THE

LEGISLATIVE ASSEMBLY DEBATES

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THIRD SESSION

OF THE

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CONTENTS.

LEGISLATIVE ASSEMBLY.

Friday, 26th January, 1923.

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

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

Rao Bahadur T. Rangachariar then took the Chair.

QUESTIONS AND ANSWERS.

Retention of Ministerial Officers after 55.

262. ***Dr. Nand Lal:** (*a*) Is it a fact that the rule regarding the retention of ministerial officers in service after the age of 55 years has been liberalised since 1918, and that such officers should now ordinarily be retained in service so long as they remain efficient until they attain the age of 60 years, and even after that age in very special circumstances?

(*b*) Is it a fact that the retention of ministerial officers in service after the age of 55 years is now the rule rather than an exception as it used to be formerly?

The Honourable Sir Basil Blackett: The reply to second part of the question is in affirmative.

Retirement of Ministerial Officers in Military Accounts Department.

263. ***Dr. Nand Lal:** (*a*) Is it a fact that in accordance with the rule in Civil Service Regulations, as it stood prior to its revision in 1918, when the grant of extension to ministerial officers after the age of 55 years was treated as an exception scores of officers of the Military Accounts Department were granted such retention, in some cases up to the age of 64 years?

(*b*) Is it not a fact that in 1921, certain officers in the Military Accounts Department were refused extension of service after the age of 55 years, although they were reported efficient and recommended for retention by the Heads of their offices, the reason for refusal being that "Government are averse to the retention of officers and men after they attain the age of superannuation as this retards the promotion of juniors"?

(*c*) If the reply to part (*b*) be in the affirmative, is it a fact that certain other officers at Simla in the same Department and similarly situated as those to whom extension was refused, were granted extension of service at about the same time?

The Honourable Sir Basil Blackett: (*a*) During the war all retirements, except on medical grounds or on grounds of inefficiency, were suspended in the Military Accounts Department and several officers had to be retained in the Department and granted extensions of service after they had attained the age of 55 years. These extensions were necessary in the exigencies of the public service.

(*b*) In 1921 certain subordinate officers in the Military Accounts Department were refused extension of service after they had attained the age of 55 years. Under the revised scheme of organisation, which was being gradually introduced in 1921 and which is now in force, officers holding the appointments of Deputy Assistant Controllers are not purely ministerial officers as they are in independent charge of branches of the office and are also extensively employed on local audit. The reason for restricting extensions of service in the case of officers of this class was that under the re-organisation scheme the number of officers of the superior service in the Military Accounts Department was reduced in spite of a growth in the volume of work, and it was necessary therefore that subordinate officers should possess sufficient energy to discharge efficiently their new responsibilities.

(*c*) Extensions have been given to subordinate officers in the Military Accounts Department in cases where it was found absolutely necessary to retain their services in the interests of the State.

LOSSES INCURRED BY M. A. DEPARTMENT OFFICERS ON RETIREMENT.

264. ***Dr. Nand Lal:** Is the Government of India aware that the Officers in the senior grade of the Subordinate Accounts Service of the Military Accounts Department who were working as temporary Deputy Examiners and who have been refused extension of service have suffered the following losses in consequence of the refusal of extension to them:

(*a*) Immediate loss of between Rs. 450 and 500 per month or between Rs. 5,400 and 6,000 per annum in income, as also of future increments of pay;

(*b*) Heavy loss of pay and pension due to loss of promotion to the grade of permanent Deputy Examiner (now Deputy Assistant Controller of Military Accounts)?

The Honourable Sir Basil Blackett: The refusal to grant an extension of service to an officer involves his being placed on the retired list and his income is necessarily reduced as compared to what he would have continued to draw had he remained on the effective list; but the reduction of his income is no reason for his retention in the service when such a course is opposed to the interests of the State.

DIFFERENTIAL TREATMENT ACCORDED TO RETIRING OFFICERS.

265. ***Dr. Nand Lal:** (*a*) Is the Government of India aware that the temporary Deputy Examiners in the Military Accounts Department who have been refused extension of service have received pension amounting to about Rs. 240 per mensem, but a large number of Accountants whose pensions, with reference to their permanent pay on 1st April, 1920, would have come to between Rs. 60 and 100 per mensem and who were far junior to the former and have been promoted to Rs. 500 per mensem with effect from that date will be entitled to a pension of Rs. 250 per mensem on completion of 3 years service on this pay?

(*b*) Is it a fact that some of the temporary Deputy Examiners of the Military Accounts Department, who on account of their superannuation were granted leave preparatory to retirement, were subsequently allowed to resume duty, granted extension of service and made permanent Deputy Examiners, thus allowing them the benefit of higher pay and pension and

the advantage of full average salary, whereas representations, even to His Excellency the Viceroy and Governor General of India, of other officers, similarly situated, for extension of service, were rejected?

(c) If the reply to question (b) be in the affirmative, will the Government of India be pleased to state the cause of differential treatment accorded to quite similarly situated officers of one and the same Department?

The Honourable Sir Basil Blackett: (a) Yes.

(b) Yes.

(c) In the few special cases officers have been retained in service after they had attained the age of 55 years in the interests of the public service.

PENSIONS CALCULATED ON INCREASE DUE TO DEARNESS OF LIVING.

266. ***Dr. Nand Lal:** (a) Is it a fact that increase of pay of clerical and Subordinate Accounts Service of the Military Accounts Department, sanctioned with effect from 1st April, 1920, was on account of dearness of food-stuffs and other necessaries of life and is it also a fact that this increase equally occasioned proportional increase in their pensions?

(b) If the reply to question (a) be in the affirmative, will the Government be pleased to state whether any increase was sanctioned for the holders of the appointment of permanent Superintendents who were equally affected as others in regard to pay and pension? If not, was there any special reason for this, beyond the abolition of the appointment, and was it taken into consideration that they would be worse off as regards pension, as compared with their juniors?

The Honourable Sir Basil Blackett: (a) The reply is in the affirmative.

(b) It was not considered necessary to raise the maximum pay of accountants in which category Superintendents in the Military Accounts Department were included.

PAY AND PENSION OF RETIRED OFFICERS IN M. A. DEPARTMENT.

267. ***Dr. Nand Lal:** Will the Government of India be pleased to place on the table a statement showing the following particulars in regard to the establishment of permanent accountants and Deputy Examiners (now Deputy Assistant Controller, Military Accounts) in all India, including those who have been made to retire from service since 1921:

(a) Their names.

(b) Rates of permanent pay they were in receipt of immediately prior to commencement of War in 1914.

(c) Rates of permanent pay, their promotion, if any, between August, 1914, and 1st April, 1920.

(d) Rates of their permanent pay fixed on 1st April, 1920, owing to revision of pay.

(e) Approximate rates of pension they would have been entitled to if they had retired on 31st March, 1920.

(f) Approximate rates of pension they would draw if they retire on 1st April, 1923?

The Honourable Sir Basil Blackett: The statement required by the Honourable Member will necessitate special compilation involving labour which would not be justified in the public interest.

EXPENDITURE ON WAZIRISTAN OPERATIONS.

268. ***Mr. P. L. Misra:** Will Government be pleased to lay on the table the following information:

(*a*) Expenditure incurred during the last three years (year by year) on the Waziristan operations;

(*b*) Loss of life as regards—

(1) British officers and soldiers,

(2) Indian officers and soldiers?

Mr. E. Burdon: (*a*) Prior to the year 1920-21, expenditure on the Military occupation of Waziristan was not distinguished in the accounts from expenditure on North-West Frontier operations generally. In 1920-21, the expenditure on Waziristan, including the Wana Column, amounted to approximately Rs. 14,40,00,000 and in 1921-22 to approximately Rs. 6,93,00,000.

