

6th February, 1923

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THIRD SESSION  
OF THE  
LEGISLATIVE ASSEMBLY, 1923.



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# LEGISLATIVE ASSEMBLY.

*Tuesday, 6th February, 1923.*

The Assembly met in the Assembly Chamber at Eleven of the Clock.  
Mr. President was in the Chair.

## QUESTIONS AND ANSWERS.

### WIRELESS INSTALLATION IN INDIA.

332. **\*Sir Montagu de P. Webb:** (a) Have Government received from the Associated Chambers of Commerce of India and Ceylon a representation urging the immediate provision through the agency of private enterprise if State funds be unavailable, of a Wireless Installation in India capable of transmitting messages at high speed and of communicating direct with any part of the world?

(b) If so, will Government be pleased to say what steps have been taken to meet this demand and forestall the possible foreign competition of similar world-wireless installations in Pondicherry and Java?

**Colonel Sir Sydney Crookshank:** (a) and (b) Government received on January 29th the representation referred to, but are not yet in a position to make any announcement as to the extent to which they are prepared to meet the specific demand which it contains.

### ROYAL COMMISSION ON THE INDIAN CIVIL SERVICE.

333. **\*Mr. B. N. Misra:** (1) Will the Government be pleased to state whether Britain or India is going to meet the costs of the Royal Commission appointed to enquire into the grievances of the Indian Civil Service?

(2) Will there be any Indians in the said Commission?

(3) If so, what is the proportion of the Indians to Englishmen in the said Commission?

(4) Will there be any members of the Indian Legislature on the said Commission?

**The Honourable Sir Malcolm Halley:** Government have as yet no information.

## UNSTARRED QUESTIONS AND ANSWERS.

### OFFICIAL REPORTS.

149. **Mr. Mahomed Hajeeshoy:** Will Government be pleased to state the reasons for the increasing delay in publishing official reports such as the Annual Review of the trade of India?

**The Honourable Mr. C. A. Innes:** The Government do not know what foundation the Honourable Member has for his general statement that there is increasing delay in the issue of official reports. As regards the Annual Review of the Trade of India, I understand that the proof of this is now

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ready. The delay in the issue of the Report was due to pressure of work arising out of the necessity of examining whether and in what directions the activity of the Commercial Intelligence Department could be curtailed, this pressure coinciding with a reduction in the number of officers.

#### TRANSFER OF ADEN.

150. **Mr. Mahomed Hajeeshoy:** (a) Will Government be pleased to state whether the proposed transfer of Aden is still under consideration; and,

(b) If the answer to the above question should be negative, to lay the papers relating to that proposal on the table?

**Mr. Denys Bray:** (a) Yes.

(b) Does not arise.

#### INTRODUCTION OF TARIFF VALUATIONS.

151. **Mr. Mahomed Hajeeshoy:** Will Government be pleased to state what, if any, protests have been received against the new tariff valuations introduced with effect from January 1st, 1923, into the Import Tariff Schedule 2, and what action, if any, has been taken in regard to such protests?

**The Honourable Mr. C. A. Innes:** The tariff valuations are revised every year after taking into consideration the prices prevailing during the preceding year, and after consulting the principal Chambers of Commerce. The only protest so far received against the tariff valuations introduced with effect from January last is in regard to paper and the representation on the subject is under consideration.

#### REPORT OF CHIEF INSPECTOR OF MINES.

152. **Mr. Mahomed Hajeeshoy:** (a) Will Government be pleased to state what, if any, actions have been taken on the latest report of the Chief Inspector of Mines in India? and

(b) Whether further action is contemplated to minimise the possibility of fatal accidents in mines?

**Mr. A. H. Ley:** Government is considering in consultation with the Chief Inspector of Mines the action to be taken on his latest report with the object of framing rules to adopt the existing rules to modern mining practice, and of factories such steps as are possible to minimise the danger of fatal accidents.

#### TOMBS AND MOSQUES IN DELHI.

**Mr. T. V. Seshagiri Ayyar** (Madras: Nominated Non-Official): Sir, may I ask the Honourable the Home Member whether his attention has been drawn to an article in the 'Muslim' dated the 4th February 1923 in which allegations are made against the demolition of tombs and mosques in Delhi, and whether the Home Member is prepared to make a statement in regard to that matter?

**The Honourable Sir Malcolm Hailey** (Home Member): I have obtained a copy of the 'Muslim' dated the 4th February 1923 and read it. The article in question refers to a large number of buildings, some 14 in all,

but in no case is it alleged that a mosque has been demolished by Government. In reading the list of buildings, with its reference to mosques lying in ruins, etc., a somewhat mistaken impression might be gained; for very many of these buildings are old ruins which have been abandoned for a very considerable time, the remains of former suburbs and villages, and have suffered from natural decay.

Though it is not stated that any mosque has been demolished, it is stated that some are in danger of destruction. As far as any action of Government is concerned, however, this is not the case. I may note that in one case in particular the mosque at Kalali Bagh, considerable local feeling was created by the fact that a mark, supposed to be a demolition mark, was placed on the compound wall of the mosque. This, however, was not a demolition but a survey mark, and the road which would otherwise have cut off part of the mosque compound was actually diverted.

I am fully satisfied, from my personal knowledge of the facts, that the Chief Commissioner is showing scrupulous care to see that nothing is done to injure any building which can be recognized as religious, and he is fully alive to the necessity of taking local opinion with him in regard to the treatment not only of mosques actually in use in the large area occupied by new Delhi, but of the numerous ruins in this area. I have seen letters on the subject addressed to the Juma Masjid and Fatehpuri Masjid Committees, and those who are acquainted with Raisina will realize that so far from attempting to destroy religious buildings wholesale, we have spent considerable sums of money in conserving them and their surroundings. The Muslim public may, I think, be assured that the local authority is doing its best to prevent any kind of incident likely to cause offence to genuine religious feeling regarding buildings in the New Delhi area.

## THE WORKMEN'S COMPENSATION BILL.

**Mr. President:** The House will now resume consideration of the Report of the Joint Committee on the Bill to define the liability of employers in certain cases of suits for damages brought against them by workmen, and to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.

Clause 11, Captain Sassoon.

**Captain E. V. Sassoon** (Bombay Millowners' Association: Indian Commerce): Sir, whatever views Honourable Members may have about the clauses of this Bill, I feel sure that there will be no disagreement in desiring to minimise fraudulent claims and malingering, and I believe the vast majority, including Mr. Joshi, would also like to see the principle of free medical treatment now supplied by individual firms extended. I am therefore optimistic of getting the support of this House on the amendment to sub-clause (1) of clause 11, which stands in my name:

"That in clause 11 in sub-clause (1) for the words "he shall if the employer within three days offers to have him examined free of charge by a qualified medical practitioner" the following be substituted, namely:—

"he shall remain in the vicinity of his place of employment for not less than three working days from the date on which service of the notice has been effected on the employer and during such period he shall hold himself available for medical examination and if the employer offers such medical examination by a qualified medical practitioner free of charge within such period he shall."

[Captain E. V. Sassoon.]

The purpose of this amendment is to require the workman to stay in the vicinity of his work, that is to say where he may happen to be living during the course of his employment or near by, and that he should give every facility to the employer to have him medically examined, so that not only may the degree of his injury be ascertained, but that he may also have the opportunity of availing himself of any free medical treatment that the employer may offer him. I need hardly tell the House that timely medical treatment would often ward off serious complications which would have ensued had the injuries been neglected. This amendment will therefore benefit the workman. It will also be fair to the employer who, no one can deny, should have the right of establishing the extent of the injury, for which he will have to pay compensation. It may be thought that the period of three working days after notice has been effected is rather long, and that when two holidays intervene, this would mean five days in all. As far as large towns like Bombay are concerned, this maximum would never be reached, but we must consider places where the workman is sent out by his employer to carry out some work on a day before a holiday. He has an accident, sends his notice into the office, two days may elapse before the employer is aware of the accident. The district doctor may be away or he may be ill, and it may be a couple of days more before a suitable doctor can be brought to the spot. But whatever period we allow, we always have one big safeguard. And that is that it is to the interest of the employer to have the man attended to as soon as possible. The sooner he is examined, and if possible treated, the more chances there are of his speedy recovery and the less of dangerous complications, and it must not be lost sight of that the worse the man gets the larger may be the compensation the employer would be liable to pay. Now, let us take the position of the workman. It is true that he must not go away for these few days. But he is in his temporary home or with friends near by; generally he has a relative with him and certainly friends and fellow-workmen near; and he is quite free to make his own arrangements and, should he desire, to call any of the efficient, if unqualified, medical attendants of whom this House has heard so much. Now, if the employer fails to take advantage of this right of examination he leaves himself open to some very large risks. To begin with, there is always the risk of the man who receives a minor injury such as a cut or a gash and not looking after it and developing blood poison or even gangrene and the employer may become responsible for paying compensation for the loss of limb or even death. Then, again, the man may go up-country and he may be persuaded that the loss of a finger or even an arm would mean a large lump sum which would be very useful to pay off the demands of an insistent money-lender. It might be pointed out to him that this would not make much difference to him because he could remain behind and work on the land and another member of the family could go into the factory. I hope, therefore, Sir, that the House would appreciate the fairness of the amendment and that the Government will be prepared to accept it.

**Mr. N. M. Joshi** (Nominated: Labour Interests): Sir, I rise to oppose this amendment. Captain Sassoon said that this amendment is fair both to the employers and to the employees. My view is quite otherwise. I consider this amendment as being quite iniquitous to the employees. What does it do? It compels the workman to live in the vicinity of the place of employment, but it does not compel the employer to give him medical

treatment. Captain Sassoon said that I should be in favour of the extension of medical relief. I am in favour of extension of medical relief. But I do not see here in the amendment any proposal for the extension of medical relief. If Captain Sassoon had provided that the man shall remain there and the employer shall give medical treatment, there would have been some fairplay. As the amendment stands there is hardly any fairplay here. All the advantages are on one side and the disadvantages on the other. Sir, there will be great difficulty for the working class people who may suffer from accidents, if this proposal is accepted. In the first place, take the case of a man who receives not a small injury, but a very large injury. He loses his two hands or loses one of his feet or legs. There is no hospital near the factory. What is the man to do? He must stay near the factory; he cannot take advantage of the hospital. Is it really right that the man should be compelled to stay near the factory although there may not be sufficient hospital accommodation near about the factory? My friend will say he has given some power to the Commissioner to make exceptions. I do not know whether he has given it or not. But he may say that he has given the power to the Commissioner to overlook such lapses. But is it right, in the first place, to deprive the workman of his natural right to go to any place he likes after such a severe accident and take whatever treatment he likes? Is it right to take away that right and to compel him to stay at a place where he may not get assistance, where he may not have his relatives near by where he may not get any nursing, where even he may not get any food? Take the case of a man, a miner as my Honourable friend Mr. Sircar would have it, who goes to the mine after walking 8 or 10 miles every day. That man has not got any arrangement for food near about his place of employment. There is no lodging compulsory upon the employer, there is no provision of food compulsory upon the employer. If that is not compulsory upon the employer, what right have you to compel the workman to stay near his place of employment? Sir, if my Honourable friend had made compulsory provision for residence, compulsory provision for nursing, compulsory provision for food, compulsory provision for hospital, I could have understood his proposal being a fair one. But as the proposal stands, it gives unfair advantage to the employer and places the workman at a great disadvantage. I hope the House will throw out his amendment.

**Mr. B. S. Kamat** (Bombay Central Division: Non-Muhammadan Rural): Sir, I am in the singularly happy position of concurring with my Honourable friend Mr. Joshi in this amendment. Captain Sassoon has not realised what the exact meaning of the phrase 'vicinity of his employment' would be in different cases. My friend, Mr. Joshi, has pointed out a few cases. I will add one more. Take railway accidents. Supposing an employee of a railway, a gangman working on the line, suffers an accident. That place of accident is midway between two stations. Captain Sassoon desires that the man should be in the vicinity of his employment. The workman lives away from the railway line, say 5 or 6 miles away, where he has got his friends and relations. Now, in the vicinity of the employment, that is to say on the main line between two stations, there is neither shelter, nor a friend, nor a relation, nor a hospital. How is that workman to remain in the vicinity of his employment? He will either die there for want of shelter or for want of food. What Captain Sassoon means is this. The man living in his *bustee*, in his residence, should not leave that *bustee* or the place of residence and should not bolt away. That is perfectly logical. But as the amendment is drafted, the phrase 'vicinity

[Mr. B. S. Kamat.]

of employment' places a handicap on the workman without giving any facility whatsoever in the different sorts of cases to the employer to treat the man. I am not, therefore, in favour of Captain Sassoon's amendment as drafted by him.

**The Honourable Mr. C. A. Innes** (Commerce and Industries Member):

Sir, I should like to explain the position that Government propose to take up in regard to this amendment. The position, as the Bill before the House presents it, is as follows. Clause 10 prescribes that notice of the accident must be given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured. This notice may be delivered by registered post or by hand. Clause 11 then proceeds to say that:

"where a workman has given notice of an accident, he shall, if the employer within three days offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination."

And if he refuses so to submit himself his right to compensation is suspended until he does so submit himself. These provisions, as we have got them now, follow almost exactly the English law. But in the Joint Committee I felt that we had not got the matter quite right, and, though I did not record any note to that effect, I told the Joint Committee that I would have the matter re-examined and, if necessary, would reserve the right to move an amendment in this House.

My difficulties are two. In the first place, in clause 11 we have left it obscure where the medical examination is to be held, and, in the second place, clause 11 leaves it obscure from what date the period of three days specified in that clause is to begin. It was, I think, clearly the intention of the Joint Committee that the workman should not go off to his village which might be a very long way away before submitting himself to examination. I do not think the clause as now drafted brings that fact out clearly enough. That is the reason why I have given notice of certain amendments. I wish to make it quite clear that ordinarily the workman must remain in the vicinity of his employment for a period of three working days after notice of the accident has been received, in order that the employer may have a fair chance of exercising his right to offer the workman free medical attendance; and my amendment suggests that if the workman voluntarily leaves the vicinity before the period specified his right to compensation shall be suspended until he returns and offers himself for this examination. Captain Sassoon's amendment goes further. He proposes that the workman must remain in the vicinity of his employment for at least three days in order that the employer may offer him free medical attendance; and he suggests that if the workman does not remain for those three days all right to compensation shall disappear. That is to say, he proposes a more drastic remedy. Now the point seems to me rather evenly balanced. On the one hand, it seems to me essential that we must let the employer be in a position of satisfying himself that any workman who has been injured by accident in his employment has really been injured. It seems to me essential that the employer should have confidence in the legislation we propose to introduce. I do not think there is anything in the point which has been raised by Mr. Kamat about vicinity. Vicinity is obviously a comparative term, and I have not the least doubt that the Commissioner will put a reasonable interpretation upon that term. Nor do I think that there is anything in Mr. Joshi's point, that this is unfair.



to the workman. After all, in this Bill we are doing a great deal for the workman. We are giving him this right to compensation, liberal compensation; we are not imposing upon him at all the burden of proving negligence. Surely in his turn the workman must do something for the employer; and looking at the matter as a whole, I personally think it is reasonable that the workman should be required to stay in the vicinity of his employment in order that the employer may offer him free medical attendance.

I am aware that the English law is different in this matter; but we have in this matter to take into account the different conditions in England and in India. In England you have innumerable medical practitioners. You have innumerable towns; and it is perfectly easy, even if a man does go away from his place of employment, it is perfectly easy for an employer to satisfy himself that he has been examined by a qualified medical practitioner in a neighbouring town. But in India, where we have these enormous distances and where duly qualified medical practitioners are not so numerous, the conditions are different. Take the case of Burma. As everybody knows, Indian labour is very largely employed in Burma. A man gets injured in Burma. Are we to allow to go racing off to say Madras, and are we to suppose that the employer would be content if he gets some sort of certificate from a village in Madras to say that this man has been injured? Surely that employer has a right to say "I want the man examined by my own duly qualified medical practitioner; and if I cannot exercise that right I shall have no confidence that I am fairly called upon to pay compensation." That is why I have put in my amendment. I think it is a reasonable amendment. Whether we should go further and put the severer penalty proposed by Captain Sassoon seems to me a delicate question. As far as the Government are concerned, I am perfectly prepared to leave it to the judgment of the House. I myself and the Government Members, the Members on the Government Bench, will remain neutral in the matter and as far as we are concerned, we shall leave it to the House to decide the point.

**Mr. N. M. Samarth** (Bombay: Nominated Non-Official): Sir, the Honourable Mr. Innes has exploded the fallacies which Mr. Joshi and Mr. Kamat started. The point in clause 11, sub-clause (2), is that if a workman, on being required to do so by the employer under sub-section (1) or by the Commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding relating to compensation shall be suspended; and in order that the workman may not be mulcted in the way in which the Bill proposes to do, and to remove the defects of drafting which clause (1) contains at present, Captain Sassoon has put forward this amendment. The objections to the amendment disappear when you have in view the proviso which he proposes in another amendment to sub-clause (2), which says:

"Provided further that the Commissioner may for sufficient cause admit a claim for compensation notwithstanding the failure of the workman to remain in the vicinity as required by sub-section (1)."

Captain Sassoon takes into consideration the fact that it may be that there may be sufficient cause for the workman to be removed from the place far away so that he may not be available in the vicinity. Well, he must be in the vicinity in the first place, in order that the employer may have a fair chance of seeing what the nature of his injury is and of giving

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him such medical assistance as may be needed in order that the original injury may not develop into anything serious if neglected.

