THE

# LEGISLATIVE ASSEMBLY DEBATES

## (Official Report)

VOL. III.

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*(1st February, 1923 to 20th February, 1923.)*

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## THIRD SESSION

OF THE

# LEGISLATIVE ASSEMBLY, 1923.


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# LEGISLATIVE ASSEMBLY.

*Monday, 5th February, 1923.*

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

## QUESTIONS AND ANSWERS.

### Interest-free Advances for Passages to Europe.

318. ***Lieutenant-Colonel H. A. J. Gidney:** (*a*) Will Government be pleased to state why Government servants of Asiatic domicile have been excluded from the recent concession of interest-free advances for passages to Europe?

(*b*) Does not the concession in effect apply, almost exclusively, to officers in the Imperial Services?

(*c*) If it is thought that facilities are required to enable Government servants of non-Asiatic domicile to visit their homes, do Government contemplate granting similar advances to Government servants employed in Delhi who wish to visit their homes, for example, in Madras?

(*d*) Will an advance be granted to a Government servant of Asiatic domicile who has made or proposes to make his home in England or to visit that island on medical advice for reasons of health, or to such a Government servant who wishes to educate his children there?

(*e*) Is it a fact that Government servants of non-Asiatic domicile already draw additions to their salaries in the way of overseas allowance and, in some instances, higher salaries than those fixed for the same posts when not held by officials recruited outside India?

(*f*) If so, will Government be pleased to state why at this late date it is necessary to super-add a concession which is denied to other officials?

**The Honourable Sir Malcolm Hailey:** (*a*) Because the officer of non-Asiatic domicile is not working in his own country whereas officers of Asiatic domicile are.

(*b*) No. It is being extended to officers of non-Asiatic domicile in the provincial services.

(*c*) No. The concession has been granted entirely on account of the high cost of passages to Europe.

(*d*) This is not permissible under the rules for the reason stated in answer to part (*a*).

(*e*) Officers of non-Asiatic domicile in certain departments who are drawing pay under a time-scale receive overseas pay. At present certain officers of Asiatic domicile also draw this pay, but new entrants, except Indians entering the Indian Civil Service by means of the open Competitive examination in London, until 1925, draw pay according to domicile, only those of non-Asiatic domicile being eligible for overseas pay. There is no

overseas pay for posts above the time-scale, and there is no differentiation in pay according as the incumbent is of Asiatic or non-Asiatic domicile.

(*f*) The Honourable Member is referred to the answer to parts (*a*) and (*c*) of this question.

**Lieut.-Colonel H. A. J. Gidney:** The Honourable Member in reply to part (*c*) of my question stated that the concession was due to the high cost of passages in force now. I should imagine that this reason should apply equally to the excessive railway rates that obtain to-day in India.

**Mr. President:** That is not a supplementary question. That is an assertion.

CONCESSIONS TO TEA-GARDEN COOLIES ON A. B. RAILWAY.

319. ***Rai Bahadur G. C. Nag:** 1. With reference to the information supplied privately to me in reply to my question No. 165 asked on the 17th January, 1923, that concessions in fares have been granted by the Assam Bengal Railway to coolies of tea-gardens in Assam firstly because the Railway has directly benefited by the development of the tea industry in Assam, and secondly because the coolies on the expiry of their employment on tea-gardens settle down and help in adding to the sources of revenue to the Government of Assam by clearing jungle and taking up land for cultivation, will the Government kindly ascertain from the said Railway since when these concessions have been granted, and since when the Railway discovered that these concessions could be justified on the two grounds mentioned?

2. Will the Government ascertain from the said Railway if it grants such concessions to the people who annually migrate in large numbers to Assam merely to take up land and settle down as cultivators?

3. Are the Government of India aware of the large influx of immigrants in recent years from the Eastern Bengal districts to Assam who have helped in reclaiming waste-lands in Assam? Are such people granted concessions in fares by the Assam-Bengal Railway? If not, why not?

**Mr. C. D. M. Hindley:** The information is being obtained from the Agent, Assam Bengal Railway, and will be communicated to the Honourable Member in due course.

TONNAGE OF MERCHANT MARINE.

320. ***Mr. W. M. Hussanally:** What is the gross tonnage of the Merchant Marine respectively of (1) Great Britain, (2) France, (3) Spain, (4) Portugal, (5) Japan, (6) America and (7) India?

**Mr. A. H. Ley:** The gross tonnage of vessels of 100 tons and over as recorded in Lloyd's Register Book, 1922-23 edition, belonging to the countries specified is as follows:

| | |
|---|---|
| Great Britain | 19,295,637 |
| France | 3,845,793 |
| Spain | 1,282,757 |
| Portugal | 285,878 |
| Japan | 3,586,918 |
| The United States of America | 17,062,460 |
| India and Ceylon | 235,160 |

These figures include steamers and motor vessels and in several cases also sailing ships. The figures given for the United States of America include those of vessels plying on the Great Lakes.

**Mr. W. M. Hussanally:** Cannot we have any figures for India alone without Ceylon?

**Mr. A. H. Ley:** I must ask for notice of that question.

**Mr. W. M. Hussanally:** The question did not ask for figures for Ceylon at all.

INDIAN COASTAL TRADE.

321. ***Mr. W. M. Hussanally:** What is the total amount of Indian coastal trade? How much of it is served by Indian Merchant Marine and how much by Merchant Marines of other countries?

**Mr. A. H. Ley:** The Honourable Member is referred to the "Annual statement of the Coastal Trade and Navigation of British India" which contains all the statistical information available about coastal trade.

INDIAN SHIPPING COMPANIES.

322. ***Mr. W. M. Hussanally:** How many Indian Shipping Companies were started during the past 50 years? How many of them succumbed and why? How many of them still survive?

**Mr. A. H. Ley:** The Honourable Member is referred to the answer given to a somewhat similar question (No. 136) asked by the Honourable Mr. Lalubhai Samaldas in the Council of State on the 24th March, 1922. I may add that a later issue of the Statistical Department publication "Joint Stock Companies in British India and Mysore," *i.e.*, for 1919-20, has also been placed in the Library.

DEFERRED REBATE SYSTEM.

323. ***Mr. W. M. Hussanally:** (*a*) What is "deferred rebate system"? How much is this rebate granted by Shipping Companies to shippers to and from India? Which companies grant this rebate and why?

(*b*) Is it a fact that this "deferred rebate" is granted only by Shipping Companies belonging to foreign countries for the purpose of keeping shippers in hand?

**Mr. A. H. Ley:** I am afraid that I cannot undertake to give within the limits of an answer to a question a description of the system known as the 'deferred rebate' system. The whole subject has recently been under inquiry by the Imperial Shipping Committee at home, and I hope to be able shortly to place in the Library a copy of the Imperial Shipping Committee's report which will give the Honourable Member full information.

**Sir Deva Prasad Sarvadhikary:** Is it a fact that a part of the deferred rebate system is that the rebate is paid at the end of a specified period and is forfeited if the party entitled to it happens to give his custom elsewhere.

**Mr. A. H. Ley:** I believe that is so.

RATE WAR AMONG SHIPPING COMPANIES.

324. *Mr. W. M. Hussanally: (*a*) Is it a fact that a sort of rate war exists among foreign shipping companies as against Indian Companies?

(*b*) If the system of " deferred rebate " and of rate war exist in India do Government propose to make these systems impossible by Statute?

Mr. A. H. Ley: The Government of India have no information regarding the alleged rate war. They propose to take no action in regard to the deferred rebate system until they have been able to study the report referred to in the answer to the previous question.

AIDS TO SHIPPING FIRMS.

325. *Mr. W. M. Hussanally: (*a*) Have the Government of India, in the past, given any direct or indirect aid to any Indian National Shipping firm, such as bounties, mail contracts or subscriptions, cheap loans, preferential railway rates, reservation of coastal trade and the like, with a view to encourage Indian ship-building and navigation as is done by other countries? If not, why?

(*b*) If the answer to the above question be in the negative, do Government propose to offer any such aid to Indian Shipping firms in the near future?

Mr. A. H. Ley: (*a*) Mail contracts are purely business transactions and differ intrinsically from the aids specified in the Honourable Member's question. The Government of India have given no assistance of the nature indicated to any shipping company whether registered in India or not.

(*b*) The Government of India have no present intention of doing so.

I would add that information regarding Mail services by steamers is given in Appendix XI to the Annual Report on the Posts and Telegraphs of India for the year 1921-22. The contract of the British India Steam Navigation Company expired on the 31st January last and has been extended for one year. It is proposed shortly to call for tenders. Mail Contract with the P. and O. S. N. Co. is arranged by His Majesty's Postmaster General and the payments are allocated between different administrations according to the Morley Award.

B. I. S. N. COY.'S TRADE.

326. *Mr. W. M. Hussanally: (*a*) Is it a fact that the British India Steam Navigation Company has almost the total monopoly of carrying all coastal trade and mails in India? What was the amount received by this Company, from Government of India in 1921-22 for (*i*) carrying mails, (*ii*) carrying Government stores?

(*b*) What amount was paid in the same year to the P. & O. Company for similar purposes?

(*c*) When do contracts with these Companies expire?

(*d*) Do Government propose offering these contracts to Indian Shipping firms on the expiry of the above contracts with a view to encourage Indian National Shipping?

**Mr. A. H. Ley:** The Government of India have no information of the proportion of the coastal trade of India carried by the ships of the British India Steam Navigation Company.

Particulars asked for about the mail contracts and the payments made under them are being collected and will be furnished by the Department which deals with this subject. The Government of India have no knowledge what stores departments or Local Governments may at times have sent by sea from one port to another in India and do not propose to endeavour to collect it.

(*d*) The action that will be taken in this matter will be decided when the event arises.

RAILWAY PREFERENTIAL GOODS RATES.

327. ***Mr. W. M. Hussanally:** (*a*) Is it a fact that Indian Railways or any of them, allow preferential rates to any foreign shipping companies for the carriage of such goods as are intended to be exported abroad; or imported from other countries?

(*b*) And is it a fact that railway freight rates for goods transported from one place to another within India and intended for local consumption are higher? If so, why?

**Mr. C. D. M. Hindley:** (*a*) The reply is in the negative and (*b*) therefore does not arise.

INCOME FROM INCREASED POSTAL RATES.

328. ***Mr. W. M. Hussanally:** 1. With reference to answers given by Sir Sydney Crookshank to supplementary questions to No. 249 on 23rd January, 1923, will Government please state (*a*) the income from increased postal rates sanctioned last year up to 31st January, 1923, or 31st December, 1922, (whichever be available) as compared with the income for the same period the year before? The income from Telegraphs to be excluded?

2. Has the anticipated income been reached?

3. What has been the cost during the above period of reprinting, overprinting, re-labelling, re-packing freight and all other incidental charges incurred in consequence of the increased postal rates?

4. Deducting this expenditure what has been the nett income from the increase in postal rates?

**Colonel Sir Sydney Crookshank:** The necessary information is being collected and will be supplied to the Honourable Member as soon as it is available.

VACCINE FOR BOVINE TUBERCULOSIS.

329. ***Rai Bahadur G. C. Nag:** Are the Government aware of the alleged discovery by the Pasteur Institute of Lille, of a vaccine for conferring immunity from tuberculosis on bovine animals and will they consider the advisability of instituting suitable inquiries of the French

Government with a view of enabling the treatment to be introduced into this country as soon as possible?

**Mr. J. Hullah:** The researches referred to in the question are well known. In 1921, Mr. Edwards, now Director of our Bacteriological Institute, at Muktesar, was in personal communication with the Sub-Director of the Institute at Lille on the subject, but so far as he is aware the work has not yet gone beyond the experimental stage.

The question of bovine tuberculosis is receiving attention in the Muktesar Laboratory. Such statistics as are available indicate that the disease is rare in this country, and it has not yet been settled whether Indian cattle are more resistant than European cattle or whether the bacillus in India is less virulent than in Europe. Work on these problems has already been published in India and the Director of the Institute at Muktesar is now about to conduct further investigations. Bovine tuberculosis is one of the subjects for discussion at a veterinary conference to be held at Calcutta this month.

N.-W. F. COMMITTEE REPORT.

330. ***Dr. Nand Lal:** (1) Is the Government of India aware that the public is anxious to know as to when the N. W. F. Committee Report will be out?

(2) Will the Government of India be pleased to state as to why its publication has been delayed?

(3) Will the Government of India be pleased to enlighten this Assembly as to when it (the aforesaid report) will be placed on the table?

**Mr. Denys Bray:** (1) Yes.

(2) The Report has only recently reached Government in its complete form and is still under consideration.

(3) I regret that I am unable to give the Honourable Member the information for which he asks.

ROYAL COMMISSION ON PUBLIC SERVICES.

331. ***Rai Bahadur G. C. Nag:** Will Government kindly state what expenditure was incurred by it on the Royal Commission on Public Services in India respectively in 1886-87 and 1916?

**The Honourable Sir Malcolm Hailey:** The Commission of 1886-87 was not a Royal Commission. It was appointed by the Governor General in Council. The expenditure incurred on it in that year was Rs. 3,29,734. Some expenditure was also incurred in the following year but actual figures are not available.

The total cost of the Royal Commission in 1912-15 was Rs. 12,28,159. It has recently been ascertained that the figure given by Sir William Vincent in reply to a question asked in the Assembly by Mr. M. K. Reddi Garu in September, 1921, did not include expenditure incurred in England which has been included in the above estimate.

LICENSE FOR RAILWAY VENDORS.

141. **Lala Girdharilal Agarwala:** 1. Is it a fact that vendors of articles of food, etc., are not allowed to sell those articles to passengers on railways without making some payment to the Railways for that sort of license?

2. Is this sort of tax permissible under any rule or law, if so, what?

3. Are not the Railways bound to look to the convenience of passengers while travelling without any direct or indirect taxation?

4. Will the Government be pleased to state what is the total amount thus realized by the Railways within the last 3 years and do Government propose to stop the practice in future?

**Mr. C. D. M. Hindley:** (1) Yes.

(2) and (3) This is not a tax.

The ordinary practice is that a small charge is made to vendors and contractors licensed to sell sweetmeats, etc., on station platforms, and it is to the convenience of passengers as well as of railways that only authorised vendors subject to railway control and inspection should be allowed on the platforms.

(4) Government is not in possession of the information and as at present advised do not propose to take up the question of interfering.

REDUCTION OF B. N. RAILWAY STAFF AT KHARAGPUR.

142. **Mr. N. M. Joshi:** (*a*) Is it a fact that a large reduction has been made in the low-paid Indian staff in the Bengal-Nagpur Railway workshop at Kharagpur?

(*b*) Is it also a fact that the number of working days and the daily hours of work have been reduced so as to considerably reduce the earnings of the employees who are working?

(*c*) Will Government be pleased to explain why this step has been taken?

(*d*) Will Government be pleased to state what they propose to do to remedy the sufferings caused by the unemployment or insufficient employment? and

(*e*) Is it a fact that at this very time or only a short time ago some highly paid officers have been appointed on the above-mentioned Railway?

**Mr. C. D. M. Hindley:** (*a*) The services of a certain number of daily paid staff in the Bengal Nagpur Railway workshop have been terminated. The men affected were unsatisfactory workers.

(*b*) Short time in the Kharagpur Workshop has been introduced.

(*c*) This step has been taken for financial reasons.

(*d*) Government propose to take no action as the services of only those men have been terminated whose work did not justify retention.

(*e*) I presume that the Honourable Member means to enquire whether additional highly paid posts have recently been created and if so this is not the case.

THE AMBALA CANTONMENT COMMITTEE.

143. **Mr. Pyari Lal:** 1. Is it a fact that the Ambala Cantonment Committee has refused to entertain applications for the construction of upper storeys in that cantonment since June 1922?

2. Is the Government aware that this said Committee has taken this action on the plea of there being a general prohibitory order therefor, by the District Commander?

3. Will the Government be pleased to state the nature of this prohibitory order and the reasons for which it has been given?

4. Is it a fact that on a reference by the All-India Cantonments Association to the Lahore District on the subject, the District Commander has denied the existence of any such prohibitory order under its letter No. 20537-9-Q.-2, dated the 20th December, 1922 to the Honorary Secretary of the Association?

5. Do the Government propose to direct the Cantonment Committee, Ambala, to entertain and consider such applications, on their merits?

6. Is the Government aware, that in several cases, the applicants gave written assurances that no pipe water shall be used in the construction?

7. Do the Government propose to take immediate action on the matter?

**Mr. E. Burdon:** 1—7. Government have no information on the subject, but are inquiring. I will inform the Honourable Member of the results as soon as possible.

THE BENARSI DASS HIGH SCHOOL, AMBALA.

144. **Mr. Pyari Lal:** 1. Is the Government aware that an application for the construction of upper storey in the Benarsi Dass High School, Ambala, was delayed in the Cantonment office for more than six weeks and then rejected?

2. Is it a fact that the applicant informed the Secretary, Cantonment Committee, of his treating the application as sanctioned under Section 92 (1) of the Cantonment Code, and asked him to return the plans?

3. Is it a fact, that instead of returning the plans, the Secretary stopped the applicant on a public road and insulted him by saying that he blindly signed the letter for the return of the plans under the influence of his "Jackals"?

4. Has the attention of the Government been drawn to the "Cantonment Advocate" of 25th November, 1922 giving details of the above incident?

5. Will the Government be pleased to state the facts of the incident?

6. If the facts be as stated in the "Advocate," will the Government take necessary action in the matter?

7. If so, will the Government be pleased to state what action it proposes to take?

**Mr. E. Burdon:** 1—7. The Government of India have no information on the subject but are inquiring. I will let the Honourable Member know the results as soon as possible.

CANTONMENT ADMINISTRATION.

145. **Mr. Pyari Lal:** 1. Is it a fact that the control of civic Cantonment Administration has now been transferred from the Q. M. G., Army Headquarters to the Commands?

2. If so, is the Government aware that there is no civic expert on the staff of the Commands?

3. Will the Government consider the desirability of appointing such an expert to the staff of the Commands?

4. Has the Government seen the article headed " Decentralisation in the Army Department ", published in the " Cantonment Advocate " of 25th December, 1922?

5. Is the Government aware that as stated in the aforesaid article, the All-India Cantonments Conference has already passed a Resolution to request the Government to transfer this control to its civic Department?

6. Has the Government considered this suggestion? If so, with what result? If not, will the Government be pleased to give it their early consideration?

**Mr. E. Burdon:** 1. The process of decentralising control is now generally under consideration by Government. A partial delegation to Commands has already taken place.

2. Yes.

3. The question of appointing officers to assist the General Officers Commanding-in-Chief in exercising control is being examined.

4 and 5. Yes.

6. As I have already indicated in my reply to the first part of the question, the whole matter of the future administration of cantonments is, at the present moment, under consideration.

NON-OFFICIALS ON CANTONMENT COMMITTEES.

146. **Mr. Pyari Lal:** 1. Is the Government aware that there is great dissatisfaction in Cantonments at the nomination of the non-official members of the Cantonment Committees, under Section 4 of the existing Cantonment Code?

2. Has the attention of the Government been drawn to an article headed " Why is election delayed ", published in the " Cantonment Advocate " of 25th December 1922?

3. Is the Government aware that the Government of India Cantonment Reform Committee has urged on page 36 of its printed Report that " action " on such of their proposals as can be given effect to, should not be delayed?

4. Is it a fact that in pursuance of this recommendation the Government has already modified Section 216 of the existing Cantonment Code?

5. Will the Government be pleased to state the reasons why action has not been taken to give effect to the Reform Committee's recommendation regarding the introduction of elective principle in Cantonment Committees so far, by a modification of Section 4?

6. Will the Government be pleased to do so now?

7. Is the Government aware that there is great misunderstanding in cantonments with regard to the genuineness of Cantonment Reform, owing to the great delay in its introduction?

**Mr. E. Burdon:** 1. Government are aware that a change of the existing system is desired in certain quarters.

2, 3 and 4. Yes.

5 and 6. Government have decided to introduce legislation which will provide, amongst other things, that a certain number of the members of cantonment committees should be elected members; but they consider that it is unnecessary and would not be convenient to introduce this particular change in advance of their wider proposals.

7. No.

LALA GULZARI LALL OF CANTONMENT COMMITTEE, NEEMUCH.

147. **Mr. Pyari Lal:** 1. Is the Government aware that no action has been taken so far in restoring Lala Gulzari Lall to his seat on the Cantonment Committee of Neemuch as was contemplated by the Government reply No. 13668/3 (A. G.-8), dated the 18th September, 1922 to the All-India Cantonments Association?

2. Will the Government be pleased to state why the action has been delayed so long?

3. Will the Government be pleased to take immediate action in consonance of the reply referred above?

**Mr. E. Burdon:** 1—3. Enquiries are being made in the matter and I will inform the Honourable Member of the result as soon as possible.

AMRITSAR GRIEVANCES.

148. **Mr. Pyari Lal:** 1. Is it a fact that the action contemplated in the Government reply dated 23rd October, 1922 to my question regarding (Amritsar Grievances) has not yet been taken?

2. Is the Government aware that as a consequence of this delay the grievances of Amritsar people remain unredressed?

3. Will the Government be pleased to state reasons why action has not been taken so far in the matter as indicated by the Government reply quoted above?

4. Is the Government aware that both the question and reply were published in the *Cantonment Advocate* of 25th October and 10th November, 1922 respectively?

5. Does the Government know that the non-cancellation of the order even after the Government's admission of its illegality, has given rise to grave discontent in Amritsar and other cantonments?

6. Will the Government be pleased to take immediate action in the matter?

**Mr. E. Burdon:** 1—6. Enquiries are being made, and I will let the Honourable Member know the result as soon as possible.

## THE CRIMINAL LAW AMENDMENT BILL.

**The Honourable Sir Malcolm Hailey** (Home Member): I have to introduce:

"The Bill further to amend the Code of Criminal Procedure, 1898, the European Vagrancy Act, 1874, the Indian Limitation Act, 1908, and the Central Provinces Courts Act, 1917, in order to provide for the removal of certain existing discriminations between European British subjects and Indians in criminal trials and proceedings."

