to be current among Indian Seamen that in addition to receiving pensions dependents of British Merchant Seamen killed in the war are receiving compensation from German reparations, the Government of India take this opportunity of clearing up the matter. The facts are as follows:—In 1921 His Majesty's Government decided that a sum of five millions sterling should be devoted to the payment of compensation for "Suffering and Damage by enemy action." It was originally intended that the expenditure should be met from reparation claims. But in January 1922 His Majesty's Government decided not to wait to see whether any payments would be received on reparation account from Germany, and they provided the promised sum of five millions sterling in the Civil Service estimates partly for 1921-22 and partly for the current year. A Royal Commission was then appointed to consider claims. As I have said, the sum was provided for compensation for suffering and damage by enemy action, but the Commission decided that in the first instance they would recommend grants in specially necessitous cases, whether among seamen and their dependents or among other classes of the population. It will be seen that it has not been decided to earmark any portion of reparation payments for distribution specially to British seamen, and in the circumstances neither part (b) of the Honourable Member's question or his succeeding question arise.

FRANCHISE FOR INDIANS IN KENYA.

286. \***Mr. T. V. Seshagiri Ayyar:** (a) Will the Government be pleased to state whether they have received any communication from Indians living in Kenya relating to the exercise of franchise by them at the ensuing election for the Legislative Council?

(b) Whether the Government has addressed the Secretary of State on the subject and if so, would the Government be prepared to lay on the table of the House a copy of the communication, if any, addressed by them?

**Mr. J. Hullah:** (a) Yes. \*

(b) The Honourable Member is referred to the answer given by me on the 15th instant to a similar question asked by Mr. Jamnadas Dwarkadas in which I stated the substance of the telegram addressed by the Government of India to the Secretary of State. Government are not prepared to lay the correspondence on the table at the present stage.

**Mr. T. V. Seshagiri Ayyar:** Has any reply been received from the Secretary of State in regard to any representation made by the Government of India on the subject?

**Mr. J. Hullah:** Yes.

**Rao Bahadur T. Rangachariar:** Are the Government aware that the conditions are getting very acute in that colony?

**Mr. J. Hullah:** Yes, certainly judging from newspaper reports.

**Rao Bahadur T. Rangachariar:** Are the Government taking proper steps to protect the interests of Indians there?

**Mr. J. Hullah:** Yes.

**Mr. Harchandrai Vishindas:** Are the Government prepared to state the substance of the reply of the Secretary of State?

**Mr. J. Hullah:** No; but I can say that the Secretary of State is working in complete accord with the Government of India.

**Mr. Jamnadas Dwarkadas:** Is there any likelihood of Government yielding to the threat held out by the European community that if the claim of the Indian community to the franchise is accepted they will resort to violence?

**Mr. J. Hullah:** No such threat has been communicated to the Government of India.

**Mr. Jamnadas Dwarkadas:** It has not been communicated to the Government of India, but has the Honourable Member read the telegram purporting to the effect that that threat has been held out by the European community?

**Mr. J. Hullah:** Yes, I have seen a telegram of that kind in the press.

**Mr. Jamnadas Dwarkadas:** Has the Government impressed on the Secretary of State for India and the Secretary of State for the Colonies that any attempt at whittling down the rights of the Indian Community would be subversive of the Resolution of the Imperial Conference of 1921?

**Mr. J. Hullah:** Certainly, we have done that.

**Mr. Harchandrai Vishindas:** In view of the fact that Government are aware of this information, although they have not received it officially, are the Government prepared to take any action in the matter or send any communication to the Secretary of State as to the threat held out by the European community?

**Mr. J. Hullah:** Yes, Government will certainly consider, and consider immediately, the advisability of making such a communication.

**Mr. T. V. Seshagiri Ayyar:** Will the Government of India communicate to the Governor of the colony its opinion that care should be

taken to protect the lives of the Indians in the colony against violence. Will the Government take proper steps to protect the domiciled Indians there against the contemplated violent action of the European settlers there?

**Mr. J. Hullah:** We should certainly take steps if we had any reason to believe that there was serious danger of violence, but we have received no information of the kind.

**Rao Bahadur T. Rangachariar:** Has the Government of India received a telegram addressed to His Excellency the Viceroy by the Indian Congress where they appeal for protection to His Excellency Lord Reading?

**The Honourable Mr. B. N. Sarma:** We propose to communicate to the Secretary of State the feeling of the House and the feeling of the Indian community to see that all that can be done is done.

FOUR-WHEELER COACHES.

287. **\*Mr. N. M. Joshi:** What is the number of coaches, in terms of four-wheelers, which do not normally form part of the daily passenger-carrying trains and their cost?

**Mr. O. D. M. Hindley:** I am sorry that I cannot answer this question for I do not know precisely what information the Honourable Member requires. If he will let me know later what information he wants I will endeavour to supply it.

**Mr. N. M. Joshi:** What I want to know is this. There is a lot of rolling stock of passenger trains which is not used daily. I want to know what the number of such stock is.

**Mr. O. D. M. Hindley:** I beg to suggest that if the Honourable Member will perhaps discuss this matter with me, I shall be able to explain the difficulties and then if he will make a specific request, I will give him any information in my power.

MANAGEMENT OF E. I. AND G. I. P. RAILWAYS.

288. **\*Mr. N. M. Joshi:** Do Government propose to place their proposals regarding the future management of the East Indian and the Great Indian Peninsula Railways before the Legislative Assembly during the current session?

**Mr. O. D. M. Hindley:** In accordance with the undertaking given by the Government in the Legislative Assembly on the 7th September 1922 in the course of the discussion on the Resolution relating to the revision of the Indian Railways Act, 1890, moved by Moulvi Miyan Asjad-ullah, a Government day will be given during the current session of the Legislative Assembly for the discussion of that Resolution. Notice has been given of amendments to that Resolution which will give the Assembly an opportunity of discussing the future management of the two Railways mentioned.

**Rao Bahadur T. Rangachariar:** Will that date be before the other Resolution by Government about the separation of Railway and ordinary Budget is taken up? Will an opportunity be given to the Assembly before that?

**The Honourable Sir Malcolm Halley:** We have not yet settled our dates, but we shall do so as soon as possible. I may remind the House that at present we have great difficulty in settling them owing to the delay in disposing of the Criminal Procedure Code Bill.

**Rao Bahadur T. Rangachariar:** My question was whether the discussion will be before the other question is taken up.

**The Honourable Sir Malcolm Halley:** I cannot give any indication at present of the date. We will consider the point and let the Honourable Member and the House know as soon as possible.

**Mr. Harchandrai Vishindas:** Do I understand that the Government is not in a position to chalk out the whole programme of this session, because I intended to put a question before the commencement of business to-day whether we will be in a position to know, so that we may regulate our movements accordingly.

**The Honourable Sir Malcolm Halley:** We should be very glad, if we could give such information to the Honourable Member which would enable him to regulate his movements; but at present we are unable to say even whether the session will terminate in March or not. At our present rate of progress it appears not impossible that we may have to sit through April and possibly through part of May.

**Mr. Harchandrai Vishindas:** I want to know whether the Governor General in Council has fixed the date under the Standing Orders for the introduction of the Budget.

**The Honourable Sir Malcolm Halley:** Yes, Sir. It is the usual date, 1st of March.

**Mr. Jamnadas Dwarkadas:** Coming back to the original question, will the Government kindly make a note of this point that many of the Members of this House desire that the discussion of the question of State *versus* Company management of Railways should precede the discussion on the question of the separation of the Railway Budget.

**The Honourable Mr. C. A. Innes:** I will certainly take note of that and will discuss it with the Honourable the Leader of the House.

**Mr. K. Ahmed:** Is it not a fact distinctly understood by the Member of the Assembly and my Honourable friend, Mr. Innes, that the earliest date will be fixed for the discussion of this Resolution which was moved by my Honourable friend Miyan Asjad-ullah and I, Sir, objected when the Home Member said that there will be an adjournment of this at the next November Session, which has not been held at all, the reason for which is obvious to the Honourable Member. Under these circumstances are we not entitled to have the earliest date fixed for the discussion of this Resolution, *viz.*, Company *versus* State management.

**The Honourable Sir Malcolm Halley:** Without entering into further discussion, I might say that we shall do our best in the circumstances to give the House as early a date as possible.

#### TEMPLES AT PAHARGUNJ, DELHI.

289. \*Rai Sahib Lakshmi Narayan Lal: (a) Has the attention of the Government been drawn to the proceedings of the All-India Hindu Maha

Sabha held at Gaya on 81st December last regarding the demolition of the temples situate within the area proposed to be included in the New Railway station at Pahar Gunj, Delhi?

(b) How many temples and Dharmshalas appertaining to the temples were there within the said area?

(c) Has any of the said temples or Dharmshalas or any portion thereof been demolished; if so, to what extent and by whose order?

(d) Has any body been consulted in the matter?

(e) What do the Government propose to do in the matter now?

**Mr. C. D. M. Hindley:** (a) No.

(b) Six temples and one dharamsala.

(c) No.

(d) Yes. All those who claimed to be interested in the matter and who approached the Chief Commissioner, Deputy Commissioner, or the Engineer-in-Chief have been consulted.

(e) Nothing at present.

PILFERING AND COMPLAINTS ON N. W. RAILWAY.

240. **\*Dr. Nand Lal:** 1. Is Government of India aware that

(a) there is a great deal of pilfering on the North Western Railway;

(b) there is a general complaint in respect of overcrowding in the third class carriages;

(c) there is a great inconvenience to women and children travelling in the third class.

2. If answer to question No. 1 be in affirmative, then will they be pleased to state as to what steps they have taken to put an end to them (pilfering, complaints, and inconvenience)?

**Mr. C. D. M. Hindley:** (a) Government are not aware that there is a great deal of pilfering on the North-Western Railway. Cases of pilferage occur on the North-Western Railway but they are not peculiar to that Railway. The subject of prevalence of theft and pilferage on railways and the measures for remedying the evil were examined in detail by the Railway Police Committee in 1921 and steps have been taken by the railways on the basis of the recommendations made by the Police Committee. Copies of the Committee's Report are available in the Library.

(b) and (c) The Honourable Member is referred to the answer given on 16th January 1928 to item (b) of starred question No. 92 asked by Rai Bahadur Lachmi Prasad Sinha in a similar connection.

**Mr. T. V. Seshagiri Ayyar:** Does that answer imply that the recommendations made by the Railway Police Committee have been acted on by the Railways?

**Mr. C. D. M. Hindley:** I am not prepared to say they have all been acted on. They have all been considered, and will be acted on if necessary.

**Mr. J. Chaudhuri:** Is there any improvement in regard to pilfering since the report of the Committee?

**Mr. C. D. M. Hindley:** I am afraid I have no figures to substantiate that point one way or the other.

**Mr. J. Chaudhuri:** I personally know there has not been. A motor car fittings were pilfered the other day.

#### PRESENTS TAKEN BY TRAFFIC INSPECTORS.

241. **\*Dr. Nand Lal:** 1. Is Government of India aware that some of the Traffic Inspectors on the North Western Railway take a periodical allowance, in the form of presents or pecuniary gratifications, from some of the Station Masters, excepting those who are posted at principal and very important stations?

2. If answer to question No. 1 be in affirmative, will they be pleased to state as to what step they have taken to put an end to it?

**Mr. C. D. M. Hindley:** The Government regret that a sweeping allegation of this kind should have been made against a whole class of Railway servants. If the Honourable Member has charges of corruption to make against individual Traffic Inspectors, the Government trust that he will make them to the Agent. The charges will then be investigated and suitable action taken if necessary.

#### INCREASE IN RAILWAY FARES.

242. **\*Dr. Nand Lal:** (i) Will Government be pleased to state as to whether the last increase in the Railway fare of the third class has effected any appreciable increase in the revenue? If so, what is the amount of that increase up to the end of December 1922?

(ii) Will Government be pleased to state as to whether the last increase in the Second Class Railway fare has effected any appreciable increase in the revenue? If so, what is the amount of that increase up to the end of December 1922?

**Mr. C. D. M. Hindley:** The Honourable Member is referred to the answer to a somewhat similar question, *viz.*, No. 150 asked by Mr. P. L. Misra on the 17th instant. The Government hope to collect shortly more detailed figures and on receipt of them, they will be able to give to the Honourable Member the information he requires.

#### DISCONTINUANCE OF RAILWAY RETURN TICKETS.

243. **\*Dr. Nand Lal:** Will the Government be pleased to state as to whether the last discontinuance of Second and First Class Return tickets has occasioned any appreciable increase in the revenue? If so, what is the total amount thereof?

**Mr. C. D. M. Hindley:** The revenue derived from 1st and 2nd class passenger traffic increased year by year from 1915-16 to 1921-22. The extent to which the abolition of 1st and 2nd class return tickets at less than two single fares contributed to this increase cannot be estimated, owing to factors being involved, the effect of which cannot be calculated.

#### FEMALE TICKET COLLECTORS.

244. **\*Dr. Nand Lal:** Will the Government be pleased to state as to whether there are female ticket collectors at every principal and important Junction Stations?

**Mr. O. D. M. Hindley:** Women ticket collectors are employed at the larger railway stations situated in Upper India where tickets are checked. Their employment on railways in other parts of India and in Burma is generally speaking not considered necessary.

SUPPLY OF WAGONS TO TRADERS.

245. **\*Dr. Nand Lal:** Is the Government aware that, at many Railway Stations of the North Western Railway, Traders and Merchants cannot get wagons till they pay in the form of bribe to the Station Masters or Goods Clerks?

**Mr. O. D. M. Hindley:** The Government of India are of course aware of the remarks of the Acworth Committee on the subject of irregularities on the distribution of wagons. The matter is one which has been receiving the careful attention of the Railway Board. The systems of registration in force on the various railways have been under examination and are now under trial. The matter has also been taken up by the Indian Railway Conference Association. Further steps will be taken as is found possible in consultation with the Railway Administrations.

CORRUPTION IN THE SERVICES.

246. **\*Dr. Nand Lal:** 1. Is Government aware that there is corruption in

- (a) Railway Department—both Traffic and Engineering?
- (b) Commissariat Department?

(2) If the answer to question No. 1 be in affirmative, will Government be pleased to state as to what effective measures they have taken to put an end to it?

**Mr. O. D. M. Hindley:** As regards the Railway Department the Honourable Member is referred to the reply given in the previous question.

To enable Government to answer satisfactorily that part of the question which relates to the "Commissariat Department", it has been necessary to make certain enquiries, the result of which will be communicated to the Honourable Member as soon as possible.

CREW SYSTEM OF CHECKING TICKETS.

247. **\*Dr. Nand Lal:** (a) Is Government of India aware that the Railway Department, though it is according to section 69 of the Indian Railways Act, required to collect Tickets from passengers at the end of journey or near that, have, in the Lahore District of the North Western Railway, recently introduced a new system, called the Crew System, according to which seven or eight Ticket Collectors and an Inspector are put in charge of a train at the starting station in order to collect tickets, and check the train at each station giving little chits, as substitutes or tokens, for the collected tickets?

(b) Is the Government of India aware that no female ticket collectors are provided under the new Crew System?

(c) Is the Government of India aware that some passengers and a Municipal Commissioner of Wazirabad complained against this new system some months back?

**Mr. O. D. M. Hindley:** Government have no information. Enquiry will be made from the Agent, North-Western Railway, and the result communicated in due course.

#### WATERING STAFF ON N. W. RAILWAY.

248. **\*Dr. Nand Lal:** (a) Is Government of India aware that only 58 extra watermen were employed for supplying water to trains on the Lahore District of the North Western Railway, last summer, whereas 80 watermen used to be employed in the previous years?

(b) Is Government of India aware that the Traffic Department of the North Western Railway dismissed, in the Lahore District, water staff at many roadside stations, barring a few principal ones?

(c) Is Government of India aware that this dismissal of watering staff caused great trouble to the third class passengers?

**Mr. O. D. M. Hindley:** The Government of India presume that if the facts are as stated the Agent was satisfied that the reduction in the staff would cause no inconvenience to the public. They are however forwarding the Honourable Member's question to him in order that he may reconsider the matter if he thinks it necessary so to do.

#### REVENUE FOLLOWING ON CHANGE IN POSTAL RATES.

249. **\*Dr. Nand Lal:** (1) Will Government of India be pleased to state as to whether the last abolition of pice post cards has occasioned some increase or decrease in the Revenue, giving in either case an approximate amount of such increase or decrease.

(2) Will Government of India be pleased to state as to whether the last increase in postage stamps on letters, namely, from half an anna to one anna, has brought about some increase in Revenue and if so, what is the approximate increase, and if there is a decrease in consequence thereof, then, what is the amount thereof up to the end of December 1922.

**Colonel Sir Sydney Crookshank:** (1) and (2) Separate information regarding the revenue from the sale of postcards is not available, but it may be stated that the gross amount realised from the sale of ordinary postage stamps and postal stationery of all kinds for the period from April to December 1922 was Rs. 5,08,88,000 as compared with Rs. 4,77,04,481 for the corresponding period of 1921.

**Mr. W. M. Hussanally:** May I inquire if the anticipated income has been realised?

**Colonel Sir Sydney Crookshank:** Sir, it is difficult to state at this particular period of the year whether the anticipated revenue on the Posts and Telegraphs combined will be fully realised, but I can inform the House this much, that it is likely that the profits on the two branches taken together will amount to over 80 lakhs of rupees as compared with the deficit which would have occurred had this Honourable House not had the foresight to increase the postal rates from a quarter anna to half an anna for post cards and from a half anna to one anna for letters.

**Mr. W. M. Hussanally:** What has been the total cost of reprinting and labelling to be deducted from this Rs. 80 lakhs?

**Colonel Sir Sydney Crookshank:** I shall be much obliged if notice can be given of that question.

**DR. JIWAN LAL, BUSHIRE.**

250. \***Dr. Nand Lal:** 1. Is Government of India aware—

- (a) that one Doctor Jiwani Lal, Sub-Assistant Surgeon, Military Indian Station Hospital, Bushire (Persian Gulf) was convicted and sentenced to five years' rigorous imprisonment in May 1922, under the charge of tampering with the loyalty of the troops, by the Court Martial;
- (b) that the convict was transferred to some Jail in India;
- (c) that the relations (brothers) of the convict addressed the Government of India begging to be informed as to where the convict was;
- (d) that his brothers are anxious to know whether he is living;
- (e) that the convict was an inexperienced youth.

(2) If the answer to question No. 1 be in affirmative, will Government be pleased to state as to whether the convict is living and if so, in what Jail he is.

**Mr. E. Burdon:** (1) and (2) Government are aware that Dr. Jiwani Lal was convicted of the offence mentioned by the Honourable Member. As far as their present information goes, he is in Thana Jail, Bombay Presidency, to which he was transferred from Bushire. I will ascertain definitely whether he is still in Thana Jail, and I will inform the Honourable Member of the result.

**IMPRISONMENT OF PAIRA BHAN, CHAUDHURI NIRMAL DAS AND DEVI DAS OF DERA ISMAIL KHAN.**

251. \***Dr. Nand Lal:** 1. Is Government aware—

- (a) that on 31st October, 1921, Paira Bhan, Chaudhri Nirmal Das and Devi Das and others, residents of Dera Ismail Khan, were charged under section 40 of the Frontier Crimes Regulations, for repeating the Karachi resolution and were convicted by the District Magistrate and sentenced to two years' simple imprisonment;
- (b) that they were transferred to Peshawar Jail on 9th November, 1921;
- (c) that on 12th November, 1921, the District Magistrate without notice to the accused enhanced the imprisonment of all the accused by changing the simple imprisonment into a rigorous one;
- (d) that there was a constant complaint of bad food;

- (e) that the treatment accorded to them was worse than that of ordinary criminals;
- (f) that a memorial was submitted to the Honourable the Chief Commissioner, North-West Frontier Province, in which these circumstances, *inter alia*, were referred to.

