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(17th September to 24th September 1924)

FIRST SESSION

OF THE

SECOND LEGISLATIVE ASSEMBLY, 1924

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1924.

Legislatve Assembly.

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THE HONOURABLE SIR FREDERICK WHYTE, KT.

Deputy President:

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RAJA RAGHUNANDAN PRASAD SINGH, M.L.A.
MR. HARCHANDRAI VISHINDAS, C.I.E., M.L.A.

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LEGISLATIVE ASSEMBLY.

Tuesday, 23rd September, 1924.

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

QUESTIONS AND ANSWERS.

TOLL ON THE BENGAL AND NORTH WESTERN RAILWAY BRIDGE OVER THE GUNDUK.

2339. ***Mr. Gaya Prasad Singh**: (*a*) With reference to my starred question No. 1116 of the 30th May 1924, regarding the toll on the B. N. W. Railway bridge over the Gunduk between Sonepur and Hajipore, is it not a fact that on the recommendation of the District Board of Saran, supported by the Commissioner of the Tirhut Division (in his letter No. 3036, dated the 8th December 1922), the Secretary to the Government of Bihar and Orissa, Irrigation Department, Railway Branch, moved the Agent, B. N. W. Railway, Gorakhpur, for making the bridge free, noting in the concluding portion of his letter No. 83|*vi-i* of 1923, C. I. R., dated the 16th May 1924, the following :

"I am to say that H. E. the Governor in Council will be glad if the Agent, B. N. W. Railway will give the matter his personal attention, and pass orders for the abolition of the toll bar on the bridge in question" ?

(*b*) Is it not a fact that the Government of Bihar and Orissa, in their letter No. 1341|VI, dated the 7th March 1924, have moved the Government of India, Railway Department, for the abolition of the toll bar in question ; and will the Government be pleased to lay a copy of this letter as well as of the letter referred to in (*a*) above on the table, together with other correspondence on the subject ?

(*c*) Are Government aware that letter No. 757-T., I. S. G., dated 6th September 1910 of the Bengal Government, Municipal Department, lays down the undesirability of levying a toll bar on Railway and other bridges for a longer period than 20 years ; and will the Government kindly place a copy of it on the table ?

(*d*) Is it not a fact that the B. N. W. Railway bridge over the Ganges at Cawnpore is free ? And if so, since when ?

Mr. A A L. Parsons: (*a*) Government have not received copies of the letters referred to.

(*b*) Yes. The correspondence is proceeding, and cannot be published at this stage.

(*c*) It has been ascertained from the Bengal Government that the circular in question has not been interpreted as lying down any hard and fast rule and that instances have occurred where tolls have been allowed for more than 20 years.

(*d*) The tolls on this bridge which is owned by the Oudh and Rohilkhand Railway and not by the Bengal and North Western Railway Company were abolished in 1907.

OPIUM POLICY OF THE GOVERNMENT OF INDIA.

2340. *Maung Tok Kyi : (*a*) Has the attention of the Government been drawn to Reuter's telegram, dated London 27th August 1924, announcing that Sir John Jordon on behalf of Britain, submitted a suggestion that the quantity of Indian opium exported to the States regulating opium smoking should be reduced by 10 per cent. per annum for a decade and the Governments of Japan and Siam and Powers with possessions in the Far East should be requested to reduce their consumption of opium at the same rate, and that the suggestion was opposed by Mr. Campbell on behalf of India ?

(*b*) If it has, will the Government be pleased to state if Mr. Campbell opposed the suggestion under their own instructions ?

(*c*) Will the Government be further pleased to state whether or not they are prepared to revise their opium policy on the lines suggested by Sir John Jordon ?

The Honourable Sir Basil Blackett : (*a*) to (*c*). I would refer the Honourable Member to parts (*a*) and (*b*) of the reply which I gave to Dr. S. K. Datta's question on the 19th September 1924, No. 2217.

AGREEMENT WITH THE ORIENTAL TELEPHONE AND ELECTRIC COMPANY, LIMITED, RANGOON.

2341. *Maung Tok Kyi : (*a*) Will the Government be pleased to state in what year they entered into an agreement with the Oriental Telephone and Electric Company, Limited, Rangoon ?

(*b*) Will the Government be also pleased to state how many times that Company has raised the rate of annual subscription for exchange connection since that year ?

(*c*) Will the Government be pleased to lay on the table a copy of the agreement made between them and the Company ?

Mr. H. A. Sams : (*a*) The license was granted in 1884.

(*b*) Alterations in the rates of annual subscription per connection are as follows :

Year.	Annual rate of subscription per connection.
	Rs.
1884	250
1902	150
1918	200
1923	250
1924	300

(*c*) I shall be glad to show the Honourable Member in my office a copy of the license granted to the Company in 1884 together with a copy of its subsequent renewals.

THE MAHA BODHI TEMPLE AT BUDDHAGAYA.

2342. *Maung Tok Kyi : (*a*) With reference to the answer given to my question No. 370 (*b*) on the 18th February 1924, regarding the Maha Bodhi Temple at Buddhagaya, will the Government be pleased to state if they have come to any decision ?

(*b*) If not, may I beg to inquire when they may be expected to come to a decision ?

The Honourable Sir Alexander Muddiman : The memorials referred to in the reply given by my predecessors have since been disposed of. The Government of Burma have been requested to inform the memorialists that the management and control of the Temple is a matter which must necessarily be left for settlement by the communities concerned.

APPLICATION OF LALA GOPAL KRISHAN FOR ENROLMENT AS A PLEADER IN THE NORTH-WEST FRONTIER PROVINCE.

†2343. *Lala Duni Chand : (*a*) Is it a fact that L. Gopal Krishan, pleader, Bhakkar, and resident of Dera Ismail Khan District, applied to be enrolled as a pleader, to the Judicial Commissioner, North-West Frontier Province in the year 1923 ?

(*b*) Is it a fact that his application for being enrolled as a pleader was rejected on the ground that he did not belong to N. W. F. Province, though as a matter of fact he did belong to it ?

(*c*) Is it a fact that on his making a representation again and pointing out the incorrectness of the ground on which he was refused enrolment, his application was again refused ?

(*d*) Are the Government prepared, under the circumstances, to ask the Judicial Commissioner to reconsider his case ?

APPLICATIONS FOR ADMISSION AS PLEADERS IN THE NORTH-WEST FRONTIER PROVINCE.

2344. *Lala Duni Chand : (*a*) Are Government aware that in the N. W. F. Province, applications for admission as pleaders are entertained only once in a year by the Judicial Commissioner, while in other Provinces the High Courts receive and decide similar applications at any time they are presented ?

(*b*) In view of the fact that this practice works hardship on those who may be entitled to practise as pleaders in N. W. F. Province Courts, are the Government prepared to invite the attention of the Judicial Commissioner to this matter with a view to his removing this hardship ?

The Honourable Sir Alexander Muddiman : With your permission, Sir, I will answer Questions Nos. 2343 and 2344 together.

The information required has been called for from the Local Government and will be communicated to the Honourable Member when received.

RESTRICTIONS ON THE ENROLMENT OF PLEADERS IN THE NORTH-WEST FRONTIER PROVINCE.

2345. *Lala Duni Chand : Are Government aware that in N. W. F. Province only a limited number of pleaders is admitted, while there is

† For answer to this question—*see* answer below question No. 2344.

[Lala Duni Chand.]

no such restriction in other Provinces, and if so are the Government prepared to refer the matter to the Judicial Commissioner with a view to his removing this restriction ?

The Honourable Sir Alexander Muddiman : The enrolment of pleaders in the North-West Frontier Province is regulated by rules made by the Local Government under section 9 (2) of the North-West Frontier Province Law and Justice Regulation, 1901 (VII of 1901). In practice the number of licenses granted is limited to the probable requirements of litigants. The objects of this limitation are (1) to assure to every legal practitioner to whom a license is granted a reasonable expectation of earning a living and (2) to prevent touting and the fostering of unnecessary litigation. The question of amending the rules is under consideration.

Diwan Bahadur T. Rangachariar : When do the Government expect the North-West Frontier Province to become a civilised province ?

The Honourable Sir Alexander Muddiman: When we cease to have riots and things like that, Sir.

ALLEGED HIGH-HANDEDNESS OF ARBAB MOHAMMAD AKRAM KHAN, HONORARY MAGISTRATE, PESHAWAR DISTRICT.

2346. ***Lala Duni Chand** : (*a*) Are the Government aware that since May 1923, repeated representations have been made by a large number of *Kazi Khels* of village Landi Yarghajo, Tehsil and District Peshawar, against the high-handedness of the local Honorary Magistrate, Arbab Mohammed Akram Khan, praying for exemption from being tried in his Court, and that hitherto no heed has been paid to their representations ?

(*b*) Are Government prepared to take any steps in the matter ?

Mr. H A. Sams : Inquiry is being made from the Local Administration and the information will be supplied to the Honourable Member in due course.

NEW STORES PURCHASE RULES.

2347. ***Dr. H. S. Gour** : (*a*) Has the attention of the Government been drawn to the fact that the Stores Rules recently published are in absolute contravention of the Resolution supported by every section of non-official opinion in the Assembly at the Delhi session ?

(*b*) Will Government be pleased to state whether the London Stores Department is absolutely independent of the Indian Stores Department in practice and not a branch of it as was desired by non-official opinion ?

(*c*) Will Government be pleased to state whether under the new Stores Rules it is open to a purchasing officer of a Department to send his indent directly to London without any reference to the Indian Stores Department ?

The Honourable Mr. A. C. Chatterjee : (*a*) Presumably the Honourable Member is referring to the Resolution regarding rupee tenders for Government stores which was adopted in this House on the 14th February 1924. I made it clear during the debate on that Resolution that the Stores Purchase Rules had been revised before the date of the debate. The recommendations made by the Assembly on that occasion are now under consideration

(*b*) Both the London and the Indian Departments are under the Department of Industries and Labour.

(*c*) Yes : but purchasing officers are required at the same time to send a copy of their Home indents to the Indian Stores Department for scrutiny.

Dr. H. S. Gour : Are the indents that are sent to the Indian Stores Department for scrutiny made public, so that the Indian industries might be able to see as to how far they are able to comply with the terms of the indent ?

The Honourable Mr. A. C. Chatterjee : They are not made public in that form, but lists are periodically published of indents that have been sent to England in a more connected form and for the better guidance of Indian manufacturers.

PURCHASE OF RAILWAY STORES BY THE INDIAN STORES DEPARTMENT.

2348. ***Dr. H. S. Gour** : (*a*) Will Government be pleased to state whether Sir Charles Innes declared in March 1922, that when the Indian Stores Department was established, it would make all purchases not only for State Railways but also for Company managed Railways ?

(*b*) Will Government be pleased to state what amount of purchases for railways has been made by the Indian Stores Department in the last three years ?

(*c*) Will Government give a final definition of their policy on the question of purchases for the Railways to be made by the Indian Stores Department ?

Mr. A. A. L. Parsons : (*a*) The statement made by Sir Charles Innes appears in Vol. II, No. 39 of the Legislative Assembly Debates of the 2nd March 1922, and was as follows :

"If this Indian Stores Department is established it will purchase for the State Railways all railway materials which can be procured in India. Further, if that Indian Stores Department is properly organised, if we have proper machinery and intelligence, and above all inspection, if that Department acquires the confidence of other great consuming Departments, especially the Company Railways, then the Stores Department would be mainly occupied in buying railway material not only for State Railways but for Company Railways also."

(*b*) The Indian Stores Department was constituted in 1922, and the purchases made on behalf of Railways during 1922-23 which were confined to textile goods amounted to Rs. 37,825. During 1923-24 the total value of the purchases Engineering and Textile for Railways amounted to Rs. 9,42,237. During the five months of the current year purchases have amounted to Rs. 3,27,539.

(*c*) The Honourable Member is referred to the reply given in this Assembly on the 17th instant to parts (*f*) and (*g*) of Mr. Neogy's question and to the reply given on the 22nd instant to part (*b*) of Mr. Willson's question on the same subject.

PURCHASE OF STORES BY PROVINCIAL GOVERNMENTS.

2349. ***Dr. H. S. Gour** : (*a*) Is it true that the Stores Rules as now published and practised do not compel the Provincial Governments to make any reference to the Indian Stores Department for their purchases if they do not want it ?

(*b*) Is it true that all Provincial purchases can go to London by way of indents altogether independent of the Indian Stores Department ?

The Honourable Mr. A. C. Chatterjee : The reply to both parts of the question is in the affirmative.

PURCHASE OF MILITARY STORES BY THE INDIAN STORES DEPARTMENT.

2350. ***Dr. H. S. Gour** : Will Government be pleased to state what percentage of the total material purchased for the military is purchased by the Indian Stores Department ?

Mr. E. Burdon : An endeavour is being made to obtain the information desired by the Honourable Member. I will let him know the result as soon as possible.

ABOLITION OF THE INDIAN STORES DEPARTMENT.

2351. ***Dr. H. S. Gour** : (*a*) Will Government be pleased to state whether it is their intention to abolish the Indian Stores Department and to revert to the old practice of all purchases being made according to the Stores Rules fixed by the Secretary of State in London and largely through the Stores Department in London ?

(*b*) Will Government be pleased to state what constitutional difficulties they had in securing the organization of the Indian Stores Department and to lay on the table all correspondence that has passed with the Secretary of State with regard to the establishment of the Indian Stores Department and the recent Rules which have been published ?

The Honourable Mr. A. C. Chatterjee : (*a*) It is not the intention of the Government to abolish the Indian Stores Department.

(*b*) No constitutional difficulties were experienced in securing the organisation of the Indian Stores Department. Government are not prepared to lay on the table all the correspondence that has passed between them and the Secretary of State regarding the establishment of the Indian Stores Department and the new rules for the purchase of stores.

RULES FOR THE PURCHASE OF IMPORTED STORES.

2352. ***Dr. H. S. Gour** : (*a*) Will Government be pleased to state whether they have asked the Secretary of State to abandon his powers under the Government of India Act for making of Rules for the purchase of imported stores ?

(*b*) How long are Government prepared to allow indents for material to go to London independently of the Indian Stores Department ?

The Honourable Mr. A. C. Chatterjee : (*a*) The Government of India are unable to disclose the correspondence which they have had with the Secretary of State on the subject of the rules for the purchase of imported stores.

(*b*) The Honourable Member is referred to the answer to part (*c*) of his question No. 2347 in which I explained that copies of all indents forwarded to London are sent to the Indian Stores Department for scrutiny. It is not considered practicable to make any revision in the existing system at present and the Government are unable to state when it will be possible to alter it. But I may say that the whole question will shortly come under review in connection with the consideration of the question of the action to be taken on the Resolution passed by this House on the subject of rupee tenders.

RUPEE TENDERS FOR GOVERNMENT PURCHASES OF STORES.

2353. *Dr. H. S. Gour : Have Government definitely rejected the policy of calling for Rupee tenders in India for all Government purchases? If so, why ?

The Honourable Mr. A. C. Chatterjee : The Honourable Member is referred to the reply given to starred question No. 2081 by Mr. W. S. J. Willson on the 17th September last.

UNIVERSITY FOR RAJPUTANA.

2354. *Rai Sahib M. Harbilas Sarda : (*a*) Will Government be pleased to state whether the proposal to establish a University for Rajputana, for which people throughout the province are anxiously waiting, is likely to materialise in the near future ?

(*b*) If not, will Government be pleased to state what arrangements are being made for the affiliation of the colleges in Rajputana to another University in view of the fact that the Allahabad University is going to sever its connection with them next year ?

Mr. H. A. Sams : (*a*) and (*b*). The scheme is under consideration locally. A meeting was held at Mount Abu on the 20th June last. The general sense of the meeting was that it would be premature to proceed with the scheme until the possibilities of affiliation with Delhi or Agra had been further explored. The Agent to the Governor General in Rajputana is in communication with the Delhi University authorities, and also with the United Provinces Committee regarding the Agra scheme.

RETRENCHMENT IN AJMER-MERWARA.

2355. *Rai Sahib M. Harbilas Sarda : (1) Will Government be pleased to lay on the table the Report of the Honourable Mr. Campbell who was deputed by the Government of India to recommend retrenchment in the cost of the administration of Ajmer-Merwara ?

(2) Will Government be pleased to state what action Government propose to take on his recommendations and when ?

Mr. H. A. Sams : (1) Mr. Campbell's report regarding retrenchments in the cost of the administration of Ajmer-Merwara is laid on the table.

(2) The various recommendations made by Mr. Campbell are under the consideration of Government.

CHAPTER VI.

AJMER-MERWARA.

133. *Commissioner's Office.*—A central record room is kept in the Commissioner's Office for several Criminal Courts in the district. The records are arranged by villages and an index is maintained in order to enable the record-keeper to trace any record when it is wanted. The records would be much more easily found if they were arranged according to courts and to the serial number of each class (original, appeal, etc.) of case in each year. The index would then be unnecessary. I have not been able to ascertain any particular advantage accruing from the present arrangement of records.

134. The files in the English record-room were properly arranged from the year 1900 onwards. A card index or loose-leaf index on the lines suggested in paragraph 37 should be prepared for these records. Old records should be weeded out and properly arranged and for this purpose a temporary staff will be required. It appears to me that, as in other offices, the amount of registration of papers is capable of reduction.

At present there is a temporary staff employed in the record room for dealing with the records, namely :

	Rs.
1 clerk on	80
1 record clerk	50
1 lifter on	19
1 daftri on	16
1 peon on	14

This staff may be continued on a temporary basis pending the preparation of a card index or loose-leaf index and the simplification of registration of papers.

135. *Ajmer Treasury.*—The Imperial Bank of India has taken over the work of the treasury on the 1st of January 1924. This has led to a reduction of the non-pensionable staff by 1 assistant treasurer, 1 assistant cashier, 2 note clerks and 11 potdars, one stamp clerk and one hamal ; the cashier will probably not be required after six months.

136. *Nasirabad Treasury Staff.*—The Nasirabad Treasury has been recently abolished. The question has been referred to me whether the sub-treasury staff should be added to the treasury staff at Ajmer.

The vernacular staff of the sub-treasury has already been abolished. There remain one accountant and one pension clerk who was doing accounts work.

137. In view of the facts that the new arrangement, by which the Imperial Bank of India has taken over the work of the treasury, has been brought into force only on the 1st January 1924, and that the treasury officer is uncertain as to the effect of this change on the work of the accountants in his office, the accountant and clerk transferred from Nasirabad may, I think, be retained in Ajmer until the 30th June 1924 and the question may then be reconsidered in the light of experience.

138. The treasury was last inspected by an Accounts Officer from the United Provinces in 1921. It appears desirable that there should be another inspection by an Accounts Officer in the near future and in the event of such inspection taking place the question of the staff required to work in the office under the new arrangement may be specially referred to him for opinion.

139. *Honorary Magistrate's Court, Ajmer.*—The question whether an additional Ahlmad should be sanctioned for employment in the office of the 1st Class Honorary Magistrate, Ajmer, has been referred to me for opinion. The ministerial staff in the court consists of one Reader. The number of cases disposed of in 1923 was 471. I am of opinion that the appointment of an Ahlmad should be sanctioned.

140. *Offices at Beawar.*—The principal officers at Beawar are the Extra Assistant Commissioner (who is Revenue Divisional Officer and 1st Class Magistrate), a Sub-Judge, 1st Class, a Tehsildar and a Sub-Divisional Officer of the Public Works Department.

141. The records of the first three officers are kept in one record room. They are tied in cloth bundles, and I understand that no weeding has been done within the memory of man. The Court records are arranged by villages instead of by years, class of case and the numbers of the cases ; consequently, as at Ajmer, an elaborate index has to be kept to enable the record-keeper to find the records of any case when they are wanted. The record room has the appearance of being very full, but if the records were weeded and unnecessary records destroyed and the remainder were properly arranged and indexed in a card or loose-leaf index on the lines suggested in paragraph 37, a considerable amount of space would be saved and the record-keeper would be able to do his work much more easily and should be able to keep up to date the arrangement, indexing, weeding and destruction of records in future. It will probably be desirable to maintain an index by villages as well as a subject index. The major and minor heads should, as far as possible, be the same as those to be used in the Commissioner's Office.

142. A question specially referred to me was whether a Hamal on Rs. 14 should be sanctioned for employment in Beawar sub-treasury. I understand that he will be employed in doing general odd jobs about the treasury and office such as moving bags of money, pulling the punkha in the hot weather, etc. It was explained to me that the present staff of menials is fully employed in process service, etc., and in consequence it is necessary to engage coolies from time to time who are not very expert in doing the work expected of them. I recommend that the Hamal may be employed.

143. *Police.*—A scheme of reallocation is under discussion but it is not yet ripe for decision. It appears to me improbable that it will be possible to reduce the strength of the subordinate police force. The rates of pay of all ranks are higher than in the United Provinces; the reason ascribed is that the cost of living in Ajmer is higher than in the United Provinces. The question of putting the police on the same pay and allowances as in the United Provinces is under consideration.

144. The allotments under "Other petty supplies" and "Office expenses and miscellaneous" for 1923-24 include special items which are not likely to recur, namely, Rs. 2,410 for the purchase of revolvers and Rs. 1,960 for the purchase of remounts for the mounted police; smaller allotments under these heads should be sufficient in future.

145. *Jails.*—A considerable economy has been effected this year by the Chief Medical Officer by the substitution of barley and gram for wheat in the diet of prisoners in the Central Jail, Ajmer. It is anticipated that the saving of diet charges will exceed Rs. 10,000 this year.

146. The Chief Medical Officer has also, in view of the present financial stringency, refrained from employing six extra warders whose appointment has been sanctioned; this will result in the saving of Rs. 2,700 in the budget. The allotment for raw materials in jail manufactures has, however, been found too small by about Rs. 3,000 and the allotment of the pay of Sub-Assistant Surgeon will have to be increased by Rs. 500 on account of the employment of a 1st grade Senior Officer; the net saving during this year will therefore be about Rs. 9,000.

147. It does not appear to be possible to suggest any further economies although the cost per prisoner per annum (Rs. 161-1-3 in 1922-23) is high as compared with the net cost in other provinces. The reasons given for this high cost are firstly that owing to the scarcity of water, water has to be paid for, and secondly that prices are generally higher than in other provinces.

148. *Education.*—I had the benefit of a discussion of the educational affairs in Ajmer with Mr. Richey, the Commissioner of Education, with the Government of India, and the following proposals are put forward as the outcome of our discussion.

149. I recommend that the number of teachers under training at the Normal School at Ajmer should be reduced by 10 as I understand that, at the present time, posts cannot be found for all the teachers trained. This will effect a saving of Rs. 1,440 per annum as the stipend of each teacher under training is Rs. 12 a month.

150. At present the Superintendent of Education for Delhi and Ajmer-Merwara is on long leave and his duties are discharged by the Commissioner for education as a temporary measure. I recommend that the following arrangements should be made for the supervision of education in Rajputana and Ajmer-Merwara in lieu of those now in force:

(1) The Principal of the Government College, Ajmer, should be given an allowance of Rs. 100 per mensem for the inspection of European schools in Ajmer-Merwara and Rajputana.

(2) The Head Master of the Government High School, Ajmer, should be given an allowance of Rs. 100 a month for the inspection of Indian Secondary schools and should be the Superintendent of Indian Education in Ajmer-Merwara.

It is understood that the Educational Commissioner would pay at least one visit a year to Ajmer in the course of his tours; the Agent to the Governor-General and Chief Commissioner should be permitted to consult the Commissioner for Education direct whenever he requires his advice.

151. This arrangement involves an increased cost to the Government of India of Rs. 2,400 a year over the cost of the present temporary arrangements but would lead to a saving of over Rs. 5,000 per annum (allowing for a saving in travelling allowances) over the permanent arrangement and would provide a more and immediate control over education. It would be necessary to find a post for Mr. Watkins, the present Superintendent of Education of Delhi and Ajmer-Merwara, before he returns from leave in two years' time.

152. It does not appear to be possible to make any further reduction in the cost of education. The Commissioner of Education indeed considers that, as foreshadowed by the Indian Retrenchment Committee in paragraph 33 of their remarks on Education, a large increase in expenditure on primary education is inevitable.

153. *Medical.*—Certain economies have already been carried out and the practice of recovering the cost of medicines from persons who can afford to pay for them

has been introduced. It does not appear possible to make further material economies unless dispensaries are closed, and the Chief Medical Officer considers this course undesirable although it may be necessary to transfer one. No charges are made for private rooms in the hospital at Ajmer as the Chief Medical Officer does not consider them good enough to justify a charge, but when the new hospital, which is now under construction, is completed it is proposed that a charge should be made for special accommodation.