The Bill has already been introduced by publication, and therefore under the rules I have not to ask for the leave of the House to introduce it. But the circumstances are so unusual and I myself feel the occasion in some sense to be so momentous that I cannot content myself simply with laying the Bill on the table of the House. There is possibly no question on which European and Indian feeling in this country has been more divided than in regard to the maintenance of racial distinctions, as we use the term, in criminal trials. There is no question on which antagonism has been more pronounced. To me therefore this is not merely a question of revising a chapter of our Criminal Procedure Code; it is not merely a question whether we should attempt a formal improvement of procedure in a sphere of justice, where, it is alleged that justice has often broken down. These may be important objects in themselves; but the character of this Bill transcends them; there are aspects of the question which bring it almost to a different plane. I would ask the House to consider with me all the circumstances of the case. I shall not attempt to go into the long history of the conflict between the communities on this question; nor need I revive memories of the embittered controversy of 40 years ago. That is past, and those memories had best stay in the past which holds them. But I emphasize this fact only, that for 40 years we have made no movement designed to bring us together on a question the solution of which is vital if we are to secure understanding and good will between the two communities. Other barriers which seemed irremovable have yielded; and claims which at first seems impossible have been conceded. But here we have stood fast. To the Indian the retention of the trial privileges of Europeans has appeared to be the wanton ascertain of a claim of superiority on the part of one race over the other. If that seemed inexcusable in itself, it was aggravated by the general belief, supported in some cases by statements of judicial authority, that the retention of these privileges had on occasion led to a complete denial of justice. If that has been the Indian view, we ought at the same time to remember what the European view has been. To Englishmen there is no more deeply-rooted tradition than that of the inviolable right of trial by a jury of their own countrymen. Further than this, a large portion of our English population out here does not come to India of its own choice, for those who are in the British Army in India are drafted here in the course of their military service. Then again you must also remember that there have been occasions, some of them unfortunately in the not distant past, when racial feeling has run so high that Europeans here might well be justified in believing that there was a danger that false prosecution, tainted evidence and social pressure on the Indian Magistracy, might involve a real denial of justice to them.

But I do not wish to enlarge on the picture as it appeared to one side or the other. I can speak to-day of the case as it stands to-day, and not as it stood in the long yesterday. For to-day, for the first time in 40 years, we have the earnest of a solution of this question. The House knows well

[Sir Malcolm Hailey.]

the stages by which we have proceeded to this Bill. It is not a Government proposal; it is based on the recommendations of a Committee as representative, as impartial in temperament and as skilled in law as we could ever hope to attain. There were only three officials on it; one, I regret to say, no longer an official of the Crown, though I think the Crown has no more loyal friend. Much as India owes to Sir Tej Bahadur Sapru, not the least of its debts will be to him as Chairman of this Committee; and much as the Committee itself was indebted to his legal acumen and great knowledge of the law, his greatest contribution was the sense of moderation and of equity with which he guided its deliberations. There were on that Committee in all six Europeans, nine Indians and one representative of the Anglo-Indian community. Their final conclusion was admittedly a compromise. While it proposed to withdraw many of the exclusive privileges enjoyed by the European British subject, yet on the other hand it sought to improve the position of Indians generally in regard to criminal trial procedure. Whatever the fate of this Bill, yet the report of the Committee is in itself a great achievement; history will recognize that it exhibited a spirit of tolerance and a sense of moderation rare in the affairs of life and perhaps unique in the annals of India. All honour is due to the representatives of two communities which could arrive at a common understanding on a question with such a past, so pregnant with difficulties, and so rife with points of difference.

We have translated that understanding into our Bill. There are of course some exceptions; the House knows them, and I do not wish to dilate on them save in two points of importance. If His Majesty's Government have been unable to agree that Dominion subjects should be deprived of the status which they now enjoy in common with the European British subject, and if in addition they have had to make a reservation regarding the transfer of certain classes of cases to the High Courts, nevertheless I do not think their attitude should be misinterpreted. They have not stood out against the proposals of the Committee in regard to the withdrawal in great bulk of European privileges generally. So far they have followed the common understanding on which the Committee arrived. But as regards Dominion subjects, they had a peculiar and a difficult position. We know well the feelings of India on the subject of franchise and other disabilities which Indians suffer in the Dominions; I think there are few Englishmen in India who do not sympathise with them. But, at the same time I do not think that India can cavil if His Majesty's Government, with an outlook on the essential solidarity of the Empire as a whole—and especially at this time—were unable to accede to a measure which in their belief would alienate the Empire from India, and destroy all chance of bringing into full effect that Resolution of reciprocity to which the greater part of the Empire representatives agreed. Then, again, as regards the reservation in respect of transfer in certain cases of charges against men coming under the Army Act, here also His Majesty's Government stood in a special position. As I have said, the majority of these men come out to India not of their own choice, but because they are drafted here in the course of their Military service. As a result of this Bill they will already be in a position less favourable than that which they enjoy in England under the English Law. It is not unreasonable that His Majesty's Government should seek by this measure of reservation to prevent any discontent which might arise in the British Army owing to the reduction under this Bill of privileges which they now enjoy in offences which do not fall within the special category.

Here then the case now stands. Perhaps the greatest achievement of the Committee is that whereas the present discrimination in trial procedure turns in part on the race of the trying Magistrate, that distinction has now gone. Such privileges as the European will retain will be privileges of procedure only; there will be no provision in our Code which lays down that a European should not be tried by an Indian. That in itself is an advance exceeding even the most optimistic expectations of those who considered the question 10 or even 5 years ago. There are no doubt those who are disappointed that the privileges now enjoyed by European British subjects will not be entirely withdrawn; and there may be others, who while they do not go to this length, are dissatisfied with the details of the Bill. But, is India, for that reason, prepared to reject a measure which shows that the two communities are prepared to arrive at a common understanding on a question which has for many years kept them apart? The solution is not a final one. It offers no obstacle to further advance on the road which has already been marked out. Indians have evidence that Europeans resident in India are prepared to place a growing confidence in the sense of justice of Indian Magistrates and of Indian Courts. More than that, they have patent proof, for all the world to see, that the European community in order to foster that goodwill with Indians, which is so vital to both communities, are prepared to make sacrifices of principle and to surrender safeguards to which they had hitherto held with great tenacity. Believe, me, the sacrifices that they are prepared to make are to them no light ones. I am quite sensible that Indians who have joined in this compromise have also, on their side, felt that they were making sacrifices in that they withdraw their claim for a full cancellation of all privileges enjoyed by European British subjects. But it is just those mutual surrenders that give the understanding its unique value. It is only by mutual surrender that you can ever arrive at a solution of differences which strike so deeply into the life of two communities. Whatever confidence you may have in the ability of India to shape its own course, and ultimately to gain a position in the Empire which will satisfy its own aspirations, no one can doubt that if in that struggle it carries with it the goodwill and secures the co-operation of Europeans in India, the advance will be more rapid and the foundations of its position will be more secure. (Hear, hear.) It is because I feel that this Bill establishes a new landmark in the mutual understanding of Europeans and Indians; it is because I feel that it gives to India so conspicuous an opportunity of showing to the outside world a tangible proof that Europeans and Indians are prepared to work together with a mutual knowledge of each others difficulties and with a mutual desire to work together in a common understanding, that I commend it to this House. Of all things the spirit of compromise and goodwill is the most elusive. Capture it while you may, and enshrine it in an imperishable form in your Statute Book.

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## 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.

**Mr. K. C. Neogy** (Dacca Division: Non-Muhammadan Rural): Sir, I have given notice of an amendment for the re-insertion of the provisions

[Mr. K. C. Neogy.]

relating to employers' liability which were omitted from the Bill by the Select Committee. I move:

"That after Chapter I the following be inserted as Chapter I-A:

"CHAPTER I-A

EMPLOYERS' LIABILITY.

Defence of common employment barred in certain cases.

3. Where personal injury is caused to a workman:

(*a*) by reason of the omission of the employer to maintain in good and safe condition any way, works, machinery or plant connected with or used in his trade or business, or by reason of any like omission on the part of any person in the service of the employer who has been entrusted by the employer with the duty of seeing that such way, works, machinery or plant are in good and safe condition; or

(*b*) by reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or

(*c*) by reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform and did conform, where the injury resulted from his having so conformed; or

(*d*) by reason of any act or omission of any person in the service of the employer done or made in obedience to any rule or bye-law of the employer (not being a rule or bye-law which is required by or under any law for the time being in force to be approved by any authority and which has been so approved) or in obedience to particular instructions given by any person to whom the employer has delegated authority in that behalf;

a suit for damages in respect of the injury instituted by the workman or by any person entitled in case of his death shall not fail by reason only of the fact that the workman was at the time of the injury a workman of, or in the service of, or engaged in the work of, the employer.

Risk not to be deemed to have been assumed without full knowledge.

4. In any such suit for damages, the workman shall not be deemed to have undertaken any risk attaching to the employment unless the employer proves that the risk arising from any negligence, act or omission, referred to in section 3, was fully understood by the workman and that the workman voluntarily undertook the same.

Limitation.

5. The provisions of this Chapter shall not apply in the case of any suit for damages in respect of an injury which is instituted after the expiration of six months from the date of the injury."

It will be noticed that I have taken these amendments *verbatim* from the clauses as they stood in the original Bill with a slight alteration in clause 4. Now, Sir, the distinction between workmen's compensation and employers' liability may be briefly stated to be this. This Bill, in the provisions relating to workmen's compensation, provides for an automatic remedy in the case of accidents arising out of the employment of any workman irrespective of any negligence on the part of the employer or any superintendent or any co-worker. But the employers' liability provisions relate to the workman's right to damages in cases where any injury has been sustained by him on account of any act, omission or negligence either on the part of the employer or any co-workman or a superintendent. Under the workmen's compensation provisions, there is a monetary limit to the amount of compensation, but under the ordinary law the employers' liability to pay damages to an injured workman, when the injury results from any negligence on the part of the employer, is not limited by any such monetary

maximum. It is interesting to note that the necessity for legislation on employers' liability arose in England as early as 1880, while the first Workmen's Compensation Act was passed in 1897. This necessity arose in England because of the peculiar application of the doctrine of common employment of the Common Law of England to certain cases of accident which defeated the claims of the workmen on the ground that the injury was a result of any act or default of their fellow-workmen of different grades. Now the question has been raised as to whether the same necessity exists in India. It is admitted on all hands that, so far as this defence under the Common Law of England is concerned, it is an unjust defence, and the question is whether that defence is open to any employer in India. A learned Judge of the Madras High Court has asserted that the Judges of the Indian Courts could be depended upon not to apply that pernicious doctrine in India. But Mr. Justice Coutts-Trotter is only one among several Judges of one out of several High Courts in India, and while his opinion is entitled to great respect, I do not think it can be accepted on his authority that the High Courts will rule out any such defence. Besides, there is no knowing that there will be any uniformity of decision in this matter in the various High Courts. It may be said that the Common Law principle of common employment will not be applied to India because the Common Law rules do not apply to India; and that the principles of justice, equity and good conscience will guide the High Courts in India. But I think it has been pointed out by as high an authority as Sir Frederick Pollock that the Common Law principles are apt to be introduced into India, not as Common Law principles, but as principles of justice, equity and good conscience. After all, what do you lose by providing for any such contingency as may arise on the application of the doctrine of common employment in India? Turning now to objections taken not on legal grounds but on the merits of employer's liability, I find that the Bengal Chamber of Commerce is prominent among the objectors. But these provisions are unanimously approved by the Local Governments, and while the Bengal Chamber of Commerce takes exception to them I may point out that the Bombay Chamber of Commerce has given its positive approval to this proposal, and similarly other commercial bodies also have approved, or at least not signified their disapproval, of these provisions. Now the report of the Select Committee says that it has not been demonstrated to their satisfaction that the necessity for legislation on these lines has arisen in India, and that if the doctrine of common employment is aimed to be applied to such cases in India the defence of common employment and that of assumed risk should be removed not only from the very limited class of workmen to whom this Bill will apply, but from all workmen. I should have given effect to this recommendation of the Joint Committee in my amendment had it been open to us to do so, because we have already adopted the definition of 'workman' in clause 2; and therefore it is no longer open to us to change that definition for this particular chapter. I may suggest to the Government, if they are prepared to accept these provisions, to amend the definition of workman in another place so as not to place any restriction on the definition of workman so far at least as the employer's liability provisions are concerned.

On a point of order, Sir, shall I move each clause separately, or all the three clauses together? I have made certain changes in clause 4 of this chapter which may have to be explained later on. Really the discussion will turn upon clause 3, as to whether or not we are going to accept this provision.

**Mr. President:** As a matter of form, the Honourable Member had better move each clause separately.

**Mr. K. C. Neogy:** Therefore I beg to move clause 3 as read out by me.

**Mr. B. S. Kamat** (Bombay Central Division: Non-Muhammadan Rural): Sir, before we proceed to the discussion of this clause I want a ruling from the Chair on one or two points. The first is whether the Mover is entitled to make changes or even a slight change as he called it in the wording of the three or four sections as they stood originally. I can quite understand that he could ask for the reinsertion of the old sections as they stood, but what he is now trying to do is to insert certain changes of his own from the original sections. Whether he can do that without any notice to us is the first point. Secondly, I want to know whether in the event of these sections being carried by the House I can move an amendment which would be a consequential amendment; because, there are certain sections in the English Act from which the Mover has got his amendment, on which I may base my amendments. Whether I would be allowed without notice to insert my consequential amendments, if his amendment is now carried, is the second point on which I seek your ruling.

**Mr. President:** I see no objection to the Honourable Member proposing to amend the Bill as it came back from the Joint Committee by inserting a clause in a somewhat different form, but we will deal with that point as it arises; it does not happen to arise on clause 3. On the other point raised by the Honourable Member as to whether he will be able to move amendments to this amendment without notice, I think on the understanding which we came to on Saturday I undertook that I would waive in principle at all events any objection which the Chair might uphold to want of notice; and unless very good reason is offered to me by objectors I shall continue to proceed on the course which I laid down for myself on Saturday.

**The Honourable Mr. C. A. Innes** (Commerce and Industries Member): Sir, I should just like to explain the position of Government in regard to this matter. I shall briefly begin by re-stating in my own words what I understand the English law in regard to employer's liability to be. Under the English common law the liability of an employer to compensate a workman for accident arising out of his employment used to be limited very seriously. Even if the workman could prove that the injury was due to the negligence of an agent of the employer, the employer had two important lines of defence open to him. One was what is known as the defence of common employment, and the other was the defence of assumed risk. Consequently as far back as 1880 before the English Government or any one had ever thought of workmen's compensation, the English Government passed the Employer's Liability Act. The effect of that Act was that it removed the defence of common employment; that is to say, if a workman was injured by reason of the negligence of any superintendent or manager or foreman, the employer was made liable. The Act did not affect the doctrine of assumed risk, though that defence has been removed in certain American Acts. It is important to notice in this connection that there is an essential difference between an Employer's Liability Act and a Workmen's Compensation Act. Under the former Act the workman has to prove negligence; under a Workmen's Compensation Act the workman has not to prove negligence. Therefore, a Workmen's Compensation Act is far more in favour of the workman than any Employer's Liability Act. Now, the original position of Government was this. We

assumed that the Indian Courts would adopt as a matter of course the English common law in respect of this doctrine of common employment and we also assumed that they would adopt the doctrine of assumed risk; that is, we thought that in the event of a suit by a workman against an employer, the Indian courts would allow an employer to set up these two defences. Originally, our idea was therefore that we should remove these two defences in India in respect of all workmen. We thought that *primâ facie* defences of this kind were inequitable defences; and we thought it right and proper that we should not allow employers to set them up in India. That was our preliminary tentative position when we assembled our Committee in July last year. In the course of the discussions in that Committee we put forward that proposal, and we were warned by Mr. Macbridge, a very great expert on all questions of this kind, that if we made our employers liability clauses in this Bill applicable to all workmen in India, the inevitable result must be that we should open the door for a vast amount of litigation. Now, as I have frequently explained to this House, one of our main objects throughout this legislation has been to limit litigation as far as possible. Consequently as a result of our deliberations, that Committee recommended that the employer's liability clauses of the Bill should merely apply to the workmen covered by the workmen's compensation clauses. We in the Government, as our Notes show, recognised that that conclusion was not a particularly satisfactory one, but our policy in drafting the Bill was to follow as far as possible the advice of the July Committee. That was our policy, because we recognised from the first that the proposals included in this Bill must be in the nature of tentative proposals and that those proposals would be circulated and criticised all over India. But on further examination we found that we had landed ourselves in great difficulty, in a position which we really could not defend. If it is inequitable that the employer should be allowed to set up defence of this kind, it seems perfectly obvious that it is equally obvious that those defences should be removed, not in respect of particular classes of workmen, but in respect of all classes of workmen. On the other hand, as I have said just now, we were warned that if we did remove those clauses in respect of all classes of workmen, we would open the door to a large amount of litigation, and that was the position in which the Bill stood when we got to the Joint Committee.

Then again, on further examination we found reason to believe that the whole assumption on which we had proceeded was probably not well founded. As I have explained, we had always assumed that the Indian Courts would apply the English common law in this matter as a matter of course. Mr. Neogy has quoted the remarks of Mr. Justice Coutts-Trotter in this matter. Mr. Justice Coutts-Trotter, I may say, I happen to know, had a good deal of experience of workmen's compensation and employer's liability cases in England before he ever came to India, and what Mr. Justice Coutts-Trotter says is this:

> "The doctrine of common employment is now recognised as judge-made law and every writer of authority regards it as an illogical anomaly. I would rather leave it to the Indian Courts to reject its application in toto as an accident of the English law dictated neither by equity or good conscience which, I hope, they could be trusted to do rather than truckle with it, as has been done in section 4 of the Act."

Mr. Neogy says that there is no guarantee that Mr. Justice Coutts-Trotter is right, that there is no guarantee that the Indian Courts will not apply this doctrine. But what I should have liked to hear from Mr.

[Mr. C. A. Innes.]

Neogy and from the other lawyers in this House is whether they can point to any case-law in India, whether they can point to any large body of case-law in India, which shows that the Indian Courts up to date have applied these two doctrines. I understand that there is one case on record, I believe there is a case reported in the Allahabad High Court which tended to show that the Courts would have adopted this doctrine of common employment. But I understand further that the remark was more in the nature of an *obiter dictum* than a considered judgment. Therefore that is my point. If we leave these clauses in the Bill, they will apply only to a limited class of workmen; and will do very little good to the limited body of workmen who are covered by this Bill. Those workmen will utilise the workmen's compensation clauses of the Bill; they will have nothing to do with the employer's liability clauses of the Bill. One has got to remember that in most countries of the world the Employer's Liability Act and the Workmen's Compensation Act are not really supplementary pieces of legislation; they are intended to provide alternative remedies. And you have also got to remember that the English Employer's Liability Act was passed as far back as 1880. It was passed in 1880, that is long before any Government in the world had conceived the idea of workmen's compensation. The English Employer's Liability Act was of the nature of a feeler in the direction of workmen's compensation legislation, and now that we have the workmen's legislation in England, what has been the result? The result has been that the Employer's Liability Act has become more and more of a dead letter. In the year 1918, I think I am correct in saying, that the total number of suits filed in England under the Employer's Liability Act was only 63, and the departmental committees of 1920 which sat on this matter in England, pointed out that the comparative success of the first Workmen's Compensation Act and the comparatively very limited operation of the Employer's Liability Act made it clear that it was along the lines of workmen's compensation rather than employer's liability that the future legislation of this class must develop. Now we are beginning, we have got all experience behind us, we can choose on what lines we are going to proceed, and we have chosen to proceed at once without the preliminary step of an Employer's Liability Act, upon the lines of the workmen's compensation, and I think that that being so, the Employer's Liability Act is for the moment unnecessary. As I have pointed out, these sections, if Mr. Neogy's amendment is passed, will apply only to a very limited class of workmen. The majority of the workmen will not use the Act at all. It may be of some limited use to the higher paid workmen who might be able to get higher damages under the Employer's Liability Act than under the Workmen's Compensation Act. But as I have shown, there is no certainty, there is no guarantee that the Indian Courts will apply these two doctrines at all. That being so, I suggest that it is wiser to leave the Courts to deal with the matter as they think fit and to reserve our legislation until the necessity for it has been proved, and if the necessity is proved, we should legislate, not for a very limited class of workmen, but for all workmen. In this view, Sir, I hope that the House will reject this amendment.

**Mr. B. S. Kamat:** Sir, I speak with a certain amount of diffidence on this amendment of Mr. Neogy on the ground that I am not a lawyer and not fully conversant with the section of the Employer's Liability Act of England of 1880. But, it seems to me, Sir, that Mr. Neogy who was a

Member of the Joint Committee which considered this Bill has now as an after-thought proposed to insert all these sections which the Joint Committee after a great deal of deliberation thought fit to omit. The question involved is this, whether in addition to the remedy which we give to the ordinary workman we should provide an alternative remedy, namely, by incorporating the additional provisions of the Employer's Liability Act of 1880, or whether we should give him the rough and ready remedy which the Workmen's Compensation Bill provides; and secondly, if we give him an additional remedy by the employer's liability sections, whether we should take away the right of defence or two defences which an employer might be able to raise in the Courts in defence of himself.