2. If answer to question No. 1 be in affirmative, will the Government be pleased to state as to what enquiry has been made by them and what result they have arrived at? Have they done anything to redress these grievances of the convicts and considered the prayer of the memorialists?

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

#### GRATUITIES IN INDIAN MEDICAL SERVICE.

252. **\*Dr. Wand Lal:** (1) (a) Is Government aware that temporary European candidates, to be recruited on five years' contract, are to get a gratuity at the rate of Rs. 250 per mensem, while temporary Indian Officers of the Indian Medical Service are not getting any gratuity?

(b) Is there any special reason for this inequality?

(c) If there were no special reason for this inequality, will the Government be pleased to state as to why this inequality should exist?

(2) Is Government aware that Temporary Indian Officers of the Indian Medical Service are not allowed any proportionate yearly gratuity in lieu of the pension of the permanent members of that service. If not, why not?

(3) Is Government aware that unlike the permanent members of the Indian Medical Service, temporary Indian Members of the Indian Medical Service, do not get any increment of pay according to the time scale, after three or more years' service as a captain?

If not, why not?

(4) Is Government aware that unlike the permanent members of the Indian Medical Service temporary Indian Officers of the Indian Medical Service, do not get the advantage of their accelerated promotion for captaincy towards their pay?

If not, why not?

**Mr. E. Burdon:** (1) (a) The position is substantially as stated by the Honourable Member.

(b) and (c) There is an essential difference between the respective obligations of the two classes of officers mentioned. The 80 European officers are being recruited conditionally for permanent commissions in the Indian Medical Service and for a minimum period of 5 years. If they fail to serve the minimum period, they receive no gratuity. The Indian officers mentioned serve on a purely temporary engagement which is for a maximum period of one year.

(2) and (3) Yes. The terms offered are sufficient to secure the candidates required for the purely temporary posts.

(4) Promotion to Captain is granted, both to temporary and permanent officers, after three years' service. This promotion is not accelerated in the case of either class of officers.

POLICY REGARDING WAZIRISTAN.

253. \*Khan Bahadur Sarfaraz Husain Khan: Will the Government be pleased to lay on the table the correspondence that may have passed between the Government of India and the Secretary of State for India relating to its future policy with respect to Waziristan.

Mr. Dony's Bray: Government do not consider it in the public interest to make public the correspondence.

RAILWAY WORKSHOPS.

254. \*Khan Bahadur Sarfaraz Husain Khan: Will the Government be pleased to state—

- (a) What stations of the East Indian Railway, Bengal and North-Western Railway and Oudh and Rohilkhand Railway have workshops?
- (b) Alongside which of the workshops referred to in question (a) have technical schools been established?

Mr. C. D. M. Hindley: There are workshops at Jamalpur and Lillooh on the East Indian Railway, at Gorakhpur on the Bengal and North-Western Railway, and at Lucknow on the Oudh and Rohilkhand Railway. At all four stations apprentices in the shops receive technical training. At Jamalpur and Lucknow schemes for the erection of new and larger technical schools at which a higher class of training will be possible are now being introduced, the local Government in each case co-operating with the railway administration.

INTERMEDIATE CLASS ACCOMMODATION.

255. \*Khan Bahadur Sarfaraz Husain Khan: Will the Government be pleased to state:

- (a) Whether all the trains of the East Indian Railway, Bengal and North-Western Railway and Oudh and Rohilkhand Railway are provided with intermediate classes?
- (b) If not, will it be pleased to issue necessary instructions to the Railway authorities to make the provisions?

Mr. C. D. M. Hindley: (a) All trains carrying passengers on the East Indian and Oudh and Rohilkhand Railways are provided with intermediate class accommodation but certain trains on the Bengal and North Western Railway carry third class passengers only.

(b) Government do not consider that any instructions are necessary in the matter.

## PUSA AGRICULTURAL RESEARCH INSTITUTION.

256. \***Khan Bahadur Sarfaraz Husain Khan**: Will the Government be pleased to lay on the table the last Annual Report of the Pusa Agricultural Research Institution?

**Mr. J. Hullah**: The Honourable Member will find copies of the report in the Library adjoining this Chamber.

## URINAL ARRANGEMENTS ON RAILWAYS.

257. \***Khan Bahadur Sarfaraz Husain Khan**: Is the Government aware of the great inconvenience caused by the absence of privy and urinal arrangements in all servants compartments attached to 1st and 2nd class compartments of Railway trains?

If so, do the Government propose to issue necessary instructions for the removal of the inconvenience referred to?

**Mr. O. D. M. Hindley**: Government has not received any complaints in regard to the alleged inconvenience, but the matter will be brought to the notice of the railway administrations.

## WAZIRISTAN OPERATIONS.

258. \***Mr. B. S. Kamat**: Will Government be pleased to state:

- (i) the total expenditure incurred since April 1922 up to date for the Waziristan operations;
- (ii) the cost of the punitive air operations recently undertaken and the quantity of bombs used to date;
- (iii) the total number of persons killed since April last by enemy raids and also persons killed on the enemy side by the Waziristan force?

**Mr. E. Burdon**: (i) Figures up to the end of October, 1922, only are at present available. The total military expenditure booked up to that date is approximately Rs. 109 lakhs. This amount includes certain charges including arrear charges on account of the North-West Frontier as a whole which it is impracticable to distinguish from the charges incurred on account of Waziristan proper.

(ii) The cost of the recent air operations cannot be precisely stated. The total weight of bombs dropped between the 17th December, 1922, and the 16th January, 1923 (both dates inclusive) is 78 tons.

(iii) The total number of persons on our side killed by enemy action since the 30th April, 1922, is as follows:

Military 68, including followers.

Civil 14, including levies.

So far as is known, 57 of the enemy have been killed.

**Mr. J. Chaudhuri:** Is it not a fact that the air operations have not proved effective in Waziristan?

**Mr. E. Burdon:** I think I gave an answer to that question to the  
12 Noon. Honourable Member at the last meeting of this Assembly.

RECOMMENDATIONS BY THE RETRENCHMENT COMMITTEE.

**Rao Bahadur T. Rangachariar:** Sir, may I be permitted to ask a question of which I have given notice to the Honourable the Finance Member. It is as follows:

Will the Government be pleased to give an opportunity to the Assembly to discuss the recommendations of the Inchcape Committee, more especially those recommending the abolition of civil departments of the Government of India, before action is taken thereon by Government?

**The Honourable Sir Basil Blackett:** This question has been to some extent anticipated in the supplementary questions that were asked in the course of the last hour, as also by an unstarred question put on the 15th instant, when it was asked:

"Will the Government be pleased to state whether the report of the Inchcape Committee is to be placed for discussion in the Legislative Assembly before any final orders are passed by the Government?"

The answer to that was:

"The Government regret that this course is not practicable."

It is hoped that a full opportunity will arise in connection with the Budget discussions for considering the recommendations made by the Inchcape Committee in connection with the Budget for the next year.

**Rao Bahadur T. Rangachariar:** No doubt the Honourable Member is aware that, in connection with matters excluded from the Budget, it is not open to this House to get them included. The Honourable Member is no doubt aware of that difficulty.

**The Honourable Sir Basil Blackett:** I am aware of that fact, but I think there will be every opportunity for discussing the recommendations of the Inchcape Committee in connection with the Budget.

**Rao Bahadur T. Rangachariar:** May I ask if the Inchcape Committee cannot be asked to adopt the procedure of sending their report in batches, as the Geddes Committee did, so that more time may be saved, instead of waiting for the final report?

**The Honourable Sir Basil Blackett:** I will inquire as to what procedure the Inchcape Committee think they may be able to adopt in this matter.

**Sir Deva Prasad Sarvadhikary:** Does the Government propose to prepare and place before this Assembly its Budget on the basis of the recommendations of the Inchcape Committee as far as they may reach the Government in time for the preparation of the Budget?

**The Honourable Sir Basil Blackett:** The Government have every hope that they will be able to take full advantage of the work of the Inchcape Committee in the preparation of the Budget.

## UNSTARRED QUESTIONS AND ANSWERS.

### INDIAN ENGINEERS ON RAILWAYS.

106. **Mr. N. M. Joshi:** Will Government kindly lay on the table the information *re* Indian Engineers on Railways, referred to in the answer given in the Council of State on the 6th September 1922 to question No. 18 (i) and (ii)?

**Mr. C. D. M. Hindley:** The statement containing the information asked for by the Honourable Member is placed on the table.

*Statement showing numbers of Indian Engineers recruited annually on the Great Indian Peninsula, East Indian, Bombay, Baroda and Central India and South Indian Railways, the percentage to recruitment of Europeans and particulars in cases of termination of service.*

Railway.	INDIANS RECRUITED IN					Total number of Indians recruited as Engineers in the 5 years 1917-21.	Percentage of recruitment of Indian European Engineers in the 5 years 1917-21.	REMARKS.
	1917.	1918.	1919.	1920.	1921.			
Great Indian Peninsula	5*	1	1†	1	2	10	35.7	All Indians recruited in 1919-21 are still in service.
East Indian	...	...	1	4	1	6	37.5	
Bombay, Baroda and Central India.	2	1	3	1	2	9‡	41.00	
South Indian	...	1	...	...	...	1§	12.5	

\* One resigned in 1920 to better his prospects.

One was discharged as his services were no longer required.

† Reverted to his original grade of Supervisor in November 1919 owing to return of Engineers from military duty but reappointed in April 1919.

‡ Of the nine Indians recruited in the years 1917-21, five are still in service, three resigned of their own accord and the services of one were terminated at his own request with three months' pay in lieu of notice owing to ill health.

§ Still in service.

### WAGON SERVICE ON RAILWAYS.

107. **Mr. N. M. Joshi:** With reference to the suggestions made by the late Mr. Thomas Robertson in 1908 in paragraphs 181—189 of his report for obtaining greater amount of service with a smaller amount of wagons, will Government kindly lay on the table a statement showing the steps taken and progress achieved during the decade immediately preceding the outbreak of the Great War?

**Mr. C. D. M. Hindley:** The more efficient working of rolling stock was the constant care of the Railway Board and Railway Administrations during the period referred to, and every effort was made to effect an improvement.

Records show, however, that they were hampered by lack of adequate facilities.

• Information as to the work done by rolling stock year by year can be ascertained by reference to the Administration Reports of Indian Railways.

#### QUARTERS ON E. I. AND G. I. P. RAILWAYS.

108. **Mr. N. M. Joshi:** Will Government kindly lay on the table a statement showing the designation of the officers for whom quarters have been built during the five years ending 31st March 1922, the pay of each officer, the cost of each quarter, the interest payable on the capital cost of each quarter, and the rent per annum realized on each of the quarters on the East Indian and the Great Indian Peninsula Railways?

**Mr. C. D. M. Hindley:** The information asked for is not readily available, and Government do not consider that the time and labour involved in collecting the particulars are commensurate with the results to be obtained.

#### O. AND R. RAILWAY DISCOUNT SINKING FUND.

109. **Mr. N. M. Joshi:** With reference to the item "Oudh and Rohilkhand Railway Discount Sinking Fund in redemption of debt incurred in excess of money raised" appearing in the Railway Budget for 1922-23, will Government kindly state:

- (a) the amount of debt incurred in excess of money raised;
- (b) the date of the loan and the date fixed for redemption;
- (c) the amount accumulated in the Fund up to 31st March 1922;
- (d) the amount payable into the Fund every year;
- (e) the amount yet remaining to be paid into the Fund; and
- (f) the circumstances differentiating this debt from the issue of £10,089,146 India 3 per cent. stock to the stockholders of the Bombay, Baroda and Central India Railway Company in satisfaction of £9,685,581 in part payment of the purchase price of the Undertaking.

**Mr. C. D. M. Hindley:** In order to reply fully to the Honourable Member's question, it will be necessary to refer to the India Office. This is being done and the reply will be communicated to him in due course.

#### TEMPLES AT PAHAR GUNJ, DELHI.

110. **Rai Sahib Lakshmi Narayan Lal:** Will the Government be pleased to lay on the table:

- (a) A full statement of what has been done or is proposed to be done with respect to the temples and Dharmshalas appertaining to the temples situate within the area proposed to be included in the New Railway Station at Pahar Gunj, Delhi?
- (b) The copies of all the correspondence on the matter?

**Mr. O. D. M. Hindley:** (a) Apart from consultations with those immediately interested in the temples and Dharamsala nothing has been done nor is it proposed to do anything at present. Government therefore does not propose to lay a statement on the table.

(b) As the matter is still under consideration Government do not propose to lay on the table copies of the correspondence.

#### DR. GOUR'S CIVIL MARRIAGE BILL.

**38. †Lala Girdharilal Agarwal:** Will Dr. Gour, M.L.A., be pleased to state whether he has received a copy of the Resolution adopted at a meeting of the Parsees held on the 26th November, 1922, protesting against the Honourable Member's Civil Marriage Bill, and if so, will he be pleased to place a copy of the same on the table?

**Dr. H. S. Gour:** The answer to the question is in the affirmative. I have also received a number of Resolutions adopted by the Parsees strongly approving of my Civil Marriage Bill. It seems that the Parsees like the other communities are divided into two sections, orthodox and reformers. The former oppose all changes, the latter consider each change upon its merits. As a distinct body of all communities are in favour of my Bill, both its utility and necessity are obvious.

#### TENURE NATURE OF POSTS OF SECRETARY, ETC., IN SECRETARIAT.

**82. ‡Rai Bahadur G. C. Nag:** Is it a fact that the posts of Secretary, Joint Secretary, Deputy Secretary, Under Secretary and Assistant Secretary in the Government of India Secretariats are all tenure appointments and if so, what is the maximum period fixed for such tenure appointments?

**The Honourable Sir Malcolm Hailey:** The posts of Secretary, Joint Secretary, Deputy Secretary and Under Secretary are tenure appointments and the period of tenure is normally three years. No maximum period is fixed and the period can be and is sometimes extended. The posts of Secretary, Joint Secretary and Deputy Secretary in the Legislative Department and of Secretary and Joint Secretary in the Railway Department are not tenure appointments.

The post of Assistant Secretary in the Education and Health Department is a tenure appointment and the tenure is limited ordinarily to three years. The post of Assistant Secretary in the Political Department has not been a tenure appointment but is limited to a salary of Rs. 1,600. Military officers appointed to Assistant Secretaryships in the Army Department have a fixed tenure of three years extensible to five years. Extensions beyond this period are only granted in exceptional cases. The other posts of Assistant Secretary in the Government of India are not tenure appointments.

† Vide p. 1003 of these Debates.

‡ Vide p. 1021 of these Debates.

## THE INDIAN COTTON CESS BILL.

**Mr. J. Hullah** (Revenue and Agriculture Secretary): Sir, I move for leave:

"To introduce a Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India."

The purpose of this Bill, Sir, is, briefly, to improve the quality and quantity of the Indian cotton crop and to enable the industry to levy from itself a small tax for its own development. The Indian mill industry already consumes about half of the commercial crop in India, and half of the mill consumption consists of what are known as the long staple varieties, that is, those suitable for working up to 20 counts and over. This consumption of the longer staple varieties practically absorbs the whole of those varieties that are grown in India and, consequently, there is no surplus left over for export and practically none for what is still more important, the development of the mill industry itself. On the other hand, we have a very large exportable surplus of the inferior cottons, namely, those of the shorter staples, and the export of these amounts on an average to 12 lakhs of bales annually and has been as high as 20 lakhs. But the market for these is limited and uncertain, and we do not know that the world will always be ready to take cotton of this inferior kind. The recent shortage in the American crop has now created a favourable opportunity for us to export cotton of superior varieties, if we can work up an exportable surplus of these varieties, and it is, therefore, obvious that we should aid the cotton cultivator to produce varieties which will enable him to profit by the demand of the world's markets and at the same to produce the larger stocks which the development of the Indian mills must inevitably require.

Considerations of this kind led the Government of India some five years ago to appoint a small technical committee, known as the Indian Cotton Committee. That Committee recommended a very large expansion of agricultural work on cotton, the establishment of a Central Cotton Committee at Bombay with a technologist and a laboratory, and they estimated that the cost of bringing into effect the proposals that they made would be about Rs. 16 lakhs. They suggested that this sum might be obtained by the levy of a cess of eight annas a bale on the whole of the commercial cotton crop. We have already established the Central Cotton Committee and they have shown very great energy and activity. Their advice has been most useful to us in connection with the Cotton Transport Bill, of which the Report of the Select Committee was recently laid before this House. We have also received most valuable advice from them on the very vexed question of the licensing of gins and presses. They are framing constructive proposals for the improvement of the marketing of cotton, by which I mean that the cultivator should obtain premia for cotton of superior staple, and, lastly, or, in point of time, firstly, it was they who made the definite proposals for the imposition of a cess which now find expression in the Bill which I seek to introduce.

The cost of the Central Cotton Committee is at present borne by general revenues and provision on this account exists in the present year's budget to the extent of Rs. 79,000. It is proposed in the Bill that the cost of the Committee shall be met from the proceeds of the cess. If so, it disappears from our Budget and to that extent this Bill will effect a measure of retrenchment.

[Mr. J. Hullah.]

We placed the proposals of the Cotton Committee for a cess before the Local Governments and they in their turn consulted all the more important commercial bodies such as the Bombay Chamber of Commerce, the Indian Merchants Chamber and Bureau, the Mill-owners' Association of Bombay, the Mill-owners' Association of Ahmedabad, the Cotton Contracts Board, the Punjab Chamber of Commerce, the Upper India Chamber of Commerce, the Karachi Chamber of Commerce and so forth. On the general proposal that a cess should be imposed there is absolute unanimity of opinion. Everybody, official or non-official, agrees that there should be a cess. There are differences of opinion on points of detail and on two points especially there is some divergence. The first is whether the cess should be levied on all commercial cotton—by which I mean all cotton exported and all cotton consumed in the spinning mills; or whether it should be levied only on the cotton brought to the mills and consumed there; or again only on exports. The great majority of opinion is that it should be levied on all commercial cotton, and we have framed the Bill accordingly. The other point on which there is a divergence of opinion is that the cess should not be 4 annas a bale, as we propose, but 2 annas. But here again, in retaining the rate of 4 annas we have followed the very great majority of opinions, but we have made provision in the Bill that the Governor General in Council may reduce the amount of the cess.

We anticipate that the proceeds of the cess—and the estimate can be made with fair confidence—will amount to between 8 and 9 lakhs of rupees a year. So far I have mentioned only the expenditure on the Central Cotton Committee itself as a direction in which this money will be spent; but, of course, this will absorb a very small amount of the total proceeds. The bulk of the proceeds we propose to spend on agricultural development and research. The Indian Cotton Committee itself placed this in the forefront of their proposals and we are doing the same. Neither we nor the Central Cotton Committee have any intention of relegating to the background, or even to a secondary place, the important matter of doing all that we can for the agriculturist and from the agricultural point of view. The Indian Cotton Committee, as I have said, made proposals which they thought would cost 16 lakhs. Out of this 16 lakhs, 14 lakhs would be spent on the agricultural side. Those were days when the War had just come to an end; when peace—and, we thought, plenty—was at hand; and in those Arcadian days we were thinking of turning our sword into a ploughshare and not into an axe. But now it is clear that the Local Governments are quite unable to incur the extra expenditure which the proposals of the Indian Cotton Committee will involve, and it is proposed that from the proceeds of the cess expenditure of the kind contemplated should be met. There is plenty to be done. Mr. Burt, the Secretary of the Cotton Committee, has supplied me with some notes of the main schemes which are under the consideration of the Central Cotton Committee and some of which they have already decided to support. In the Punjab a very grave position has already arisen owing to the unsatisfactory yield of the Punjab American crop. The Punjab American crop covers an area of approximately half a million acres and has added about 140,000 bales to the supply of Indian long staple cotton. It is the most striking instance in India of the replacement of a very short staple by cotton of a superior staple and has until recently been very rightly regarded as a triumph of the Agricultural Department. But recently there has set in very serious deterioration and we urgently need research to remove the causes of this deterioration which are at present imperfectly known. The Central Cotton Committee

have recommended that a special Research Staff should be provided from the cotton cess funds, and the investigations that will be made in the Punjab will have an important bearing on problems in Sind, Northern India generally and the western part of the United Provinces. In Bombay there are several schemes which require to be taken up and which the Local Government is unable to finance. The Agricultural Department has drawn attention to the necessity of investigating two very important problems. One is the loss caused by wilt in the southern Mahratta country, and the other the loss caused by boll-shedding in Gujerat. Again, there is need for special plant breeding work for the production of a better strain of the upland type of the southern Mahratta country. These problems, as the Central Cotton Committee realise, are of more than provincial importance. The first of them affects all the black cotton-growing soil in India—that is, about three-fourths of the entire cotton producing country. The second affects a well-defined tract of country lying between two provinces and one Indian State. It is a problem of very considerable importance. Another important problem to which the Bombay Government draw special attention is the loss caused by the spotted boll-weevil, and the problem of attacking this menace is at present under the immediate consideration of the Central Cotton Committee. Madras has put forward its own problems—two important schemes of research which they are unable to undertake, plant breeding work on the herbaceous cottons. Others have been received from the Central Provinces and the United Provinces. So it is pretty evident there is a very great deal of work to be done if the necessary funds can be found. Another proposal which the Central Cotton Committee have made is the institution of research studentships for graduates of Indian Universities for research on cotton, to be trained under competent experts; and finally we have in view as well, if we have sufficient money, the establishment of a Central Research Institute for cotton. That scheme has already been worked out in full detail and we hope some day, when the necessary funds are available, that such an Institute will be established.