(*b*) The information desired by the Honourable Member is being compiled and when it is ready I will communicate it to the Honourable Member.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): May I ask a Supplementary Question, Sir? Is it not a fact that His Excellency the Viceroy, Sir William Vincent and Mian Sir Muhammad Shafi went to the North-West Frontier Province after we had dispersed when the September Session was over in Simla to review the situation?

Mr. E. Burdon (Army Secretary): The answer is in the negative.

OFFICE ORDER BY MR. DEWAR, A. G., PUNJAB, *re* ABSENCES FROM OFFICE.

269. ***Mr. P. L. Misra:** (*a*) Is it a fact that Mr. D. Dewar, Accountant General, Punjab, has signed an office order in which it is stated that he is

> "Tired of having his hands forced by men who have sick wives and who cannot work just when they are wanted."
>
> "In future when employing new men we will take only those who sign a declaration requiring that in the event of their wives being ill it will not be an absolute necessity for them to absent themselves as they are able to make satisfactory arrangements for their being looked after while they are at office."
>
> "No one who is unconfirmed is to be confirmed unless he signs this declaration."

(*b*) Will Government be pleased to state if such order is warranted by any sanctioned authority?

(*c*) If not, do Government propose to have this order rescinded?

The Honourable Sir Basil Blackett: I understand that the facts are as stated in the first part of the question. Accountants General are entitled to use their discretion in the matter of the recruitment of their offices, but there are objections to laying down hard and fast rules of the kind in

question and the Auditor General is communicating with the Accountant General, Punjab, with a view to the reconsideration of the terms of the order.

Mr. N. M. Joshi: A supplementary question, Sir. Did Government enquire from this officer whether he himself will sign the declaration which he wants the other people to sign?

The Honourable Sir Basil Blackett: I trust the officer will do his duty in all circumstances.

Mr. S. C. Shahani: May I ask a supplementary question, Sir? Will Government be pleased to state if there are any European or Eurasian employés in the office of the Accountant General, Punjab?

The Honourable Sir Basil Blackett: I did not catch that question.

Mr. S. C. Shahani: Will Government be pleased to say if there are any European or Eurasian employés in the office of the Accountant General, Punjab?

The Honourable Sir Basil Blackett: That does not arise out of this question and obviously I shall require notice.

ABOLITION OF DIVISIONAL COMMISSIONERSHIPS.

270. ***Mr. P. L. Misra:** (*a*) Will Government be pleased to state if they have received any opinions from Local Governments on my resolution moved at the Delhi Session last year regarding the abolition of Divisional Commissionerships?

(*b*) If so, will Government be pleased to lay the same on the table?

The Honourable Sir Malcolm Hailey: (*a*) Opinions from all local Governments have not yet been received.

(*b*) Government do not propose at present to lay the correspondence on the table.

Mr. K. Ahmed: One supplementary question, Sir. Are the Government aware that the Retrenchment Committee in Bengal have abolished these appointments?

The Honourable Sir Malcolm Hailey: The Honourable Member has guessed right.

Mr. R. A. Spence: May I ask a supplementary question, Sir? Can Government give any information as to the loss of money caused by the waste of time of this House by the supplementary questions asked by my Honourable friend. . . . .

Mr. Deputy President: Order, order.

PERIOD FOR DISCUSSION OF BUDGET.

271. ***Mr. P. L. Misra:** Do the Government propose to allot full 15 days this year for the discussion of the budget in view of the fact that:

(*a*) The time allotted hitherto was inadequate to discuss the demands; and

(*b*) The shortness of the time also caused undue strain and inconvenience to the Members?

The Honourable Sir Basil Blackett: I may point out to the Honourable Member that it is the Governor General and not the Government who in the exercise of the powers conferred by rule 47 of the Indian Legislative Rules allots days for the discussion of demands for grants. The Government is not in a position to make any statement on the matter at present.

Mr. N. M. Joshi: May I ask a supplementary question, Sir? Will Government be pleased to approach the Governor General and inform him on behalf of this Assembly that the Members want more days for the discussion of the Budget?

The Honourable Sir Basil Blackett: The matter will be duly considered at the right time.

Mr. Harchandrai Vishindas: Has the Governor General determined the interval that should elapse between the presentation of the Financial Statement by the Honourable the Finance Member and the time to begin the discussion on the Budget?

Mr. Deputy President: Order, order. May I ask the Honourable Member to address the Chair?

Mr. Harchandrai Vishindas: I apologise, Sir.

May I ask a supplementary question? Is Government prepared to state what interval will be allowed by the Governor General in Council, under the rules between the presentation of the Financial Statement and the discussion on it by the Assembly?

The Honourable Sir Basil Blackett: I undertsand the actual dates have not yet been considered.

Mr. Harchandrai Vishindas: May I ask another question as to when those dates will be considered and information conveyed to the Assembly?

The Honourable Sir Basil Blackett: At the earliest convenient opportunity.

RENTS IN RAISINA.

272. ***Mr. W. M. Hussanally:** (*a*) Are there any rules for fixing rents on houses in Raisina? If not, what are the determining factors for fixing such rents?

(*b*) Is the value of land on which such houses stand and the compounds thereof taken into account?

(*c*) Is the total cost of the buildings, the fittings and the furniture taken into account in fixing such rents?

(*d*) What percentage is charged as interest upon total investment?

Colonel Sir Sydney Crookshank: (*a*) There are no rules special to Raisina. Rents are assessed in accordance with the principles enunciated in the Fundamental Rules, which govern the assessment of rents throughout India.

(*b*) Yes.

(*c*) Yes, but the hiring of furniture is optional and rent for it is quite separate from the rent of the building.

(*d*) The percentage charged on account of interest is 3½ per cent. in the case of buildings occupied for the first time prior to 19th June 1922, and 6 per cent. in the case of buildings occupied after that date.

The pooled percentages are as follows:—

I. *Officers' quarters.*

4½ per cent. (round) in the case of buildings and electric installation.

4¾ per cent. (round) in the case of special services.

3½ per cent. in the case of furniture.

II. *Quarters for ministerial establishment.*

4½ per cent. (round) in the case of buildings.

4 per cent. (round) in the case of electric installation and special services.

3½ per cent. in the case of furniture.

In this connection I would refer the Honourable Member to the reply given by me to a question by Munshi Iswar Saran, M.L.A., at a meeting of this Assembly on the 25th instant.

MUNICIPAL COMMITTEE IN RAISINA.

273. ***Mr. W. M. Hussanally:** (*a*) Is there any Municipal Committee in Raisina? If so, what are the sources of its revenue?

(*b*) What are its functions?

(*c*) How are its members chosen?

The Honourable Mr. A. C. Chatterjee: (*a*) Yes. Apart from a small income from miscellaneous fees and fines, the revenues of the Imperial Delhi Municipal Committee are chiefly derived from grants-in-aid made by the Chief Commissioner.

(*b*) The Committee performs the usual functions assigned to Municipalities by the Punjab Municipal Act. Owing to the paucity of its resources these are at present confined to education, sanitation, vaccination and the maintenance of cattle-pounds.

(*c*) The four members of the Committee are officials nominated by the Chief Commissioner.

ROADS, LIGHTING, ETC., IN RAISINA.

274. ***Mr. W. M. Hussanally:** (*a*) What is the total annual cost of (*i*) Estate office, (*ii*) maintenance of roads, lighting and drainage and other services in Raisina?

(*b*) Do tenants contribute towards the upkeep of the same?

Colonel Sir Sydney Crookshank: (*a*) The information is being collected and will be furnished as soon as possible.

(*b*) No, except through general taxation.

RENT OF HOSTELS IN RAISINA.

275. ***Mr. W. M. Hussanally:** (*a*) Have the rents of the rooms in the two Hostels for Members and the quarters at Windsor Place been recently

enhanced? If so, what were the reasons or circumstances justifying the enhancement?