12 Noon. Mr. Neogy thinks that if it is not sufficient that the remedy provided by the Compensation Bill alone should be allowed. He wants an additional and an alternative remedy. Now, I do not think it would serve the interests of the workman himself to have an additional remedy. As my friend, the Honourable Mr. Innes, has pointed out, there is an amount of litigation involved in that proposal. Those who have read the provisions of the Employer's Liability Act of 1880 and have also read the literature that has sprung around it owing to the interpretations of each and every section of the Act will be almost bewildered, and I am sure if they go through the whole literature they will find that it is far better to leave the Employers' Liability Act alone. Now, if you adopt Mr. Neogy's amendment, as Mr. Innes pointed out there might be litigation over each and every word and phrase in these clauses. The defences that are likely to be raised are: what do you mean by " Superintendent "? Is he the properly authorised superintendent? Then, the question will be raised whether the workman did not enter the service voluntarily or the principle or the maxim of law which the lawyers call *volenti non fit injuria* even if you shut out the doctrine of common employment. Now, how is the ordinary workman in India to fight in the Court against these subtle and ingenious arguments which might be raised. It only means he will have to go into the hands of the lawyers and we want to save him in the Workmen's Compensation Bill from going into the hands of the lawyers in order to fight out such subtle interpretation of law, as to whether it was an assumed risk or whether the man entered the service knowing full well the service which he was entering into and whether also, secondly, he was not more highly paid than similar classes of workers outside *because* there was a greater hazard. Now, all these subtle interpretations of law he will have to face through his lawyer and I think it is far better not to entangle him in these different provisions of law. Then, again, my friend, Mr. Neogy, while stating his case, pointed out that one great advantage of giving the alternative remedy to the workman is that, if he wants to sue the employer under the provisions of the employer's liability section, there would be no limit to the damages that might be claimed for. I do not know whether he is quite correct in the statement of facts. The Employer's Liability Act, 1880, does not show any such thing. (*Mr. K. C. Neogy*: " What about the present Bill?") Indeed, if you want to be equitable at all, and I am sure my friend, Mr. Neogy, wants to be equitable, if he wants to copy the provisions of the Employers' Liability Act in this Compensation Bill, then in a sense of fairness it is also necessary that he should adopt section 3 of the Employer's Liability Act, which provides a limit to the damages. It is not correct to say that a workman can go to the Court and claim damages even to the extent of ten or fifteen thousand rupees. The Employers' Liability Act, if he has read it correctly, does provide a limit in

[Mr. B. S. Kamat.]

section 3. That section lays down that the amount of compensation recoverable under this Act (*i.e.*, the Employers' Liability Act) shall not exceed such sum as will be found to be more than his estimated earnings during the three years preceding the injury. Now, it is not correct to say that the workman can go and claim any amount of damages under the Employers' Liability Act. The utmost he can claim is a sum not more than 3 years' earnings preceding the injury. Now, I want to ask Mr. Neogy whether he is prepared to accept as a consequential amendment, if his amendment is carried, my amendment that section 3 of the Employers' Liability Act shall also be inserted in this Chapter. (*Mr. K. C. Neogy*: "No, no.") Now, if he is not prepared to accept that, then I say he is inequitable and unfair. Because you are giving two remedies or two weapons to the workman, and it is not fair that he should have these two remedies and that, at the same time, you should take away the two defences from the employer, namely, the defence of common employment and the defence of assumed risk. The two things go together and I think, if this House is not prepared to have section 3, namely, the section which puts a limit to the amount of damages claimable, that the other sections should be inserted according to the amendment of Mr. Neogy. I have no serious objection to Mr. Neogy's amendment on the merits, but I contend that if he wants to insert those provisions of the Employers' Liability Act of 1880, then, I say, equity requires that section 3 also of that Act ought to be incorporated and ought to be copied here. I do hope the House will see that it is fair and just and equitable that section 3 of the Employers' Liability Act is also embodied in the Act, if the sections which Mr. Neogy wants to insert are carried in this House.

**Mr. N. M. Joshi** (Nominated: Labour Interests): Sir, I think there is some misapprehension in the mind of my Honourable friend, Mr. Kamat, about these sections giving an alternative remedy to the workman. I think he was led to believe that, on account of some remarks which fell from my Honourable friend, Mr. Innes. Mr. Innes said that in some countries the Employers' Liability Act is enacted as an alternative remedy. But neither was the Employers' Liability Act so enacted in England as an alternative remedy nor are the sections which Mr. Neogy wants to put in here also an alternative remedy. The alternative remedy, both in England and in India, exists already. Even if the sections may not be in the Bill, the alternative remedy will remain to the workman. My Honourable friend ought to refer, in order to be convinced of that, to section 5 of this Bill. Sub-section 5, clause 3, of the Bill deals with the alternative remedies. Therefore, it is absolutely clear that the sections which my Honourable friend, Mr. Neogy, wants to put in do not give a new alternative remedy. What these sections do, is to remove certain defences which employers can plead in England. That is the only thing which these sections do. But they do not give an alternative remedy at all. Sir, everybody seems to be agreed on the point that these sections are not quite adequate. If the employers' liability is to be defined, it must be defined for all workmen. But unfortunately the Government does not promise to bring forward another Bill immediately or within a short time, in order to define employers' liability. If the Government would promise to bring forward another Bill, I should certainly advise my Honourable friend, Mr. Neogy, to withdraw these sections from this Bill altogether because there is an advantage in having the employer's liability defined for all classes, and there is no difference of opinion on this point at all. In the absence

of any such promise from the Government, however, I think it is better to have the employer's liability defined at least in the case of those workmen who are included in the Workmen's Compensation Act. My Honourable friend, Mr. Neogy, has already explained that these sections will be particularly useful to those workmen who get wages varying from Rs. 80 to Rs. 300. I think there is a large number of workmen belonging to this class and these sections will be particularly useful to them. I therefore on the whole support the amendment of my friend, Mr. Neogy.

**Dr. Nand Lal** (West Punjab: Non-Muhammadan): Sir, if I were to give my vote as a member of the Bar I would have supported the amendment which has been proposed by Mr. Neogy. But I am afraid I have to give my vote as a legislator. And I have got to see not only the profit of the legal profession but I have got to see the other side also, that is the workman and the employer. Giving my deep consideration to this question, I feel constrained to oppose this amendment for a number of reasons. The first reason which has actuated me to stand in opposition to it is this, that it is sure to give rise to litigation and litigation of a very highly technical character, which may involve both the workman and the employer very seriously and perhaps both of them may become regular combatants in the law courts, which will mean, so far as my way of thinking goes, a great expense of money. Not only that. It will, no doubt, hamper the progress of the Workmen's Compensation Act also. These are the three grounds which compel me to go against my own profit and to be in favour of the development of industry in this country. I agree with Mr. Joshi when he says that we have got some other law in India which can come to the help and assistance of the workmen beyond the scope of the Workmen's Compensation Act. In spite of this knowledge of his, he yet supports the amendment, and it is extremely difficult for me to say that he is consistent. If there is any law according to his way of thinking, then he will have to accede to my contention that the present amendment is unnecessary. Is he really serious to over-burden our Statute Book? If a law is already in existence, as he himself admits, then this new law need not be devised. On that ground also the amendment according to the very argument of Mr. Joshi has got no force. The third ground is that which centres round the question of practicability. We cannot ignore that question, and I fully agree with the Honourable Mr. Innes when he very ably expressed this view, which view is based on history. When we look into the case law, we find that the Workmen's Compensation Act has been much more resorted to and the Employers' Liability Act was not used so frequently. The latter was not called in to help the workman, whereas the Workmen's Compensation Act was generally resorted to. Why? Because, the Workmen's Compensation Act gives you cut and dry material. Certain formulæ have been incorporated. A certain maximum amount of compensation, in some cases is allotted. The nature and description of injuries of a permanent character are fully described. The workman can understand very well what compensation he will be entitled to. He makes a reference to the employer. If the employer enters into an agreement or technically compromises, then he feels contented with that agreement. Otherwise he goes to the law court and seeks redress. From this we can easily deduce that this method is naturally more convenient to the workmen as well as to the employer and decidedly less expensive. Therefore, having this precedent in our favour, we feel justified in saying that the amendment is not such an amendment as should have the support of this House. Therefore, in brief, I oppose this amendment.

**Sir Deva Prasad Sarvadhikary** (Calcutta: Non-Muhammadan Urban): Sir, if I felt that there was any practical need of incorporating this clause in this Bill I should have given it my hearty support. As it is, however, reading clause 3 of the Bill as it stands and the concluding portion of clause 3 of Mr. Neogy's amendment, in this Bill at all events this provision is unnecessary, and to be able to say that in regard to any amendment is, I think, to plead for its rejection. What is the present clause 3? "If personal injury is caused to a workman by accident arising out of and *in the course of his employment*, his employers shall be liable to pay compensation in accordance with the provisions of this Chapter." And then the clause has certain provisos excluding the possibility of damages being awarded in certain events. I need not read those out but shall draw the attention of the House to the corresponding words in Mr. Neogy's amendment. They are: "a suit for damages in respect of the injury instituted by the workman or by any person entitled in case of his death shall not fail by reason only of the fact that the workman was at the time of the injury a workman of, or in the service of, or engaged in the work of, the employer." Comparing those words again with the words in the present clause 3, we have this, that if the injury is caused to a workman by accident arising out of and *in the course of his employment*, the employer except in certain eventualities is liable. Therefore, to a certain extent at least there is over-lapping of ground. I need not go in detail into the question that Mr. Kamat has raised, because if you have the poison, there must also be the antidote. If you have what Mr. Neogy proposes, then Mr. Kamat's proviso must come in. That would only add to the complexity of the Bill and would take away from it the simple straightforward and comprehensive nature which I believe is one of the features of the Bill and which ought to commend itself to the House. Sir, I have spent much of my life in drafting pleas, tenable and untenable, and many other pleas than of common employment and assumed risk would occur to the draftsman which the amendment of Mr. Neogy cannot provide against. I think India may well congratulate herself that its simple Civil Procedure Code has helped us in doing without that fearfully complex plea system till lately obtaining in England, and that the practitioners here, in spite of what Dr. Nand Lal has said, have never troubled themselves about nicety of pleas that is yet the privilege of English draftsmen. What has been apprehended by Mr. Neogy is therefore more or less imaginary, particularly in view of the plain straight and unambiguous provisions of the Workmen's Compensation Bill that we are now considering. Sir, Mr. Neogy himself has alluded to it and the Honourable Mr. Innes has brought it out more clearly that the Workmen's Compensation Act was the result of a sort of evolution. Much earlier than that Act, the Employers' Liability Act came and when the Workmen's Compensation Act came, the Employer's Liability Act became more or less obsolete, and that for very good reasons. Supposing we were here to say or be told, Sir, that before we have reforms in this country in still more generous measure we should have to go over the whole ground covered in England commencing from the Magna Charta, I do not think we shall be in a very enviable state of things. We have the result of the toils and struggles in England resulting in the Workmen's Compensation Act and we ought to begin to build upon that. And if it is really felt that some enactment of the nature of the Employer's Liability Act is necessary it ought to be much more comprehensive whether the Government gives the guarantee which Mr. Joshi wants to have or not. I do not, in leaving out these sections, read

a desire on the part of the Joint Committee that the go-by shall be given to the principles of the Employer's Liability Act, but I think that they must have felt that what the present Bill provides is sufficient as a good first step as I called it in welcoming this measure. I myself had my doubts, Mr. Seshegiri Ayyar voiced them, whether the Joint Committee should have done what it did in picking and choosing. We have an opportunity here in this House now of considering on its merits what the Joint Committee has rejected and I hope that having regard to all the points of view that have been urged the House will be of opinion that for practical purposes the Bill that is before us is a good first step and we need not complicate the issues.

**Lieut.-Colonel H. A. J. Gidney** (Nominated: Anglo-Indians): Sir, as one of the Members of the Committee when it first sat, I wish to voice my opinion regarding Mr. Neogy's amendment. I support that amendment mainly because it affords provision to a class of workmen whose pay ranges from Rs. 83 to Rs. 300 and who, as provided by the Joint Committee, will only receive compensation graded on the salary of Rs. 83. I consider that those people who are in receipt of a higher salary up to the limit of Rs. 300 are entitled to a proportionate rise in compensation according to their salary, because as drafted or re-drafted by the Joint Committee, these workmen will not receive that compensation. I therefore consider that the Employer's Liability Act will provide an adequate compensation for these workmen, and if the Workmen's Compensation Act, as presented to this House for acceptance to-day, denies these workmen that compensation, I consider they should be given an opportunity of another source of compensation. I have listened very attentively to what the Honourable Mr. Innes said, and much as I agree with all that he has said in the avoidance of excessive litigation which would almost stifle this Bill, so far as its practical application is concerned, surrounded as we are in India with so many difficulties, with so many castes and creeds demanding specific investigations, yet at the same time, even at the risk of increasing the number of lawyers in India, I support Mr. Neogy's amendment, because, as I have said before, it does provide adequate compensation for a certain class of workmen which the present Workmen's Compensation Act denies them.

**Mr. T. V. Seshagiri Ayyar** (Madras: Nominated Non-Official): Sir, I cannot help saying that those of this House who have opposed this amendment have not considered the serious situation which would arise by omitting provisions relating to the liability of employers. I do not know whether the Honourable Mr. Innes means to suggest that by not making a provision we are in any way facilitating the work of the Courts or bettering the condition of the workmen. The law as regards employer's liability and the law as regards the liability to pay compensation to workmen are both existent in India as well as in England. Supposing you had no law relating to workmen's compensation, there would still be the remedy to the Indian workman by a suit for damages. You are only simplifying the work by enacting a few provisions by which the Commissioner will be enabled to fix the compensation in an easy manner. As regards the liability of employers, although you may not make a provision in this Act, still the liability would be there. If I am convinced that by not introducing the provision we are likely to help either the capitalist, or the employee, or the Court, I would have voted against the amendment, but the absence of law does not suggest that there will be no remedy for the wrong. The remedy will

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be invoked, and in invoking the remedy what will be the position? Instead of turning to certain specific provisions in an Act, the party would be compelled to have recourse to the English law. There are doubts in this country as to how far the common law of England or the Acts of the English Legislature would be applicable in this country. I have got before me two articles, both practically within a month. One of these articles points out that in Madras it has been held that the common law of England is not applicable except in the Presidency Towns. But in another article it is pointed out that, although by Statute the common law is not made applicable to mofussil towns, the principles of equity, justice and good conscience would be invoked and the principles of English law would be brought in for the purpose of determining these cases. Therefore, by omitting provisions in the Workmen's Compensation Act, you will not shut out the remedy. The remedy will be sought in the complicated decisions of the English Courts, and I am sure no greater danger to the Courts or to the workmen can be apprehended than the bringing in of a large body of undigested decisions of Courts in England. It is for this reason desirable that you should introduce provisions in the Act itself which would simplify the procedure and would make the remedy easy for the workmen. It is for that reason that I take it Mr. Neogy has asked for the introduction of these provisions. There is no use in running away from danger when you have got it before you. If you do not introduce the provision relating to employer's liability the workman will know that he can fall back upon the English law. He will certainly have recourse to it, and what will be the result? Instead of having a cut and dried formula, instead of well-defined provisions in the Act, you will drive him to have recourse to a large number of undigested decisions of the English Courts with the result that the work of the Court, the work for the workman would be made more difficult than before. Therefore, the idea which the speech of the Honourable the Commerce Member has brought in, namely, that by not introducing the provisions relating to workmen you are minimising the chances of litigation and bettering the position of the labourer, must be wiped out of your mind altogether. As soon as he finds that there is provision for workmen's compensation, if he find that there is negligence on the part of the employer, the workman would undoubtedly have recourse to the Courts and if he has recourse to the Courts, are you bettering his position by not making a provision in the Act? Are you making it better for him, or for the capitalist, or for the Courts by driving him to have his relief in English law? That is the position you have to consider. I will not say that the provisions as introduced by Mr. Neogy are perfect. They are capable of improvement. It may be, as pointed out by Mr. Kamat, some restriction will have to be placed upon the liability of the employer. That is not a matter upon which I am speaking. I am arguing the general principle whether this House will be justified, will consider it proper not to have these provisions relating to the liability of employers in an Act which provides for compensation to workmen. If the Honourable the Commerce Member will be good enough to say that very soon he would introduce an Act relating to the liability of employers, then it may be that we shall stay our hands, and will not press the amendment. But if he is going to say 'I shall have only an Act relating to workmen's compensation and I shall have nothing to do with an Act relating to employers' liability, then he is courting danger' which he is anxious to avoid. For these reasons I ask that these sections be adopted as part of the Bill.

**Sir Henry Moncrieff Smith** (Secretary, Legislative Department): I wish to remind the House of a remark which fell from my Honourable and learned friend, Dr. Nand Lal, a remark which I should like to endorse most heartily, that this Legislature should not cumber the Statute Book with any provision unless it is perfectly satisfied that there is a necessity for that provision. With regard to this amendment of Mr. Neogy, Sir, what is the question we have to ask ourselves? It is whether the necessity has been proved for introducing this particular chapter on the employers' liability. From the Joint Committee's report it appears that they considered this question very carefully. They discussed both sides of it and by a majority they formed the opinion that the necessity was not proved. The question of the necessity, Sir, depends upon the answer to another question, which is whether our courts in India will follow the old English doctrine, the judge-made doctrine, the common law doctrine of the employers' liability and assumed risk. Now, as regards the supporters of this amendment, Sir, I listened to the debate carefully, and until Mr. Seshagiri Ayyar rose, I did not hear any suggestion that there was any probability much less any certainty whatever that our Indian courts would adopt the English law in this respect. I do not think, Sir, that Mr. Seshagiri Ayyar himself has shown that there is really any risk at all. He has referred to certain discussions, general discussions, but no discussions relating to this particular matter. What is the actual position with regard to that, Sir? Is any Member of this House satisfied that there is at the present moment any risk of our Indian courts adopting these doctrines and applying them to suits between employers and employees? We have one very definite opinion and that is an opinion of a High Court Judge in this country, a Judge of the same High Court of which my Honourable friend, Mr. Seshagiri Ayyar, himself was at one time such a distinguished member. He has expressed an opinion that the courts in this country will not and cannot follow those judge-made doctrines, an opinion which apparently in his own mind amounts to a practical certainty. Sir, if the courts do apply these doctrines, then I think will come the time for legislation but we should not legislate to meet a hypothetical danger. Mr. Innes has explained to the House several times already that this Bill is an experiment. He has explained also that it is particularly desirable that we should start this Bill on as simple and clear lines as possible. Let us proceed with the Bill on that understanding and should necessity arise in the future it will not be a difficult matter to add provisions to the Bill on the lines of the Employers' Liability Act of 1880.

**Mr. Darcy Lindsay** (Bengal: European): In rising to oppose the amendment, I do not wish it to be understood that I necessarily oppose the principle of the employers' liability but I hold very strongly that this Workmen's Compensation Bill should stand on its own footing and not have tacked on to it what should be, if necessity arises, provided for by a separate Act entirely. In the Statement of Objects and Reasons given by the Government for the inclusion of Chapter II, in the draft Bill, it is stated "modifications are made in the ordinary civil law affecting the liability of employers for damages in respect of injuries sustained by their workmen;" and the very meagre reference to employers' liability in the Bill as originally drafted, shows that the one idea was to amend the common law or to improve the common law. I maintain that there are other means of bringing about that end, if it be at all necessary or desirable. Again, the Select Committee in their report admit that this reference to employers' liability in the original draft was only a partial remedy. Well, then, Sir,

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why apply only a partial remedy? It is likely to lead to great confusion. We have heard from several Members that the great object of this Bill is to avoid litigation in every possible way. We are told, on the other hand, that the employers' liability section is likely to create litigation. I would also point out to you, Sir, that practically none of the provisions of the Bill which apply to the workman's compensation section apply to the employer's liability. We do not, or we did not in the Bill as originally drafted, allow our Commissioner to deal with the settlement of employer's liability. No, the workman would have to go to court to obtain his relief. The Honourable Mr. Innes has told us, that when the Workman's Compensation Act came into operation in England, application for damages under the Employer's Liability Act became far and few between. That shows that the workman in every way prefers to claim under the Workman's Compensation Act and not run the risk of a suit under the Employer's Liability Act.

Another point was raised by the Honourable Mr. Kamat that if my Honourable friend, Mr. Neogy's amendment were carried and the employer's liability section reinstated in the Bill, there is no provision made for limit of award of damages. Now, that is a most important issue. We have been informed that in England the Act allows three years' wages as a maximum. Talking as a late insurance official, because I am now numbered amongst the "unemployed," I feel that to support my late profession I ought to support this amendment, because it undoubtedly means considerably more premium. Where there is no limit to the risk involved, the premium must of necessity be higher. That to my mind has got a very important bearing on Mr. Neogy's amendment and that is a very strong reason why it should be rejected. As I have said before, the experience in England goes to show that the Employers' Liability Act is more or less a dead letter; and, therefore, why cumber the Indian legislation with what is no longer found of any use at Home? I think my Honourable friend, Mr. Seshagiri Ayyar, is really in agreement with me that there should be a separate Act. If there is any necessity for such an Act in future—and the Honourable Member has, I think, explained both in the Report of the Joint Committee and also in what he stated to the House to-day—that if later on it is found necessary to adopt an Employers' Liability Act the Government will take measures to bring in such a Bill. I strongly advise the House, Sir, to reject this amendment and not confuse what, to my mind, is a very first class Bill—the Workmen's Compensation Act.

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

**Mr. President:** Amendment moved:

"That after Chapter I the following be inserted as Chapter I-A:

"CHAPTER I-A."

EMPLOYERS' LIABILITY.

3. Where personal injury is caused to a workman:

(*a*) by reason of the omission of the employer to maintain in good and safe condition any way, works, machinery or plant connected with or used in his trade or business, or by reason of any like omission on the part of any person in the service of the employer who has been entrusted by the

employer with the duty of seeing that such way, works, machinery or plant are in good and safe condition; or

(*b*) by reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or

(*c*) by reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform and did conform, where the injury resulted from his having so conformed; or

(*d*) by reason of any act or omission of any person in the service of the employer done or made in obedience to any rule or bye-law of the employer (not being a rule or bye-law which is required by or under any law for the time being in force to be approved by any authority and which has been so approved) or in obedience to particular instructions given by any person to whom the employer has delegated authority in that behalf;

a suit for damages in respect of the injury instituted by the workman or by any person entitled in case of his death shall not fail by reason only of the fact that the workman was at the time of the injury a workman of, or in the service of, or engaged in the work of, the employer."

The question is that that amendment be made.

The motion was negatived.

**Mr. President:** That disposes of clauses 4 and 5.

**Dr. Nand Lal:** Sir, I beg to move:

"That in clause 3 (1) after the word 'personal' add the words 'and bodily'."