Honourable Members may have noticed, in the papers that have been sent to them, a proposal by the Central Cotton Committee, following the advice of the Indian Cotton Committee, for the appointment of a technologist and the establishment of a laboratory for him. The purpose of this is to have a small spinning plant to test the suitability of the different Indian cottons for spinning up to various counts and especially to test new varieties of cotton. The great problem in India has always been to get the cultivator a fair price for cotton of superior varieties, and our agricultural officers know by bitter experience how trade valuations of new cottons are practically useless. The fact is that a commercial mill cannot undertake this work. It cannot go through all the very thorough and detailed tests which are required, and it cannot work on the very small quantities which a plant breeder will produce in the early stages of attempting to evolve a new variety. . . .

**Mr. Deputy President:** I wish to draw the attention of the Honourable Member to Standing Order 87 and to ask him to bring his remarks to a close; he has taken already over quarter of an hour. Under that Standing Order only a brief explanatory speech is allowed at this stage.

**Mr. J. Hullah:** I am sorry, Sir. I only wish to add that there remain two points emphasised in the opinions we have received. One is that there should be central control so that no province shall be able, by over-representation on the Committee, to obtain an undue share of the proceeds

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of the cess; we have provided for this in the Bill; central control is reserved to the Government of India. The second point is that the proceeds of the cess shall be spent on cotton and on cotton only; that we have effected by keeping the proceeds out of the general revenues and making them into a separate fund.

I now, Sir, ask for leave to introduce the Bill.

**Mr. Deputy President:** The question is:

"That leave be given to introduce a Bill to provide for the creation of a Fund for the improvement and development of the growing, marketing and manufacture of cotton in India."

The motion was adopted.

**Mr. J. Hullah:** I now introduce the Bill.

### THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

**Mr. Deputy President:** The House will now proceed with the further consideration of the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State.

**Mr. K. Ahmed** (Rajshahi Division: Muhammadan Rural): Sir, it now falls to my lot—an unpleasant task—to criticise the action of the police under this section. My learned friend, Mr. Seshagiri Ayyar, moved the first portion of my amendment on the last occasion. Therefore, Sir, I propose to move the latter portion, giving up that portion which has been already moved by my Honourable friend . . . . .

**Mr. Deputy President:** I am afraid I must ask the Honourable Mover to move the first portion of his amendment No. 61.

**Mr. K. Ahmed:** Yes, Sir, the first portion has been moved by my Honourable friend, Mr. Seshagiri Ayyar. You leave the matter entirely in my hands, Sir, and I shall do the needful . . . . .

**Mr. Deputy President:** It will read like this:

"At the end of sub-clause (iii) insert the following:  
'and the words 'or otherwise' shall be omitted'."

I call upon the Honourable Member to move that amendment.

**Mr. K. Ahmed:** I beg to move, Sir, that:

"At the end of sub-clause (iii) insert the following:  
'and the words 'or otherwise' shall be omitted'."

and at the end. . . . .

**Mr. Deputy President:** No, it would be to the convenience of this House if the latter portion of the amendment is taken up at a later stage.

**Mr. K. Ahmed:** So I am moving just the middle clause, Sir. Honourable Members of this Assembly are aware that when a man is brought forward before a Magistrate under section 110 he is alleged to have committed the offence of bad livelihood; that is to say, whenever it is within the knowledge of a Magistrate—Sub-divisional Magistrate or Presidency Magistrate—that a man is by habit a robber and that he is by habit a receiver of stolen property knowing the same to have been stolen or habitually protects or harbours thieves or aids in the concealment or disposal of stolen property or habitually commits or attempts to commit or abets

the commission of offences under Chapter XII of the Indian Penal Code or habitually commits mischief, extortion or cheating or counterfeiting coin or offences under any such sections as 489-A, 489-B, 489-C, 489-D of the Code or is so desperate and dangerous as to render his being at large without security hazardous to the community, then, Sir, under section 117 and sections 112 and 113 the accused is tried according to the evidence which is adduced by the police. The police as a matter of fact bring all sorts of evidence—such as was discussed on the last occasion. The word 'otherwise' is a very extraordinary word. Learned Judges of many High Courts have observed that this sort of word is very objectionable. As a matter of fact the meaning of the words 'or otherwise' has been held to be ambiguous by Judges, and reported in 15 Criminal Law Journal at page 705 and also in 21 Criminal Law Journal at page 810. Their Lordships found that a man's guilt under the above sections could not be proved by witnesses in all those ways and otherwise. What is the meaning of the words 'or otherwise?' If I follow the definition of law as it is defined by Bentham, Holland, Austin and by Professor Kenny of Cambridge University, Lecturer to the law students as well as to the successful candidates of the Indian Civil Service, who teaches them criminal law, *i.e.*, Indian criminal law,—he defines it in this way, that unless and until you have got authentic evidence to prove that a man is bad, the science of jurisprudence tells you that in the eye of the law *ipso facto* he is an innocent person, and therefore you cannot prove anything against him by 'otherwise.' The science of jurisprudence tells you that every one is supposed to be innocent in the eye of the law, an honest trustworthy person, not a habitual criminal of the description given in the section I have read. A police sub-inspector arrests a man and tries to prove that he is an offender of the description given in any of those items; and in the matter of proving the guilt of the particular person the fact that he is a habitual offender or is a person so desperate and dangerous as to render his being at large without security hazardous to the community is to be proved by evidence of general repute or otherwise.

This man is a bad man. Give the dog a bad name. But why should you not go in a straightforward manner and prove that he is a bad dog or a bad man? Instead of doing that, you are making provision in the administration of justice to prove bad character by getting evidence not in a proper channel, not in a straightforward manner and something besides which is called "or otherwise." Suppose, Sir, in returning a compliment, any Member of this Assembly, out of courtesy, goes to pay a visit to my Honourable friend, Sir Henry Moncrieff Smith, at his residence, and at the time of coming back, after leaving his card in the box, anything is found or alleged to have been found stolen from his premises. Then you say "Oh, this thing has happened when such-and-such M. L. A. was walking along the street" and you prove by calling witnesses that he was found in such-and-such a place. Is that the way, Sir? No, certainly not. That is not the principle of law in any country, and I hope sincerely that this part of the clause—"or otherwise"—will be omitted. Here, Sir, I will quote from the judgment of two of the most important judges—for whom I have the greatest respect and reverence—two distinguished judges, the people of India have ever seen—I mean Sir W. Comer Petheram, Kt., Chief Justice and Mr. Justice Beverley of the Honourable High Court of Calcutta. It is reported in I. L. R. 28 Calcutta, page 621. They say:

"Evidence that there are rumours in a particular place that a man has committed acts of extortion on various occasions, that he has *badmashes* in his employ to assist

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him, and generally that he is a man of bad character is not evidence of general repute under section 117 of the Criminal Procedure Code.

Evidence of rumour is mere hearsay evidence of a particular fact. Evidence of repute is a different thing. A man's general reputation is the reputation which he bears in the place in which he lives amongst all the townsmen, and if it is proved that a man who lives in a particular place is looked upon by his fellow-townsmen, whether they happen to know him or not, as a man of good repute, that is strong evidence that he is a man of good character. On the other hand, if the state of things is that the body of his fellow-townsmen, who know him, look upon him as a dangerous man and a man of bad habits, that is strong evidence that he is a man of bad character.

It cannot be said that, because there are rumours in a particular place among a certain class of people that a man has done particular acts or has characteristics of a certain kind, these rumours are in themselves evidence under section 117 of the Code."

Now, Sir, you have the words "or otherwise," that is, by means fair or foul, either this way or the other, you can bring evidence. You know the police. They are all-mighty, as I have said, and it is not difficult for the police to get any number of witnesses to depose that a man is of bad character. This is a matter which is specially confined to the police and he can prove anything he likes. There is the Evidence Act. It applies anywhere and everywhere. But, as I have said already, the police is a magic lantern which gives you all shades of light, the mystery of which we cannot understand. The Evidence Act fails; knowledge and experience fail when you bring a man under arrest and prove his character to be bad by calling in anybody and everybody in any way you like. Certainly, Sir, for the ends of justice, these words "or otherwise" should be omitted, and I therefore move that the words "or otherwise" should be deleted from sub-clause (iii) of clause 20.

**Mr. Deputy President:** Amendment moved is :

"At the end of sub-clause (iii) insert the following :  
'and the words 'or otherwise' shall be omitted'."

**Sir Henry Moncrieff Smith** (Secretary, Legislative Department): Sir, I have listened to my friend, Mr. Kabeer-ud-Din Ahmed, with great attention because I wondered what arguments he was going to advance for the deletion of these words "or otherwise." He began by regretting—I am glad that it is a matter of regret for him—that he had to attack the police. Well, Sir, that, I would suggest, was not relevant to the amendment before the House. There is no question here in this clause of the conduct of the police at all. The sub-section which the Bill amends is merely framed for the guidance of the Magistrates, and the police have no concern in it whatever. The case is, by the time this sub-section operates, entirely in the hands of the Magistrate.

Sir, Mr. Kabeer-ud-Din Ahmed recited numerous rulings which, he says, go to show that the words "or otherwise" cause great difficulty. He went so far as to read us a long extract—a very interesting extract indeed, but entirely irrelevant to his notice of amendment. All that the Court said in that case was that certain evidence which had been produced was not evidence of general repute. We are not talking about evidence of general repute at the moment. We are talking about the words "or otherwise." Sir, the point is a very simple one and I hope I can explain it to the House clearly. The words "or otherwise" have occurred in the Code of Criminal Procedure since 1882. When the Lowndes Committee was appointed to consider the Code and to suggest a revision, they cut these

words out. They gave no reasons for it. They just merely mentioned in their report: "We have, however, deleted the words 'or otherwise'". I venture to suggest to the House that they did so without full consideration of the effect of the amendment which they were suggesting. The Courts in this country, as in any other country in the world, look upon the Legislature as a reasonable and responsible body. That is to say, when the Legislature does something, the Court assumes that the Legislature had some reason for its action. Here we have got a law which has been in force for 40 years. The Legislature suddenly cuts out the words "or otherwise" and apparently makes a change in this section. Well, Sir, the Courts then say to themselves, "The Legislature must have had some reason for cutting these words out," and they find it rather difficult to find that reason. It is not that the words 'or otherwise' are doubtful. There has never been any doubt about them at all. (*Mr. T. V. Seshagiri Ayyar*: "What is the meaning?") I will explain what the meaning is if the Honourable Member will wait for a moment. It is merely this. The sub-section runs thus:

"For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise."

The meaning of that simply and solely is this, that evidence of general repute is not the only means of proving that the person is an habitual offender. The words "or otherwise" are added to make it quite clear that you are not overriding the provisions of the law of evidence; that is, any evidence which would be relevant or admissible under the Evidence Act can also be utilised for the purpose of proving that a man is an habitual offender. I think that is the only explanation. If we cut out the words, and the Courts seek for the reason of our action, what conclusion do they come to? They arrive at this conclusion,—the Legislative Assembly and the Legislature, if the Bill is passed in this form, intended to lay down that the word "may" in this section, as so often happens in our Statute Book, is equivalent to "shall"; that if you want to prove that a person is an habitual offender, the only way you can do it is by evidence of general repute. That point was very carefully considered by the Joint Committee. The Joint Committee decided that it was unsafe to remove the words and that it was much better to put them back again, and I submit that this is a case in which, at all events, this House should endorse the action of the Joint Committee. (*Rao Bahadur T. Rangachariar*: "Will you please read the chit I sent you?") (*An Honourable Member*: "May be proved also by evidence of general repute.") (*A Voice*: "'Also' by itself has no meaning there.") *Mr. Rangachariar* has sent a note across from which I gather he quite understands that it means that it may be proved by evidence of general repute in addition to any evidence that is admissible under the Evidence Act. The section may be worded in numerous ways, but I would suggest to the House that the drafting that has stood for forty years is clear. *Mr. Ahmed* has cited rulings to support his contention that the words have caused difficulty, but the words "or otherwise" have not been referred to in those rulings. There is not a single case in which they have caused difficulty. Commentaries refer to the words in one High Court Judgment, but in that case they caused no difficulty. Therefore I would suggest that we do not alter the phraseology of the section which has stood so long.

**Colonel Sir Henry Stanyon** (United Provinces: European): I have very little to say in supplement to what has been said in explanation of these words by *Sir Henry Moncrieff Smith*. The argument of the Honourable

[Colonel Sir Henry Stanyon.]  
and learned Mover suggests that he interprets the words "or otherwise" to mean "or in any other informal or illegal or hearsay manner that the police and the Magistrate may please." They do not mean that at all. This is a portion only of the adjective law and this section is governed by the Law of Evidence. It provides an exception to the law of evidence where it provides for proof by evidence of general repute; and then it makes it clear that the general law of evidence also applies by using the words "or otherwise." "Or otherwise" means "or in any other way allowed by law." There is no published judgment which has interpreted the words in any other way; and that being so, although there is much to be said for the improved form which has been suggested by the Honourable Mr. Rangachariar (if I may refer to him by name), still it is always advisable to keep to a phrase that has been on the Statute Book so long as this phrase "or otherwise." Therefore I would suggest that the clause be allowed to stand as it is.

**Mr. T. V. Seshagiri Ayyar** (Madras: Nominated Non-Official): I do not like to prolong the discussion, but I would just point out to the Government that there is a difficulty which it is better to avoid by adopting the suggestion which Mr. Rangachariar has brought forward. If you use the word "otherwise" following the words "of general repute," according to the ordinary canon of construction, the word "otherwise" would govern the kind of evidence which is referred to in the previous clause. That is the reason, I take it, the Calcutta High Court had felt some difficulty. Unfortunately I have not been able to get at the judgment. When I read the clause it struck me that the word "otherwise" is liable to be misunderstood, and that is the reason why the Lowndes Committee wanted its omission. If your idea is that the general rule of evidence should apply *plus* "repute" evidence, the proper way of carrying out that idea is to use the language which has been suggested to you by my Honourable friend, Mr. Rangachariar. If you allow the words "or otherwise" to stand, I fear it is capable of being interpreted, as evidence of the same character that has been enumerated before, namely, "repute" evidence. That is the proper rule of construction and it is liable to be understood in that light. Therefore, in order to make the position clear, I think the Government will be well advised to accept it—we do not care very much about the matter—but I think in the interests of proper drafting, it is desirable that the ambiguity should be removed, as the words "or otherwise" are liable to the construction which I have just mentioned.

**Mr. Deputy President:** The question is:

"At the end of sub-clause (iii) insert the following:  
'and the words 'or otherwise' shall be omitted'."

The motion was negatived.

(Mr. Deputy President then called upon Mr. Agnihotri to move his amendment.\* Mr. Agnihotri was absent.)

**Mr. B. Venkatapatiraju** (Ganjam *cum* Vizagapatam: Non-Muhamadan Rural): I am appearing for Mr. Agnihotri. I do not move it\* as Mr. Ahmed is moving his amendment.

\* "After sub-section (5) as re-numbered the following sub-section shall be inserted:

'(6) General repute in this section means an opinion based on either personal knowledge of the deponent or concrete instance.'

**Mr. K. Ahmed:** I move:

"That the following clause may be inserted after clause 20, sub-clause (iii).

*Explanation:* General repute is the reputation of a person in the place where he resides or carries on business, among the general body of his neighbours who are acquainted with him or have personal knowledge of his reputation, and excludes mere belief and opinion not founded on specific instances of acts falling under clauses (a) to (e) and rumour."

It is not necessary for me to dilate upon the subject any further. I will add to them by reading the closing lines of the judgment of Sir Comer Petheram C. J., and Beverley J., reported in I. L. R., 28 Cal. page 621. The closing lines are these:

"We cannot help thinking that if that state of things, which is said to exist and to have existed, had in truth existed there, some very different measures would have been taken by the authorities on their own motion than those which have been taken; and that being the state of things, we cannot think it safe to act upon this evidence, and the result is that the rule will be made absolute and the bonds were cancelled."

That is the opinion of the Learned Chief Justice of the Calcutta High Court and his words are before the country and the Honourable Members of this Assembly who represent the people of this country. We get so many Statutes and Acts passed by this Assembly and they are interpreted by the Honourable Judges of the High Court and their rulings are accepted in the interpretation of Acts. That was the ruling of the Chief Justice and Mr. Justice Beverley. We use that ruling and use it successfully in any Court of law to defend persons accused on evidence of general repute adduced by the police. What I want is that the law should be brought into conformity with the ruling given by the Judges of the High Court and that the following words should be added as an explanation:

"General repute is the reputation of a person in the place where he resides or carries on business among the general body of his neighbours who are acquainted with him or have personal knowledge of his reputation and excludes mere belief and opinion not founded on specific instances of acts falling under clauses (a) to (e) and rumour."

**Rao Bahadur T. Rangachariar** (Madras City: Non-Muhammadan Urban): Do you mean to say clauses (a) to (e) or only clauses (a) and (e).

**Mr. K. Ahmed:** I have no hesitation in moving that the concluding portion should read "clauses (a) to (e) and rumour". In order to prove a case like this, it is absolutely necessary that it should be "clauses (a) to (e)." That evidence is necessary to prove reputation. It is absolutely necessary for the ends of justice that it is only the people who live in the neighbourhood or vicinity of the village who can come forward and they are the only persons who come forward and give evidence as regards the reputation of a man and not persons who are not in any way concerned to come forward and give evidence in support of the defence or the accused and therefore it is necessary that this Explanation after clause 20, sub-clause (iii) should be added. Otherwise there is no royal road for the poor accused to get out of the trap. That being so, my proposition has been supported by the rulings and the observations which I have read out. I think, Sir, representing the people of India, we are not here to accept a law which does not give protection to our people whom we are supposed to represent and therefore it is the duty cast upon each and every Member of this Assembly to see that the welfare and the amelioration of the condition of these Indian peoples is not endangered and that they are not made victims in the hands of the police. I suppose, Sir, I have made out a strong case. The ruling which I have cited is already in existence and we generally use it. You cannot go back on the ruling of the

[Mr. K. Ahmed.]

Honourable High Court Judges. My Honourable friend, Mr. Innes, is not here. He would have wanted a little bit of economy towards this expenditure of paper and I ask the Honourable Member for the Government to accept this Explanation after clause 20, sub-clause (iii) and will not object to any further, depriving the justice suggested by the Judges in those rulings which I have already read out. I hope the Government Member will accept this amendment.