(*b*) Have the rents of other houses been similarly revised? If not, why not?

Colonel Sir Sydney Crookshank: (*a*) A readjustment of the rents of the quarters for Members of the Indian Legislature was originally undertaken in compliance with the recommendations of an informal meeting of the House Committee, held on the 19th March, 1922, as a result of a few individual complaints which had been received by Government in the matter. In this connection the Honourable Member is referred to the reply given by me to a question by Mr. Beohar Raghubir Sinha, M.L.A., at a meeting of this Assembly on the 13th February, 1922. These rents had not been assessed in accordance with the principles enunciated in the Fundamental Rules, and a further revision was undertaken in common with a revision of the rents of all other accommodation in Raisina and Old Delhi. As a result there has been a general enhancement of rents.

(*b*) Yes, the rents of all other houses and quarters have been revised in accordance with the principles for assessment of rents laid down in the Fundamental Rules.

ALLOTMENT OF QUARTERS TO MEMBERS OF LEGISLATURE.

276. ***Mr. W. M. Hussanally:** (*a*) Is it a fact that allotment of rooms and quarters to Members of the Assembly for the current session, were made by ballot?

(*b*) Is it a fact that no such ballot was held for Members of the Council of State, but that they were given a preference? If so, for what reasons?

Sir Henry Moncrieff Smith: (*a*) The attention of the Honourable Member is invited to the second paragraph of Legislative Department Circular No. LXXXIV, dated the 18th December, 1922, issued to all Members from which it will be seen that the quarters at Windsor Place only were allotted to Members of the Legislative Assembly for the current session by ballot, the reason being that the number of applicants for these quarters far exceeded the number of quarters available.

(*b*) The Honourable Member will also see from the Circular referred to that Members of the Council of State were not allotted quarters by ballot but that those Members of the Council of State who had applied for quarters at Windsor Place and who could not be accommodated at Metcalfe House were allotted quarters there. The reason for this was that, whereas there was, after allowance had been made for those Members who as a matter of practice make their own arrangements, ample accommodation for Members of the Legislative Assembly, the accommodation in Metcalfe House for Members of the Council of State is inadequate.

OCCUPATION OF ROOMS IN HOSTELS.

277. ***Mr. W. M. Hussanally:** (*a*) Is it a fact that rooms in the two hostels are not much in demand by Members either of the Council of State or the Assembly?

(*b*) How many rooms are there in each of the two hostels; and how many in each have been occupied by Members for the current session?

(c) How many allotments have had to be cancelled in consequence of the Members declining the offer?

Sir Henry Moncrieff Smith: (a) It is a fact that some of the quarters in the two hostels are vacant each Session.

(b) There are 55 quarters in the Western Hostel and 44 quarters in the Eastern Hostel. So far 18 quarters in the Western Hostel and 25 quarters in the Eastern Hostel have been allotted to Members but as Members are still arriving in Delhi it is not possible to say how many quarters will eventually be occupied.

(c) Ten allotments of quarters made for the present Session have been cancelled, but in only three cases was the allotment cancelled because the Member concerned stated that the accommodation offered was not suitable for his requirements.

TREATMENT BY CANTONMENT MAGISTRATE, AMBALA, OF A PLEADER.

278. ***Mr. W. M. Hussanally:** (a) Has the attention of Government been drawn to an article in the *Cantonment Advocate* detailing the circumstances under which the Cantonment Magistrate at Ambala drove away a pleader from his Court? Are the facts given in that periodical correctly stated? If not, what are the correct facts?

(b) Is it a fact that the pleader in question has applied to the Punjab Government for sanction to take legal proceedings?

(c) Do the Government propose to take any action in the matter?

Mr. E. Burdon: (a) to (c) The Government of India have seen the article in question but have made no inquiry whether the facts have been correctly stated. The matter would be one which concerns primarily the Punjab Government to whom, as it appears from the Honourable Member's question, the complainant has already made application.

ALLEGATIONS OF CORRUPTION AGAINST CANTONMENT SUBORDINATES, AMBALA.

279. ***Mr. W. M. Hussanally:** (a) Is it a fact that the Government appointed only one Military officer to conduct the enquiry into allegations of corruption against some Cantonment subordinates at Ambala in the first instance; and subsequently on the representation of the Cantonment Association, Government agreed to appoint a second member if the Cantonment Committee agreed to pay his expenses?

(b) If so, is it a fact that the said Committee declined to bear the charge? If they did decline, for what reasons?

(c) Did the Association offer to bear the expenses? If so, did the Government accept the offer? If not, will Government be pleased to state its reasons?

(d) Is it a fact that in the event no second member was appointed?

(e) Is it a fact that the Association applied to the Punjab Government to grant a general pardon to all witnesses who appeared before the Committee of inquiry and gave evidence against the alleged delinquents?

(f) Is it a fact that the Punjab Government declined the prayer?

(g) Is it a fact that the proposed enquiry proved abortive in consequence?

(h) Do Government propose now to hold a departmental enquiry into the matter? If not, what do they propose to do?

Mr. E. Burdon: The facts are as follows:

(*a*) The Government of India appointed a senior officer of the Cantonment Magistrates' Department to inquire into the allegations in question. The local military authorities later suggested the appointment of a lawyer to assist the investigating officer in his enquiry.

(*b*) The Cantonment Committee declined to bear the expenses connected with the appointment of this lawyer. They considered that the expenses of the proposed enquiry should not be paid from the Cantonment Fund.

(*c*) So far as the Government of India are aware, the All-India Cantonments Association did not offer to bear the expenses in question. The Government of India themselves were prepared to accept the liability but in the end the investigating officer found that he did not require a special legal adviser.

(*d*) Yes.

(*e*) On the representation of the Association, such an application was made to the Punjab Government.

(*f*) The Punjab Government declined to grant immunity from prosecution except to witnesses in regard to whom there was good reason for believing that the bribes said to have been given by them, if given, were extorted by pressure.

(*g*) The enquiry failed to produce any immediate result as no one was prepared to give evidence in support of the charges of corruption.

(*h*) The matter is at present under consideration.

AUDIT OFFICERS IN RAILWAY SECRETARIAT.

280. ***Rai Bahadur G. C. Nag:** Is it a fact that there are at present no less than three officers of the Indian Audit Department on deputation in the Railway Secretariat and that one of them has been on deputation for over 18 years; if so, (*a*) what is the period of deputation fixed for each, (*b*) for what specific work has each been so deputed and (*c*) what deputation or other allowances each is paid in addition to his pay?

Mr. C. D. M. Hindley: The facts are as stated by the Honourable Member. There is no fixed period for these deputations. The three officers in question are employed as Secretary, Joint Secretary and Assistant Secretary in the Railway Board's Office and receive, in the case of the first two, the pay sanctioned for the posts and, in the case of the latter, the usual duty allowance of Rs. 250 per mensem given to all Assistant Secretaries drawing departmental rates of pay.

CATERING ARRANGEMENTS OF WESTERN HOSTEL, RAISINA.

281. ***Rai Bahadur G. C. Nag:** (*a*) Will the Government be pleased to state the terms on which the catering arrangements for the Western Hostel, Raisina, were made with the caterers for the years 1921 and 1922?

(*b*) Were they paid any compensation or contribution by Government to meet alleged losses in those years?

(*c*) Who were the caterers in those years and which department of Government made arrangements with them?

(*d*) What are the terms agreed upon for the current year and which Department of Government has made the arrangements?

Sir Henry Moncrieff Smith: (*a*) Copies of the agreements entered into with the caterers in 1921 and 1922 are placed on the table.