When we see the provision of clause 3 (1) we find that the expression 'personal injury' occurs there. The House will agree with me that the word 'injury' is not defined in the Bill. If some definition of 'injury' had been given, I would not have attempted to move this amendment. But the fact is that the word 'injury' seems to be such a word that it ought to be defined. When I see the General Clauses Act, I cannot find any definition of this word. I do not think the English Act gives the definition of this word either—I am subject to correction—but my recollection of the study of the English Act is that the definition of this word 'injury' is not given there. We have got the Indian Penal Code, no doubt, where the word 'injury' is defined. But that definition serves the purposes of the criminal law. Sir, you will be pleased to see section 44 of the Indian Penal Code. There the definition runs as follows:

"The words 'injury' denotes any harm whatever illegally caused to any person, in body, mind, reputation, or property."

Now the definition which is available to us is of a very abiguous character, and perhaps it will not be of any help to us for the purposes of the Bill which is under debate now. Because if a workman feels irritated or feels aggrieved he will have no cause of action. If, again, his implement is broken, then according to the scope of this Bill he shall have no cause of action. If in consequence of some obnoxious smell in the vicinity of the factory he suffers, he shall have no cause of action. He shall have cause of action only in the case where he has got some bodily injury. And my contention seems to be supported by the mere perusal of Schedule No. I. When we go into that Schedule we find the descriptions of various injuries given there. From that the natural inference can be drawn that the Select Committee, or the framers of these clauses, contemplated that injury, to all intents and purposes, so far as the purview of

[Dr. Nand Lal.]

this Bill goes, means bodily injury. But, Sir, this inference in the absence of a statutory definition, will not be of great avail. Whenever there will be a question, ' whether a certain injury comes within the scope of the word ' injury ', which is incorporated in clause 3, the question will require determination. Both parties will set forth their own construction, according to their own convenience and profit, and in some cases, Sir, it may give rise to unnecessary litigation. And therefore the champion of labour will have to give serious consideration to this point. The help that is sought to be extended to the workman will not be such as they desire to extend to him. It is quite probable, Sir, that Honourable Members who may oppose this amendment may premise or argue, ' that supposing on account of work which is entrusted to the workman he has become lunatic or there is some sort of mental shock given. Say, he is working in the mine or is working in the factory, and there is a fall or the engine bursts or something like that happens and it may give rise to a shock and that shock may affect his brain. It could be argued in this way, that the definition which I am going to propose will not meet such a case. In reply to that I would submit that you have not made such provision as may cover that case. Now, Sir, you will agree with me that the word " personal " is very ambiguous. And when we are going to frame a law we should try and see that the meanings which are attached to a word in common parlance should not be given prominence, because this is a Statute, it is to be interpreted in a certain way, with reference to a particular significance or sense. Therefore either the word ' personal ' should have been defined or the word ' injury.' I quite concede that the word ' personal ' was indispensably necessary; if the word ' bodily ' had been used in place of the word ' personal ' then clause 3 would have been considered very defective. However, the defect, to my mind, now is that the word ' bodily ' is not incorporated in the clause and I suggest that this Honourable House will consider the character of this amendment and will accept it. Otherwise I am afraid there will be loopholes for litigation and the poor workman who has been given some help will eventually say " Well, the help which was given to me has been practically wasted in the form of litigation." Therefore, Sir, with these few remarks I commend this amendment to the House and I hope the Government Benches will also support it, because it is more or less a verbal sort of amendment.

**Mr. Darcy Lindsay:** I move, Sir, that the question be now put.

The motion was adopted.

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

" That in clause 3 (1) after the word ' personal ' add the words ' and bodily '."

The motion was negatived.

**Mr. K. B. L. Agnihotri** (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I move that in clause 3 (1) in proviso (*a*) substitute the word ' seven ' for the word ' ten.'

By this clause, Sir, we exempt the owner from his liability for certain classes of injuries; and in proviso (*a*) we provide that if the injury is of such a nature that it does not result in the disablement of the workman for a period exceeding ten days, the employer shall be exempted. Sir, when we look at the English Act—the Workmen's Compensation Act of 1906—we

find that the period there has been fixed at seven days only and not ten days. I do not know why that period has been changed into ten days in this Bill. The period when the workman is injured and is away from his work is the period when he needs the help most and therefore it is very necessary that this period should be reduced. It may be argued that where the injury were of a nature that the workman received some cuts or some light bruises or some scratches, the employer should not be made liable to pay him compensation for that. But there is no fear on that point as we have already provided in the Bill the definitions of injuries under which the employer will be made only liable. Therefore it is necessary that the period should be reduced as much as possible in the interests of the workman and his family. I move, Sir, that the period fixing it at ten days should be reduced to seven days only.

**The Honourable Mr. C. A. Innes:** Sir, I sincerely hope that the House will not accept this amendment. This particular clause which the Honourable Member proposes to amend is a very important clause indeed. Practically every Compensation Act in the world makes provision for a waiting period, that is the period for which disability must last before compensation is due. The reason why this waiting period is provided is, in the first place, to minimise the risk of malingering. In the second place, the waiting period prevents a very large number of claims which will be so trivial that the administrative expenses would consume most of the amount awarded. It is true that the English Act provides a waiting period of one week. In America, on the other hand, the waiting period is 14 days and in other countries it is very much longer still. In Sweden, I believe, it is as much as 60 days, and in Denmark I believe it is as long as 13 weeks. My fear is, that the period of 10 days provided in the Bill is not long enough. Originally, the Government proposed 20 days, but after very careful discussion we arrived in the July Committee at this period of 10 days, and that has been accepted also by the Joint Committee, and I hope that the House will accept that period as a fair period, a period which is generous to the workmen. I should like this House to remember this. If we adopted this amendment which Mr. Agnihotri proposes, we should probably increase the number of cases under this Bill by as much as 20 per cent. That is the estimate which we have framed after studying figures based on English and American experience. It is not going to give very much benefit to the workmen; it is only a matter of three days. On the other hand, we are going to increase the work caused by this Bill enormously. As I have said, the waiting period has been carefully arrived at in consultation with two Committees, and I hope that the House will stick to the period drafted in the Bill and will not accept the amendment by Mr. Agnihotri.

The motion was negatived.

**Rai Bahadur Lachmi Prasad Sinha** (Gaya *cum* Monghyr: Non-Muhammadan): Sir, I beg to move:

"That to proviso (*b*) (*i*) of clause 3 (1) at the end the following be added:

'Provided the employer is not aware of the fact before the workman joined his work under such intoxication on the date of accident'."

Sir, I move this amendment which is in the form of a proviso to clause 3, sub-clause (1) (*b*) (*i*). In moving this amendment, I do not think that much explanation is necessary because it is self-explanatory. Sub-clause (*b*) (*i*) as it stands provides that the employer will not be liable for payment of compensation to a workman if the latter joined his work, before

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the accident or injury took place, under the influence of drink or drugs. Sir, in this connection may I ask whether the employer or his agent is or is not to see that his workmen who are, or may be, liable to injuries or accidents from the nature of their work do not join their work under such intoxication. I think the House will admit that in such cases the responsibility lies on the employer and not on the employee. Moreover, Sir, it may be urged how is the employer or his agent to find out as to who amongst his labourers are intoxicated. In this connection, I would simply say that I want to throw the responsibility on the employer in such cases, and I hope the Government will kindly try to suggest some means which will have the desired effect of the proposed amendment. We are not all draftsmen here, and we can only recommend some principles on which certain clauses or sub-clauses of Bills may be based and drafted, and so far as the drafting is concerned it rests with the Government drafters to carry out the suggestions if accepted by this House.

Lastly, I would like to draw the attention of this House to the Minute of Dissent attached to the Joint Committee's Report by the Honourable Mr. Raza Ali who says " According to the English law, the employer is liable to pay full compensation in the case of death or permanent total disablement even if the accident is due to the misconduct of the workman." With these remarks I move my amendment.

**Khan Bahadur Sarfaraz Hussain Khan** (Tirhut Division: Muhammadan): Sir, I rise to support the amendment on the ground that, unless some such provision is made in the Bill, which will in these cases throw the responsibility on the employer, illiterate workmen will find it a very difficult job to obtain any compensation from their shrewd employers. In the majority of cases where compensation is claimed by working men who have sustained injuries, the employer will try to shelter himself under this clause on the plea that when the workman did come to his work he was under the influence of intoxicants and as such is not eligible for compensation. The case of such a nature will be more explicit and clear if I quote the example of firemen or drivers on running train engines. Their duties, as I think, Honourable Members are aware, are such that, in spite of their utmost vigilance and watchfulness, accidents and injury happen to them, and in some cases so serious as to result in death. Now, in such cases, it is very easy to refuse compensation on the plea that they were at the time drunk. What the amendment attempts is to ensure that the employer should engage a supervisor to see that no workman under the influence of intoxicants goes to his work. Unless this amendment be made, Sir, any employer, who is generally much more intelligent than the employed, can give the plea that the workman was under the influence of intoxicants, so it should be made the duty of an employer to see that the employee is not under that influence. With this in view, I support the amendment.

1 P.M.

**Mr. A. G. Clow** (Industries Department: Nominated Official): Sir, I suggest, in the first place, that the common-sense of the House will not allow this amendment to be carried. The spectacle suggested to us by the speeches of the two Honourable Members on my left is that of the employer in the morning drawing a chalk line in front of the factory and asking all his workmen to step solemnly along it. I do not think you will get the workman to agree to an examination every morning as to whether he was sober or not.

But, apart from this, is there any employer who is going to allow a man whom he knows to be drunk to enter his factory, to work with his machines possibly to involve him in a very serious accident costing many lives? For he will certainly have to pay for the other workmen injured, even if he is excused liability on behalf of the drunk workman.

The motion was negatived.

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

"In clause 3 (1) in proviso (*b*) (*ii*) after the word 'workmen' add the words 'and not countermanded by a person in authority superior to the workman'."

Sir, we have provided in this clause that, if a workman were to wilfully disobey an order expressly given or a rule expressly framed for the purpose of securing the safety of the workman, such a workman should not be entitled to any compensation under this Bill. So far as this rule goes, it is very wholesome and desirable, but there may be cases in which an employer or superior officer may order such a workman to do a particular work which may amount to disobedience or the breach of such rules and in such cases the employer will get the benefit of the obedience to his orders by the workman which the workman had no alternative but to obey being the immediate order of his employer or superior officer and with the knowledge that his act would amount to breach of the rules or the regulations or orders expressly laid down for the safety of such workman. Under these circumstances, I think it desirable that no loopholes should be given to the employers which would give undue advantage to him over the workmen and therefore I move this amendment. Sir, it may happen that the amendment which I have proposed may not be in strict accordance with the drafting rules or the draft may not be approved by the Members on the Government Benches, but my whole object is to put before the Government my view and difficulty on this point and to request them to make the necessary changes in the Bill.

**The Honourable Mr. C. A. Innes:** Sir, as far as the Government Benches are concerned we think that we have provided for the point raised by Mr. Agnihotri by putting in the word "wilful". It must be "wilful disobedience". I put it to the House that the inclusion of the word "wilful" covers the point raised by Mr. Agnihotri and that his amendment is not necessary.

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

"In clause 3 (1) in proviso (b) (*ii*) after the word 'workmen' add the words 'and not countermanded by a person in authority superior to the workman'."

The motion was negatived.

**Mr. K. B. L. Agnihotri:** As "wilful" has been explained to cover my second amendment* which I also wanted to put before the House, I beg permission to withdraw it.

**Mr. N. M. Joshi:** Sir, I beg to move the following amendment which stands in my name:

"To proviso (*b*) in clause 3 (1) at the end add the following:

'Unless the injury results in death to the workman or in his permanent total disablement in either of which cases the employer shall be liable to pay compensation to which the workman would otherwise have been entitled'."

* "In proviso (*b*) (*iii*), after the word 'workmen' add the words 'unless done under orders of a person superior in authority to him'."

[Mr. N. M. Joshi.]

Sir, in order that the House may understand the exact scope of my amendment I would like to explain first what the original section 3 (*b*) is. That section is intended to prevent compensation being given to workmen in cases of accidents which take place on account of the serious and wilful misconduct of the workman. Serious wilful misconduct is defined in this section in three ways, namely, first, when the workman goes to work under the influence of drink, secondly, when the accident is due to the fact that the workman has wilfully disobeyed a rule and thirdly, when the accident which takes place is due to the fact that the workman had removed a safety guard. Now, Sir, to a layman, this clause seems to be quite reasonable, and my Honourable friend Mr. Agnihotri just mentioned that he approved of it. But, Sir, to those people who have studied the principles on which the Workmen's Compensation Bill has been framed and the principles on which the Workmen's Compensation Acts of other countries are based, this clause itself is altogether against those principles. The principle of the Workmen's Compensation Bill, as has been explained several times, is that the industry which creates risks for workmen should bear the civil liability for the accidents that take place. While defining that principle, there is nowhere mention of negligence either of the employer or of the employee. This is the general principle of the Workmen's Compensation Bill. If the principle of negligence is to be brought in here, then certainly we must bring in negligence of the employer also. If on account of the wilful misconduct of the employee he is to be deprived of the compensation, then certainly the employee deserves more compensation in those cases where the negligence of the employer is proved. You cannot modify the principle only in the case of the employee and not modify it in the case of the employer. The Bill, as it is before us, provides no additional compensation for those cases where the wilful negligence of the employer will be proved. I therefore think that this clause, as it has been drafted, is against the principle of workman's compensation.

Then, naturally, you will ask me, how did this come here at all? My surmise is that this clause has been introduced here on the model of the English Workmen's Compensation Act. But the misfortune of the workman in India is this, that although the clause is based largely upon the English clause, this Bill drafted in such a way that, while portion of the clause which was in favour of the employer has been taken in here, the portion of the clause which favoured workmen has been taken out. That is the misfortune of the Indian workman. I do not know what explanation the Government can give for putting only one part of the English clause in the Bill and omitting the other part which favoured the workman. Sir, I would like the House to remember, in the first place, that the amendment which I am proposing is just to restore the English section in our Bill—in principle, I do not say the words—but I want to restore the spirit of the English section, namely, even where wilful misconduct of the workman is proved and the accident has caused the death of the man or has totally disabled him, compensation should be paid. Sir, the principle on which the English clause is based is this, that in the case of death and total disablement, when you refuse to give compensation to a workman you do not punish the workman at all. You punish those people who depend upon the workman or those people who have to maintain the workman. This is the principle on which the English practice of giving compensation even where wilful misconduct is proved is based.

Sir, this principle was mentioned by Mr. Gladstone now Lord Gladstone when he introduced an amendment in the English Workmen's Compensation Bill exactly similar to the amendment which I have moved. Therefore, the House is assured that it is not an argument of my invention. There was another argument which was given by Lord Gladstone when he introduced this principle in the English Act, and that was this. Where a workman is killed on account of the accident, if you charge him with causing the accident on account of serious wilful misconduct, you are charging a dead man whose lips are sealed, who cannot give evidence and show to the world that the charge brought against him is false. That was the second argument given by Lord Gladstone when he moved an amendment similar to mine in the House of the Commons. I hope these arguments will find favour with the House.

But, Sir, there are also other arguments why my amendment should be accepted. In the first place, several times when amendments are being discussed, arguments are brought forward that we must not put too great a burden upon the industry. I assure the House that even if they accept my amendment, the burden on the industry is not likely to be too great. After all, are the cases of wilful misconduct causing the death of workmen going to be too many? What is the meaning of a workman by wilful misconduct causing the accident and killing himself? It means that the man is practically willing to commit suicide. Take the third sub-clause of this clause (*b*)—" the wilful removal or disregard by the workman of any safety guard."

When a workman wilfully removes the safety guard he is prepared to commit suicide. Is there any one here who believes that such cases of practical suicide will be too many? Personally I do not take that cynical view of human nature at all. I do not also believe that there will be in many cases a wilful disobedience of orders. Sir, as this is also the English law, we must therefore go by the experience of England in this respect. Are the cases under this clause going to be too many? In order to assure the House that the cases are not going to be too many, I propose to quote to the House an authority from England. When this amendment was being discussed in the English House of Commons, Mr. F. E. Smith, a very distinguished and famous lawyer and who is now Lord Birkenhead, occupying one of the highest positions in England, gave this as his experience of this clause. He said:

" The point of view which appealed to me so strongly was this. An workman would not commit a breach of rules for any improper motive if the result of that breach was likely to inflict upon him permanent disablement or death. The Legislature however was not only entitled but bound to provide against cases where a man might well say ' Whatever happens is a trivial matter and I shall get compensation '. But to say that it was necessary in the case of where a man's life or limbs were concerned was flying in the face of all human experience."

Mr. F. E. Smith, now Lord Birkenhead, says that to say that a man will wilfully do something that will cause his death or disablement is to fly in the face of human experience. Sir, I therefore feel that the burden on the industry, if my amendment is accepted, will not be very much indeed. Then, Sir, there is likely to be used another argument. It may be said that the conditions in England are quite different from the conditions in India. I therefore want to show to the House that whatever may be the difference in the conditions between England and India, there is no difference between the conditions in England and India as regards this point at least. Let us see what are the conditions which are material in this respect. The first is

[Mr. N. M. Joshi.]

the workman having been at the time thereof under the influence of drink or drugs. Is there any one, who is likely to say the working classes in India drink more than the working classes in England? I do not think there will be anybody here who will make that statement. Then the second section is about the wilful disobedience of the rules. Is there any one here who will say that an Indian workman or for the matter of that an Indian is less law-abiding than an Englishman? My experience is that an Indian is a quiet, docile creature and he obeys the laws more readily than even the Englishman. What about the third? The third is the wilful removal or disregard of any safety guard. This I consider to be suicide. Is it proved by anybody that an Indian is more prone to commit suicide than an Englishman? I do not think any one can show that. I therefore think that the argument that the conditions in England and India differ does not hold good at least in this case.

Sir, I have thus shown that the clause as it stands is against the principles of the workman's compensation, and even though my amendment be accepted it will only be a compromise, because the ideal amendment would have been to drop this clause altogether. But I do not take the ideal course; I am prepared to accept a compromise which was accepted in England. Thirdly, I have shown that my proposal has the support of experience—experience, not of a theoretical man like myself, but the experience of English statesmen, English lawyers, who had very great experience of the working of the Compensation Act in England. Sir, if necessary, I would like to add one authority more in my support. When reading this debate in the House of Commons I came across the Division List. I looked through the list of people who had voted in favour of this amendment and I found there the name of Mr. Rufus Daniel Isaacs. Sir, this gentleman I think is well known to my Honourable friend Mr. Innes and to the other Members of this House. He is no other than His Excellency Lord Reading. I have therefore shown, Sir, that my amendment has not only the support of experience as well as of principle, but of great personages. I need not therefore say anything more, and I strongly hope that the House will accept my amendment.

**Captain E. V. Sassoon** (Bombay Millowners' Association: Indian Commerce): Sir, I notice that the first point which Mr. Joshi insists upon is that his amendment is required to balance the fact that the employee cannot get anything from the employer even should he suffer through the wilful negligence of the employer. But surely, Sir, as the Honourable Mr. Innes has pointed out to us and as has been emphasised from the Treasury Benches, should it be found that under ordinary common law the workman has not got his rights safeguarded, a Bill for employer's liability will be brought in. That I think covers this point.

The second point Mr. Joshi makes is that the industry should compensate the injured workman for all accidents. I notice that he does not suggest that the workman who is drunk or suffering from drugs or wilfully disobedient, etc., should get compensation unless the injury should cause death or permanent injury. Now, if the industry is to compensate for all accidents, why are these left out? Surely, surely, because we want to put every discouragement in the way of the workman coming to his work drunk and removing the safeguards wilfully. We should not forget, Sir, that a wilful act such as the removal of safety devices does not only endanger

the limb and the life of the workman himself but may also endanger those of his innocent fellow workmen. Now, Sir, Mr. Joshi has pointed out that the present Lord Birkenhead said that he could not conceive a workman disregarding a safety device if he thought that this might lead to his permanent injury or death, and that he may only do this if he thought that the injury would be a trivial one. Sir, is the House to encourage a workman to risk a trivial injury which may become a serious injury, and say to him, "because you thought it would only be a trivial injury, we will not therefore penalise you, by saying you are not to receive compensation?" That seems to me to be the point. Merely because a very high Member of the House of Lords at Home, who is also a very high legal exponent, should have said this in his more youthful days, I see no reason why we should follow. Surely, we should take advantage of the experience gained since the debate which Mr. Joshi referred to.

**Mr. N. M. Joshi:** They have not repealed it yet.

**Captain E. V. Sassoon:** There is no reason to think that because they have not repealed it, it was not wrong. We have seen the results. We hope, therefore, to benefit by the results. It may be that if our method is shown to be better than that of the Home Government, they may bring in an Act amending their present Act. Now, Sir, it appears to me that the only point that Mr. Joshi can bring forward—and which he has not brought forward—is that this allowance should be given to the family as a compassionate allowance. That seems to me to be the only argument that could be brought forward. "The workman is not alive to be told not to do it again and his poor dependents are the ones who are going to suffer. Therefore let us give them something that they do not deserve." But, Sir, should this be brought under this Bill? Surely, if you are going to tell the widow and the children that they are going to have an allowance though they are not entitled to have it because the husband was killed or permanently injured, why should they not have an allowance if the husband was killed or permanently injurd while walking down the street, or in any case which does not come under this Act? Surely, if we are going to bring in a measure of this kind, this is a matter which should come under a National Accident Insurance Act, and not under this particular Bill. In other words, why should the widow receive compensation as a compassionate allowance just because her husband happens to be a workman? Under *this* Bill therefore, I do not think that this point should be brought in, in this place. If it is intended that everybody who gets killed by an accident or is permanently injured is to have compensation, then this should be done in a much wider measure. Therefore, Sir, I oppose Mr. Joshi's amendment for these reasons, firstly we do not want to encourage anybody to go to work drunk or under the influence of drugs or to remove safety devices, and secondly, from the point of view of a compassinate allowance this is not the place to make the provision.