**Sir Henry Moncrieff Smith:** I want to put forward two reasons why the Government cannot accept this definition of "general repute" put forward by my Honourable friend. Experts have recognised for a long time that it would be a most excellent thing if we could introduce a definition of "general repute" into our Code of Criminal Procedure in this section 117, but the experts have always failed to arrive at a satisfactory definition. The House will remember that only on Saturday my Honourable and learned friend, Mr. Subrahmanayam, who is not here, to-day, pointed out that no difficulty had arisen from the absence of a definition and that the courts had had to consider it so often and had laid down so clearly the principles that the magistrates should follow that no magistrate now found the slightest difficulty in finding out and deciding for himself what evidence was admissible and what was not. Those were practically Mr. Subrahmanayam's words. Here again, I would ask the House to realise what section 117 (3) really means. It says that the fact that a person is a habitual offender can be proved by evidence of general repute. That is

**I P.M.** to say, notwithstanding what we have in the Evidence Act, general repute is a relevant fact when you try to prove that a person is an habitual offender. Now Mr. Ahmed has, I think, followed the line of examining all the High Court rulings he could get hold of and of trying to bring them together under one definition. One High Court has had before it a case in which the witnesses have come from distances, and their evidence has been mere hearsay: the High Court said, 'this was not evidence of general repute, because the evidence was hearsay evidence, it was not evidence within the knowledge of the witnesses and therefore could not be brought within the four corners of the law of evidence.' That is what happened in every ruling. The Judges have merely laid down that if you attempt to give evidence of general repute, general repute as a relevant fact must be proved according to the law of evidence. I wish to indicate to the House the dangers of attempting the definition of a term like this. As I say, the Courts have in various cases indicated what evidence should not have been admitted; and when they go on to say that evidence of general repute must be of people living in the neighbourhood, that remark naturally applies to the particular case. If we are to attempt a definition at all, the definition should be on such lines as the rulings of the Courts, that evidence of general repute is not so and so, and it should be in a negative form; it is practically impossible to get an exhaustive definition in the positive form which will not rule out very much valuable evidence. Let us take the ordinary case of an habitual offender or of a desperate or dangerous person who now comes within the purview of the section. A very ordinary case is that of a man who is never at home at night. He is a suspected person. The police go round to his house at night, and they never find him at home. On the contrary, they always find him asleep all day. Well, that, by itself, may be no evidence, because he may have an occupation which keeps him employed. But suppose the evidence is that the man has no occupation at all, none whatever,—that he is seen

in the company of ex-convicts, and he has no income; nobody knows what his income is, and yet this man lives in very good style, spends a lot on his clothes, on luxuries, and on vices. Well, all that is corroborative evidence, surely, of the man's reputation, and it might come within some of the four corners of Mr. Ahmed's definition, but it is very dangerous indeed to attempt an exhaustive definition in case you rule out evidence, the only evidence in the case which may be available, to bring this habitual offender to book. I began by saying that experts realised that it would be an excellent thing if we could have a definition and it is not the first time it has been considered. It has been attempted over and over again. It has been attempted so often that the House will find, if it looks at the Report of the Lowndes' Committee, that that Committee referred to it and said, "it has been suggested that a definition should be introduced into the Code", and they went on to say, "we have not attempted to frame a definition". They realised the impossibility. The fact is, you would have to work right through the Evidence Act and consider every clause of the Evidence Act and to have regard to that in making your definition if it is to be at all exhaustive. Therefore, I would suggest to the House that where experts have failed and where the Lowndes' Committee, which included many eminent Judges and many eminent lawyers, has failed, has realised the impossibility of even making an attempt, the House itself should not attempt to make any change in the law which has stood in this case also for 40 years.

**Sir Deva Prasad Sarvadhikary** (Calcutta: Non-Muhammudan Urban):

Sir, I cannot support this amendment and must object to it strongly. In the first place, the man who would require most protection, if this is "protection, is the one covered by clause (f) of section 117 which is now added to the category of people against whom evidence of general repute may be given. I need not labour the point because I set out my objection in opposing that amendment about the desperate character who however dangerous might be a tyro against whom anything in the shape of general repute such as could be predicted about an habitual offender might be urged; but I do think, Sir, and I should suggest to Mr. Ahmed to consider that what he is seeking is not a help to the people, not a help to the accused but is really taking away existing safeguards broadcasted over a series of well understood judicial interpretations and decisions about which neither the police nor the magistracy can have the slightest doubt. If you were to attempt to circumscribe and define it in that way, however much a good definition or explanation be needed a variety of safeguards, such as the decisions, however contending, already contain would not be provided for. Mr. Chief Justice Petheram's judgment itself for example is a strong argument against the acceptance of this amendment. It is by a series of negations that the different High Courts have from time to time provided the safeguard as to what is or is not general repute and what shall not reckon as general repute. They are there and they have the force of law, therefore, why interfere with them? Let the accused have the fullest possible benefit of these judicial decisions upon which nobody can go back unless the Legislature chooses to go back upon them, as is now suggested. However necessary they may be, it cannot be effectively done on the way proposed. If my view is correct, Sir, I would like to suggest to Mr. Ahmed and some of my friends that we might agree upon the different amendments that might well be given the go-bye and let us concentrate our attention on things that really matter. We have a tremendous number of clauses yet to go through, and, as was indicated to-day by the Leader of

[Sir Deva Prasad Sarvadhikary.]

the House, other necessary work of the House must suffer unless we are very careful about time. I do not for a moment suggest that the things that matter should be hustled or rushed, but we ought to concentrate our attention upon those, and might well agree upon letting things alone that may very well be let alone. I believe this, as put, is one of them.

**Rao Bahadur T. Rangachariar:** Sir, I am sorry, my Honourable friend, Sir Deva Prasad Sarvadhikary, has chosen the wrong moment for his homily to the movers of amendments to the Criminal Procedure Code. Sir, those of us who have to work the machinery of this Code alone know the defects which exist in the Code, and, Sir, the lay public, the impatient lay public, no doubt are getting impatient over the amendments moved in this House, and they offer all sorts of advice; and I am surprised that my Honourable friend, Sir Deva Prasad Sarvadhikary, has chosen to join those ranks.

**Sir Deva Prasad Sarvadhikary:** Not of the lay public, though.

**Rao Bahadur T. Rangachariar:** But this subject of general repute has given the greatest difficulty to the Courts in administering this section, and I can quote from the Honourable Bar to which my Honourable friend belongs. This is what the Calcutta Bar Association say, it is important:

"There is no phrase in the Code round which a larger body of legal literature has grown up than general repute. It is hopeless to reconcile the bewildering array of rulings on this subject or to draw any clear ruling from them taken as a whole. As evidence of habit, general repute is of the least value; it is mere opinion, it is hearsay. We therefore think that the elucidation of the meaning and scope of the expression 'general repute' is absolutely necessary.

We suggest here a few salient points based on certain rulings, though we do not pretend to deal exhaustively with such a difficult matter."

Sir, I am glad to admit that there is no greater Bar than the Bar of the Calcutta High Court; and when they recognize such great difficulty in this matter, for my Honourable friend to spring up and warn the movers of amendments not to waste the time of the House, etc., he is really quite out of place. I may also say, Sir, that the Madras Bar have felt the same difficulty. They say:

"The character of the so-called repute evidence is well-known to be a very dangerous departure from the salutary principle of the exclusion of hearsay evidence. The manner in which the evidence of repute, so-called, has been admitted, even where admissible under the present law, has not been satisfactory."

I think I may say from my own experience that this is a very very difficult question. And we are now dealing with the cases of Magistrates of the second and first class, probably raw men who are put on to perform the duty of admitting evidence of general repute. Admittedly, that evidence ought not to be admitted; we are making an exception in the general law of evidence and we are departing from the English law and from our ordinary law in this respect in allowing this evidence to be admitted at all. Therefore, it is but right that we should give some guidance to the magistracy by way of an explanation. That explanation is based upon several rulings of the Calcutta and other High Courts. My Honourable friend, Sir Henry Moncrieff Smith, has no objection to the wording of the explanation so far as that goes; at any rate he has not said that it is incorrect; but what he fears apparently is that there may be other cases of evidence relating to general repute which may be excluded by this explanation. But what is the explanation? "General repute is the reputation of a person in the place where he resides or carries on business," what is there wrong in that?

Do you want the reputation which a person residing in Madras has in Calcutta or anywhere else equally far? Then it goes on—"among the general body of his neighbours who are acquainted with him or have personal knowledge of his reputation, and excludes mere belief and opinion not founded on specific instances of acts falling under clauses (a) to (e) and rumour." That is what the explanation is and it is embodied, so far as I have been able to see on the rulings of the Calcutta High Court. I am not able myself to see what other evidence can be admissible as evidence of general repute. It must be remembered too that repute evidence is admissible only as an exception, and I think we should limit it as far as possible. It is dangerous to allow this exception, and it is much more dangerous to allow it without an explanation for the guidance of the magistracy who are not trained lawyers. Even English Judges in trying matrimonial cases, in which repute evidence is admissible, have felt the greatest difficulty in deciding what evidence is admissible and what not. Unless, therefore, the Government Members are able to suggest some other kinds of evidence which come under general repute, I do not see why we should not use the explanation, which is comprehensive enough to allow all such evidence as can safely be admitted.

The Assembly then divided as follows :

## AYES—32.

Abdul Quadir, Maulvi.  
Abdulla, Mr. S. M.  
Agarwala, Lala Girdharilal.  
Ahmed, Mr. K.  
Ahsan Khan, Mr. M.  
Asad Ali, Mir.  
Ayyar, Mr. T. V. Seshagiri.  
Bagde, Mr. K. G.  
Bajpai, Mr. S. P.  
Basu, Mr. J. N.  
Bhargava, Pandit J. L.  
Chaudhuri, Mr. J.  
Gulab Singh, Sardar.  
Ikramullah Khan, Raja Mohd.  
Iswar Saran, Munshi.  
Jatkar, Mr. B. H. R.

Lakshmi Narayan Lal, Mr.  
Man Singh, Bhai.  
Mia, Mr. B. N.  
Mukherjee, Mr. J. N.  
Nabi Hadi, Mr. S. M.  
Nag, Mr. G. C.  
Neogy, Mr. K. C.  
Pyari Lal, Mr.  
Ramayya Pantulu, Mr. J.  
Rangachariar, Mr. T.  
Reddi, Mr. M. K.  
Sarfaraz Hussain Khan, Mr.  
Shahani, Mr. S. C.  
Srinivasa Rao, Mr. P. V.  
Venkatapatiraju, Mr. B.  
Vishindas, Mr. H.

## NOES—39.

Abdul Bahim Khan, Mr.  
Aiyar, Mr. A. V. V.  
Akram Hussain, Prince A. M. M.  
Allen, Mr. B. C.  
Barua, Mr. D. C.  
Blackett, Sir Basil.  
Bradley-Birt, Mr. F. B.  
Burdon, Mr. E.  
Cabell, Mr. W. H. L.  
Chatterjee, Mr. A. C.  
Cotelingam, Mr. J. P.  
Crookshank, Sir Sydney.  
Dalal, Sardar B. A.  
Davies, Mr. R. W.  
Faridoonji, Mr. R.  
Ghulam Sarwar Khan, Chaudhuri.  
Gidney, Lieut.-Col. H. A. J.  
Haigh, Mr. P. B.  
Hailey, the Honourable Sir Malcolm.  
Hindley, Mr. C. D. M.

Holme, Mr. H. E.  
Hullah, Mr. J.  
Innes, the Honourable Mr. C. A.  
Ley, Mr. A. H.  
Mitter, Mr. K. N.  
Moncrieff Smith, Sir Henry.  
Muhammad Ismail, Mr. S.  
Percival, Mr. P. E.  
Samarth, Mr. N. M.  
Sarvadhikary, Sir Deva Prasad.  
Sen, Mr. N. K.  
Singh, Babu B. P.  
Singh, Mr. S. N.  
Sinha, Babu Ambica Prasad.  
Spence, Mr. R. A.  
Stanyon, Col. Sir Henry.  
Subrahmanayam, Mr. C. S.  
Tonkinson, Mr. H.  
Webb, Sir Montagu.

The motion was negatived.

**Mr. Deputy President:** The question is that clause 20 stand part of the Bill.

The motion was adopted.

**Rao Bahadur T. Rangachariar:** Sir, I move the amendment which stands in my name, *viz.* :

“Omit the whole of clause 21.”

I wish to briefly explain the object of this amendment. We are now dealing with the Chapter relating to taking security for keeping peace and good behaviour. We have passed the stage in which the order has been passed by the Magistrate calling upon the accused person to give security. The stage now is where the security is offered under section 122. As it now exists a Magistrate may refuse to accept any surety offered under this chapter on the ground that for reasons to be recorded by the Magistrate such surety is an unfit person. The new clause proposed by the Government is an attempt to improve that section. Honourable Members will notice that the section as it stands leaves it to the discretion of the Magistrate to refuse to accept a security for reasons to be recorded by him on the ground that he is an unfit person. The first attempt made in this amendment by the Government is to define what is meant by an unfit person, and in making that attempt, if Honourable Members will now look at the amended clause before them, they will see that they want to tell the Magistrate in such and such a case you may call him an unfit person, that is, he is not a man of good moral character. What is meant by a man not of good moral character. Not only is the reputation of the poor fellow who is called upon to give security for keeping the peace or good behaviour at stake, but the reputation of the unfortunate person, whom it may be very difficult to secure in order to find as a surety, is in the hands of this Magistrate, who can say that he is not a man of good moral character. Are persons belonging to the C. I. D. men of good character, of good moral character, when they pry into other peoples' affairs? Do people belonging to the Income-tax Department come under the category of men of good moral character when they pry into my accounts and encourage my neighbours to spy on me and give evidence? What is meant by a man of good moral character? Is a big zemindar who openly lives with his concubine a man of good moral character? Is he a man of substance? Is he not a man quite worthy? Is he not a man whose bond is good enough? What is meant by the alteration now proposed by Government? It is merely adding to the terrors of this chapter. Not only do you bind the man to give you security for keeping the peace but you make it impossible for him to give that security. Would I, even if he were my best friend, go and stand surety and take the risk of being called a man of bad character at the hands of the Magistrate? Am I to place my reputation in the hands of the ill-paid police and the other agencies which are at work in binding over people to keep the peace? Now, take the other thing: “unable to control the movements or action of the person by whom the bond is to be executed.” You cannot judge beforehand. If I am unable to control the movements, if the man commits a breach of the bond, I forfeit a substantial sum, and the man who breaks the bond will be convicted for the offence and sent to jail; and I forfeit a heavy bail which I have given. The Magistrate is to decide whether I, the surety, will be a man who will be able to control the movements or action of the person by whom the bond has been executed. It is a very difficult task which you are imposing upon the Magistrate. The next condition is “of insufficient means to enable him to fulfil his

pecuniary liability under the bond." That goes without saying. Why do you want an explanation? Have any Magistrates found any difficulty in rejecting a security when they found that the man was not of sufficient means? That shows that you do not want to have any faith in the Magistracy and that you do not think that they have the common-sense to find whether a surety is a fit surety or not. If he is not possessed of means to fulfil his pecuniary liability under the bond, that is the commonest ground on which the Magistrate would refuse to accept a security, so that the guidance given to the Magistrate in this case is in one respect unnecessary and in other respects it is a dangerous pitfall and shows the anxiety of the authorities to make it difficult for the man to find a surety, which even ordinarily is difficult to find. That is one of the objects in view. I now come to the second object in view. Under the law as it now stands, the Magistrate, once he has taken security, once he has accepted the surety, cannot cancel it afterwards if the circumstances change. Now it is proposed not only that he may originally refuse to accept the securities, but after having accepted security, say after six months of the period is over, that the Magistrate should have power to cancel it and call upon the man in question to give security all over again. Of course the position now is that the surety himself may come forward, after having given security and ask to be relieved of the security if he finds the man on whose behalf he has given it is a troublesome man. Then the Magistrate will call upon the man to furnish additional security. Now we are to give this power to the Magistrate again, although a man finds difficulty enough in finding the original security. To give this power to a Magistrate to revoke a security once it has been accepted is not necessary and it may lead to abuse of the power. It is not a case of punishment; it is of a purely preventive nature. A man has given security which is thought good enough; there is no reason why power should be given to revoke it afterwards.

The third provision is that if the surety is to be rejected the Magistrate is to do this and that. It is a judicial discretion which has been invested in the Magistrate; is he to be taught the elements of his duties, informing him that if he wishes to reject a surety, he must, in making an order refusing to accept, take evidence. Any Magistrate with any sense in him will do it. What is the use of telling him to record the substance of the evidence? It is not necessary for this duty to be taught to him; otherwise he is not fit to be a Magistrate. Therefore the three objects aimed at by this amendment are either unnecessary or likely to be mischievous, and this amendment is unnecessary. The section may be left as it is; it is wide enough. The discretion may be left to the Magistrate. What is the difference? The Magistrate may refuse to accept a surety on the ground, for reasons to be recorded by him, that such surety is an unfit person. His hands are not tied, and that judicial discretion is to be controlled by the High Court. I do not think therefore that any case has been made out for making this change. The 17 and odd amendments which follow will show what difficulty lawyers feel in laying down rules for the guidance of the discretion of Magistrates. I think it was Jenkins C. J. who said:

"In these matters of discretion, it is always very difficult to lay down rules for guidance. You must leave it to the good sense of the Magistrate, and that good sense is liable to be controlled by higher authority."

Therefore I ask that the section be left as it is, and this amendment be not made, and I move the amendment which stands in my name.

**Mr. Deputy President:** The amendment is to omit the whole of clause 21.

**Mr. H. Tonkinson** (Home Department: Nominated Official): Sir, my Honourable friend proposes to delete the whole of clause 21 from the Bill. This clause, Sir, proposes to substitute a new section for the existing section 122. Let us see, in the first instance, what the provisions consist of. In the first place the Magistrate is given power to refuse to accept any surety offered, or to reject any surety previously accepted by him or by his predecessor. Secondly, provisions are made as to what is to take place before a Magistrate refuses to accept or reject any such surety. He must satisfy himself by inquiry on oath into the fitness of the surety, or cause such an inquiry to be held by a subordinate Magistrate. Then for the guidance of the courts an attempt has been made to indicate the grounds upon which a Magistrate may find a person to be unfit. Fourthly, it is provided that he shall record the substance of the evidence [sub-section (2)]; and finally in the case of an order rejecting a surety, it is provided that the person for whom the surety is bound to appear must be present. Now, Sir, my Honourable friend objects, in the first place, to the provisions as to the reasons for finding a surety to be unfit. We have amendments later in the list on which this question can be more fully and perhaps more properly considered. I would merely remark now that, as regards the first clause in it, as to good moral character, the Government lay no particular stress upon the word 'moral.' That a person is not of good character is, however, certainly a ground which has been generally considered by all the High Courts as one which should be applied. Then he objects, Sir, to clause (c) to the effect that the surety is unable to control the movements or actions of the person by whom the bond has been executed. That, Sir, is, in very general terms, the criterion which has been consistently considered by the Allahabad High Court to be the principal ground for finding whether a surety is fit or is not fit. Surely, Sir, what we should consider on the present motion is not these particular provisions. We shall have a chance of considering those at length later. Is it not now advisable to consider whether it is desirable to place in the Code definite provisions which will guide our Magistrates as to the action which they should take in these cases? Before proceeding further, I should like to draw the attention of the Assembly to the fact that in clause 107 of the Bill we are providing for an appeal against the orders passed under this section. Now, Sir, that clause has not been unnoticed by my Honourable and learned friend because he has given notice of an amendment to that clause. I submit, Sir, the amendment which he has proposed to that clause is entirely inconsistent with the amendment which he has proposed to this one. The position is that we propose to provide in the Code for an appeal against the orders of a Magistrate. At present we have a provision for revision. Well, there is a great difference between provisions for revision and provisions for appeal. Powers of revision are powers given to the courts. They are discretionary powers which may be exercised or not as the courts think fit: but when we give a right of appeal, we grant a right to the subject, and if we are to call upon our appellate courts to deal with these questions on appeal, it is essential that they should have proper material upon which to base their decision.