**Mr. N. M. Joshi:** There is no question of medical assistance here.

**Mr. N. M. Samarth:** Yes, given free of charge.

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

**Mr. N. M. Samarth:** What is the meaning of his remaining in the vicinity? In order that he may be examined by a qualified medical practitioner and apparently in order that he may be treated. It is surely in the interests of the employer that the injury should be cared for by a qualified medical practitioner, for if it were neglected he would have to pay heavier compensation than he would otherwise have to do. Therefore I say it is in the interests of the employer to see that everything that is needed is done for the injured workman. All the objections as to the necessity of his removal to a distant place or to a hospital, are taken away by the proviso which Captain Sassoon proposes, namely, that if the Commissioner finds that there was sufficient cause for the workman not to remain in the vicinity, then, in spite of the fact that he was not in the vicinity, he will get the compensation which the Commissioner thinks proper in the circumstances of the case. I think, therefore, there is a great deal in Captain Sassoon's amendment which deserves support and I trust the House will accept it.

**Mr. Jamnadas Dwarkadas** (Bombay City: Non-Muhammadian Urban): Sir, the House knows very well that Mr. Joshi is a very practical man, and as a practical man he always advances arguments which, however much we may differ from him, appeal to reason. Only in this instance I was rather surprised to find Mr. Joshi resorting rather to heat, to passion—which is not his weakness at any rate—than to argument, in trying to oppose the amendment put forward by my Honourable friend, Captain Sassoon.

Of course Mr. Joshi has his own views and he is entirely welcome to them, one thing can be said about him, it is this that he always says what he thinks is right. But I think if Mr. Joshi will go a little deeply into himself he will find that it is rather a suspicion. (*Mr. N. M. Joshi:* "Quite natural.") It may be natural I do not know—but it is rather a suspicion of the source from which the amendment comes that is responsible for his opposition. I want Mr. Joshi to come down to the plane of practical politics and remove his prejudice for the time being and not consider the source from which the amendment is coming but to discuss it on its own merits; I want him then to say whether he honestly believes that there is anything in the amendment which is likely to prove detrimental to the interests of the working classes, or on the other hand there is not anything in the amendment which, if carried, is likely to prove of immense advantage to the working man. I want to ask a few questions of Mr. Joshi. I must say at once that I hope Mr. Joshi will not suspect me, as I am afraid he suspects others. (*Mr. N. M. Joshi:* "I am not quite sure.") I want to ask him a few questions. Let us come down to the plane of practical politics. Take the case of Bombay itself where you find more instances of people being in factory life than elsewhere perhaps. Take a case where a man in a mill meets with a serious accident. Suppose this clause as proposed by Captain Sassoon is not provided; what would be the result?

You have to consider it from that point of view. Mr. Joshi knows as well as I do that there is unfortunately a kind of superstition prevailing among these men that as soon as an accident takes place, which may not be at all of a fatal or even of a serious character, the workman begins to feel that he is going to die or that he is going to be permanently disabled, and the one thing that he wants and says is "Let me go away from here to my people, to my village and die there." That is a very admirable feeling, I admit; but I do not think it ought to be encouraged. (*An Honourable Member*: "Why not"?) Because by encouraging that feeling you are hastening the death of that man, which probably would never have occurred otherwise if you had made it possible for ordinary medical assistance to reach him in time. *Cries of "No, no"* and interruption). I hope I shall not be interrupted like this; I think it is a practice which ought to be condemned that Members should interrupt another Member when he is speaking, especially when the interruptions are not relevant—I am sorry to digress, Sir—but there is too much interruption, I think. How far are these villages from Bombay? These Bombay workmen come from Konkan or the Ratnagiri district; it takes two or three days to go from Bombay to any places in Ratnagiri district; you know that the journey is not a very pleasant one—you have got to go in a steamer where comforts are very few as Mr. Joshi very well knows. Now, if you encourage that superstition in the man and if he goes away refusing medical aid, being certain that he will get compensation or that his family will get compensation, he goes as it were to die in the midst of the members of his family in a far-off village, the journey to which is very difficult and is sure at any rate either to make his injury more serious or even to make it prove fatal. Now, I think that this amendment proposed by Captain Sassoon aims at protecting the workman against himself; and in India you cannot help it. The one thing that you have got to do is to protect these ignorant workmen against themselves. What does this amendment want? That the man will live in the vicinity of the place of his work. Now, is there anything unreasonable in that? Take the example of a man working in a Bombay factory; he is working for instance in one of the Parel mills; he is not forced to live in the mill itself; he is asked to go and live in a chawl, and I am sure Mr. Joshi will agree with me that if he lives in a chawl for three days, he will have a better chance, a much better chance, a surer chance of being looked after well than if he went to the village where he would be neglected altogether. But Mr. Joshi's argument is this: "I have no objection to this amendment if you make it compulsory on the employer to offer medical assistance to the workman." I take it that I am right in thus interpreting Mr. Joshi's argument. Now, I know that the clause does not make it compulsory on the employer, nor does the Bill do it; even if this amendment is not carried it would not make it compulsory on the employer to give free medical assistance to the man. But what does it amount to in practice? As a matter of fact Mr. Joshi very well knows—I need not tell him here—but I may inform the other Members that in Bombay there is not a single large group of mill agents which does not provide for free medical examination for their workmen.

**Mr. B. S. Kamat:** But you are taking only the Bombay example.

**Mr. Jamnadas Dwarkadas:** I am speaking from the practical standpoint; I am speaking of what is done by large employers of labour and if you are not going to act in accordance with that from the point of view of the men who are employed largely in large factories, well, I do not

[Mr. Jamnadas Dwarkadas.] -

know what this House is going to be guided by. Therefore as I say in Bombay you have the example of the workmen being given free medical assistance, day in and day out, by mill agents. As soon as a man meets with an accident he gives three days' notice—that is provided for in the Bill itself. Here Captain Sassoon rightly suggests three working days; as a matter of fact my Honourable friend, Mr. Innes, proposes to move an amendment\* on the point; that is reasonable, otherwise the notice will not reach the employer at all. Now what happens in these three days? If the employer offers medical assistance—at all events he is bound to offer and speaking about Bombay I know that he is bound to offer medical assistance to the man—if he offers that the man should be medically examined the man should not refuse it. Now, do you want him to refuse it? There again a prejudice obtains among these ignorant workmen that the moment they feel that they have met with a serious accident they do not want to be examined by any medical officer; they want to be examined for instance by some quack, or they want to resort to all kinds of superstitious methods of curing themselves. Now, I think that if we acquiesce in encouraging this kind of practice we are doing, in the name of service to the labouring classes, serious injury to the cause of labour itself, serious injury to the cause of humanity itself. Let us not carry our ideals too far so as to narrow our vision and to blind ourselves to all the good that could come out of a reasonable arrangement like this. Again, is not the employer doing only a reasonable thing in saying that if he has to pay compensation to the workman for the injuries that he suffers from, at least he has a right to be told three working days before the man leaves the place that he has met with a serious accident, that the employer must also have a chance of giving him free medical examination so that the patient may have a chance of being cured by the treatment of an efficient medical practitioner? Now, I say that it would amount to the employer giving free medical assistance to the workman. Would it be anything else than that? Is it not in the interests of the employer to see that the workman is neither totally disabled nor that he meets with death? It is in the interests of the employer to see that the workman is cured as soon as possible so that he may be saved the burden of giving compensation either to the workman if he is totally disabled or to his family if the man happens to die. So, looking at it from the practical point of view, it seems to me that it is an equitable arrangement, it is a fair arrangement; it is in the interests of the employer by all means, but I say it is more in the interests of the workman himself that he should be offered an opportunity of being treated by a qualified medical practitioner. I therefore think that the House would do well in not taking a prejudiced view on this question and to support the amendment, for it really aims at bringing about better results than the clause in the original Bill itself.

**Mr. W. M. Hussanally** (Sind: Muhammadan Rural): Sir, it seems to me that the objection on the part of my Honourable friend, Mr. Joshi, is more on account of the clause as suggested by my Honourable friend, Captain Sassoon, there being no provision in it to compel the employer to offer free medical treatment to his employee and I understood Mr. Joshi to say that if there was any clause of that kind to compel the employer to offer medical treatment free of charge to the employee he would have no objection to the clause as proposed. If that be his objection, and if I

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\*See later motion by the Honourable Mr. Innes.

understood him aright, I would suggest to the Honourable Mover of this amendment as well as to Government the addition of the words 'and treatment' after the word 'examination' in the first instance, and also after the word 'examination' in the second instance; that is to say, the employer would offer medical examination and treatment to the employee, free of charge.

**Mr. N. M. Joshi:** Free board and lodging.

**Mr. W. M. Hussanally:** I do not know, Sir, whether it is at all necessary to give free board and lodging; because ordinarily he will have his own lodging and board also. It is only in exceptional cases and where the workman meets with an accident at a place which is far distant from his own place, free board and lodging will be necessary. But in such cases, as the Honourable Mr. Innes pointed out, the word 'vicinity' is too flexible a term, and it will be interpreted by the Commissioner as well as by the employer more liberally than what Mr. Joshi thinks it is liable to, and I believe that if the two words that I suggest are added, all reasonable objections will be met. Therefore, I commend the addition of these two words to the Honourable Captain Sassoon as well as to Government.

**Mr. President:** Has the Honourable Member moved that amendment?

**Mr. W. M. Hussanally:** Yes, Sir.

**Mr. President:** Further amendment moved:

"After the word 'examination' where it first occurs in the amendment standing in the name of Captain Sassoon, to add the words 'and treatment,' and similarly in the following line after the word 'examination,' to add the words 'and treatment'."

**Captain E. V. Sassoon:** Sir, as far as I am concerned, I have no objection to the doctor who examines the injured workman giving him treatment also. I take it that Mr. Joshi does not necessarily insist that the treatment should last as long as the workman might want it, but would give more or less first aid treatment which would be to the greatest advantage of the workman as well as the employer. I should like, however, to point out to Mr. Joshi that there has been a great deal of opposition from workmen against forcing any treatment on them if they did not want it. They may prefer to have one of their own doctors to look after them, and that is the reason why I only suggested in my amendment that the examination should be compulsory, and only the examination. If Mr. Joshi wants the treatment also to be compulsory, I am prepared to accept it.

**Mr. B. Venkatapatiraju** (Ganjam cum Vizagapatam: Non-Muhammadian Rural): Sir, a greater responsibility is thrown on the Members of this House by their not knowing whether Government would support or oppose this amendment. In such matters, Government should make up its mind either to support or oppose it, but unfortunately they have not made up their minds. In this case, Sir, Mr. Joshi rightly asked 'what about the provision for free board and lodging of the injured workman' if he stops in the vicinity, which was suggested by Captain Sassoon. I may mention, Sir, that in the Perambore Mills, the Act applies not to Bombay alone—about three-fourths of the labourers live 5, 6 and even 10 miles away from the place of employment. Does Captain Sassoon want that these people should live near Perambore Mills where they work? I may also state that unnecessary anxiety is shown by some of my Bombay friends that some men may court death in order to secure compensation for their dependants, which, to my mind, is against human nature. (A Voice: 'No.') I may

[Mr. B. Venkatapatiraju.]•

point out that if Honourable Members will refer to clause 4 in the section itself, they will find that there it is clearly provided that the workman is bound, if the employer offers him medical treatment, to accept such treatment, otherwise his compensation would be reduced. Therefore, there is no difficulty about attendance because it is provided in clause 4 of this very Act. In England, Sir, excepting giving notice of injury, even medical examination is not at all necessary. They say: "The want of notice in the case of death is no bar to the maintenance of action if the Judge is of opinion that there was reasonable excuse for such want of notice". Sir, the object of introducing the amendment, without any provision being made for board and lodging, or even to compel the employer to provide medical treatment, is, that the injured man must stop for three working days near the place of employment, and then he will have the right to claim compensation, otherwise he would forego that right to claim compensation. Then about the examination, the injured man is bound to be examined and he is prepared to be examined; and lastly he is entitled to be treated and he is prepared to be treated, and he cannot avoid being treated by some one engaged by the employer. Supposing there is no house or accommodation available, he lives in the place in which he usually lives. What is the objection? If the employer is so anxious to avoid heavy compensation, he should depute a medical officer to look after the injured person and treat him properly at his residence, because if the injured person avoids medical treatment, he will suffer the consequences. When such is the case, I do not see without sufficient safeguards as suggested by Mr. Joshi and Mr. Kamat, how Captain Sassoon's proposition can be accepted, unless Government will accept the responsibility themselves.

**The Honourable Mr. C. A. Innes:** I am afraid, Sir, I must oppose the amendment suggested by Mr. Wali Mahommed Hussanally without any notice at all, and I am very reluctant to introduce into this Bill words and phrases, the effect of which I am not certain. Also I do not myself think that the actual insertion of the words is necessary. I am perfectly satisfied in my own mind that if any doctor, and I am sure Colonel Gidney will support me . . . .

**Mr. President** to Mr. N. M. Joshi: I must ask the Honourable Members from Bombay to desist from their conversation.

**The Honourable Mr. C. A. Innes:** I am sure that Colonel Gidney will support me in this that if any qualified medical practitioner examines an injured workman, he will give him first-aid treatment without being required to do so by any law. I would also point out that clause 4 of the Bill actually presupposes that such treatment will be given. On the whole, I do not think it safe to accept this amendment as I am not fully certain what the effect of the insertion of the suggested words will be. Therefore, I am afraid I must object the proposal to insert the words 'and treatment'.

**Rao Bahadur T. Rangachariar** (Madras City: Non-Muhammadian Urban): Sir, this question gave considerable difficulty to us in the Joint Committee, and we thought that it is not easy to provide for all cases which are likely to come up. Mr. Jamnadas has been speaking of Bombay city conditions. My friend Mr. Venkatapatiraju spoke of Madras conditions. But let us remember that this Act applies not only to big concerns but also to small concerns, to factories within the meaning of the Factories Act. I think it is to these cases we have to look. Many of them would not have

qualified medical practitioners in their factories; many of the employers running these factories are poor themselves. They would have to search for medical practitioners in order to have the examination that will take them some little time. Therefore, we thought it best to provide for these cases by rules to be made under the proviso, as Honourable Members will see:

"Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act."

The rules will have to be made, having regard to local conditions and we thought that these cases could well be provided for by rules. At the same time, let us remember what is the object of this examination by the employer. The employer wants to get evidence. That is the whole object of it. His object is to get evidence beforehand, as soon as the accident occurs, so that the workman may not exaggerate the injuries, may not aggravate the injuries by bad treatment and all that. So we give an opportunity by this clause to the employer to procure early evidence and his own doctor to examine the employee. Now, if an accident occurs in a factory or in a place where a workman is employed, I think the employer is as much likely to know of it as the workman himself. Because the employer is sure to have a manager on the spot who would know about the accident and therefore, if he wants to have evidence (he is not bound to), but if he wants to arm himself with evidence he will take care to have his doctor ready to examine the man. On the other hand, let us see the point of view of the poor workman. My Honourable friend, Mr. Jamnadas Dwarkadas, has spoken of the superstition—but it is not a superstition, it is a sentiment—prevailing among my countrymen. I do not think you can call it a superstition if they want to die in their own homes. I think we ought all to encourage and not discourage it. I do not see the harm, if I like to die in my own house where I was born and among my kith and kin. Why is it a superstition? I think it is a sentiment we ought to honour and respect. And, therefore, Sir, when we have regard to the main object of the provision, namely, to give an opportunity to the employer to secure evidence, I do not see why we should give more facilities than the section as it stands provides. I think Captain Sassoon has forgotten his usual generous sentiments when he came forward with this amendment. He knows he has got three days within which to do that and I am sure in cities like Bombay the rules may provide for examination on the spot and probably there so much time will not be needed. You can have it done in three hours in a city like Bombay. The man is injured and a medical man will be on the spot and probably on the premises and the whole examination could be done in three hours and I therefore submit, Sir, it is unnecessary to interfere with the section as it has been framed by the Joint Committee, which I assure you we took quite a long time in considering, and we left it to the rules to provide for cases and cases. I am rather surprised at the attitude that Mr. Innes has taken to-day in this Chamber. He, as a member of the Joint Committee, instead of pledging the Government to support the Joint Committee's amendment, says the Government are neutral in this matter. If this is the attitude of Government, we should have taken a different line altogether in the Joint Committee. I am supporting the amendment as it was framed in the Joint Committee and I know no reason why the Honourable Mr. Innes should depart from the attitude which he took up there. I oppose Captain Sassoon's amendment and support the clause as it stands.

**Lieut.-Col. H. A. J. Gidney** (Nominated: Anglo-Indian): in reference to what the Honourable Mr. Innes has just said, I do give my support in its entirety. He conceded the principle, and I believe is nothing further to say on it. As being one who took a considerable part in the deliberations of the Joint Committee when this matter was discussed, I rise to oppose Captain Sassoon's amendment. This House can not picture a mofussil station where an employee is injured. It has a small factory which employs a sub-assistant surgeon—a very eminent man in his own way but of mediocre talents so far as emergency surgical operations are concerned. Or it may be the first aid required from this medical doctor is not sufficient to render complete aid, or might be the cause of making a mild injury a very serious one. I see no reason why the patient or the employee should not have a free choice as to the medical practitioner he wants. But to insist on that injured man remaining three days in the place of his employment is, I say, a most unjustifiable restriction. I therefore oppose the amendment.

**Mr. R. A. Spence** (Bombay: European): I move, Sir, that the motion be now put.

The motion was adopted.

**Mr. President:** The original question was:

"That in clause 11 in sub-clause (1) for the words 'he shall if the employer within three days offers to have him examined free of charge by a qualified medical practitioner' the following be substituted, namely:

'he shall remain in the vicinity of his place of employment for not less than three working days from the date on which service of the notice has been effected by the employer and during such period he shall hold himself available for medical examination and if the employer offers such medical examination by a qualified medical practitioner free of charge within such period he shall'."

Since which an amendment has been moved:

"After the word 'examination' insert the words 'and treatment' in both places where the word 'examination' occurs."

The question I have to put is that that amendment be made.

The amendment was negatived.

**Mr. President:** The question is that the original amendment be made.  
12 Noon.

The Assembly then divided as follows:

AYES—28.