**Rao Bahadur T. Rangachariar** (Madras City: Non-Muhammadan Urban): Sir, I strongly support this amendment. I may confess that my feeling as regards this Bill has been one of distrust. Having regard to the fact that industries in our country are not yet developed, this Bill may work as a deterrent to the growth of industries and industrial activities in this country. Therefore, I am one of those who would like to be very cautious in enacting provisions to the benefit of the workmen and to the injury of the employer. But, in this case, Sir, I feel strongly

[Rao Bahadur T. Rangachariar.]

that I can trust to the Britisher's commonsense. His commonsense has told him that it is not likely that a man for the sake of a paltry sum of hundred or two hundred or three or five hundred rupees that he may get that he would willingly kill himself or permanently disable himself. If death results, or if total disablement results, the law presumes—that is how I read the English law—that it cannot be wilful or culpable neglect on the part of the employee. It will be a safe presumption to draw in such a case for I have yet to find a man who will kill himself for the sake of two hundred rupees, unless he is insane or temporarily insane. I mean it is human nature. Therefore it is a safe rule of evidence to go upon; and as we are anxious in this case, as we have been told several times, to avoid the clutches of lawyers and law courts, why give a loophole to employers to resort to law in such a case. You want to save the employee from the clutches of the law, but you put the employers in those clutches by suggesting these differences. I do not know if Captain Sassoon would like to be placed in my hands: What is it you are doing here? A man has killed himself. He is an employee, poor fellow, who leaves behind a widow and children quite unprovided for. All that the amendment says is in such a case compensate him to the limited extent which this Act provides. What does it provide? Forty-two months' wages.

**Mr. N. M. Joshi:** Thirty months' wages.

**Rao Bahadur T. Rangachariar:** And in the case of total disablement, something more. Therefore I think it is not a very harsh measure to adopt, it is a reasonable course to adopt. Captain Sassoon suggests that we should wait for national insurance legislation. I do not know when we are going to get that; but here we are legislating for workmen's compensation as between employers and workmen. Why not take this opportunity to provide for this case here? Captain Sassoon, by this very argument, admits the necessity for some legislation. In his generous heart he feels no doubt that some compassionate allowance is needed for the widow and poor children of the workman. He feels that; then why not provide for it in a measure which deals with the liability of the employer to the workman. In this country it is much more necessary than in England, because the presumption of ignorance here can be more safely drawn than in the case of English workmen. English workmen are educated; they know the value and use of the appliances which are provided there. But here, Sir, even members of highly placed families do not know the actual use of the various parts of the machinery installed in the works. I know, Sir, of the case of a daughter of a Member of the Executive Council who very nearly killed herself by tying her silk cloth to the switch of an electric fan. Thereby she was about to be killed. What I mean is that ignorance is so great in these cases that you can safely draw the presumption, if such accident occurred that it was due to ignorance and not to wilful disobedience to any lawful order or rule. I therefore submit, Sir, that it is but right that we should provide for such cases. The Government themselves recognise the necessity for it in the original Bill. That is a strong argument in favour of this amendment. No doubt the original Bill as introduced provided only for half compensation; but now I see Mr. Joshi has grown more ambitious and he is asking for full compensation as in the English Act. The English Act allows full compensation and therefore Mr. Joshi asks for it. If any one will move for half compensation, I am willing to accept it, whether Mr. Joshi is willing to accept

it or not. But it seems to me that it is a case where we must provide for some compensation; otherwise we shall be acting cruelly in the case of the ignorant workman for whose benefit we are enacting this measure. The one argument that has been used against this is that it will encourage carelessness. Sir, it is an argument which has no weight behind it. As I have stated already, a man cares more for his life than for anything else. Therefore it is not likely to have that effect; if we pass this amendment it is not likely to have that effect. I therefore strongly support the amendment.

**The Honourable Mr. C. A. Innes:** Sir, as Mr. Rangachariar has just pointed out, Mr. Joshi's amendment goes further than we went in the original draft of this Bill. We provided in these circumstances only for half compensation, and I wish to point out to the House that there was no clause in the Bill which aroused greater opposition than that. Practically every employers' association in the country condemned it, and no less than six Local Governments thought that there was no justification for that clause. I desire to point out to the House that Mr. Joshi's clause is even more drastic; it is not a matter of half compensation—it is a matter of full compensation. Now, Sir, let us see what Mr. Joshi's arguments are. His first argument is that the omission of this clause is against the whole principle of workmen's compensation. I deny that in toto. What is the main principle of the Workmen's Compensation Act? The main point of it is that the workman has not got to prove negligence on the part of the employer. Now what I want to point out here is that we are not dealing with negligence; we are dealing with accidents arising when a workman is directly under the influence of drink or drugs; we are dealing with accidents arising out of wilful disobedience of rules expressly framed for a workman's safety; we are dealing with accidents arising out of wilful removal of safety devices. It has nothing to do with negligence. In each of these cases we assume that there was not merely negligence, but something wilful. Therefore, Mr. Joshi's argument that the omission of this clause is against the principle of workmen's compenstaion is entirely unfounded.

Now, le me take Mr. Joshi's next argument. He has got no argument at all. All he can say is that this appears in the English Act and therefore we must have it in our Act; and here again I join issue with him at once. All the way through we have made it perfectly plain that we never intended our Bill to be a slavish imitation of the English Act. We made it perfectly plain that we intended to legislate for India and India's conditions. Now, I am not going to say—and I hope Mr. Joshi will not think that I am going to say—that my objections to this clause are due to any difference between the conditions of India and the conditions of England. I am not going to base my objections to the clause on any argument based on different conditions of industry. I make Mr. Joshi a present of arguments of that kind. My objection to the clause, as usual, is based on principle. As I have said, all that Mr. Joshi has been able to say was that this appears in the English Act. He said that we must adopt the principle of the English Act. Now, what is the principle on which this clause of the English Act is based? Mr. Joshi has told us. He says in the first place it is a principle that you should not punish the sons and the children for the sin of the father. If a man by reason of his being drunk kills himself in a factory, then, he says, it is wrong in principle that his dependants should be punished, and therefore you must pay compensation which otherwise if the workman had not been drunk and had been killed you would

[Mr. C. A. Innes.]

have had to pay to his dependants. Now, I put it to the House, is it right in principle? It is purely a matter of a compassionate allowance. Is it not the way of the world? Suppose a man is accused of murdering another man and suppose he is hanged; his dependants suffer, his wife and children suffer; does any one pay them compensation? The wife and children of the murdered man suffer; does any one pay them compensation? Here you have got a precisely similar case; when a man by reason of his being drunk does a thing which reacts most terribly on his dependants, why should you say that compensation shall be paid to his dependants? At any rate, why should you say that the employer should pay that compensation? If you want to pay compensation let the State pay it; do not put it upon the employer; do not let the employer have to pay compensation for an act which he could not have prevented. Then again, Mr. Joshi referred to some arguments used apparently by Lord Gladstone, or Mr. Herbert Gladstone, as I think he was then, in the House of Commons. Mr. Herbert Gladstone said that it was unfair to make a charge of this kind against a dead man. It seems to me, Sir, a singularly weak argument. In this case we are not merely dealing with a dead man, but we are dealing with men who are permanently disabled, so that that argument loses its force. I say that we are here now to legislate for India. We are not here to copy the English law merely because it is the English law, and if we are going to copy the English law, I say that that provision of the English law must satisfy our sense of logic and our reason.

Now, Sir, I come to the main objection to this clause, the objection which has weighed most with me. What is the main object, what is the main benefit that we hope to get from this legislation? We are placing a burden upon the employer; we are placing upon him the obligation to pay compensation to workmen for injuries referred to in this Bill. We hope that by doing so, and by the pressure of the Insurance Companies, those employers will be more and more careful in their factories. They will pay more and more attention to the safety of their workmen; they will go in for safety devices; they will frame more carefully rules for the safety of their workmen. And yet, Mr. Joshi comes and says that he wishes to introduce a clause which makes it very nearly useless, for an employer to put in those safety devices, to make those safety rules. According to him, if a workman injures himself or kills himself by his own wilful misconduct or by his disobedience to rules or by the removal of the safeguards, still the employer has got to pay; therefore why should the employer go in for these safety devices? That is one of my main arguments against this clause. The other argument is this. You cannot defend a clause like this by any argument based on reason, and you cannot pretend that it is fair to the employer to make him responsible for accidents which he could not possibly have prevented. Sir, I oppose the amendment.

**Mr. B. S. Kamat:** Sir, after the very able manner in which the Honourable Mr. Innes has shown the weakness of some of the arguments of Mr. Joshi, there remains very little for me to say, but there is one point to which I wish to draw the attention of the House with reference to the English Act. But before I do so, let me explain my own position in the matter. I have my sympathy for the desire of Mr. Joshi to give some sort of compassionate allowance to the workman who loses his life even by his own wilful misconduct, and if he had drafted out an amendment to

that effect in the proper manner, probably it would have been possible for me to support it; but as it is, I am afraid his amendment, as drafted, cannot be supported.

**Mr. N. M. Joshi:** May I say one word, Sir? Compensation is compassionate allowance, and it is nothing but that. That is the principal argument.

**Mr. B. S. Kamat:** Mr. Joshi based the whole of his case on the parallel of the English Act, and he led the House to believe that under the English Act the amount of compensation or compassionate allowance claimable by such workman or his dependants would be the same as if in the case of death due to any other cause and not by drink or wilful misconduct. There is nothing like that in the English Act at all. If he carefully and critically studies that Act, he will see that all that the Act provides for is this: " If it is proved that the injury to a workman is attributable to his wilful misconduct, then in that case his claim shall not be disallowed except in case of death. Well, this only means his claim is only allowable . . . . . .

**Mr. N. M. Joshi:** According to the Act.

**Mr. B. S. Kamat:** There is a good deal of difference between the fact that his claim, in spite of the fact that he was drunk, is allowable and the fact that he is entitled to the same allowance as otherwise such claim is referred to an arbitrator who probably allows one-third or one-fourth or the full amount of compensation as he deems fit. Under Mr. Joshi's amendment on the other hand what Mr. Joshi wants is that, although the workman, by his drunkenness or by his mischief has brought on his own death, the employer is to be penalised by the giving of the *full* amount of the compensation, as if the workman was not drunk. There is no such provision in the English Act at all. All that the English Act provides is that his claim should be allowed. There is a worldwide difference between that and Mr. Joshi's amendment. And, although I have full sympathy with the object Mr. Joshi has in view, I am afraid I cannot support him in the amendment as drafted by him.

One word as regards what has fallen from Mr. Rangachariar. He says no men would bring death on himself for the sake of two or three hundred rupees. Well, we do not say that he would bring death on himself for the sake of the money. Whatever may be the motive, why should an innocent man, *i.e.*, the employer, be penalised? If Mr. Rangachariar wants to give him something out of sympathy, he can devise to give something in another form. But don't penalise the employer for no fault of his.

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

The motion was adopted.

**Mr. President:** Amendment moved:

" To proviso (*b*) in clause 3 (1), at the end add the following:

' Unless the injury results in death to the workman or in his permanent total disablement in either of which cases the employer shall be liable to pay compensation to which the workman would otherwise have been entitled '."

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

The Assembly then divided, as follows:

AYES—22.

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| Abdul Majid, Sheikh. | Jatkar, Mr. B. H. R. |
| Abdul Rahim Khan, Mr. | Joshi, Mr. N. M. |
| Agnihotri, Mr. K. B. L. | Latthe, Mr. A. B. |
| Ahmed Baksh, Mr. | Misra, Mr. B. N. |
| Asjad-ul-lah, Maulvi Miyan. | Nag, Mr. G. C. |
| Ayyar, Mr. T. V. Seshagiri. | Neogy, Mr. K. C. |
| Bagde, Mr. K. G. | Rangachariar, Mr. T. |
| Basu, Mr. J. N. | Sinha, Babu L. P. |
| Chaudhuri, Mr. J. | Srinivasa Rao, Mr. P. V. |
| Faiyaz Khan, Mr. M. | Subrahmanayam, Mr. C. S. |
| Ibrahim Ali Khan, Col. Nawab Mohd. | Venkatapatiraju, Mr. B. |

NOES—51.

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| Ahsan Khan, Mr. M. | Ley, Mr. A. H. |
| Akram Hussain, Prince A. M. M. | Lindsay, Mr. Darcy. |
| Allen, Mr. B. C. | Mahadeo Prasad, Munshi. |
| Barua, Mr. D. C. | Mitter, Mr. K. N. |
| Blackett, Sir Basil. | Moncrieff Smith, Sir Henry. |
| Bradley-Birt, Mr. F. B. | Muhammad Hussain, Mr. T. |
| Burdon, Mr. E. | Muhammad Ismail, Mr. S. |
| Cabell, Mr. W. H. L. | Mukherjee, Mr. J. N. |
| Chatterjee, Mr. A. C. | Nabi Hadi, Mr. S. M. |
| Clow, Mr. A. G. | Nand Lal, Dr. |
| Crookshank, Sir Sydney. | Percival, Mr. P. E. |
| Dalal, Sardar B. A. | Ramji, Mr. Manmohandas. |
| Davies, Mr. R. W. | Rhodes, Sir Campbell. |
| Faridoonji, Mr. R. | Samarth, Mr. N. M. |
| Gidney, Lieut.-Col. H. A. J. | Sarfaraz Hussain Khan, Mr. |
| Ginwala, Mr. P. P. | Sassoon, Capt. E. V. |
| Haigh, Mr. P. B. | Singh, Mr. S. N. |
| Hailey, the Honourable Sir Malcolm. | Spence, Mr. R. A. |
| Hindley, Mr. C. D. M. | Tonkinson, Mr. H. |
| Holme, Mr. H. E. | Townsend, Mr. C. A. H. |
| Hullah, Mr. J. | Tulshan, Mr. Sheopershad. |
| Hussanally, Mr. W. M. | Ujagar Singh, Baba Bedi. |
| Ikramullah Khan, Raja Mohd. | Webb, Sir Montagu. |
| Innes, the Honourable Mr. C. A. | Willson, Mr. W. S. J. |
| Iswar Saran, Munshi. | Zahiruddin Ahmed, Mr. |
| Jamnadas Dwarkadas, Mr. | |

The motion was negatived.

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

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The Assembly re-assembled after Lunch at Five Minutes to Three of the Clock. Sir Campbell Rhodes was in the Chair.

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

"In clause 3 (2) omit the words:

'If a workman employed in any employment involving the handling of wool, hair, bristles, hides or skins contracts the disease of anthrax or'."

The effect, Sir, of this amendment, if it be carried, would be to exclude the disease of anthrax from the operation of the Act. I do not suppose that I need occupy the time of the House by any lengthy description of the disease of anthrax. It is a cattle disease; and it also affects sheep and goats. In recent years, it has been communicated to human beings, and

shows itself in the form of a malignant pustule, or boil, or carbuncle which generally proves fatal. In Europe and in the United Kingdom, one or two people have died of this disease every year. I believe a little over 100 people have died of anthrax in the last 25 years; and in the United Kingdom and in Europe a determined effort is now being made to stamp out the disease.

Now, I desire at the start to make it quite clear that I have not the slightest desire to relieve the employer from his liability, make full, proper and adequate compensation to any labourer who contracts an occupational disease who may suffer or die of anthrax whilst working for that employer. But what I do submit, Sir, is that in this country among the people who work in those trades,—who handle wool, hair, hides or skins—men, women and children, it is a matter of extreme difficulty, if not impossibility, to decide where, how and when anthrax may have been contracted. In the first place, a great quantity of hair and wool, bristles, hides and skins come into India from outside, partly over the sea, and more largely over the land frontiers. Now, no arrangements exist, no organisation, by which hair, or wool, or hides and skins infected by anthrax can be examined, there is no means of detecting the presence of the anthrax germ. Then again, skins, bristles, hides, wool and so forth are transported all over this country. There is at no stage any organisation or machinery to detect whether those goods are infected by anthrax or not. The germ is a difficult one to detect and a very difficult one to kill. I believe that it can retain vitality for many years under the most unfavourable circumstances. Now in these circumstances although Government may from time to time notify that different parts of the country and the cattle in those districts have been affected by anthrax, it is impossible, I submit, to make regulations which would protect all the people who may handle wool, hair, bristles, hides or skins. Then again, Sir, in my experience the people who are engaged in this trade are very often daily labourers. They are not permanent employees. Those people who are engaged in picking and sorting wool and handling skins are very often coolies taken on in the morning and discharged in the evening. I would ask this House how are these people to be examined to discover the presence of anthrax. It looks like some skin disease which is very very common in India. How are these coolies and labourers to be examined? How is medical provision to be afforded? Are they, before they commence the day's work, to be stripped, men, women and children, to discover if they have any sore on their bodies, which may possibly turn out to be anthrax? And then supposing that there is a sore, is it every doctor who can tell whether that sore is anthrax or not? I believe that it requires a bacteriological examination to decide whether the sore or boil or whatever it is, is anthrax or not. It is a matter of the very greatest difficulty to detect. I have not been able to discover with the information at my command, that anybody in this country has died of anthrax through handling hair, wool or hides or skins. They may have done so. I am very familiar with the wool business myself and within my own experience nobody handling wool has died of anthrax. I believe some little time ago somebody who used a Japanese shaving brush died of anthrax. That is not quite the same case as that of labourers who are engaged in the wool trade or the hides and skins trade. I have during the course of the last ten years myself attended more than one conference in Yorkshire and London, and I am very familiar with all the steps that have been taken and the legislation that has been passed to endeavour to check and

3 P.M.

[Sir Montagu Webb.]

eradicate this disease in Europe, but I feel that it would be a matter of very great difficulty to apply those measures and steps in this country where the conditions are so entirely different. It is for this reason, Sir, that I move that we take anthrax out of the scope of the operation of this Bill. I do so, Sir, not because I do not recognise the danger of anthrax, not because I do not recognise the liability of the employer to compensate work people who may suffer from that danger, and not because I am not aware of the fact that anthrax is included in similar legislation in other countries. I do so because I urge that conditions in India are such that the practical application, the equitable application of the principle of compensation as between employer and workman will in practice prove to be almost impossible. If anthrax be included in this Bill, it will mean that labourers, men, women and children either must be inspected to discover if they are affected by anthrax, or, the employer will be liable to pay compensation for people who die of anthrax who have not contracted the disease whilst in his employ, but have caught it somewhere else. It is for these reasons, not because I desire to relieve the employer from the liability to compensate, but because the practical difficulties in this country are so great as to make the equitable application of the principle in practice almost impossible, that I move that the words which I have read out, be omitted from the beginning of clause 3, sub-section (2).

**The Honourable Mr. C. A. Innes:** Sir, I am afraid I must oppose this amendment. Sir Montagu Webb's first point was that anthrax requires bacteriological examination and that no ordinary doctor can diagnose a case of anthrax straight off without first having some bacteriological examination. Well, Sir, I have taken expert advice on that very point. I have taken the advice of the Sanitary Commissioner with the Government of India, who is himself a very great expert on anthrax and who has just attended on our behalf an Anthrax Conference in London. He tells me that it is by no means necessary that every factory and every woollen mill should keep a trained bacteriologist. He says that the malignant pustule which is the ordinary manifestation of the disease can be diagnosed clinically and no doctor would think of awaiting the result of a bacteriological examination before commencing treatment. Even in Germany only in 50 per cent. of the cases is the material sent to a bacteriological laboratory in order to confirm diagnosis. I think, Sir, I have answered the first point made by Sir Montagu Webb.

Sir Montagu Webb's second point was that, as far as he knew, cases of anthrax were of very rare occurrence in India. If that is so, and I believe it is, then I do not think that employers need worry very much if we do include anthrax within the scope of the Bill. We have included anthrax within the scope of the Bill because essentially it is an occupational disease; possibly it is the most typical occupational disease there is: and I think I am correct in saying that every Workman's Compensation Act in the world, or practically every one, makes provision for anthrax. We included it in the Bill because in woollen mills, in exporters' godowns of wool, hides and other places where anthrax is liable to occur—in these industries anthrax is essentially a disease of the industry. Moreover, I think there are certain things that can be done for the workman in places like that. In England pictures of the malignant pustule are placed everywhere for the information of workmen, so that they may seek early treatment. Pictures of this kind are hung up in the factory. Nor is there I think any neces-

sity why those workmen should be inspected before they come to work. After all it is for the workman to prove that he has got the disease.

As regards Sir Montagu Webb's last point, namely, that in these woollen mills and in exporters' wool godowns daily labour is usually employed, I think I am correct in saying that the disease of anthrax supervenes very quickly; not only that, its fatal effect follows very quickly. On the whole, I think, that the case for inclusion of anthrax in the Bill particularly strong and I would repeat that anthrax is the most typical occupational disease that any one could think of.

**Lieut.-Colonel H. A. J. Gidney:** Sir, when this subject was brought up in the Committee which sat on the Bill I pressed strongly, and I think I was left almost unsupported in the end, for the inclusion of other occupational diseases besides anthrax. In fact I went so far as to enumerate a few diseases, such as lead poisoning, kala-azar (which is a residential disease pathogronomic to certain parts of India), chrome poisoning, etc., etc. The Committee did not agree with me. At the same time I think they felt that when this Bill had been in operation for some time—this being an experimental stage of it—there would be need to include these occupational diseases to a greater extent than they have seen fit to do to-day. There is no doubt that the occupational diseases included in a similar Bill in England cover a very large field indeed, and to only include anthrax in this Bill is, I consider, a very very conservative attitude to take up; and, for this reason, I do not agree with Sir Montagu Webb's amendment; in fact, I oppose it. If Sir Montagu Webb is correct in his figures that no deaths from anthrax, to his knowledge, have taken place in such occupations in India, why, as Mr. Innes said, why should the employer trouble himself about its inclusion as an occupational disease in this Bill? But as such deaths are likely to take place, and are most certainly due to occupation I think the employees so occupied should be protected especially when one considers the extreme rapidity and fatality of this disease and the difficulty owing to the paucity of reseach institutions of diagnosing it in its earliest stages in India as compared to England. Sir Montagu Webb has not adduced any good reasons in support of his amendment except to plead the cause and protection of the employer. His other reason is that conditions in India are such that the equitable application of compensation between the employer and employee will be almost impossible of execution. If anthrax be included, labourers he says, must be inspected. That is exactly what the Workmen's Compensation Act is going to lead to, *viz.*, more careful inspection of employees. If anthrax is to be excluded from this Bill it would deprive the Bill of a very important and necessary safeguard. I, therefore, oppose the amendment, Sir.