(*b*) In 1921 the caterers were paid a sum of Rs. 5,000 in full settlement of their claim for compensation for loss in catering for Members. No compensation was paid by Government to the caterers in 1922.

(*c*) Messrs. Bestoso and Alasia, Kashmir Gate, Delhi, were the caterers in 1921. Arrangements were made with them by the local Public Works Department. Messrs. Hoosain Buksh and Co., of the Elysium Hotel, Delhi, were the caterers in 1922. Arrangements were made with them by the Legislative Department of the Government of India after consulting the House Committee.

(*d*) A copy of the agreement entered into with the caterer by the Legislative Department of the Government of India for the current year is placed on the table.

AGREEMENT made the 6th day of January 1921 BETWEEN THE SECRETARY OF STATE FOR INDIA IN COUNCIL (hereinafter called the Government) of the one part and Mr. NICOLA AZZOLLINI, Manager of Bestoso and Alasia, Kashmere Gate, Delhi (hereinafter called the caterers) of the other part.

WHEREAS the Government have appointed the said Mr. Nicola Azzollini, Manager of Bestoso and Alasia, Kashmere Gate, Delhi, to act as caterers at the Western Hostel and Chummeries for officers in New Delhi and whereas the caterers have accepted and are willing to act as such.

NOW IT IS HEREBY AGREED between the parties hereto as follows:—

(1) That in every part of this instrument the terms "The Secretary of State for India in Council" and the "Government" shall be deemed to include the Secretary of State for India in Council, his successors and assigns and the term "the Government" shall be deemed to include also every person duly authorized by the Chief Commissioner of Delhi to act for or to represent the Secretary of State for India in Council in relation to any matter or thing contained in or arising out of this contract.

(2) That the caterers will not unless with the consent of the Government obtained beforehand, in writing, make any sub-contract for the execution of the works hereby contracted for, or any part thereof nor unless with such consent as aforesaid, assign or underlet this present contract.

(3) That this contract shall remain in force for the season 1920-21.

(4) That the caterers shall supply meals to the residents of the Hostel and Chummeries during the period of the Legislative Session at Delhi.

(5) That the caterers shall supply meals on a standard not inferior to the specimen menus given in Schedule A at Rs. 5-8-0 per head per diem as described in Schedule B. The said schedules are annexed hereto and are signed by the parties to this contract the said schedule forming part of the conditions of this contract.

Provided that wines, spirits and mineral waters will be supplied at prices to be determined by the Chief Commissioner of Delhi whose decision shall be final between the parties to this contract.

(6) (*a*) That the catering service and table equipment shall be in all respects up to the standard of a first class hotel and that the caterers shall maintain a staff of table servants in the proportion of not less than one servant to four residents.

(6) (*b*) The caterers will either look after the arrangements personally (one of the principals) or will be represented by an European resident manager approved by the Estate Officer, Delhi.

(7) That the caterers will provide fires, free of cost in the public rooms and will arrange to provide bath water and fuel at the rates entered in the Schedule B aforesaid.

(8) (*a*) That the Government will provide the caterers with free accommodation but that the caterers shall pay hire for any furniture placed therein for the use of the said caterers at the same rates as Government officers pay for hire of the furniture provided to them by the Government, and the amount due on account of such hire shall be payable at the end of the month for which it is due. Government is however under no obligation to provide furniture should there be none to spare.

(8) (*b*) The caterers will be responsible for the Government furniture in the Dining rooms and service rooms and for keeping these rooms clean and orderly.

(9) That in the event of any dispute arising between the Government and the caterers as to the fulfilment of all or any of the conditions of this contract or as to any matter or thing anywise connected therewith, the said dispute shall be referred for the decision of the Chief Commissioner of Delhi whose decision shall be final and conclusive between the parties to this contract.

(10) That should caterers commit breach of any of the above conditions, the Government will be at liberty to cancel this contract forthwith without payment of any compensation whatsoever. Provided also that the caterers shall be liable to pay to the Government damages for inconvenience caused to the Government on account of the change of the caterers.

IN WITNESS WHEREOF the said parties have hereunto subscribed their names at Delhi on the dates hereinafter mentioned respectively.

Signed for and on behalf of the Secretary of State for India in Council by on the day of 1921. } (Sd.) A. M. ROUSE, *Superintending Engineer, 2nd Circle.*

Signed by the said on the day of 1921, in the presence of } (Sd.) NICOLA AZZOLLINI, Bestoso and Alasia.

(1) (Sd.) A. H. FAWKES.

(2) (Sd.) F. D. INNIS.

Witnesses.

SCHEDULE A.

Chota Hazri.

Tea and coffee. | Toast and butter. Fruit.

Breakfast.

Porridge or similar dish. Fish. One grill. One dish of eggs. | Currey or dal and rice. Tea, coffee, or cocoa. Preserves. Fruit.

Lunch.

Soup. One hot dish. One cold dish. | Salad. Pudding. Cheese and biscuits. Coffee.

Tea.

Tea. | One plateful of bread and butter and cake.

Dinner.

Soup. Fish. Entre. Joint with vegetables. | Pudding. Savoury. Dessert. Coffee.

Ices on occasion, twice weekly.

(Sd.) NICOLA AZZOLLINI, Bestoso and Alasia.

(Sd.) A. M. ROUSE, *Superintending Engineer, 2nd Circle.*

SCHEDULE B.

1. Daily rate Rs. 5-8-0 per head.

This covers the ordinary meals, special teas or special dishes at dinner will be the subject of special arrangements.

2. If meals, (*i.e.*, breakfast, lunch or dinner) are served in rooms, there will be an extra charge of 4 annas a meal except in the case of illness when no charge will be made, in which case the residents must send their own servants for the meals.

Meals if taken to rooms will only be served half an hour before or after the times fixed for regular meals.

3. Hot water—Two annas a four gallon tin. Fuel (coal or wood) at market rates.

4. The caterers will issue to residents such glass, crockery, cutlery, etc., as may be required in their rooms and the residents will be required to give a receipt for the same, which will be returned when the equipment is returned to the caterers.

5. Hours of meals are as follows:

Breakfast	...	8-30 to 9-30	A.M.
Lunch	...	1-30 to 2-30	P.M.
Dinner	...	8 to 9	P.M.

(Sd.) NICOLA AZZOLLINI,

Bestoso and Alasia.

(Sd.) A. M. ROUSE,

Superintending Engineer, 2nd Circle.

26th January 1921.

AGREEMENT made the nineteenth day of December, 1921, BETWEEN THE SECRETARY OF STATE FOR INDIA IN COUNCIL (hereinafter called the Government) of the one part and HOOSAIN BUKSH trading as and proprietor of the firm of Messrs. Hoosain Buksh and Company of the Elysium Hotel, 2 Underhill Road, Delhi, Hotel Proprietors, Caterers and general merchants (hereinafter called the caterers which expression shall where the context so admits includes his personal representatives and permitted assigns) of the other part.

WHEREAS the Government have appointed the Caterers to act as caterers at the Western Hostel for officers in New Delhi, on the terms and conditions hereinafter mentioned and the Caterers have accepted and are willing to act as such.

NOW IT IS HEREBY AGREED between the parties hereto as follows:

(1) That in every part of this instrument the terms "The Secretary of State for India in Council" and the "Government" shall be deemed to include the Secretary of State for India in Council, his successors and assigns and the term "the Government" shall be deemed to include also every person duly authorised by the Secretary to the Government of India in the Legislative Department to act for or to represent the Secretary of State for India in Council in relation to any matter or thing contained in or arising out of this contract.

(2) That the caterers will not unless with the consent of the Government obtained beforehand, in writing, make any sub-contract for the execution of the works hereby contracted for, or any part thereof nor unless with such consent as aforesaid, assign or underlet this present contract.