154. I recommend that the Sub-Assistant Surgeons should be given as far as may be the same pay and allowances, on similar conditions as to qualifications, etc., as Sub-Assistant Surgeons in the United Provinces.

155. *Public Works Department.*—I have dealt with the question of the superior staff of the Public Works Department in connection with the proposal to abolish the appointment of Superintending Engineer, Rajputana.

156. I am inclined to think as the result of my enquiries that it may be possible to reduce the amount spent on the maintenance of various roads. In the absence of detailed information it is difficult to state definitely to what extent the total allotment can be reduced with due regard to the nature of the traffic using the road. I recommend that a report should be obtained from the Public Works Department on the allotments necessary for the maintenance of the various roads mile by mile with a view to possible reduction of the total cost of maintenance.

157. Some economy may also be possible in the cost of maintenance of irrigation tanks.

158. *Inclusion of Ajmer Officials in Cadres with the United Provinces.*—It appears to me that it is desirable in certain cases, if the Government of the United Provinces will permit, to include in the cadre of that province certain appointments in Ajmer-Merwara such as those of Extra Assistant Commissioners, Sub-Divisional Officers of the Public Works Department, Sub-Assistant Surgeons and Sub-Inspectors and Inspectors of Police. The pay of officials in Ajmer appears to be generally the same as in the United Provinces. Under this proposal it should be possible, with the permission of the Government of the United Provinces, for an Ajmer officer to proceed to the United Provinces, for service there from time to time for a certain period in the course of which he would receive a more up-to-date training and a wider experience than he can probably obtain in Ajmer. This should lead to increased efficiency in the administration and that in itself will result in economy. Further, it should be possible to obtain officers, if required, from the United Provinces, when necessary and there would be less difficulty in filling vacancies caused by officers going on leave and less necessity for keeping the establishment over strength in order to fill casual vacancies. It will be reasonable to give a suitable local allowance to provincial officers deputed to Ajmer-Merwara when they are not natives of Rajputana in order that suitable men when required may be attracted to service in Ajmer-Merwara.

159. *Increase of Provincial Receipts.*—I have examined the question of the possibility of increasing the receipts in Ajmer-Merwara.

160. The receipts of land revenue cannot be altered during the period of the present settlement which expires in 1930. It is, however, possible, with the sanction of the Government of India, to alter the rates of cesses levied for irrigation under first class tanks. The question of increasing these rates, which appear to be low in certain cases, should be considered.

161. The principal item of provincial receipts is excise. This item is expanding and every effort is being made to increase the revenue from it.

162. In respect of such matters as stamps, registration fees, etc., it is usual in Ajmer-Merwara to follow the example of the United Provinces.

163. I am not sure whether any further material increase can be expected under Forests without increased expenditure which will not be remunerative for some years.

164. Every effort is, I understand, being made to increase the receipts from jail manufactures. It is realised that the average cost of a prisoner per annum is high at Ajmer as compared with the cost in a neighbouring province.

165. Educational fees could perhaps be raised in certain cases but they are now at the same rates as in the neighbouring province.

166. A grant is made from Government funds of Rs. 15,000 a year to the district board. The district board cess is levied at the rate of 3 pies per rupee of land revenue. This appears to me to be very low and the district board should I think be warned that the grant may be stopped unless there is an increase in the cess.

167. *Financial Settlement.*—As a general measure for encouraging economy in Ajmer-Merwara I recommend that the question of making a financial settlement for period of years with the province should be considered. It is perhaps only natural that the district board, for example, should refrain from levying an additional cess if it thinks that the result of such a measure would be the receipt of less money from the Government of India for the province. If, however, it were realised that any savings effected will be available for expenditure within the province in other directions where expenditure is desirable, the officials and the people would have a greater inducement to increase the revenue and to do all in their power to ensure that the administration is as economical as possible without undue loss of efficiency.

(Sd.) A. Y. G. CAMPBELL.

HONORARY MAGISTRATES IN AJMER-MERWARA.

2356. ***Rai Sahib M. Harbilas Sarda** : Will Government be pleased to state what qualifications are required to be possessed by people who are appointed Honorary Magistrates in Ajmer, considering the duties they have to perform ; and, whether the Honorary Magistrates in Ajmer possess them ?

Mr. H. A. Sams : The ideal aimed at in appointing Honorary Magistrates in Ajmer-Merwara is to secure the services of gentlemen of good social status and education, commanding the confidence and esteem of the public. Commonsense, sound judgment, judicial impartiality and independence of character are the qualifications required. The standard of efficiency expected from stipendiary Magistrates is not always attainable by Honorary Magistrates, but in Ajmer-Merwara the latter have rendered and continue to render valuable services to the public. They exercise only second or third class powers, the court of the Honorary Magistrate 1st class having been recently discontinued on the appointment of the City Magistrate.

COUNTING OF OFFICIATING SERVICE RENDERED BY POSTAL AND R. M. S. OFFICIALS FOR FIXING THEIR INITIAL PAY IN THE TIME-SCALE.

2357. ***Mr. Kamini Kumar Chanda** : 1. (*a*) Will the Government be pleased to state if the benefit of officiating service rendered by Postal and R. M. S. officials confirmed before the date of issue of the Government Resolution on 23rd September 1920 introducing the time-scale of pay was allowed for fixing the initial pay in the time-scale and whether the same concession was also granted to the officials confirmed after the introduction of the Fundamental Rules on 1st January 1922 ?

(*b*) Whether the same concession has been denied to officials confirmed between 23rd September 1920 and 1st January 1922 ? If so, what is the reason for this discrimination ?

2. Will the Government be pleased to state (*a*) whether the benefit of the officiating service was in the first instance conceded with effect from 1st March 1921 and many officials whose cases were promptly settled benefitted by this concession as regards arrears of pay ?

(*b*) Whether officials whose cases were settled later on were allowed the benefit of the past service only with effect from 1st April 1924 ? If so, will the Government be pleased to state the reasons for this differential treatment ?

3. Are the Government aware that recoveries had been made from officials whose claims to increased pay were subsequently admitted and the recoveries so made have not been refunded ? Will the Government be pleased to state why the refund of amounts so recovered has been refused ?

4. (*a*) Are the Government aware that records are not in all cases available relating to officiating services and that such officiating services can be verified by collateral evidence ?

(*b*) Are the Government prepared to admit such collateral evidence in support of officiating services in respect of which the records are not available ?

Mr. H. A. Sams : 1. (*a*) If, as is persumed, the inquiry relates to clerks in post offices and to Railway Mail Service sorters the reply to the first part is in the affirmative, except that in the case of the Railway Mail Service the date is the 29th September, 1920. To the second part the reply is that officiating service, rendered by the officials concerned on and after the 1st July, 1922, (the date from which Fundamental Rules 30 to 36 were applied to the Postal Service), counts towards increments in the time-scale.

(*b*) The officials in question have been allowed to count towards increments their officiating service rendered on and after the 1st July, 1922. Financial considerations did not admit of the grant of any concession other than that referred to in part 1 (*a*).

2. (*a*) Yes.

(*b*) Yes and in some cases from a later date, the reason being that it is against the ordinary practice of Government to grant concessions with retrospective effect.

3. I have no information on the subject but will be prepared to consider individual cases that may be brought to my notice through the usual channel.

4. (*a*) Yes.

(*b*) This has been done in several cases.

Mr. Gaya Prasad Singh : With regard to my question No. 2339, may I have your permission, Sir, to put only one supplementary question.

Do the Government expect.....

Mr. President : The Honourable Member ought to have been in his place when his name was called.

CONTRACTION OF CURRENCY.

Mr. Jamnadas M. Mehta : Sir, I am putting this question of which I have given private notice to the Honourable Sir Basil Blackett.

(*a*) Are Government aware that there has been since 7th January 1920 a contraction of the currency to the extent of 62 crores as per statement below :

7th January 1920.

			Backing securities.		
Note Issue.	Silver.	Gold.	India.	England.	
Rs. 186·21 (Crores).	Rs. 42 57 (Crores).	Rs. 43·64 (Crores).	Rs. 17·50 (Crores).	Rs. 82·50 (Crores).	= Rs. 186·21

30th September 1923.

I. (Actual)

Note issue.	Silver.	Gold.	Securities. India.	England.	
Rs. 179·28 (Crores).	Rs. 97·48 (Crores).	Rs. 24·32 (Crores)	Rs. 57·48 (Crores).	*Nil*	=Rs. 179·28.

If there had been no manipulations since 7-1-20 it should have been

II. (What would have been without manipulation.)

			Backing securities.		
Rs. 241·12 (Crores).	Rs. 97·48 (Crores).	Rs. 43·64 (Crores).	Rs. 17·50 (Crores).	Rs. 82·50 (Crores).	=Rs. 241·12

Actual shortage or contraction

241·12—179·28

Actual contraction Rs. 61·84 crores.

(*b*) Will Government lay a statement on the table showing whether and if so how far the said statement is correct ? What is the present position ?

The Honourable Sir Basil Blackett : (*a*) The statement is correct as far as it goes, *i.e.*, having regard to the figures for the two particular dates mentioned. I am unable to understand why the 7th of January 1920 should have been chosen as the starting point.

(*b*) I place on the table a statement showing the details of the expansion and contraction of currency between the 1st January 1920 and the 31st August 1924 from which it will be seen that the net contraction during the period was about 45¾ crores of which no less than 38½ crores relates to the period prior to the 1st April 1921.

I need hardly point out that the expansion of currency during the war period was very much more, the note circulation alone having increased during that period by about 1.16 crores.

Statement regarding contraction of currency since 1st January 1920.

1st January 1920 to 31st March 1921.

	(In lakhs of rupees.)
Expansion.—Gold purchased by the Secretary of State and remitted to India	19,52
Gold acquired by Government	20,80
Issue of Indian Treasury Bills to the Paper Currency Reserve	37,95
Total expansion ..	78,27
Contraction.—Sales of gold by Government	43,66
Discharge of Indian Treasury Bills in the Paper Currency Reserve	4,37
Transfer of sterling securities in London to the Secretary of State's cash balance against opposite transfer in India ..	68,72
Total contraction ..	1,16,75
Net contraction between 1st January 1920 and 31st March 1921	—38,48

1921-22.			
Expansion.—Issue against internal bills of exchange under emergency provisions	2,00		
Contraction.—Discharge of Indian Treasury Bills in the Paper Currency Reserve	3,30		
Transfer of sterling securities in London to the Secretary of State's cash balance against opposite transfer in India ..	2,50		
Total contraction ..	5,80		
Net contraction in 1921-22 ..			—3,80
1922-23.			
Contraction.—Discharge of Indian Treasury Bills in the Paper Currency Reserve	7,60		
Issues against internal bills withdrawn ..	2,00		
Total contraction in 1922-23 ..		..	—9,60
1923-24.			
Expansion.—Purchase of sterling securities for the Paper Currency Reserve	12,00		
Issues against internal bills of exchange under emergency provisions	12,00		
Total expansion ..	24,00		
Contraction.—Transfer of sterling securities in London to the Secretary of State's balance against opposite transfer in India	5,85		
Net expansion in 1923-24		..	+18,15
1924-25 up to 31st August 1924.			
Contraction.—Issues against internal bills (emergency currency) withdrawn			—12,00
Net contraction between 1st January 1920 and 31st August 1924		..	—45,73

It will be seen that practically the whole of the net contraction occurred before 1st April 1921 and that there has been a net expansion since 1st April 1923 of Rs. 6,15 lakhs.

Mr. Jamnadas M. Mehta : May I tell the Honourable Member why I selected the 7th of January. It was because January 1920 was the last month before the Currency Committee's report was put into force on the 2nd of February 1920.

The Honourable Sir Basil Blackett : I think the Honourable Member is incorrect in this that the Reverse Councils began to be sold before the 7th of January.

Mr. Jamnadas M. Mehta : It may be so. But the Currency Committee's report was to come into force in February 1920 and this was the last month before that date. That is the relevance of 7th January 1920.

UNSTARRED QUESTIONS AND ANSWERS.

PROVISION FOR CANDIDATES WHO PASSED THE STAFF SELECTION BOARD'S EXAMINATION IN 1921 AND 1922.

456. Mr. Abdul Haye : 1. Will Government please state how many of the candidates who passed the Staff Selection Board's Examination in 1921 and 1922 have not yet been provided for ?

2. If there was a sufficient number of qualified candidates on the Waiting List will Government please state why another examination was held this year ?

The Honourable Sir Alexander Muddiman : I would refer the Honourable Member to the reply which I gave a few days ago to Sardar V. N. Mutalik's question No. 2248.

SUCCESSFUL CANDIDATES AT THE STAFF SELECTION BOARD'S EXAMINATIONS.

457. **Mr. Abdul Haye** : (*a*) Have there been any cases in which certain successful candidates, for reasons of their own, were not able to avail themselves of offers of service made by Government ?

(*b*) If there are such cases, are Government now prepared to make a second offer to such candidates who may now be willing to accept it, in preference to those who passed the examination in 1924 ?

The Honourable Sir Alexander Muddiman : (*a*) Yes.

(*b*) Such cases are considered on their merits by the Staff Selection Board. Government cannot give any undertaking in the matter.

EXEMPTION OF CERTAIN ASSISTANTS IN THE UPPER DIVISION FROM THE STAFF SELECTION BOARD'S EXAMINATION.

458. **Mr. Abdul Haye** : (1) Will Government please state if it is a fact that before the formation of the Staff Selection Board in October 1920 there were certain members of the clerical establishment in the Secretariat of the Government of India, Army Headquarters and attached offices in Simla, who were holding 1st Division appointments either in provisionally permanent, *sub pro tem* or officiating capacities ?

(2) Is it also a fact that before the formation of the S. S. Board the majority of such above-mentioned persons were selected and permanently absorbed in the first Division by the offices concerned ?

(3) Is it also a fact that in the case of certain offices in Army Headquarters although the establishments were absorbed in the permanent cadre from 1st April 1920 they were required to undergo the S. S. Board's Examination ?

(4) Is it also a fact that some of the First Division Assistants who were selected and absorbed and had been working in the said Division for more than one year prior to the formation of S. S. Board and who even continued to work in that capacity for 2 years after the creation of S. S. Board, were subsequently reverted on the ground that they were unable to pass the S. S. Board's test ?

(5) Is it a fact that in consequence of such reversion, in certain cases the officials reverted have sustained a loss in the matter of pay which they would have avoided if they had not been so selected in the first instance for the higher division ?

(6) Are Government prepared to consider favourably the cases of such assistants of old standing who have rendered useful service and who are specially recommended by their immediate officers and if possible exempt them from the examination of the S. S. Board ?

The Honourable Sir Alexander Muddiman : (1) to (5). The question is somewhat vague, and I have not been able to verify the statements made in it. There may be such cases.

(6) A recommendation for exemption from the Staff Selection Board examination is a matter for the Department concerned in the first instance. But the policy is to grant exemptions in as few cases as possible.

CIVIL AND MILITARY LINE OVERSEER.

459. **Mr. Abdul Haye** : (1) With reference to the answer given to my unstarred question No. 331, will Government please state what veterinary qualifications does the present Civil and Military Line Overseas possess or has he even any working knowledge of veterinary subjects ?

(2) (*a*) What is the total amount of allowance paid to the Serjeant in addition to his pay and staff pay ?

(*b*) Are the allowances mentioned in clause (*d*) of the answer paid from the budget of the regiment to which the Serjeant belongs or from the budget of the Army Remount Dept. If the latter is the case was this amount ever sanctioned by Government ?

(*c*) How much of such extra expenditure has been incurred since 1907 and was it ever brought to the notice of Government for regularisation ?

Mr. E. Burdon : (1) and (2). It has been found necessary to refer this question to the local military and accounts authorities, whose reply has not been received. I will furnish the Honourable Member with a reply to this question as soon as possible.

CAPITAL EXPENDITURE ON AND INCOME DERIVED FROM TOWN TELEPHONE PROJECTS FOR THE FIVE YEARS PRECEDING 1923-24.

460. **Mr. Bhubanananda Das** : In reference to my starred question No. 1616 of 3rd instant, will Government be pleased to inform the House :

(*a*) the capital expenditure on all town telephone projects for the 5 years preceding 1923-24 (the year for which no information is available) ?

(*b*) the additional expenditure in each case for maintenance and management for each year ?

(*c*) the annual income derived from respective towns during this period ?

The Honourable Mr. A. C. Chatterjee : Publications showing the financial results of the working of Government telephone systems during the years 1920-21, 1921-22, and 1922-23 have been placed in the Library. From these the Honourable Member will be able to obtain the information he asks for so far as these years are concerned. No such information for years prior to 1920-21 is available, as the system of keeping separate accounts for telephones was not introduced before then.

REVENUE FROM THE TELEPHONE TRUNK SYSTEM.

461. **Mr. Bhubanananda Das** : With reference to my starred question No. 1615 of 3rd instant, will Government be pleased to inform the House

what amount of these revenues over the telephone trunk system was derived from the

(*a*) Government Departments

(*b*) Public ?

Mr. H. A. Sams : No separate account is kept of the revenue derived from (*a*) Government Departments and (*b*) the Public.

OFFICE HOURS IN THE GOVERNMENT OF INDIA SECRETARIAT.

462. **Mr. Bhubanananda Das** : (*a*) Is it a fact that in some Departments of the Government of India the office hours are 10-30 A.M. to 5 P.M. and in some 10-30 A.M. to 4-30 P.M. and in another 10 A.M. to 4 P.M.?

(*b*) If so, are the Government prepared to consider the desirability of fixing the same office hours (say 10 A.M. to 4 P.M. or preferably 10-30 A.M. to 4-30 P.M.) for all Departments of the Government of India in order to remove inequality of treatment ?

The Honourable Sir Alexander Muddiman : (*a*) Yes.

(*b*) The question of office hours is, within limits, one for each Department to decide for itself, and the Government of India do not propose to issue any instructions in the matter.

PARAGRAPH IN THE *Telegraph Recorder* OF MAY 1922, HEADED " THE POWER OF CLERKS ".

463. **Mr. Kamini Kumar Chanda** : (*a*) Has the attention of Government been drawn to the paragraph " The power of clerks " at page 212 of the *Telegraph Recorder* of May 1922 ?

(*b*) And what steps, if any, in the way of precaution or prevention has been taken and if not taken already, whether the Government do propose to take suitable measures according to that timely warning ?

The Honourable Mr. A. C. Chatterjee : (*a*) Yes.

(*b*) Government do not consider any action necessary.

APPEALS OF THE OFFICE ESTABLISHMENT OF THE DIRECTOR GENERAL OF POSTS AND TELEGRAPHS.

464. **Mr. Kamini Kumar Chanda** : (*a*) Is it not a fact that all cases, appeals, etc., relating to the office establishment of the office of the Director-General, Posts and Telegraphs, are noted on, before submission, absolutely by one clerk who is understood to be the Appointment and Camp clerk of the Deputy Director-General, P. O., and his views, which are as a rule against complaints of the aggrieved staff are generally upheld by the authorities ?

(*b*) Is it not a fact that recently an appeal has been decided by the Honourable Member in charge of the Department of Industry and Labour in favour of the appellant Babu B. B. Bose, a clerk of the office of the D. G., P. and T., an appeal which was previously thrice thrown out as noted by the Camp Clerk of the Deputy Director-General ?

(*c*) Is it a fact that clerks of that office have recently submitted individual appeals to His Majesty's Secretary of State ?

(*d*) Do the Government propose to make an inquiry and remove the grievances of the clerks of the Director-General's office in this matter ?

The Honourable Mr. A. C. Chatterjee : (*a*) The answer is in the negative. There is no such clerk.

(*b*) Yes. His previous applications were not however noted on by the Camp Clerk to the Deputy Director-General, nor had that official anything to do with their rejection.

(*c*) Yes, five clerks have done so.

(*d*) In view of the reply to (*a*) and to the second part of (*b*), (*d*) does not arise.

REVISION OF THE PAY OF THE CLERICAL STAFF OF THE DIRECTOR GENERAL, POSTS AND TELEGRAPHS.

465. **Mr. Kamini Kumar Chanda** : Is it a fact that according to the Special Departmental Committee (Booth Committee) appointed for the revision of pay of the staff of the Director-General, P. and T., the cost of revision was recommended as Rs. 71,736 per annum while the cost of actual revision according to Government sanction was Rs. 82,217, *vide* item 26 of the report of the Retrenchment Committee page 266 ?

The Honourable Mr. A. C. Chatterjee : The Committee recommended a revision which, including the cost of two Officers appointments namely Rs. 19,800, would have cost in all about Rs. 91,000 per annum. The cost of the revision sanctioned by Government amounted to Rs. 82,217.

GRANT OF PERCENTAGE INCREMENTS TO THE CLERICAL STAFF OF THE DIRECTOR GENERAL, POSTS AND TELEGRAPHS.

466. **Mr. Kamini Kumar Chanda** : Is it a fact that percentage increments as against partial time-scale with retrospective effect from December 1919 as recommended by the Booth Committee and supported by the Director-General was not given effect to by Government as being " unnecessarily liberal " with the result that the majority of the clerks have not been benefited ?

The Honourable Mr. A. C. Chatterjee : It is a fact that full effect was not given by the Government to the recommendations made by the Committee or to the alternative recommendations of the Director General.

Improved rates of pay were however introduced from 1st March 1921 the effect of which was to give immediate percentage increments to the lowest paid, or ' B class ' clerks, and generally to improve the position of the whole staff.

GRANT OF PERCENTAGE INCREMENTS TO THE CLERICAL STAFF OF THE DIRECTOR GENERAL, POSTS AND TELEGRAPHS.

467. **Mr. Kamini Kumar Chanda** : Is it a fact (*a*) that on 1st March 1921 the pay of the two clerks Babu H. M. Bose and Miss B. deMonte of the office of the Director-General, P. and T., was Rs. 210 and 157 respectively by accelerated promotions or otherwise ?

(*b*) That if the time-scale as recommended by the Booth Committee was introduced their pay would be Rs. 157 and 147 respectively according to their length of service and Rs. 42 and 67 respectively by way of personal allowance would have to be granted to them to bring them to the time-scale in case the Booth Committee's recommendations were accepted ?

And to avoid this grant of personal allowance to the two clerks specially and to 18 others of the old A class clerks of that office the percentage increments for all 290 clerks were granted ?

And that the granting of this percentage increments did not give adequate benefit to the majority but created various sorts of anomalies, *viz.*, equality of pay of the clerks irrespective of the length of service specially among the old B class clerks ?

The Honourable Mr. A. C. Chatterjee : (*a*) Yes, including allowances.

(*b*) Percentage increments where given were granted as a general principle and not for the particular purpose suggested by the Honourable Member. Nor are Government prepared to admit that the benefits conferred were inadequate. Where anomalies were created, representations asking for their removal were, as far as possible, dealt with as special cases.

GRANT OF PERCENTAGE INCREMENTS TO THE CLERICAL STAFF OF THE DIRECTOR GENERAL, POSTS AND TELEGRAPHS.

468. **Mr. Kamini Kumar Chanda** : (*a*) Is it not a fact that the grant of percentage increments for the clerical staff of the office of the Director-General, P. and T., has caused discontent to the clerks advanced in service ?

(*b*) Do the Government propose to rectify those at an early date ?

The Honourable Mr. A. C. Chatterjee : (*a*) No.

(*b*) Does not arise.

REVISION OF PAY OF THE CLERICAL STAFF OF THE DIRECTOR GENERAL, POSTS AND TELEGRAPHS.

469. **Mr. Kamini Kumar Chanda** : Is it a fact that since 1919 the question of granting a living wage to the clerks of the Indian Secretariat and attached offices was being considered by the Government of India, the Department of Commerce and that the P. W. D. recommended that the pay of the office establishment of the office of the D. G. P. and T., should be revised on the basis of, the Bengal Secretariat ?

The Honourable Mr. A. C. Chatterjee: The question of revising the pay of the staff of the Director General, Posts and Telegraphs Office was under consideration between 1919 and 1921 with the result that from 1st March 1921 revised scales of pay were sanctioned.

The reply to the second part of the question is that no such official recommendation was made as the revision was referred to a special committee and dealt with on their report.

THE INDIAN CRIMINAL LAW AMENDMENT (REPEALING) BILL.

Mr. President: The Assembly will now proceed with the consideration of the Bill to repeal certain provisions of the Indian Criminal Law Amendment Act, 1908.

Clauses 2 and 3 were added to the Bill.

(Mr. President called Pandit Madan Mohan Malaviya to move his amendment, but he was not present in the Chamber).

Clause 1 and the Title and Preamble of the Bill were added to the Bill.