Ahsan Khan, Mr. M.  
Allen, Mr. B. C.  
Barua, Mr. D. C.  
Bradley-Birt, Mr. F. B.  
Cotelingam, Mr. J. P.  
Dalal, Sardar B. A.  
Davies, Mr. R. W.  
Haigh, Mr. P. B.  
Holme, Mr. H. E.  
Hussanally, Mr. W. M.  
Jamnadas Dwarkadas, Mr.  
Misra, Mr. B. N.  
Muhammad Ismail, Mr. S.  
Mukherjee, Mr. J. N.

Nayar, Mr. K. M.  
Percival, Mr. P. E.  
Ramayya Pantulu, Mr. J.  
Reddi, Mr. M. K.  
Rhodes, Sir Campbell.  
Samarth, Mr. N. M.  
Sarfaraz Hussain Khan, Mr.  
Savvadhihikary, Sir Deva Prasad.  
Sassoon, Capt. E. V.  
Spence, Mr. R. A.  
Townsend, Mr. C. A. H.  
Webb, Sir Montagu.  
Willson, Mr. W. S. J.  
Zahiruddin Ahmed, Mr.



## NOES—34.

Abdul Rahim Khan, Mr.  
 Abdulla, Mr. S. M.  
 Agnihotri, Mr. K. B. L.  
 Ahmed, Mr. K.  
 Ahmed, Baksh, Mr.  
 Asjad-ul-lah, Maulvi Miyan.  
 Ayyar, Mr. T. V. Seshagiri.  
 Bagde, Mr. K. G.  
 Bajpai, Mr. S. P.  
 Burdon, Mr. E.  
 Chaudhuri, Mr. J.  
 Faiyaz Khan, Mr. M.  
 Gidney, Lieut.-Col. H. A. J.  
 Ginwala, Mr. P. P.  
 Gour, Dr. H. S.  
 Ikramullah Khan, Raja Mohd.  
 Iswar Saran, Munshi.

Jatkar, Mr. B. H. R.  
 Joshi, Mr. N. M.  
 Kamat, Mr. B. S.  
 Ley, Mr. A. H.  
 Mahadeo Prasad, Munshi.  
 Mitter, Mr. K. N.  
 Muhammad Hussain, Mr. T.  
 Nag, Mr. G. C.  
 Nand Lal, Dr.  
 Neogy, Mr. K. C.  
 Pyari Lal, Mr.  
 Rangachariar, Mr. T.  
 Singh, Mr. S. N.  
 Srinivasa Rao, Mr. P. V.  
 Subrahmanayam, Mr. C. S.  
 Tulshan, Mr. Sheopershad.  
 Venkatapatriaju, Mr. B.

The motion was negatived.

**The Honourable Mr. C. A. Innes:** Sir, I beg to move:

"That in clause 11 in sub-clause (1) for the words "within three days" the following words be substituted, namely:

'before the expiry of three working days from the time at which service of the notice has been effected'."

Sir, in speaking on the last amendment I explained fully to the House the reason why I have given notice of these amendments which stand in my name to clause 11, and I do not think that there is any necessity for me to waste the time of the House by repeating what I then said. I explained that my object was to clear up a vagueness and obscurity in the section as it stands at present. Mr. Rangachariar in his speech said that the Joint Committee had discussed this question at great length and he suggested that I ought to have been content with the solution arrived at by the Joint Committee. But, as I explained in my previous speech, I never was content with the solution at which the Joint Committee had arrived and I told the Joint Committee, though I did not make any note to that effect in the Joint Committee's report that I would like to have the matter re-examined with the object of moving, if necessary, an amendment in this House.

**Rao Bahadur T. Rangachariar:** Why do you want "working days"?

**The Honourable Mr. C. A. Innes:** Mr. Rangachariar says that the proviso to sub-clause (1) of clause 11 meets the point.

That proviso says:

"Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act."

But I am advised that that proviso does not meet the point and that the Local Government could not provide by rules under the Act that the workman must not leave the vicinity of his employment before submitting himself to free medical examination offered to him. That is the very reason why I have put in this amendment. Mr. Rangachariar asks me why I have put in "three working days." The reason is that a notice might be delivered at a factory or a mill on a day when that mill or factory was closed, and it seems to me that if we do give a period to the employer in which he may offer free medical examination, we should make the period a

[Mr. C. A. Innes.]

proper period and that we should not include in that period days when the mill or factory is closed. I commend, Sir, my amendment to the House.

**Mr. President:** Amendment moved:

"That in clause 11 in sub-clause (1), for the words 'within three days' the following words be substituted, namely:

'before the expiry of three working days from the time at which service of the notice has been effected'."

**Mr. N. M. Joshi:** Sir, I wish to move a small amendment to the amendment proposed by the Honourable Mr. Innes, and that amendment is:

To omit the word "working".

I have given notice of my amendment to the Honourable Member. Sir, we have been told here that the employers are a very kind-hearted class. Sir, I wish I could believe all that about them. I want to believe that. But, Sir, if the employers are really kind-hearted, why should they not be ready to act on a notice received on a Sunday? If there is notice of an accident on a Sunday, a kind-hearted employer will surely at once move to send a doctor to the employee, and even the doctor, under the rules of his profession, will not grudge sacrificing his Sunday's rest for the sake of an injured workman. I therefore feel that there is no necessity for putting in this word "working" at all. Notice of an accident, at least of a serious accident, on a Sunday ought to be taken as effective notice to the employer. As soon as he sees that there is an accident he must take steps to send a doctor. I am not a lawyer, and not being a lawyer, I do not understand the meaning of the words "service of the notice has been effected". I therefore feel that this word "working" is not necessary at all and that therefore it should be deleted.

**Mr. President:** Further amendment moved:

"To omit the word 'working' in the amendment moved by the Honourable Mr. Innes."

The question is that that amendment be made.

The motion was adopted.

**Mr. President:** The question is that the amendment, amended as follows, be made:—

"That in clause 11 in sub-clause (1) for the words 'within three days' the following words be substituted, namely:

'before the expiry of three days from the time at which service of the notice has been effected'."

The motion was adopted.

**Rai Bahadur L. P. Sinha** (Gaya *cum* Monghyr: Non-Muhammadan): I beg to move:

"In clause 11 (1) between the words 'to have him examined' and the words 'free of charge' insert the following:

'at his place of residence where he lives during his term of employment'."

I am moving this amendment only as a safeguard against the cases which may arise. Take for example a labourer gets some injury by accident arising out of his daily duties and he has given notice of that accident to his employer who according to the proposed clause will only be compelled to have the workman examined within 3 days free of charge but

we don't know where the workman is expected to be examined. It may be that the doctor on receipt of information of the accident from the employer may in his turn send a notice to the workman asking him to present himself for examination at a certain place which may be far away from the workman's usual place of residence; moreover the injured man might not be in a position to attend at the doctor's place owing to his injury being of a more or less serious nature. Now the employer may in certain cases take advantage of this section not to grant him any compensation on the ground that the workman did not submit himself to medical examination which was offered to him by the employer. It is therefore only fair that medical examination should be offered to him at his usual place of residence where he generally lives and where he is employed.

**The Honourable Mr. O. A. Innes:** I do not think that the amendment should be accepted and that for two reasons. In the first place, I do not think that we ought to tie down the medical examination to the workmen's place of residence. Quite conveniently it may take place, at any rate, in the case of slightly injured persons, at hospitals or dispensaries attached to the factory. In the second place, we have got a proviso here which I think covers the point.

The motion was negatived.

**Captain E. V. Sassoon:** Instead of moving this amendment now, I prefer, with the leave of the House, to move the amendment as an amendment to the following amendment of the Honourable Mr. Innes.

**Mr. President:** Does the Honourable Member mean that he wants to move the amendment after the Honourable Mr. Innes has moved the next?

**Captain E. V. Sassoon:** Yes, Sir.

**The Honourable Mr. O. A. Innes:** I beg to move:

"That in clause 11 in sub-clause (2) for the words 'and to take or prosecute any proceedings in relation to compensation or in the case of a workman in receipt of half-monthly payments his right to receive half-monthly payments shall be suspended until such examination has taken place' the following words be substituted, namely: 'shall be suspended during the continuance of such refusal or obstruction'."

This amendment, Sir, is not an amendment of any importance. It is a drafting amendment which has been suggested to us by the Legislative Department. It does not affect the merits of the case at all.

**Captain E. V. Sassoon:** I would like with the permission of the House to move an amendment to this amendment as follows:

"That after the word 'obstruction' at the end of the amendment, the following be added:

'Except in the case of the first examination after notice of accident in which case the employer shall not be liable to pay compensation to the workman in respect of the accident:

Provided that the Commissioner may for sufficient cause admit a claim for compensation notwithstanding failure to comply with the requirements of the clause'."

Sir, I would like to point out to the House, that, as the amendment now stands, should a workman not wait after having given notice but go away, the penalty will be suspension. But, Sir, should the workman, as I mentioned in my previous remarks, sustain a cut or a slight

[Captain E. V. Sassoon.]

injury, and go away without any treatment or examination, this injury would become a more serious one meaning the loss of a limb. He would come back and under the provisions of this Bill, at any time within six months of the notice he would be allowed to make a claim. The claim for a permanent injury would be a lump sum and therefore suspension would really be no penalty at all. The workman therefore will be able to take no notice of these instructions. He can send in his notice, leave, and at any time within six months can come in and say, "I have in consequence of the cut in my arm, lost my arm, and therefore I am entitled to the full benefits under the Bill." Therefore I suggest to obviate any possible, I will not say probable, any possible fraudulent claim it would be only fair that in the event of his leaving within the three days, which are not working days now, and without having been medically examined he should not benefit under the provisions of this Bill, unless, of course, he is able to persuade the Commissioner that his reason for leaving without being examined was a sufficiently strong one to justify the Commissioner admitting his claim.

**Mr. President:** Is the Honourable Member's amendment the same as that of which he gave notice on the 3rd February?

**Captain E. V. Sassoon:** With slightly verbal alterations, to the same effect.

**The Honourable Mr. C. A. Innes:** I think the amendment now moved by Captain Sassoon is in substance the same as amendment No. 50\* and No. 53.\* Those two amendments have already been fully discussed by the House and the House has voted against them and that being so I think the House should maintain the same attitude and reject this amendment.

**Lieut.-Colonel H. A. J. Gidney:** I think Captain Sassoon has suggested a very correct precautionary measure because as a medical man I can put before you an instance of a slight injury to the forearm, involving the destruction of one of the important nerves. It is not apparent to the layman. It is not apparent to the injured person who may come to realise it after some months and he then claims this lump sum for permanent disablement and I think the provision here although it introduces a layman to decide on a professional matter is better than allowing a man to take unfair advantage of this period of detention.

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

The motion was negatived.

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

The motion was adopted.

**The Honourable Mr. C. A. Innes:** Sir, I beg to move:

"That in clause 11 after sub-clause (2) the following sub-clause be inserted, namely:

'(3) If a workman before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination voluntarily leaves the vicinity of the place in which he was employed his right to compensation shall be suspended until he returns and offers himself for such examination'."

I have already explained the reason for this amendment. The House will see that it is a far more modest proposal than that suggested by Captain Sassoon. All we do is that we say that if a workman leaves the vicinity of the place before submitting himself to such examination his right to compensation should be suspended until he returns and so submits himself. I hope the House will accept this amendment.

**Mr. N. M. Joshi:** I propose to move a small amendment to the amendment moved by the Honourable Mr. Innes and that amendment is "Omit the words 'returns and' in lines 6 and 7 of his amendment. The effect of the amendment will be that the man must offer himself for examination but it is not necessary that he should return to the place. The reason of my amendment is quite obvious. There will be some cases in which it will be very difficult indeed for a man to return but if the injury is very small, then the man should return but this will be provided by the fact that these medical examinations are going to be according to some rules and it is quite possible to frame rules for the medical examination under the Act to provide that in the case of small injuries causing a particular percentage of disablement the man must return but in other cases the man need not return. The whole thing is provided for by simply saying that the man must offer himself for examination and the interpretation of the word 'offer' will be made according to the rules that will be framed by Government for medical examination. Therefore I think the words 'returns and' ought not to be there. If the injury is small, the rules will provide that the man must return. If the injury prevents a man from returning, then the man will be allowed by the rules not to return but the employer will be asked to examine the man at his place of residence. I think my amendment is quite reasonable and will be accepted by the Government.

**Mr. President:** Further amendment moved that in lines 6 and 7 of the Honourable Mr. Innes' amendment the words 'returns and' be omitted.

**The Honourable Mr. C. A. Innes:** I must oppose this amendment. I think it would have been better if Mr. Joshi had opposed the whole of my amendment from the beginning, for by missing out the words 'returns and' he destroys the whole value of the amendment which I propose to make to this clause.

**Rao Bahadur T. Rangachariar:** Sir, I oppose the amendment and I also oppose Mr. Joshi's amendment. It appears to me quite unreasonable to ask the workman not to leave the vicinity of the place of his employment. That is the object of this clause also. That was the objection to Captain Sassoon's amendment. That is also the objection to Mr. Innes' amendment. As I said, these matters should be decided by rules to be made. There may be cases where it will be quite just to call upon the man to stay in his place of employment for medical examination. There may be cases where he should be allowed to go away to his own home and offer himself for medical examination at or near his place of residence. There are cases and cases which it is difficult to provide for. As the amendment now suggested runs, in every case, whether the injury is one which results in death or whether it be an injury which does not result in death, the workman cannot leave the vicinity of the place. That is what this amendment aims at. I think it is a cruel thing to do that. I think these cases must be provided for by rules. We have passed clause 10. Clause 10 provides that the workman must give notice as soon as

[Rao Bahadur T. Rangachariar.]

practicable after the happening of the accident and before he has voluntarily left the employment in which he was injured. Having done that, to make a provision that he should not only give notice but should also stay in the place, is not a right amendment and I oppose it.

**Mr. Pyari Lal** (Meerut Division: Non-Muhammadan Rural): I think, Sir, to carry this amendment as proposed by the Honourable Mr. Innes would be in other words accepting the amendment of the Honourable Captain Sassoon. The whole question turns upon as to whether the workman should or should not leave the vicinity of the place where the accident occurred. The House has decided it and he is not prevented from leaving it but this amendment introduces the same thing again—that he must remain in the vicinity and he must return to the place for medical examination. I think it is very hard indeed on the poor workman. We have to consider the humane element of the thing also. To ask a man who is suffering from a severe pain to return to the place of employment for medical examination is very hard indeed and I think the House has already recorded its opinion on that point and this amendment should be accordingly rejected.

**Lieut.-Colonel H. A. J. Gidney**: Sir, I rise to oppose the Honourable Mr. Innes' amendment as also the amendment suggested by my Honourable friend, Mr. Joshi. The House has just now rejected Captain Sassoon's amendment although he showed that there was a crying necessity for making some provision against fraudulent claims on the part of employees. The only advantage I can see in the Honourable Mr. Innes' amendment is that something is better than nothing. It demands from the injured employee an examination within three days in the vicinity of his employment. Now I say that it is no safeguard whatever. Whereas if on the one hand, the House has rejected the safeguards suggested by the Honourable Captain Sassoon, it now asks us to accept the Honourable Mr. Innes' amendment, it will certainly be going "from the frying pan into the fire." Let us pause and ask ourselves what does this amendment demand from the injured employee. It is going to insist on an injured workman remaining in the vicinity of his employment to receive treatment for three days. There may be no doctor there: how can you expect an injured workman to remain in the vicinity for three days, and prevent him from going to another place for medical relief,—to his own house probably. I say, Sir, that it is not rational, nor correct; I think it is going "from the frying pan into the fire."

**Mr. N. M. Joshi**: Sir, I must make my position on this amendment clear.

**Mr. President**: The Honourable Member has already spoken.

**Mr. N. M. Joshi**: I would like to speak on the amendment as a whole.

**Mr. President**: The Honourable Member did speak on the amendment as a whole.

The question is:—

"That the words 'returns and' be omitted."

**Mr. N. M. Joshi**: I withdraw my amendment, Sir.

The amendment was, by leave of the Assembly, withdrawn.

**Mr. President:** Amendment moved:

"That in clause 11 after sub-clause (2) the following sub-clause be inserted, namely:

'(3) If a workman before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination voluntarily leaves the vicinity of the place in which he was employed his right to compensation shall be suspended until he returns and offers himself for such examination'."

The question I have to put is that that amendment be made.

The Assembly then divided as follows:

#### AYES—44.

Ahsan Khan, Mr. M.  
Allen, Mr. B. C.  
Barua, Mr. D. C.  
Blackett, Sir Basil.  
Bradley-Birt, Mr. F. B.  
Bray, Mr. Denys.  
Burdon, Mr. E.  
Cabell, Mr. W. H. L.  
Chatterjee, Mr. A. C.  
Clow, Mr. A. G.  
Cotelingam, Mr. J. P.  
Crookshank, Sir Sydney.  
Dalal, Sardar B. A.  
Davies, Mr. R. W.  
Faridooji, Mr. R.  
Haigh, Mr. P. B.  
Hailey, the Honourable Sir Malcolm.  
Hindley, Mr. C. D. M.  
Holme, Mr. H. E.  
Hullah, Mr. J.  
Hussanally, Mr. W. M.  
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.  
Mukherjee, Mr. J. N.  
Nand Lal, Dr.  
Percival, Mr. P. E.  
Ramayya Pantulu, Mr. J.  
Rhodes, Sir Campbell.  
Samarth, Mr. N. M.  
Sarfaraz Hussain Khan, Mr.  
Sassoon, Capt. E. V.  
Singh, Mr. S. N.  
Spence, Mr. R. A.  
Tonkinson, Mr. H.  
Townsend, Mr. C. A. H.  
Tulshan, Mr. Sheopershad.  
Webb, Sir Montagu.  
Willson, Mr. W. S. J.  
Zahiruddin Ahmed, Mr.