**Rao Bahadur T. Rangachariar:** Even now the section runs: "For reasons to be recorded."

**Mr. H. Tonkinson:** The Honourable Member asks the question as to what is the necessity of providing in the Code for an inquiry. He sug-

gests that it is practically teaching the Magistrate what he should do. Well, Sir, I suppose he will admit now that our High Courts are practically unanimous to the effect that there should be a judicial inquiry under this Section. They are not, Sir, unanimous as regards the other point as to whether the inquiry should be on oath. The only rulings on that point are to the effect that in such an inquiry the Magistrate has the power, if he thinks fit, to take evidence on oath. I do not know whether it is necessary now to refer to the rulings on the question, but I should like to refer to the history of the clause. The proposals of the Government of India were contained in the Bill of 1914. In that Bill Government proposed to include a provision that

' before making an order refusing to accept a surety under sub-section (1), the Magistrate shall either himself inquire into the fitness of the surety or direct such inquiry to be made by any Magistrate subordinate to him, and the report of such subordinate Magistrate shall be admitted as evidence of the facts stated therein.'

That clause, Sir, with opinions received upon it was considered by Sir George Lowndes' Committee and they noted in their remarks on clause 17:

" We think that the inquiry should be held upon oath and that the Magistrate should be bound to record the substance of the evidence adduced before him."

Then the Joint Committee included fresh provisions and so we have the clause as it stands in the Bill, a clause which I suggest is a distinctly reasonable proposal. We are providing for an appeal; we must, Sir, therefore definitely enact in the Code what are the materials which the Magistrate must include in the record of his inquiry under this section. Incidentally, I may say that the section does give power to enable a Magistrate to delegate the inquiry to a Magistrate subordinate to him, which the Allahabad High Court has held cannot now be done. In view of the fact that my Honourable and learned friend must, as I think he will admit, see that the amendment which he has proposed to clause 107 of the Bill is entirely inconsistent with his present amendment, I hope that he will withdraw his amendment.

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

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

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**Mr. Deputy President:** The amendment moved is:

" Omit the whole of clause 21."

**Lala Girdharilal Agarwala** (Agra Division: Non-Muhammadan Rural): Sir, I rise to support the amendment so ably moved by my learned and Honourable friend, Mr. Rangachariar. I say that the proposed new clause is quite vague and unworkable and would cause delay in the disposal of surety cases. One result would be that every person from whom a security is demanded will have to remain in custody for some time till the question whether a surety is proper or improper is decided. Now the limitation placed upon the competence and the qualifications of a surety are to be limited by these words, namely, not of good moral character. Now what is the meaning of these words—'not of good moral character'? It would depend upon the sweet whim of a Magistrate. One Magistrate may say that a person who is an ex-convict for murder is a man of bad character. Another Magistrate may say that every ex-convict is a man of bad character,

[Lala Girdharilal Agarwala.]

including a man who has been fined one rupee in a case where he drove his motor without a lamp at 6-15 P.M. Then again one Magistrate may say that a Non-co-operator is a man of bad character, or not of good character; while another may say that a man who does not vote according to the Joint Magistrate's view at a municipal meeting where the Joint Magistrate happens to preside is not a good character. Where is the line of difference? How do you draw the line? Now, Sir, an orthodox Hindu might say that a man who drinks soda and lemonade is not a man of good character. Again, the "drys" will say that a man who drinks is a man of bad character. The "wets" on the contrary will say that a man who abstains from drink is a bad character. Now where is the line to be drawn? Now, Sir, some people might say that a man who marries in a community which is not his own is a man of bad character. There are many who say that. Others may say that a man who keeps a concubine secretly is a man of good character, but that he who keeps a concubine openly is a man of bad character. I do not want to be long; I have just explained my object that this is too vague. Now, sub-clause (b) runs:

"of insufficient means to enable him to fulfil his pecuniary liability under the bond."

This is simply saying that a man who has got no property should not be a surety. That is the ordinary law now; the present law provides also for that, and nobody would take a surety from a man who has got no means. This does not require to be changed. The last sub-clause is "unable to control the movements or actions of the person by whom the bond has been executed."

How is the Magistrate to know that beforehand? I submit that this too is most improper and one result that would be inevitable in every case would be that the person against whom an order for finding surety has been passed would have to live in jail for some time before he is, if at all, released on furnishing security. With these words I support the amendment.

**Sir Deva Prasad Sarvadhikary:** Sir, I wish even at the risk of earning a Rangachariar like rebuke from the Government Benches I could have preached what Mr. Rangachariar calls a homily and ask them to economise time; because if they consented to dropping this proposed clause and accepted Mr. Rangachariar's amendment they would have got rid of 17 amendments at a stroke and economised much time. I am afraid, however, that that homily at all events would be inopportune. There are occasions when however it can be successfully and effectively preached and Government might also respond to my appeal by accepting what can be accepted without detriment to the public weal, as I said previously.

It is always a pleasure to be able to agree with Mr. Rangachariar. Sometimes it is possibly expedient because the severity, assumed or otherwise, of his wrath and the mode of its expression is apt to be uncomfortable now and again. But here, Sir, we have a vivid illustration of the utter baselessness of his contention. Section 122 is far too broad and general. Government attempts to define, Government attempts to afford some safeguards, some differentiating elements, that would be the much needed guide, but Mr. Rangachariar thinks that generalities, indefiniteness and vagueness are about the best and had better continue and attempted definition is to be deprecated. I do not know whether he has behind him on this

occasion the support of his own Bar Association. Now, it is quite clear that section 122 as it stands is capable of improvement, certainly in two directions; one has been pointed out already by Mr. Tonkinson. We are going to have an appeal now, and the materials for a proper appeal must be there. Therefore evidence is to be recorded, at least its substance. Well, so far as insistence on moral character in sureties goes, I am afraid it is a dead horse as far as the Government is concerned. It is no good Mr. Agarwala's multiplying his notion about various elements of good or bad character; Government is prepared, I believe, to drop its insistence upon moral character in sureties, if I understood Mr. Tonkinson aright . . . .

**Mr. H. Tonkinson:** On the word 'Moral.'

**Sir Deva Prasad Sarvadhikary:** Government does not want to insist on the word 'moral.' Any way we can discuss all that detail only in the course of the amendments that follow and we shall judge which to accept and which not to. But if you drop as Mr. Rangachariar suggests the whole of the proposed clause 122, why the, the very necessary safeguard I have referred to will be denied to us. If we can get rid of the objectionable features of section 122, as pointed out in the amendments against sub-clause (a) of clause 122 (1) and also in Mr. Iswar Saran's amendment with regard to the incoming man interfering with what his predecessor had done, where is the good in retaining the clause as Mr. Rangachariar suggests? I think we ought to concentrate our attention upon the details that suggest improvements, and without attempting to preach a homily once more I suggest the omnibus desire to drop section 122 should be dropped.

**The Honourable Sir Malcolm Halley (Home Member):** Just before the interval, we on the Government side took certain risks; we did not desire to prolong the discussion on the proposal to introduce a definition of "repute" which we thought to be thoroughly bad, and therefore did not discuss it at length, although we had material by which we could have riddled it not in one, but in fifty different directions. Fortunately the House showed that we were justified in taking that risk, for it refused to support Mr. Kabeer-ud-Din Ahmed in stepping in where one of the greatest legal luminaries had feared to tread. But the present case is one which we must argue out, because we feel that in justice to ourselves we must make it clear that it is not primarily in the interests of Government that our revised clause 122 has been put forward. It has been put forward entirely in the interests of persons affected by an order to provide security. It is always a pleasure to have to deal with an amendment by Mr. Rangachariar; he always supports it on definite grounds, capable of no misapprehension. What is his ground here? It is, that we already in the present section 122 have all that we want. Why seek to lay down for Magistrates rules designed merely to help them to decide who they shall and who they shall not accept as surety? Trust your Magistrates; they are men of discretion. Why tie their hands in any way? I am only too glad that the genial influences of yesterday's holiday have so weighed with Mr. Rangachariar (*Rao Bahadur T. Rangachariar*: "It was not a holiday to me") that he is now prepared to place so high a measure of confidence in our Magistrates. There have been other respects in which he has not shown an equally liberal spirit. When we were dealing with section 107 he showed no such spirit of confidence. In dealing with the question of taking security for breach of peace (section 107), what did he demand the Magistrate

[Sir Malcolm Hailey.]

should do? Why, that he should immediately report each and every order to the Sessions Judge, who was to pass orders as to the propriety or otherwise of his conduct. But now that we have this handsome admission from Mr. Rangachariar, we shall not forget it, and when we come to the numerous amendments tabled by him, which propose to place restrictions on the discretion of our Magistrates, he will not, I know, resent it if I remind him of what he has said this morning, and hold him to it. But, as a matter of fact, have we been unwise in attempting to lay down for our Magistrates definite rules of conduct here? Like the sons of Levi, have we taken too much upon ourselves? Let me give the reasons why it has been done. Let me quote the demand of an authority which Mr. Rangachariar will, I think, be the last to depreciate. This is what the Bar Library of Calcutta said to us:

"We think it absolutely necessary that the question of the grounds of fitness of sureties should be determined by the Code having regard to the great diversity of judicial opinions on the matter. The Allahabad rulings have generally adopted ability to control as the test. The Calcutta decisions while dissenting from this view are in conflict *inter se*. Some accept the test of property qualifications and others regard the question as one to be determined on the facts of each case."

Then again, let me quote the opinion of the Calcutta High Court. They say:

"Some difference of opinion exists as indicated in recent decisions of this Court whether the obligation of the surety is simply pecuniary or whether he may be expected and required to exercise some measure of control over the person whose good behaviour he guarantees. The clear intention of the Legislature might, in the opinion of the Judges, find expression in the section."

And all that the Lowndes' Committee proposed to do was to allow the Legislature to express its opinion on this particular point. It is not really Government that has initiated the insertion of the new section; it was legal opinion itself that has prompted us to this action. That, I think, is a sufficient answer to one part of Mr. Rangachariar's attack on us; but to complete my case I will quote to the House yet one further legal authority on the point. The Chief Court in Rangoon found that its Magistrates needed guidance in the matter; they felt the matter so important that they laid down the following rules for Magistrates in accepting sureties. They say:

"Before any person is accepted as surety for good behaviour the Magistrate should satisfy himself that the person . . . ."

I ask the House to note the words which follow; they bear a curious similarity to what we have got in our Bill.

"is of good character, is able to pay the penalty in the bond and lives in a place where he is likely to be able to exercise some supervision over the conduct of the suspect."

If then our legal advisers and the administrators of our Courts are correct, it is clear that Magistrates do actually need some guidance in the matter. It is particularly the case, as Mr. Tonkinson pointed out this morning, that some such provision as this is required now that we are prepared to give an appeal against the refusal of sureties. If you take section 122 as it now stands in the Code, all that the appellate Court could say is since there are no criteria laid down by the Legislature, it had no material upon which they can over-rule them, and the same differences of opinion as to what criteria should be applied would continue to trouble both the Magistrates and the appellate Courts. That the differences are material

the rulings in the commentaries show. I have given reasons—perfectly adequate reasons—for making some provision of the nature of the new section 122 to take the place of the very wide discretion left under the existing section 122. I am not at this point proposing to argue the details of our new clause. It has been attacked by Mr. Rangachariar on principle, and not primarily on questions of detail. As Mr. Tonkinson said this morning and as Dr. Sir Deva Prasad Sarvadhikary has just repeated, the House will have full opportunity to judge whether the criteria we have laid down are adequate or need amendment. We are, for instance, quite prepared to give way on the question of the insertion of the word “moral” before “character.” After all, a person’s private peccadilloes lie between him and his creator or his wife. There is no real reason why they should be allowed to count in deciding his sufficiency as a surety. With regard to the remaining two requirements, (b) and (c), we are quite prepared to argue them on the merits and if necessary to amend them on the merits. I am arguing here solely on the question whether some provision such as the new 122 is required or not, and that is the point on which the decision of the House is in the first place necessary.

**Colonel Sir Henry Stanyon:** Sir, I took advantage of the holiday yesterday to give a good deal of consideration to this amendment and I came to the conclusion that the proposal of the Honourable Mover ought to have support. I have listened to the arguments which were advanced in support of the clause in the Bill which the Honourable Mover wishes to have omitted and my opinion in favour of the motion remains unshaken. The present section 122 is a simple and straightforward section, introducing no complications, involving no undue delay in procedure, which, if it is to be worth anything, ought to be prompt, and it contains in its one simple provision, namely, that the Magistrate shall record his reasons in writing, all the safeguards which can possibly be got if the Magistrate is to be anything more than a mere machine. I at all events can claim freedom from any inconsistency in asking for confidence in the discretion of Magistrates. The clause which the Bill now before us proposes to substitute for this simple section shows many disadvantages. The first thing is that it involves an error of a well known judicial principle. It is an attempt to crystallise judicial discretion. It purports to substitute for the simple procedure laid down by the present section 122 a cumbrous and complicated procedure. I join issue with those who say that this proposed clause will introduce safeguards. My own impression is that while affording excuse to the weak Magistrate, to the arbitrary Magistrate, to the pro-pole Magistrate—and there are such Magistrates—to refuse security, it will merely harass and confuse the conscientious Magistrate. What does it involve? When a man offers security, instantly on behalf of the prosecution  
 3 P.M. in a great many cases will come the objection to the security; and then the Magistrate will be required to enter upon a preliminary inquiry into the moral character, or into the solvency of the surety or into his power of control over the accused, (if I may so speak of him) before anything is done in the original case itself. A regular case will be tried, substantive evidence recorded and a finding delivered; and then will follow an appeal which may take days, or weeks or months; and all this time the man who is required to give security will be “hung up,” possibly under arrest. Well, that I think is a procedure which will not commend itself to the House. Why is this particular distinction made in this case? If a Magistrate can be trusted to take surety for bail in serious cases, why not in a

[Sir Henry Stanyon.]

case where there is no offence whatever alleged except the general badness of character or an intent to commit an offence. The reason for that distinction does not appear to be quite clear. Then, without going into the little details that have already been sufficiently urged, as to the difficulty of deciding exactly what is a bad moral character, I would submit for the consideration of the House, that in a great many of these cases under the rule "set a thief to catch a thief," a man of bad character may be the best security that the public can have, to look after the man that wants supervision. No doubt the solvency of the surety is a very proper subject of inquiry; and I do not imagine that any Magistrate or any court would accept a surety unless he or it was satisfied in a reasonable way that he was a man whose bond could be depended upon. With regard to the point of control over the person bound, it is difficult to understand exactly what is meant by the surety's control. A surety must not indulge in wrongful restraint or wrongful confinement, he can only use moral influence or whatever influence he may have, to control the person bound over. Well, no surety will ever bind himself unless he feels he can control the man. The mere fact that he binds himself indicates that he feels confident of being able to keep his man in the right way so as to save his own money. When a man stands surety for a particular person for not breaking the peace or for being of good behaviour, he naturally stands surety to see that he does so. In that view the provision is unnecessary. But the main ground upon which I venture to oppose the clause in the Bill and to support this amendment is this that this crystallising, or an attempt to crystallise, the discretion of the Magistrate, is not a move in the right direction. It is a retrograde step; and while it will not control the Magistrates in any particular way, it will, on the other hand, furnish excuses to refuse sureties upon unjustifiable grounds. For all these reasons, I recommend to the House to sustain the amendment.

**Mr. J. Chaudhuri** (Chittagonj and Rajshahi Divisions: Non-Muhammadan Rural): I move that the question be put.

The motion was adopted.

**Mr. Deputy President:** The question is that the whole of clause 21 be omitted.

The Assembly then divided as follows:

AYES—36.

Abdul Quadir, Maulvi.  
 Agarwala, Lala Girdharilal.  
 Ahmed, Mr. K.  
 Ahsan Khan, Mr. M.  
 Asad Ali, Mir.  
 Ayyar, Mr. T. V. Seshagiri.  
 Bagde, Mr. K. G.  
 Bajpai, Mr. S. P.  
 Barua, Mr. D. C.  
 Basu, Mr. J. N.  
 Bhargava, Pandit J. L.  
 Chaudhuri, Mr. J.  
 Cotelingam, Mr. J. P.  
 Gulab Singh, Sardar.  
 Iswar Saran, Munshi.  
 Jannadas Dwarkadas, Mr.  
 Jatkar, Mr. B. H. R.  
 Joshi, Mr. N. M.

Lakshmi Narayan Lal, Mr.  
 Man Singh, Bhai.  
 Misra, Mr. B. N.  
 Nabi Hadi, Mr. S. M.  
 Nag, Mr. G. C.  
 Neogy, Mr. K. C.  
 Pyari Lal, Mr.  
 Rangachariar, Mr. T.  
 Reddi, Mr. M. K.  
 Shahani, Mr. S. C.  
 Singh, Babu B. P.  
 Sinha, Babu Ambica Prasad.  
 Sircar, Mr. N. C.  
 Srinivasa Rao, Mr. P. V.  
 Stanyon, Col. Sir Henry.  
 Subrahmanayam, Mr. C. S.  
 Venkatapatiraju, Mr. B.  
 Vishindas, Mr. H.

## NOES—37.

Abdul Rahim Khan, Mr.  
 Abdulla, Mr. S. M.  
 Aiyar, Mr. A. V. V.  
 Allen, Mr. B. C.  
 Blackett, Sir Basil.  
 Bradley-Birt, Mr. F. B.  
 Bray, Mr. Denys.  
 Burdon, Mr. E.  
 Cabell, Mr. W. H. L.  
 Chatterjee, Mr. A. C.  
 Crookshank, Sir Sydney.  
 Dalal, Sardar B. A.  
 Davies, Mr. R. W.  
 Faridoonji, Mr. R.  
 (Sidney, Lieut.-Col. H. A. J.  
 Haigh, Mr. P. B.  
 Hailey, the Honourable Sir Malcolm.  
 Hindley, Mr. C. D. M.  
 Holme, Mr. H. E.

Hullah, Mr. J.  
 Ikramullah Khan, Raja Mohd.  
 Innes, the Honourable Mr. C. A.  
 Ley, Mr. A. H.  
 Moncrieff Smith, Sir Henry.  
 Muhammad Hussain, Mr. T.  
 Munammad Ismail, Mr. S.  
 Mukherjee, Mr. J. N.  
 Percival, Mr. P. E.  
 Ramayya Pantulu, Mr. J.  
 Samarath, Mr. N. M.  
 Sarfaraz Hussain Khan, Mr.  
 Sen, Mr. N. K.  
 Singh, Mr. S. N.  
 Sinha, Babu L. P.  
 Tonkinson, Mr. H.  
 Webb, Sir Montagu.  
 Zahiruddin Ahmed, Mr.

The motion was negatived.

**Mr. B. N. Misra** (Orissa Division: Non-Muhammadian): Sir, practically my amendment is the same as that of my predecessor, the Honourable Mr. Rangachariar. My amendment is to the effect that the Magistrate may refuse to accept any surety offered under this Chapter on the ground that, for reasons to be recorded by the Magistrate, the surety is not fit to stand as such.

**Mr. Deputy President:** I am afraid, it cannot be moved. Munshi Iswar Saran.

**Munshi Iswar Saran** (Cities of the United Provinces: Non-Muhammadian Urban): Sir, after the speeches that have been made on the subject, I do not think it is at all necessary for me to make a long speech. The House will notice that under section 122 in the Bill it is provided that a Magistrate may after having accepted a surety reject it. I submit that it is not at all necessary to give him this power, and I do not see that any necessity has arisen for introducing this change in the law as it stands. The provisions in the present Criminal Procedure Code have stood the test of time and they have worked very well. I submit that a change like this in certain cases is apt to be misused. If you have a weak Magistrate or a pro-police Magistrate, as Sir Henry Stanyon puts it, he may, after having accepted a surety, very well say, "well, on further facts that have been brought to my notice, I am inclined to reject this surety." I therefore submit to the House that this power should not be given to the Magistrate. I move, Sir:

"That in clause 21 in section 122:

Omit the words from 'or may reject' to the word 'predecessor' in sub-section (1)."