Dr. H. S. Gour (Central Provinces Hindi Divisions : Non-Muhammadan) : Sir, I move that the Bill be passed. In doing so, I do not wish to recapitulate the arguments that have influenced me and my friends in asking this House for the repeal of Part II of the Criminal Law Amendment Act. In introducing the Bill I pointed out how I was carrying out the unanimous recommendation of the Repressive Laws Committee upon which the Government were represented and whose recommendation was unanimous on this point. I have given to the House the *ipsissima verba* of that recommendation, which was to the effect that the Committee hoped that the Bill would be introduced in the Delhi Session of 1922 for the repeal of the Criminal Law Amendment Act. Honourable Members will remember that the Government did partially carry out the terms of this recommendation. They introduced a Bill repealing only Part I of the Criminal Law Amendment Act, but left Part II intact. Part II of the Criminal Law Amendment Act was sought to be repealed in the last Assembly, but without success. That attempt had been renewed by this Assembly. Honourable Members will remember that during the previous stage of this Bill we pointed out to the Government how the provisions of Part II of this Act were obnoxious to the acknowledged and well understood principles of criminal jurisprudence. We also pointed out how the prototype of this Act, namely, the Irish Coercion Act, contained safeguards which are wanting in this Act. We also pointed out how the Governor General in Council, and latterly since the Devolution Act, the Local Governments, have been given the power to declare any association as unlawful. The Honourable the Home Member replying to this part of the debate laid emphasis—I submit undue emphasis—upon the wording of section 15, sub-clause (2) (*a*) of the Act. I have no doubt he wanted to impress upon this House the desirability of arming the Government with the power of suppressing violent and dangerous conspiracies ; but if Honourable Members will turn to section 16 they will find a ready answer to the arguments of the Honourable the Home Member, for they will find that while an unlawful association is defined in clauses (*a*) and (*b*), section 16 of the Act lays down that if the Local Government is of opinion that any association interferes or has for its object interference with the administration of law or with the maintenance of law and order, or that it constitutes a danger to public peace, the Local Government may, by notification in the official Gazette, declare such association to be unlawful.

Honourable Members will further find if they turn to clause (*b*) of section 15 that any association, which has been declared to be unlawful by the Local Government under the powers hereby conferred, is an unlawful association. Consequently it comes to this that the Local Government, rather the Governor General in Council in 1908, and since the passing of the Devolution Act of 1920, the Local Government, has been given the absolute right of declaring any association as an unlawful association.

The Honourable Sir Chimanlal Setalvad on the last occasion when this Bill was before this House pointed out that this large power conferred upon the Local Government was not subject to scrutiny or control by any judicial authority, and it came to this that the Local Government may declare any body of men as constituting an unlawful association, and thereafter the members are exposed to the penalty which is prescribed in the following section. Now, Sir, one fact which I want particularly to draw the attention of the House to, and that fact I hope the Honourable the Home Member or any other occupant of the Treasury Benches will

take note of, is this. Suppose the Local Government declares a member or an association to be unlawful and afterwards hands him over to the magistrate for the purpose of passing sentence, what is to be the measure of punishment ? The magistrate says, " You come before me as a member of an unlawful association. I have now to mete out the sentence." The accused says, " I am not a member of an unlawful association ; I am an innocent man and have been wrongly notified as a member of an unlawful association, and I am therefore entitled to the verdict of acquittal." The magistrate says, " You are a member of an unlawful association upon the finding of fact by the Executive Government, beyond which it is not competent for me to go. I am here the sentencing officer and all I have now to find is what should be an adequate sentence that I should pass upon you."

Now, Sir, it is a well-known principle of law that the measure of punishment is the degree of crime, and if the magistrate is not in a position to inquire into the criminality of the accused, how is he to pass adequate sentence ? And that is the position in which the judiciary in India is placed by the passing of what was considered to be an emergency legislation.

I further beg to point out that whatever may have been the immediate causes which led to the enactment of this Act of 1908, the Government themselves acknowledged in 1913 that this Act was not sufficient to cope with the mischief it was intended to be directed against, and in 1913 they passed what is known as the Conspiracy Act adding two important sections to the Indian Penal Code. In 1913 they said that the Act of 1908 was a scrap of paper. They did not say so in words, but they meant it. They said it was not sufficient and had failed of its effect. In 1924 they say that the Act of 1913 is not sufficient, because they cannot get sufficient evidence to bring the offence home to the accused, and they therefore want not only the retention of one or other of the penal provisions of the criminal law of this country but both.

Now, Sir, I pointed out on the last occasion that if there is disturbance of law and order of the character described by the Honourable the Home Member and by his predecessor in office in this House, the Government are empowered to resort to the ordinary provisions of the law which have been considerably strengthened by the addition of the two sections to which I have adverted. They have never tried those sections because they say they cannot get sufficient evidence for it.

Now, Sir, my Honourable friends in saying so are on the horns of a terrible dilemma. I wish to ask them, " If you have no evidence to prove that a particular man is guilty, how are you justified in notifying him as a member of an unlawful association ? What are your data, and upon what grounds do you feel justified in issuing your notification under section 16 of Part II of the Criminal Law Amendment Act ? " Surely, Sir, it must be upon some evidence, and if it is upon some evidence which you consider as sufficient, why should you fear that that evidence should be examined and scrutinised by a trained judiciary ? That I submit is a weakness of Part II of the Criminal Law Amendment Act, and I have no doubt that when the Repressive Laws Committee recommended its repeal, they were influenced by the considerations to which I have adverted. Well, Sir, it has been said, I do not know with what degree of cogency, that if we were to repeal Part II of the Criminal Law Amendment Act,

[Dr. H. S. Gour.]

Government would be deprived of the power which they possess of suppressing lawlessness and crime, and the Honourable the Home Member, at the last sitting of this House, when this Bill came up for further consideration referred to a large number of cases of dacoity and murder, which he said had taken place in Bengal, and in which some of the miscreants had been brought to book. I pointed out, and I repeat it to-day, that in spite of the recrudescence of crime in Bengal, the provisions of Part II of the Criminal Law Amendment Act have not been put in force in that Province, and therefore it follows that the ordinary law is sufficiently strong to cope with the crime of the nature described by the Honourable the Home Member. I therefore feel that I can safely ask this House to support my motion that the Bill be now passed, and I make that motion.

Mr. H. Tonkinson (Home Department : Nominated Official) : Sir speaking in this House a few days ago, my Honourable and learned friend Mr. Jinnah said that the Honourable the Leader of the House did not mind how foolish a decision this Assembly might arrive at on a particular matter. I am speaking from memory, but that is, I think, the substance of a remark which he made. My Honourable friend was very mistaken, and this is one of the reasons why I rise now in the hope that even now, at this last stage, we may persuade the Assembly against the acceptance of this motion. We consider in fact that the passing of this Bill in the present condition of affairs in India would be so opposed to the interests of the country that, even if we look only at the reputation of this Assembly, it is desirable that the Bill should not be passed. I do not wish to take up the time of the House for long, but I do wish to refer to certain aspects of the case which have not, I think, received much attention in the Assembly.

The Bill, as we know, seeks to repeal the portions of the Criminal Law Amendment Act, 1908, which deal with unlawful associations. That is, the present Bill proposes to remove a restriction upon what is known as the right of association. This right may on the one hand be regarded as an extension of the right of individual freedom. For example, if A, B and C may lawfully pursue a particular course of action, if acting without agreement, then A, B and C may pursue the same course of action when acting under agreement. This, however, is not a complete statement of the case, for on the other hand the right of association may greatly restrict the right of freedom of individuals. This is due to a fact that, according to Professor Dicey, has received but little notice from English lawyers, namely, that whenever men act in concert for a common purpose, they tend to create a body which from no fiction of the law, but from the very nature of things, differs from the individuals of whom it is composed. A body created by combination, whether a political league, or a trade union, by its mere existence, limits the freedom of its members and tends to limit the freedom of outsiders.

> "Espirit de corps," *to quote again from Dicey,* "is a real and powerful sentiment which drives men to act either above, or still more often, below the ordinary moral standard by which they themselves regulate their conduct as individuals."

I doubt whether it is necessary for me to refer at length to the application of these remarks to India. One has only to remember the proceedings of the volunteer movement in India a few years ago to see how seriously combinations of persons may curtail the freedom of outsiders. For my present purpose the point which I wish to make is that

at the present day the exercise of the right of association raises difficulties in every civilised country. In England, as elsewhere, trades unions and strikes or federations of employers, and lock-outs; in Ireland the boycotting by leagues and societies of any landlord, tenant, trader or workmen bold enough to disobey their behests or break their laws ; in the United States the efforts of mercantile trusts to create for themselves huge monopolies ; in France the alleged necessity of stringent legislation in order to keep religious communities under the control of the State ; in almost every country, in short, some forms of association force upon public attention the practical difficulty of so regulating the right of association that its exercise may neither trench upon each citizen's individual freedom nor shake the supreme authority of the State.

I doubt whether it is necessary, for me, Sir, to develop further the theoretical justification for special provisions of law relating to associations. I should like, however, to cite an authority which was appealed to in another connection by my Honourable friend Pandit Motilal Nehru the other day. I refer to Professor Sidgwick. He refers to the danger of obstinate and systematic disobedience to Government being materially increased by the formation of organised associations and to certain kinds of acts which, when done by individuals, may be unsuitable for legal repression, but which become more grave and more palpably mischievous when carried out by the organised co-operation of a large group of persons. Further he refers to the danger of disorderly conduct, and he says :

" This constitutes an adequate ground for special repressive intervention if it becomes manifest that the ultimate design of a political association is to use unlawful violence for the attainment of its ends, or if "—*and here the Professor might well, I think, have been referring to recent conditions in India,*—" even though it formally repudiates unlawful methods, its operations have a manifest and persistent tendency to cause such violence. Under these circumstances it is in harmony with the principle on which indirectly individualistic interference has before been justified, that the whole corporate action of such an association shall be prohibited and suppressed, even though a part of its operations may be perfectly lawful."

Mr. V. J. Patel : All that applies when the Government are responsible.

Mr. H. Tonkinson : And then in a note, to which I think I should invite the particular attention of this House, Professor Sidgwick says:

" It will often tend to minimise the required interference if the suppression be not performed once for all by the Legislature, but from time to time, so far as may be required, by the executive temporarily invested with special powers. Such powers, if they are to be useful at all, should be somewhat wide ; or else the attempted repression may be evaded by the reconstitution of the dangerous association under a new name ; but the use of these wide powers should be carefully watched by the legislature."

I think, Sir, this quotation enables me fittingly to leave the theoretical justification for legislative provisions relating to associations, because it is in conformity with the principles laid down in the note which I have just read that the Act which it is now proposed to repeal has been framed.

Dr. H. S. Gour : It justifies temporary legislation.

Mr. H. Tonkinson : And that note, I would remark, is a note by an authority whose greatness was appealed to so recently by the Honourable Pandit Motilal Nehru.

I now turn to the remaining portions of the Act of 1908. What does it consist of ? In the first place an unlawful association is defined in sub-section (*2*) of section 15. I will leave clause (*b*) for the present.

[Mr. H. Tonkinson.]

Clause (*a*) includes among unlawful associations those which " encourage or aid persons to commit acts of violence or intimidation or of which the members habitually commit such acts." The provisions of this clause, Sir, of section 17, which provide for the penal sanction, and of section 18, which provide for the continuance of the association after a formal act of dissolution or change of title, have not been seriously questioned in this House. I submit, Sir, that these provisions are so reasonable, so consonant with the principles of criminal jurisprudence that save perhaps in regard to a few minor particulars they cannot be seriously questioned. It has been suggested that the provisions are covered by the ordinary criminal law. But that is not so. Proof that A, B, and C have joined in a criminal conspiracy is very different from proof that X is an unlawful association and that A, B, and C are members of such an association. From what I have already said there can be no doubt that mere membership of an association of the kind defined in clause (*a*) of section 15 (*2*) should be sufficient to constitute a criminal offence. My Honourable friend, Pandit Motilal Nehru, speaking on this Bill, referred to the magnificent system of law and jurisprudence which has been handed down in England from generation to generation and which is the pride of the England of to-day. I note, Sir, that that system contains provisions of a similar nature to those which I am now considering. Members of certain societies are deemed guilty of the offence of unlawful combination and those societies include *inter alia* those which

" administer engagements purporting or intended to bind persons taking the same to disturb the public peace or to obey the orders or commands of any committee or body of men not lawfully constituted or not to inform or give evidence against any associate, confederate or other person," and so on.

Sir, speaking in 1913 on the Conspiracy Bill to which my Honourable friend, Dr. Gour has referred, Sir Reginld Craddock quoted the remark of Sir James FitzJames Stephen :

" If you find a gap in your criminal law stop it as soon as you find it, in a quiet time if possible, in troubled times if you must."

The sponsor for this Bill on the other hand seeks not to follow this course but deliberately to make a gap in our law. He has not attacked these provisions, but nevertheless he proposes to repeal them. I admit that he and other Members of this House have attacked other provisions of the Act of 1908, but then their proper course is to propose an amendment of those provisions and not the repeal of these provisions which, I submit, Sir, ought to remain a part of the permanent law of the land. Admitting as they must do the justice of these provisions, they ought certainly to vote against the present Bill.

I now turn to the provisions which have been attacked. They are those which enable the Local Government to declare an association as unlawful. This power, as I have already indicated, and as Professor Sidgwick has said, ought in certain circumstances to be vested in the Executive Government. When may a Local Government declare that an association is unlawful ? This is provided for by section 16 which gives the power to the Local Government when it is of opinion that

" any association interferes or has for its object interference with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the public peace."

I would now like to draw atention to what my Honourable friend Dr. Gour has just said about membership. He suggested that the Executive

Government by notification declares that a man is a member of an association and that when the accused appears before the Court he is not able to prove that he is not a member. This, Sir, is quite wrong as any one who reads the provisions of the Act will at once see. If any association has for its object or if its operations are normally attended by the consequences set out in section 16, I think that all Members in this House must admit that membership of such an association ought in the interests of good government to be made a criminal offence. If then we admit for the present the existence of such circumstances in India, the objections should be directed not to the repeal of the Bill but as to the manner in which the provisions have been worked. We have been told that the powers have been improperly used. I have not got time to discuss this question at length. I would, however, remind the House that a Committee of which Dr. Gour who has moved this motion and Sir Sivaswamy Aiyer were among the members who examined this question three years ago. I understand that they had access to confidential documents and they accepted the view that the provisions had been useful in regard to, and I gather from their report, properly applied against, the volunteer movement in India. The provisions are now being used in the Punjab. I have not sufficient knowledge of the details of what is happening in that province to speak at length on this subject. But I take it that every one here will admit that there have been instances there which would have called for what was described by Sir Malcolm Hailey as the exercise of that higher law which bids the State to protect the common citizen against intimidation, terrorism and wrong. The Act was passed, as we all know, to deal with anarchical crime in Bengal. In regard to the portions of the Act which still remain on the Statute-book Sir Harvey Adamson said that it was hoped that the provisions would be mainly preventive. He explained that the Government of the time believed that the effect of declaring an association unlawful would be to separate from it many of the young and comparatively guiltless and also to deter the older men from giving it henceforth the assistance, pecuniary or otherwise, which from inclination, thoughtlessness or fear they had given it in the past. He said, " We hope to separate the waverers from the real criminals ". The value of this weapon as against anarchical crime in Bengal was questioned in this House a few days ago. Our position in regard to anarchical crime is, however, still, as was explained by the Honourable the Leader of the House, the same as when the Act was passed. We hope to be able to utilise it to separate the waverers from the real criminal. We have little hope to secure by these provisions the real criminals. We still think we may be able to deter the waverers, and in any case, the position, as stated in this House by the Honourable Pandit Motilal Nehru, is so serious that we are not prepared, in view of our responsibility for the maintenance of law and order, to abandon any weapon at the present juncture. Sir, I oppose the motion.

Lala Duni Chand (Ambala Division : Non-Muhammadan) : I belong to that province in which the Criminal Law Amendment Act has been applied most wantonly and most indiscriminately. It is particularly my duty to ask for the repeal of this Act which has been popularly called for the last three years a lawless law. I say, Sir, that it has been applied in the Punjab during the last three years and it has been applied on a very very large scale. It is still in force in several districts of the Punjab and if I mistake not it still applies to the Akali *jathas*. Government might say that it is not possible for us to rule

[Lala Duni Chand.]

the Punjab without the help of this Act. I would say that if it is necessary for you in order to rule the Punjab to have an Act like this you should admit your defeat and adopt other means to rule the Punjab. It is a matter of humiliation for the Punjab that the Act is still kept as a sword of Damocles hanging over its head and allowed to fall on it from time to time. It is a law with regard to which the sanest leader that we have got here, Pandit Motilal Nehru, said that if it is again applied to his province he will break it. If that is the attitude of a most revered and rational leader like Pandit Motilal Nehru, Government should think twice before keeping the Act any more on the Statute-book. Then there is another point. I know that almost every law, even the best law, can be abused and misused. I say with regard to this law that it has been most easily and most frequently abused. I will not allow any law to remain on the Statute-book which can be so wantonly abused and misused in the case of a very large number of people. If you could be discriminate in its application I could understand that perhaps in certain circumstances you might be allowed to use it but I know it as a fact that you have abused it, you have misused it and you have never taken into consideration the feeling of the country with regard to this law. I cannot be positive now but till the last winter session of the Assembly this Act was in force in my own district. The Government have been declaring at the top of their voice that non-co-operation is dead, that the people are entirely changed. In spite of these declarations you are keeping this law in force in the Punjab and in those districts which are absolutely quiet and non-violent. It was argued the other day from the Government Benches that if you are going to repeal this law what substitute are you going to give us. In the first place, I say that if there is a law that is positively bad, that is against all principles of jurisprudence, I would not care to give you a substitute. So far as my experience goes, there is a substitute handy and ready in the two codes, the Indian Penal Code and the Criminal Procedure Code. I know it for a fact that there is no situation with which you cannot deal by having recourse to these two Codes. May I ask you if in hundreds and thousands of cases you have not applied sections 107, 108, 108-A, 109 and 110 of the Criminal Procedure Code. I know a case when there was *satyagraha* in Nagpur. A graduate from the Madras University went to join the *satyagraha* and he was bound over under section 109 because he had no ostensible means of livelihood. If you want any substitutes I say that these are the substitutes. I do know that these sections should not be applied. They have a limited scope. The framers of those sections never meant that they should be applied in cases to which they have been applied. You may use them if you like, it may be to your credit or your discredit. I look upon laws of this kind always as liable to abuse. It has got great resemblance to the Defence of India Act. I say that I can help Government in retaining a law of this kind only in one case, that is during war time. There are no war conditions now and there is absolutely no justification to apply this law and retain this law. So far as I know, during the last three years, there has been a demand from the highest to the lowest for the repeal of this law. I would invite the attention of the House to what the greatest lawyer, Mr. C. R. Das, said. When he

presided over the Indian National Congress he traced the history of laws of this kind. He was of opinion (any body who cares to read his presidential address can see for himself), as an eminent lawyer and not as an agitator, that this law is opposed to all principles of jurisprudence, to all principles of public morality. When opinions have been expressed even from moderate quarters for the repeal of this law, when a motion of this kind is brought forward by a sane man like Dr. Gour, I think that should be sufficient to open the eyes of the Government and Government should not say that it is only agitators and extremists that want the repeal of this Act. It is conclusive proof of the fact that the whole of India, call it Nationalist, call it Extremist or Moderate, wants the repeal of this law. To me it is a matter of great surprise that even up to this time there should be opposition to a motion like this. Can the Government say that there is any element in the country which is opposed to the repeal of this law ? If that is the view of the country, as has been represented by various shades of opinion, Government should, in conformity with the spirit of Reforms, come forward and say that this law should be repealed because the whole country wants it to be repealed. It does not appear edifying that even after three years of Reformed Government you should still retain this measure on the Statute-book. It has sufficiently disgraced your Statute-book and I would ask you that a Statute like this should not be kept any more on the Statute-book. I know it is certain that we are going to repeal this law by an overwhelming majority. I am fully confident of that. It will then be open to you to keep it on the Statute-book or not but, so far as the universal voice of the country is concerned, I think there is no doubt that the country thinks that this law should be repealed. I hope that Government will take note of the feeling of the country and agree to this motion.

Mr. M. A. Jinnah (Bombay City : Muhammadan Urban) : In the first instance I think Mr. Tonkinson has completely misunderstood me when he attributes to me the suggestion that it did not matter how foolish the decision may be that this House should come to.

Mr. H. Tonkinson : On a point of explanation I may say that the remark of my Honourable and learned friend to which I referred was to the effect that the Honourable the Leader of the House did not mind how foolish the decision of this Assembly may be.

Mr. M. A. Jinnah : I never said anything of the kind, Sir. I think the Honourable Member has quite misunderstood me. I have got the manuscript of my speech here ; if the Honourable Member likes I will send it across to him.

Next, he said that the reputation of this House was at stake if it were to repeal this Act. Well, Sir, it seems to me that every now and then this argument is trotted out, that, if we do a particular thing which they do not like, our reputation is at stake. Sir, our reputation is at stake and we are determined to put an end to this foolish determination of those who are advising the Government to continue this Statute ; and I say that if this House wishes to redeem its reputation in the eye of the civilised world it should insist upon the removal of this Statute from the Statute-book. Sir, Mr. Tonkinson's speech was a beautiful essay, rich in quotations from most elementary text-books. But he never answered the question which I put in this House and I repeat that question again. Will he show me anywhere in the world where the Government have in normal times—of course we are at issue on that point, whether

[Mr. M. A. Jinnah.]

these are normal times or not—but will he show me any Government in normal time coming to a Legislature and asking for powers such as are contained in this Statute ? I say, Sir, no Legislature and no Government will dare to ask for the powers contained in this Statute. If that proposition is sound, then I ask Mr. Tonkinson and I ask the Government on the other side there, do they think that there is that danger, that emergency, which entitles them to come to this House to-day and say that they must be allowed to retain this Statute on the Statute-book ? Now that is the question to which the lecture of Mr. Tonkinson does not reply. (*The Honourable Mr. A. C. Chatterjee* : "We discussed it the other day.") I am answering now the speech that has been made to-day on behalf of the Government. I do not wish to repeat what I said to meet the Honourable Mr. Chatterjee as to his law. Now, Sir, the point is this. The Government have not shown us a single instance, excepting the recent association in the Punjab, which has been dealt with under this Act. They have not shown us a single instance where an association that was bent upon revolutionary crimes or anarchical movements has been dealt with under this Statute. That is admitted. Then what are the associations that you want to aim at ? If you cannot touch the revolutionary organizations, if you cannot touch the anarchical movements under this Statute, because, as far as I understand, Sir, these bodies have no address, they have no specific location and their membership is unknown even to Government, omniscent as it is, then what are the associations that you wish to deal with under this Statute ? That is the question I ask the Government. The answer is those associations which Mr. Tonkinson with his mentality may think are interfering with the administration of the country. The frame of mind which he displayed in his speech is one of a ruler who is determined to brook no interference with the administration of this country, and those are the orders he will pass against any association which comes into disfavour either with himself or with the Honourable the Home Member. And then what happens when that association has no right to be heard, no right of defence ? It has got to be disbanded, and as I said before, if I had the misfortune to belong to such an association I have either got to go to jail or resign against my own conviction that the association is perfectly lawful and that its aims are loyal and patriotic. And why ? Because Mr. Tonkinson does not agree with me. That is the question which this House has got to decide, and I say this, that, if this House did anything but vote for the repeal of this Statute, it would lose its reputation.

Pandit Motilal Nehru (Cities of the United Provinces : Non-Muhammadan Urban) : As I have been honoured by the Honourable Mr. Tonkinson by his references to me more than once in the course of his speech, I think it is but fair to me and to him that I should be allowed to trespass on the patience of the House for a few minutes. I have often had the misfortune of being misrepresented by the opposing Counsel in law courts and of having my argument so twisted as to be used in support of his argument. But the manner in which the Honourable Mr. Tonkinson has persuaded himself to believe that he has the support of my own argument for his case is, to say the least of it, most surprising. He says that I gave my opinion as to what the present condition of the country was and as to what it may become, and in those circumstances he says it will be very unwise for the Government to throw away the weapon that

they have. Now, Sir, the whole drift of my speech on the second reading of this Bill was that it was the Government who was responsible for these associations ; that it was the Government that had brought them into existence, and that if you do not mend your ways, you may be sure that one fine morning you will wake up to find the whole country a honeycomb of secret societies. That was my argument. I said you were standing on the edge of a precipice. Have a care, one false step will hurl you many fathoms down into the abyss. Mr. Tonkinson says that on my own showing it is for the Government not only to stand on the brink of the abyss but also to dash down into it. He is welcome to use my argument in that way.