#### NOES—29.

Abdul Majid, Sheikh.  
Abdulla, Mr. S. M.  
Agnihotri, Mr. K. B. L.  
Ahmed, Mr. K.  
Ahmed Baksh, Mr.  
Akram Hussain, Prince A. M. M.  
Asad Ali, Mir.  
Asjad-ul-lah, Maulvi Miyan.  
Ayyar, Mr. T. V. Seshagiri.  
Bagde, Mr. K. G.  
Bajpai, Mr. S. P.  
Chaudhuri, Mr. J.  
Faizyaz Khan, Mr. M.  
Gidney, Lieut.-Col. H. A. J.  
Ginwala, Mr. P. P.

Gour, Dr. H. S.  
Jatkar, Mr. B. H. R.  
Joshi, Mr. N. M.  
Kamat, Mr. B. S.  
Mahadeo Prasad, Munshi.  
Misra, Mr. B. N.  
Nag, Mr. G. C.  
Nayar, Mr. K. M.  
Neogy, Mr. K. C.  
Pyari Lal, Mr.  
Rangachariar, Mr. T.  
Reddi, Mr. M. K.  
Sinha, Babu L. F.  
Venkatapatiraju, Mr. B.

The motion was adopted.

**The Honourable Mr. C. A. Innes:** Sir, I beg to move:

"That in clause 11, sub-clauses (3) and (4) be renumbered (4) and (5) respectively, and that for sub-clause (4) as so renumbered, the following sub-clause be substituted, namely:

'(4) Where under sub-section (2) or sub-section (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension and if the period of suspension commences before the expiry of the waiting period referred to in clause (D) of sub-section (1) of section 4, the waiting period shall be increased by the period during which such suspension continues'."

This amendment, Sir, is purely consequential—a drafting amendment. I need say no more.

**Mr. N. M. Joshi:** I think, Sir, the amendment is not a consequential one. It is a serious amendment. I would draw the attention of my Honourable friend, Mr. Innes, to the last words of sub-section (2) of section 11: "*unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.*"

Sir, it is provided that when a man has got sufficient cause not to submit himself for examination during the period of suspension, he shall be paid his compensation; and I therefore think this amendment is absolutely inconsistent with that clause. I hope the House will not accept such an amendment, which is absolutely wrong even in drafting.

The motion was adopted.

**Mr. N. M. Joshi:** Sir, I beg to move the following amendment:

"In clause 11 omit sub-clause (4)."

I am not moving my other amendment at all.

**Dr. Nand Lal:** What is the number of your amendment?

**Mr. President:** The Honourable Member means the clause now re-numbered (5)?

**Mr. N. M. Joshi:** Yes, Sir; new number (5).

**Dr. Nand Lal:** May I ask the Honourable Member the number of the amendment?

**Mr. N. M. Joshi:** It is not printed. It is a very simple amendment; it asks for the omission of clause (4) in the Bill as submitted by the Joint Committee; now it has become clause (5) after the addition of the clause by the amendment of the Honourable Mr. Innes. Sir, this clause is intended to reduce the compensation which a workman may have for his injury, if it is shown that he did not avail himself of the medical treatment which may be offered to him by the employer or of any other qualified medical treatment of which he might have availed. Sir, I think that if this is allowed to be retained a large part of the benefit which the working classes may get from this Bill will altogether disappear. The working classes in this country are not generally ready to avail themselves of the treatment offered by western medical practitioners and if on that ground a man's compensation is to be reduced, I think the working people will lose their compensation in many cases. Sir, I am not an advocate nor am I a supporter of the Ayurvedic and Unani systems of medicine; as a matter of fact the House knows well that when Government showed their sympathy—it may be lip sympathy—for the Ayurvedic and Unani systems of medicine, I was one of those people who opposed the Resolution which was brought forward in this House in support of those systems of medicine. But, Sir, I am not here to propagate my views on the Ayurvedic and Unani systems of medicine. I must take note of the condition of things as they exist in India to-day. To-day it is a fact which no body will deny that the working classes in this country have a great prejudice against western systems of medicine.

Sir, among the opinions which have been received on this Bill, there are some which are in favour of the clause and there are also some which are against it. I would only read one, namely, the opinion of the Government of Madras on this proposal. They say:

"Refusal to receive medical or surgical aid offered by an employer should not debar a workman from claiming compensation for the original injury suffered by him. Though prejudice or ignorance may in some instances induce a workman to decline medical aid proffered by the employer, considering that a differentiation in the award



of compensation between the original injury and its subsequent development is not going to be easy and that it would be very difficult indeed to say that the subsequent ill-effects are due to the neglect of the original hurt or injury, the compensation should, this Government think, be awarded in spite of refusal to receive surgical or medical aid offered by the employer."

In the same way, the United Provinces Government point out the difficulty of the women workers who generally have got a great prejudice against male doctors treating them. Sir, I know very well that this clause does not totally debar a man from receiving compensation for injury even if he refuses to be treated by a qualified medical practitioner. But, Sir, if we leave this loophole in the Bill, the effect will be that every employer, though he may be very kind-hearted, will try to go to the Workmen's Compensation Commissioner before he pays the compensation. It is very easy for an employer to say to the injured workman that his wound aggravated because he received a treatment which was not a treatment from a qualified medical practitioner. Therefore, this Bill will not only deprive the poor workman of a part of his compensation but it will also leave a loophole for the employer to go to the Workmen's Compensation Commissioner. I can hardly think of an employer who will not take advantage of this clause to get the compensation reduced. I therefore think that this sub-clause in the interests of the working classes must be deleted.

Sir, there is another danger, and a great danger too. Many Honourable Members of this House have taken a very cynical view of the psychology of a workman. They had accepted, and many of them advocated, that a working man may commit suicide in order to get compensation or he may get his hand cut off, as Captain Sassoon only a few minutes back suggested, in order to get compensation. But, Sir, what does this clause provide for? Take the case of a factory which is not in Bombay. I want the House not to misunderstand me. I am not taking the case of a factory in Bombay. I am taking the case of a workman who is injured in a small factory in a suburb, or in an out-of-the-way place, where, there may be only one qualified medical practitioner paid by the employer. Now under these circumstances the only qualified medical practitioner available to the injured man is the employer's doctor. Now where is the guarantee that this employer's doctor will give sufficient and good treatment to the injured man? You will say "why not"? Sir, if we are to take a very cynical view of human nature, let us take a similar cynical view of the employer's psychology. Sir, if the man on account of the wound dies, the employer pays Rs. 240; if he lives, the employer has to pay a larger compensation. The difference between the highest limit for compensation for death and compensation for total disablement is Rs. 1,000. If a working class man will commit suicide for the sake of Rs. 240, as some said yesterday, what guarantee is there that an employer's doctor will not neglect the injured man in order to save the thousand rupees for his master? That is what is provided by this Bill, at least in some cases. I hope, Sir, since the House has taken a very cynical view of the psychology of the workman, they take a similar view of the psychology of the employer. Let us be fair to both parties, and, if you are going to be fair, there is a great danger to the life of a wounded man working in an out-of-the-way factory. There is a very great temptation for the employer to save Rs. 1,000 by neglecting him. Therefore, I hope my amendment will be accepted.

**Mr. President:** Amendment moved:

"In clause 11, omit sub-clause (5)."

**Captain E. V. Sassoon:** Sir, in the first place, I join issue with Mr. Joshi that the House has taken a very cynical view of the workman. (Mr. N. M. Joshi: "You yourself spoke".) I think that the voting on my amendment would have shown that whatever I have said did not get the approbation of the House. On the other hand, I am prepared to allow the House to take as cynical a view as they like of the bad employer. And, when Mr. Joshi read out the opinion of the Government of Madras on this clause, perhaps, even though I may be one of the hated class of employers, I may be allowed to read out extracts from the opinions of the Mill Owners Association on this very clause. This, I may tell you, is the opinion of a body consisting of men who, according to Mr. Joshi, nearly all of whom, I think he said, would be prepared to go to any length to save a few rupees:

"Section 4.—In connection with this clause, concerning the penalties which may be imposed on a workman as a result of his not availing himself of the services of a qualified medical practitioner when such services are offered to him by his employer, my Committee (that is to say, the Committee of the Mill Owners Association) draw attention to the deep-rooted prejudice that many Indian work people have against western medical methods.

Also, when considering this section it must be remembered that the judgment of the medical practitioner whose services are engaged by the employer may at times be biased in favour of the employer."

This, Sir, is the opinion of the Mill Owners Association of Bombay, not, as you may think, of Mr. Joshi:

"For the foregoing reasons, therefore, my Committee advise that the Commissioner should be advised to make allowance for the Indian workman's prejudices concerning medical practice and that in all disputes the issue of which depends upon a medical decision he should be compelled to take independent medical evidence."

Now, Sir, I do feel that this new clause No. 5 does fail in that respect, and therefore I, though I would oppose Mr. Joshi's amendment which is to remove the whole clause, would like to add safeguards to that clause. Perhaps, Sir, I am not in order in doing that now? I would like to add to the clause that the Commissioner should take advantage of the facilities given him under sub-section (2) of clause 20 and appoint a medical assessor in such cases.

**Mr. President:** Amendment moved:

"In clause 11, omit sub-clause (5)."

**The Honourable Mr. C. A. Innes:** Sir, I must object to the amendment proposed by Captain Sassoon. I have had no notice at all of this amendment. It has just been proposed on the floor of the House and I am afraid, Sir, I must rise to a point of order against Captain Sassoon.

**Mr. President:** We can only deal with that after we have disposed of Mr. Joshi's amendment.

**Mr. A. G. Clow** (Industries Department: Nominated Official): Sir, I am afraid that my Honourable friend, Mr. Joshi, has unintentionally misled the House as to the opinions received on the Government proposal regarding this very difficult question of medical relief. This Bill was framed after consultation of Local Governments and interests throughout the country; the Government of India issued a circular letter, and in that letter they drew attention to the fact that in a number of American Acts a workman who refuses to take medical relief when offered by his employer

forfeits all his rights to compensation. It was in response to this that the Madras Government said that such a proposal would bear very hardly on workmen in this country who have prejudices, justified or otherwise, against accepting western medical science. And it was in consequence of that opinion and of the opinions received from other Local Governments that the Government of India completely altered the proposal before they drafted the Bill. Now the proposal, as it reads now, merely protects the

1 P.M. employer against aggravation of the injury. There is nothing whatever to prevent the workman being attended by a doctor of the Unani or Ayurvedic school. If the doctor is efficient, if he does not produce aggravation of the injury—and remember, it is for the employer, and not the worker to prove aggravation—if no aggravation is produced, then the worker does not suffer in any way. I think that this is a perfectly reasonable clause. It was accepted by the Joint Committee without change and I am surprised to find Mr. Joshi opposing it at this stage.

**Mr. B. S. Kamat:** Sir, I think Mr. Joshi's amendment to drop this clause is legislation by obsession. He seems to be obsessed by the fact that every employer for the sake of Rs. 96 upon which he has been harping since yesterday will kill a workman. The second obsession is that every employer . . . .

**Mr. N. M. Joshi:** I never said "every employer."

**Mr. B. S. Kamat:** Whatever he said, of course he led the House to believe that the employers as a rule will take advantage of this section as a loophole.

**Mr. N. M. Joshi:** Exactly; some people.

**Mr. B. S. Kamat:** Now, if his amendment is carried, the whole framework of this Bill would be destroyed. If a workman, whatever his sentiments or whatever his prejudices might be up to now, wants to take advantage of a social piece of legislation like this which is—a Western product engrafted upon Indian society—he will have to adjust himself to new ideas, namely, if he wants compensation, he must submit himself for some sort of civilized medical examination. Mr. Joshi wants that the employer should be put under certain conditions. But on the other hand, he wants that the employee should be absolutely at liberty either to get his wound not treated at all by a proper man or to apply Unani medicine to it or to apply Ayurvedic decoctions to it and allow septic poisoning of the blood or gangrene or any other disease to intervene. And yet he wants that the employer should rigidly follow the Workmen's Compensation Act so far as compensation is concerned. I do not think, Sir, this is fair. You cannot have it both ways. You cannot have your cake, eat it and keep it in your pocket too. Now, I shall refer to what the Social Service League of Bombay, with which my friend, Mr. Joshi, is connected, and where he is doing such splendid work so as to evoke our admiration uniformly, say on this clause. They passed the following opinion upon this clause:

"The Social Service League of Bombay record the opinion that in this clause there should be this alternative:

'In clause 11 (4) the following should be added, namely, examination by any other qualified medical practitioner provided free of charge by Government or any local authority.'

[Mr. B. S. Kamat.]

In any case, I point out, Sir, that he had himself admitted the necessity of some sort of medical examination for the injured person. Now, he is coming forward to delete the whole of this clause and leave the injured man absolutely at liberty either to have no treatment at all or to have Ayurvedic treatment or to take homely domestic applications for the wound and yet to go to the employer and ask for compensation in full. I therefore think, Sir, as I said at the beginning, that this is nothing but legislation by certain obsessions.

**Mr. N. M. Samarth:** My difficulty, Sir, is this. Mr. Joshi was a Member of the Joint Committee. He has signed the Report of the Joint Committee subject to a certain minute of dissent. He does not, in that minute of dissent, raise any objection in regard to the clause which is under consideration. Is it open to a member of the Joint Committee, who comes before the House signing the Report of the Joint Committee on the Bill subject to a certain minute of dissent in which he does not take any objection to the clause which is under consideration, to do so now?

**Mr. J. Chaudhuri:** (Chittagong and Rajshahi Divisions: Non-Muhamadan Rural): Sir, this question was raised when we were considering the Police Bill in Simla during the last Simla session. I think it was understood—I do not recollect if the Chair gave a ruling on the point,—but we understood that the Members of a Joint Committee or of a Select Committee are quite free when the Bill comes up for consideration to move any amendment they like and vote any way they like and we did so. I think my Honourable friend, Mr. Samarth, is in error in this respect.

**Mr. N. M. Joshi:** May I say one word of explanation? I had learnt one lesson in my childhood and it was this, that it was never too late to learn. There was a time when I thought this clause was innocuous or not harmful as it was. During the last few days, having seen through the psychology of the employer, I have changed my mind.

**Mr. President:** Amendment moved:

“To omit sub-clause (4) [re-numbered (5)] of clause 11.”

The question is that that amendment be made.

The motion was negatived.

Clause 11, as amended, and clauses 12 to 21 were added to the Bill.

**Mr. K. B. L. Agnihotri:** (Central Provinces Hindi Divisions: Non-Muhammadan): My amendment is:

“In clause 22 omit sub-clause (1). Under the clause we provide:

‘No application for the settlement of any matter by a Commissioner shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.’”

It is well and good to prevent the workman from going in for litigation or approaching the Commissioner unless he has a real dispute with the employer and which has been left unsettled, but it is otherwise to force that man to enter into an agreement with the employer. So far as there is a recommendation for agreement, I am at one with the Government but so far as there is a compulsion for agreement, there I beg to differ from the Government. Sub-clause (1) of clause 22 practically compels the workman to go to the employer for an agreement and if he fails to get

an agreement on certain points, to go to the Commissioner, which I consider to be very objectionable, because under this sub-clause the workman will be under the belief, that he shall have to agree to the terms that may be made by his employer and if he did not do so, probably he would be ruined by his employer in the future. And he shall be in a way compelled to agree to those terms which he thinks to be undesirable. With that view, Sir, I move that this clause be deleted, which will not make it compulsory to have an agreement with the employer. The workman could approach the Commissioner directly where the need exists and without approaching the employer.

**Mr. A. G. Clow:** Sir, I do not think that there is any compulsion to reach an agreement. All that the clause provides is that the workman and the employer should first attempt to reach an agreement. We do not want the Commissioner to be flooded with a number of applications, when the workman has not even approached his employer and asked for compensation. If the Honourable Member will read sub-clause (d) he will see that there should accompany the application a concise statement of the matters on which agreement has and on which agreement has not been come to. There is no question of the workman having to accept anything the employer offers. I oppose the amendment.

**Mr. President:** The question is that in clause 22, sub-clause (1) be omitted.

The motion was negatived.

**Mr. K. B. L. Agnihotri:** Parts (b), (c) and (d) of my amendment drop out as they are only consequential. I beg to move part (e) of my amendment, namely:

"In sub-clause (3), after the word 'Commissioner' add the words 'or Secretary of any workman's union or association recognized by the employer or Commissioner and of which the applicant is or the deceased was a member'."

Under this sub-clause we provide that if the applicant workman is an illiterate person or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner. It will be very hard for the workman to approach the Commissioner for this and he should be allowed to give the information necessary under this clause and the information be allowed to be reduced into writing by any person he chooses; but if it is desired to stop him from asking advice from strangers, he may at least be permitted to get the assistance from the Secretary of the Union of which he happens to be a member. That will safeguard the interests of the worker also and give the information that may be required by the Commissioner. Therefore, Sir, I put before the House that there should not be unnecessary obstruction in his getting assistance from the Union and he may be allowed to have the help of the Union where the Union exists and where the employer or the Commissioner has recognized the Union.

**Mr. A. G. Clow:** I think the Honourable Member has misunderstood the intention of this clause. There is nothing to prevent the Secretary of any workmen's union or association from preparing the application. There is nothing to prevent the Honourable Member himself, who shows a keen solicitude for workmen, preparing these applications and I hope he

[Mr. A. G. Clow.]

will. All we say is that if the workman is unable to furnish his application and has no Secretary of the Union and no Honourable Member to come to his aid, then he has a right to ask the Commissioner to prepare his application for him.

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

The motion was negatived.

Clause 22 was added to the Bill.

Clauses 23, 24 and 25 were added to the Bill.

**Mr. B. N. Misra** (Orissa Division: Non-Muhammadan): Sir, I move:

"That in clause 26 for the words 'in the discretion of' the words 'taxed according to Rules provided in the Civil Procedure Code, 1908, by' be substituted."