**Mr. Darcy Lindsay:** I move that the question be now put.

The motion was adopted.

**Mr. Chairman:** Amendment moved:

"In clause 3 (2) omit the words:

'If a workman employed in any employment involving the handling of wool, hair, bristles, hides or skins contracts the disease of anthrax or'."

[Mr. Chairman.]

The question is that that amendment be made.

The motion was negatived.

**Mr. N. M. Joshi:** Sir, I beg to move the following amendment which stands in my name:

"In clause 3, sub-clause (5), after the word 'person' insert the words 'and damages have been awarded in his favour'."

This, Sir, is the clause where alternative remedies have been dealt with. The clause as it stands states that a man who goes to a Court for a suit in damages for an accident is prevented from going to the Workmen's Compensation Commissioner. My amendment proposes that if a man goes to a Civil Court for damages for an accident and if he succeeds in getting damages he should be prevented from going to the Workmen's Compensation Commissioner. But if he does not succeed in his suit, then it should be open to him to go to the Workmen's Compensation Commissioner. Sir, this amendment is again an instance of my fondness for slavishly following English legislation. To frankly admit, I admire the English legislation; I admire the English people also, at least the English people in England. But, Sir, I cannot understand why my Honourable friend Mr. Innes should not like Indians like myself slavishly following the English legislation. I am, therefore, causing great disappointment to him by asking the House to slavishly follow the English legislation. After all, what is the argument to prevent a man going to the Workmen's Compensation Commissioner if he fails to get any damages from the Civil Court? The argument is that the man should not be encouraged to go into litigation. Sir, if that is the argument, this clause does not prevent that. The man has his alternative remedies. If there had been any clause here to prevent a man going altogether to the Civil Court, I should have supported it. I am in favour of giving only one remedy to the working classes. To give them two remedies no doubt is to put them at a disadvantage; and therefore if the Government had proposed that the workman should have only one remedy I should have supported it. But unfortunately they put before the working class man—they suggest to him, as a matter of fact he does not know it himself—they suggest to him by means of this section that there are two remedies open to him. Is it right, after having done that, to penalise the man if he sometimes makes a mistake and goes to the Civil Court. Therefore I think it is absolutely wrong—at least as long as the working classes in India are illiterate and ignorant—to penalise them for a small mistake of theirs. I hope therefore that the House will accept my amendment.

**Mr. K. B. L. Agnihotri:** Sir, I rise to support the amendment moved by Mr. Joshi. I shall take the House through clause 19 also which will show that this sub-clause (5) is absolutely unnecessary. In clause 19 we provide that 'no Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner'. Now if this clause stands in this Bill, then sub-clause (5) becomes unnecessary for the simple reason that a Civil Court will not entertain any suit and to penalise the worker for his ignorance in merely approaching the Civil Court for a remedy which the Court cannot and will not grant, will be very very hard for the workman. And if Mr. Joshi's amendment is accepted, then even though the sub-clause be superfluous, it will have some meaning. I therefore suggest that Mr. Joshi's amendment be accepted.

**The Honourable Mr. C. A. Innes:** Sir, I should just like to explain the view the Government has taken on this very difficult question of alternative remedies. Our view is that we have provided a special law which enables the workman to recover compensation from his employer. We have also provided a special machinery to enable him to recover that compensation. The law is special in that the workman has not got to prove negligence. We deprive the employer of what would be a defence under the common law. We treat the injury as a risk of the industry. We make the employer in the public interest pay. That is to say, the law to that extent imposes a special disability upon the employer, and it gives a special benefit to the workman. Now having done that for the workman, we think it only right that we should do something for the employer. We think it only fair that we should protect the employer from being harassed, not only by claims under this Act but also by suits in the Civil Courts. Therefore we give the workman his choice. He can go to the Civil Court if he likes. He can lay a claim before the Commissioner under this Act if he likes. But he must exercise his option; he cannot do both.

And the second point is that under this law we want to encourage him to use this Act. It is for that reason as I explained before that we tried to draw the Bill in such a way that both the workman and the employer can understand it, and that they can come to an agreement among themselves. And if there are disputes we try to encourage the workman to take our simple and inexpensive machinery of the Commissioners. Our whole object is to prevent the workman from wasting his money in the Courts, and the employer from being harassed by suits. That is my objection to Mr. Joshi's amendment. Mr. Joshi wants that the workman should first be able to go to Civil Courts; if he gets his damages there well and good; he cannot go any further; but if he fails in the Civil Court, he must be allowed to file a claim under this Act against his employer. I say that bearing in mind the objects with which we set out, the course suggested by Mr. Joshi is not right, and that it is fair that the workman should be required to exercise his option whether he should go to the Civil Court in the first instance or whether he should claim under this Act. I oppose the amendment.

**Rao Bahadur T. Rangachariar:** Sir, this is one of those cases where people in this country, especially the English people, expose their dread of Courts. I do not know why they have a dread of Courts at all. It is there they get justice; after all we are concerned in seeing justice done. I think lawyers in this part of the country are perhaps to blame. The heavy fees in Calcutta perhaps account for it; the gold mohurs which they reap in Calcutta apparently account for this dread of Courts; but the poor pagodas of Madras do not drive parties away from Courts. Now, Sir, what is the object of this? Let us remember that this Act provides a new right and a new remedy, a new right which depends upon one set of circumstances, whereas the ordinary remedy under the law depends upon another set of circumstances. Here the liability arises by the mere fact of employment. This law assumes, as the Honourable Mr. Innes told us just now, that by the mere fact of employment this liability arises on the part of the employer; and in order to give relief in respect of that liability a special machinery is created. Under the ordinary law a workman, if he resorts to the ordinary Courts, has to prove other circumstances, not merely the fact of employment; he undertakes another burden, namely, he has to prove negligence on the part of the employer before he can get a farthing; so that a man may be entitled to compensation under this Act but will not

[Rao Bahadur T. Rangachariar.]

be entitled to damages in the Civil Courts. This section provides a punishment, therefore, for a man daring to go to the Civil Courts. We are enacting a law here saying " Be afraid of Courts; if you go anywhere near the precincts of a Court, take care, we will come down upon you. Although you may be entitled under this Act to compensation you may not be justly entitled to damages in the Civil Court. But you are entitled to something in law which this law creates and we will deprive you of it; we impose a fine on you, the fine being that we will deprive you of what is justly due to you." Sir, can any civilized Legislature support such a proposition? Is a Legislature going to say,—" Impose a penalty on people going to the Courts established by His Majesty and by the Government of the country"—not national Courts established by the Congress Party—I can quite understand if a penalty is imposed by saying that if you went to these panchayet Courts established by the Congress party we will impose a penalty. But, Sir, what is the crime he has committed? He has committed the sin of approaching a Court established by this very Government, and the Legislature says " We will impose a penalty upon you. How dare you go?" Therefore, we will deprive you of what is justly your due. Therefore, Mr. Joshi's amendment has got substance behind it, principle behind it, justice behind it. On the other hand, the proposal made by Government is ridiculous on the face of it. The Government expose themselves to ridicule. They themselves dread their own Court which they established. That is what they are saying in so many words. Sir, if a man goes to a Civil Court and loses, he pays costs. If he is an unsuccessful party, he pays costs; costs no doubt oftentimes are not fully compensatory of the actual costs incurred—that I know. But that is not all. That may be a reason for increasing the costs to be awarded by altering the rules by which costs are to be awarded. But do not make it a penalty for a man going to the Court and say " we will deprive you of what is your due." We deal with a set of ignorant people. The man may be an innocent person in the hands of a scheming lawyer. (*Mr. R. A. Spence*: " Are there any?") I suppose there are. Just as there are scheming merchants—are there not scheming merchants who took advantage of the war boom? Now, Sir, there are black sheep in every fold. Let us not therefore sneer at only one set of people. There are honourable persons and other kinds of persons in every class and profession. Therefore, I say, Sir, it is quite reasonable to suggest that if a man has already got compensation for injuries sustained, let him not have any more. But where his action failed? As I said before, if the cause of action is the same for both cases, that is, if he has to prove only the same set of facts in either case, then no doubt I can understand it. But, where he has to prove more in one Court and less in another Court, that the Court where he has to prove less should say: don't give him any compensation because the other Court has already refused it; that seems to me illogical and to be a case of creating jealousy. Don't give it to him because he has been to my neighbour. It seems to me to be a very indefensible position for any Government or anybody to take up. I therefore, Sir, support Mr. Joshi's amendment.

**Mr. J. N. Mukherjee** (Calcutta Suburbs: Non-Muhammadan Urban): Sir, my object in rising to address the House is to draw pointed attention to certain aspects of the Bill and of the clause under consideration to which attention has already been drawn to some extent. My Honourable friend, Mr. Agnihotri, has said that section 19 drives the party injured to the

Commissioner. I submit, Sir, that seems to me to be the effect of section 19 (1) and (2) of the Bill. It reads:

"If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by the Commissioner."

There is no other alternative. Then the second sub-clause says:

"No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act *required* to be settled, decided or dealt with by a Commissioner."

Therefore, Sir, I think in almost 99 cases out of a hundred, all matters which crop up in connection with compensation for injury have to come up before the Commissioner, and they are required by the Bill to be decided by him. Therefore my Honourable friend, Mr. Joshi, suggests that the words "and damages have been awarded in his favour" be added to sub-clause (5) which will read as follows after the addition proposed has been made:

"Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and damages have been awarded in his favour."

That is how it will read when the present sub-clause (5) is supplemented by the words proposed by him to be added. Otherwise, the first portion of the clause, being followed by the subsequent portion of it, gives no intelligible meaning to the following words "and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury if he has instituted a claim to compensation in respect of the injury before a Commissioner." These words must mean that the same matter is covered by the civil suit as well as by the proceeding before a Commissioner, not cases where there are other elements justifying a claim for compensation or damage, which can be taken before a Court of law for adjudication. We are not concerned with the question of agreement, but of a civil suit instituted before the Civil Court. Therefore, there seems to be an inherent inconsistency in the Bill itself as framed because it compels an injured workman to go to a Commissioner in all cases under the Bill and then vaguely mentions the Civil Court. We can get some meaning out of it only when we contemplate that in such cases only where the facts justifying a claim for compensation both before a Commissioner as well as in a Civil Court overlap each other, the former proceedings operate to the exclusion of that in a Civil Court and in no other. Nobody can go before the Civil Court for compensation within the meaning of clause 19 of the Bill, but he must appear before the Commissioner for redress in all cases arising in any proceeding under the Bill. Therefore, I submit, Sir, the matter deserves grave consideration by the Honourable Members and to my mind, my friend's amendment, to say the least, suggests some way out of the difficulty. Without it you give the injured man no relief by pointing out to him the road to the Civil Court. I leave the matter in the hands of the House with these words.

**Mr. R. A. Spence:** Sir, I have even a greater feeling for lawyers than my Honourable friend, Mr. Rangachariar, and I am basing my arguments against this amendment because I have a great belief in them. I don't

[Mr. R. A. Spence.]

believe there are any scheming lawyers. The Honourable Mover of this amendment, as far as I understand him, objected to the workman being able to go to the law and also being able to go to the lawyer. And he complained, I think, that, if this amendment was not supported by the House, a man who had gone to the lawyer would not be able to go to the law of this Act. Well, now, surely, if he had gone to the lawyer and the lawyer had advised him that under the Civil Code he had a claim for damages and he had exercised that power of free will, which my Honourable friend Mr. Rangachariar thought no man should be deprived of—the right of going to the Courts which has been established by this Government and not by the Congress Party—if exercising that power of free will, he goes to the Civil Court as advised by his lawyer and if he loses his case, surely the lawyer will tell him that his case, having failed in the Court, had failed because he had got no case and therefore he would have no case under the law of this Act and therefore there would be no hardship for him in being prevented from taking proceedings under this Act.

The Honourable Mr. Innes has told us the reasons which have induced Government to cut down that clause and honestly I think his arguments are very strong and I think we ought to refuse to accept this amendment.

**Dr. Nand Lal:** Sir, I am in favour of this argument advanced by the Honourable Mr. Innes that the workman may be made to adhere to this Bill. I am also in favour of this argument which has been advanced by the same Honourable Opposer that the employers should not be harassed. Conceding to that extent, yet I feel bound to submit before this House that things opposed to equity should not be countenanced in the form of any provision. There is a workman, altogether ignorant; he seeks for legal advice. Unfortunately, he is ill-advised and goes to the ordinary Civil Court, contemplating that he will secure a decree there, and his suit in regard to damages,—not for compensation as defined by the present Bill which is being debated upon—is unfortunately dismissed. Now injury he has sustained. He has suffered. There is another rule of law which can be availed of by him but he is deprived of it. Why? Because he was ill-advised. It is simply inequitable that he should be deprived of the provision of this Bill so far as compensation, with reference to certain prescribed injuries goes. I concede that if he is allowed any damage from the Civil Court, the amount of that damage may be deducted. But there is no reason why we should allow a peculiar provision in this Act that he should altogether be deprived of his remedy under the Workmen's Compensation Act if he resorts to the Civil Court with a view to seek ordinary remedy. Apart from that, you will be pleased to see, Sir, that the wording of clause 3, sub-clause (5) is: "Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person." Supposing he has got a different cause of action against a person other than the employer. Then, in that case also, he is told "Oh, you should not go to the Commissioner under the Workmen's Compensation Act." Now, in this case the employer will not be harassed. It is "any other person". Is this House going to deprive the workman of another remedy against another person? I submit that this House will support the amendment which speaks for itself and is really commendable. With these few remarks I most heartily support this amendment which is based on equitable grounds.

**Sir Henry Moncrieff Smith:** Sir, Mr. Joshi, if I understood him aright, was professedly attempting to follow the English law. I should like to explain to the House as briefly as possible that Mr. Joshi's amendment is really not the English law at all. There are certain special provisions in the English law which recognise claims in the Civil Court—in the County Court. But when claims are made there, they have one particular effect which Mr. Joshi has not mentioned and which perhaps the House did not realise, and that is, that if the Civil Court proceeds to assess compensation, it shall, if it is of opinion that the proceedings ought to have been brought under the Workmen's Compensation Act, award to the employer the whole costs of the case. Now, we have not got that in our law. It might be rather a dangerous provision in our law if Mr. Joshi amends it in that way, because the workman having got something out of the Civil Court and having had costs awarded against him would say, "At all events, let me again try my luck with the Commissioner; at least I may get something which will be a set off against the costs which have been awarded to the employer against me." In India a provision of that sort would probably swallow up most of the compensation subsequently awarded. As has been suggested, not by laymen in this House at all but several times to-day by lawyers themselves, this might be an advantage to the lawyer. It will force every workman, once he becomes acquainted with the law, to go to a lawyer and seek his advice as to the Court where he will stand the best chance of getting adequate damages or compensation. I would remind the House that compensation under this Act is not damages. It is quite another thing from damages—damages which a Civil Court can award. In this particular case compensation is defined as the compensation obtainable or awardable under the provisions of this Act. Now, Sir, if the workman is to be driven to take legal advice—it is suggested that he should and ought to take legal advice . . . (*Mr. N. M. Joshi*: "I am against it. You can prevent it.") Mr. Joshi will prevent the workman taking legal advice in this matter, he would like the workman to make up his own mind without any assistance whatever in the matter as to the proper course he should pursue. I think that is dangerous too, because it will merely tend to swell litigation. The workman, as a matter of fact, in such a case, would not proceed to file a suit for damages without some advice, and I think the House will realise how dangerous it is for any would-be client to decide on litigation without taking advice. In many places he can get it very cheaply. There are struggling pleaders just beginning their career, or perhaps pleaders who have struggled for many years without establishing a career, who are quite prepared to give advice—advice that certainly is not fit to be followed in every case—without due consideration of the law on the subject and of the facts. Sir, I think, if the workman deliberately or even inadvertently goes to the Civil Court and decides to bring a claim there for damages, then he should stand by what he has done. No provision is made in this case—I do not quite know what Mr. Joshi's contention is, but would he allow the workman half way through the proceedings in the Civil Court to change his mind and ask the Court to stay proceedings and then say, "I am going to the Commissioner to get compensation in that way. I wish to take no further proceedings in this case." In such a case the workman's money will have been wasted, and he will undoubtedly have to pay the cost of the suit up to that time. (*Mr. N. M. Joshi*: "Something is better than nothing.") I do not agree that something is better than nothing. If we are going to have anything in the law, we must have the thing complete. It is these "somethings that are better than nothing" that lead to difficulties

[Sir Henry Moncrieff Smith.]

and to a series of rulings on every difficult section or provision in our law in India. I entirely disapprove of that suggestion that we should have something that is better than nothing. I would suggest that the workman should in this case choose his remedy and should stick to it.

**Mr. Chairman:** Amendment moved:

"In clause 3, sub-section (5), after the word 'person' insert the words 'and damages have been awarded in his favour'."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—23.

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| Abdulla, Mr. S. M. | Mahadeo Prasad, Munshi. |
| Agnihotri, Mr. K. B. L. | Misra, Mr. B. N. |
| Ayyar, Mr. T. V. Seshagiri. | Mukherjee, Mr. J. N. |
| Bagde, Mr. K. G. | Nag, Mr. G. C. |
| Bajpai, Mr. S P. | Nand Lal, Dr. |
| Basu, Mr. J. N. | Neogy, Mr. K. C. |
| Chaudhuri, Mr. J. | Rangachariar, Mr. T. |
| Ginwala, Mr. P. P. | Sinha, Babu L. P. |
| Hussanally, Mr. W. M. | Srinivasa Rao, Mr. P. V. |
| Iswar Saran, Munshi. | Subrahmanayam, Mr. C. S. |
| Jatkar, Mr. B. H. R. | Venkatapatiraju, Mr. B. |
| Joshi, Mr. N. M. | |

NOES—40.

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|---|---|
| Allen, Mr. B. C. | Kamat, Mr. B. S. |
| Barua, Mr. D. C. | Ley, Mr. A. H. |
| Blackett, Sir Basil. | Lindsay, Mr. Darcy. |
| Bradley-Birt, Mr. F. B. | Mitter, Mr. K. N. |
| Bray, Mr. Denys. | Moncrieff Smith, Sir Henry. |
| Burdon, Mr. E. | Muhammad Ismail, Mr. S. |
| Cabell, Mr. W. H. L. | Percival, Mr. P. E. |
| Chatterjee, Mr. A. C. | Ramayya Pantulu, Mr. J. |
| Clow, Mr. A. G. | Ramji, Mr. Manmohandas. |
| Crookshank, Sir Sydney. | Samarth, Mr. N. M. |
| Davies, Mr. R. W. | Sarfaraz Hussain Khan, Mr. |
| Faridoonji, Mr. R. | Sassoon, Capt. E. V. |
| Haigh, Mr. P. B. | Singh, Mr. S. N. |
| Hailey, the Honourable Sir Malcolm. | Spence, Mr. R. A. |
| Hindley, Mr. C. D. M. | Tonkinson, Mr. H. |
| Holme, Mr. H. E. | Townsend, Mr. C. A. H. |
| Hullah, Mr. J. | Tulshan, Mr. Shewpershad. |
| Ikramullah Khan, Raja Mohd. | Webb, Sir Montagu. |
| Innes, the Honourable Mr. C. A. | Willson, Mr. W. S. J. |
| Jamnadas Dwarkadas, Mr. | Zahiruddin Ahmed, Mr. |

The motion was negatived.

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

"That in clause 3 (5) the following be substituted for sub-clauses (*a*) and (*b*):

'If he has received compensation in respect of the injury under the provisions of this Act except with the leave of the Commissioner and in any suit so instituted the amount of compensation recovered under this Act shall be taken into account in awarding damages'."

Sir, this amendment deals with the converse case. We have just now dealt with the first portion of this section in which if a man went to a civil court we told him he ought not to claim compensation under this Act. This latter portion of the section deals with the case of a man where he is

sought to be prevented from going to the ordinary court. And on what ground? Mark the words—" if he has instituted a claim to compensation under the Act he cannot go to the civil court." If he has merely instituted a claim, which may be infructuous, he cannot go to the civil court. Honourable Members may have noticed from the various provisions of this Bill this compensation is awarded under various restrictions. The man has to give notice of the accident within a reasonable time. He has to give notice of the claim, and if he does not do this it is left to the discretion of the Commissioner whether to award compensation or not. Then again, the amount awarded under this Act is very small. Again, as Honourable Members must have noticed, the nature of the accident may be such that more compensation and damages would be awarded in the civil court. Therefore the right to go to a civil court is inherent with us. Whenever there is a wrong there is a remedy. That is a well-known rule of law. There can be no wrong without remedy. Therefore the right to go to the civil courts established by the Government of the country is the inherent right of every subject of His Majesty. By this clause we propose to take away that right; and for what reason? Because the man has merely instituted a claim for compensation which may or may not be successful. Therefore it is not right to have such a clause. You cannot take away this valuable inherent right of every citizen except for good cause; the good cause will be if he has recovered sufficient compensation. But merely the instituting of a claim should not be a ground for driving him out of court. That is why I have proposed, Sir, that " if he has received compensation in respect of injuries under the provisions of this Act " he should not go to the civil court unless the case is so serious that the Commissioner considers that he can give leave for going to the court. It will be seen, I do not permit him to go to Court without the leave of the Commissioner. I provide safeguards against vexatious claims, so that if he has received compensation he cannot go to the civil court except with the leave of the Commissioner, and even when he goes to the civil court, I make adequate protection to the employers by providing " and in any suit so instituted the amount of compensation recovered under this Act shall be taken into account in awarding damages." Therefore, it is a just provision; the employer does not suffer, the employee does not suffer; on the other hand the inherent right of every subject of His Majesty is preserved. You do not do any violence to that well known rule of law 'No wrong without a remedy.' On the other hand, if you leave it as it is, you simply say because you have instituted a claim to compensation, therefore you should not go to the civil court or because merely an agreement has been come to. If an agreement has been come to, what is the satisfaction to the man by merely having an agreement. If compensation had been given under the agreement, I can understand it. Supposing he does not register the agreement as is required under the Act, the agreement is no good. Therefore, in either case only if he has recovered compensation, he should be deprived of the remedy which he has under the law. Therefore, I move the amendment which stands in my name.