The fact that you have not been able to touch the associations that you are afraid of, namely, the anarchical associations, under this Part of the Act and the fact that you cannot possibly touch them, were my reasons for asking you to desist from keeping this law any longer on the Statute-book. I asked the Honourable the Home Member at the time when he was talking of this law as a weapon how the weapon was proposed to be used. He said in effect what the Honourable Mr. Tonkinson has said to-day, namely, that by suppressing such associations at an early stage he would prevent them from ripening into anarchical associations. Mr. Tonkinson has now said that the law may be applied to waverers. Now, Sir, that is a very dangerous proposition and one which we should examine further. How are we to know who are the waverers, and how is the law to deal with waverers ? I think the only law to meet a contingency like the one contemplated by the Honourable Mr. Tonkinson would be one enabling you to take charge of all the young men in the country whose minds are beginning to be imbued with patriotic ideas, who begin to think of their country, and of their lot in it, who are wavering between joining an anarchical movement and doing what they can for their country in other ways. The only law which will meet a case like that would be a law if you can have it passed in this House or any other, enabling you to take charge of all the young men in the country to see that they may not develop at a later stage into anarchists. Then the Honourable Member referred to one class of criminals, the Congress volunteers. The line upon which they stood was that one false step would lead them to anarchy. The right step, which of course would be the application of the Act, would make them very good citizens. These volunteers were Congress volunteers. What did they object to ? They objected to any encroachment on the very natural and elementary right of association which this Act denied to them. They were a determined set of people—there was no wavering there. They went to jail in their thousands and in their tens of thousands by breaking this very law, knowing fully what they were doing, and determined to do it again if occasion arose. Can you call them waverers ? They did it, and there were so many of them who followed this course that you were not able to send them all to jail. To do that you would have to convert the whole of this country into an enormous jail. Well, then, what is this weapon for ? As Mr. Jinnah has said, and as I have shown in my remarks on the second reading of this Bill, you cannot possibly touch any real anarchical society. I hope I have disposed of the argument, so far as it deals with waverers.

Then it is said that such a law is not peculiar to this country. My Honourable friend has unearthed some old English Statute, in which he says that the law of unlawful assemblies is very similar to the law laid down in this Act. I am sorry I was not in the House when he made

[Pandit Motilal Nehru.]

those observations ; I shall only deal with them on the report I have received of his remarks. Well, no one has ever denied that unlawful associations have to be dealt with under the law, that there have been laws dealing with unlawful associations from the beginning of civilization, and that there will be such laws to the end of civilization. But I should like to ask the Honourable Mr. Tonkinson whether any man in England incurring the displeasure of the bureaucracy—I mean the executive, there being no bureaucracy in England—can be declared to be a member of an unlawful assembly. The objection to this Act is that it leaves in the hands of the Executive what is the province of the Judiciary. I say with confidence that there is no law of this kind in any civilized country, there never has been and never can be any such law in a civilized country in normal times, namely, in times like these. When I say " normal times " I distinguish such times from those when it becomes necessary to enforce martial law. In such times there may be any number of secret societies, and conspiracies. It is for the ordinary law to deal with them. There can be no other law which leaves it entirely in the hands of the Executive to decide whether a particular association is unlawful or not. But once a court of law holds that a particular association is an unlawful assembly, there are the provisions of the ordinary law to deal with that association. You do not want a special Act for it. The real sting of this Act lies in the fact that you rob the Judiciary of its proper function and invest the Executive with a power which it does not and should not possess in any country. That was my point, Sir. As for the reputation of this House, well, I do not know how much of it is left in the minds of my friends opposite. I think it was the weakest reed for my Honourable friend to rely upon. The reputation of this House is that it has pledged itself to the repeal of all repressive laws. That this is a repressive law can admit of no doubt. The House will only justify its traditions and its reputation if it passes this Bill.

(*Several Honourable Members* : " I move that the question be now put.")

Mr. H. Calvert (Punjab : Nominated Official) : Sir, I had hoped that it would not be necessary for me to take any part in this debate, but as several speakers have made a specific reference to the province which I represent and to happenings in that province, it seems desirable that the views held in that province with regard to the situation should be placed before the House. (*Mr. M. A. Jinnah* : " Whose views ?) Sir, the ground I tread is rather difficult, and I have no desire to wound the feelings of any people who are in sympathy with that particular association. I will only say that in that province a body of men, whom we need not further mention, started an association and registered it under the Societies Registration Act, 1860 ; that association had objects both lawful and laudable ; but, Sir, other men took possession and control of that association and diverted its aims and its activities into other channels. That association set about directly to challenge not only the authority of Government but the authority of the ordinary forms of law. It challenged, Sir, the authority of law itself, and the Law Courts and, Sir, the law that it challenged was no repressive law but the ordinary civil law of the land, the ordinary law of property.

Mr. Chaman Lall : On a point of order, may I ask the Honourable Member whether he is aware that the case is *sub judice* and he ought not to refer to it ?

Mr. H. Calvert : I refer to no case at all.

Mr. Chaman Lall : The Honourable Member has referred to the leaders of this organization. Those particular leaders are now in jail. I consider that case is *sub judice*.

Mr. President : Does the Honourable Member acknowledge that the description given by Mr. Chaman Lall is accurate ?

Mr. H. Calvert : No, Sir.

Mr. President : Order, order. Will the Honourable Member kindly tell me to what he is referring ?

Mr. H. Calvert : I am referring to the action, Sir, of associations in the Punjab, which were declared unlawful associations.

Mr. President : Is he or is he not referring to a question under the jurisdiction of a Court ?

Mr. H. Calvert : No, Sir.

I am referring to cases which have been already decided—there have been a large number of cases decided in the Punjab. I am going to deal, Sir, with what happened before the application of the Act and which led up to the trial, the trial of certain members of an unlawful association ; I am taking the period prior to the association being declared an unlawful association.

Now, Sir, we admit that this Act, which Dr. Gour desires to repeal, is a special Act of a very exceptional nature and which should only be applied in exceptional situations. There were a very large number of cases coming to courts and decided daily by the courts in which the ordinary law of the land was being defied. For two years the Government tried to use only the ordinary laws of the land. For two years various measures were put into force. We tried avoiding arrests and arresting. We tried ordinary trials under the ordinary law of the land ; we sent people to prison. We tried releasing prisoners on a large scale. Everything failed. It was only after two years of trial of the ordinary law of the land and when parties of perambulating pilgrims were sent into territory not under the authority of this Assembly that the special law was invoked. Now, Sir, the result was that a situation arose which the ordinary law of the land was unable to cope with. There are in the Assembly, Sir, many Honourable Members who are in the profession of law and they are bound by their profession to uphold the authority of the Courts. I would ask them what they would do if they were appointed judges and they found that their courts were flouted, that the law they administered was openly flouted, when they found that they gave decrees and those decrees could not be executed because their authority was defied. If, Sir, they pressed for punishment of the direct offenders, they found that they were immature youths, old men or people who were the dupes of others. If the lawyers of this House were placed in a position like that, when even the compounds of their courts are crowded with a large number of people armed and marshalled for the purpose of defying them so that they could not carry on their work, they would apply for special methods.

Now, Sir, the main point I seek to make is this, that in this province we had two years' trial of the ordinary law. Most of the convictions that have taken place in connection with this movement have been convictions under the ordinary law of the land, and I hold, Sir, that no

[Mr. H. Calvert.]

evidence has been given in this Assembly that the special powers had been in any way abused. So far, this Act has been applied not only not indiscriminately but it has been applied only when matters were reaching a stage when territory outside British India was being affected. I would only add one word. In the opinion of every one responsible for maintaining in that province respect for the ordinary courts, administering the ordinary law and trying to uphold the ordinary right of person and property, in the opinion of all these people, the time for repeal of this Act has not yet come. I therefore oppose Dr. Gour's Bill.

Dr. H. S. Gour : I should like very briefly, Sir, to reply to the Honourable Mr. Tonkinson, who has defended this piece of legislation upon theoretical and practical grounds. Dealing with the law of associations, he admits that it is a right of every man to associate and to create and join associations, but he cites Professor Henry Sidgwick in support of the view that where people associate in large numbers and are a menace to the peace and integrity of the State, the State is entitled to restrain their movements and their actions. But in citing that passage, he did not place emphasis, which the author of that work necessarily did on this, namely, that all interference by the State with the liberty of man is only justified in cases of national peril and can be supported only by temporary legislation. Now, Sir, I beg to ask, is this a temporary legislation ? If it were a case..... (*Mr. M. A. Jinnah* : " Is there a national peril ? ") Is this a temporary legislation ? If it were the case, have a legislation limited by a number of years. My friend on the other side would have said " It is covered by the enunciation of the principle of Professor Sidgwick," and I ask certainly with Mr. Jinnah, are we here in a state of national peril ? Surely, Sir, even the Honourable the Home Member and his associate, who have defended this measure, have not gone the length of describing this country as in a state of national peril. Therefore, Sir, so far as the theoretical considerations are concerned, I submit they go by the board. Now, we descend from the arena of theory to that of practice. Are there any practical considerations which outweigh the initial principle to which even the Honourable Mr. Tonkinson subscribes ? I ask the Honourable Member what justification is there for the retention of this measure on the Indian Statute-book, when all the cases mentioned by the Honourable the Home Member were dealt with under the ordinary existing law ? The Honourable Mr. Tonkinson has not vouchsafed any reply to it. On the other hand, there is a tone of sub-conscious conviction in my Honourable friend's remarks when he said that there are provisions in this Act which might be modified ; and when he has admitted that fact, I submit he has paved the way for the repeal of the whole of it. Surely, Sir, it was up to the Government when they repealed Part I of the Criminal Law Amendment Act to bring in a measure for the amendment of Part II, and when we introduced this Bill in March last, we pointed out the flagrant defects in the enactment, and we gave the Government ample time and opportunity to bring these provisions in line with the dictates of modern jurisprudence. What have they done ? Even at the eleventh hour my esteemed friend Sir Chimanlal Setalvad asked the Honourable the Home Member if he was prepared to modify its provisions. What was the response ? The response was that he was not prepared to give an undertaking to that effect on behalf of Government. Now, Sir, what

is, then, there to support this measure on the grounds of practical utility or practical considerations ? My Honourable friend read to the Members of this House the definition of an unlawful association. He read clause (*a*) and when clause (*b*) confronted him, he dropped it like a hot potato. He forgets altogether that, in view of clause (*b*), clause (*a*) of section 15 is unnecessary, because, on account of its large terms, clause (*b*) empowers a Local Government to declare any association as an unlawful association. Therefore, my Honourable friend Mr. Tonkinson studiously avoided mentioning clause (*b*) or justifying it, and I can only take it that he found it wholly unjustifiable. I think it was with reference to clause (*b*) that my Honourable friend conceded, by implication that there are provisions in this part of the Criminal Law Amendment Act which might be amended and improved. I, therefore, submit, Sir, that nothing whatever has been said in this long debate on this occasion and on the last occasion which in the slightest degree shakes the position of the Members on this side of the House that this piece of legislation is vicious in principle and vicious in practice and the sooner we remove it from the Statute-book the better it will be for the reputation of the Members of this Assembly. What answer has my friend given to the pledge solemnly made by the Repressive Laws Committee, who hoped that the Government would bring forward a repealing Act during the Delhi session of 1922 for the repeal of this measure. Surely, Sir, between January 1922 and September 1924 much time has elapsed. The undertaking given by the members of the Repressive Laws Committee should have made good or the non-compliance with their recommendations justified on the floor of this House. I, therefore, submit, Sir, that, because we stand committed by the recommendations made not only by the members who are representatives of the non-official Members of this House but also by the Home Member, who was a representative of the Government, we are, *prima facie*, justified and entitled to ask for the repeal of this measure. We ask for its repeal upon the first principle, namely, the freedom of men and I ask my European friends, who have struggled for the liberation of themselves and their people, to support this measure of repeal and so uphold individual liberty and the natural right of lawful associations. My friend, the Honourable Mr. Tonkinson, while conceding the principle, said that, if the case goes before a magistrate, a man can show that he is not a member of that association. I can only think that my learned friend has not read section 17, the provisions of which not only make a person, who is a member, liable to the penalty, but even a non-member and an outsider liable to punishment if he contributes or receives or solicits any contribution for the purpose of any such association or in any way assists the operations of any such association. Members and non-members, associates and non-associates, are all equally liable to punishment under the provisions of section 17 of Part II of the Criminal Law Amendment Act. Could the provisions of this section be possibly enlarged ? And the question that I asked the Honourable Mr. Tonkinson was this. If the magistrate asks the accused to show cause why he should not be sentenced and he says that he is not a member of an unlawful association, it is not open to the magistrate to try the question whether the association is lawful or unlawful. That, I submit, takes away the plenary power of the judiciary to try a question upon which depends the measure of punishment. My friend, the Honourable Mr. Calvert, appealed to the legal element in this House to uphold the authority of law. Sir, I am quite.

[Dr. H. S. Gour.]

certain that every lawyer in this House, and for that matter every Member of this House, is anxious to uphold the majesty of the law and the authority of the judiciary and it is inspired by that feeling that I ask this House to support my measure.

The Honourable Sir Alexander Muddiman (Home Member) : Sir, I do not propose to detain the House very long. In the first place, I should like to refute the statement that there has been any pledge given that the Bill should be repealed. No such pledge has been given.

Diwan Bahadur M. Ramachandra Rao (Godavari *cum* Kistna : Non-Muhammadan Rural) : May I ask the permission of the Honourable the Leader of the House to draw his attention to a paragraph which appeared in the speech of Sir Harvey Adamson when the discussion was going on in 1908 ? This is what he said :

"It has been suggested that the Bill would be more acceptable to the public if a provision were inserted limiting its operation to a stated period. We have considered this point and come to the conclusion that it is better to enact the Bill as a permanent measure. If, happily, conditions improve so as to make it apparent that its provisions are no longer wanted, it will be easy to repeal it."

The Honourable Sir Alexander Muddiman : I quite accept that. But my reference was to the Repressive Laws Committee. The facts are that the Committee definitely recommended that the Criminal Law Amendment Act should not be repealed and it is no use wasting time on endeavouring to extract a pledge by Government out of that report. Whether the law is a good law or a bad law, there is no question of a pledge to repeal it. But, as I said in my speech, if the condition of peace of the country was such as would permit of it, no one would be better pleased than I to see that the law was amended in so far as it is compatible with the peace and good government of the country. Now, the motion before the House is to repeal the law entirely. There has not been one word said—and I do not think there could be one word said—in this House in support of associations " which encourage or aid persons to commit acts of violence or intimidation or of which the members habitually commit such acts ". I cannot believe that there is a single Member in this House who desires in any way to protect those associations. Therefore, I take it, that the House do think that, in so far as the associations of the class I have quoted are concerned, there is no case against the Act as it stands. It was said by my Honourable friend that unlawful associations of that kind can easily be dealt with under the ordinary law. That is not so. Dr. Gour has just read out to you section 17 and I do not propose to take the time of the House by reading it again. But it is quite clear that section 17 read with section 15A of the Act does give very valuable power.

Now, the main complaint against the Bill is in respect of section 15, clause (*b*), which gives power to the Executive Government to notify an association as unlawful. It does give that power, and I admit that it is a very great power ; but it does not give that power in an unlimited way. It must satisfy the provisions of section 16, that is, the Local Government must be of opinion that the Association interferes, or has for its object interference with the administration of law and order. You might say—and I admit—that it is a very large power to give the Executive Government, but if the Executive Government exercises its

discretion rightly what harm follows ? Can you contend because of that the whole law should be repealed ? That is the whole question. (*An Honourable Member*: " Who is to be the judge ? ")

I wish the Honourable Member would not interrupt. I do not believe there is anybody in this House who wishes that an association rightly declared unlawful should be countenanced. You propose to repeal the whole of this Bill because you object to one clause. That at any rate is my contention.

The next point I wish to raise is this. In the course of the debate it was said that this is a law which is not a law ; though it is open to anyone to disobey it. Have we come to this stage that a man is to decide what law he is to obey ? Is that not the way in which anarchy lies ? Are we to be allowed to pick and choose our laws ? That is no argument for the repeal of a law. I may have a fondness for forgery, but no Legislature is going to repeal that law because I do not like the laws against forgery.

Sir P. S. Sivaswamy Aiyer (Madras : Nominated Non-Official) : May I ask if Government are willing to cut out clause (*b*) ?

The Honourable Sir Alexander Muddiman : If the Honourable Member had raised the point before I might have been in a position to give him a definite answer. It is not for myself but for the Government of India that I speak, and I suggest that it is not fair to ask me to make a statement of that kind at the last moment.

Dr. H. S. Gour : That was the question put by the Honourable Sir Chimanlal Setalvad.

The Honourable Sir Alexander Muddiman : What he proposed was that an appeal should be allowed from the Executive Government to the judicial authorities. (*An Honourable Member*: " Even that has not been done.") A suggestion has been made by other speakers that you may notify a member of an association. You do not do that. You notify the association.

Mr. Jinnah asked me to show him any country in the world where legislation of this kind exists in normal times. The point is that these are not normal times. These are abnormal times. When I am told that there are dangerous conspiracies in the land I certainly do not think that these are normal times.

Another point he made was that no Government could ever come to the Legislature and ask for legislation of this kind in normal times. We are not asking for legislation ; we are endeavouring to maintain legislation that was given to us in abnormal times, and which we are desiring to maintain in times which I regard as abnormal.

My Honourable friend, Pandit Motilal Nehru, drew a picture of Government on the edge of a precipice. If that is so, I am not one of those who would neglect to hold on to any rope I can. Certainly this is not the time to cut away ropes.

Then another gentleman objected, when my Honourable friend was speaking, and said we always had the powers to make a declaration of martial law. Is that a reasonable proposition for any civilised Government ? (*A Voice* : " Is it a civilised Government ? ") Are we to wait until the forces of disorder burst upon us, and we are left to the last resort

[Sir Alexander Muddiman.]

of Government? You say that this law is no good against anarchy. I am not prepared to say that. Even if it is not, I am still prepared to retain it.

It has been said that these matters can be dealt with under the ordinary law. Well, there you contend on the one hand that this is an extraordinary law and it therefore must go, and, on the other, that extraordinary situations can be dealt with under the ordinary law. It must be admitted by everybody in this House that there comes a time when the ordinary law cannot work on account of the terrorism of witnesses, mass movements, intimidation, etc. A man even of considerable courage may be intimidated and afraid to give evidence. If one man came to my house and sat on my doorstep it would not perhaps intimidate me ; but if 500 or 1,000 came into my compound and refused to leave, it would seriously intimidate me. When you get to that stage the ordinary law does not function. The ordinary law presumes that a man will give evidence if wanted. When you get to the stage when no one will give evidence for you, the police will not take up your case, and the court having insufficient evidence cannot convict, it is then that these extraordinary measures are necessary.

I do beg the House to consider the position. I am not going to repeat all I said about Bengal. It was not for the purpose of endeavouring to get a catch vote ; it was really with the object of impressing on the House the position in that province. The list of occurrences I read to you was read with the object of bringing before you not arguments but what has actually occurred. It has found confirmation in other quarters.

One other point. I heard my Honourable friend opposite say that all other so-called repressive laws must go. That is a much more serious proposition. It is not necessary for me to deal with it, but his declaration will provide matter for consideration.

In conclusion, I have nothing more to say to the House than this, that here we are in times that are not normal. We have something in our hands which the Legislature gave us which we ask you not to take away from us. If you do, if you take away all these powers, then there is no stage left between the ordinary law and martial law. (*A Voice* : "Good government !") I trust the Government is good already. (*A Voice* : "Self-government !") Surely no man can seriously believe that a change in the form of Government will be a universal panacea.

With these words I oppose the motion.

Mr. President : The question is :

"That the Bill to repeal certain provisions of the Indian Criminal Law Amendment Act, 1908, be passed."

The Assembly divided :

AYES—71.

Abdul Karim, Khwaja.	Badi-uz-Zaman, Maulvi.
Abhyankar, Mr. M. V.	Belvi, Mr. D. V.
Acharya, Mr. M. K.	Chaman Lall, Mr.
Ahmad Ali Khan, Mr.	Chanda, Mr. Kamini Kumar.
Aiyangar, Mr. C. Duraiswami.	Das, Mr. Bhubanananda.
Aiyangar, Mr. K. Rama.	Das, Mr. Nilakantha.
Aiyer, Sir P. S. Sivaswamy.	Datta, Dr. S. K.
Alimuzzaman Chowdhry, Mr.	Duni Chand, Lala.
Aney, Mr. M. S.	

Dutt, Mr. Amar Nath.
Ghazanfar Ali Khan, Raja.
Ghulam Bari, Khan Bahadur.
Goswami, Mr. T. C.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Hans Raj, Lala.
Hussanally, Khan Bahadur W. M.
Hyder, Dr. L. K.
Ismail Khan, Mr.
Iyengar, Mr. A. Rangaswami.
Jeelani, Haji S. A. K.
Jinnah, Mr. M. A.
Joshi, Mr. N. M.
Kartar Singh, Sardar.
Kasturbhai Lalbhai, Mr.
Kazim Ali, Shaikh-e-Chatgam, Maulvi Muhammad.
Kelkar, Mr. N. C.
Lohokare, Dr. K. G.
Mahmood Schamnad Sahib Bahadur, Mr.
Malaviya, Pandit Krishna Kant.
Malaviya, Pandit Madan Mohan.
Mehta, Mr. Jamnadas M.
Misra, Pandit Shambhu Dayal.
Misra, Pandit Harkaran Nath.
Murtuza Sahib Bahadur, Maulvi Sayad.
Mutalik, Sardar V. N.
Nambiyar, Mr. K. K.
Narain Dass, Mr.
Nehru, Dr. Kishenlal.
Nehru, Pandit Motilal.
Nehru, Pandit Shamlal.
Neogy, Mr. K. C.
Patel, Mr. V. J.
Piyare Lal, Lala.
Purshotamdas Thakurdas, Sir.
Ramachandra Rao, Diwan Bahadur M.
Rajan Bakhsh Shah, Khan Bahadur Makhdum Syed.
Rangachariar, Diwan Bahadur T
Ranga Iyer, Mr. C. S.
Ray, Mr. Kumar Sankar.
Reddi, Mr. K. Venkataramana.
Samiullah Khan, Mr. M.
Sarda, Rai Sahib M. Harbilas.
Sarfaraz Hussain Khan, Khan Bahadur.
Shafee, Maulvi Mohammad.
Shams-uz-Zoha, Khan Bahadur M
Singh, Mr. Gaya Prasad.
Sinha, Mr. Ambika Prasad.
Sinha, Kumar Ganganand.
Tok Kyi, Maung.
Venkatapatiraju, Mr. B.
Vishindas, Mr. Harchandrai.
Yusuf Imam, Mr. M.

NOES—40.

Abdul Qaiyum, Nawab Sir Sahibzada.
Abul Kasem, Maulvi.
Ajab Khan, Captain.
Akram Hussain, Prince A. M. M.
Bhore, Mr. J. W.
Blackett, the Honourable Sir Basil.
Burdon, Mr. E.
Calvert, Mr. H.
Chalmers, Mr. T. A.
Chatterjee, The Honourable Mr. A. C.
Cocke, Mr. H. G.
Crawford, Colonel J. D.
Duval, Mr. H. P.
Fleming, Mr. E. G.
Gidney, Lieut.-Col. H. A. J.
Hezlett, Mr. J.
Hindley, Mr. C. D. M.
Hira Singh, Sardar Bahadur Captain.
Holme, Mr. H. E.
Hudson, Mr. W. F.
Innes, The Honourable Sir Charles.
Lindsay, Mr. Darcy.
Lloyd, Mr. A. H.
Makan, Mr. M. E.
Moncrieff Smith, Sir Henry.
Muddiman, The Honourable Sir Alexander.
Muhammad Ismail, Khan Bahadur Saiyid.
Nag, Mr. G. C.
Naidu, Mr. M. C.
Parsons, Mr. A. A. L.
Rushbrook-Williams, Prof. L. F.
Sams, Mr. H. A.
Sastri, Diwan Bahadur C. V. Visvanatha
Singh, Rai Bahadur S. N.
Sykes, Mr. E. F.
Tonkinson, Mr. H.
Tottenham, Mr. G. R. F.
Webb, Mr. M.
Wilson, Mr. W. S. J.
Wilson, Mr. R. A.

The motion was adopted.

THE INDIAN EVIDENCE (AMENDMENT) BILL.