This is a new Act and if we leave the discretion to Local Governments, the practice may vary in different provinces and we do not know what the effect will be. I think it will be well to give them some basis. That is why we have it in section 22, that such application will be accompanied by any such fee; and also in section 23 we provide that the Commissioner will follow the Civil Procedure Code in order to take evidence on oath, and in section 24 also we say that a legal practitioner or other person may be authorised to appear. We have almost followed the Civil Procedure Code, and we have already fixed data, and the rules of the Civil Procedure Code provide that the presiding officer of the Court can exercise his discretion, so that the costs should be taxed according to Rules provided in the Civil Procedure Code.

**Rao Bahadur T. Rangachariar:** What are those rules?

(*An Honourable Member:* "There are no rules; different Courts have different rules.")

**Mr. B. N. Misra:** Rules according to which taxation takes place they are embodied. However, my point is that the basis should be to tax according to the rules which obtain under the Civil Procedure Code, instead of a simple discretion being given; I wish that it should be taxed according to rules provided in the Civil Procedure Code.

The motion was negatived.

Clauses 26, 27, 28 and 29 were added to the Bill.

**Mr. K. B. L. Agnihotri:** Sir, I move:

"That in sub-clause (1) (a), clause 30, after the word 'sum' wherever it occurs, insert the words 'or periodical payment'."

Sir, in clause 30 we allow an injured worker and the employer the right of appeal in certain cases. This right of appeal has been confined only to such cases which involve an allowance or disallowance of a lump sum only, and does not provide for cases where questions of half-monthly or periodical payments are involved. By the acceptance of the amendment which I beg to move we shall be extending this right of appeal even

to the periodical payments which the workman may or may not be entitled to. With these words, Sir, I beg to move my amendment.

**Mr. President:** Amendment moved:

"In clause 30, sub-clause (1) (a) after the word 'sum' wherever it occurs insert the words 'or periodical payment'."

**The Honourable Mr. C. A. Innes:** Sir, I do not think that it is necessary to accept this amendment. We wish to limit appeals as far as possible under this Bill, and we wish to limit them to the really important issues. Half-monthly payments cannot in any case exceed Rs. 15. Ordinarily they will not last very long—they are merely given in cases of temporary disability, and I think they can quite well be left to the Commissioner; there is no need for any appeal to the High Court.

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

The motion was negatived.

**Mr. K. B. L. Agnihotri:** Sir, the next amendment which I beg to move is that in sub-clause 1 (a) after the words 'a claim' insert the words 'in full or in part.' Sir, we give a right of appeal to a workman only in case of disallowance of a claim in full. If the amendment which I move be accepted, I think we shall make the meaning of this clause rather very clear; it will mean, even if the claim is disallowed in part, the workman will have the right of appeal. With these words, I move my amendment.

**Mr. President:** Further amendment moved:

"That in sub-clause (1) (a), after the words 'a claim' insert the words 'in full or in part'."

**The Honourable Mr. C. A. Innes:** Sir, I have no objection to this amendment. It is governed by the Rs. 300 limit in the proviso. We may have to make a slight alteration in drafting in the Council of State, but no doubt this House will be ready to agree to that.

**Mr. President:** Amendment moved:

"In sub-clause (1) (a), after the words 'a claim' insert the words 'in full or in part'."

The question is that that amendment be made.

The motion was adopted.

**Dr. Nand Lal (West Punjab: Non-Muhammadan):** Sir, in view of the policy of this Bill which is of a special character, I do not propose to move my amendment, viz.:

"In the first proviso to clause 30 (1) for the words 'three hundred' substitute the words 'one thousand'."

Sir, I am given to understand that, if I make verbal changes, Government is prepared to accept my amendments. Will you kindly give me, Sir, permission to make verbal amendments? The verbal amendments are, that instead of putting a new clause, I am putting my amendment as sub-clause (3), and instead of saying "section 5," I shall

[Dr. Nand Lal.]

say "the provisions of section 5." Then, I anticipate your permission, Sir, and move my amendment which will run as follows:

"After clause 30 insert the following as sub-clause (3), namely:

'(3) The provisions of section 5 of the Indian Limitation Act shall be applicable to appeals under this Act'."

Since the Government is prepared to accept my amendment, I think I need not detain the House. The amendment commends itself.

The amendment was adopted.

Clause 30, as amended, was added to the Bill.

Clause 31 was added to the Bill.

**Mr. K. B. L. Agnihotri:** Sir, I beg to move:

"In clause 32:

'In sub-clause (1) after the word 'may' insert the words 'with the approval of the Legislature'."

Clause 32 authorizes the Governor General in Council to make rules that may be necessary on matters mentioned in the various sub-clauses of this section. My object is to have those rules before the Legislature for their approval. No doubt, we have to leave many points to the Governor General in Council but it is desirable and necessary that these rules be approved by us. The other day when I moved a similar amendment, the Honourable Mr. Innes pointed out certain anomalies; he pointed out that there were many matters in the Mining or Steam Boilers Regulations that might require expert knowledge which might not be possessed by some Honourable Members of the House and that it would be simply ridiculous to put such proposals before the House. In this case, Sir, no such difficulty will arise. Even if difficulties were to arise, the House is expected to be guided by the opinion and the advice of the Government. I therefore beg to move that whatever rules be made under this Act or under clause 32, they may be placed for approval before the Legislature. It may be said, Sir, that the amendment which I am moving is incongruous with other Acts, because they do not provide such a clause. But I wish to remind the House and take them back to the Lac Cess Act passed the year before last in the Simla Session, which has made a similar provision. With these words, I beg to move the amendment which stands in my name.

**The Honourable Mr. O. A. Innes:** Sir, Mr. Agnihotri has mentioned one of the objections I took to a similar proposal made by him not in connection with the Mines Bill but the Steam Boilers Bill. But he has omitted to refer to another objection which I took on that occasion. I think it wrong, Sir, that rules of this kind should require the approval of the Legislature before they are made effective.

I think it wrong, as I said on that occasion, that the time of this House should be taken up with details like rules of this kind. Everybody knows—he has only got to look at the list of business—that we have not time as it is to get through all the business before us. Everybody knows that owing to the pressure of Government business, important non-official Resolutions and important non-official Bills never come before this House; and I deprecate our wasting the time of the House with rules of this kind. They are essentially the sort of rules which ought to be left



to the Executive Government, and we provide the safeguard that rules of this kind must be published before they are actually made. That is the proper safeguard. Sir, I oppose the amendment.

The motion was negatived.

Clause 32 was added to the Bill.

**Mr. K. B. L. Agnihotri:** Sir, I beg to move:

"In clause 33, after the words 'subject to' insert the words 'approval of the Local Legislative Council and'."

Sir, this amendment is similar to the one which I just moved. I have simply to answer one of the objections which the Honourable Mr. Innes has put forward, namely, that much time of the Legislature will be wasted if these rules are put up for approval. May I remind the Honourable Mr. Innes that even the rules that are framed about emigration and other laws have to be put before us for approval; and similarly there will be no harm if these rules are also put up. It happens that Bills come before us which though they have been considered by Select Committees and thoroughly considered by the Government still require some modifications which are made when they come to the House, and may sometimes be necessary that the people acquainted with local conditions may be better able to suggest certain changes or alterations in the rules when put before the House. Therefore, Sir, I beg to move this amendment.

The motion was negatived.

Clause 33 was added to the Bill.

Clause 34 was added to the Bill.

**Sir Montagu Webb** (Bombay: European): Sir, I beg to move that:

"In column 2 of Schedule I;

substitute the figures 10 for the figures 25; substitute the figures 10 for the figures 20; substitute the figure 5 for the figures 10 wherever they occur; and substitute the figures 2½ for the figure 5."

The reason for this amendment is that I feel, and those for whom I speak feel, that the compensation provided in this Schedule for minor accidents is on too high a scale. I am not quite certain, Sir, upon what principle exactly the scale of percentages in Schedule I has been based; but surely there are very few occupations in which the workman would lose one-quarter of his earning capacity by being deprived of a thumb.

**Rao Bahadur T. Rangachariar:** A weaver.

**Sir Montagu Webb:** I notice that the Karachi Chamber of Commerce have worked out some of these compensations in the Schedule as they would appear expressed in goats, sheep, cows and so forth; and taking that example, I find that a workman drawing, say, wages of about Rs. 60 or Rs. 70 a month, by the loss of a thumb would receive compensation equivalent in value to 10 cows, or 150 sheep or 200 goats! For the loss of a thumb, it seems to me, Sir, that such a scale of compensation would be too high. The same remarks apply to the scale of compensation for the loss of fingers and toes, etc. For that reason, Sir, I beg to move the amendment which stands in my name.

**The Honourable Mr. C. A. Innes:** Sir, I can answer the Honourable Sir Montagu Webb's question at once. These scales were worked out after taking the best advice we could get in Simla and Delhi and after the most

[Mr. C. A. Innes.]

careful study of the Schedules in force in the different countries. I should like also to point out to the House that throughout this debate there has been a sort of general understanding that we should leave the scales of compensation as they were left by the Joint Committee, and I think that we ought to carry that understanding right through to the end. In that view, Sir, I hope that the House will not accept this amendment.

The amendment was negatived.

Schedule I was added to the Bill.

**Sir Montagu Webb:** Sir, I have here a letter from Mr. Darcy Lindsay authorising me to move the amendments standing in his name. I beg to move, therefore, that:

“ In Schedule II the following be substituted for sub-clause (vi) (a) :

‘ (a) A building which is designed to be, is, or has been more than one storey in height above ground level, or ’.”

The object of this amendment, Sir, is only to define more clearly the conditions set forth in Schedule II and to avoid misunderstanding. As it is, the Schedule at present reads: “ a building which at the time when the accident on account of which compensation is claimed takes place comprises more than one storey wholly or partly above ground, or.” The presence possibly of a single brick might be the deciding factor as to whether a building at the time of an accident was of more than one storey. It appears to me that it would avoid misunderstanding and lessen the possibilities of disputes if the definition were made a little more complete. Therefore, Sir, I beg to substitute the words which I have read out—“ a building which is designed to be, is, or has been more than one storey in height above ground level, or ”.

**The Honourable Mr. C. A. Innes:** Sir, I am advised that the amendment moved by the Honourable Member brings out more clearly our original intention than the existing clause. That being so, Sir, we are quite prepared to accept the amendment.

The amendment was adopted.

**Sir Montagu Webb:** I beg to move, Sir:

“ That in Schedule II the following be substituted for sub-clause (vi) (b) :

‘ (b) A building which is used, has been used, or is designed to be used, for industrial or commercial purposes and is, or is designed to be, not less than twenty feet in height measured from ground level to the apex of the roof, or ’.”

The reasons for this amendment are exactly the same as those which I just put forward a minute ago; they are to make a more exact definition so as to avoid disputes. The amendment speaks for itself and I hope, Sir, that Government will be able to accept it.

**The Honourable Mr. C. A. Innes:** Government, Sir, are quite prepared to accept this amendment for the reasons I have already given.

The amendment was adopted.

Schedule II, as amended, was added to the Bill.

Schedule III was added to the Bill.

Schedule IV was added to the Bill.

**Mr. President:** The question is that this be the title of the Bill.

The motion was adopted.

**Mr. President:** The question is that this be the Preamble of the Bill.

The motion was adopted.

**The Honourable Mr. C. A. Innes:** May I point out, Sir, that clause 1 has not yet been passed which was postponed?

**Mr. President:** Does it require any amendment?

**The Honourable Mr. C. A. Innes:** No, Sir, it does not require any amendment, but it has got to be formally passed.

Clause-1 was added to the Bill.

**The Honourable Mr. C. A. Innes:** Sir, I beg to move the next motion which stands in my name, and before I do so, I hope that the House will permit me to say just a very few words. I wish, in the first place, to congratulate the House on passing a very difficult piece of legislation, and I wish to thank them also for the great consideration they have shown in dealing with a very intricate and controversial Bill. Government have made every effort to lay before the House a measure carefully thought out to meet Indian conditions. I am sure that I will have my Honourable colleague Mr. Chatterjee with me when I say that if Government have achieved any success in this direction, they owe it very largely to the labours of the gentleman on my right, Mr. Clow. (Applause.) But, Sir, whatever efforts we have made, I am quite free to admit that in almost every clause and in almost every line of this Bill, there is room for a fair difference of opinion and I think, if I may be permitted to say so, Sir, the House has shown the very greatest restraint in dealing with these controversial matters. I think that the House arrived at the conclusion that in dealing with a controversial matter of his kind, the wisest course was to go by the understanding, the implied understanding, which had been arrived at and which had been enshrined in the Joint Committee's Report, and the fact that the House did arrive at this wise decision has enabled us, I think, to get through in a reasonable time this very difficult Bill. I think, Sir, in this Bill we have a very good augury for the future. England has arrived at her present stage of labour legislation by a process of painful evolution, and I am afraid that in that process a legacy of class bitterness has been left. I hope, Sir, that in India we shall avoid that class bitterness, and if we do avoid it, it will be very largely due to the spirit of mutual good-will and toleration which employers and the labour people have shown in regard to this Bill. I have seen representatives of the employers in the persons of the Honourable Sir Alexander Murray and Mr. Saklatwalla and the representatives of labour in the persons of my Honourable friend, Mr. Joshi and Mr. Roy Chaudhury of Bengal, I have seen them day after day sitting across the table, thrashing out together the very difficult questions raised in this Bill, and I have admired very greatly the good-will, the tolerance and the reasonable spirit of give-and-take in which they approached the very intricate problems, and as long as we have that spirit of give-and-take and mutual good-will, I have no fears myself as to the way in which India will deal with her labour problems. I move, Sir:

"That the Bill, as amended, be passed."

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

"That the Bill to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident, and as further amended by this House, be passed."

**Rao Bahadur T. Rangachariar:** Sir, when I give my assent to this motion, I am not without apprehensions as to the effect which this Bill may have on the growth of indigenous industries in this country. Sir, England took more than a century to enact her Workmen's Compensation Act. It was only in the year 1906 that she embarked upon this piece of legislation after she had had a most successful industrial career in the world. India has yet to begin her industrial career, and before we are yet on our feet, these fetters are put upon the growth of industries. But I welcome the measure in the hope that it will be liberally administered. The Government have always got a very serious responsibility indeed in administering this measure which will become law. This measure proposes the appointment of a Commissioner quite outside the ordinary Civil Court. I hope every effort will be made by every Local Government in the selection and choice of the Commissioner. It is no use appointing merely executive officers to discharge the duties which are thrown upon the Commissioner by this Bill. He must be a highly trained judicial officer who has to be in charge as Commissioner to decide the very complicated questions which will arise in the construction of this Act. There is a very great danger in appointing a Commissioner because, having only to work compensation cases, he is likely to get into a groove from which it will be very difficult for him to extricate himself. So it would have been perhaps a better provision to allow these questions to go before the ordinary Civil Courts where sub-judges and district judges would have their ordinary suits to try, where there is less chance or risk of their becoming confirmed specialists with fixed ideas. We have had that experience, Sir, in the case of income-tax officers who have been appointed to settle legal questions. We have had that experience in the Estate Land Act cases in Madras, where revenue officers have been appointed to decide civil disputes. I hope that will not be the result in this case. I hope the officer who is chosen for this responsible position will be a man of ripe judicial experience, although he may cost the country somewhat higher. Sir, in this country labour is quite disorganized. It is not organized at all. Unlike the labourers in England and elsewhere, these people cannot afford the assistance of either skilled lawyers or skilled experts to assist them in the conduct of cases before the Commissioner, whereas before the Commissioner the employer is sure to have the assistance of able counsel and able medical men—while the poor servant will not be in a position to afford the expense. Therefore, we must take care that what we give with one hand is not taken away with the other. So, this measure will have to be very liberally and carefully administered. And there is a chance of this measure increasing the cost of articles consumed by the consumer. Insurance Companies are sure to be started and high premia are sure to be demanded. It is not after all the pockets of the employer that the money required will come out of, but the pockets of the consumer. Here is a great chance for people in this country to undertake ventures in the shape of Insurance Companies. I know, Sir, many a foreign Company have their eye on this country now. They are closely watching the progress of this legislation in this Chamber and in another place. Directly this becomes law I am sure enterprising foreign Companies will plant their Companies and their Agents here. I hope my

countrymen in this Chamber—especially the magnates from the Bombay side—in addition to running mills will also encourage the growth of indigenous Insurance Companies to take advantage of this new Act, so that we may have Indian Companies taking advantage of Indian conditions and adding to the wealth of the country in this way.

Sir, there is one clause which we have passed to-day, to which I ask the serious attention of the Government; that is, sub-clause (3) to section 11. Sir, we have passed it no doubt but I hope in another place it will be set right. We have passed a clause saying that, if a man goes away from the place and if he does not return for medical examination, then the right of compensation is to be suspended. Sir, what is to happen if that man dies and is unable to return? He goes away to his place and he dies on the spot and he does not return. The compensation, according to the clause as it stands, will go. I hope that will be taken note of in another place and the necessary amendment made.

Sir, I support the motion.

**Mr. Jamnadas Dwarkadas:** May I be permitted, Sir, to say a few words in supporting the motion before us that the Bill be passed? I may say at once, Sir, that I do not apprehend that the passage of this Bill will in any way hamper the growth of industries in this country. Mr. Rangachariar has just told us that, after years of industrial development in other places, measures of this character have been adopted. If other countries have made the mistake of not starting in the right direction and allowing the evils that grow as a necessary adjunct to industrial development, I am sure we, at any rate, will not repeat the mistakes that they have made, especially when we consider the result of the mistake that have been made by other nations. In other countries we find as a result of the mistakes made by them that hatred, suspicion and distrust have come in where mutual understanding and good will ought to have been the rule. In this country we want to avoid hatred. In this country we want to avoid mutual distrust. In this country we want to avoid mutual suspicion. The best way to do it is to start with these precautions and then take up wholeheartedly the industrial development of this country, which seems to be in sight at a not very distant date, and we shall soon find that we shall be a prosperous India, rich, industrially developed, and without the feelings of hatred, mutual suspicion and distrust that are unfortunately in existence in other parts of the world. It is for us to avoid the mistakes that have made possible the existence of all those evil conditions in other countries, and if we begin in the right direction, as I am sure that this Legislature is beginning, we shall have achieved a good deal not only as a service to our own countrymen but as an example to other nations that will in future take upon themselves the task of industrial development. I may also, Sir, with your permission, add a word of congratulation to the Government of India for undertaking legislation of this kind. It has been rightly pointed out by a Labour Leader in Bombay, who has not always been in sympathy with Government actions, that so far as labour legislation in this country is concerned, since the inception of the Reforms the Government have gone beyond even his wildest dreams. Perhaps that is an exaggeration.