**Sir Henry Moncrieff Smith:** Sir, all that the Bill proposes in this matter is to enable a Magistrate to reject a surety previously accepted, not arbitrarily, but on the same grounds which would have justified him in refusing to accept the surety in the first case. There is a clause in the Bill, much later on, which provides for two possible contingencies which may arise. One is when a surety becomes insolvent, and the other when a surety dies. The Bill provides for both those cases and enables a Magistrate to demand fresh security. He obviously must do so. But there are other cases in which a surety may subsequently become an unfit person

[Sir Henry Moncrieff Smith.]

though at the time he was accepted he may have been fit. It seems to me that it is only logical to provide that if a surety subsequently becomes unfit for reasons which would have justified the Magistrate in rejecting him in the first case, then the Magistrate should be able to call for fresh security. What is to happen if a person who has been bound over under these sections finds a surety who at the time is perfectly fit, able to control the person for whom he stands, is of good character and sufficient financial means, but who later emigrates to Fiji? In the first place there can be no question of his controlling the person for whom he stands surety. In the second place there will be no means of enforcing the bond as the man will be gone. Or take the case of a surety who is sent to jail for a long period. Is there any reason why in such cases the Magistrate should not have power to call for a fresh surety?

**Mr. Deputy President:** The question is:

"That in clause 21 in section 122:

Omit the words from 'or may reject' to the word 'predecessor' in sub-section (1)."

The Assembly then divided as follows:

AYES—32.

Abdul Quadir, Maulvi.  
 Agarwala, Lala Girdharilal.  
 Ahmed, Mr. K.  
 Ayyar, Mr. T. V. Seshagiri.  
 Bagde, Mr. K. G.  
 Bajpai, Mr. S. P.  
 Basu, Mr. J. N.  
 Bhargava, Pandit J. L.  
 Chandhuri, Mr. J.  
 Gulab Singh, Sardar.  
 Hussanally, Mr. W. M.  
 Iswar Saran, Munshi.  
 Jamnadas Dwarkadas, Mr.  
 Jatkari, Mr. B. H. R.  
 Joshi, Mr. N. M.  
 Lakshmi Narayan Lal, Mr.

Man Singh, Bhai.  
 Misra, Mr. B. N.  
 Nag, Mr. G. C.  
 Neogy, Mr. K. C.  
 Rangachariar, Mr. T.  
 Reddi, Mr. M. K.  
 Savadhikary, Sir Deva Prasad.  
 Sen, Mr. N. K.  
 Shahani, Mr. S. C.  
 Singh, Babu B. P.  
 Sinha, Babu Ambica Prasad.  
 Sinha, Babu L. P.  
 Srinivasa Rao, Mr. P. V.  
 Subrahmanayam, Mr. C. S.  
 Venkatapattiraju, Mr. B.  
 Vishandas, Mr. H.

NOES—41.

Abdul Rabim Khan, Mr.  
 Abdulla, Mr. S. M.  
 Ahsan Khan, Mr. M.  
 Aiyar, Mr. A. V. V.  
 Allen, Mr. B. C.  
 Barua, Mr. D. C.  
 Blakett, Sir Basil.  
 Bradley-Birt, Mr. F. B.  
 Bray, Mr. Denya.  
 Burdon, Mr. E.  
 Cabell, Mr. W. H. L.  
 Chatterjee, Mr. A. C.  
 Cotelingam, Mr. J. P.  
 Crookshank, Sir Sydney.  
 Dalal, Sardar B. A.  
 Faridooji, Mr. R.  
 Gidney, Lieut.-Col. H. A. J.  
 Haigh, Mr. P. B.  
 Hailey, the Honourable Sir Malcolm.  
 Hindley, Mr. C. D. M.  
 Holme, Mr. H. E.

Hullah, Mr. J.  
 Ibrahimullah Khan, Raja Mohd.  
 Junes, the Honourable Mr. C. A.  
 Ley, Mr. A. H.  
 Mitter, Mr. K. N.  
 Moncrieff Smith, Sir Henry.  
 Muhammad Hussain, Mr. T.  
 Muhammad Ismail, Mr. S.  
 Mukherjee, Mr. J. N.  
 Nabi Hadi, Mr. S. M.  
 Percival, Mr. P. E.  
 Ramayya Pantulu, Mr. J.  
 Smarth, Mr. N. M.  
 Sarfaraz Hussain Khan, Mr.  
 Singh, Mr. S. N.  
 Sircar, Mr. N. C.  
 Stanyon, Col. Sir Henry.  
 Tonkinson, Mr. H.  
 Webb, Sir Montagu.  
 Zahiruddin Ahmed, Mr.

The motion was negatived

**Rao Bahadur P. V. Srinivasa Rao** (Guntur *cum* Nellore: Non-Muham-  
madan Rural): The amendment which I have the honour to move is as  
follows:

• "In clause 21 in sub-section (1) of proposed section 122:

Omit clause (a), *viz.*, 'not of good moral character'."

The Honourable House is aware that the Lowndes Committee, which consisted of members upon whom much encomium has been lavished by this House, have deliberately held that it is a mistake to define the grounds of fitness. Anyhow the House has decided by a majority of one vote that it is necessary to define the same. Now the question for the consideration of the Honourable House is whether this condition should be retained, namely, "not of good moral character." Government either in their desire to meet the wishes of the Honourable Members, or for other reasons, have generously offered to drop the word "moral." It seems to me, Sir, that this makes no difference whatever. I cannot understand character divorced from moral principles. Then taking the illustration of my learned friend, Mr. Rangachariar . . .

**Sir Deva Prasad Sarvadhikary:** Not his own illustration.

**Rao Bahadur P. V. Srinivasa Rao:** The illustration quoted by him,— of a zamindar keeping a concubine but having great influence over his tenants. Suppose he offers to be a surety for one of his tenants against whom proceedings are instituted. I believe there are some zamindars who think they would not deserve the name of zamindar unless they kept one or two women. Would they come under the category of persons of good character according to the view propounded from Government Benches? It seems to me that though the word "moral" is dropped, the substance is there. It would not make any change whatever. And it seems to me that this clause cannot commend itself to the Honourable House. What is the effect of having a proviso like this? Any person who wants to be a surety would have to allow his character to be inquired into by a Magistrate. I do not think any man of self-respect would allow his character to be impeached or challenged by the police or any Magistrate who presides over the court. If the Magistrate has a dislike against the man, he will say, he is not of good character and he cannot accept his security. The words are so comprehensive and elastic that they will include everything, and any person may be rejected as not being a fit person on one ground or another, and it would be absolutely impossible for any person against whom proceedings are instituted to get a surety. It will strike any one that the object is practically to deprive these persons from getting sureties. Judging from the practical point of view, I suppose it will be conceded that every opportunity should be given to persons bound over to be of good behaviour, and even under the existing law it is difficult to procure sureties for good behaviour. I think we must encourage people to come forward to give surety, because there is always the prospect of a good, healthy, influence being yielded over the persons bound over. Now, this new section will frustrate the very object of bad characters or habitual offenders being reformed into really good men, by preventing respectable persons from coming forward and standing as sureties for their good behaviour. Therefore, it seems to me that by retaining this clause you will practically deprive every person against whom proceedings are instituted from being able to get respectable sureties.

[Rao Bahadur P. V. Srinivasa Rao.]

For these reasons, Sir, I have no doubt that the Honourable House will accept my amendment to omit clause (a) in sub-section (1) of proposed clause 122.

**Mr. H. Tonkinson:** Sir, the Honourable Member proposes to omit clause (a), the first of the conditions which it is proposed to specify to guide Magistrates in their action as regards the rejection or the acceptance of a surety. Now, Sir, I would submit that, although, as regards clauses (b) and (c), there have been very considerable differences of opinion in the different High Courts, as regards clause (a) there is practically no difference of opinion, that is, the question as to whether a man is of a good character or not is generally accepted as one of the points which should be considered by the Magistrate. The Honourable the Leader of the House read out the instructions given by the Lower Burma Chief Court to the Courts in Burma. Good character was included amongst them. The Judicial Commissioner in Sind has held that the character and status of the sureties required may suitably be specified. The Bombay Courts have done the same. The Allahabad decisions are generally on the lines of clause (c), but they have definitely held that it is a material point in the inquiry as to whether a man has had a previous conviction, and so on. There is, Sir, I think not the least doubt whatsoever that this is a criterion which should be included. We are quite prepared, as we have said already, to omit the word "moral" and, if that would meet the wishes of the House, we would accept that amendment. (*Cries of "No, no."*) If, however, this clause is cut out from section 122, I would submit, Sir, that then we should have a contradiction between section 122 and section 112 of the Code. Under section 112 it is definitely stated that when the Magistrate makes an order in writing setting forth the substance of the information received, he shall also state the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of securities, if any, required. The omission, Sir, of this clause will mean that we shall have a definite contradiction between section 122 and section 112, because, Sir, if that clause is omitted, then the Magistrate in refusing to accept security may follow only clauses (f) and (c).

**Rao Bahadur T. Rangachariar:** Character there has a different meaning altogether.

**Mr. Harchandral Vishindas:** That word existed in the old Code.

**Mr. T. V. Seshagiri Ayyar:** May I say a word? I am sorry the Government should think of opposing this amendment also. If you omit the word 'moral' and still retain the word 'good', I do not think you are improving the position of the accused. On the other hand, as has been pointed out by Sir Henry Stanyon, a good Magistrate will find it very difficult to come to a conclusion whether a man is of good character or of good moral character, and a bad Magistrate would take it into his head to make it impossible for the accused to give security. Already the House has empowered the Magistrate to reject a security which has once been accepted. Supposing a man has been speaking at a political meeting, and the Magistrate comes to the conclusion that this man is on that ground a bad character and that therefore the security offered by him should be cancelled. What would be the position of the accused? I do not think the Government is facilitating the work of the Assembly by speaking against the amendment.

which has just been moved. Sir, it becomes very difficult for us, if we find no spirit of "give and take" in a matter like this, to make any advances to Government. I thought this was one of the occasions when the Government may go out of its way to accept an amendment. By omitting the word 'moral' and retaining the word 'good' you are not improving matters at all. On the other hand, you are making the position of the accused more difficult.

**Mr. S. C. Shahani** (Sind Jagirdars and Zamindars: Landholders): Sir, I have merely to point out that the Government are doing something very bad in omitting the word 'moral' in the clause providing for a surety to be of good moral character. The ideas of some of the people with regard to 'good' and 'moral' may be not a little confounded, if the Government come forward to advisedly drop the word 'moral.' The position of the Government here is anomalous, and I think based on ignorance as to the meaning of the two terms, good and moral. No one in human society can be good without being moral. ("Hear, hear" from Government Bench.) You may cry "Hear, hear" but in doing so you really show that at least you do not understand the terms. If you analyse the word 'moral,' you see that in its reference is clearly made to the relations subsisting between one man and another which to be true must needs be good. Separating social relations from the dictates of God regarding goodness should be deemed incorrect and unwise. I would request the Government, in spite of their having assumed in this matter airs of superiority, to apply their minds to the ideas involved in the two terms and to make the position they assume in their regard more logical and consistent. Apart from the objections that have been raised by Mr. Seshagiri Ayyar, which are indeed valid, it would, as I say, on ethico-political grounds be advisable on the part of Government not to go in for a course of conduct of such a dubious nature.

**Sir Montagu Webb** (Bombay: European): Sir, I do not understand quite clearly whether the Honourable the Mover has accepted the suggestion of Government that the word 'moral' should be omitted; but if he has not, I would beg your permission to move definitely a further amendment that the word "moral" be omitted from clause (a).

**Mr. W. M. Hussanally** (Sind: Muhammadan Rural): Sir, I had no intention of speaking upon this motion, but . . . . .

**Mr. Deputy President:** The amendment moved is:

"That in clause 21 in sub-section (1) of proposed section 122, clause (a) be omitted to which a further amendment has been moved that the word 'moral' be omitted."

**Mr. N. M. Samarth** (Bombay: Nominated Non-Official): The amendment is that the clause be omitted; the amendment to the amendment is that the clause be not omitted except with the word 'moral,' which may be omitted. Such an amendment, I submit, is not in order.

**Mr. Deputy President:** Amendment moved:

"In clause 21, in sub-clause (1) of proposed section 122, clause (a) be omitted."

**Mr. W. M. Hussanally:** As I said, I had no intention of speaking upon this motion. But with regard to the remark that fell from Mr. Tonkinson as to the inconsistency in section 122 (as it is proposed to be amended) and section 112, I must say I cannot see that inconsistency at all. Mr. Tonkinson was of opinion that if the clause were omitted from section 122 it would become inconsistent with the words "number" and "character" in section

[Mr. W. M. Hussanally.]

112. I do not think that the word 'character' in section 112 bears the same meaning as in the new clause in section 112. "Character" in section 112 means only 'kind' and nothing further; whereas in section 122 it refers to moral character, and I think, Sir, that so far as the inquiry into the moral character of a person is concerned, it will be very difficult for Magistrates to hold an inquiry and to come to any satisfactory decision in the matter; because moral character is such a vague term that any inquiry into that matter will result in nothing; and as has been pointed out by my friend, Mr. Srinivasa Rao, even if a person has spoken a lie he becomes a man of bad moral character. Therefore if the character of a person is to be inquired into, the section ought to be recast and made more definite. As the section stands I think there is no go but to delete it.

**Mr. P. E. Percival** (Bombay: Nominated Official): I only wish to point out, Sir, that, if we omit this clause, the Magistrate would not be able to refuse any surety however notorious he might be. It seems to me that that would be the effect, because you are tying down the Magistrate strictly to the remaining clauses, namely, clauses (b) and (c). Consequently the Magistrate could not refuse a man who had been convicted of a serious offence involving moral turpitude. Even Mr. Agnihotri agrees that a man who has been convicted of an offence involving moral turpitude should not be allowed to stand as surety. But, if you cut out this clause altogether, a man who has been convicted of any offence whatsoever could not be refused by a Magistrate.

**Mr. H. E. Holme** (United Provinces: Nominated Official): Sir, it seems to me to be assumed that in every case an inquiry would be made as a matter of course into the character of the surety and unless that inquiry issues in a satisfactory result the surety will be rejected; whereas it would seem that as a matter of course the surety would be accepted unless there is some reason for objection to him, in which case an inquiry will have to be made, and the Magistrate would, I think, not take upon himself an additional burden especially when he is heavily over-worked by making such an inquiry unless there is some reason for it. At present it appears that the usual course is to make some inquiry or have some inquiry made into the qualifications of the surety before the surety is accepted, and to give power to reject him later will rather tend to result in the surety being accepted as a matter of course at once, unless some reason is shown to the contrary.

**Mr. Harchandral Vishindas** (Sind: Non-Muhammadan Rural): Sir, in addition to what Mr. Hussanally has said in reply to Mr. Tonkinson, there is also this consideration, that this word "character" in section 112 existed in the old Code also side by side with section 122 as it then existed, whereas in section 122 the word "character" did not appear. So, the absence of the word "character" would not create the difficulty or inconvenience which Mr. Tonkinson has pointed out. I quite agree with Mr. Hussanally there. Mr. Percival said that it would be absurd that a Magistrate should not be in a position to refuse security from a man who has been previously convicted. To begin with, it is quite one thing to say that a man should be refused as security because he has been previously convicted and quite another thing to say that a man who is of a bad moral character should be refused. To overcome that difficulty the more logical and more consistent course is to make a provision that "if any person has been previously

convicted, he should be refused " without saying anything about his being a man of bad moral character. But I do not see any force of reasoning in refusing security of a person who has been previously convicted. As Sir Henry Stanyon pertinently pointed out what is the object of taking a security? The object of taking a security is that in the event of the accused person violating his bond and not observing the terms upon which he has been let off, the security should pay up the amount. That is the only object. What have you got to do with his moral character or his having been previously convicted? What have you got to do with his having control over the man or not? The only criterion, the only principle upon which you are taking security is that the accused will be of good behaviour during that period. If he is not of good behaviour, then his security forfeits the money. As Sir Henry Stanyon pointed out, in very many cases there would be men of bad character who would be qualified to stand as security for their friends, because there will be a kind of obligation upon the security to see that the accused person does not go astray so that he may save his money. Further, I think—this is a point that has been laid stress upon by previous speakers, but I think nothing will be lost by my repeating it—you would be making it very hard for Magistrates to find out whether a man's character is really such as can come within the category of the provisions of the Bill or not. There are various and various kinds of bad characters. There may be some who might think that a man who has done a particular wrong or who has been very bad to his neighbour is an immoral man. Another man may think that in his relations with other men the proposed security does not possess the requisite qualifications. When such considerations can arise, I think, Government are committing a mistake by trying to maintain the position they have taken of retaining this clause of the Bill. I think it is not in the interests of legislation, it is not in the interests of the subjects or the people that this clause should be retained.

**Mr. T. V. Seshagiri Ayyar** and **Mr. J. Chaudhuri** (at the same time): I move that the question be now put.

**Sir Henry Moncrieff Smith:** Sir, I want to refer to one point in regard to the remarks which fell from my Honourable friend, Mr. Hussanally. He said that even omitting the word " moral," if we have the word " good character " in this clause, the Courts will be in doubt as to what " good character " means. Now, I think that argument might tend to mislead the House. I doubt whether my Honourable friend had in his mind the Evidence Act, because the words " of good character " are used in the Evidence Act, and they have never caused any difficulty there. I have never heard of any suggestion that they should be amended. Section 58 of the Evidence Act says:

" In criminal proceedings, the fact that the person accused is of a good character is relevant."

There is the Evidence Act laying down definitely that a certain class of evidence is relevant. What is the good of telling the Courts that it is relevant if the Courts do not know what it means? The course of the debate has, I think, shown that a certain section of the House is of opinion that the character of the surety ought not to be taken into consideration at all. Certain Members think that if he is a wealthy man and lives on the spot, it does not matter what sort of character he may have, and the Magistrate is not to be justified in rejecting him. That is a view which will not

[Sir Henry Moncrieff Smith.]

commend itself to any of the High Courts. I think the House is overlooking the fact that the High Courts have practically unanimously laid down that character is one of the grounds which may be considered when the Magistrate is making an inquiry into the surety's fitness. It has been done over and over again. If you take up any commentary you will find the rulings. Sohoni's commentary is to the following effect:

"The generally accepted view seems to be that the Magistrate is at liberty to take into consideration the 'moral unfitness' of the person as well (that is, as well as the financial position)."

The Calcutta High Court in a case in which the surety had been rejected on several grounds brushed aside some of the grounds. As regards the ground that the surety had three brothers in jail, they said, "No, that does not affect his character. We take the man as he is." The other ground that he did not live close by—they brushed that aside also, but the fact that the sureties were reported to be of bad character—the Court found that to be sufficient ground for a Magistrate to reject a surety. I would ask the House to consider most seriously whether by rejecting this clause altogether, throwing out clause (a) of the Bill altogether, they are going to prevent Magistrates from rejecting a surety though he may be a bad character. We are, as far as I understand, discussing whether clause (a) should stand. If it stands, then Government are quite prepared to accede to the amendment moved by my Honourable friend opposite that the word "moral" should be omitted.

**Rao Bahadur O. S. Subrahmanayam** (Madras ceded Districts and Chittoor: Non-Muhammadan): We started this morning with the precept that we ought to cut short the discussion and that we should proceed with the amendments as quickly as we can. I am afraid the blame for prolonging the discussion does not rest on one side of the House or on one section of the House, but it rests on all sides, on all sections of the House. Character, as has been several times pointed out, is an element in testing sureties that are submitted to the Court. Whether in civil matters or in criminal matters character has always been considered, and no Magistrate or Judge worth his position ever ignores the character of person who is offered as surety. Of course, the primary consideration is that he is solvent. Therefore, having been unable to carry the amendment which my Honourable friend, Mr. Rangachariar, suggested, we are now dealing with the details of the clause of the Bill. Government has made a fair offer that they would omit the word "moral" which lends itself to all sorts of misapprehensions. I think it is advisable to accept that small concession to omit the word "moral" and have "good character" only in the clause. That will save us a lot of trouble and will also be in conformity with the decisions of the Courts. We need not stand up for persons who are considered not to possess character, but with regard to "moral" there is the difficulty of interpretation of the term, and therefore on that ground the word "moral" is offered to be omitted, and I think we will do well to accept that offer and close with it as quickly as we can.