(3) That this contract shall remain in force from 7 days before the opening of the Winter Session of the Indian Legislature till 7 days after the closing thereof both days inclusive unless previously terminated as hereinafter provided (hereinafter called the said period).

(4) That the caterers shall during the said period supply messing and all necessary attendance kitchen table requirements, etc., of any kind for the residents of and authorised visitors to the Hostel who shall require messing at the scale and charges hereinafter mentioned.

(5) That the caterers shall supply meals on a standard not inferior to or less than the specimen menus given in Schedule A at the charges given in Schedule B. (The

said schedules are annexed hereto and are signed by the parties to this contract the said schedules forming part of the conditions of this contract) PROVIDED that wines, spirits and mineral waters will be supplied in sufficient quantity and of the best quality at prices to be determined by the Government of India in the Legislative Department whose decision shall be final between the parties to this contract.

(6) (*a*) All food and drink to be obtained from reliable sources and that the catering service and table equipment shall be in all respects up to the standard of a first class hotel to the satisfaction of Government and that the caterers shall maintain a staff of table servants in the proportion of not less than one servant to four residents dismissing any if so required by Government and seeing that they are properly and cleanly clad.

(6) (*b*) The caterers will either look after the arrangements personally or will be represented by an European resident manager approved by the Government of India in the Legislative Department.

(7) That the caterers will provide fires, free of cost in the Public rooms and will arrange to provide hot bath water as in Schedule B and fuel at the local market rates.

(8) (*a*) That the Government will provide the caterers' manager with free accommodation but that the caterers shall pay hire for any furniture placed therein for the use of the said caterers at the same rates as Government Officers pay for hire of the furniture provided to them by the Government, and the amount due on account of such hire shall be payable at the end of the month for which it is due. Government is, however, under no obligation to provide furniture should there be none to spare.

(8) (*b*) The caterers will be responsible for the Government furniture, etc., in the dining rooms and service rooms and for keeping these rooms clean and orderly.

(8) (*c*) Government give no guarantee as to the number that will require messing and take no responsibility for the accounts of those requiring messing nor for any stores, etc., the caterers may bring on the premises.

(9) That in the event of any dispute arising between the Government and the caterers as to the fulfilment of all or any of the conditions of this contract or as to any matter or thing in anywise connected therewith the said dispute shall be referred for the decision of the Secretary, Legislative Department, Government of India, whose decision shall be final and conclusive.

(10) That should caterers commit any breach or fail to observe any condition of this contract Government shall be at liberty to forthwith cancel the contract and make other arrangements at the expense and risk of the caterers without prejudice to recovery of any other damages they may suffer.

SCHEDULE A.

Chota Hazri.

Tea and coffee.
Toast and butter.
Fruit. (Including apples if specially asked for by any resident).

Breakfast.

Porridge or similar dish (with cream).
Fish (Sea fish at least twice a week if obtainable).
One grill.
One dish of eggs and bacon.
Curry or dal and rice.
Tea, coffee or cocoa.
Preserves (English).
Fruit.

Lunch.

Soup.
One hot dish.
One cold dish (chicken, ham and tongue on Wednesday and Saturday).
Salad.
Pudding (with cream and sauce alternately).
Cheese and biscuits.
Coffee.

Tea.

Tea
One plateful of bread and butter or toast and cake.

Dinner.

Soup.
Fish (Sea fish twice a week if obtainable).
Entre.
Joint with vegetables.
Pudding (with cream and sauce alternately).
Savoury (Asparagus twice a week).
Dessert.
Sweets.
Coffee.
Ices twice weekly.

Condiments, fresh drinking water, toast and small fresh rolls to be available at every meal.

THE SCHEDULE ABOVE REFERRED TO.

1. Daily rate Rs. 6 per head or a married couple Rs. 11 provided that any one who resides at the hostel for at least one month the charge shall be at the rate of Rs. 5-4 a day or in the case of married couple Rs. 10. This covers the ordinary meals that are specified in Schedule A. Special teas or dishes at dinner will be subject to special arrangements between the person ordering the same and caterers.

	Rs.	A.
Children under one year		*Nil.*
,, between one and three	1	8
,, between three and six	2	0
,, between six and twelve	3	8
,, over twelve	5	0
European servant	4	8
Non-resident guests—		
Breakfast	1	8
Lunch	2	0
Tea (without cake)	0	8
Tea with cake	0	12
Dinner	3	8

If meals (*i.e.*, breakfast, lunch or dinner) are served in rooms, there will be an extra charge of 4 annas a meal except in the case of illness when no charge will be made, in which case the residents must send their own servants for the meals.

Meals if taken to rooms will only be served half an hour before or after the times fixed for regular meals.

3. Hot water—Two annas a four gallon tin. Fuel (coal or wood) at market rates.

4. The caterers will issue to residents such glass, crockery, cutlery, etc., as may be required in their rooms and the residents will be required to give a receipt for the same, which will be returned when the equipment is returned to the caterers.

5. Hours of meals are as follows :

Breakfast	..	...	...	...	8-30 to 9-30	A.M.
Lunch	...	...	...	...	1-30 to 2-30	P.M.
Dinner	...	...	...	...	8-0 to 9-0	P.M.

IN WITNESS WHEREOF the parties have hereunto set their hands the day and year first before written.

(Sd.) HOOSAIN BUKSH & CO.

Signature of the said Hoosain Buksh

(Sd.) N. AZZOLLINI,

Witness to signature of Hoosain Buksh.

Manager, Elysium Hotel.

Signed by the Secretary, Legislative Department, Government of India for and on behalf of the Secretary of State for India in Council in the presence of } (Sd.) H. MONCRIEFF SMITH.

(Sd.) W. T. M. WRIGHT,
Legislative Department.

AGREEMENT made the twenty-third day of December one thousand nine hundred and twenty-two BETWEEN THE SECRETARY OF STATE FOR INDIA IN COUNCIL (hereinafter called the Government) of the one part and BENJAMIN PAUL of Nowshera, (hereinafter called the caterer which expression shall where the context so admits include his personal representatives and permitted assigns) of the other part.

WHEREAS the Government have appointed the Caterer to act as caterer at the Western Hostel for officers in New Delhi on the terms and conditions hereinafter mentioned and the Caterer has accepted and is willing to act as such.

NOW IT IS HEREBY AGREED between the parties hereto as follows :

(1) That in every part of this instrument the terms "The Secretary of State for India in Council" and the "Government" shall be deemed to include the Secretary of State for India in Council, his successors and assigns and the term "the Government" shall be deemed to include also every person duly authorised by the Secretary to the Government of India in the Legislative Department to act for or to represent the Secretary of State for India in Council in relation to any matter or thing contained in or arising out of this contract.

(2) That the caterer will not unless with the consent of the Government obtained beforehand, in writing, make any sub-contract for the execution of the works hereby contracted for, or any part thereof nor unless with such consent as aforesaid, assign or underlet this present contract.

(3) That this contract shall remain in force from seven days before the opening of the Winter Session of the Indian Legislature till seven days after the closing thereof both days inclusive unless previously terminated as hereinafter provided (hereinafter called the said period).

(4) That the caterer shall during the said period supply messing and all necessary attendance kitchen table requirements, etc., of any kind for the residents of and authorised visitors to the Hostel who shall require messing at the scale and charges hereinafter mentioned.

(5) That the caterer shall supply meals on a standard not inferior to or less than the specimen menus given in Schedule A at the charges given in Schedule B (the said Schedules are annexed hereto and are signed by the parties to this contract the said Schedules form part of the conditions of this contract) PROVIDED that wines, spirits and mineral waters will be supplied in sufficient quantity and of the best quality at prices to be determined by the Government of India in the Legislative Department whose decision shall be final between the parties to this contract.