**The Honourable Mr. C. A. Innes:** Sir, if Mr. Joshi's amendment was bad, then I say Mr. Rangachariar's is worse, much worse. In the first place if the amendment proposed by Mr. Rangachariar is accepted, it will mean that there will be no objection to a workman filing simultaneously a suit under the common law and a claim under this Act, and that goes, as I have said, against one of our principles. I should be prepared to say

[Mr. C. A. Innes.]

that there was something in Mr. Rangachariar's argument if there was any chance of a workman losing his claim before a Commissioner on the ground that he was not a workman covered by the Act. If he lost it purely on a technical point, then naturally he ought to have his remedy in the civil court; but he has got his remedy, for this Act, as you see, applies only to workmen as defined in this Bill. If, therefore, a man is non-suited in a claim before the Commissioner on the ground that he is not a workman, then there is nothing to prevent him from filing a suit in a civil court. Then, again, Mr. Rangachariar makes an important point of the fact that merely if a workman has instituted a claim before a Commissioner, he is not allowed to go to the civil court and he points out that this is unfair. He suggested that there might be some reason in it if we only debarred him from going to the civil court if he got compensation from the Commissioner. But this Act is far more favourable to the workman than the common law. If a workman filing a claim before a Commissioner where he has not got to prove neglect, fails, then *a fortiori* he will fail before a civil court. We are preventing him from wasting his money. But the real reason why I object to Mr. Rangachariar's amendment is this; let us assume that the workman has obtained compensation from the Commissioner and then wants to be allowed to file a suit in the civil court. If we accept the amendment, we practically tempt the workman to waste the compensation that he has got from the Commissioner in prosecuting probably a useless case in a civil court. Sir, I say that is not right and I oppose the amendment.

(At this stage Mr. President took the Chair.)

**Mr. President:** Amendment moved:

"That in clause 3 (5), the following be substituted for sub-clauses (*a*) and (*b*):

'If he has received compensation in respect of the injury under the provisions of this Act except with the leave of the Commissioner and in any suit so instituted the amount of compensation recovered under this Act shall be taken into account in awarding damages'."

The question is that that amendment be made.

The motion was negatived.

**Mr. K. B. L. Agnihotri:** Sir, I move the following amendment which stands in my name:

"In clause 3, in sub-clause (5), omit sub-section (*b*)".

We have deprived, Sir, the workman from going to a civil court for damages in two cases. The first is where he has instituted a claim before the Commissioner in respect of any claim and the second is where an agreement has been come to between the workman and his employer providing for the payment of damages or compensation in respect of the injury in accordance with the provisions of this Act.

I beg to move an amendment that this sub-clause (*b*) which deals with
4 P.M. the agreement, may be deleted.

Sir, in the former portion of sub-clause (5) we have already provided that the workman may bring a suit for damages against any other person if he so likes. When he can bring a suit for damages against a person other than an employer, why should he be debarred from bringing that

suit if an agreement has been arrived at between himself and his employer in respect to the liability of the employer. This will be incongruous. Sir, it is also possible that the employers may take advantage of this sub-clause, and at the time when a workman seeks employment the employer might say to him that he would only be given employment if he gave an agreement that in no case will he be entitled to go to the Civil Court for damages; and the workman will have to agree to it for the sake of work and this will be very hard for the workman. Therefore, I beg to submit, that this sub-clause (*b*) should be deleted.

**Mr. A. G. Clow:** Sir, I ask the House to reject this amendment. I do not think the Honourable Member has considered what the effect of it will be. The obvious effect will be that the good employer, the benevolent employer, who at once puts his hand into his pocket and pays out the compensation will still be liable to a suit for damages, whereas the quarrelsome employer who says " No, I refuse to give any compensation," and who forces the employee to file a claim before the Commissioner will thereby protect himself from a suit. Now, our whole object has been to encourage employers to pay compensation without any trouble. We have tried so to frame the Act that they will be able to calculate compensation without legal help, without official help; and the amendment moved by the Honourable Member simply strikes at the root of all this. It is a direct incitement to the employer, in order to protect himself, to refuse to pay compensation at once.

**Mr. N. M. Joshi:** Sir, I should like to know from my Honourable friend Mr. Clow or from anyone else how the workman by this clause is protected against a dishonest employer. Suppose an employer, who is a very wealthy man and a very well educated man, persuades his employee, who is a poor illiterate man, to come to an agreement that he should accept compensation of Re. 1 or Rs. 2 a month, whereas if the complaint is made to the Compensation Commissioner a compensation of Rs. 10 a month will be due to him. How is this case provided for by this clause. As a matter of fact, my fear is that if you keep this clause, many poor people, illiterate people, will, in sheer ignorance accept a very small dole or small monthly payment from the employer, and if they once accept it and if any other people afterwards tell them that they have made a mistake they shall not be able to go to the Workmen's Compensation Commissioner and complain that they were cheated. I therefore think that this amendment is a very proper amendment and should be accepted in the interests of the ignorant and illiterate working classes of this country.

The motion was negatived.

**Dr. Nand Lal:** Sir, the amendment which I propose to move is as follows:

" That in clause 3, sub-clause (5) (*b*), for the words ' an agreement has been come to,' substitute the words ' a lawful compromise in writing has been arrived at '."

Supposing, Sir, a workman goes to the civil court and institutes his claim; he wil be confronted with this plea, which I am afraid in a majority of cases may be raised, that there was an agreement between the employer and the workman who is now suing in the civil court. It is very risky so far as the interests of the workman go, because agreement covers both oral agreement and an agreement in writing. If the agreement which

[Dr. Nand Lal.]

I should like to be substituted is reduced to writing, then that is a pretty good safeguard against injustice. But if the mere word "agreement" remains, as it has been proposed, in this clause, then every employer when he will be impleaded as defendant will say, "Oh, there was an agreement between myself and the workman"; and then both parties will be compelled to produce a number of witnesses. I think the House will agree with me that if both the parties have got to produce evidence it is very expensive, very costly, and litigation may be prolonged. But if this modest amendment of mine is accepted, Sir, the natural result thereof would be that there would be no fear of this sort. A compromise which has been reduced to writing will be produced there and then, and it will put the whole litigation to an end. Of course a second question will naturally crop up, and that would be whether that compromise is lawful or unlawful. To substantiate my contention in this connection, I may put forward a hypothetical illustration. Supposing a workman is a minor and he goes to the court and the employer says: "There was an agreement between this minor and myself." Will this House approve of this agreement which has been entered into by a minor forming one party and the employer the other party? The whole doctrine of minority would be set at naught altogether; in some cases we protect minors. But here is an Act of a very peculiar character in which the minority is also not protected. That minor workman may be duped away, he may be induced to subscribe to an agreement or bond or a deed of compromise. Therefore that deed or that bond or that agreement will be altogether unlawful. If this amendment is accepted by this House it will decrease litigation instead of increasing it. Many Honourable Members have been showing themselves averse to litigation. Here is an amendment, and I shall see how many of them will now come forward and express their sympathy with it. With these few words, I place this amendment before the House.

**Captain E. V. Sassoon:** Sir, the Honourable Member seems to have omitted to look at clause 28 and clause 29 of the Bill, from which he will see that no agreement is effected unless it has been registered by the Commissioner who will only do so on being satisfied as to its genuineness. On the other hand, if the employer omits to send the agreement to be registered by the Commissioner under clause 29, the workman has all his rights under this Act. Therefore, the Honourable Member will realise that the workman is well protected from the unscrupulous employer who may try and make him sign an unjust agreement without having to go to the law at all.

**The Honourable Mr. C. A. Innes:** Sir, I would like to supplement what my Honourable friend, Captain Sassoon, just said. As Mr. Sassoon has correctly pointed out, all important agreements under this Act have to be registered, and therefore have to be written. But I think probably Dr. Nand Lal had in his mind, when he proposed his amendment, the case of half-monthly payments for temporary disability. We definitely decided that we should not insist on the registration of those half-monthly agreements for the simple reason that the Commissioner would be flooded up with applications for registration if every petty compensation for a few days' temporary disability had to be reduced to writing and had to be registered with the Commissioner. So what we have tried to do is to provide another remedy for the workman. Supposing the employer and the workman come to an agreement for half-monthly payment, the workman

always has the power under clause 6(1) of the Bill to apply to the Commissioner for a review of that agreement, and further powers are given under section 10 where the Commissioner is empowered to accept a claim, whether by way of half-monthly payment or otherwise, even though that claim may be time-barred under the rest of the Act. I think we have met the point sufficiently well.

The motion was negatived.

**Mr. President** (to Mr. N. M. Joshi): Is your point not met by the amendment just disposed of?

**Mr. N. M. Joshi:** No, Sir. I beg to move the amendment which stands in my name, namely:

"To clause 3, sub-clause (5) (*b*), at the end add the following:
'and provided the agreement has been registered with the Commissioner'."

Sir, this amendment will practically make the registration of agreements almost compulsory. The Honourable Mr. Innes just said that important documents will be registered, but the unimportant ones will not be registered, and it is not that every agreement will be registered. It is necessary at the present stage of our working classes who are mostly illiterate and ignorant that every agreement should be registered. I have personally no fear that there will be hundreds and thousands of these agreements from every province and from every district so that the Workmen's Compensation Commissioner will be flooded with them. I do not believe accidents take place in such large numbers as was made out by my Honourable friend, Mr. Innes. I therefore think that my amendment will safeguard the interests of the illiterate and ignorant workmen against dishonest employers and I hope that protection is due to them.

**Mr. J. Chaudhuri:** Sir, may I suggest that the word "settlement" may be substituted for the word "agreement" in Mr. Joshi's amendment, as the word "agreement" is likely to cause difficulties in many cases.

**The Honourable Mr. C. A. Innes:** Mr. Joshi said that he did not believe that there would be many claims under this Act and he didn't believe that, if we prescribed that claims for half-monthly payments must be registered, the Commissioner would be flooded with applications for registration. Well, Sir, English experience shows that most claims for compensation arise in respect of temporary disabilities and small accidents, and I find that in one year there were no less than 355,000 claims admitted. As I explained in reply to Dr. Nand Lal, we have tried to provide for this point in another way. We do not propose, we never have proposed to insist on the registration of half-monthly payments but we have provided under clause 6 (2) a machinery for the purpose and we have given power under clause 10 (*1*) to a Commissioner to extend the period for a claim if he so thinks fit. I do not think myself that that amendment is either necessary or desirable.

The motion was negatived.

Clause 3 was added to the Bill.

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

"In sub-clause A (*i*) of clause 4 (*i*), for the word 'thirty' the word 'sixty' be substituted."

[Mr. B. N. Misra.]

This clause provides that in the case of death of a workman only thirty months' wages will be paid as compensation; that is quite sufficient. Sir, probably some of the Honourable Members will call me very greedy as I am always asking a little more. But I think Honourable Members will find that this proposal to raise thirty to sixty months' wages will not entail such hardship on the mill-owners, factory owners and rich people, nor will they find it difficult to make that payment for it will be a payment in the interests of labour itself. Sir, the workmen that are in view come mostly from the labouring class who get say about Rs. 15 to 20 or say 25 a month. The amount that is contemplated under this section will probably be from Rs. 600 to Rs. 800. Rupees 20 to 25 has been ascertained to be the average monthly wages of the workman. Now, Sir, will this payment really entail hardship upon the millowners? It has been said that it is a new Act and that industry will perhaps be ruined if workmen are allowed such compensation. Sir, this is not a general order of things. Accidents are, of course, rare. For instance in the case of agriculture or in the case of landed owners, we get famine or we get floods occasionally. We do not get them often. What is done in such cases? Whenever there is a flood or a famine, even the benign Government not only gives up the rent from the poor tenants but also comes to the relief of the famine-stricken or the flood-stricken people. I think that is a very wholesome rule observed by the Government.

**Mr. President:** Order, order. The Honourable Member has wandered very far from his own amendment.

**Mr. B. N. Misra:** Sir, I was giving an illustration.

**Mr. President:** The illustration is out of order.

**Mr. B. N. Misra:** The mill-owners, factory-owners or mine-owners, are not such poor people as will find it difficult to meet these occasional accidents which will be due to the negligence or it may be really due to some actions on the part of the owners themselves or it may be due to some natural causes. But these rich people amass their wealth with the labour of these poor labourers. The prosperity of these industries is due to the workman's labour. If the workmen are not properly looked after or if there is not sufficient inducement to workmen, I think these industries cannot prosper. These small payments, instead of being a hardship to the millowners or factory-owners or mine-owners, will really do good to them inasmuch as it will induce the workmen to readily come forward and join the factories, etc. Now, Sir, the amount that has been fixed is thirty months' wages in case of death. Is that the value set upon a man's life—whether he be a workman or any other man? If you put it at thirty months' wages, I think it is too little. If it is intended to help his dependants, then also it is very little. Of course the maximum is fixed at Rs. 2,500. Probably that may help the higher paid men such as engineers and others who get perhaps Rs. 200 or Rs. 300 a month. In their case Rs. 2,500 may be sufficient. But in the case of poor workmen, thirty months' wages is very small. The Honourable Mr. Innes said that even when a man is murdered, nobody compels the murderer to pay compensation to the relations of the deceased. When a man has murdered, the moment it is found out, he is hanged by the neck and nobody lives to pay compensation. Our civil law lays down that no man's heirs or successors are responsible for the guilt or criminal

action of his predecessors. That is why the heirs or successors are not asked to pay compensation. The man is either transported to the Andamans or is kept in jail for several years.

**Mr. President:** Order, order. The Honourable Member is getting even further from his amendment.

**Mr. B. N. Misra:** Sir, my submission is, it is really a moral duty on the part of these owners who are rich men to meet this occasional expenditure which will really be a relief to the workman and will not really tell so much upon the industry. I therefore submit that thirty months' wages is too small and that it ought to be increased to sixty months' wages.

**Mr. President:** Amendment moved:

"In sub-clause A (*i*) of clause 4 (1), for the word 'thirty' the word 'sixty' be substituted."

The question is that that amendment be made.

The motion was negatived.

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

"In sub-clause A (*i*) of clause 4 (1), substitute the words 'thirty-six' for the word 'thirty'."

My amendment is based on the same principle as that of Mr. Misra. No doubt I am more modest in my demand than Mr. Misra. I have followed the period that has been allowed in the English Statute, and I shall not be ashamed of my slavish imitation of the English provision where it is beneficial to workmen. Sir, in the English Statute, thirty-six months' period has been allowed. My own impression is that even sixty months' period which was moved by Mr. Misra was not a long period. But thirty-six months' period is not much longer than the thirty months which has been allowed in the Bill. I do not know, Sir, on what basis these periods have been fixed. I submit that thirty-six months will not be long enough to put heavy pressure on the employer or the owner but will be much more convenient to the workman or his family. No doubt, the standard of living in England is higher than that in this country. But at the same time, the number of dependants here is much larger than what it is in England. I submit that such a modest amendment as to substitute "36" for "30" should be accepted by the House.

**Mr. President:** Amendment moved:

"In sub-clause A (*i*) of clause 4 (1), substitute the words 'thirty-six' for the word 'thirty'."

**The Honourable Mr. C. A. Innes:** A scale of this kind must always be more or less a matter of opinion. We worked at it very hard. We had a Committee on it, as the House knows, in July, and we had a Joint Committee on it. Both the Committees have agreed that this scale is, having regard to the conditions of India, on the whole not only a fair scale but a liberal scale. It has been accepted generally throughout the country, and I do hope that the House will be guided by the advice which it has received from the two Committees and by the fact that the country generally has accepted the scale that we have proposed. I deprecate most earnestly any tampering with the scale at this time. I hope that the House will reject this amendment.

The motion was negatived.

**Mr. N. M. Joshi:** Sir, I move the following amendment which stands in my name:

"In sub-clause A (*i*) of clause 4 (1) after the word 'or' insert the words 'the sum of five hundred rupees whichever of these sums is the larger but not exceeding in any case' and omit the words 'whichever is less'."

The object of this amendment is to put down the minimum limit of Rs. 500 as compensation in a case of accident where the workman will be killed. Sir, Schedule IV of this Bill lays down the minimum compensation of Rs. 240. It sets down Rs. 8 as the lowest assumed wage, so that 30 months' wages come to Rs. 240. I consider that this minimum wage is too little taking into consideration the wages in India as well as the prices in India. In the English Act—I am very sorry to refer to the English Act again and again—the minimum compensation provided for is £150 which comes to Rs. 2,250. After all, the prices in India are not ten times as low as in England and the wages in India are not also ten times as low as in England. I therefore think that in placing the minimum at Rs. 240 we are really giving too little for the lower paid workman who may be killed on account of an accident. The sum of Rs. 240 as compensation for death to the wife and children of the workman I think will be considered by the House as too low. The minimum limit that I have proposed is only Rs. 500, about one-fourth of the minimum limit proposed in the English law. I have not proposed a very exorbitant limit at all. It only assumes that the minimum wage taken should be about Rs. 16 or 17. I therefore hope that the amendment proposed by me will be accepted by the House.

**The Honourable Mr. C. A. Innes:** Sir, I am afraid that I must again oppose this amendment. It is perfectly true that our lowest assumed wage for the purpose of Schedule IV is Rs. 8 a month, and therefore the actual minimum amount of compensation which is payable for death is Rs. 240. But for the individual workman the minimum compensation which he is going to get depends upon the amount of wage that he was drawing. If a man was drawing Rs. 30 a month, his minimum compensation will be Rs. 900. Mr. Joshi has drawn attention to the fact that £150 is the minimum compensation payable in England. That remark is not strictly accurate, if Mr. Joshi will permit me to say so, for the English law makes provision for a case where the workman leaves only partial dependants and in that case £150 has not got to be paid but such amount as may be considered reasonable. But taking £150 as the minimum compensation payable under the English Act, let us compare that with the minimum compensation we pay. What does £150 really represent in England. The average wage of a workman in England may be taken to be £2 and therefore £150 mere means 75 weeks' wages or say 18 months' wages. Our minimum compensation is based throughout on 30 months' wages and I say that having regard to our conditions in India our scale is already adequate and liberal and I oppose the amendment.

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

The motion was negatived.

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

"That in clause 4 (1) in sub-clause A (*ii*) the word 'five' be substituted for the word 'two'."

In this Bill we have provided that compensation in the case of the death of a minor shall be Rs. 200 only which I consider to be very low and

I propose that Rs. 500 instead of Rs. 200 would be a very reasonable amount. The death of a minor is as valuable as the death of an adult member, if not more. There are minors who have dependants and in such cases the award of Rs. 200 will be absurdly small. Moreover if the minor were alive, his dependants would enjoy the benefit of his work for a longer period which they lose by his death. I move therefore that Rs. 500 be substituted for Rs. 200 which is very low. With these words I move my amendment.

**Mr. B. C. Allen** (Assam: Nominated Official): Sir, I hope that the House will throw out the amendment of Mr. Agnihotri. If it were carried my own amendment would be killed before it was born, a fact which as the prospective parent I cannot contemplate without horror. I oppose the amendment mainly on the ground that it cuts across the whole principle of the Bill. If you look at the Statement of Objects and Reasons you will see that the Bill is intended to remove the hardship caused by the death of a workman. There is no question whatever of penalising the employer or of offering a solatium to the wounded feelings of the parents. Mr. Agnihotri has stated that the death of a minor is as " valuable " as the death of an adult. He suggested that minors had dependants. I think he has overlooked the fact that a minor under the Act is less than 15 years old, and although there may be husbands of the age of 14, I imagine that the number of fathers at that age is very small. Even if there is an occasional father of 14. the chances of his being killed are almost infinitesimal. There is another perhaps even more important principle which Mr. Agnihotri's amendment ignores. I feel some diffidence in referring to the English Act, but if you turn to that Act you will find that in the case of persons who have no dependants the compensation is limited to £10, or rather to the cost of medical attendance and funeral expenses not exceeding £10. You will also find if you turn to the English law that it has thought it necessary to prevent parents from benefiting from the death of their children. Under the various English Acts a father as such has no insurable interest in his child. The Friendly Societies Act also limits the payment made on account of the death of a child to £10. Now, if these precautions are necessary in England I imagine that they are also necessary in India. I do not for a moment mean to suggest that Indian parents are not very fond of their children. In my experience it is one of the most pronounced characteristics of Indian families. But English parents are fond of their children also, and I cannot feel that the House will be acting wisely in disregarding a precaution which has been found necessary in the mother country.

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

The motion was negatived.

**Mr. B. C. Allen:** Sir, as Captain Sassoon has withdrawn his amendment and as Mr. Agnihotri's amendment has not been carried, perhaps the House will accept the amendment which I have to move without further debate. (*Cries of* " No.") I understand that they do not agree. I move, Sir:

" That in clause 4 (1), sub-clause A (*ii*), the word ' one ' be substituted for the word ' two '."