**Mr. W. M. Hussanally:** May I ask if I would be in order if I suggest that the words "a convicted person" be substituted for clause (a), and ask if that is acceptable to the Government Benches?

**Mr. Deputy President:** The question is:

"That in clause 21 in sub-section (1) of proposed section 122, clause (a) be omitted."

4 P.M. The Assembly then divided as follows:

## AYES—38.

Abdul Quadir, Maulvi.  
 Abdulla, Mr. S. M.  
 Agarwala, Lala Girdharilal.  
 Ahmed, Mr. K.  
 Akram Hussain, Prince A. M. M.  
 Asad Ali, Mir.  
 Asjad-ul-lah, Maulvi Nayan.  
 Ayyar, Mr. T. V. Seshagiri.  
 Bajpai, Mr. S. P.  
 Barua, Mr. D. C.  
 Basu, Mr. J. N.  
 Bhargava, Pandit J. L.  
 Chaudhuri, Mr. J.  
 Gulab Singh, Sardar.  
 Hussanally, Mr. W. M.  
 Iswar Saran, Munshi.  
 Jamnadas Dwarkadas, Mr.  
 Jatkar, Mr. B. H. R.  
 Joshi, Mr. N. M.

Lakshmi Narayan Lal, Mr.  
 Man Singh, Bhai.  
 Misra, Mr. B. N.  
 Mukherjee, Mr. J. N.  
 Nag, Mr. G. C.  
 Neogy, Mr. K. C.  
 Rangachariar, Mr. T.  
 Reddi, Mr. M. K.  
 Sarfaraz Hussain Khan, Mr.  
 Sen, Mr. N. K.  
 Shahani, Mr. S. C.  
 Singh, Babu B. P.  
 Sinha, Babu Ambica Prasad.  
 Sinha, Babu L. P.  
 Sircar, Mr. N. C.  
 Srinivasa Rao, Mr. P. V.  
 Subrahmanayam, Mr. C. S.  
 Venkatapatiraju, Mr. B.  
 Vishindas, Mr. H.

## NOES—37.

Abdul Rahim Khan, Mr.  
 Abdul Rahman, Munshi.  
 Ahsan Khan, Mr. M.  
 Aiyar, Mr. A. V. V.  
 Allen, Mr. B. C.  
 Blckett, Sir Basil.  
 Bradley-Birt, Mr. F. B.  
 Burdon, Mr. E.  
 Cubell, Mr. W. H. L.  
 Chatterjee, Mr. A. C.  
 Cotelingam, Mr. J. P.  
 Crookshank, Sir Sydney.  
 Dalal, Sardar B. A.  
 Davies, Mr. R. W.  
 Faridoonji, Mr. R.  
 Gidney, Lieut.-Col. H. A. J.  
 Haigh, Mr. P. B.  
 Hailey, the Honourable Sir Malcolm.  
 Hindley, Mr. C. D. M.

Holme, Mr. H. E.  
 Hullah, Mr. J.  
 Ikramullah Khan, Raja Mohd.  
 Innes, the Honourable Mr. C. A.  
 Ley, Mr. A. H.  
 Mitter, Mr. K. N.  
 Moncrieff Smith, Sir Henry.  
 Muhammad Hussain, Mr. T.  
 Muhammad Ismail, Mr. S.  
 Nabi Hadi, Mr. S. M.  
 Percival, Mr. P. E.  
 Ramayya Pantulu, Mr. J.  
 Samarth, Mr. N. M.  
 Sarvadhikary, Sir Deva Prasad.  
 Singh, Mr. S. N.  
 Stanyon, Col. Sir Henry.  
 Tonkinson, Mr. H.  
 Webb, Sir Montagu.

The motion was adopted.

**Mr. W. M. Hussanally:** On a point of order, Sir, may I at this stage propose an amendment in place of clause (a), with reference to a convicted person being accepted as surety . . . .

**Rao Bahadur T. Rangachariar:** I object to his coming forward with a new amendment.

**Mr. Deputy President:** I rule it out of order. I want to know if Mr. Srinivasa Rao will move his amendment to (b) of clause 65.

**Rao Bahadur T. Rangachariar:** He does not move it.

**The Honourable Sir Malcolm Hailey:** Then I would ask your permission, Sir, to move the omission of clauses (b) and (c), that being the amendment put forward by Mr. Srinivasa Rao.

(Voices: "We did not catch properly what the Honourable Member said.")

**The Honourable Sir Malcolm Hailey:** I am asking the permission of the Chair to move the omission of clauses (b) and (c). I now formally move the following amendment:

"In clause 21 in section 122:

Omit the words 'as being' and clauses (b) and (c)."

**Mr. Deputy President:** The question is that the amendment be made.

The motion was adopted.

**Mr. K. Ahmed:** I move, Sir:

"That in clause 21 in proposed section 122, sub-section(1), in the proviso for the words 'cause such inquiry to be held and a report to be made thereon by the Magistrate subordinate to him' substitute the words 'accept a certificate of fitness from a pleader practising in the court of the Magistrate or of some superior court, or from any respectable inhabitant of the locality'."

The reason why I have been impressed to move this amendment is that Magistrates from time to time, according to the case of the prosecution, have held that in certain villages there is no respectable person because all of them are low-class Hindus, low-class Muhammadan cultivators or probably they are a class of people whom the Sub-Inspector will not be kind enough to acknowledge to be respectable, and who are very often being prosecuted under section 110 and sent to jail. That is the reason why I have suggested the words noted above in substitution for the words "cause such inquiry to be held and a report made thereon by the Magistrate subordinate to him" as desirable.

And this, I submit, is a sound principle, which should be accepted by this House, because the poor man who rightly or wrongly by the decision of Court has been convicted and bound over for a certain amount to be of good behaviour for a year or two or three years, certainly, Sir, has got to furnish surety. The principle is that some substantial security which is forthcoming should be furnished within the time fixed. After the poor man has arranged everything to get the surety in compliance with the law, the police will tell the Magistrate some thing and the Magistrate will say 'Look here, Sir, this man is no good, because there was a case against him,' because some person went there and lodged information at the police station. There is entry of the information in the diary—I do not know how many kinds of diaries are kept, but I may say according to the Procedure Code and for the satisfaction of this House and under the provision of law there are only two kinds of diaries kept in every police station. But they bring a certain entry which is not a proved entry; it is only a matter of complaint which is not inquired into and reported or a charge sheet of it submitted, it is only an *ex parte* entry which is found in the police diary and the Magistrate takes the word of the police as gospel truth and rejects the surety, which is an insult to the educated people of this country when they stand surety for their servants, etc. It is an insult to the morality, nay of civilization, that they should insist on keeping the man in the lock up without accepting the surety offered. All this has been put under section 110 and the wrong end of the stick has been caught hold of, leaving aside the principle of law, forgetting that a man in compliance with the order of the Magistrate under section 110 has furnished the security. This has been abused in the past and there is no way of getting out of it, because the

police will throw some blue light from his magic lantern and the Magistrate will take that blue light as the beacon light and that is the only light that reflects on the so-called justice according to him against 99 persons out of 100 and that is how, Sir, there is miscarriage of justice in this country. People having come to the Court and being ready and willing to give security cannot get out of the clutches of the police, and it is very obvious from the decisions of Judges that this engine of oppression should be removed. Sir, in this connection I ought to read the opinions of some of the distinguished bodies in India. I should have handed over this to my Honourable friend Sir Henry Moncrieff Smith. But he has got a copy, I know. It is not quite relevant to the point, but the substance of it will cover exactly what he wants probably for the time being to fit in this amendment.

Sir, I will read from page 128 of the opinions of various distinguished bodies recorded in 1918 on the Criminal Procedure Code Amendment Bill, the comments of the Bar of the Calcutta High Court on this subject:

"We think it is absolutely necessary that the question of the grounds of fitness of sureties should be determined by the Code, having regard to the great diversity of judicial opinion on the matter. The Allahabad rulings have generally adopted ability of control as the test. The Calcutta decisions, while dissenting from this view, are in conflict *inter se*, some accepting the test of property qualification and others regarding the question as one to be determined on the facts of each case. We would refer to Abdul Karim *versus* Emp. 44 Cal. 731, as exemplifying the conflict between Calcutta cases, and indicating the necessity of settling the question once for all."

Sir, this is relevant to the amendment I wish to make, namely the substitution for the words—"cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him," of the words:

"accept a certificate of fitness from a pleader practising in the Court of the Magistrate or of some superior court, or from any respectable inhabitant of the locality."

Sir, this amendment will bring the solution for all the difficulties and it is good for the Government and for the country and the people at large, and is necessary to serve the ends of justice; and that is why I have brought it before you for your kind acceptance. Such difficulties are against good polices and it is against the public interest; and that the Legislature should undertake to legislate where the conditions cannot be fulfilled. Therefore I think I have satisfied you for the substitution of these words. You will find, it is not difficult at all, because if a man is defended by a pleader or lawyer of a Magistrate's court or a higher court, he is supposed to know his client well; he has got correspondence from the village where he lives. The man has been writing letters to his pleader and his pleader's clerk. The pleader knows the position of the man and his certificate is enough. If you think the certificate of a Bachelor of Law who is practising at a court is not enough, I ask you to exercise your common sense and see how and where the poor ryot would stand when he comes for justice. There must be some way of providing for his case; you do not want to keep him in the lock-up. It is against public policy. With due respect I ask the Government to be good enough to accept this amendment and bring a solution of these difficulties.

**Mr. Jamnadas Dwarkadas** (Bombay City: Non-Muhammadan Urban):  
I move that the question be now put.

The motion was adopted.

**Mr. Deputy President:** Amendment moved:

That in clause 21 in the proviso to sub-section (1) of the proposed new section 122 for the words from "cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him" substitute the words "accept a certificate of fitness from a pleader practising in the Court of the Magistrate or of some superior Court, or from any respectable inhabitant of the locality."

The question is that that amendment be made.

**Mr. Harchandrai Vishindas:** Sir, I have to move an amendment to this.

(Several Honourable Members moved that the question be now put.)

The amendment moved was negatived.

**Rai Bahadur Pandit J. L. Bhargava** (Ambala Division: Non-Muhammadan): Sir, with your permission, I beg to suggest an amendment which is of a non-controversial nature, namely, that in the proviso to sub-section (1) of section 122 the words "or solemn affirmation" be added after the word "oath."

(An Honourable Member: "Oath includes solemn affirmation?")

**Sir Henry Moncrieff Smith:** I object to the moving of the amendment.

(Mr. Deputy President then called upon Mr. Pantulu to move his amendment.)

**Mr. J. Ramayya Pantulu** (Godavari cum Kistna: Non-Muhammadan Rural): Sir, I propose:

"That in clause 21, in sub-section (2) of proposed new section 122, between the word 'inquiry' and the words 'the Magistrate', the following words, namely: 'the person on whose behalf the surety is offered or has been previously accepted shall be given an opportunity of proving the fitness of the surety and' be inserted."

The clause to which I am referring reads thus:

"In every such inquiry the Magistrate holding the same shall record the substance of the evidence adduced before him."

The inquiry which is referred to here is the inquiry which a Magistrate makes for the purpose of finding out whether he should reject a surety already accepted, and this inquiry will evidently be based upon the evidence adduced by the police. That would be a one-sided inquiry and there is nothing in the section, as worded here, to prevent a decision being arrived at without the person on whose behalf the surety has been offered or accepted having an opportunity of saying what he has to say. It would be very unfair that a surety who has been once accepted, should be rejected behind the back of the person who offered that surety and simply on the one-sided inquiry that is made and the evidence adduced by the police. It is only fair that, when you reject a surety who has been already accepted, that you should give the party on whose behalf the surety was once accepted an opportunity of saying that he is still fit to be accepted and that the reasons given by the police are not sound.

I think this is a very reasonable proposition and I hope the Government will see their way to accept this amendment.

**Sir Henry Moncrieff Smith:** Sir, I may say at once that the Government has no objection whatever to the principle of this amendment. I do not

myself quite like the drafting. I would rather not weld it on to the section as it is at present. There is no reason whatever why notice should not be given to the person most affected that is, the person offering surety and why he should not be given an opportunity of showing cause but I think it would be better if instead of introducing the words into the clause as it stands we substitute a new sub-section (2) in the proposed section 122 as it stands in the Bill, and I would move, Sir, and I do move accordingly, that for sub-section (2) of the proposed section 122, the following be substituted:

“Such Magistrate shall before holding the inquiry give reasonable notice to the person by whom the surety was offered and shall in making the inquiry record the substance of the evidence adduced before him.”

The amendment I propose lays it down that the Magistrate shall give reasonable notice to the person affected. It is quite unnecessary, as in any other cases, to lay down that the man should be given an opportunity for giving evidence. He is bound to have that. If any Magistrate holds an *ex parte* inquiry in this case, the House has to remember that we are providing an appeal in every case, and the Appellate Court would immediately upset any order rejecting a surety if the Magistrate had made an *ex parte* inquiry without giving notice to the person affected. I would therefore commend this redraft to the House.

**Mr. T. V. Seshagiri Ayyar:** What is the amendment, will you please read it out?

**Sir Henry Moncrieff Smith:** It is to substitute for sub-section (2) in the Bill these words, which embody what Mr. Pantulu desires:

“(2) Such Magistrate shall before holding the inquiry give reasonable notice to the person by whom the surety was offered and shall, in making the inquiry, record the substance of the evidence adduced before him.”

**Mr. T. V. Seshagiri Ayyar:** What about the surety?

**Mr. W. M. Hussanally:** Notice should be given to both the surety and the person affected.

**Mr. T. V. Seshagiri Ayyar:** If you use the words ‘persons affected,’ that includes the accused as well as the surety.

**Sir Henry Moncrieff Smith:** The original amendment by Mr. Pantulu used the words “person on whose behalf surety is offered.” I used the words “the person affected” as a short way of describing the person on whose behalf surety was offered.

**Mr. T. V. Seshagiri Ayyar:** Why not the surety also?

**Sir Henry Moncrieff Smith:** If the person affected is given notice, surely the surety himself will come forward if he is really anxious to give security.

**Mr. J. Ramayya Pantulu:** Sir, the amendment proposed by Government provides for notice being given to the person on whose behalf surety has been accepted, but it does not say that he can show cause why the surety should not be rejected, and, therefore, to attain that object I think the wording of my amendment is preferable; but in order to minimise discussion I would accept the amendment proposed by Government provided they add the words “on either side” at the end of their amendment—that is, “record the substance of the evidence adduced before them on either side.” That would mean that the party on whose behalf a surety has once been accepted will have the right to adduce evidence.

**Sir Henry Moncrieff Smith:** Sir, I have no objection at all to meeting my friend, Mr. Seshagiri Ayyar. The amendment will then read:

"Such Magistrate shall before holding the inquiry give reasonable notice to the surety and to the person on whose behalf such surety is offered, and shall in making the inquiry, etc."

**Mr. T. V. Seshagiri Ayyar:** Yes, yes.

**Mr. J. Ramayya Pantulu:** Then I accept the amendment, Sir, that has just been read out.

**Mr. Deputy President:** Has Mr. Pantulu the leave of the House to withdraw his amendment.

(Leave was given.)

**Mr. Deputy President:** The question is:

"That in Clause 21 for sub-section (3) of the proposed section 122, the following be substituted, namely:

"(2) Such Magistrate shall before holding the inquiry give reasonable notice to the surety and to the person by whom the surety was offered, and shall in making the inquiry record the substance of the evidence adduced before him."

The motion was adopted.

**Mr. Deputy President:** The question is that clause 21 stand part of the Bill.

The motion was adopted.

**Bhai Man Singh (East Punjab: Sikh):** The amendment that stands in my name is:

"That in clause 22 for sub-clause (2) substitute the following:

"(2) In sub-section (5) for the words 'for keeping the peace' the words 'under this section' shall be substituted and sub-section (6) shall be omitted."

The substance of my amendment, Sir, is that whosoever is required to furnish security under this chapter, whether he is required to furnish security for keeping peace or for being of good behaviour or anything of the sort, if he fails to furnish security and is ordered to be imprisoned he should be given simple imprisonment in all cases. The Bill as it stands makes an exception in the case of habitual offenders, those who are required to be bound over under section 110. Under the present Bill those people can be given rigorous imprisonment, while all others are to get simple imprisonment, I do see that as regards persons who are bound over under section 110 their moral character is surely more to be deprecated than that of those who are bound over under section 107, section 108 or section 109. But all the same we have been talking over these sections for so many days; and we have been saying always that these provisions are not punitive but preventive. I need not take the time of the House by quoting any authorities in support of this fact. It has been held very often that these sections are preventive and not punitive. There seems to be absolutely no reason why if we want to award imprisonment and send a man to jail we should give him rigorous imprisonment under any circumstances if the action you are taking against him is simply preventive, simply meant to keep him away from committing any offence. The man could have just come and offered security and then he would

have remained out altogether. Why, if he is sent to jail, should he be required to be put to hard labour and given rigorous imprisonment? I think the proposition that I am putting before the House is so very clear that I would request the Government to accept it and I hope that the Honourable Members will see the reasonableness of my request.

**The Honourable Sir Malcolm Hailey:** I am sorry that I do not see the sweet reasonableness of this proposal. How does the law stand at present? For failing to give security for keeping the peace—107—the alternative is simple imprisonment. Under sections 108 and 109 and 110, the Magistrate may give rigorous or simple imprisonment at his discretion. What do we now propose? We propose to keep 107 as before, namely, the imprisonment will be simple. As regards 108 and 109 we now propose that instead of the Magistrate having any discretion in the matter, the imprisonment must be simple. For my own part, I fear that it will create a good deal of astonishment in the country when it learns that a man who can find no security under section 109 receives simple imprisonment. It seems to me myself strange that he should not be put to any form of labour. However, that is not the immediate point; it is the proposal of the Bill and I forbear to argue against it. The immediate point is that of Bhai Man Singh, who demands, as a universal rule, that imprisonment shall be simple imprisonment under all the punitive clauses. The difference between us is, then, that he would have only simple imprisonment under section 110. The list of offences which qualify a man for an order under section 110 is known to the House; they have been read to it more than once. I need not enlarge on the category, the habitual robber, the habitual forger, the habitual kidnapper and the like. If such a man cannot find security then he must thoroughly fill the picture as a bad character; he has got no friends; nobody will stand up for him. Yet it is proposed by Mr. Man Singh that a man of this type, who may have been convicted several times over for these serious offences, shall when he is in jail not be put to any form of labour. It seems to me an unkindness to the taxpayer that we should keep a man of this type in jail without demanding that he should contribute by labour of any kind to pay for his subsistence. I quite admit that the object of these sections is preventive, and not punitive; but if a man is adjudged a bad or dangerous character and can find no surety, it seems to me not unreasonable that when in default of security he is committed to prison under section 110, the Magistrate should have discretion to give him either simple or rigorous imprisonment.

**Mr. B. Venkatapatiraju:** Sir, I do not see any point in the arguments advanced by the Honourable Leader of the House when he says that we are only following the old law. I can understand that in countries where Indians are employed as coolies, for want of labour they would give rigorous imprisonment so that they can take work. But there is no such dearth of labour in India for the Government to utilise this section of people for labour. Here, a person has not committed any offence. If he is convicted of an offence, he has already suffered punishment for it. We are here only providing for preventing him from doing further mischief. With that object in view why should you give him rigorous imprisonment? It is only a preventive provision for the purpose of keeping him out of danger for the benefit of society. That is the only thing the Government should do. The only excuse for the Government is, "Why should we maintain him in jail without asking him

[Mr. B. Venkatapatiraju.]

to do some work''? I do not know why Government should think of securing some work out of him on that ground. The only ground for which he should suffer rigorous imprisonment is for any particular offence that he has committed. Otherwise I do not think any discretion need be given to the Magistrate. I therefore strongly support the amendment moved by Mr. Man Singh.