(6) (*a*) All food and drink to be obtained from reliable sources and that the catering service and table equipment shall be in all respects up to the standard of a first class hotel to the satisfaction of Government and that the caterer shall maintain a staff of table servants in the proportion of not less than one servant to four residents dismissing any if so required by Government and seeing that they are properly and cleanly clad.

(6) (*b*) The caterer will either look after the arrangements personally and reside on the premises or will be represented by an European resident manager approved by the Government of India in the Legislative Department.

(7) That the caterer will provide fires, free of cost in the public rooms and will arrange to provide hot bath water as in Schedule B and fuel at the local market rates.

(8) (*a*) That the Government will provide the caterer or his manager as the case may be with free accommodation but that the caterer shall pay hire for any furniture placed therein for the use of the said caterer at the same rates as Government officers pay for hire of the furniture provided to them by the Government, and the amount due on account of such hire shall be payable at the end of the month for which it is due. Government is, however, under no obligation to provide furniture should there be none to spare.

(*b*) The caterer will be responsible for the Government furniture, etc., in the dining rooms and service rooms and for keeping these rooms clean and orderly.

(*c*) Government give no guarantee as to the number that will require messing and take no responsibility for the accounts of those requiring messing nor for any stores, etc., the caterer may bring on the premises.

(9) That in the event of any dispute arising between the Government and the caterer as to the fulfilment of all or any of the conditions of this contract or as to any matter or thing in anywise connected therewith the said dispute shall be referred for the decision of the Secretary, Legislative Department, Government of India, whose decision shall be final and conclusive.

(10) That should caterer commit any breach or fail to perform or observe any condition of this contract Government shall be at liberty to forthwith cancel the contract and make other arrangements at the expense and risk of the caterer without prejudice to recovery of any other damages they may suffer.

THE SCHEDULE 'A' ABOVE REFERRED TO.

Chota Hazri.

Tea and coffee.
Toast and butter.
Fruit (including apples if specially asked for by any resident).

Breakfast.

Porridge or similar dish (with cream).
Fish (Sea fish at least twice a week if obtainable).
One grill.
One dish of eggs and bacon.
Curry or dal and rice.
Tea, coffee or cocoa.
Preserves (English).
Fruit.

Lunch.

Soup.
One hot dish.
One cold dish (chicken, ham and tongue on Wednesday and Saturday).
Salad.
Pudding (with cream and sauce alternately).
Cheese and biscuits.
Coffee.

Tea.

Tea.
One plateful of bread and butter or toast and cake.

Dinner.

Soup.
Fish (Sea fish twice a week if obtainable).
Entre.
Joint with vegetables.
Pudding (with cream and sauce alternately).
Savoury (asparagus twice a week).
Dessert.
Sweets.
Coffee.
Ices twice weekly.

Condiment, fresh drinking water, toast and small fresh rolls to be available at every meal.

THE SCHEDULE 'R' ABOVE REFERRED TO.

1. Daily rate rupees six annas eight per head or a married couple rupees twelve. This covers the ordinary meals that are specified in Schedule A—special teas or dishes at dinner will be subject to special arrangements between the person ordering the same and caterer.

Children under one year	*Nil.*
,, between one and three	1 8
,, between three and six	2 0
,, between six and twelve	3 8
,, over twelve	5 0
European servant	4 8

Non-resident guests.

Breakfast	1 8
Lunch	2 0
Tea (without cake)	0 8
Tea with cake	0 12
Dinner	3 8

2. If meals (*i.e.*, breakfast, lunch or dinner) are served in rooms, there will be an extra charge of four annas a meal except in the case of illness when no charge will be made, in which case the residents must send their own servants for the meals.

Meals if taken to rooms will only be served half an hour before or after the times fixed for regular meals.

3. Hot water will be supplied by the caterer on demand at two annas a four gallon tin and fuel (coal or wood) at market rates.

4. The caterer will issue to residents such glass, crockery cutlery, etc., as may be required in their rooms and the residents will be required to give a receipt for the same, which will be returned when the equipment is returned to the caterer.

5. Hours of meals are as follows :

Breakfast	8-30 to 9-30 A.M.
Lunch	1-30 to 2-30 P.M.
Dinner	8-0 to 9-0 P.M.

IN WITNESS WHEREOF the Honourable Mr. H. Moncriff Smith, C.I.E., I.C.S., Secretary to the Government of India in the Legislative Department on behalf of the Secretary of State for India in Council has set his hand and the said Benjamin Paul has hereunto subscribed his name at the day and year first before written.

SIGNED by the said Honourable Mr. H. Moncrieff Smith Secretary to the Government of India in the Legislative Department on behalf of the Secretary of State for India in Council in the presence of } (Sd.) H. MONCRIEFF SMITH.

B. M. P. COELLO,
Superintendent, Legislative Department, Government of India.

SIGNED by the said Benjamin Paul caterer in the presence of } (Sd.) B. PAUL, *Caterer.*

S. WEBB-JOHNSON,
Officiating Solicitor to the Government of India, Delhi.

UNSTARRED QUESTION AND ANSWER.

MESTON COMMITTEE'S REPORT.

111. **Rai Bahadur G. C. Nag:** Will Government be pleased to lay on the table a copy of the Meston Committee's report dated 2nd December 1908 and of the Government of India, Home Department Resolution No. 52-61 (Establishments), dated 21st January 1910?

The Honourable Sir Malcolm Hailey: The Report and the Resolution are not published documents, but I will give the Honourable Member copies.

MOTION FOR ADJOURNMENT.

Mr. Chairman: I have received notice of the following motion from the Honourable Munshi Iswar Saran:

"I beg to inform you that I desire to move the adjournment of the House, on Friday, the 26th of January next, for the purpose of discussing a definite matter of urgent public importance, namely, the situation created by the Despatch of the Secretary of State regarding the Resolution adopted by the Legislative Assembly in September 1921 regarding the re-examination and revision of the constitution at an earlier date than 1929."

Under Standing Order No. 21 at page 14 the matter must be a definite matter of urgent public importance. Having regard to the nature of the subject and the procrastination which has taken place already, I decide it is not a matter of urgent public importance and therefore I cannot allow Munshi Iswar Saran to make that motion.

There are two other motions received—one from the Honourable Dr. Gour and the other from the Honourable Mr. Seshagiri Ayyar. I wish to know from Dr. Gour whether he does not consider his motion covered by the Resolution of which I have given notice already.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I have adverted to the Resolution of which you gave notice and the *ipsissima verba* of which are now before me. The Resolution of which you gave notice, Sir, ran as follows:

"This Assembly recommends to the Governor General in Council that he may be pleased to move the Secretary of State for India to suspend the proposed appointment of a Royal Commission on the conditions and alleged grievances of the All-India Services and that the Government of India be pleased to undertake such inquiry with a view to meet legitimate grievances and limit outside recruitment, and, pending such inquiry and report, recruitment outside India to those Services be limited to the bare minimum proportion of the annual requirements."

This Resolution was tabled by you, Sir, before the appointment of a Royal Commission and it is for that reason that the Resolution is worded to the effect that the Government of India should suspend the proposed appointment of a Royal Commission. The announcement made by the Honourable the Home Member yesterday has settled, so far as this Resolution is concerned, its fate. It is no longer a proposal to appoint a Commission for that is a *fait accompli*, and my motion yesterday to the Chair, followed by a written request addressed to the Chair and to the Secretary, is to protest against not a proposal to appoint a Royal Commission but against the appointment made of a Royal Commission. I therefore submit that there is no Resolution before this House which blocks my motion for leave to grant me an adjournment. I therefore submit, Sir, that my motion is in order.