I only have to emphasise the points to which I have already called attention when speaking to Mr. Agnihotri's amendment. The draft Bill is departing from the principle of the English Act: is departing from the principle of the Bill that was originally laid before us: it is introducing a

[Mr. B. C. Allen.]

new and in my opinion unsound principle. There is a further aspect of the case. Honourable Members will perhaps say, "why on earth should this compensation be reduced when the representative of the Millowners is willing to raise it"? I must confess that when I first read his amendment, I felt that I was being smitten by one in my own house. Various explanations came across my mind. I thought of Tennyson's "wealthy men who care not how they give" and the danger such wealthy men may be to the body politic. Then I thought of that horrid tag of Virgil's—"Timco Danaos," which might I suppose be translated 'you must look even a gift horse in the mouth if the giver is a Greek'. But my Honourable friend has since cleared away all my doubts. When he addressed us on the introduction of the Bill he explained with a frankness and freedom which I have always associated with the late President Wilson, that though the millowners would disburse this money they would subsequently recover it from us the consumers. And this is a point which I want the House to bear in mind, because previous experience has, I believe, almost invariably shown that when you put a cess upon an industry and that industry can and does proceed to recover that impost, it generally recovers a good deal more. In fact in this particular case it would probably be unavoidable. You could not divide the small sum payable over each individual *dhoti*, *chaddar* or whatever it is produced in these mills, and the price of each article would have to rise probably by at least one anna. Now, I have no doubt that the cotton mill industry could recover this sum. They are a highly organized industry, and it seems not unlikely that at no distant date they will be protected and will be able to recover the money. But we all know that all industries are not in that position. What about the rubber industry which some time ago was not able to extract from the consumers even so much as the cost of production? I fancy that there will be a considerable number of small Indian industries in this country which will not be in the position of wealthy industries like the mill industry. I think that we should remember what the Honourable Mr. Innes said when introducing the Bill. It is very important to consider the small industries and to carry the manufacturer with us, to make him feel that he has been fairly and justly treated. Now, what is the reason, what is the excuse offered by the Select Committee for raising the rate originally laid down in the Bill when it was submitted to the House? They say that they have to impose this charge upon the industry, not because it is a good charge, or a right charge, not because it is the just or proper thing to do, but because it "meets the views of those who were of opinion that the original provision appeared to hold somewhat cynically cheap the life of a minor." Now, I ask this House, is that a sufficient reason? Are we to do what we do not think right simply because somebody may say that we held the life of a minor cynically cheap? Is there any rule of guidance for this House except that it should do what it thinks right? Are we to do a thing which we do not approve, simply because somebody may say something? I suggest that rather than do that, we had better close our doors and retire from the work of legislation altogether.

**Mr. N. M. Joshi:** Sir, the argument of my Honourable friend Mr. Allen seems to be that small industries will be ruined. Again, Sir, I want to know whether there are any small industries such as coffee where accidents take place in large numbers. If accidents do not take place in large numbers, a sum of Rs. 200 is not going to ruin the industry. I think, therefore, the amendment is not acceptable to any Member in this House.

**Captain E. V. Sassoon:** Sir, I would like to point out to the Honourable Mover of the last amendment that even the mill industry is not always in a prosperous condition and we fully appreciate that there may be times when anything that raises our cost of production would have to be very carefully reviewed. I have pointed out to this House already that it is true that any increase in the cost of production does perhaps in part fall on the consumer, and it is so in the long run; but as far as these particular charges are concerned, my own view is that whether Rs. 100 or Rs. 300 is paid as compensation for the death of a minor, the insurance premium in this case would not differ very much. All these matters come back to the amount of the insurance premium. Now, Sir, the reason why I did not move my previous amendment was not perhaps so much due to Mr. Allen's remarks on Mr. Agnihotri's amendment, as those of the Honourable Mr. Innes when speaking on the amendment moved by Mr. Joshi. It seems to me that if an adult might receive Rs. 240 or Rs. 260 as compensation, it would not be logical for me to suggest that the amount of a minor should be raised from Rs. 200 to Rs. 300. But I would like to defend the Rs. 200 as supported by the Select Committee. The point I take is that though it may be perfectly true that the minor of 14 or 15 has no dependents, at the same time his parents or grand-parents have been to some expense and trouble in bringing him up and may well hope for some return in their old age when he is in his prime of life. His death therefore in a way removes their old age pension, and I think it only fair that they should get, if I may use an insurance analogy, their premium back. For this reason, I hope that the House will not agree to Mr. Allen's amendment and will keep the Rs. 200 as supported by the Joint Committee.

The motion was negatived.

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

"That at the end of sub-clause A (*ii*) of clause 4 (*1*) add the following:

'Provided he has no invalid dependants solely depending for their livelihood on the income of the deceased minor.

'(*iii*) In the case of a minor having invalid dependants solely depending for their livelihood on the income of the minor, thirty months' wages or Rs. 350, whichever is more'."

Sir, we generally find that amongst the working classes a minor son or daughter of a wage-earner, who has become invalid or infirm, either through natural causes or by accident, maintains the parents or dependants through his or her own earnings. Moreover, the sons or daughters of day labourers begin to work from practically their childhood because they cannot afford to do otherwise. So in the circumstances, I think Honourable Members will agree with me that blind or invalid parents or dependants solely depending on the income of deceased minors for their livelihood should not be thrown into a miserable plight because the minor in his daily duties has got injured and died.

Sir, with these few words I move my amendment.

**The Honourable Mr. C. A. Innes:** Sir, I do not think that the House will expect me to say very much on this amendment. I think the House would be well advised to do as has been done hitherto and stick to the figure suggested by the Joint Committee.

The motion was negatived.

**Mr. B. N. Misra:** Sir, if I am not mistaken, probably many of the Honourable Members want it to rain copious showers over the middle of the ocean but they do not want even a drizzle over the scorched and dry land. Their attitude has been always to support the man of wealth. I have already submitted my arguments in my last speech and I do not wish to say anything more here. I respectfully submit to the House my amendment:

"That in sub-clause B (*i*) of clause 4 (1) for the words 'forty-two' the words 'eighty-four' be substituted."

The motion was negatived.

**Dr. Nand Lal:** Sir, in face of the fact that amendment No. 31 which was moved by Mr. Joshi has been rejected and the same principle for all intents and purposes is involved in amendment No. 40,* I do not propose to move it.

**Mr. W. S. J. Willson** (Bengal: European): Sir, I rise to move the following amendment:

"After sub-clause B (*ii*) of clause 4 (*1*) add the following:

'Provided that where a workman, who from previous injury suffers permanent partial disablement, meets with an accident which in conjunction with the previous injury results in total disablement the compensation shall be fifty per cent. of the compensation provided under clauses (*i*) and (*ii*)'."

Sir, I move this amendment in the belief that I am proposing something not only perfectly fair to the workman and fair to the employer, but of positive advantage to the workman. I have no desire to cut down what is paid to the unfortunate individual who is damaged in his work but if you take the case of a man who has, either before the passing of this Act when he may not have received compensation or after the passing of this Act when he will have received compensation, lost, say, one arm. He would under the Act, if it were his right arm, get 70 per cent. under Schedule I; and then if he loses, in the course of further employment, the other arm, which would be the left arm, he would get 60 per cent., making a total of 130 per cent. of the compensation. Now, I do not think the House will consider that although a man suffers two injuries and suffers twice, he should necessarily get more than the total which he would get if he were totally disabled. Apart from that, if he has already drawn the percentage for the first accident, it seems to me that it would be positively against the interests of a subsequent employer to take him on, if the subsequent employer, by removing only one other arm in the course of an accident, renders himself liable to pay for a total disablement. We will say the first employer pays 70 per cent., the second employer who has the misfortune to lose the man's other arm has to pay 42 months' pay as for total disablement. It may be said and it has been said to me in private conversation that the argument against the amendment is that the poor man who has only one arm will be very much less likely to get a job. But, Sir, I do not think we all take that unkind view. I think there is a good deal of humanity in the world. and I think a great many employers are only too pleased if they can see their way to employ a man who has suffered from some physical disability. We have all, I have no doubt, seen damaged workmen at

* "That in sub-clause B (*i*) of clause 4 (*1*) after the word 'or' insert the words 'the sum of rupees two thousand whichever of these sums is the larger but not exceeding in any case' and omit the words 'whichever is less'."

work in Railways and public services. There is no earthly reason why a man with one arm or one leg cannot make a perfectly good gate-keeper on any railway; but if he happens not to be looking when a train came up he certainly would be under a disability in running away and he might lose the other leg. Is the employer to be afraid of that and not employ that man? There are various machines in industries which can perfectly well be worked by a man with one arm or a man with one leg. I need not particularise them; those who are acquainted with industries and machinery will be well aware that what I say is correct. I think, Sir, that no further words should be necessary from me to emphasise the justice of what I say, that my amendment will prove in effect to be perfectly fair and positively beneficial to workmen in certain conditions, and fair to employers in any case.

**Mr. A. G. Clow:** Sir, this raises a somewhat intricate question, but I think the Honourable Member was really arguing on a fallacy, the fallacy being that the wages of a workman after an injury were the same as his wages before the injury. If he will look at the top of Schedule I, at the head of the column giving the percentage, he will see the phrase " percentage of loss of earning capacity." In other words, what we say is that in the normal case the man who has lost his right arm above the elbow has lost 70 per cent. of his earning capacity, and the wage which he might expect to receive after the injury will, on the average, be only 30 per cent. of the wage he was getting before. Consequently, when he is permanently disabled,—let us take the case of a man on Rs. 30 a month—we estimate that his average wage after the injury will be only Rs. 9. So that when finally he is completely disabled he will get 9 times 42 rupees. If the Honourable Member will take the trouble to work this out, I think he will find it comes to the difference between the compensation he originally got and the compensation he would have got had he been completely disabled.

Now that deals only with one side of the question which is the case of injuries under the Schedule. But as the House is aware, there are other permanent injuries. The Honourable Member's amendment refers not only to sub-clause (*i*) but to sub-clause (*ii*) also, and he was careful to make no reference to sub-clause (*ii*) in the course of his speech. " In the case of an injury ", I shall read the sub-clause, " In the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury." In other words, what the Commissioner has to decide is, how much was this man earning before and how much he could earn now? If the Honourable Member can persuade the Commissioner that the workman is now able to earn exactly the same wage as he used to before the injury, obviously no compensation will be payable at all. I hope that this meets the Honourable Member's point.

The motion was negatived.

**Mr. K. B. L. Agnihotri:** I gave notice of an amendment to sub-clause B (*ii*) of clause 4 (1) to substitute a clause for the existing one, but with your permission, Sir, I now wish to move an amendment to substitute ' greater ' for ' less ' instead of the amendment of which I gave notice. Sir, the compensation which we allow in this case is Rs. 15 or a sum equal to one-fourth of his monthly wages, whichever is less. By my amendment

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it will come to Rs. 15 or ¼th of his monthly wages whichever is greater. There may be cases in which a workman may be drawing, say Rs. 100 or 200 or Rs. 250, and if he gets a partial injury and is unable to work for the time being, he will be entitled to get only Rs. 15 or ¼th or whichever be the less. That means Rs. 15 and this sum for a fortnight will be quite insufficient and inadequate for his own and his family's maintenance. Therefore, Sir, I propose that instead of Rs. 15 it should be Rs. 15 or ¼th of the pay whichever be greater. If we take the analogy of Government servants, who when they are injured generally get half their pay for the month, we find a support to my amendment and the same analogy should apply in the case of workers who should also be allowed to get the half pay for the month and therefore, Sir, I move my amendment to substitute " greater " for " less."

5 P.M.

**The Honourable Mr. C. A. Innes:** I need only say in respect of this amendment, Sir, that the effect of it will be that, if a workman on Rs. 10 a month gets temporarily disabled, under Mr. Agnihotri's proposal he will get compensation in half-monthly payments of Rs. 15 each half month That is to say, a workman on Rs. 10 a month will have his pay raised to Rs. 30 a month while he is temporarily disabled. It seems to me, Sir, that the amendment is on the face of it absurd.

The motion was negatived.

Clause 4 was added to the Bill.

**Rai Bahadur L. P. Sinha:** Sir, I beg to move:

" To sub-clause (*a*) of clause 5, at the end the following be added :

' Provided the workman was not on leave without pay or under suspension for any period during the preceding twelve months from the date of accident; but in such cases monthly wages shall be calculated at twelve times the rate of monthly salary which he was drawing on the day of accident divided by twelve '."

I beg to move this amendment because there may be cases arising very often that the workman joins his work after remaining for a long time under suspension or on leave without pay. Now, Sir, in these cases, if monthly wages are calculated according to clause 5, sub-clause (*a*), then the workman will I think lose a great amount of money which he would have received otherwise by way of compensation. As, for example, a workman gets an accident or injury on the 15th of a month: he rejoined his work on the first of the month after six months' leave without pay or remaining under suspension for the same period. Now, taking it for granted that he was at the time of the accident drawing a monthly rate of pay of Rs. 60; if his monthly wage is calculated according to the present clause which is not so very clear on the point I think his pay of six months' active service will only be taken into account whereas if the amendment which I have proposed is accepted, I don't think the workman is expected to lose anything neither will the employer be giving anything more than what the workman's real dues would have been.

With these remarks I move my amendment.

**Mr. A. G. Clow:** I admit, Sir, that this is an extremely complicated clause. I observe that the Honourable Member has been so impressed by its complications that he has introduced in his own amendment a quite unnecessary complication where he says we should first multiply and then divide by 12. I suggest that the result of that mathematical calculation would be to

bring us back to where we started from. If he agrees with us so far, the latter part of his amendment will read:

"But in such cases monthly wages shall be calculated at the rate of monthly salary which he was drawing on the day of the accident."

Now, Sir, if the thing was as simple as all that, there would be no need for this clause at all. Why should not we calculate every one's wages at the rate of the monthly salary he was drawing on the day of the accident? The real fact is that there are a great many difficulties in calculating salaries. Some men are paid daily, some weekly, some fortnightly. They get bonuses, they get their food, they get other concessions. All these things have to be taken into account. I hope, Sir, that I have demonstrated that if there is any difficulty in the clause, this amendment will not remove it.

But I do not think that I ought to sit down till I have answered the difficulty raised by the Honourable Member at the end, when he said that, a man who had been away for six months on leave without pay or under suspension would be compensated at only half the scale he ought to get. That, Sir, is not the case. If the House will look at the Explanation, they will see that " a period of service shall be deemed to be continuous which has not been interrupted by a period of absence from work exceeding 14 days." The effect of that in this case is that it is only the last continuous period of service that the workman has rendered that counts. In other words, the workman instanced by the Honourable Member would have his wages calculated under sub-clause (*b*) and not under sub-clause (*a*) at all, and this sub-clause, although it does, I admit, look extremely intricate, is a very simple one. You divide the remuneration he has got during the period by the number of days during which he has worked. That gives you the average daily wage that he has received during his period of work. You then multiply—I am inverting the order to make it simpler,—you then multiply by 30, which gives you the average monthly wage.

I ask the House to reject the amendment.

The motion was negatived.

Clause 5 was added to the Bill.

**Mr. President:** The question is that clause 6 stand part of the Bill.

**Mr. N. M. Joshi:** Sir, while on this clause, I should like to get some information from the Honourable Mover of this Bill. Only a short time ago he referred to this clause as covering the cases of workmen who will be cheated into accepting small monthly instalments by dishonest employers. Sir, clause 6, sub-clauses (1) and (2) provide for the review of half-monthly payments payable for compensation. Clause 6 (1) makes it very clear that this review can be obtained if the workman can show a change in his condition. 'Condition' means condition of health, because there is a reference to the certificate from the medical practitioner. If the review could be obtained only for the reason of a change in the condition of the workman, I do not believe this section will cover the case of a man who is cheated into receiving small payments by agreements. In the same way, the word " review " is found in sub-clause (2) of this clause. I think the word " review " here also means the same thing as in sub-clause (1) of clause 6. Therefore, a review can be obtained only if the workman can show a change in his condition either by a certificate or without a certificate. But I do not think this clause gives the right to a workman to ask for a review if he is cheated by a dishonest employer.

**The Honourable Mr. C. A. Innes:** Sir, I will have the point raised by Mr. Joshi examined by the Department. I understand that what I said before was correct, but I will have the point re-examined, and if necessary, will consider it further with reference to action elsewhere.

**Mr. President:** The question is that clause 6 stand part of the Bill.

The motion was adopted.

**Mr. President:** The question is that clause 7 stand part of the Bill.

The motion was adopted.

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

"To clause 8 (4) add the following:

'The Commissioner shall on application by the employer submit a statement showing in detail all disbursements made'."

The amendment is self-explanatory. If an accident has taken place and the employer has paid the necessary compensation to the Commissioner, and the Commissioner has distributed the same to the dependants of the deceased, it is not unreasonable that the Commissioner should on application supply to the employer a statement showing how the money has been disbursed. With these words, Sir, I move the amendment.

**Rao Bahadur T. Rangachariar:** Sir, I do not know if the Honourable Member would substitute any other word for the word "submit". Already there is a fear in the minds of the people in this country that this Commissioner who is going to be appointed under the Act will be at the beck and call of the employers. If the Legislature says that the Commissioner shall, on application by the employer, submit a statement showing in detail all disbursements made, we make him a submissive individual to the employer and he will be quite useless to the employee (servants). I hope Sir Montagu Webb was not led away by his inner consciousness or prevision in using that word "submit". I hope that that is not going to be the result of this Act.

**The Honourable Mr. C. A. Innes:** Of course, it seems perfectly reasonable that an employer who pays compensation to the Commissioner should be allowed to know how that compensation has been distributed. At the same time, I wish to point out that if the employer has paid compensation and if there are dependants, the employer in no circumstances will get back any part of that compensation. He only gets back the compensation if the Commissioner on enquiry finds that there are no dependants. In that case, he gets back all except, say, Rs. 50 for funeral expenses. Therefore from that point of view, it does not matter very much to the employer how the compensation is distributed. My fear is that if we impose upon the Commissioner the burden of submitting—to use the word objected to by Mr. Rangachariar—this statement, we may impose rather a lot of unnecessary work upon him. At the same time, if an employer does want a statement of this kind, it seems only reasonable that he should have it, and I am quite prepared to leave the amendment to the judgment of the House.

**Sir Montagu Webb:** May I say I am quite prepared to accept the word 'furnish" for "submit".

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

"To substitute the word 'furnish' for the word 'submit', in the original amendment."

The question is that that amendment be made.

The motion was adopted.

**Mr. President:** Amendment moved:

"To clause 8 (4) add the following:

'The Commissioner shall on application by the employer furnish a statement showing in detail all disbursements made'."

The question is that that amendment be made.

The motion was adopted.

**Mr. N. M. Joshi:** My amendment is:

"In clause 8 omit sub-clause (7)."

I shall very briefly explain the circumstances under which the case contemplated by this sub-clause will arise. Let us take an adult workman. He meets with an accident, a very serious accident causing permanent total disability. The minimum compensation for such an accident is Rs. 316. The employer is willing to give that compensation and that amount is deposited with the Commissioner. Then the Commissioner finds that the man is in the hospital and he has got very severe injuries. The Commissioner may think that the man may die within six months. If the man had died instantaneously he would have got only Rs. 240. So, the Commissioner may think that if the man had died he was entitled to only Rs. 240 and he ought not to get the benefit of the remaining Rs. 96. Therefore this sub-clause gives a discretion to the Commissioner to withhold this sum of Rs. 96 or any part of the total compensation. I am against this sub-clause altogether, because, in the first place, when we settle the compensation for total permanent disability we do not provide for the life of the man which is really necessary. If a man is totally disabled in an industrial undertaking, it is but reasonable that he should be maintained by the industry till the end of his life. Instead of that, he is given only 42 months' wages. Suppose that this man who is totally disabled lives for more than seven years. Who is going to maintain him? The industry does not take the responsibility. But as soon as the Compensation Commissioner finds that the man is likely to die early he wants to take advantage of the possibility of his early death. Sir, I think this proposal is, for this reason, very mean, because, in the first place, if you provide for the end of his life, then certainly I can understand your saying that if he does not live we should get back the money. But if he lives longer, you say, "Go on the streets," but if there is a possibility of his dying earlier, you say, "Give us the benefit." Moreover, it is not only mean. In some cases this proposal is likely to be very inhuman. A man who suffers from an injury causing permanent disablement requires money for his treatment. If he gets money he can go to a doctor but when the Commissioner finds that the man is likely to die he says: "No. You are likely to die. I shall not give you the whole amount. If you want treatment, I do not think with this treatment you will get better. Therefore I would not give you the money. I will keep the money and see whether you die or not." Sir, this is very inhuman and from my point of view the Government by putting in this clause puts the Workmen's Compensation Commissioner in a very wrong position altogether. What will be the position if a certificate is brought from the doctor that the workman died for want of treatment for which he could not afford the money. The Workmen's Compensation Commissioner will say

[Mr. N. M. Joshi.]

that he thought the man would not die but the doctor will say that the man died because he did not get the money. I therefore hope that the Government will see the wisdom of accepting my amendment.

**The Honourable Mr. C. A. Innes:** I wish to explain what the position of the Government is in regard to this amendment. I am quite free to admit that the clause in its original form was put in by myself and my friend on my right. We were not advised to put it in by the July Committee. The reason of course is that Mr. Clow and myself come from the north of the Tweed and there is not much sentiment in our composition. We rather pride ourselves on trying to be logical. Now, when we were considering this Bill, the drafting of it, we were rather impressed by the difficulty arising out of the discrepancy between the lump sum payment due in the case of the death of a minor and the lump sum payment due in the case of a permanent disablement of the minor. I take that extreme case. If the minor gets killed, the compensation due is Rs. 200. If a minor is permanently disabled the compensation may be as much as Rs. 3,500. Now, Sir, the House will see that this discrepancy is a very serious thing for an employer. It is a difference between Rs. 200 and Rs. 3,500, and therefore we gave the Commissioner discretion. If a minor was very seriously disabled we gave the Commissioner discretion to hold over the payment of the lump sum up to six months in order that he might see what was going to happen. That seemed only fair to the employer. But in the course of the Joint Committee I must confess that I personally was impressed by one argument which Mr. Joshi brought forward. He pointed out that this difficulty which I have just brought to the notice of the House is incidental to the system of lump sum payments, and definitely we have elected for lump sum payments on account of the conditions in this country. This difficulty is incidental to that system and he put it to us that we could not have it both ways. If you accept the lump sum payment system, you have got to accept the disabilities of that system. I have been personally myself impressed by that argument and as far as the Government are concerned we are quite prepared to leave this point which Mr. Joshi has raised to the judgment of the House. I have tried to explain why we put the clause in and after hearing Mr. Joshi's main argument against the clause I am willing to leave it to the judgment of this House to decide whether the clause be omitted or retained in the Bill.

**Mr. President:** The question is that sub-clause (7) of clause 8 be omitted.

The motion was adopted.

**Mr. President:** The question is that clause 8, as amended, do stand part of the Bill.

The motion was adopted.

**Mr. President:** The question is that clauses 9 and 10 do stand part of the Bill.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 6th February, 1923.