(At this stage Mr. President vacated and Sir Campbell Rhodes took the Chair.)

But I feel that a beginning in the right direction has been made. It is to the advantage of the country; it is to the advantage of the world, because

[Mr. Jamnadas Dwarkadas.]

it will be held as an example to other nations which are going to rise industrially. Sir, with these words, I heartily support the motion before us.

**Mr. N. M. Joshi:** May I be permitted to say one word in support of this motion? Sir, whatever may be the merits of the clauses and the proposals in this Bill, we owe a great debt of gratitude to the Honourable Mr. Innes, to my Honourable friend, Mr. Clow, and to my Honourable friend, Mr. Chatterjee, for bringing it forward and securing its passage through the Assembly. Sir, this Bill is the beginning of what is to follow in future and I welcome it in that light. The Bill no doubt has got its defects. I have pointed them out during the discussion. But, Sir, I would like to refer only to one of them. I felt greatly pained when I found yesterday the House refusing to help the widow and the children of a workman when he dies on account of an accident although the accident might have been caused by his wilful misconduct. That vote has unfortunately placed a very undesirable stamp upon the whole House. It has shown to the working classes that on certain occasions they may not get justice—not only that they may not get justice but that they may not even get compassion from this House. Sir, that is the effect of that vote and it means nothing else. (*Honourable Members:* “No, no.”) I am glad to hear it does not mean that. I have pointed out one defect of the Bill. I should also like to point out the strong point of the Bill. The strong point of the Bill is exactly that which my Honourable friend, Mr. Rangachariar, said is the weakest point. The strong point is the procedure by which the workman is to get compensation. It is wrong in the present condition of the working classes in India to send a workman to a Court or into the hands of a lawyer. I am not a friend of the lawyer, and I therefore feel that that is the strongest point of this Bill.

There is only one word more. Mr. Rangachariar mentioned in his speech that our industries are only just beginning to be started and established and expressed his apprehension that a legislation of this kind may not help them. May I tell him to learn, as Mr. Jamnadas Dwarkadas told him, by the experience of the western world. If you want western industries, if you want western industrialism, and if you do not adopt the western methods of social insurance and other ameliorative measures, certainly you will not only have the bitterness that you see in the west, but you will see here much worse things than that. Therefore, if the country wants industrialism, I think it is better in the interests of the country that all measures which are necessary to avoid the evils of industrialism should be taken. Nobody will express the opinion here that modern industrialism has no evils, and if these evils are there, we must take measures to prevent those evils before we undertake to develop industries. If you do not do that, then you will suffer not only what the west has suffered but you will suffer more. With these words I again congratulate the Honourable Member for having got this Bill passed in this Assembly.

**Dr. Nand Lal:** This a very useful piece of legislation and my belief is that it will prove a very effective step towards the industrial development of this country. I feel bound to offer a suggestion to the Government of India, which is this, that they will be pleased to impress on the minds of the Local Governments that, at the time of appointing Commissioners, they will kindly see that either very able and trained lawyers are appointed or judicial officers of great experience are put in charge of this important

work. At the same time, if the Commissioners will be in need of expert assistance, the Local Government should be careful to appoint experts of great capabilities and not pay attention to creed, caste or colour. With these few words I commend the motion which has been very ably moved and I congratulate the Government on this very useful measure.

The motion that the Bill, as amended, be passed was adopted.

The Assembly then adjourned for Lunch till Three of the Clock.

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The Assembly re-assembled after Lunch at Three of the Clock. Mr. President was in the Chair.

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

**Mr. President:** The Assembly 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.

Clause 62 was added to the Bill.

**Dr. H. S. Gour** (Nagpur Division: Non-Muhammadan): Sir, I move:

"That in clause 63, in clause (f) of the proposed section 239, for the words 'the possession of which has been transferred by one offence' the words 'the possession of which has been transferred in the same transaction' be substituted."

Honourable Members will find this is an amendment to section 239 of the Code of Criminal Procedure and the clause is "persons accused of offences under sections 411 and 414 of the Indian Penal Code or either of those sections in respect of stolen property, the possession of which has been transferred by one offence." Now, section 411, I may inform the Honourable Members of this House deals with the offence of receiving stolen property and section 414 with the offence of concealing stolen property. Now, in the first place I want the Government to explain what they mean by the clause 'the possession of which has been transferred by one offence.' Will they illustrate to me how the possession of property of one offence can be transferred so as to constitute offences under sections 411 and 414 of the Indian Penal Code. It seems to me what is intended is that if there is a theft, say, of half a dozen articles one man is made the receiver of property: another conceals that property: the third one assists in the concealment of the property. These are all offences committed in the same transaction and consequently persons who are privy to an act which constitutes a series of acts in the same transaction may be dealt with together. That seems to be therefore the intention so far as we on this side of the House understand it. If the Government justifies the retention of the clause which they have inserted in this sub-clause (f), I shall be pleased to withdraw my amendment. Otherwise I suggest to the Government that the adoption of the amendment made by me is an improvement on the language of the official draftsman.

**Mr. President:** Amendment moved:

"In clause 63, in clause (f) of the proposed section 239, for the words 'the possession of which has been transferred by one offence' substitute the words 'the possession of which has been transferred in the same transaction'."

**Mr. H. Tonkinson** (Home Department: Nominated Official): Sir, my Honourable and learned friend asks that I should endeavour to explain what is the meaning to be attached to the words 'the possession of which has been transferred by one offence' in clause (f) of the proposed section 239. I would in the first place direct his attention to the fact that exactly the same words are included in clause (e), and he has not suggested any change of those words. Now, Sir, the Honourable Member has suggested that the official draftsman should explain what these words mean. This, however, Sir, is not a Government clause at all, it is a proposal of the Lowndes' Committee, introduced by them, and that Committee was not a Government Committee at all. They said, with reference to this clause, 'we accept this clause with certain verbal modifications and have added a new sub-section dealing with offences under sections 411 and 414 of the Indian Penal Code.' The clause is exactly as drafted by the Lowndes' Committee. My Honourable friend proposes to substitute for those words the words 'the possession of which has been transferred in the same transaction.' I would suggest, Sir, in the interests of the accused, that it is distinctly dangerous to make that change. But perhaps it will be sufficient if I merely explain what the meaning of the words is. Take a concrete example. A is a cattle-thief; two cattle are stolen; B is the dishonest receiver to whom A has passed on one of the cattle; C, the dishonest butcher who knows the cattle to have been stolen and assists in their concealment by slaughtering the other. Well, Sir, if A is present, A, B and C can all be tried together under clause (e). If A has disappeared, then this is not possible, and the provisions of clause (f) are required. The possession of these cattle has been transferred in one offence, the original offence of theft. One person has later committed an offence under section 411, and another person has committed an offence under section 414. The two cattle were stolen at the same time, that is one offence. I do not know whether it is necessary for me to go on and explain further as to how the proposed amendment is dangerous, but there is no doubt about it that the amendment proposed by my Honourable and learned friend has a much wider application than the words in the Bill, and I think the House will agree that it is desirable not to make the change.

**Dr. H. S. Gour:** Sir, in view of the explanation given by the Honourable Mr. Tonkinson, I do not wish to press my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Clauses 63, 64 and 65 were added to the Bill.

**Mr. K. B. L. Agnihotri** (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to move:

"In clause 66, insert the following at the beginning:

'In sub-section (1) of section 245 of the said Code after the word 'accused' the words 'to explain points or circumstances appearing in evidence against him' shall be inserted'."

Section 245 provides:

"If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal."

I wish to insert the words "to explain points or circumstances appearing in evidence against him" after the word "accused." The clause,



as amended, will require the Magistrate to explain the points or circumstances appearing in evidence against the accused and not ask him general questions about other details not against him. Sir, similar provision has been made under section 342 in connection with warrant cases and I think that procedure is more desirable than the one which we have already provided in section 245. Section 245 should also be altered and brought in conformity with the provisions of section 342. With these words, Sir, I move my amendment.

**Sir Henry Moncrieff Smith** (Secretary, Legislative Department): Sir, I think this amendment has been moved under a misapprehension. There are several sections of the Code which provide for the examination of the accused at a particular stage of the inquiry or trial. This section 245 is only one of them. In all these places where at a particular stage of the inquiry or trial an examination of the accused has to be made, that examination has to be made in accordance with the provisions of section 342. Section 342 is the provision which guides the Magistrate in all these cases. It is quite unnecessary in section 245 to lay down the details of the examination, because section 342 governs section 245. It is there already and it is quite unnecessary to put it into the Code a second time.

**Dr. H. S. Gour:** May I just point out, Sir, in addition to what has fallen from the Honourable Sir Henry Moncrieff Smith, that my Honourable friend is wrong in saying that section 342 only relates to warrant cases. If he will refer to Chapter XXIV, he will find that that Chapter deals with general provisions as to inquiries or trials, and consequently it entirely covers the case which my friend is now seeking to provide for.

**Mr. President:** Amendment moved:

"In clause 66, insert the following at the beginning:

'In sub-section (1) of section 245 of the said Code, after the word accused' the words 'to explain points or circumstances appearing in evidence against him' shall be inserted'."

The question is that that amendment be made.

The motion was negatived.

Clause 66 was added to the Bill.

**Dr. H. S. Gour:** Sir, I beg to move:

"In clause 67 (i) in proposed sub-section (1) for the words 'upon information' substitute the words 'in consequence of information'."

This is merely a verbal amendment and I invite the attention of the Treasury Benches to accept it, if they consider it an improvement.

**Mr. H. Tonkinson:** Sir, as my Honourable friend has not endeavoured to justify the amendment which he has proposed, I would merely explain the reason why these words as they stand in the Bill are more appropriate than the words proposed by my Honourable friend. Cases are instituted by taking cognizance. Section 190 is the section dealing with taking cognizance of an offence and we want to use the same words as in section 190 in section 250.

**Dr. H. S. Gour:** I withdraw the amendment, Sir.

The amendment was, by leave of the Assembly, withdrawn.

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

"In clause 67, sub-clause (i) in proposed new sub-section (1) of section 250, for the words 'by his order of discharge or acquittal' substitute the words 'at the time of discharging or acquitting the accused'."

That clause runs as follows:

"(1) If, in any case instituted upon complaint or upon information given to a police-officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal, call upon the person upon whose complaint or information the accusation was made forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or may, if such person is not present, issue a summons to him to appear and show cause as aforesaid."

Well, Sir, the complainant can only be called upon to show cause why he should not be made to pay compensation, after the accused has been formally discharged or acquitted; and the accused person can only be discharged or acquitted by means of a judgment which is written and signed. The Madras High Court has held that oral judgments are not valid under the Criminal Procedure Code, and so when an accused person is discharged or acquitted, it means that the judgment has been written and signed by the Magistrate. It is only after that that the Magistrate can call upon the complainant to show cause why he should not be made to pay compensation to the accused. So, the order which the Magistrate will pass ordering the payment of compensation can only be affixed or appended to the judgment as a postscript, so to speak. Therefore, it is impracticable for the Magistrate to order compensation or to call upon complainant to show cause, by his order of discharge or acquittal. He can only do it after he has acquitted or discharged the accused. That is the reason why I want to insert the words "at the time of discharging or acquitting the accused."

**Sir Henry Moncrieff Smith:** Sir, there is something perhaps a little unsatisfactory about this sub-section (1) of section 250, though not for the reason, I suggest, that my Honourable friend Mr. Pantulu has given. I do not think that any real difficulty arises from the fact that the Magistrate is required to do this by his order of discharge or acquittal. But if Honourable Members will look at the clause closely they will find that in the case where the complainant is present the clause requires the Magistrate to call upon him to show cause by his order of discharge or acquittal. When the complainant is not present he does it outside his order of discharge or acquittal. He issues a summons. I think that is distinctly unsatisfactory. I should like to meet my Honourable friend in one way, and I have an amendment here; it does not embody his words "at the time of" because we think that those words are apt to be vague and to lead to difficulties, lead perhaps to additional grounds of appeal and revision. What is the time of discharge or acquittal? We are generally told it takes a clever man to do two things at the same time. If he is delivering his judgment, he cannot at the same time write an order calling upon a man to show cause. Therefore we cannot have the words "at the time." I tried hard to think of a phrase which is satisfactory and have come to the conclusion that it is not possible. We must stick to the order, and I

would suggest that whether the complainant is present or not, the Magistrate must in both cases call upon the accused by his order—where he is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any such accused when there are more than one, or,”

and then it will go on “ if such person is not present, issue a summons to him to appear and show cause as aforesaid.” It means another amendment, Sir, a second amendment—for the word “ issue ” insert the words “ direct the issue of.”

“ For the words beginning with ‘ call upon the person ’ and ending with ‘ or may,’ the following words be substituted;

‘ if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any such accused when there are more than one, or ’,”

and then it will go on “ if such person is not present, issue a summons to him to appear and show cause as aforesaid.” It means another amendment, Sir, a second amendment—for the word “ issue ” insert the words “ direct the issue of.”

**Mr. J. Ramayya Pantulu:** I withdraw my amendment, Sir.

The amendment was, by leave of the Assembly, withdrawn.

The amendment (proposed by Sir Henry Moncrieff Smith) was adopted.

The second amendment—to omit the word “ issue ” in order to substitute the words “ direct the issue of ” in proposed sub-section (1) of clause 67 was adopted.

**Mr. K. B. L. Agnihotri:** Sir, I move:

“ That in clause 67 in proposed sub-section (2) in sub-clause (i) after the words ‘ such amount ’ omit all words commencing from ‘ not exceeding ’ to the words ‘ third class ’.”

Sir, in section 250 of the present Bill we provide that in false and frivolous or vexatious accusations a compensation up to Rs. 100 may be awarded; and in the case of a Magistrate of the second or third class the amount has been limited to Rs. 50. My amendment will make it uniform for all classes of Magistrates, whether first, second or third. I think, Sir, the amount of fifty rupees which was provided in the old Code was a proper amount because if the accused thought that the amount awarded to him was not sufficient he could go to a Civil Court and have compensation or damages from that Court as well. One hundred rupees for each of the accused will be rather a high amount to be awarded in such cases of compensation. Therefore, Sir, I propose that the amount of fifty rupees which was provided in the old Code should be stuck to and should not be changed in this new Bill. With these words, Sir, I propose my amendment.

**Mr. H. Tonkinson:** Sir, as has been mentioned by my Honourable friend the Bill proposes to increase the amount which may be awarded as compensation under this section from rupees fifty to rupees one hundred in cases dealt with by a first or second class Magistrate. In 1911 the Punjab Chief Court wrote that they would raise the penalty, which is entirely inadequate at present, to Rs. 150, and that, Sir, is the genesis of the present proposal. If Rs. 50 was inadequate in 1911, surely Rs. 100 is inadequate now. My Honourable friend says that it is possible to go and file a civil suit. That is true, Sir, but in this section we provide a summary proceeding with the object of stopping these vexatious and frivolous prosecutions, and I think, Sir, it is most desirable to increase the amount of compensation which may be awarded in the manner proposed in the Bill. I therefore, Sir, oppose the amendment.

The motion was negatived.

**Mr. K. B. L. Agnihotri:** Sir, I move in the same sub-clause:

"That before the word 'third' insert the words 'second or'."

As the first amendment of mine has failed, I wish to provide by this amendment that the awarding of compensation to the extent of Rs. 100 should only be confined to 1st class Magistrates, and 2nd and 3rd class Magistrates could only award compensation to the extent of Rs. 50.

**Mr. H. Tonkinson:** Sir, the present provision in the Bill which restricts the power of Magistrates to award compensation exceeding Rs. 50 was introduced by the Joint Committee. They thought, Sir, that it was undesirable that a Magistrate who had only power to pass a sentence of fine up to Rs. 50 should have power to order compensation to an amount exceeding Rs. 50. This, Sir, does not apply to the case of a second class Magistrate who can award a sentence of fine up to Rs. 200.

Another point is, Sir, that these cases are very likely to be those in which a second class Magistrate exercises jurisdiction. In these circumstances, Sir, I oppose the amendment.

The motion was negatived.

**Mr. B. N. Misra** (Orissa Division: Non-Muhammadan): Sir, practically the first part of my amendment has already been disapproved by the House, which was also the amendment of my Honourable friend, Mr. Agnihotri, and so it remains for me only to move the second\* part of my amendment which relates to (2A), the latter portion, that is, "shall suffer simple imprisonment for a period not exceeding thirty days". I propose that 30 days is too long a period. Possibly the offence for which the complaint might have been instituted may be of a very simple nature, and even if an accused was convicted for such offence, he might be sentenced to pay a fine. But when a complaint is presented and it is found to be vexatious and frivolous, to make the complainant in default of payment to pay a fine (which is now Rs. 100) to undergo a sentence of thirty days, will be very severe.