The Honourable Sir Malcolm Hailey (Home Member): May I say, Sir, on behalf of Government that we regard this as a matter entirely for your discretion and on which we do not wish to argue.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): May I say a word, Sir. If for any reason, having regard to the language used by my Honourable friend, Dr. Gour, his motion is considered as contravening Order 11, Rule 4, I submit, Sir, that, so far as my motion is concerned, that difficulty will not arise. The language of my letter to the Secretary is this:

"I have been asked by the Democratic Party to move the adjournment of the Assembly to-morrow to discuss the announcement made by the Honourable the Home Member on the subject of the appointment of a Royal Commission to inquire into the financial and other conditions of the higher services in India . . . ."

It is as regards the announcement made yesterday that I have given notice of this motion. The Resolution, Sir, to which you referred contemplated the possibility of the appointment of a Commission. Here, a Commission has apparently been resolved upon, and it is only the names that have to be filled in. It is that announcement that I want to discuss. Under these circumstances, my motion cannot be affected by the Resolution of which you as a Member of this House, had given notice previously.

Dr. H. S. Gour: May I, Sir, just point out that my learned friend's motion protests against the announcement. My motion protests against the appointment, and I therefore submit that my motion is not only strictly in order but is in full conformity with constitutional practice, and there is absolutely nothing in the language of my notice which contravenes either the letter or the spirit of any rule published in this Manual.

Mr. Chairman: It is with some hesitation that I give my ruling on this matter. I consider Dr. Gour's motion somewhat offending against the rules as it is too general and makes no reference to the decision announced and I consider Mr. Seshagiri Ayyar's motion in order as it relates to the decision recently announced about which no notice has been given. I therefore rule that Mr. Seshagiri Ayyar's motion is in order.

Mr. T. V. Seshagiri Ayyar: Then, Sir, I ask for leave of the House to allow me to move the adjournment of this House in order to consider the announcement made by the Honourable the Home Member yesterday.

Mr. Chairman: May I ask whether the Honourable Member has leave of the Assembly to move the adjournment? Unless any Member objects there is no need to stand. I will read out the motion to the House:

"For leave to make a motion for adjournment of the business of the Assembly for the purpose of discussing a definite matter of urgent public importance, namely, the decision of His Majesty's Government to appoint a Royal Commission on the Services in India."

(No Member objecting) leave is granted and the motion will be taken up at 4 P.M. to-day or at an earlier hour with the consent of the Honourable Member in charge if our business terminates earlier. The House will now proceed to consider the Bill further to amend the Code of Criminal Procedure, 1898.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, the amendment that I propose runs as follows:

"In clause 27 insert the following at the end of sub-clause (*i*):

'and in the first proviso for the words 'such order' the words 'such report or information' shall be substituted'."

It is really very short but it relates to a very long section. I am afraid there will be some difficulty in drawing the Honourable Members' attention to my point and I think I shall have to trouble them with section 145. The section is a very long one and contains about seven clauses and two provisos, if the present amendment is allowed it will contain about nine clauses. Section 145 contemplates that whenever a District Magistrate, Sub-divisional Magistrate, or other Magistrate of the first class is satisfied, from a police report or other information, that there is a dispute likely to cause a breach of the peace, he will issue certain proceedings, call upon the parties and declare possession of a party until any of the parties has obtained the decision of a proper civil Court. There you will find after clause (4) there are two provisos. The first proviso is:

"Provided that, if it appears to the Magistrate that any party has, within two months next before the date of such order, been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date."

My amendment relates to this proviso. This proviso contemplates that if the Magistrate finds that a party had been dispossessed two months before the date of the order, which is called the preliminary orders served upon the parties, then the Magistrate will decide the actual possession to be with that party and declare possession to that party. Several cases have arisen where actually between the date the Magistrate issued the preliminary order and the actual dispossession took place, it was about more than two months, or three months or two months and fifteen days, or sometimes there was some difficulty to prove actual possession exactly just before two months. In these cases the Magistrates have always committed an error and have declared possession of the party whom they considered to be in possession at the date of the order and within two months. This has really placed rather a premium on high-handedness and taking forcible possession by some party. I shall illustrate this. Now, Honourable Members many of them have left their homes and have come here and I think will continue to be here from January till the end of March. As soon as I came away say, somebody, my neighbour, trespasses upon my land and perhaps my servant is not able to protest or to bring evidence enough to induce the police or the Magistrate to issue a preliminary order asking the parties to lay their claims about possession. After my return, say, after three months, I find that really my land has been trespassed on. Then I go on my land and the other party comes and a sort of a breach of the peace is apprehended. Then a report is made and the Magistrate issues an order. By that date, by the date the Magistrate issues the preliminary order, as I was absent, the possession had been taken by the other party before three months. The law lays down that the Magistrate will take evidence about the fact of actual possession and this proviso says:

"Provided that, if it appears to the Magistrate that any party has, within two months next before the date of such order . . . . ."

[Mr. B. N. Misra.]

My point is this. He issues the preliminary order three months after and evidence is taken. He finds that the opposite party, my opponent, has been in possession for three months from the date of the order I am referring to, although some information was given by my servant or some report was made and the Magistrate did not make up his mind to issue the order earlier. It happens in many cases that whenever there is some trespass accompanied by any violence, cases are filed for trespass or for hurt and the Magistrates generally make it a point to await the result of such cases, then go through those records and issue a preliminary order. In such a case also, 3 or 4 months elapse before the actual dispossession and the Magistrate's preliminary order. Strictly speaking, it was practically a delay due to a certain procedure and not due to the party, who was dispossessed, putting forth his case after some delay. If this proviso is allowed to stand, it really does not give power to the Magistrate to go beyond the two months. Unfortunately the Magistrates regard this provision to be a two months' limitation. It is an advice given by the Legislature that they would not go beyond two months. If they find that a man was dispossessed beyond two months from the date of the preliminary order, then he must go to a Civil Court and the Magistrate actually puts in possession the party whom he finds in possession on the date of the order. Really it is doing harm to a man who has been dispossessed wrongfully and it is assisting the highhanded and the oppressive aggressor who had somehow or other taken possession and it may be even without the knowledge of the owner in some cases. There are several cases in the Allahabad Law Journal and in Indian Cases, specially in 19 Indian Cases. I would have read that last case but unfortunately I am told the Legislative Assembly Library has not got that book. It is still at Simla. Therefore I cannot procure the book. In that case it so happened that there were two zamindars. One party was practically absent and the other party tried to collect rent and there was a sort of disturbance and one Magistrate came and told the parties without issuing a formal order not to create a disturbance and so on. They kept quiet for some time and then the situation became rather serious and the parties began fighting. By that time actually four months had passed and then the Magistrate issued a preliminary order in writing. It was contended that as the opposite party was in possession for four months prior to the date of the order, the Magistrate had no power to put that party in possession because we find in the proviso that the Magistrate can put him in possession under section 145 if he finds that the man was dispossessed only within two months. Really this wording gives very often sanction to violence and aggression of one party and if somehow or other a party can manage to get the two months to pass away from the date of dispossession to the date of the preliminary order, the Magistrate finds that he is unable to put the party who was wrongfully dispossessed, in possession. Therefore I have brought in this amendment that instead of ' such order ' the words " such report or information " shall be substituted. Take the case of a man who knows the law and he says ' If I somehow or other can manage to be in possession for two months, the Magistrate cannot dispossess me and the other party will be driven to a civil suit ' and we know the difficulties of going to a civil court and the expense to be incurred and the long delay to be incurred. Suppose a man wants to buy a piece of land from a man who has encroached on it and the man has somehow or other kept his possession concealed and the other party does not know it. He comes to know after some time and then both parties fight and there

is a dispute. In such a case the report is made but so far as actual possession is concerned, the wrong doer has been already in possession for four months and this entitles the Magistrate to declare actual possession under 145. My submission therefore is that we should give speedy remedy and if the Magistrate finds that if really a man has been wrongfully dispossessed, then he should put that party in possession. The two months criterion should not come in here and the two months should count only from the date on which the information was given or the report was sent. Sometimes mischief is made in the Magistrate's office. Sometimes a man knows that such a report has been made by the police. Somehow or other the record is kept concealed from the Magistrate and the two months pass away. Then the Magistrate sees the record and he issues a preliminary order as is contemplated and then practically the Magistrate has no power under this proviso to put that party in possession. Under these circumstances the two months criterion works as a hardship and causes failure of justice and the object of the section fails. So the words " such report or information " should be substituted for the words " such order." I therefore move:

" That in clause 27, at the end of sub-clause (i) and in the first proviso for the words ' such order ' the words ' such report or information ' shall be substituted '."