Mr. K. Rama Aiyangar (Madura and Ramnad *cum* Tinnevelly : Non-Muhammadan Rural): Sir, I beg to move:

"That the Bill further to amend the Indian Evidence Act, 1872, be referred to a Select Committee consisting of Mr. M. A. Jinnah, Mr. B. Venkatapatiraju, Khan Bahadur Ghulam Bari, Diwan Bahadur C. V. Visvanatha Sastri, Sir Henry Moncrieff Smith, Diwan Chaman Lall, Sardar V. N. Mutalik, Sardar Gulab Singh, Dr. H. S.

[Mr. K. Rama Aiyangar.]

Gour, Mr. M. C. Naidu and myself, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

I have already got the leave of the House. The main point of the Bill is that the law relating to mortgage, as has been explained in the recent decision of the Privy Council, necessitates proof that the attestor actually saw execution by the executant. Unless that is done, even though there is no defence in the case, the suit will have to be dismissed. Simply because the attestors are kept out, or even though they come they do not say that they actually saw the execution by the executant, the suit stands dismissed. Of course, the discussions in that ruling will clearly show that the provision is intended to avoid frauds being committed. I am of opinion that the substantive law is all right and must be so, but the real question is whether, when there is no defence and when by some means the attestors are kept out, or even if they come they are made to say that they did not see the executant sign the document, when those things happen, whether the suit should stand dismissed. Attempts have been made more than once here to amend the law suitably to avoid any injustice being done in these cases. Of course, the question arises whether the Transfer of Property Act, section 59, could be amended to give the needed relief, or section 68 of the Indian Evidence Act. In fact, I wanted to amend section 114 of the Indian Evidence Act to give this relief on a previous occasion, but on an objection taken on behalf of the Government leave was not granted to me to amend section 114. The scope of this Bill is such that it will include an amendment of any of the sections so as to give the required relief. In fact, I may say that the scope and principle of this Bill is to find a suitable amendment. I also refer in the Statement of Objects and Reasons to the wording of section 59 of the Transfer of Property Act, "signed by the mortgagor and attested." "Attested" under the Evidence Act should include proof of the fact of acknowledgment by the signatory, but under the law as has been now laid down by the Privy Council it is not possible to allow proof in that form before the courts of justice. The courts feel hampered, the parties feel hampered and justice requires that something must be done. I therefore place it before the Assembly so that a Select Committee may go into the question. It has been suggested by some of my Honourable friends that the wording should be changed. For that and other reasons I beg to move that a Select Committee be formed to consider this matter. I move the motion standing in my name.

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, I regret that I have to oppose my Honourable friend's motion, in the first place, because he has done me the honour to invite me to serve on the Select Committee, secondly, because I realise his earnestness in endeavouring to bring about a change in the law regarding attestation, and thirdly, because everybody recognises the great industry he has displayed in drafting Bills on this subject. He has himself referred to the fact, and it will be within the recollection of the House, that in February last he tried to effect the very same object, that he has now, by a Bill to amend a certain provision of the Indian Evidence Act. He has told the House that leave to introduce the Bill was refused because the Assembly was of opinion that it was not the right way to set to work about it. I am not quite sure that my Honourable friend does this House full justice in that matter. I had to oppose Mr. Rama Aiyangar's motion on that occasion on two

grounds. One was that the drafting of the Bill was unsatisfactory and the order was that the principle of the Bill was bad. At all events the House did not consent to any change in the law in this respect. Now, to a large extent my objections to this Bill are the same as they were last February in connection with my Honourable friend's first Bill. As regards the drafting Mr. Rama Aiyangar has admitted that his language is not perfect. I do not propose to say anything about the language because I recognise that it may be possible to put that right in the Select Committee. I am not satisfied that even so my Honourable friend is going the right way to work to effect the change in the law which he requires. The Privy Council, dealing with this subject, laid down in the case to which my Honourable friend has referred, that is, I. L. R. 35 Madras, that it was clear that the Indian Legislature intended in section 59 of the Transfer of Property Act to use the word " attest " in the same sense in which it is used in the English law, that is to say, they said " attested " in section 59 means " proved by the evidence of a witness who saw the execution, who actually witnessed the signature of the executant of the document." My Honourable friend proposes to amend the Indian Evidence Act, and to leave section 59 of the Transfer of Property Act unchanged, and without any change in the wording of section 59 of the Transfer of Property Act he assumes that the word " attest " by reason of this Bill which he has introduced will acquire another meaning, a meaning different from that meaning which the Privy Council has ascribed to it. Therefore, Sir, I am not at all convinced that the proper way to effect his object is by a mere amendment of section 68 of the Indian Evidence Act. The House will remember that the object has been achieved in another way in another law. If my Honourable friend will refer to section 50 of the Indian Succession Act (Act X of 1865) he will find that there is quite an elaborate definition of the word " attest " and an elaborate description of the methods of *attestation* in regard to wills. Therefore if our law is to be consistent in its methods the proper place to provide for this amendment in the law is probably in section 59 of the Transfer of Property Act, or in some place in that Act at all events, and not by an amendment of the Evidence Act alone. But I have a further objection to the Bill on principle; and if I have to repeat some of the remarks I made in opposing the introduction of the Honourable Member's Bill in February it is because the arguments I then used seem to me to apply with equal force to the Bill which is at present before the House. My Honourable friend said that the Privy Council have laid down what is the law on the subject in India,—the law of attestation of mortgages—but, as I pointed out to him on the previous occasion I think the Privy Council went very much further than that. They not only laid down what the law was but they indicated very clearly their opinion that this is what the law should be, in other words, that no change in the law was desirable. In that case, reported in 35 Madras, the Judicial Committee reviewed a large number of English cases on this point. They quoted with approval from various judgments of the English courts. With reference to an argument that attestation in England meant no more than what my Honourable friend desires it should be, namely, the evidence of a witness, who says that in his presence the executant acknowledged his signature, the Privy Council said that this extended construction would be " a dangerous determination and destructive of those barriers the statute erected against perjury and frauds ". They also said in regard to the particular case that was then before them, after having explained that

[Sir Henry Moncrieff Smith.]

the word "attested," in their opinion, was used in the Indian law in the same sense in which it was used in the English law that :

"section 59 of the Transfer of Property Act in requiring that in a certain class of cases a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses, could only mean that the witnesses were to attest the fact of execution. Any other construction, in their Lordships' opinion would remove the safeguards which the law clearly intended to impose against the perpetration of frauds."

And later on they say :

"Nor do their Lordships agree with the view expressed by the learned Judges (that is the Judges of the Madras High Court) regarding the policy of placing a larger construction on the word in consequence of the social institutions of the country. Those very institutions, their Lordships consider, make it necessary that the barriers against perjury and fraud to use the language of the Master of Rolls, in Ellis *v.* Smith" (which I have just quoted) "should not be removed upon speculative considerations."

That very clearly indicates, Sir, that deliberate safeguards were placed into our law and that the Judicial Committee expressed their approval of the existence and the maintenance of those safeguards. This House has more than once posed as the champion of the poor man and the man of the lower classes who has to find himself in opposition at times to those who are in a better position and well-to-do. Now, the question arises in this case, Sir, who really requires protection. It is a case of the money-lender against his debtor. The law has thought fit to afford certain safeguards to the debtor. Does this House think it desirable that those safeguards should be whittled away and that the law should be made easier for the money-lender ? That is not the line that the Legislatures in this country have taken so far. It is not very long ago that the Central Legislature passed a Usurious Loans Act. The House is well aware that in several provinces there are laws placing restrictions on the alienation of land and the object of those laws is in every case to protect the improvident person from the money-lender in his part of the world. At one period of my career, Sir, I was a Judge. I am not a lawyer and it is with some diffidence I am speaking on this matter in a House in the composition of which there are so many eminent lawyers. In my experience as a District Judge, at one period, 80 or 90 per cent. of the appeals that I tried from subordinate civil courts were appeals in mortgage cases, and my experience of those cases was this, that there was no necessity whatever to make things easier for the money-lender. It was the mortgagor in every case who was up against difficulties and who had always found it hard to establish that the case against him was a false case, even when there was really very little doubt that the case was a false one, that the mortgage deed was a forgery. To a certain extent my Honourable friend's Bill shifts the burden of proof. The law has laid down that strict proof is required in the case of a mortgage for the reasons which I have already advanced; and my friend without exactly shifting the burden of proof to the other party proposes to make it easier for the holder of a mortgage deed to prove execution. That, Sir, is a direction in which this Legislature should not consent to go. Further it is most certainly a matter into which, I think, the law should not introduce presumptions. There should be strict proof on one side or the other in this matter. My Honourable friend's Bill introduces a presumption in the matter. That goes back possibly to the drafting question; but as he has drafted the Bill I think it would be rather difficult to get away from his idea of bringing in a presumption. Attestation is a matter of solemnity. It is a solemn procedure and

I think it should remain so. There is one more difficulty about my Honourable friend's Bill. How long after execution does he contemplate that an attesting witness will be able to appear, to sign a deed and to say "the executant acknowledged his signature in my presence"! Perhaps 25 years ago a mortgage deed was signed or purported to be signed. There was no attestation at all at that time. For 25 years or so, that mortgage deed remains an invalid document, it cannot be proved; and then one day comes the mortgagee with a witness who says "Yesterday the mortgagor acknowledged that he signed this in my presence and I accordingly signed it myself as an attesting witness." There is a mortgage deed which certainly becomes validated by my friend's legislation and which for 25 years has been an utterly worthless and invalid document. That is a matter that will have to be very carefully looked into, and I do not see how anything could be welded on to this Bill to remove that particular defect.

My friend referred to *ex parte* cases and the difficulty experienced in cases where the defendants do not appear, or in cases where execution was even admitted, but I am unable to see in what way his Bill will remove these difficulties. And I am not at all sure that if there are difficulties that they ought to be removed. This House is well aware that in certain parts of India and in Burma there is a regular trade in fraudulent suits. A suit is brought; a corrupt process server appears in court and says "I served a summons on the defendant". That summons was never served. There are various ways of proving that a summons was served when it never has been served; an *ex parte* decree is obtained and after the defendant is put to the greatest difficulty first of all in getting the *ex parte* decree set aside and then in contesting the suit. I feel, Sir, that in this matter of *ex parte* decrees it would be very dangerous to make things easier for the decree holder.

This is not by any means the first time or even the second time that this matter has come before this House. As I explained in February, there was a Bill in 1916 introduced by my Honourable friend Pandit Madan Mohan Malaviya. In the course of that Bill my Honourable and learned friend tried to amend the law in the very way in which my friend Mr. Rama Aiyangar is now seeking to do; and, Sir, it was not the House on that occasion that rejected his proposal. My learned friend withdrew it himself. He did not press it I think because he realized the difficulty. Then, four or five years later, Mr. Rangachariar, who is still a Member of this House, also introduced a Bill on this subject. Again the House affirmed the principle that it would not alter this law on the subject of attestation; and for the third time in February last the House rejected the Bill of my Honourable friend. I cannot see, Sir, that circumstances have so changed that the Central Legislature should now reconsider the matter. I think the House should be consistent and should refrain from proceeding with this Bill, the principle of which I think is objectionable, and it is that principle my Honourable friend now asks the House to agree to when he moves that the Bill be referred to a Select Committee. I hope the House will not agree to that motion.

Dr. H. S. Gour (Central Provinces Hindi Divisions : Non-Muhammadan) : The Honourable Sir Henry Moncrieff Smith has attacked the principle of this Bill, and in doing so he has quoted the words of the Privy Council who in the Madras case laid down that any thing but

[Dr. H. S. Gour.]

the narow view which their Lordships were enunciating would remove the barries against perjury and fraud. May I ask my learned friend here whether in laying down the law their Lordships of the Privy Council have not unconsciously swept away the barriers against perjury and fraud, and whether it is not a fact that since the enunciation of that novel doctrine by that august tribunal the prices of attesting witnesses have not gone up by leaps and bounds, and whether it is not a fact that a mortgage suit has become a mere gamble in which the mortgagee stands to gain or lose according to whether he is prepared to suborn attesting witnesses or not. Now Sir, I beg to submit that I am somewhat surprised that the Honourable Sir Henry Moncrieff Smith should have called into requisition his somewhat antiquated experience as a District Judge. I refer, Sir, to the Honourable Members of this House, what they feel every day in their practice and whether it is not a fact that this enunciation of the law by the Privy Council has wrought incalculable mischief in the administration of the law relating to mortgage. My Honourable friend says that you must not make the law easier for the money-lender ; but has my Honourable friend adverted to the fundamental doctrine which underlies the law of attestation from a time immemorial. When Gladstone wrote his celebrated commentaries, an attesting witness was supposed to be the contemporaneous repository of the facts and circumstances attending the execution of a document ; and the reason why the Indian Evidence Act requires the calling of on attesting witness to prove execution of the document is not that he saw the executant affix his signature, but because he is the living witness who can depose to the facts and circumstances which led up to the execution of the document—he is the witness who tells you how the contract was made, how the negotiations developed, under what circumstances whether of fair play or fraud the execution of the document was brought about. That is the object of attestation. Their Lordships of the Privy Council say that an attesting witness is a witness who saw the executant affix his signature or mark to a mortgage deed. Now Sir, let me illustrate to you a simple case. A witness is present before and during the execution of a document. He knows all the circumstances attending its execution, but just when the signature is being affixed he happens to be accidentally absent. He comes before the court and says : " I know all about the execution of this document. I know the executant ; I know all the negotiations that took place between the executant and executee. I know the circumstances which brought about this transaction, but just at the moment of time when he was affixing his signature I happened to be absent ". I ask, Sir, as a man of common sense what would be your verdict ? Would you not say that that man is a competent witness and is able to prove the execution, namely, the making of that document ? And yet their Lordships of the Privy Council have ruled out his evidence as inadmissible for the purpose of proving the execution of a document as required by section 59 of the Transfer of Property Act. Well, Sir, I submit that that narrow view of the meaning of " attestation " should not find acceptance upon the floor of this House. My Honourable friend has referred to the previous history of attestation in this country. If I remember aright, my friend Pandit Madan Mohan Malaviya's Bill was limited to the United Provinces and it was with reference to mortgages that were executed in the United Provinces where the wider view I am advocating prevailed till the current view of the High Court was overruled by the

Privy Council. With reference to the Honourable Mr. Rangachariar's Bill, I did have some part in opposing it, but not on the ground of principle. I was in full sympathy with the principle, but his Bill was ill-conceived, and I am afraid, Sir, on that very ground I have the misfortune to oppose my friend, Mr. Rama Aiyangar's Bill, for while I admit that you must change your law of attestation—and I further go and say that the law of attestation must be changed at the instance of the Government—I am afraid, when we examine the detailed provisions of this Bill, I find that my friend is trying to amend a wrong Act of the Indian Legislature. What he should have done is to add an *Explanation* to section 59 or an interpretation clause to section 3 of the Transfer of Property Act where he can define the meaning of the words " to attest ", by adding words, something to the following effect : " the words ' to attest ' in this Act include an admission " and so forth. If he had done that, I have not the slightest doubt that this House would have accepted his motion, but when he wishes to modify the provisions of the Indian Evidence Act, he is doing circuitously what the circumstances of the case require that he should do directly. He should have taken the bull by the horns and either added an *Explanation* to section 59 of the Transfer of Property Act and said " the words ' to attest ' in this section include an admission ", or, as I have suggested, he should have added an interpretation clause to section 3 of the Transfer of Property Act. Not having done that, I am afraid I shall be constrained to vote against his Bill, but not because I do not agree with the principle. I have always agreed with the principle, and my friend the Honourable Mr. Rangachariar is a witness to the fact that when he brought forward a similar Bill, I entirely supported the principle, though in his case also I was constrained to vote against it on the ground that the proposal of the Honourable Mr. Rangachariar was wrong in its details. I am afraid I shall have to do the same to-day, and I would therefore ask my friend to withdraw his Bill and redraft the Bill for the amendment of the Transfer of Property Act on the lines I have suggested ; and I have not the slightest doubt that if he does so, his Bill will find a smooth passage in this House.

Mr. H. E. Holme (United Provinces : Nominated Official) : Sir, I do not wish to repeat the hackneyed saying that hard cases make bad law. But surely the case cited by the Honourable Dr. Gour would be a very exceptional, if not for practical purposes an impossible case. Here is a man who knows all the circumstances of the attestation, he has been there during the whole of the proceedings, and yet at the very instant at which the executant affixed his signature to the document, he happens to be unavoidably absent. Surely, as the Honourable Sir Henry Moncrieff Smith pointed out, an attestation being a solemn act, the man who had been specially called to witness the execution, would not be absent at the exact time when it took place. There is one other point I wish to refer to, and that is that in the Statement of Objects and Reasons it is mentioned that :

" The decision of the Privy Council has caused considerable difficulty in administering justice even when a party is *ex parte* or admits execution, if the attestors are gained over."

I cannot see what cause will remain if the attestors are gained over, whether this Bill is passed or not. It is certainly a most deplorable state of things and one which often occurs I am afraid (and for some reason or other it has occurred with greater frequency since the Privy Council decision, although I cannot see what that has to do with it) when the attestant

[Mr. H. E. Holme.]

is bribed or threatened or won over in some way, but if he falsely denies having seen the executant affix his signature, surely under those circumstances he can equally deny that the executant has acknowledged his signature, and that would make no difference. Moreover, I think there is a section in the Evidence Act, I forget the number, which says that if the attesting witness denies or does not recollect the execution of a document, the execution may be proved by other evidence. (*Dr. H. S. Gour* : " That is a presumption of law.") Surely it is, I should be very much surprised if it was not, in the Evidence Act. (*Mr. H. Tonkinson* : " Section 71.") That, I think, amply meets all the objections as far as the corruption of attesting witnesses is concerned. It simply means that if they are won over, the provision of the Evidence Act, which requires their evidence is wiped out and the law becomes the same as if the document is not required to the attested. Sir, it appears to me for the reasons already given that the Bill is unnecessary and will not affect the object which is aimed at. I therefore oppose it.

Sir P. S. Sivaswamy Aiyer (Madras : Nominated Non-Official) : Sir, I am in sympathy will the objects of the Mover of this Bill, and I think there is a case for some alteration in the law. But I am afraid that the method which he has chosen is not exactly the right method of achieving this end, and I think it is justly open to some of the criticisms which have been made against the Bill by the Honourable Sir Henry Moncrieff Smith. I do not propose to criticize the drafting of the Bill. The proper method of achieving the object which the Honourable Mr. Rama Aiyangar has in view seems to me to be the amendment of section 59 of the Transfer of Property Act, and here I should like a ruling from the Chair as to whether the Select Committee would be acting *ultra vires* if they changed a Bill to amend the Evidence Act into a Bill to amend the Transfer of Property Act. If you, Sir, hold that it would be competent to the Select Committee to do that, I am quite willing that it should go to the Select Committee. On that matter I know you have allowed considerable latitude to the Members of this House, but I wish to know whether you would be prepared to stretch that latitude to this extent. If you are prepared to do so, I should support this motion for referring the Bill to the Select Committee.

Passing on, Sir, to the other criticism which has been made by Sir Henry Moncrieff Smith with regard to the policy of requiring the attestation of two witnesses with regard to mortgages what I should like to observe is this, that you may retain the formality of attestation, but as to what exactly " attestation " should mean, you may interpret it liberally. For instance there is one class of instruments which are at least as important as mortgages and that is wills. Now with regard to wills under section 50 of the Indian Succession Act the word " attestation " is used in a wider sense. Under section 50 it is stated :

> " The will shall be attested by two or more witnesses each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person."

Those are the lines on which I think some alteration of the law is required with regard to the meaning of " attestation " in the Transfer of Property Act. If it were competent to the Select Committee to go into this question under your ruling and introduce some such amendment, I shall not mind in the least ; but if it is not so competent, I hope my friend Mr. Rama

Aiyangar will withdraw this Bill and introduce another Bill and I hope that it may not share the fate of my friend Mr. Rangachariar's Bill but will meet with the same generous reception that the present Bill has received from the Honourable Dr. Gour.

Mr. N. M. Joshi : I move that the question may now be put.

Diwan Bahadur T. Rangachariar (Madras City : Non-Muhammadan Urban) : Sir, reference has been made to the Bill which I sought to bring before this House in 1921. I then adopted the deliberate course of bringing into line all documents relating to transfers of property dispensing with compulsory attestation of documents. The Transfer of Property Act makes a distinction as to the method of executing documents including attestation in respect of various classes of transfers. In the case of sales and in the case of exchanges, the law does not make it obligatory that the document should be attested, whereas in the case of mortgages and gifts the law requires that the document should be executed and attested by at least two witnesses. I considered what course to adopt, whether to bring the definition of " attestation " into line with the definition of " attestation " in the Indian Succession Act or to drop this compulsory provision requiring attestation. I adopted the latter course and brought the Bill before the House and took its vote on that principle, namely, whether there should be compulsory requirement as regards attestation. The House refused to accept my view, namely, that it should be dispensed with. But, on the other hand, the opinions then received were largely in favour of the first alternative, namely, to bring the definition of " attestation " into line with the definition as in the Indian Succession Act, and I take it that my Honourable friend Mr. Rama Aiyangar has got that object in view. Unfortunately, he has chosen the wrong Act to apply the remedy ; and I therefore join with my Honourable friend Sir Sivaswamy Aiyer in requesting him to withdraw this Bill and bring in a Bill to amend the Transfer of Property Act or to introduce a general definition of " attestation " in the General Clauses Act. One of the two courses might be adopted to achieve the object he has in view, and I therefore press upon him to withdraw the motion.

Mr. President : Sir Sivaswamy Aiyer has put to me a point of importance to which I think the answer must be obvious. (At this stage Mr. K. Rama Aiyangar rose to speak.) What does the Honourable Member want ? He knows that the President is in possession of the House.

Sir Sivaswamy Aiyer has put to me a point of importance to which I think the answer must have been obvious to him. It would be *ultra vires* on the floor of this House to propose such an amendment ; it must certainly be *ultra vires* in the Select Committee.

Mr. K. Rama Aiyangar : May I point out, Sir, with reference to the President's ruling, I say in the Statement of Objects and Reasons :

> " It is proper that the needed amendment must be made to section 59 of the Transfer of Property Act or section 68 or section 114 of the Indian Evidence Act. It is submitted that though the substantive law may continue as before, the proof needed may be modified so as to give scope for justice being rendered where formal impediments stand in the way."

I also say in the last paragraph :

> "The scope and principle of the Bill is to find the suitable amendment. It might be noted that in section 59 of the Transfer of Property Act the words used are ' signed by the mortgagor and attested '."

I have mentioned it with the view that the President may in a case of this kind, if there is difference of opinion, allow the matter to be considered

[Mr. K. Rama Aiyangar.]

and suitable amendment made. Of course if the Select Committee decides on a suitable amendment other than that which I propose, I should have no objection to withdraw my Bill. But I want to make my observations before I am prepared to follow the advice that has been given to me by my Honourable friends, for whom I have got the greatest regard. I must mention that the whole position taken by the Honourable Sir Henry Moncrieff Smith is that it is better to place some difficulty before the House, so that the matter is not taken up as early as possible. That seems to be the actual trend of events. Section 59 was sought to be amended ; section 114 was sought to be amended and other attempts were made, but every time this kind of objection is put forth. Dr. Gour's idea of course is worth noticing. But if section 59 is left as it is and attestation is made to include the provision that he refers to, I really do not know if the object, which their Lordships of the Privy Council have brought forth so clearly in the decision, will be achieved. Therefore it is that I took the view that it would be better to make proof in cases of such documents possible to courts, so as to decide properly on the merits and in the interests of justice. That was the view that I took. As regards the point that was made by my other friend relating to section 71, I have read that section of the Evidence Act closely, and it will be seen that it refers to cases where the attestor denies his signature or where he does not remember, but it does not refer to a case where he remembers but he begins to say that he did not see the executant sign. That does not apply to that case. I have read that section carefully and it will not apply to the case that I referred to.

Mr. H. Tonkinson : Section 71 reads as follows :

"If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence."

I am afraid my Honourable friend's last statement is not in accordance with that section.

Mr. K. Rama Aiyangar : It is not a question of not remembering, but it is a question of remembering but saying that he did not see the executant sign it. That question also arises. It would not cover all the cases. If you will please note it, you will see that what I say is all right. That question it is that has to be solved by this present amendment that I propose. Therefore, the whole question is a question of difficulty. I do not want just to have it settled on the floor of this House as to which is the proper thing to do. That that amendment is needed is almost conceded by all my friends. If it goes to the Select Committee, I have requested that they may have scope to amend any one of these sections. On the ruling of the President, the matter will stand. I want the whole thing to be taken up and disposed of If they consider and decide that it should be by an amendment of another section, I shall have no objection to withdraw this Bill and then bring in another Bill. At this stage I submit I wanted specially that this kind of argument ought not to be brought forth before the House to see that it is shelved. I only want to dispose of this without any further delay.