Sir, sometimes it happens that, after a complainant presents a complaint, the accused tries to win over the witnesses so that they may not prove the facts of the case. On account of the machinations of the accused, if the complaint is not proved, he may get Rs. 100. He may perhaps bribe the witnesses Rs. 5 or Rs. 10 each and spend Rs. 20 or Rs. 30 and get a compensation of Rs. 100. This would be very unjust. The Magistrate may hold in cases where the witnesses are won over by foul means the complaint to be false and frivolous. Sometimes it may be that the Magistrate may not be able to study the situation and there may not be many witnesses—there may be a single witness and that witness may be unwilling to appear. In such cases, it is a very hard case to impose a very heavy fine as well as to ask the complainant to undergo such a severe punishment, imprisonment for one month. I submit the result would be that probably many people won't go to court. Supposing a rich man, a big zamindar has given some blows or a slap or abused filthily one of his tenants, the tenant would be afraid to come to Court because the zamindar is an influential man who can win over the witnesses. This poor man will have no remedy, because the Court will again punish him. So the threat of these punishments will deter a man from going to Court. Under these

\* "In proposed sub-section (2A) of clause 67 for the word 'thirty' substitute the word 'seven'."

circumstances, I respectfully submit that the House will accept my proposal that the punishment to be inflicted should not be so severe as one month in default of payment of Rs. 100.

**The Honourable Sir Malcolm Hailey** (Home Member): The existing law provides for Rs. 50 compensation and, in default of payment, 30 days imprisonment. The House has already agreed that the maximum of compensation should be raised to Rs. 100. It hardly seems consistent, therefore, to reduce the period of imprisonment to seven days. I cannot myself exactly follow out the arithmetical ratio which the Honourable Member has in his mind, but it seems to me of a peculiarly inverse nature. The arguments which he has used and the instances which he has quoted apply of course equally against the whole scheme for compensating the accused as the result of false, vexatious or frivolous complaints. I would remind him that all that is provided is a maximum. It by no means follows that, because the law provides a maximum, the Magistrate will invariably, as he seems to suggest, award to a man who brings a frivolous complaint the full imprisonment for 30 days.

**Rao Bahadur T. Rangachariar** (Madras City: Non-Muhammadan Urban): Sir, there is a great question of principle in support of the amendment moved by my Honourable friend, Mr. Misra. Sir, it is an uncivilised method of recovering compensation to put a man in prison. I wish he had moved for the total abolition of imprisonment in default of payment of such compensation. How is it a compensation to the accused person—compensation for costs incurred by him in regard to his defence? It is no compensation to put the complainant in jail. Sir, it seems to me ridiculous that the Legislature should provide any imprisonment in this way. By all means recover the amount by selling his movable or immovable property. But if the man is unable to pay, simply because he went to Court complaining of an offence committed against him and may be he is not sufficiently influential to prove it and the Court comes to the conclusion that the complaint is vexatious, you put him in jail! I quite admit that it would be right to compensate, by making payment to the accused money for costs incurred by him. But to go and put a man in jail because he is unable to pay seems to me to be barbarous. I, therefore, Sir, support the amendment.

**Rao Bahadur C. S. Subrahmanayam** (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, the principle under which my friend, Mr. Rangachariar, supports this amendment is the principle probably which applies to every provision in our law in which non-payment of a fine, non-payment of a debt is followed under various circumstances by imprisonment. That is, when we attack the entire principle which pervades all branches of law, then I think the argument of my learned friend here would hold good. But why this sympathy for a man who has dragged another into a criminal Court and the Court, after proper inquiry, has found that the complaint was frivolous and vexatious? Why should we assume that the Court which has found that the complaint was frivolous and vexatious came to that conclusion because one man was rich and the other man was poor, one man was able to win over the witnesses and so on? All these considerations are entirely outside the position, the basis on which this compensation has been fixed. We must assume in arguing a question of law, a question of legislative measure, that the court which passed judgment passed it rightly. But if you give the go-by to the finding of a court and then say that the court may have been misled, and therefore the consequences of that judgment ought to be nullified by these provisions, I think that is not a

[Rao Bahadur C. S. Subrahmanayam.]

clean way of arguing a legislative measure. If the Court has gone wrong in its finding there are provisions for revision. There are provisions of law to guard against that. If the compensation is wrong, the man has the right to appeal against the award of compensation. This is a matter on which there need not have been any argument. Because the Bill says "fifty" you want to put in "thirty" or because the Bill says "forty" you want to put in an amendment saying "thirty". You must fix it at some amount. Then this alternative of imprisonment in default of payment exists for ordinary simple debts. If a man gets costs in a civil suit and the other man does not pay it, then he is liable to be imprisoned. Why this tenderness for a man who has brought a criminal case which a court has found to be vexatious and frivolous.

**Dr. H. S. Gour:** Sir, there has been considerable misapprehension on the part of my learned and legal friends in reading the very elementary provision which prefaces section 250. It is not in a case of frivolous or vexatious prosecution that the Magistrate is empowered to impose a fine by way of compensation. The case must be found to have been false, and either frivolous or vexatious. In the first place, therefore, it must be a false charge, added to which it must be either frivolous or vexatious. In other words, it must be a case not merely which is not proved but a case which has been proved to be a false case and super-added to which a frivolous and vexatious case. That was the premises upon which my learned friend Mr. Rangachariar built up his argument.

**Rao Bahadur T. Rangachariar:** No, that was not my argument.

**Dr. H. S. Gour:** He further said that it was an uncivilised and barbaric thing for a man to be imprisoned for not paying his debts. I am surprised at my friend supporting a theory that it is a barbarous and uncivilised thing for a man to be imprisoned for not paying his debts. Surely, Sir, this is much more than a debt. A man has launched a prosecution in court. Let us assume, as the section assumes, that it is found to be both false and frivolous or vexatious. What is the remedy which the aggrieved accused has against the complainant? It is not a debt as my Honourable friend, Mr. Subrahmanayam, assumed, it is in the nature of a fine for having made a false and frivolous case against the accused.

**Rao Bahadur T. Rangachariar:** It is compensation.

**Dr. H. S. Gour:** My friend on my left says "compensation".

**Mr. J. Chaudhuri** (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): It is a sanction.

**Dr. H. S. Gour:** If he has not got property, movable or immovable, from which this compensation is to be recovered, is he to go scot-free? If so, it is setting a premium upon all poor people.

**Rao Bahadur T. Rangachariar:** Upon paupers.

**Dr. H. S. Gour:** Paupers and vagabonds to institute false and frivolous prosecutions because forsooth they will have nothing to pay, nothing to lose, by implicating respectable people in cases under the Indian Penal Code. I cannot understand, Sir, what my learned friend meant by saying that the case may not be proved, witnesses may have been suborned, influence may have been brought to bear upon the case, and so the case may fail. But

my friend forgets that in all these cases, the Court will acquit the accused, because the case has not been proved. The Court will not pronounce it to be a false case and the Court will not pronounce to be a frivolous or vexatious case. If it does, you have the right of appeal and revision. I therefore submit that upon every ground this amendment fails and ought not to receive the support of the House.

**Dr. Nand Lal** (West Punjab: Non-Muhammadan): I oppose this amendment. Take a hypothetical case. Two persons are enemies. One is a rich man and he employs an ordinary man to lodge a false complaint against his enemy who is a very respectable man. The complaint is altogether vexatious and false. It has been dismissed and it has been found by a competent Magistrate that it was frivolous and that it was vexatious. Look at the disgrace to which the accused has been put. He has been dragged to the Court for nothing. He had to spend money in engaging Counsel. He was summoned to the Court, and no wonder in some cases he may be sent to a lock-up. The competent Magistrate after having gone into the evidence, after having examined all the circumstances, comes to this conclusion that the complaint is altogether unfounded and the complainant has been called upon to pay compensation, Rs. 100 if the case is tried before a first class or a second class Magistrate and only Rs. 50 if the case is tried by a third class Magistrate. He fails to pay that. As a matter of fact, he defies the law and then the Code provides that if he does so, he may be imprisoned for a period not exceeding 30 days. It will depend upon the discretion of the Magistrate. He may award imprisonment for 7 days, or for 15 days but not more than 30 days. Then you will be pleased to see the character of the imprisonment. It is simple imprisonment and such a sort of compensation is reckoned to be fine and would be realised as such. I think the amendment has got no justification whatsoever and it should be rejected. On no principle can it be supported.

The motion was negatived.

**Mr. K. B. L. Agnihotri:** I beg to move:

"In clause 67 in sub-clause (ii) after the word 'substituted' insert the following: 'and the words 'of the second or third class' shall be omitted'."

Sir, it has been said from the Government Benches that second and third class Magistrates have been authorised to award compensation only to the extent of Rs. 50 as otherwise they would have to award compensation beyond their powers, because a third class Magistrate cannot punish an offender and inflict a fine on him of any amount over Rs. 50. Therefore to provide against this anomaly they have provided for the award of compensation by a third class Magistrate to the extent of Rs. 50 only. In the old Code, the amount of compensation that a first class Magistrate could award was fixed at Rs. 50. Now, if a first class Magistrate had inflicted a fine of Rs. 50 on an accused, the accused had no right of appeal against that conviction or order. On that principle, if under the old Code no provision for appeal against an order of the first class Magistrate was made, that was quite sound in principle. But, here, we authorise the first class Magistrate to award compensation to the extent of Rs. 100. If the same Magistrate had awarded a punishment of fine extending to Rs. 100, but not below fifty, the accused could have had a right of appeal against that fine. In this case why should not the complainant have a similar right of appeal against the order of the first class Magistrate? It looks anomalous. If we adopt the principle in one case, why should we not adopt it in the other case?

[Mr. K. B. L. Agnihotri.]

Therefore, I beg to move that even the compensation awarded by first class Magistrates should be subject to appeal as that awarded by second or third class Magistrates. With these words I commend my amendment for the consideration of the House.

**Mr. H. Tonkinson:** Sir, at the present time there is no appeal from an order of compensation passed by a Magistrate of the first class. I think the substance of the amendment moved by my Honourable friend is that if a Magistrate of the first class passes a fine exceeding Rs. 50 an appeal would lie, why then should an appeal not lie if he makes an order for compensation exceeding Rs. 50? If it would meet my Honourable friends I am quite prepared to agree to an amendment of the Bill on those lines. But I would ask the Assembly to deprecate any extension of the rights of appeal beyond that. There are at present, Sir, in the Code ample provisions as regards revision which will check any possibilities of failure of justice. If that suggestion will meet my Honourable friends, then we on the Government Benches would be prepared to agree to such an amendment.

**Mr. K. B. L. Agnihotri:** I am quite prepared to accept the amendment which has been suggested by Mr. Tonkinson.

**Mr. H. Tonkinson:** I would suggest that we may go on to later amendments, with your permission, until the draft of this amended clause is ready.

**Dr. H. S. Gour:** I beg to move:

“That in clause 67 (iii) after the words ‘from the date of the orders’ the following be inserted:

‘or such further period as the Court may, in the circumstances of the case, think fit to direct.’”

This is a very simple amendment and I hope Government will see their way to accept it. The additions made by Government to sub-clause (4) are as follows:

“And where such order is made in a case which is not subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order.”

The object is that the payment of compensation should be withheld for a period of one month when giving the complainant a right of revision. But the revision may take a much longer time, and I therefore suggest the addition of the following words—“or such further period as the Court may, in the circumstances of the case, think fit to direct.” If the case is already launched on the revisional side of the High Court, it is not likely that it will be disposed of within one month, and therefore I submit that the Court must have jurisdiction to extend the period, and not limit it strictly, as it has been in the amended clause, to 30 days. This is all the more necessary, Sir, in view of the fact that we have already adopted the provision for alternative imprisonment in case of non-payment, and I therefore suggest that the addition of these words should be made at the end of sub-clause (iii).

**Mr. President:** Amendment moved:

“In clause 67 (iii) after the words ‘from the date of the orders’ insert the following:

‘or such further period as the Court may, in the circumstances of the case, think fit to direct.’”



**Sir Henry Moncrieff Smith:** Sir, I quite agree with Dr. Gour that, if revisional proceedings have been launched, it is not likely that the proceedings will be terminated within one month, and that the Magistrate ought to have power to delay the payment of the compensation. Sir, the Magistrate has got that power: it is quite unnecessary to add it in the clause. If my Honourable friend will look at the clause which the Bill adds, it says that compensation shall not be paid before the expiration of one month from the date of the order. "Shall not be paid before." There is nothing to say that the compensation shall be paid on the expiration of one month. It is perfectly clear that the Magistrate has a discretion, and in a case like that he will exercise his discretion. It is unnecessary to add words to the Bill which would be redundant.

**Dr. H. S. Gour:** Sir, I withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

**The Honourable Sir Malcolm Hailey:** I move, Sir, that the final consideration of clause 67 be postponed until we have prepared a draft on the clause which the House has just been discussing.

The motion was adopted.

**Mr. K. B. L. Agnihotri:** Sir, I wish to move the third amendment which stands in my name, namely:

"In clause 67-A, after sub-section (2) the following sub-section shall be added, namely:

'(3) The Magistrate before proceeding to hear the evidence shall if requested allow the accused reasonable time to prepare his case'."

Sir, section 252 as it stands at present reads thus:

"When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complaint (if any), and take all such evidence as may be produced in support of the prosecution."

Sir, it does leave a discretion to the Magistrate to adjourn the case for a reasonable period in order to enable the accused to prepare his case, but what happens often is that the Magistrate takes up the case immediately when it is put before the Magistrate and the accused and his counsel do not generally get an opportunity to go through the *chalan*, or the papers filed by the police in the Court and thus are not able to prepare the case to defend the accused. Therefore, I suggest that provision of the nature I suggest be incorporated in this Code. Then the Magistrates will certainly give some opportunity to the accused to prepare their cases. I do realise that in many cases probably the accused may take undue advantage of this provision and may want to delay the proceedings; I admit that it is just possible, but, I propose that a period considered reasonable by the Magistrate be allowed and not a period which the accused thought reasonable. Therefore, the amendment which I have moved may be accepted by the House.

**Sir Henry Moncrieff Smith:** Sir, I suggest to the House that this is a case, most certainly a case, in which we should not trench upon the Magistrate's discretion. As my Honourable friend admits, most Magistrates will allow reasonable opportunity for the accused to prepare the case if good cause is shown to them. But, surely, in the ordinary course, the best way for the accused to prepare his case is to begin by listening to the evidence for the prosecution. How else is he going to prepare his case, unless my Honourable friend contemplates the preparation of false defences and that sort of thing? (*Mr. Agnihotri:* "No, no.") As I said, Sir, I

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think this is a case in which the Magistrate's discretion should not be taken away, just as we, who are sitting in this House, on a question of motion for postponement of business, are entirely in the hands of our President. You are not obliged, Sir, to put any motion for the adjournment of business; it is entirely in your discretion, and it would be a serious hampering possibly of public business if it were not so.

**Mr. President:** Amendment moved:

"In clause 67-A, insert the following at the end :

'The Magistrate before proceeding to hear the evidence shall if requested allow the accused reasonable time to prepare his case'."

The amendment was negatived.

Clause 67-A was added to the Bill.

**Mr. J. Ramayya Pantulu:** Sir, mine is merely a drafting amendment and if it does not commend itself to the Honourable Sir Henry Moncrieff Smith, I do not want to press it.

**Mr. President:** I cannot allow amendments to be moved conditionally. Does the Honourable Member move it or not?

**Mr. J. Ramayya Pantulu :** I move it, Sir. It runs as follows :

"In clause 68, to the proposed new section 255-A add the following :

'Before passing the sentence'."

The object of my amendment is this. Previous conviction can only be proved after the accused has been convicted. I want to make it clear that this should be done before the accused is sentenced. That goes without saying. But I propose that these words be added at the end in order to make it quite clear that evidence should be recorded before the sentence is actually pronounced.

**Mr. H. Tonkinson:** Sir, I do not know whether it is really necessary to oppose an amendment moved in such halting terms. I suggest it is entirely unnecessary. There is no doubt, of course, that this action will be taken before passing a sentence. It is quite obvious I should think, Sir, to any one that that would be so. I would merely invite the attention of the House to the fact that in Chapter XXI of the Code the sections are arranged chronologically. This provision comes in proposed section 255-A, and the sentence comes in section 258. I think, Sir, that this amendment is therefore unnecessary.

**Mr. President:** Amendment moved:

"In clause 68, to the proposed new section 255-A add the following :

'Before passing the sentence'."

The question is that that amendment be made.

The motion was negatived.

Clause 68 was added to the Bill.

**Rao Bahadur P. V. Srinivasa Rao** (Guntur *cum* Nellore: Non-Muhamadan): Sir, the amendment standing in my name, runs as follows :

"In clause 69, omit the words 'if the Magistrate thinks fit'."

In place of the amendment that stands in my name, I hold in my hands a copy of the amendment drafted by the Government; and I am advised

Sir, to move it in place of my amendment, and if you permit me, I am prepared to do so, though, I must say, that I am not satisfied with it. But as a compromise and under the circumstances, I am willing to move it in place of my amendment. That amendment, Sir, runs thus :

"That in clause 69 for the words 'either forthwith or if the Magistrate thinks fit at the commencement of the next hearing of the case' the following be substituted, namely :

'At the commencement of the next hearing of the case, or if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith'."

I do not think any speech is required from me to commend it as the Government have, I understand, accepted it. I therefore move this amendment.

The motion was adopted.

Clause 69 was added to the Bill.

Clause 70 was added to the Bill.

**Mr. K. B. L. Agnihotri:** Sir, I move the following amendment :

"In clause 71, for the words from after the ' to the word 'inserted' substitute the following :

'after the word 'complainant' the words 'or his authorised agent' shall be inserted, the words 'and the offence may be lawfully compounded' shall be omitted'."

Sir, in clause 71, which refers to section 259 of the Code, we provide that

"When the proceedings have been instituted upon complaint and upon any day fixed for the hearing of the case the complainant is absent and the offence may be lawfully compounded, the Magistrate may in his discretion, notwithstanding anything hereinbefore contained at any time before the charge has been framed, discharge the accused."

Sir, this section of the present Code provides that in the absence of the complainant the case may be dismissed in default if the offence be compoundable. Sir, the Lowndes Committee recommended that in every case instituted upon complaint the case may be dismissed in the absence of the complainant. They said :

"We think that no useful result follows from attempting in ordinary complaint cases to force the complainant to go on against his will. We therefore omit the words 'and the offence may be lawfully compounded,' as has been suggested by the Bombay Government. We think the requirements of justice will be sufficiently safeguarded by the discretion which is already vested in the Magistrate under this section."