**Mr. W. M. Hussanally:** Sir, I should like to say a few words in support of this amendment. Ordinarily I know that under section 123 the imprisonment to be awarded in lieu of failure to find surety may be either simple or rigorous, but in the province from which I come, Sind, I think I shall not be far wrong if I say that imprisonment for failure to give security for keeping good behaviour is almost invariably rigorous and I think that in the interests of society it is not right that such persons should be condemned to rigorous imprisonment, because I think that people going to jail specially to suffer rigorous imprisonment come out more hardened criminals than when they enter the jail. I think the object being to keep them away from mischief, as my friend, Mr. Raju, has said, the ends of justice would be met if they are given only simple imprisonment, and they should be kept apart from ordinary criminals, so that when they come out of the jail they come out reformed men and not made into hardened criminals. On that ground and on that ground alone I will support this amendment.

**Mr. P. B. Haigh** (Bombay: Nominated Official): Sir, I think there seems to be some misapprehension in the minds of the last two speakers as regards the effect of an order of rigorous imprisonment. To deal first with Mr. Hussanally. He suggests that if a man who has been ordered to find security to be of good behaviour is unable to do so and is sent to jail and caused to undergo rigorous imprisonment, his morals will be contaminated and he will come out of jail a worse man than when he went in, whereas if he only has to undergo simple imprisonment this is not the case (*Mr. W. M. Hussanally*: "If he is kept apart") if he is kept apart from those who are undergoing simple imprisonment. In the first place, you must remember the class of people who normally go to jail under section 110. I need not read again the list. It ranges from a forger to a desperate and dangerous character, and I would suggest to the House that it will not take the argument seriously that people of this class who are unable to find anybody to stand security for them will have their morals contaminated by going to jail and doing hard labour, whereas they will be saved that, if they undergo simple imprisonment. Secondly, let us consider what simple imprisonment means. It means that the person is absolutely unable to do any work whatever and there he sits from day to day in complete idleness. There must be many Members of this Honourable House who have had opportunities of inspecting jails in one capacity or another, and surely they will agree that the lot of the man undergoing simple imprisonment is in many ways far worse than that of the man who undergoes rigorous imprisonment. I submit that for men of this class rigorous imprisonment is less of a hardship than simple imprisonment.

Then with regard to Mr. Raju's argument, he says that in this country there is no scarcity of labour, and therefore simple imprisonment should be applied. Well, I submit that even if there is no scarcity of labour, the finances of this country are not at present in such an affluent state that we can afford to keep in jail forgers,

habitual offenders and desperate and dangerous characters entirely at the public expense and not allowed to do even a hand's turn to contribute towards the cost of their upkeep. For these practical reasons I trust the House will throw out this amendment.

**Mr. Deputy President:** The question is:

"That in clause 22 for sub-clause (2) substitute the following:

'In sub-section (5) for the words 'for keeping the peace' the words 'under this section' shall be substituted and sub-section (6) shall be omitted'."

(Cries of 'Noes' and 'Ayes.')

**Mr. Deputy President:** Those who are in favour of the motion will please stand up.

**Rao Bahadur T. Rangachariar:** I object to that procedure, Sir. It is only to enable you to decide whether the claim for a division is frivolous that this procedure is adopted. If a vote is to be taken by standing, then all Members will have to be sent for. The object of a division is to give notice to others who are absent. I think, Sir, the procedure you are adopting will be setting up a bad precedent.

**Mr. Jamnadas Dwarkadas:** May I point out, that instead of asking those who are in favour of the amendment to stand up, if you just ask those who want a division to stand up, probably it would make a good deal of difference. That I think was your intention, Sir.

**Mr. Deputy President:** Those who are for a division will please stand up.

(Two or three members stood up.)

**Mr. Deputy President:** Division is refused.

The amendment was negatived.

**Mr. Deputy President:** The question is that clause 22 do stand part of the Bill.

The motion was adopted.

**Rao Bahadur T. Rangachariar:** I beg to move:

"That in clause 23 (iii) substitute the following for proposed sub-section (5):

"5. If any condition upon which any person has been discharged is not fulfilled, the District Magistrate or the Chief Presidency Magistrate by whom the order of discharge has been made or his successor, may, after notice and inquiry, cancel the same."

The object of this amendment is very simple. Honourable Members will find that the District Magistrate or the Chief Presidency Magistrate has got power under section 124 to release a man who has given security, and clause 5 provides:

"If any condition upon which any such person has been discharged is, in the opinion of the District Magistrate or Chief Presidency Magistrate not fulfilled, he may cancel the same."

Of course I take it that the Government intend it should be after inquiry and notice, although it is not clear. If a man has been let off on condition, to know whether that condition has been broken or not it should be only after inquiry and notice. I want to make that point clear in my amendment, so that the action may not be taken against him behind his back on mere *ex parte* or police report. That is the object of this amendment and I hope the House will accept it. I move it, Sir.

**Sir Henry Moncrieff Smith:** Here again the Government is prepared to accept the principle of my Honourable friend's amendment, but we have to go a little further into the matter than he has gone. Mr. Rangachariar merely provides for notice and inquiry. I want the House to understand clearly what stage we have arrived at in the proceedings. The present law does not provide for a conditional discharge to be made when a man has failed to find security. We are dealing with the case of a man who has failed to find security and is accordingly in jail. Now, we are proposing in the Bill to enable the Magistrate to discharge a man on conditions which will be prescribed by the Local Government. The reason why this was provided is very clearly explained in the Statement of Objects and Reasons. As the House knows, there are many numerous Reformatory settlements, many of which are run by that estimable body, the Salvation Army. They have been very freely used for the purpose of reforming our criminals. At present they are mainly used for the gipsies, the criminal tribes who wander about, and it seemed to us that they were a very suitable place in which also to enable habitual offenders to have a chance of reformation. They can learn a trade and when the period for which they are bound over expires they can go out and earn their own living in an honest manner. Now these people have been treated leniently already, the Magistrate has sent them to a reformatory settlement. While there, they commit a breach of the conditions on which they have been discharged. A notice therefore to a person of that class is not enough, and I am suggesting an amendment to the House which lays down that if the man is not already before the Magistrate, the Magistrate shall have power then to issue a warrant to have him brought before him. I quite agree, I think we are all prepared to agree, that the Magistrate should give him an opportunity of showing cause why the order of discharge should not be cancelled, but there can be no question of dilatory proceedings,—of issuing a summons to the man. You have got to remember that this man probably may have run away, may have absconded; at all events, a notice to him that he is going to be put back into jail will simply be an invitation to him to abscond. Therefore, unless the Magistrate has power to issue a warrant, you are leaving a dangerous criminal, an habitual criminal, at large in the country. The House should remember that if the Magistrate finds that a condition has been broken, after this inquiry that Mr. Rangachariar and I both provide for, if he finds that a condition has been broken, the man has to go back to jail. He is going back to jail, and therefore if the Magistrate is of opinion that the condition has been broken, the first step should certainly be that he should issue a warrant. Therefore, Sir, I am accepting the principle of Mr. Rangachariar's amendment but would take out the word 'notice,' which is vague and which might be argued to indicate a summons only, and I am proposing an amendment which would provide a definite procedure for the Magistrate and also provide for several cases which Mr. Rangachariar's amendment does not provide for. For the proposed new sub-section (5), Sir, I would move that the following be substituted, namely:

"If any condition upon which any person has been discharged is in the opinion of the District Magistrate or Chief Presidency Magistrate by whom the order of discharge was made or his successor not fulfilled, he may issue a warrant for the arrest of such person, and when such person is brought before him, he may, after such inquiry as he thinks fit, cancel the order discharging such person:

Provided that if at any time after the expiration of fifteen days from the date of the issue of the warrant the Magistrate has reason to believe that such person has absconded or is concealing himself so that the warrant cannot be executed, he may cancel the order forthwith."

The proviso is more or less on the lines of section 88 of the Code which deals with proclaimed offenders. This is the case of an habitual offender; he has been found to be an habitual offender. He has had an opportunity of coming up in revision, he may have an opportunity of appeal. The order stands,—the Magistrate's order that this man is an habitual offender; therefore if after fifteen days the police are not able to find him and the Magistrate has reason to believe that he is concealing himself or absconding, the Magistrate is enabled to cancel the order forthwith; and then the following sub-clauses of this clause come into operation—'any police officer may arrest without warrant.' I may warn the House that if they accept my amendment in this form, I shall have to propose merely consequential amendments to the next sub-section, sub-section (6), and its various paragraphs, which are partly occasioned, as I say, by this amendment and partly by a subsequent amendment of Mr. Rangachariar.

**Mr. Deputy President:** The further amendment moved is:

"That in sub-clause (3) of clause 23 (1), for the proposed new sub-section (5), the following be substituted, namely: 'If any condition upon which any such person has been discharged is in the opinion of the District Magistrate or Chief Presidency Magistrate by whom the order of discharge was made or his successor not fulfilled, he may issue a warrant for the arrest of such person, and when such person is brought before him, he may after such inquiry as he thinks fit cancel the order discharging such person:'

Provided that if at any time after the expiry of fifteen days from the date of the issue of the warrant the Magistrate has reason to believe that any such person has absconded or is concealing himself so that the warrant cannot be executed, he may cancel the order forthwith.'

**Rao Bahadur T. Rangachariar:** Sir, I have no technical objection to the amendment to my amendment moved by Sir Henry Moncrieff Smith; that is, I do not object to his moving this amendment without notice. But I am sorry that I am unable to accept it on its merits. It is certainly not a reasonable course to adopt in a case like this. The position is, that a man accepts a condition offered to him quite voluntarily and the District Magistrate lets him out. Now, by the amendment proposed by my Honourable friend, first of all the District Magistrate has to form an opinion that the man has broken the conditions; that is, he has to prejudge the question which he is to inquire into and decide. That is the first objection I have to the wording of my Honourable friend. In my amendment, the Magistrate has to come to a conclusion after notice and inquiry that the condition has been broken, and then only he can say—"you have not fulfilled the condition and therefore the conditional discharge must be cancelled."

Then the next thing is that the Magistrate may issue a warrant for the arrest of such person at once. Of course, if the condition is broken, he must go back to jail. But then come the words "after such inquiry as he thinks fit," which leave it open to the Magistrate to do it in any manner he likes. First of all you commit him to an "opinion" and then the inquiry may be "such as he thinks fit," which may be in a very summary manner.

This amendment therefore is open to these objections. A man may be condemned without being heard and sent back to jail. But it is very unlikely that a man will break a condition which he has voluntarily accepted, and I think the Government is rather over-nervous in dealing with cases of this nature. That is the remark which I wish to emphasise in this connection. What I mean is that they want to tighten their hold on a

[Rao Bahadur T. Rangachariar.]  
man who has not yet been convicted of an offence and who is merely bound over because they suspect he will give trouble; they want to bind him round and round; and although he accepts a condition they do not want to allow him to go. That appears to me to be the object of this amendment and I therefore oppose it and stick to my own amendment.

**Mr. Deputy President:** The question is:

“ That in clause 23 (iii) substitute the following for proposed sub-section (5) :

‘ (5) If any condition upon which any person has been discharged is not fulfilled, the District Magistrate or the Chief Presidency Magistrate, by whom the order of discharge has been made or his successor, may, after notice and inquiry, cancel the same.’

To which a further amendment has been moved that in clause 28 (iii) the following be substituted for proposed sub-section (5) :

“ (5) If any condition upon which any such person has been discharged is, in the opinion of the District Magistrate, or Chief Presidency Magistrate, by whom the order of discharge was made, or his successor, not fulfilled, he may issue a warrant for the arrest of such person, and when such person is brought before him he may, after such inquiry as he thinks fit, cancel the order discharging such person :—

Provided that if at any time after the expiry of fifteen days from the date of the issue of the warrant, the Magistrate has reason to believe that any such person has absconded or is concealing himself so that the warrant cannot be executed, he may cancel the order forthwith.”

The question is that that amendment be made.

5 P.M. The Assembly then divided as follows :

AYES—30.

Aiyar, Mr. A. V. V.  
Akram Hussain, Prince A. M. M.  
Allen, Mr. B. C.  
Blackett, Sir Basil.  
Bradley-Birt, Mr. F. B.  
Burdon, Mr. E.  
Cabell, Mr. W. H. L.  
Chatterjee, Mr. A. C.  
Crookshank, Sir Sydney.  
Dalal, Sardar B. A.  
Faridoonji, Mr. R.  
Gidney, Lieut.-Col. H. A. J.  
Haigh, Mr. P. B.  
Hailey, the Honourable Sir Malcolm.  
Hindley, Mr. C. D. M.

Holme, Mr. H. E.  
Hussanally, Mr. W. M.  
Innes, the Honourable Mr. C. A.  
Ley, Mr. A. H.  
Mitter, Mr. K. N.  
Moncrieff Smith, Sir Henry.  
Muhammad Hussain, Mr. T.  
Muhammad Ismail, Mr. S.  
Mukherjee, Mr. J. N.  
Percival, Mr. P. E.  
Singh, Mr. S. N.\*  
Sircar, Mr. N. C.  
Tonkinson, Mr. H.  
Webb, Sir Montagu.  
Zahiruddin Ahmed, Mr.

NOES—33.

Abdul Quadir, Maulvi.  
Abdulla, Mr. S. M.  
Agarwala, Lala Girdharilal.  
Ahmed, Mr. K.  
Asjad-ul-lah, Maulvi Miyan.  
Ayyar, Mr. T. V. Seshagiri.  
Bagde, Mr. K. G.  
Bajpai, Mr. S. P.  
Basu, Mr. J. N.  
Bhargava, Pandit J. L.  
Chaudhuri, Mr. J.  
Cotelingam, Mr. J. P.  
Gulab Singh, Sardar.  
Iswar Saran, Munshi.  
Jamnadas Dwarkadas, Mr.  
Jatkar, Mr. B. H. R.  
Joshi, Mr. N. M.

Lakshmi Narayan Lal, Mr.  
Man Singh, Bhai.  
Misra, Mr. B. N.  
Nag, Mr. G. C.  
Neogy, Mr. K. C.  
Rangachariar, Mr. T.  
Reddi, Mr. M. K.  
Sen, Mr. N. K.  
Shahani, Mr. S. C.  
Singh, Babu B. P.  
Sinha, Babu Ambica Prasad.  
Sinha, Babu L. P.  
Srinivasa Rao, Mr. P. V.  
Snbrahmanayam, Mr. C. S.  
Venkatapatiraju, Mr. B.  
Vishindas, Mr. H.

The motion was negatived.

**Mr. Deputy President:** I may remind the House that the original amendment of Mr. Rangachariar, is still before the House.

*Several Honourable Members:* The question may now be put.

**The Honourable Sir Malcolm Halley:** Before the question is put, I ask an opportunity to state our strong objections to the amendment moved by Mr. Rangachariar. We offered him what looked like a very good alternative, drafted with great skill, with all the proper safeguards inserted, and not unreasonable in itself. It made full provision for the particular class of case he has in view. But he and his friends would not have it. Now where do we stand? Everybody knows the class of person to whom a conditional release is given: possibly a member of a criminal tribe, often a member of a wandering tribe. He is sent to a settlement for the purpose of reclamation. Now how does Mr. Rangachariar propose to treat this evasive sort of gentleman? The Magistrate has to send first of all a notice to him. If Mr. Rangachariar can tell us where to find a wandering criminal or a habitual absconder, he is cleverer than our Magistrates or police are often able to show themselves. To proceed. He says nothing as to what is to happen if the notice is not served, or the man does not obey it. He insists on notice; according to him no warrant is ever to issue. Again; a few minutes ago he objected strongly to Sir Henry Moncrieff Smith's wording "such inquiry as he thinks fit." And what is his own wording? Here see this new upholder of the Magistrate's full discretion comes out again. When Sir Henry Moncrieff Smith proposed to put in the words "such inquiry as he thinks fit," Mr. Rangachariar thought them hopelessly inadequate. What are his own words. "Notice and inquiry." Nothing else. So much for his consistency.

I put it that this is a ragged amendment. It does not provide for the circumstances; it inserts insufficient safeguards; it allows you to go on issuing notice after notice to an absconder, and in the end it allows the Magistrate to dispose of the case after an inquiry of a nature which Mr. Rangachariar himself has more than once pronounced to be insufficient.

**Rao Bahadur T. Rangachariar:** May I be permitted to offer an explanation as a special case?

**Sir Henry Moncrieff Smith:** Mr. Rangachariar has spoken twice already.

**Mr. Deputy President:** If it is a personal explanation, I will allow it.

**Rao Bahadur T. Rangachariar:** At any rate the personal explanation is as regards why I distrusted the Magistrate in this case was . . .

**Mr. Deputy President:** That is not a personal explanation.

Amendment moved:

"That in clause 23 (iii) substitute the following for proposed sub-section (5):

(5) If any condition upon which any person has been discharged is not fulfilled, the District Magistrate or the Chief Presidency Magistrate, by whom the order of discharge has been made or his successor, may, after notice and inquiry, cancel the same."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—30.

Abdul Quadir, Maulvi.  
 Abdulla, Mr. S. M.  
 Agarwala, Lala Girdharilal.  
 Ahmed, Mr. K.  
 Asjad-ul-lah, Maulvi Miyan.  
 Ayyar, Mr. T. V. Seahagiri.  
 Bagde, Mr. K. G.  
 Bajpai, Mr. S. P.  
 Basu, Mr. J. N.  
 Bhargava, Pandit J. L.  
 Chaudhuri, Mr. J.  
 Gulab Singh, Sardar.  
 Iswar Saran, Munshi.  
 Jatkari, Mr. B. H. R.  
 Lakshmi Narayan Lal, Mr.

Man Singh, Bhai.  
 Misra, Mr. B. N.  
 Nag, Mr. G. C.  
 Neogy, Mr. K. C.  
 Rangachariar, Mr. T.  
 Reddi, Mr. M. K.  
 Sen, Mr. N. K.  
 Shahani, Mr. S. C.  
 Singh, Babu B. P.  
 Sinha, Babu Ambica Prasad.  
 Sinha, Babu-L. P.  
 Srinivasa Rao, Mr. P. V.  
 Subrahmanayam, Mr. C. S.  
 Venkatapatiraju, Mr. B.  
 Vishindas, Mr. H.

NOES—31.

Abdul Rahim Khan, Mr.  
 Allen, Mr. B. C.  
 Blackett, Sir Basil.  
 Bradley-Birt, Mr. F. B.  
 Burdon, Mr. E.  
 Caball, Mr. W. H. L.  
 Chatterjee, Mr. A. C.  
 Cotelingam, Mr. J. P.  
 Crookshank, Sir Sydney.  
 Dalal, Sardar B. A.  
 Faridoonji, Mr. R.  
 Gidney, Lieut.-Col. H. A. J.  
 Haigh, Mr. P. B.  
 Hailey, the Honourable Sir Malcolm.  
 Hindley, Mr. C. D. M.  
 Holme, Mr. H. E.

Hullah, Mr. J.  
 Innes, the Honourable Mr. C. A.  
 Jamnadas Dwarkadas, Mr.  
 Ley, Mr. A. H.  
 Mitter, Mr. K. N.  
 Moncrieff Smith, Sir Henry.  
 Muhammad Hussain, Mr. T.  
 Muhammad Ismail, Mr. S.  
 Percival, Mr. P. E.  
 Samarth, Mr. N. M.  
 Singh, Mr. S. N.  
 Sircar, Mr. N. C.  
 Tonkinson, Mr. H.  
 Webb, Sir Montagu.  
 Zahiruddin Ahmed, Mr.

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 24th January, 1928.