Mr. President : The question is :

"That the Bill further to amend the Indian Evidence Act, 1872, be referred to a Select Committee consisting of Mr. M. A. Jinnah, Mr. B. Venkatapatiraju, Khan Bahadur Ghulam Bari, Diwan Bahadur C. V. Visvanatha Sastri, Sir Henry Moncrieff Smith, Diwan Chaman Lall, Sardar V. N. Mutalik, Sardar Gulab Singh, Dr. H. S. Gour, Mr. M. C. Naidu and Mr. K. Rama Aiyangar, and that the number of members

whose presence shall be necessary to constitute a meeting of the Committee shall be five.''

The motion was negatived.

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

The Assembly re-assembled after Lunch at Ten Minutes to Three of the Clock, Mr. President in the Chair.

MESSAGE FROM THE COUNCIL OF STATE.

Secretary of the Assembly : Sir, the following Message has been received from the Secretary of the Council of State :

''I am directed to inform you that the Council of State have at their meeting of the 23rd September 1924 agreed, without any amendments, to the Bill to consolidate, amend and extend the law relating to the levy of duties of customs on articles imported or exported by land from or to territory outside India, which was passed by the Legislative Assembly on the 19th September 1924.''

THE INDIAN REGISTRATION (AMENDMENT) BILL.

Diwan Bahadur T. Rangachariar (Madras City : Non-Muhammadan Urban) : Sir, I beg to move :

''That the Bill further to amend the Indian Registration Act, 1908, be referred to a Select Committee consisting of the Honourable the Home Member, Sir Henry Moncrieff Smith, Mr. K. Rama Aiyangar, Diwan Bahadur C. V. Visvanatha Sastri, Diwan Chaman Lall, Mr. G. C. Nag, Mr. K. Ahmed and myself, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be four.''

Sir, this is a very short Bill and my object is explained in the Statement of Objects and Reasons. Under the Indian Registration Act, as it stands, as Honourable Members are aware, if the executant of a document appearing before a Sub-Registrar denies the execution of the document, the Sub-Registrar has no option but to refuse registration and the party has to go up to the District Registrar and ask him to make the necessary inquiries in order to get the document registered. There was a time, no doubt, when Sub-Registrars were not sufficiently educated or sufficiently responsible to be entrusted with this duty of inquiring into the execution of documents. As it is, Honourable Members will have noticed that Sub-Registrars are authorised by other sections of the Act to hold inquiries in certain other matters. However innocent the document may be and however small and insignificant it may be, the parties are compelled to resort to district headquarters, to go before the Registrar, to get proof of its execution and get the registration completed. It is to obviate this difficulty that I have brought in my Bill. That is the principle underlying the Bill. I seek to do so by enabling Local Governments to authorise Sub-Registrars to perform the functions of the Registrar. Whether that is the right method or some other method can be devised in the Select Committee, is a matter for further consideration.

I notice on the agenda a motion by my friend the Honourable Mr. Tonkinson, that the Bill should be circulated for opinion. I agree with him, Sir, that in a matter like this opinion should be taken and am quite willing to accept that motion if it should be made.

Mr. H. Tonkinson (Home Department : Nominated Official) : Sir, I move :

''That the Bill further to amend the Indian Registration Act, 1908, be circulated for the purpose of eliciting opinion thereon by the 1st February 1925.''

[Mr. H. Tonkinson.]

Sir, as my Honourable and learned friend Mr. Rangachariar has agreed that this is not an inappropriate motion to make on this occasion, I do not desire now to question either the principle of the Bill or its form. As my Honourable friend has explained, the Bill is a permissive one and it will be for the Local Governments to decide whether in any particular case a Sub-Registrar should be given the powers which it will be possible to give if this Bill becomes law. My one point, Sir, is that Registration is a transferred subject and this Bill proposes an amendment in a law relating to Registration. Now the responsibility for the administration of that subject is vested in the Ministers. Some of us here may have had at one time or another some considerable experience—perhaps antiquated experience—in regard to the control of this subject. But that, Sir, must have been in other capacities. But now, especially when this subject is a transferred one, we receive no direct information in regard to the administration of the subject of Registration. Many Honourable Members also are interested in the question of the attainment of provincial autonomy and I submit, Sir, that the growth of such autonomy would be seriously impeded if, in a case where the administration of a subject has been transferred to Ministers, we, in this Legislature, proceed to amend that law without obtaining the views of the responsible Ministers.

Sir, with these words I move my amendment.

Mr. President : Amendment moved :

"That the Bill further to amend the Indian Registration Act, 1908, be circulated for the purpose of eliciting opinion thereon by the 1st February 1925."

The question I have to put is that the Bill be circulated.

The motion was adopted.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Diwan Bahadur T. Rangachariar (Madras City : Non-Muhammadan Urban) : Sir, I beg to move :

"That the Bill to provide that, when firearms are used for the purpose of dispersing an assembly, preliminary warning shall, in certain circumstances, be given, be referred to a Select Committee consisting of the Honourable the Home Member, Mr. M. A. Jinnah, Dr. H. S. Gour, Sardar Gulab Singh, Mr. B. Venkatapatiraju, Raja Ghazanfar Ali Khan, Mr. H. Tonkinson, Mr. T. C. Goswami, Mr. B. C. Pal, Pandit Madan Mohan Malaviya, Mr. W. S. J. Willson and, with your permission, Colonel Crawford and myself, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be seven."

Sir, the title of the Bill is self-explanatory. The principle which I seek to emphasise by my Bill is that the provisions in the Criminal Procedure Code relating to the dispersal of unlawful assemblies by the use of firing and of firing by the military are inadequate in certain respects, especially in cases where the authorities, civil or military, have to resort to the use of fire-arms in dispersing such unlawful assemblies. The defects in the Criminal Procedure Code were noticed for a long time and were brought to prominence in the unfortunate Punjab tragedies. So much so that my Honourable friend, the Right Honourable Srinivasa Sastri, brought in a motion on the 3rd March 1921 in the Council of State recommending the acceptance of certain Resolutions and asking for the amendment of the provisions of the Code on the lines, more or less, which I have indicated in the various clauses of the Bill which I have introduced. Sir, there was

a long discussion in the Council of State when our Honourable friend opposite was in the Chair there. The Government accepted two of the clauses and, on the division, the rest of the clauses were defeated. But two of these clauses were accepted on behalf of Government and also by the Council of State. Then, Sir, in pursuance of that Resolution the Government brought in a Bill to amend the Criminal Procedure Code to give effect to one of the objects enumerated in that Resolution. That passed the Council of State, and when it came up to this House to be passed by this House, amendments were sought to be made in this House seeking to amend the Code further. That amendment I had the honour of giving notice of, and when the amendments were tabled, the then Home Member apparently disapproved of them and he wanted to consider what steps he should take thereafter ; but the Government never chose to bring in a Bill.

The point which I wish to emphasise from that procedure is that Government themselves felt that there was a necessity to amend the sections of the Code dealing with the dispersal of unlawful assemblies. In some respects, no doubt the only difference between them and this side of the House was whether the amendments went far enough. I considered that they did not go far enough to meet the requirements of the case. They thought perhaps that discretion was the better part and they threw up the Bill altogether.

It is a matter on which we feel very strongly that the law ought to be amended. Speaking for myself at any rate, I am very anxious that the executive should be clothed with all reasonable and legitimate power to disperse unlawful assemblies and to put an end to riot, because, Sir, the possibilities arising out of mischief of that sort are immense. But I do feel that the law in this country is quite different from the law in England in essential respects. I see no reason why it should be different, at any rate to the extent it is. The possession of firearms is rather a dangerous incentive to certain people, like those who get easily panic-stricken and people who cannot keep their nerves steady. I do not object to people keeping firearms who can keep their nerves and do not easily rush into panic. Also there are dangerous views held by certain executive officers in this country that it is their solemn duty to kill people in order to create a moral effect, not in the places where the crowds are assembled, but in other parts of the country. I am glad to see, Sir, that His Majesty's Government and the Government of India have recently deliberately dissociated themselves from inculcating any such doctrines in the minds of executive officers, because there can be no more dangerous doctrine which can be propounded in the government of a country. It is the surest way for such a Government to come to an end, however weak the people may be. The weakest animals always find means of getting rid of tyrants, and I am not sure that weak as we are we cannot one day rise and put an end to tyranny, if tyranny continues. I am therefore anxious that the law should serve the purpose of the executive, while also protecting the people from dangerous misuse. As you know, Sir, and as the House also knows, there are ample safeguards in the provisions of the Indian Penal Code, a Code which has stood the test of time, a Code of which the English legislators can well be proud. There are ample safeguards in the Chapters relating to general exceptions and private defence in the case of public officers doing their duty fearlessly, so long as they perform their duty in good faith. Now the provisions in the Criminal Procedure Code give unnecessary additional protection to officers engaged in this unpleasant task. I do not think that any human being is so bad as to take a delight in inflicting harm or injury or death on other

[Diwan Bahadur T. Rangachariar.]

human beings. I believe when these people enter upon their duty they enter upon it not with delight but with reluctance. Now, as I have stated already, often times on account of the habits of the people, on account of the ignorance of language, or rather misconstruction of words used, the attitude of crowds is often assumed to be hostile, when really the crowd is going to petition. I have heard it stated during the Punjab troubles that when the crowd walked barefooted in order to petition the authorities, it was mistaken for a hostile attitude and force was resorted to. Speaking of my own experience in my own province, there have been cases where force by the use of fire-arms has been resorted to unnecessarily, and if a person with more nerve had been in charge, fire-arms would not have been used. I remember a case in Madras city, where my conviction and the conviction of reasonable persons was that firearms had been freely used without any necessity. In this country it is so easy to quell disturbances. Crowds are easy to manage, I should think, though I have never tried it myself, but knowing my people as I do for the last fifty years, they are unaccustomed to the use of arms. That is one of the complaints which we have against the British Government, the reckless way in which they administer the law as to arms, and also the way in which the little military instinct which we have in the south has been killed by the deliberate policy pursued of enlisting for the military foreigners and people from the Punjab and even from across the frontier as if they are the friends. The little military instinct which we had has been killed and crowds are not so dangerous as often times people represent them to be. I know of cases where a police constable with a baton has been able to keep at bay large numbers of people. After all what are they armed with ? Brickbats and *lathis*. Do you think any London policeman would resort to the use of fire-arms in the way in which policemen in this country do ? I do not want to exclude my countrymen in this respect ; I attribute that conduct more to the want of nerve only than any deliberate intention to kill. They get panic-stricken by seeing a crowd. We know the effect the possession of fire-arms has on a house-holder when a thief or an imaginary thief enters his house. Having fire-arms his incentive is to use them. Being possessed of these deadly weapons, these people in authority are tempted to use them unnecessarily. No doubt they sometimes get excited and use fire-arms unnecessarily. Therefore, unless there are safeguards in the law there is a danger and risk of these arms being used upon innocent people, or of unnecessary violence being used where less force would have been quite ample. Now it is unnecessary for us to recapitulate instances, and I do not want to recall memories which I should like to bury in the dead past. The Government themselves have recognised that they should issue executive orders on the lines I have indicated in my Bill. They may plead in opposition to my Bill that they have already issued executive orders to that effect to their officers, and therefore why should there be a provision in the law ? but a provision in the law is one thing, executive orders is another. Where you have a foreign Government they naturally think (I do not blame them, it is human bias, it is human nature) that these executive officers, if they exceed the provisions of the law, are thereby doing their best to help the Executive Government, and maintain their authority and therefore they look at these excesses with a fond eye, and are willing to excuse where rigorous politicians like myself would not be inclined to excuse. That is the tendency of a foreign Government. They do not know the people ; the people distrust them ; they distrust the people ; and therefore there is a natural tendency to support the

executive even when they abuse or misuse the power which is given to them, and in such cases the one provision of the Criminal Procedure Code which stands against getting an adequate remedy is this provision preventing prosecutions altogether, even when we know that officers have deliberately exceeded their powers. The necessity for obtaining sanction from the Local Government or from the Governor General, as the case may be, before the injured party can institute proceedings so as to make the person answerable in a Court of law stands as a great deterrent, and in fact my own view is that probably it encourages excesses at the hands of the executive officers. They feel they are safe, otherwise I could not understand how certain people acted in certain circumstances, in the way they did, but for the assurance they had that they could not be touched by the arm of the law so long as they had got their Government to support them. There have been cases where, even on the Government's own admission, officers have abused the powers entrusted to them by law. Is there one case in which the Government took the initiative to prosecute those officers ? It is said, oh ! if applications are made to the Government, they will not withhold sanction. Sir, I know the Executive Government and how difficult it is to move it in matters of this sort. As I said, there is a natural inclination to take a soft view of things, whereas the injured party would not be inclined to do so, and the Courts would rigorously apply the law. After all, what is it we ask ? I ask in my Bill that where officers misuse or abuse the law, the injured party,—I do not say the whole public as in England,—the injured party should be free to go to the Court, and I confine it to cases only where fire-arms are used. That is the principle for which I would stand, and unless you give it to the people, no matter what other direction you give, leaving them to the mercy of getting sanction or not from the Executive Government before they can take action, I think it is dangerous to allow this state of things to continue. I therefore ask that the injured party or persons or their representative should be given the liberty to go before the Court without any fetter of sanction. In England the injured party, in fact the public, are free to go in a matter of that sort to the Courts against the officers who have exceeded their powers. I have stated already that they are sufficiently protected by the substantive law, this special law need not protect them further. That is my point. And again I have been very careful in the wording I have given to the various clauses in my Bill. I say : " Fire-arms should be used only if such assembly cannot otherwise be dispersed, and no fire-arms should as a rule be used except on the written authority of a Magistrate of the highest class available on the spot. " I have heard of a case where the Prime Minister's house in England (I believe it was the Prime Minister's house) was invaded by a crowd that wanted to gain access to him. The attitude of the crowd was threatening and the police played the waterhose on them : they discharged water and dispersed the assembly. But here—(*Sir P. Sivaswamy Aiyer* : " There are no hoses. ") There are no hoses available, sometimes no water. But what is it you hear in the official accounts ? The attitude of the crowd looked ugly, a policeman's turban was pulled off, or brickbats were thrown. On these slight provocations fire-arms are resorted to. That was the case in the Chulai riots ; that was the case in the Madura riots of which my friend Mr. Rama Aiyangar has knowledge. But I do deprecate the resort to the use of fire-arms when you have got drilled policemen. Twenty drilled policemen can in concert face an undisciplined crowd, a mob which is generally composed of cowardly people, and to resort to fire-arms in such a case, unless absolutely necessary, is a pity. They say, unless you nip it in the bud, the thing is likely to spread. I do not think the risk is so

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great that you should unnecessarily resort to these deadly weapons of precision. That is why I say unless it cannot be otherwise dispersed, no fire-arms should be used except on the written authority of a Magistrate of the highest class. In fact I have in some of my clauses followed existing sections ; for instance, that military force cannot be resorted to except on the conditions I have indicated. I have taken care to embody in some of my clauses the language of the existing sections in the Code itself. Then I also make a proviso that :

"When immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, the seniormost Police or Military officer present on the spot may give the written authority instead and the same shall be communicated to the nearest Magistrate forthwith."

And in clause (*2*) I say :

"Before the assembly is fired upon the fullest warning should be given by all available means to the assembly that, unless it disperses within a given time, it will be fired on."

And in clause (*3*) :

"The person given the authority to fire shall ordinarily give such interval between the warning and firing as he considers sufficient in all the circumstances of the case."

I leave the discretion to him ; I know the difficulty of making up your mind on the spot, but still I make the person giving the authority the judge. Then I ask for a full report. I insist upon this as rather important because oftentimes you get inaccurate reports in the Press and in the public platform about occurrences, and official versions often have additions or accretions as time goes on, so that in cases of this sort where severe measures are adopted the law should provide a safeguard that there should be an immediate report made on the spot when the facts are fresh. I cast that obligation on the officer who resorts to it. The last clause is the most important, namely, giving the right to " any person injured by the use of fire-arms or any parent or guardian, husband or wife of a person killed by the use of fire-arms " to make " a complaint against any person for any offence committed by him by reason of any act purporting to be done under this Chapter." As I stated before, my object is to improve the law, to impose restrictions, necessary restrictions, reasonable restrictions and that people who have to perform this unpleasant task should know and feel that they are entering upon a serious task. If there are provisions of law they will be guided by them and will think twice and thrice before they resort to the use of fire-arms. While I do not restrain the use of fire-arms, I impose reasonable restrictions and limitations as to when they should be used. There may be many improvements which may be suggested in the course of discussion in the Select Committee. The principle that the law should be improved has been accepted by Government already, because they themselves introduced a Bill but later on withdrew it. The only question is to what extent we should improve it That question can be safely left to the Select Committee. There is no object in the Government flying away from the question. The question has got to be faced. There is a lot of public feeling in the matter and the law must be improved. I therefore ask the House to accept my motion.

The Honourable Sir Alexander Muddiman (Home Member) : Sir, the object of my Honourable friend's Bill, as stated in the Statement

of Objects and Reasons, is to guard against the indiscriminate use of fire-arms for the purpose of dispersing an unlawful assembly, and all reasonable men must be in agreement with that. The subject is one, as my Honourable friend has said in his opening speech, of the greatest importance. It is of the greatest importance to the citizen that fire-arms should be used in dealing with mobs with the greatest care and discrimination, but it is equally of great importance that when force has to be resorted to, it should be resorted to in a manner that will curb the disturbance of the peace in an effective manner. On that subject my Honourable friend and I are in entire agreement. My Honourable friend has mentioned that there are executive instructions which correspond very closely to the provisions of this Bill, but he wants them to be given statutory effect. I would point out, Sir, that statutory effect is a very different thing from executive instructions as he himself has recognised, and we must be careful lest in our desire to protect the rioter from a misuse of force we should forget the claims of the general public to be protected from those gusts of passion which shake this country from time to time. One recent instance has attracted the notice of my Honourable friend, because quite recently I heard him put questions on the matter. I am glad that the mover referred to the extremely unpleasant duty that falls to the lot of an officer who has to suppress mob violence by ordering firing. I can imagine no more difficult position for a humane man than to have to judge between the danger of allowing the peace of a whole town to be wrecked and deciding to take action which must result in the loss of another fellow-creature's life. It is one of the most painful positions to my mind in which any man can be placed, and he has to exercise his descretion on the spur of the moment—that is a point of great importance—he has to exercise it under conditions which are in themselves of a very trying nature. I do not know whether my Honourable friend has ever been a rioter or ever seen a riot. I presume that he has never been a rioter, but has he ever seen a riot ? I have seen a riot. I am not talking of India, but I may tell him I have seen a riot in one of the big continental cities, and it is one of the most appalling things to see and makes one feel how close to the surface the beast in man is on occasions. The roar of the crowd has ever since remained in my memory. When passions are roused to a degree of blood heat the officer responsible for the life and property of those under his charge has to take a responsibility which I believe to be one of the greatest that can be given to any human being. To meet a man in battle is one thing. You know what you are about. But to deal with a mob is a thing that demands not only courage, but cool-headedness and quick decision. It is not merely that the decision must be made—It must be made at the right time. Before I pass on to the Bill itself I ought to have mentioned one thing which is not quite accurate in my Honourable friend's speech. Sir William Vincent never actually moved a Bill here. He did not move any Bill here and it was therefore not withdrawn.

Diwan Bahadur T. Rangachariar : He moved it in the Council of State and got it passed.

The Honourable Sir Alexander Muddiman : Not in this House.

Diwan Bahadur T. Rangachariar : Then it was placed on the table of this House as passed in the Council of State.

The Honourable Sir Alexander Muddiman : He never moved it in the Assembly, and the motion was not withdrawn.

My Honourable friend said a great deal about the peaceful crowds of India and that it is very easy to restrain crowds in India. I agree that this is so up to a certain point, and that unless inflamed by religious passion or some powerful motive the ordinary behaviour of an Indian crowd, I agree on the whole, is peaceful. But let me tell my Honourable friend who has never seen a riot that when it is inflamed by those passions there is no question of peaceful behaviour, and the mob shows its terrible nature as many of the occurrences in India indicate only too truly. It may be said, and no doubt will be said, that men may lose their heads in dealing with these occurrences. In what country do men not lose their heads ? When you have officials like gods who can face these cataclysmic outbreaks with a precision and firmness that can hardly be demanded of humanity, then you will be able to dispense with any law in the matter of dealing with a mob. It is perfectly true that there have been and will be in the future, whatever your rules may be, occasions when officers lose their heads—that is undeniable, but the exception does not prove the rule. My contention is that, speaking generally, the thanks of this House are due to those who carry out duties of a very unpleasant character with a single eye to the dictates of their duty. I am glad that my Honourable friend recognises that these duties are now often mainly carried out by Indian officers and I should like in this connection to pay a tribute to many Indian officers who in circumstances of great difficulty have shown great discretion and great courage.

Sir, I will now turn to the provisions of the Honourable Member's Bill. I would first point out that it relates solely to the use of "fire-arms". In this connection I will suggest to the House that in dealing with this question of the use of force to suppress disorder, it is undesirable to discriminate between the use of fire-arms and forms of force.

My Honourable friend's clause makes a point of the distinction in a way that he could hardly have wished if he had considered the matter more fully. He says :

> "Fire-arms should be used only if such assembly cannot otherwise be dispersed."

Now, Sir, the first question I would put to this House is who is to be the judge of whether the assembly cannot otherwise be dispersed. Is that to be a matter for judicial finding, subsequent to the use of fire-arms ? That is one point. Then I do not wish to make merely dialectical points but this procedure would require of an officer in charge of a squadron of cavalry armed with lances and carbines to direct a charge on the mob before he directed firing. Now, I cannot believe myself, (I am not a soldier and I am speaking subject to correction), that a charge by lancers is a more humane method of dispersing the mob than carbine fire. The same argument applies to the case of infantry armed with bayonets. Under the proposed provision, the duty of the officer commanding would be first of all to see if a bayonet charge would disperse the assembly. The inevitable result of that will be, whether the charge was successful or not, that the mob would be brought to a state of great violence. If the charge failed, the infantry would probably be torn to pieces. If it did not, the number of injured would be far more serious and the passions of the mob greatly inflamed. That will be the effect of my Honourable friend's

provision. The next point in the clause which I have to refer to is that it says there must be a written order. Now, what is the object of this written order. Has there usually been any question as to whether the order to fire was given or not ? That was not the question. The general question is whether the order was given too soon or too late. Take the case of a person in charge of the police facing rioters. As is often the case, there is a Hindu mob on one side and a Muhammadan mob on the other and there is a thin line of policemen between. The mobs on both siders are threatening. Brickbats are thrown. Perhaps a shot is fired from a house. At any moment the two mobs may be at one another and the police would then be torn to pieces. The order to fire must be given in writing. Would you take a pencil and paper at such a time and write down the order. Does my Honourable friend require the words " Fire, Sd. A. P. M." to be written down ? Or does he want an officer to write " Whereas I, John Jones, Sub-Divisional Magistrate of the first class, have come to the conclusion that the moment has arrived to fire" etc., etc., I admit there are some cases where it is quite possible to give the written order but these are not the ordinary cases. They are the exception rather than the rule. Now, Mr. Bray was telling the Assembly the other day about the Kohat riots. Does any one suppose that any useful purpose in a case like that would be served by requiring a written order ? This clause further requires the Magistrate of the highest class to make the order. It is quite reasonable that a Magistrate should give the order wherever possible, but if you have a provision of this kind in the law, and it is not complied with it becomes an invalidity. Take the case when there in an Honorary third class Magistrate. There is a communal riot going on. These things often happen and there is no use in hiding facts. The Magistrate will not take the responsibility. The policeman has got to act. If he acts with this clause before his eyes he has to break the law because there is no order and if he does not act, he will be broken for not stopping the riot. He is between the devil and the deep sea. I do not think my Honourable friend really wants to bring about such a state of things. Then again I have heard it said, though my Honourable friend did not say this for he is far too good a lawyer to use an argument of this kind,—I have heard it said—that a written order and reading of the Riot Act is required by English law before force can be used to disperse a mob. Now, that is not so. I will just explain what the English law on the point is. It is this. There is no restriction on the use of force against a mob imposed by the Riot Act. The discretion of the officer is absolute. If you have the Riot Act read, as it is called, though it is an improper way of putting it, then any one who remains in an assembly thereby called upon to disperse for one hour after the reading of that Act is guilty of a felony and that is the only advantage you get by reading the Riot Act. I apologise to my Honourable friend for using an argument on a point which he did not raise but I thought I had better clear it. So much for clause 1.

Now I come to clause (*2*). It reads :

" Before the assembly is fired upon the fullest warning should be given by all available means to the assembly that unless it disperses within a given time, it will be fired on."