What I beg to submit is that if the case has been instituted upon a complaint, whether it was a cognizable case or a non-cognizable case, the complainant should have the liberty to withdraw from the case, or absent himself or not proceed with the case as he thinks fit.

It may be argued, Sir, that in cognizable cases, the State has to look to the interests of the public and such cases may not be allowed to be withdrawn or dismissed in default. Well, Sir, in such cases the clause as it stands now provides that such cases could only be dismissed at the discretion of the Magistrate; so there will be no hampering of justice and no escape of a criminal even in cognizable cases. Moreover, in cognizable cases in 90 out of 100 cases the police do take cognizance of such cases, and even after the filing of the complaint if the police considers that in the interests of justice and to protect the interests of the public it was necessary to take cognizance,

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they could take cognizance, and in that case this section 259 would not apply because 259 applies only in those cases in which a complaint has been instituted in Court at the instance of the complainant. Here 'complaint' does not mean an information to the police, but 'complaint' in this clause means a direct allegation made in a Court of law. Therefore, Sir, the interests of justice would not suffer in any way if my amendment is accepted.

**Mr. President:** Amendment moved:

"That in clause 71, for the words from 'after the' to the word 'inserted' substitute the following:

'After the word 'complainant' the words 'or his authorised agent' shall be inserted, and the words 'and the offence may be lawfully compounded' shall be omitted'."

**Mr. H. Tonkinson:** Sir, I admit that the amendment proposed by my Honourable friend would bring the Bill back to the measure as it was drafted by Sir George Lowndes' Committee. I would merely in opposition to the proposal of Sir George Lowndes' Committee and the proposal of my Honourable friend read the remarks of the Chief Commissioner, North-West Frontier Province, with reference to that clause. He said:

"I also would press for the retention of the words 'and the offence may be lawfully compounded', which it is proposed to omit from section 259; otherwise it leaves the door open to blackmail and an abuse of justice, for it will encourage persons guilty of serious criminal offences to pay complainants not to continue the prosecution."

Sir, I submit that that is not an imaginary evil, and that that proposal in the Bill is a proposal which should be accepted as it stands.

The amendment was negatived.

Clause 71 was added to the Bill.

**Mr. K. B. L. Agnihotri:** Sir, I move:

"That after clause 71 insert the following clause:

'71A. In section 260 of the said Code, in sub-section (1) after the proviso insert the following further proviso:

'Provided further that no case in which the accused objects to its trial in a summary way shall be so tried'."

Sir, here we have . . . . .

**Mr. President:** Before the Honourable Member begins to discuss the merits of the proposed amendment, I am not at all satisfied that it is within the scope of the Bill; I am prepared to hear him on that point.

**Mr. K. B. L. Agnihotri:** Sir, there was an original clause in the Bill which was numbered as 72 and it referred to section 260 of the Criminal Procedure Code. That clause has been omitted by the Joint Committee, and therefore I am entitled to move either its re-insertion or any amendment in that section. On this point I may perhaps mention, Sir, that on the very first day I requested the Deputy President to give me a ruling, and the Deputy President who occupied the Chair on that day was pleased to give me a ruling that I could put in amendments of this nature; and in accordance with that ruling, on previous occasions I have moved amendments referring to clauses of the Bill which have been dropped by the Joint Committee, and as such, Sir, I am entitled to move an amendment in regard to this clause also.

**The Honourable Sir Malcolm Hailey:** Mr. Agnihotri has recalled a ruling of the Deputy President on this matter. It is true that certain amendments have been allowed on the strength of that ruling. But I think the Deputy President allowed those amendments on their merits because he felt that they did actually refer to the subject matter of the Bill and I submit, that the question whether an amendment does refer to the subject matter of the Bill or not is really the crucial and decisive test. Now, may I put to you, what Mr. Agnihotri proposes in the present case? Section 260 was mentioned in the original Bill but it was proposed to amend this section (which is a somewhat long one) in one small matter only. There were a large number of sub-clauses in section 260 defining the particular offences which were to be brought within the scope of the summary procedure. It was merely proposed to add one additional offence, namely, the offence of attempting to commit suicide, within the scope of that section. This proposal, however having fallen through, the whole section has been omitted in the Bill as it came to us; but taking the opportunity of the fact that the section was mentioned (for this very limited purpose) in the original Bill, Mr. Agnihotri now proposes an amendment which makes a substantive alteration in the whole of our procedure regarding trials by summary procedure. I claim then that this is not an amendment which is relevant to the subject matter. As I say, he will by this amendment introduce considerations which are not in any way pertinent to the purpose for which section 260 was mentioned in the original Bill.

**Mr. President:** I should like to know from the Honourable Member whether he accepts the description given by the Honourable the Home Member about the clause in the original Bill and whether it tallies with his view of it?

**Mr. K. B. L. Agnihotri:** I have not been able to follow the Honourable the Home Member, Sir . . . .

**Mr. President:** I put the point to the Honourable Member as to whether the statement that clause 72 in the original Bill did in fact refer to a single offence and not to procedure under which offences might be tried tallies with his view?

**Mr. K. B. L. Agnihotri:** Yes, Sir, it referred to the addition of an offence among the summary trials that are provided in section 260 of the Code, and section 260 was brought before us in the original. If it had been embodied in the Report of the Joint Committee I would have been entitled to move any amendment in that section, according to the ruling that was previously given. In that way, if I could move an amendment to the portion other than that brought before us in the original Bill, I cannot be debarred from moving this amendment in this section.

**Mr. President:** I will deal with the point raised by the Honourable Member as to the latitude of the Assembly to amend any and every provision within a certain section because that section happens to be mentioned in the amending Bill. The Honourable Member is well aware that a section may cover a great variety of different things. I have not the slightest doubt that the Deputy President gave a perfectly just and accurate ruling in that particular case; but I do not accept the Honourable Member's reading of this case, because the original section only brought an additional offence within the scope of summary trials. Now the Honourable Member is proposing to introduce a very large change in the rights of accused persons who may be brought to summary trial.

**Mr. T. V. Seshagiri Ayyar** (Madras: Nominated Non-Official): As this is a very important matter, I hope you would allow us to put our case before the House. Sir, when a particular section is brought for the consideration of the House, what is in the mind of the Government is not the governing factor, if I may respectfully say so. We have to vote upon the section, and I take it, Sir, that ultimately you will ask that this clause do stand part of the Code. Therefore, the whole of that section is open to discussion, because I take it from the formal words in which you put the question the clause as presented is to be voted upon. Clause 67 includes the matter which the Government want to take into the Code and you will have to put to the House whether that should stand part of the Code. Under these circumstances, Sir, it seems to me, where one section is brought in the fact that Government have a particular idea in mind should not be the guide and the whole of the section should be allowed to be discussed by the House.

**Mr. President:** I must be guided by the subjects rather than by the fact that there may be two or three quite different letters in the same envelope.

**Dr. H. S. Gour:** May I advert to another aspect of the question. When a certain section comes up before this House, the question is as to whether that section should be amended. The Government say that it should be amended in a particular way. Any Honourable Member of this House may suggest that the amendment should take some other form. Consequently, by the very necessity of the case the whole section becomes subject to amendment. I submit that, when this section was an integral part of the original Bill and it was left out by the Select Committee, according to the ruling given by your predecessor in the Chair, the Deputy President, and yourself, Sir, in connection with the Workmen's Compensation Bill (the omission of Chapter II), section 260 which deals with summary trials became relevant and any Member of the House, therefore, became entitled to ask for the restoration of that section as open to discussion by this House and, that section having come up for discussion before this House, it is open to any Member to suggest an amendment to that section. I, therefore, submit that Mr. Agnihotri's amendment is in order.

**Mr. President:** I am afraid I cannot agree. The Honourable Member has not appreciated the distinction which I have drawn between a section which may raise several different subjects of importance and those subjects themselves. I draw a line between them. Otherwise, as the Honourable Member may well see, liberty to amend the Code would be practically unlimited.

**Dr. H. S. Gour:** This section merely deals, Sir, with summary trials. It categorises certain offences and says that these offences shall be summarily triable. That is all. Consequently, it comes within the ruling that has just been given. Sir, that it should deal with one single subject—in this case, the mode of trial of certain offences. That is all that the section deals with, Sir. Mr. Agnihotri's amendment is that the mode of trial shall be subject to a certain proviso, which he proposes to insert. A number of different subjects have not been brought together under section 260. It is only as regards the mode of trial in a summary manner that that section lays down one principle and one single fact. And under that section we have a large number of offences which are categorised as triable summarily.

**Mr. President:** No, I must uphold the objection taken by the Home Member, which seems to me to be valid.

**Mr. President:** Amendment moved:

"In clause 67, to sub-section (ii) add the following:

'and for the words 'to an accused person' the following shall be substituted, namely, 'or has been so ordered by any other Magistrate to pay compensation exceeding fifty rupees'."

The question I have to put is that that amendment be made.

The motion was adopted.

Clause 67 was added to the Bill.

**Mr. President:** Clause 73.

**Rao Bahadur T. Rangachariar:** Sir, would the next amendment not be covered (referring to the amendment in Dr. Gour's name) by the ruling which you have just given? The Government propose to include only a particular section. My friend wants to exclude certain sections. He may perhaps move an amendment with reference to the included section but not propose the exclusion of other sections.

**Mr. President:** Is the Honourable Member discussing clause 73?

**Rao Bahadur T. Rangachariar:** Yes, Sir.

**Dr. H. S. Gour:** He is trying to block my motion, Sir.

(Mr. President then called on Dr. Gour to move his amendment.)

**Dr. H. S. Gour:** Sir, my amendment is to section 261 of the Code of Criminal Procedure which lays down what offences shall be summarily triable. I wish to exclude therefrom certain distinct offences. These are offences punishable by section 292 (sale of obscene books), 293 (possession of obscene books), 294 (the singing of obscene songs), 426 (mischief) and 447 (trespass). Now, Honourable Members will see that the question of what is an obscene book or an obscene song cannot be summarily disposed of. Many of the sacred songs which have the sanction of religion may be described as obscene. Many of the statues which we see in the public galleries and museums may be described as obscene. It is not a matter which can be disposed of in a summary fashion. I, therefore, suggest, Sir, that these three offences dealing with obscenity be excluded from the summary jurisdiction of the Courts. I stand on very strong ground when I say that sections 426 and 447 should also be excluded. Now, if Honourable Members will turn to the definition of mischief and to the definition of criminal trespass given in section 425 and section 441, they will find that they are extremely complicated offences, and so far as regards trespass, the lawyers are not agreed as to when civil trespass ends and criminal trespass begins. Honourable Members know that trespass may be of a dual character. It may be a civil trespass or a criminal trespass, and the civil judges have not yet drawn the clear line of demarcation between these two classes of trespass. How can a Magistrate, wielding summary powers, distinguish what the Civil Courts have failed to discriminate? And the same observations apply generally to mischief. I suggest these are extremely difficult cases, cases which require close and careful scrutiny, and that therefore

[Dr. H. S. Gour.]

the Magistrate should not be empowered to deal with them summarily. I move my amendment, Sir, which runs as follows:

"In sub-clause (i) of clause 73:

- (1) After the words and letter 'in clause (a)' insert the following:  
'the figures 292, 293, 294 and 426 shall be omitted' and
- (2) Omit the figure '447' where it occurs for the second time."

**Mr. President:** Amendment moved:

"In sub-clause (i) of clause 73:

- (1) After the words and letter 'in clause (a)' insert the following:  
'the figures 292, 293, 294 and 426 shall be omitted' and
- (2) Omit the figure '447' where it occurs for the second time."

**Rao Bahadur T. Rangachariar:** I do not know whether you have considered the point which I raised, namely, whether this is not covered by your previous ruling, because it deals with sections which are not touched by the amendment.

**Mr. President:** Precisely: it is covered by my previous ruling. The Honourable Member is in order in moving his amendment.

**Mr. H. Tonkinson:** Sir, I object to the proposal of my Honourable and learned friend on the ground that it means a reduction in the jurisdiction of honorary magistrates. This section, Sir, is the section under which Honorary Magistrates try offences. I think that it is most desirable and I hope that I shall have the support of the House, which I believe includes a number of Honorary Magistrates (*Voices*: "No, no.") in objecting to any proposal to reduce the jurisdiction of honorary magistrates in this matter. My Honourable friend proposes the deletion of 5 sections from those which can be tried summarily under this section. I would refer the House to section 225 of the Code of 1872. Each of those five sections was included in the provision of that Code which corresponds to the present provision. I have never heard it suggested that honorary magistrates are not capable of trying such cases. There may be in a particular case a difficult question of criminal trespass or mischief, but such cases will not be transferred by the stipendiary magistrates to be tried by the honorary magistrates under this section. My Honourable friend objects to the honorary magistrates trying these offences. I would merely add that if he will refer to all the various amendments to the Village Acts which have recently been made, he will find that such offences are triable by panchayats,—section 294, section 426, section 447 are all triable by panchayats in one Act that I have here, the Bihar and Orissa Village Administration Act. Under these circumstances I oppose the amendment.

**Dr. Nand Lal:** Sir, I support this amendment. The grounds which have been advanced in opposition to this amendment are three. Firstly, "these are cases which are tried by honorary magistrates." I quite concede that there are honorary magistrates and honorary magistrates. Some are really capable and some are not, but the offences being of a highly technical nature and as most important points are involved in them, therefore it is not desirable that the adjudication, upon various crucial points, should be left to the discretion of the honorary magistrates. As for instance, there is a book, a religious book. The case has been sent to the honorary magistrate, and in consequence of not sufficient experience and



not having been a trained lawyer he gives a decision which is wrong. Do you know what will be the consequences? It will cause a stir. I think the Government Benches will accept this amendment which commends itself. Section 426 penalizes mischief,—it is extremely difficult to define what is mischief and what is not. Will the Government Benches be in favour of this provision under debate. I should say at once that it will hardly be right. Take the case of section 441. Section 447 is dependent on the definition given in section 441 of the Indian Penal Code which is somewhat difficult. There are such factors and points involved in that very definition that it is difficult to understand and follow the nicety of law in a very short time which the summary trial will allow. I need not go into other grounds of opposition with a view to save time. The suggestion is that summary trial should not be extended to the sections under discussion. I commend this amendment to the Government Benches. I think they will have no objection to the acceptance thereof.

The motion was negatived.

Clause 73 was added to the Bill.

**Mr. President:** Clause 74. Dr. Gour.

**Dr. H. S. Gour:** I have an assurance, Sir, from Sir Henry Moncrieff Smith that all these consequential changes\* will be considered and made at the conclusion of the debate in this House.

There is no Chief Court in Lower Burma and I take it that it will be taken due note of as a consequential amendment.

**Sir Henry Moncrieff Smith:** It will not be a consequential amendment in this Bill. The matter is being provided for in another Bill.

Clause 74 was added to the Bill.

Clause 75 was added to the Bill.

**Mr. K. B. L. Agnihotri:** Sir, I beg to move:

“That in clause 76, sub-clause (i) after the word and figures ‘Chapter XVIII’ the words ‘and cross-examined by him’ be inserted.”

Section 288 of the existing Code provides that the evidence of a witness duly taken in the presence of the accused may in the discretion of the presiding judge before whom such witness is produced and examined be treated as evidence in the case. Sir, what I beg to propose is that the mere fact that the statement has been taken down by the committing Magistrate in the presence of the accused should not be deemed to be such evidence as may be admissible in the Sessions Court under section 288 but where the witness has been examined in the presence of the accused and the accused had a chance of cross-examining him or an opportunity of cross-examining him or had cross-examined him in such a case only such a statement may be admissible in the Sessions Court, otherwise not. It may happen, Sir, that in the Sessions Court the witness was cross-examined by the accused while he was not cross-examined in the committing Magistrate's Court and the statement which he had given before the committing Magistrate was not broken down in the cross-examination as

\* Amendment No. 229 in List of Amendments :

“To clause 74 add the following :

‘and in the same section omit the words ‘and includes the Chief Court of Lower Burma’.”

[Mr. K. B. L. Agnihotri.]

it happened in the Sessions Court. It will be perfectly justifiable for the Sessions Judge to include that evidence of the committing Magistrate's Court into this Sessions Court and to convict the accused on that evidence. I think this is not a good provision and therefore in order to safeguard the interests of the accused it is better that such a statement should be made admissible in the Sessions Court wherein the accused had a right or an opportunity or has cross-examined that witness. Otherwise not. With this view I beg to move the amendment.

**Sir Henry Moncrieff Smith:** I should like to read to the House section 238 as it would stand as amended by Mr. Agnihotri:

"The evidence of a witness duly recorded in the presence of the accused under Chapter XVIII and cross-examined by him may in the discretion of the presiding judge be treated as evidence."

I do not know whether it is the evidence which is to be cross-examined or the accused or Chapter XVIII. The word 'cross-examined' might apply to any of those. The substantive to which the words will not apply is 'witness.' Therefore the drafting of my friend's amendment is really hopeless. I think my friend has also overlooked that this is a provision that enables the evidence taken by the committing Magistrate to be taken as evidence in the Sessions Court only after the witness has been examined and cross-examined in the Sessions Court. That is a sufficient safeguard in this case. It would be entirely unreasonable, as my friend suggests, to lay down that unless the witness was cross-examined in the Magistrate's Court it would be impossible to use his evidence in the Sessions Court. It would enable the defence to obstruct, boycott the prosecution altogether. They would be given an opportunity of cross-examining in the Magistrate's Court, and as a matter of fact, Sir, I understand that it is a very common thing for the defence to reserve their cross-examination till they come to the Sessions Court. In every such case, Sir, it would be impossible to treat that evidence, use that evidence, as evidence in the Sessions Court even though the witness might be a purely formal one, a purely technical one.

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

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 7th February, 1923.

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