That again is an excellent executive instruction. Our executive instructions require, as my Honourable friend recognises, that warning should be given before firing. When you lay it down as a condition in a law that you

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must give full warning, then the position becomes more difficult. Who is to decide what is a given time ? Who is to decide that time ? Is it the Magistrate or the mob ? I assure you it is the mob who often decide what is the given time. I have seen with my own eyes a worthy Hindu Deputy Magistrate running for his life and the mob were then deciding the given time.

Diwan Bahadur T. Rangachariar : Then do not appoint a Hindu as a Magistrate.

The Honourable Sir Alexander Muddiman : I am sorry. I cannot say whether he was a Hindu or a Muhammadan. I ought to have said an Indian. Now, I quite agree with my Honourable friend that warning is most desirable and an interval should be given if possible, but you cannot lay it down as a hard and fast provision of the law. If you do, you get into a position which it is perfectly impossible to accept. I am not speaking now from the point of view of Government. I am speaking from the point of view of the ordinary citizen. It is generally the ordinary citizen that suffers in the end. It is his house that is burnt, it is his banker's books that are stolen and it is his grain that is looted.

Now the next clause reads :

"The person given the authority to fire shall ordinarily give such interval between the warning and firing as he considers sufficient in all the circumstances of the case."

There again we have the same difficulty. The officer may consider the time sufficient but the mob may not.

Diwan Bahadur T. Rangachariar : I am not concerned with the mob.

The Honourable Sir Alexander Muddiman : Unfortunately the officer placed in that position is. I agree that warning should be given wherever possible, but you cannot make it a rule. There may be cases of deliberate defiance of the law where you know that you can tell the mob if they do not disperse within one hour, something will happen. Warning may be possible in such cases. But this is one case out of 100. In the other 99 cases the situation arises suddenly and it would not be possible to give an interval between the warning and the firing. They have to be suppressed in a hurry and there is no time for warning. And mind you one other thing. If you warn the mob in time and wait and the mob gather and attack you, what happens ? Your policemen are torn to pieces. It is not a case of pulling off their *pagris* but of pulling of their heads.

As regards clause 4, I see no objection to it. I have not examined the drafting of it, but it requires that :

"A full report of the occurrence shall be made in all cases when such assembly is dispersed by the use of fire-arms to the nearest first-class Magistrate within twenty-four hours of the occurrence, and such report shall be a public document."

Now, I can see no objection to the general principle. But may I tell you one thing and that is a remark based on experience. My Honourable friend has said, and he has said rightly, that very often the first reports that are given out contain inaccuracies. That is perfectly true and I will tell you why. Those first reports are written when the rioting is still going on and the full facts are not known to the authorities. Take

a recent case. We had a riot in Delhi. I think it went on for two or three days. I was pressed considerably to publish at once a statement of what I had received. I declined to do so, because I was perfectly well aware that it was only a partial report, and that was borne out when we received the full report, when it turned out that rioting had not been confined to one quarter but had spread to other quarters. We must always bear in mind that inaccuracies in the early reports are not necessarily a sign of a desire for concealment. They occur very often because the early reports are sent in when the rioting is still going on, and therefore in some ways a premature report is misleading and even dangerous.

The next point raised by my Honourable friend is clause 5, which runs :

"If the person is himself a first-class Magistrate his report shall be made to the District Magistrate, and, if the person is a District Magistrate, his report shall be made to the Local Government."

Well, that follows on the other and I have no comments to make, although it may require a little examination as to the form in which it has been cast ; but to the general principle embodied in the clause under consideration I see no objection.

Now the last clause is one which my Honourable friend emphasised, I think, because he felt he had the English law behind him. What he emphasised and pressed was this question of the right to bring a complaint. I do not think I need read out the law as so many in the Assembly are lawyers, but as Honourable Members know, under the law it is provided by section 132 that prosecutions in these cases require sanction ; in the one case they require the sanction of the Local Government, in the other of the Governor General in Council. Well, my Honourable friend pointed out, and rightly, that there is no such provision in the English law : that is, the sanction of the Government is not required by that law. He proposes that—

"Any person injured by the use of fire-arms or any parent or guardian, husband or wife of a person killed by the use of fire-arms may make a complaint against any person for any offence committed by him by reason of any act purporting to be done under this Chapter."

Now, the only change in the law is that it dispenses with the sanction of the Governor General or the Local Government, as the case may be. In this connection I should like to read to the House a short extract from Dicey's Rule of Law, where he makes what I think is quite a good point. He is quoting from a French writer, a jurist of standing. He says:

"Under every legal system the right to proceed against a servant of Government for wrongs done to individuals in his official capacity exists in some form or other. The right corresponds to the instinctive impulse of the legal victim to seek compensation from the immediately visible wrong-doer. But on this point the laws of different countries have utterly different tendencies. There are countries such, for example, as England and the United States, where every effort is made to shelter the liability of the State behind the personal responsibility of its officers. There are other countries where every effort is made to cover the responsibility of servants of the State behind the liability of the State itself to protect him against and to save him from the painful consequences of faults committed in the service of the State."

Those are entirely different points of view. The English law abandons its agents to the mercy of the law Courts. The French law takes the liability upon itself and protects its servants. Now, it is not for me to attempt to tell this House what the right line is in India. We who speak on this side are often told that we know nothing about the

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customs of the people and the habits of the country. But I will say this. I have lived 25 years in this country and I have been brought into touch with a great many people in this country, and it appears to me that you cannot draw a just parallel between the position in regard to suits against officers charged with the administration of these provisions in England and in India. Sir, the last big case of firing in England on a mob, and it was a leading case and is still the *locus classicus,* was the Acton colliery case in 1893. I think I need hardly develop the point that the use of fire-arms in India is far more frequent than it is in England. You have to go back some 50 years for a big case of this kind over there; while here you have only got to turn over the pages of the papers for the last few months to see the difference in that respect. But you may say, where does that lead you ? It may simply lead you to this, that more care is used in England in these matters and the mere fact that this provision exists which enables a suit to be brought without sanction is itself a thing that prevents these occurrences. Sir, that can hardly be supported. I think my Honourable friend would not argue that. (*Diwan Bahadur T. Rangachariar* : " I would ".) Well, I think my Honourable friend would be carrying it very far if he did ; and since he is going to argue that I will develop my point a little further. It is this, that the need for the use of fire-arms is far more frequent in this country. It is due—I do not wish to go into details—but it is due very largely to communal differences, to racial differences and to religious differences. (*Diwan Bahadur T. Rangachariar* : " And the nervousness of the police ".) Well Sir, I have followed the history of the Indian police, and I think that whatever faults they have, they are not nervous. They have many faults; officers in charge of them occasionally lose their heads; I admitted that from the beginning ; but the nervous police constable I have yet to meet as a common object.

Well, to return to the last clause, the right of complaint, which was pressed by my Honourable friend. I am not going to take the usual line taken on these occasions and say, " well the Government would never refuse sanction in a good case ". Sir, I have found it useless to protest in this House that Government would not refuse sanction. I do not think it would but the House will not be convinced by that. That argument I am going to use is this. The nervous policeman will arise the day he finds that he is liable to a suit if he fires. That is when you will have your nervous policeman. The fear of suit may very well not deter a man from doing what he ought not to do; but it may deter him from doing what he ought to do in the interests of the remainder of the population. And that, Sir, is certainly a thing to be greatly feared and I honestly believe it is to be feared. Did I use the word: " suit " ? It was of course a slip. I meant " criminal prosecution ". Of course the principle of sanction to the prosecution of public servants is already well recognized in the Indian law in many cases, though it is not recognized I believe in the English law. My Honourable friend tells me that in certain cases sanction is necessary in England. That may be so, but here at any rate it is a well-known principle and is recognized in Indian law.

There is one other thing before I close, I think I have dealt with the main points in my Honourable friend's Bill, but he used words that I think I cannot pass over without comment. He referred to the distrust

of the people in the officers of Government. Now, Sir, if there is one occasion when the people do trust officers of Government, it is on the occasion of riots. That, Sir, is not a suggestion ; it is a fact. I may tell him that during the Delhi riots and the Agra riots, the people showed the greatest thankfulness to those British troops who were brought down to hold the streets during the riots. They brought them tea, milk and other refreshments and there was certainly no question of distrust. I am afraid, Sir, it is in the normal peaceful days that distrust is felt: the distrust is much less on these occasions than in the normal peaceful days, when, perhaps, their services are not quite so fully appreciated. I hope I have not made my Honourable friend feel that I am in any way opposed to what he has at heart as much as I have. I have endeavoured to point out briefly the practical difficulties which attend the provisions of his Bill :

Mr. President : The question is :

"That the Bill to provide that, when fire-arms are used for the purpose of dispersing an assembly, preliminary warning shall, in certain circumstances, be given, be referred to a Select Committee consisting of the Honourable the Home Member, Mr. M. A. Jinnah, Dr. H. S. Gour, Sardar Gulab Singh, Mr. B. Venkatapatiraju, Raja Ghazanfar Ali Khan, Mr. H. Tonkinson, Mr. T. C. Goswami, Mr. B. C. Pal, Pandit Madan Mohan Malaviya, Mr. W. S. J. Willson, Colonel J. D. Crawford and Diwan Bahadur T. Rangachariar, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be seven."

The Assembly divided:

AYES—58.

Abdul Karim, Khwaja.
Abhyankar, Mr. M. V.
Aiyangar, Mr. C. Duraiswami.
Aiyangar, Mr. K. Rama.
Aiyer, Sir P. S. Sivaswamy.
Alimuzzaman Chowdhry, Mr.
Aney, Mr. M. S.
Badi-uz-Zaman, Maulvi.
Chaman Lall, Mr.
Chanda, Mr. Kamini Kumar.
Das, Mr. Bhubanananda.
Das, Mr. Nilakantha.
Duni Chand, Lala.
Dutt, Mr. Amar Nath.
Ghazanfar Ali Khan, Raja.
Ghulam Bari, Khan Bahadur.
Goswami, Mr. T. C.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Hans Raj, Lala.
Hyder, Dr. L. K.
Iyengar, Mr. A. Rangaswami.
Jeelani, Haji S. A. K.
Jinnah, Mr. M. A.
Joshi, Mr. N. M.
Kasturbhai Lalbhai, Mr.
Lohokare, Mr. K. G.
Mahmood Schamnad Sahib Bahadur, Mr.
Malaviya, Pandit Madan Mohan.
Mehta, Mr. Jamnadas M.
Misra, Pandit Shambhu Dayal.
Misra, Pandit Harkaran Nath.
Murtuza Sahib Bahadur, Maulvi Sayad.
Mutalik, Sardar V. N.
Nambiyar, Mr. K. K.
Narain Dass, Mr.
Nehru, Dr. Kishenlal.
Nehru, Pandit Motilal.
Nehru, Pandit Shamlal.
Neogy, Mr. K. C.
Patel, Mr. V. J.
Purshotamdas Thakurdas, Sir.
Ramachandra Rao, Diwan Bahadur M.
Rajan Bakhsh Shah, Khan Bahadur Makhdum Syed.
Rangachariar, Diwan Bahadur T.
Ranga Iyer, Mr. C. S.
Ray, Mr. Kumar Sankar.
Samiullah Khan, Mr. M.
Sarda, Rai Sahib M. Harbilas.
Sarfaraz Hussain Khan, Khan Bahadur.
Shafee, Maulvi Mohammad.
Shams-uz-Zoha, Khan Bahadur M.
Singh, Mr. Gaya Prasad.
Sinha, Mr. Ambika Prasad.
Sinha, Kumar Ganganand.
Tok Kyi, Maung.
Venkatapatiraju, Mr. B.
Yusuf Imam, Mr. M.

NOES—38.

Abdul Qaiyum, Nawab Sir Sahibzada.
Ahmad Ali Khan, Mr.
Ajab Khan, Captain.
Akram Hussain, Prince A. M. M.
Bhore, Mr. J. W.
Blackett, The Honourable Sir Basil.
Burdon, Mr. E.
Calvert, Mr. H.
Chalmers, Mr. T. A.
Chatterjee, The Honourable Mr. A. C.

Cocke, Mr. H. G.
Crawford, Colonel J. D.
Duval, Mr. H. P.
Fleming, Mr. E. G.
Hezlett, Mr. J.
Hindley, Mr. C. D. M.
Hira Singh, Sardar Bahadur Captain.
Holme, Mr. H. E.
Hudson, Mr. W. F.
Hussanally, Khan Bahadur W. M.
Innes, The Honourable Sir Charles.
Lindsay, Mr. Darcy.
Lloyd, Mr. A. H.
Moncrieff Smith, Sir Henry.
Muddiman, The Honourable Sir Alexander.
Muhammad Ismail, Khan Bahadur Saiyid.
Nag, Mr. G. C.
Parsons, Mr. A. A. L.
Rushbrook-Williams, Prof. L. F.
Sams, Mr. H. A.
Sastri, Diwan Bahadur C. V. Visvanatha.
Singh, Rai Bahadur S. N.
Sykes, Mr. E. F.
Tonkinson, Mr. H.
Tottenham, Mr. G. R. F.
Webb, Mr. M.
Willson, Mr. W. S. J.
Wilson, Mr. R. A.

The motion was adopted.

THE INDIAN REGISTRATION (AMENDMENT) BILL.

Mr. K. Rama Aiyangar : (Madras and Ramnad *cum* Tinnevelly : Non-Muhammadan Rural) : Sir, I beg to move :

"That the Bill further to amend the Indian Registration Act, 1908, be referred to a Select Committee consisting of the Honourable Sir Alexander Muddiman, Mr. K. C. Neogy, Mr. T. C. Goswami, Sir Henry Moncrieff Smith, Dr. H. S. Gour, Pandit Madan Mohan Malaviya, Mr. M. A. Jinnah, Diwan Bahadur T. Rangacharir, Diwan Bahadur M. Ramachandra Rao, (with your permission, Sir), Mr. C. Duraiswami Aiyangar and myself, and that the number whose presence shall be necessary to constitute a meeting of the Committee shall be five."

This is a small matter, Sir. The only question is that when presentation is made by a person other than an authorised agent even when the executant is present and accepts the registration, because of the existing state of the law, it has to be held that the registration is invalid. Their Lordships of the Privy Council have once also regretted that it was so. However, sections 32 and 33 are such that in the present state of the law, even though it is presented by a person on behalf of the executant and the executant is present there and completes the registration, it is held invalid. It is only to remedy that defect, I introduced the Bill and the Select Committee will consider the wording and put it properly in its place. I beg to move that the Bill be referred to the Select Committee.

Mr. H. Tonkinson (Home Department : Nonminated official) : Sir, when my Honourable friend moved for leave to introduce this Bill on the 21st of February, it was pointed out in this House that the difficulties mentioned in the first judgment of the Privy Council, which is cited in the Statement of Objects and Reasons, had been fully met by the Bill introduced by the Honourable Pandit Madan Mohan Malaviya and finally passed into law in 1917. I am surprised, Sir, that once again my Honourable friend has not referred to that amendment of the law. It was further pointed out, Sir, on that occasion that the second ruling which is referred to by the Honourable Member had nothing to do with the Bill before the House. I am surprised that he again states that on one occasion their Lordships of the Judicial Committee have regretted that this provision of the law existed. We have now been informed, Sir, by the Honourable Member, not in this House but separately, that the reference in the Statement of Objects and Reasons to the Patna case should have been a reference

to a case reported in 49 Indian Appeals at page 395. I should like, Sir, now to refer to some facts in regard to these two cases in particular. First I take the case of Jambu Prasad *vs.* Mahummad Aftab Ali Khan. Sir, when that case was before the Allahabad High Court, my Honourable friend Pandit Motilal Nehru was one of the leading counsel engaged. The case dealt with three mortgage deeds executed between 1886 to 1892. The Allahabad High Court gave a decree for the claim based upon the one deed, but they held that the other deeds had not been validly registered. It was argued before them by the Honourable Pandit that the executants being present when the document was registered, the document was validly registered ; but the Court held, on the other hand, that this was not proved, but all that was proved was that they had attended on the same day. That case, Sir, went up to the Privy Council. I would observe that before the Privy Council, Sir George Lowndes appeared for the respondent. That is a point, Sir, of some importance, because Sir George Lowndes in another capacity took a leading part in the decision as to the form which the amendment of the law should take in 1917. Before the Privy Council a claim was made that the mortgagees themselves would have been entitled to present for registration and their presence would have removed any defect, that is to say, a claim was made on the lines of the present Bill. This claim, however, was dismissed by the Privy Council, because they held that the mortgagors attended to assent to registration and this was not sufficient to give the registrar jurisdiction. The Judicial Committee, therefore, upheld the Allahabad decision, and it is not therefore quite correct to suggest as in the Statement of Objects and Reasons, that Their Lordships were the first to place this alleged highly technical construction on the law. Indeed, in their order in that case the Privy Council refer to another Allahabad decision of 1906 where it had been held that the sub-registrar's jurisdiction only comes into force if and when a document is presented to him in accordance with the law. Now, Sir, under the provisions of section 32 it is required that the person presenting a document for registration shall be either the person executing or claiming under the same, the representative or assign of such person or the agent of such person, representative or assign duly authorised by a power of attorney executed or authenticated in the manner provided in the next section.

(At this stage Mr. President vacated the Chair which was taken by the Deputy President.)

The Privy Council in the case in question held that one object of these provisions was to make it difficult for persons to commit frauds by means of registration and it was the duty of the Court not to allow the imperative provisions of the Act to be defeated. It was in consequence of that decision that my Honourable friend Pandit Madan Mohan Malaviya brought forward a Bill in the Imperial Legislative Council, as a result of which section 23A was inserted in the Registration Act. This section, Sir, permits persons claiming under a document which has been accepted for registration from a person not duly empowered to present the same to be registered within four months from the person who claims first having become aware that the registration of the document was invalid. There may be cases, Sir, in which through want of care or stupidity or otherwise of the registering officers documents which ought not to be registered are registered and ignorant people who rely upon the registering officers following the law may thus find themselves in a difficult position. But this section gives

[Mr. H. Tonkinson.]

them full relief and the Honourable Member has not indicated any manner in which its provisions are defective. I understand it was generally agreed in 1917 that it was a satisfactory solution, and the Bill was then unanimously passed.

Let us turn now to the other case referred to in the Statement of Objects and Reasons, in which, according to my Honourable friend, the Judicial Committee of the Privy Council has suggested that the law required amendment. That, Sir, was a Burma case, the case of Ma Shwe Mya *versus* Maung Po Hnaung. The respondent in that case had obtained a decree against the appellant. Whilst an appeal to the Privy Council against that decree was pending the respondent applied for leave to execute. He was given leave provided he gave security. A bond Form 3 in Appendix G to the Code of Civil Procedure mortgaging certain oil wells was executed before the Additional District Judge and was presented for registration by the head clerk of the Court of Additional District Judge. The appeal in the first case was upheld and so the bond became operative. The question was whether it was properly registered. It was not presented by any person claiming or executing. The District Judge was not present at the time of presentation. The Judicial Commissioner of Upper Burma held that the head clerk was his representative. The Judicial Committee in their decision announced by Viscount Cave held that representative was a term of ambiguous meaning which must be construed according to its context and in section 32 their Lordships were satisfied that "representative" meant the legal personal representative or the guardian or committee and did not include a clerk or an agent. Their Lordships held, therefore, that the registration of the security bond was invalid. In connection with the present Bill, however, it is important to notice that their Lordships of the Judicial Committee indicated that the provisions of section 23A provided an adequate remedy.

Now, Sir, with reference to the remarks as to the amendment of the law being required. These remarks were made by Their Lordships in this case ; but it was in regard to an entirely different matter which is not affected at all by the present Bill. Their Lordships did remark that the case disclosed a probably inadvertent omission in the law which could only be cured by legislation. Under section 88 of the Registration Act, certain officers of the Crown are not required to attend a registration office in proceedings in connection with the registration of a document executed in their official capacity or to sign endorsements, etc. The registering officer is empowered to refer to them for information and if he is satisfied as to the execution of the document he registers it. The omission in the law referred to by the Judicial Committee is as regards the want of a similar provision to that relating to officials who execute for officials who may claim a document. That is, there might have been a provision which would not have required the District Judge himself to present the security bond in this particular case. But, Sir, that has nothing whatever to do with the Bill in regard to which my Honourable friend has moved the present motion. I submit further that not only is the present Bill unnecessary but possibly it may be dangerous. Since we have had any Registration law in India, ever since 1867, I think the year was, we have had these provisions in this form. These provisions are the provisions against fraud. I submit, further, that if we take the case which is intended to be covered by the proposed *Explanation* to section 32, when the

person presenting is accompanied by the executors, all that is required under the present law is for the person who has the document and who is not under this proposal a person duly authorised by power of attorney, etc., but another person, to hand over the document to the persons who did actually execute. There is no defect in the present law and the Bill is absolutely unnecessary. I submit, Sir, that it is, therefore, most undesirable to make such an amendment of the law. If I do not consider that this House would accept the view that the Bill is unnecessary and should be opposed, I should have moved an amendment for circulation on the grounds already stated to-day in connection with the Bill of which you, Sir, were the sponsor. Sir, I oppose the motion.

Dr. H. S. Gour : I move that the question may now be put.

Mr. K. Rama Aiyangar : I want to say only one word, Sir. Under the imperative provisions of the section their Lordships said that they had to hold that even if the presentation was made by the executant, they could not register. I maintain, therefore, that it is a case where relief is needed.

Mr. Deputy President : The question is :

"That the Bill further to amend the Indian Registration Act, 1908, be referred to a Select Committee consisting of the Honourable Sir Alexander Muddiman, Mr. K. C. Neogy, Mr. T. C. Goswami, Sir Henry Moncrieff Smith, Dr. H. S. Gour, Pandit Madan Mohan Malaviya, Mr. M. A. Jinnah, Diwan Bahadur T. Rangachariar, Diwan Bahadur M. Ramachandra Rao, Mr. C. Duraiswami Aiyangar and Mr. K. Rama Aiyangar, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The Assembly divided :

AYES—42.

Abdul Karim, Khwaja.	Misra, Pandit Shambhu Dayal.
Abhyankar, Mr. M. V.	Misra, Pandit Harkaran Nath.
Aiyangar, Mr. C. Duraiswami.	Murtaza Sahib Bhadur, Maulvi Sayad.
Aiyangar, Mr. K. Rama.	Mutalik, Sardar V. N.
Aiyer, Sir P. S. Sivaswamy.	Narain Das, Mr.
Aney, Mr. M. S.	Nehru, Dr. Kishenlal.
Badi-uz-Zaman, Maulvi.	Neogy, Mr. K. C.
Chaman Lall, Mr.	Patel, Mr. V. J.
Das, Mr. Bhubanananda.	Purshotamdas Thakurdas, Sir.
Das, Mr. Nilakantha.	Ramachandra Rao, Diwan Bahadur M.
Duni Chand, Lala.	Ranga Iyer, Mr. C. S.
Goswami, Mr. T. C.	Ray, Mr. Kumar Sankar.
Gour, Dr. H. S.	Samiullah Khan, Mr. M.
Gulab Singh, Sardar.	Sardar, Rai Sahib M. Harbilas.
Hans Raj, Lala.	Shafee, Maulvi Mohammad.
Iyengar, Mr. A. Rangaswami.	Singh, Mr. Gaya Prasad.
Jeelani, Haji S. A. K.	Sinha, Mr. Ambika Prasad.
Joshi, Mr. N. M.	Sinha, Kumar Ganganand.
Kartar Singh, Sardar.	Tok Kyi, Maung.
Kasturbhai Lalbhai, Mr.	Venkatapatiraju, Mr. B.
Lohokare, Mr. K. G.	Yusuf Imam, Mr. M.

NOES—38.

Abdul Qaiyum, Nawab Sir Sahibzada.	Duval, Mr. H. P.
Ahmed, Mr. K.	Fleming, Mr. E. G.
Ajab Khan, Captain.	Hezlett, Mr. J.
Bhore, Mr. J. W.	Hindley, Mr. C. D. M.
Blackett, The Honourable Sir Basil.	Hira Singh, Sardar Bahadur Captain.
Burdon, Mr. E.	Holme, Mr. H. E.
Calvert, Mr. H.	Hudson, Mr. W. F.
Chalmers, Mr. T. A.	Hussanally, Khan Bahadur W. M.
Chatterjee, The Honourable Mr. A. C.	Innes, The Honourable Sir Charles.
Crawford, Colonel J. D.	Lindsay, Mr. Darcy.

NOES—38—*contd.*

Lloyd, Mr. A. H.	Sams, Mr. H. A.
Makan, Mr. M. E.	Sastri, Diwan Bahadur C. V. Visvanatha.
Moncrieff Smith, Sir Henry.	Singh, Rai Bahadur S. N.
Muddiman, The Honourable Sir Alexander.	Sykes, Mr. E. F.
Muhammad Ismail, Khan Bahadur Saiyid.	Tonkinson, Mr. H.
Nag, Mr. G. C.	Tottenham, Mr. G. R. F.
Nehru, Pandit Shamlal.	Webb, Mr. F.
Parsons, Mr. A. A. L.	Willson, Mr. W. S. J.
Rushbrook-Williams, Prof. L. F.	Wilson, Mr. R. A.

The motion was adopted.

THE WEEKLY PAYMENTS BILL.

Mr. Chaman Lall (West Punjab : Non-Muhammadan) : Sir, I move for leave to introduce a Bill to make provision for the weekly payment of wages to workmen, domestic servants and other employees.

I do not intend to detain the House at any length in this matter, particularly, after the conversational fire-works of the Honourable Diwan Bahadur T. Rangachariar on the fire-arms question, and the carefully registered whispers of the Honourable Mr. K. Rama Aiyangar on the Registration Act. All I wish to say can be condensed in a few sentences. There are two reasons why I want this Bill introduced ; firstly, on social and, secondly, on economic grounds. The social ground is this. We find that industrial workers in various centres in India have to subsist for a period at least of one month on credit, having to borrow large sums of money from money-lenders at exorbitant rates of interest. My Bill is designed to prevent any such extortion. Secondly, we found, as was the case in Bombay recently during the mill strikes, that large numbers of workers, several thousands, were thrown out of work and the wages due to them were not paid to them by their employers until after a very long period of negotiation and suspense. All that period was utilised to induce workers to return to work. I want to make it impossible for any employer to place employees in that position where he can withhold wages due to his employees. I want to make it penal to withhold wages.

This is the second aspect of the economic question that ordinarily, wherever wages are paid by the day, the wages are actually less in the total amount than when paid on a monthly basis, a proof of the fact that some allowance is indeed made for the fact that workers have to live on credit and borrow money at exorbitant rates for their subsistence. Honourable Members will see on page 4 of the Report known as " The Report of the Second Regular Wages Survey of the Punjab, taken in December 1917 " a table giving the average daily earnings of labourers. In 1917 it was by the day 6 as. 6 p., but when reckoned by the month it was 6 as. 11p. You will find right through this table that when payments are made by the week the workers get more in money than when payments are made by the day. This is briefly why I wish to move this Bill. I want this Bill to apply to workers not only in Government employ, not only in the industrial centres, but to workers all round. The difficulties that may be met with in the form of the Bill as drafted

by me can easily be got over when it is referred to a Select Committee. I need not, therefore, go into the actual provisions of the Bill.

Sir, I move for leave to introduce it.

The Honourable Mr. A. C. Chatterjee (Industries Member) : Sir, I do not rise to oppose the Bill, indeed I cannot do so because I have had some difficulty in understanding what the exact aim or object of the Bill is. So far as I can judge from a very careful perusal of the terms of the Bill, I do not know whether the Honourable Member wants to introduce a weekly system of payments, or whether he wants to prohibit the system of withholding the wages of people of small means, or both. So far as I can judge from the actual language of the Bill, so long as an employer arranges to pay on a weekly basis, he can withhold payment for a month or six weeks.....

Mr. Deputy President : If the Honourable Member is not opposing the motion, he can defer his remarks to the second stage.

The Honourable Mr. A. C. Chatterjee : I think, Sir, I am entitled to explain the position of the Government with regard to the Bill. It has usually been the practice to allow the Member of Government to do so.

Mr. Deputy President : The Honourable Member will have ample opportunity to do so later on. Unless he opposes the leave for introduction, I do not think any remarks are in order.

The motion was adopted.

Mr. Chaman Lall : Sir, I introduce the Bill.

THE MATERNITY BENEFIT BILL.

Mr. N. M. Joshi (Nominated Labour Interests) : Sir, I ask for leave to introduce a Bill to regulate the employment of women in factories and mines and on those estates to which the Assam Labour and Emigration Act, 1901, applies some time before and some time after confinement, and to make provision for the payment of maternity benefit.

Sir, the object of my Bill is purely humanitarian. It seeks to prohibit the employment of women after confinement ; it also seeks to prevent employers dismissing women six weeks before confinement. The Bill also seeks to provide maternity benefits during the enforced period of absence. It has been found that mere prohibition without the provision of maternity benefits would not be of any use. That is the experience in England. Therefore, while prohibiting the employment of women and also allowing them to remain absent some time before confinement, I have made provision for maternity benefits. The Bill does not apply to women in all industries, but it applies only to factories, as defined by the Indian Factories Act, to mines as defined by the Indian Mines Act, and to estates which are regulated by the Assam Labour and Emigration Act, 1901. Here I want to make one thing clear. Although in my Bill I have mentioned the estates regulated by the Assam Labour and Emigration Act, still I do not intend to exclude other estates which may be regulated by other legislation. As a matter of fact I know there are other estates which are regulated by the Madras Planters Labour Act, and I think when the Bill goes to Select Committee.....

The Honourable Mr. A. C. Chatterjee (Industries Member) : Sir, I rise to a point of order. Can the Honourable Member, in introducing the Bill, propose that the scope of the Bill should be enlarged ?

Mr. N. M. Joshi : Sir, I do not think I am enlarging the scope of the Bill at all.

The Honourable Mr. A. C. Chatterjee : I ask for your ruling, Sir.

Mr. Deputy President : There is no motion for enlarging the scope of the Bill.

The Honourable Mr. A. C. Chatterjee: I understood the Honourable Member to suggest the enlarging of the scope of the Bill.

Mr. Deputy President: When such a motion comes up, it will be time to consider it.

Mr. N. M. Joshi: Sir, if the Chair allows me at the time when I make a motion for sending the Bill to a Select Committee, or when I ask the House to take my Bill into consideration, I propose to bring in certain estates which are not included here. The other details I have left to the Local Governments. The welfare of labour is a provincial subject, and I therefore think that these details must be left to the Local Governments. Sir, my Bill, since it was published in the papers, has received a large volume of public opinon in its favour. The Bombay Legislative Council has passed a Resolution supporting the principle of my Bill. There was a public meeting held in Bombay very recently under the auspicies of 13 organisations in the City supporting the proposals of my Bill. The Medical Relief Committee of the Bombay Municipality, of which my Honourable friend Mr. Patel is the President, has also supported the proposals which I have included in my Bill. Sir, I therefore hope that the Bill will meet with support at the hands of this House; but before I take my seat, I would like to make one request to Government. It is this. To-day I am going to introduce the Bill, and the second motion for sending the Bill to Select Committee will not be made before the end of January. I would like Government to circulate my Bill, if the House gives me leave to introduce it, in the meanwhile, so that the Government may be ready with the opinions of the Local Governments, and able to consider the Bill properly. I hope, Sir, the House will give me leave to introduce my Bill.

Mr. T. A. Chalmers (Assam: European): Sir, I rise to oppose this Bill. In opposing the introduction, I wish to make it clear that I do not do so because I disapprove of the principles of the Bill, or because employers in Assam are reluctant to give these privileges. As a matter of fact, for many years such privileges have been given. Many years before the International Conference at Washington, the quarter of a million of women employed in Assam tea gardens enjoyed these privileges, and these privileges have, up to date, not been introduced on such a large scale in any other country in the world. My opposition arises....

Diwan Bahadur M. Ramachandra Rao: May I ask the Honourable Member if he is speaking on behalf of the Government ?

Mr. Deputy President : I do not think such a question arises; the Honourable Member is opposing and is entitled to do so.

Mr. T. A. Chalmers: Allow me to introduce myself to the House as a tea planter from Assam. I represent the European community of that

Province. My opposition to the Bill arises from the fact that the Mover proposes to discriminate between tea grown in other parts of India and tea grown in Assam. He now informs the House that he proposes to extend the scope of this Bill later on. I still object to the discrimination because we have seen how our friends from Bombay have suffered and are still suffering from the effects of a discriminating Bill. I refer to the unjust cotton excise duty. Why should people who grow potatoes or rubber, or coffee, or anything not provide for their women workers the same privileges and rights as those that the tea industry are asked to provide ? I think it would be equivalent to an excise duty on cotton being applied in Bombay and not applied in Calcutta. I maintain that those who employ women for any purpose whatsoever should undertake to provide for the special disabilities to which women are subject. I therefore ask the Honourable Mover to delete the reference to the Assam Labour and Emigration Act and to define an estate as any place where more than ten women are employed on any work whatsoever that is not already covered by the Indian Factories Act and the Indian Mines Act. If the House supports my proposal and the Honourable Mover accepts it, I understand that it will enlarge the scope of the Bill.

Mr. N. M. Joshi: I do not propose to do that.

Mr. T. A. Chalmers: Then I have nothing further to add at present.

The motion was adopted.

Mr. N. M. Joshi: I introduce the Bill.

THE INDIAN RAILWAYS (AMENDMENT) BILL.

Mr. K. C. Neogy (Dacca Division : Non-Muhammadan Rural) : I move for leave to introduce a Bill further to amend the Indian Railways Act, 1890. This Bill is intended to prohibit the reservation of compartments in railway trains for the exclusive use of persons belonging to any particular community, race or creed. This question came up for discussion in the last Assembly on more than one occasion, and the present position is that it is only in certain trains and it is only for the benefit of third class passengers belonging to a particular community that carriages are reserved ; and while the compartments are reserved for Europeans the Railway Administration has issued a circular to their local Agents asking them to permit anybody who may be wearing European dress to make use of these reserved compartments. I have no doubt that the objection which the predecessor of this House took to the reservation of compartments still remains so far as the underlying principle of this discrimination is concerned. I need hardly point out to the House that public opinion resents this discrimination as strongly as it did ever before. There have been prosecutions for the infringement of this rule, and some of them came up before the different High Courts in India. The latest case I think came up before the Calcutta High Court, and we have the decision in that case reported in the law journals. It appears that a young Indian belonging to the middle class deliberately broke the law and insisted on remaining in a compartment which was reserved for Europeans. This is what the judgment says :

" The accused.....was seen seated in a compartment of a third class railway carriage marked for Europeans.....with some other Indian passengers all of whom were attired in Indian dress. They were asked by a ticket examiner to vacate the compartment as it was reserved for Europeans. The other Indian passengers occupying the said compartment vacated it, but the accused did not, saying he had as

[Mr. K. C. Neogy.]

much right to occupy the said compartment as any European. Subsequently the accused vacated the compartment stating that he courted the prosecution to make a test case of it. He was prosecuted and convicted and fined Rs. 5."

In this case it was held that if this rule is not inconsistent with any express provision of law in the general scheme of the Railway Act, it should not be held to be *ultra vires* of the powers of the Company. But one of th learned Judges observed to the followng effect :

"I cannot but feel that it is desirable that public bodies, which exist for public convenience, derive their revenue from the general public and enjoy monopoly in their trade under the law of the land, should take good care to remove any vestige of suspicion of preferential treatment of any particular class or community."

Later on, he observed :

"The effect of such reservation is that a European, or one who is included in that term, for whom a compartment is reserved may travel in any compartment he likes but an Indian suffering from the disability of not being classed as a European is debarred from travelling in the European reserved compartment. I am unable to concede that such an apparently invidious distinction is not to be considered preference in favour of one community to the prejudice or disadvantage of another."

Sir, I believe that the Government case is that this arrangement is suited to the religious susceptibilities and the peaceful disposition of the Indians Now. Sir, the logical consequence of such an argument would be that member of the province from which my Honourable friend, Nawab Si Sahibzada Abdul Qaiyum, comes will have to be provided with a reserved compartment because a timid Bengali like myself may not like to trave with him. Furthermore, separate compartments may have to be provided for Hindus and Muhammadans, Jains and Christians. I do trust tha Government are not going to take up this position and I hope the House will give me leave to introduce this Bill.

The motion was adopted.

Mr. K. C. Neogy : I introduce the Bill.

THE WORKMEN'S FREEDOM BILL.

Mr. N. M. Joshi (Nominated : Labour Interests) : I move for leave to introduce a Bill to repeal legislation making breaches of contract of service, absence from work and desertion on the part of artificers, labourers and workmen and the enticing away, harbouring or employing of labourers under labour contract a penal offence.

Since I gave notice of my Bill the Government have introduced certain legislation which includes a part of the legislation which my Bill seeks to repeal. I therefore propose to omit that part which is included in the Government Bill. The Government have introduced legislation to repeal the Workmen's Breach of Contract Act which is included in my Bill. They have also included in their Bill sections 490 and 492 of the Indian Penal Code which are included in my Bill. I therefore omit these from the Bill which I ask for leave to introduce.

Mr. Deputy President : The Honourable Member is not entitled to do anything of the kind now. He may ask for leave to introduce the Bil as it is.

Mr. N. M. Joshi : Then I will ask for leave to introduce the Bill as it is. I hope the House will give me leave to introduce it.

The Honourable Mr. A. C. Chatterjee (Industries Member) : I wish to point out that, as has already been mentioned by the Honourable th Mover, a Bill has already been introduced by Government which deals with

two-thirds of his proposals. There is only one point left in his Bill and that is with regard to certain provisions of the Assam Labour and Emigration Act. Those provisions, as the Honourable Mover is aware, have been inoperative for many years by executive notification, and I can give him the assurance that there is no intention whatever on the part of Government to make those provisions effective in the near future. I can give him the further assurance that before Government take any action towards rescinding the present notifications and making those provisions again effective, the views of this House will be obtained. I hope that in view of the assurance given by me he will withdraw his Bill. Otherwise I sall be obliged to oppose this motion.

Mr. N. M. Joshi : In view of the assurance given by the Honourable Mr. Chatterjee I have great pleasure in withdrawing my Bill. Before I sit down I want to make a request to Government that they should at an early date undertake the examination of this Act and get these sections repealed as soon as possible.

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

THE SPECIAL MARRIAGE (AMENDMENT) BILL.

Dr. H. S. Gour (Central Provinces, Hindi Divisions : Non-Muhammadan) : Sir, my Bill is a very small Bill and deals with a small point. It is simply this. This Special Marriage Act was enacted in 1872 when they had no statutory provision regulating the age of majority. Consequently the framers of the Act fell back upon the English law of majority and enacted in section 2, clause (3) that each party must if he or she has not completed the age of 21 years have obtained the consent of his or her father or guardian. Three years later the Indian Majority Act was enacted and it fixed the age of 18 years as the age for majority. Now the corresponding change in the Act of 1870 has not been made, with the result that if a person between the age of 18 and 21, having no father alive wishes to marry, he or she cannot marry at all because under the Guardian and Wards Act a person after he completes the age of 18 cannot have a guardian and yet this Act enacts that a person between the age of 18 and 21 shall obtain the sanction or consent of the guardian. It is merely to correct this anachronism in the law that I wish to introduce this short Bill. Sir, I ask for leave to introduce it.

Mr. Deputy President : The question is :

"That leave be given to introduce a Bill further to amend the Special Marriage Act, 1872."

The motion was adopted.

Dr. H. S. Gour : Sir, I introduce the Bill.

THE INDIAN STAMP (AMENDMENT) BILL.

Mr. C. Duraiswami Aiyangar (Madras Ceded Districts and Chittoor : Non-Muhammadan Rural) : I rise to ask for leave to introduce a Bill to amend the Indian Stamp Act, 1899.

The only point in it is as the law exists in section 35 of the Indian Stamp Act all documents which are not stamped or insufficiently stamped can be admitted in evidence on payment of a penalty except in so far as the case of promissory notes and bills of exchange are concerned. There is an exception there by which the promissory note will be altogether excluded and no action can lie upon it if it is not stamped. My object

[Mr. C. Duraiswami Aiyangar.]

is to make the law to validate insufficiently stamped or non-stamped documents on an uniform basis and my chief ground is that in this country people do not properly understand what is meant by a promissory note or a negotiable instrument. Therefore difficulties often arise. I do not want to say anything more on this occasion because I can tell the House that I consulted the Honourable Sir Basil Blackett about it and he has consented to my introducing the Bill at this stage, though changes will have to be made at a later stage. I therefore beg leave of the House to introduce my motion.

The Honourable Sir Basil Blackett (Finance Member): The Honourable Member who desires to introduce this Bill must have misunderstood me when I spoke to him because I never agreed that I would not oppose the Bill at the introduction. He must have misunderstood the conversation that we had in the lobby a day or two ago. I desire to oppose this Bill and I do so for several reasons. The Bill is an attack on the Government stamp revenue. It is an attack on the stamp revenue of the Provincial Governments and it was decided only a little more than a year ago, when the Government were amending the Stamp Act in 1923, that it was undesirable to make the change which is now proposed. The Select Committee on the Stamp Bill, what is now the Stamp Act of 1923, reported as follows :

> "While therefore we are by a majority of opinion that the enhancement of the stamp duty on promissory notes is justifiable we are at the same time of opinion that the rigour of the above quoted provision should be relaxed at least temporarily. We do not recommend a permanent relaxation "—(*which is what is now proposed by the Mover of this Bill*)—"because it appears that the exception which is made in the case of promissory notes to the rule that documents not duly stamped may be received in evidence on payment of a penalty is a provision of very long standing both in the English and the Indian law and to do away permanently with this provision would lead to evasion of payment of duty on a large scale."

The sections which the Honourable Member in his Bill proposes to amend have come down in their present form from as long ago as 1879. When the law was amended in 1879 the provisions relating to penalties and validation were completely changed and among other things a distinction was drawn for the first time between bills of exchange, promissory notes and instruments chargeable with one anna on the one hand and other classes of instruments on the other hand, and the former were not allowed to be validated under any circumstances. The reasons for making this distinction and not allowing the promissory notes and instruments chargeable with one anna to be validated under any circumstances were in the first instance that this was in accordance with the English law. The argument was also that it is more easy to evade payment of duty in the case of adhesive stamps than in the case of other stamps and more in the case of certain classes of documents which may run their course and can be automatically cancelled without ever being produced either before a Civil Court or a Government servant. The argument that is pressed by the Honourable Mover is that this leads to injustice inasmuch as on account of the illiteracy in the country a number of innocent persons suffer and that from the point of view of revenue it might pay to validate these instruments on payment of a penalty rather than to prohibit their validation. Now bills of exchange and cheques are in practice often negotiated and the transactions pass through the hands of many people. Any one who handles them is likely to bring to light the defective stamping or actually to make up for

it by affixing a stamp and in any case it is always open to the banker who may deal with these at some time or other to affix the stamp of validation. In these cases therefore the argument in respect of loss of revenue is not very cogent. But with regard to promissory notes, many of them are never seen except by the drawer and the drawee. When they come to Court it is the lender who is likely to bring them before the Court, not the man who has borrowed ; and the lender is not usually an illiterate person. It is therefore not I think a very strong argument to claim that this provision is a hardship on the illiterate person. The difficulty is that if these documents are not stamped in the first instance and are allowed to be validated simply by an addition of the stamp, even with the addition of a penalty and quite a high penalty, the loss of revenue is likely to be quite severe ; because in practice it will mean that no document will be stamped except when it has to come before a Court. I am aware that the Honourable Mover will say that as a matter of fact the present condition of the law leads to perjury. He will argue that if a document is not stamped and has not been stamped at the proper time and eventually it is desired to bring it before the Court, some means will be found for stamping it and claiming that it was stamped in proper time ; or that other means will be found of evading the duty. But I would point out to the Honourable Member that for over 40 years this has been the provision of the law in India. This provision is based on the English precedent. The same rule applies in the case of the English stamp law. The argument in regard to illiteracy has, as I have pointed out, to be substantially discounted because it may safely be assumed as a general rule that it is the lending class who are likely to be the sufferers by the existing provision and the lending class is not illiterate. It may be that occasional hardships occur, but I think that the tax-payer in general and the provincial tax-payer has to consider seriously the loss of revenue that would be thrown upon him by a change in the law at this date. Though stamp legislation is a central subject stamp revenue is a provincial one, and I have not heard that the Honourable Member has been invited by any of the Local Governments to introduce this legislation. It is very difficult to estimate the revenue from that class of documents. Ordinarily, in fact in almost all cases excepting cheques, they are stamped with adhesive stamps and usually with unified postage revenue stamps. The, amount which is credited to stamps on account of the share of unified revenue and postage stamps is something approaching 20 lakhs a year ; but there are reasons to doubt as to whether our statistics tell us exactly what the revenue from these stamps is, and we must also remember, as I pointed out at the beginning of my speech, the revenue from stamps was altered by the Stamp Act of last year, and we have not yet made complete calculations as to what was the effect of that action and what is the revenue from this particular form now. But unified postage stamps and revenue stamps are used of course in other kinds of instruments and there are no data for estimating the stamps affixed on cheques or the proportion which the unified stamp bears to other adhesive stamps, or the proportion which the revenue from this class of documents bears to that from other documents in respect of the unified postage and revenue stamps. It would hardly be worth while to attempt any estimate, unless indeed this Bill were to be taken seriously by the House and passed on to the second reading, in which case we should undoubtedly have to consider very carefully what revenue

[Sir Basil Blackett.]

is at stake and what we are risking by even considering the proposal that is made. But on the ground of principle that this is an attack on the stamp revenue and an attack on the stamp revenue not only of the Central Government but also of the stamp revenue of Provincial Governments, and that it has not so far as I know been instigated by any Provincial Government, I desire on behalf of the Government to oppose this motion.

(Mr. C. Duraiswamy Aiyangar rose to speak).

Mr. Deputy President : The Honourable Member has no right of speech.

The question is :

"That leave be given further to amend the Indian Stamp Act, 1899."

The Assembly divided :

AYES—27.

Abhyankar, Mr. M. V.
Aiyangar, Mr. C. Duraiswami.
Aney, Mr. M. S.
Chaman Lall, Mr.
Das, Mr. Nilakantha.
Duni Chand, Lala.
Gulab Singh, Sardar.
Hans Raj, Lala.
Iyengar, Mr. A. Rangaswami.
Kartar Singh, Sardar.
Malaviya, Pandit Madan Mohan.
Mehta, Mr. Jamnadas M.
Misra, Pandit Shambhu Dayal.
Misra, Pandit Harkaran Nath.
Murtaza Sahib Bahadur, Maulvi Sayad.
Narain Dass, Mr.
Nehru, Dr. Kishenlal.
Nehru, Pandit Shamlal.
Neogy, Mr. K. C.
Patel, Mr. V. J.
Ramachandra Rao, Diwan Bahadur M.
Ranga Iyer, Mr. C. S.
Ray, Mr. Kumar Sankar.
Samiullah Khan, Mr. M.
Singh, Mr. Gaya Prasad.
Sinha, Kumar Ganganand.
Venkatapatiraju, Mr. B.

NOES—47.

Abdul Qaiyum, Nawab Sir Sahibzada.
Ahmed, Mr. K.
Aiyer, Sir P. S. Sivaswamy.
Ajab Khan, Captain.
Badi-uz-Zaman, Maulvi.
Bhore, Mr. J. W.
Blackett, The Honourable Sir Basil.
Burdon, Mr. E.
Calvert, Mr. H.
Chalmers, Mr. T. A.
Chatterjee, The Honourable Mr. A. C.
Crawford, Colonel J. D.
Das, Mr. Bhubanananda.
Duval, Mr. H. P.
Fleming, Mr. E. G.
Ghazanfar Ali Khan, Raja.
Hezlett, Mr. J.
Hindley, Mr. C. D. M.
Hira Singh, Sardar Bahadur Captain.
Holme, Mr. H. E.
Hudson, Mr. W. F.
Hussanally, Khan Bahadur W. M.
Hyder, Dr. L. K.
Innes, The Honourable Sir Charles.
Jinnah, Mr. M. A.
Kasturbhai Lalbhai, Mr.
Lindsay, Mr. Darcy.
Lloyd, Mr. A. H.
Mahmood Schamnad Sahib Bahadur, Mr.
Makan, Mr. M.E.
Moncrieff Smith, Sir Henry.
Muddiman, The Honourable Sir Alexander.
Muhammad Ismail, Khan Bahadur Saiyid.
Nag, Mr. G. C.
Parsons, Mr. A. A. L.
Purshotamdas Thakurdas, Sir.
Rajan Bakhsh Shah, Khan Bahadur Makhdum Syed.
Rushbrook-Williams, Prof. L. F.
Sams, Mr. H. A.
Sastri, Diwan Bahadur C. V. Visvanatha.
Singh, Rai Bahadur S. N.
Sykes, Mr. E. F.
Tonkinson, Mr. H.
Tottenham, Mr. G. R. F.
Webb, Mr. M.
Willson, Mr. W. S. J.
Wilson, Mr. R. A.

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 24th September, 1924.