Sir Henry Moncrieff Smith (Secretary, Legislative Department): I think this House will be prepared to admit that it is the duty of the House as a whole to examine with great care every amendment that is proposed to be made in the law and particularly is that obligation laid on a Member for the examination of an individual amendment for which he is responsible. When I received notice of this amendment I doubted whether Mr. Misra had considered the effect of his proposal on the law as it stands. After listening to his remarks in support of his motion, I am certain that he has not considered it. I shall now try to explain to the House what the effect will be. The case Mr. Misra contemplates is a case where the Magistrate has been satisfied that a dispute regarding land exists, which is likely to cause a breach of the peace. He has called on the parties to put in their claims regarding possession of the property. Then, when they appear, without reference to claims as to title, he examines their claims as to actual possession on the date of the order. I want the House to bear that carefully in mind. He has to ascertain which party was in possession on the date of his order. That is the law as we have now got it. These three sub-sections (1), (2) and (3) are already on the Statute Book and Mr. Misra does not propose to amend the first part of (4). Therefore the Magistrate is setting out to find out who is actually in possession on the date of his order. Now Mr. Misra comes in and proposes an amendment in the proviso to the effect that if the Magistrate finds that there has been wrongful and forcible dispossession within two months before the date of the information, then he may presume that the party wrongfully dispossessed was in possession on the date of the information. Now, is that going to help the issue at all? What the law lays down is that the Magistrate has to find out the fact of actual possession on the date of his order and any presumption as to possession on the date on which he received information will not enable him to decide the case or issue any order whatever. I suggest a case to the Honourable Member. Suppose that there has not been any forcible dispossession before the date of the information, but after the Magistrate gets information, and before he issues an order one party goes on the land and forcibly dispossesses the other. There

[Sir Henry Moncrieff Smith.]

will be no presumption in that case at all. The dispossession was not previous to the date of the information and though it was previous to the date of the order the Magistrate has to find that the party who had forcibly occupied the land had actual possession on the date of the order and has to confirm him in his possession until the Civil Court ousts him. I think if Mr. Misra had considered the effect of his amendment, he would have saved the time of this House by not moving it.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): Sir, I do not think Mr. Misra's amendment is so very unreasonable as Sir Henry Moncrieff Smith's remarks would lead one to believe. I think it is really a good amendment, and I beg to support it. This section relates to disputes about immoveable property in regard to which there is an apprehension that there would be an immediate breach of the peace unless the Magistrate intervenes. Now all that the Magistrate has to find out in this case is, who was in peaceful possession of the property in dispute at a particular time, and he has to keep him in possession of that property until he is evicted by an order of a competent Civil Court. Proviso 1 says that if there is evidence to show that one of the parties who claims possession of the property had been forcibly dispossessed of it within two months immediately preceding the date of the preliminary order the Magistrate may treat the party so dispossessed as if he had been in possession at such date for the purpose of this section. What Mr. Misra proposes is that if the party who had been forcibly dispossessed of the property within two months immediately preceding, not the preliminary order issued by the Magistrate but immediately preceding the complaint made by the party dispossessed the Court should find that he was in peaceful possession either to the police or to the Magistrate, I will quote a probable case. Suppose there is a dispute about a piece of immoveable property between two parties. Suppose that one of the parties which had been in peaceful possession of the property has been wrongfully dispossessed of it. Suppose that that party complains to the Magistrate, and suppose the Magistrate does not feel justified in issuing a preliminary order simply on the strength of that complaint, but sends the complaint to the police for investigation and report. I quote this as a hypothetical case but it is the sort of case which very commonly happens. Suppose the complaint is sent to the police for report. The police take their own time over the matter and then send up the report. Suppose thereupon the Magistrate makes up his mind and issues a preliminary order; and by the time the Magistrate issues the preliminary order, it happens that the dispossession becomes more than two months old. Therefore, the Magistrate cannot give possession to the man that was dispossessed. But the delay in the issue of the preliminary order was not due to the party which had been dispossessed but to the Magistrate or, it may be, due to the police. Why should the party which has been forcibly dispossessed be prejudiced by the delay on the part of the police or on the part of the Magistrate in issuing the preliminary order? What is there sacred about the date of the preliminary order? The law says, if a man has been dispossessed within two months immediately preceding the issue of the preliminary order, he shall be considered to have been in peaceful possession of the property. But why should he not if he comes to the Court within two months after being dispossessed, be considered to be in time? If there is no default on his part, if there is no delay on his part, if he comes and complains before the Court in time, and the Court takes long in arriving at a decision, it is not the fault of the party. Therefore I think it is

quite just that dispossessions made within two months immediately preceding the complaint by the party should be treated as wrongful, and the man who has been forcibly dispossessed should be put in possession of the property. Therefore, I support the amendment.

The Honourable Sir Malcolm Hailey (Home Member): I do not know if Mr. Pantulu has realized that the whole object of this Chapter is to allow the Magistrate to decide the facts of actual possession of the subject in dispute. I quote the exact words of 145 (4):

"Whether any and which of the parties was, at the date of the order before mentioned, in such possession of the said subject."

That still stands; nobody proposes to amend that; and therefore the object of the Magistrate is to decide simply one point: who was to be considered in possession at the actual date of the order? There is an obvious reason: that the future conduct of parties has to be regulated on that order of the Magistrate. It is of no value to the parties or to anybody else if the Magistrate decides that some three months before—it may be four according to Mr. Pantulu—such and such a person was in possession. That helps no one. What you want for the purposes of this section is that you may get an order which will regulate the position of the parties in regard to the fact of possession as from the date of the Magistrate's order.

Mr. Chairman: The motion before the House is:

"To insert the following at the end of sub-clause (*i*) in clause 27 'and in the first proviso for the words 'such order' the words 'such report or information' shall be substituted."

The motion was negatived.

Mr. B. Venkatapatiraju (Ganjam *cum* Vizagapatam: Non-Muhammadan Rural): Sir, on behalf of Mr. Rangachariar I beg to move the following amendment:

"To clause 27, sub-clause (*ii*), add the following:

'and at the end of sub-section (6) insert the following Explanation:

'*Explanation:* A person shall be deemed to be in actual possession where he is in possession of the disputed property through an agent, manager or servant or such other person'."

Sir, the object of section 145 is to prevent a breach of the peace in order to preserve the actual possession of the party. The question now is, who is in actual possession?—naturally, the person who was in actual possession or any other person on whose behalf the person was in possession, as he was in possession on behalf of the rightful owner; and even in cases where the complaints were obliged to be brought up before higher tribunals on account of a misunderstanding or misapprehension of the rule by the lower Court or Magistrate,—I will quote an authority, not one but a number of authorities wherein it was stated that naturally possession includes the possession of a servant on behalf of his master or of an immediate tenant on behalf of his landlord and of the usufructuary on behalf of the mortgagor. It is not a question whether we have to consider about the rights or wrongs of the parties or the lawful or unlawful possession but in order to make the legislation clear that this was suggested; so that Magistrates may not think that there is an absolute necessity that the person who complains or puts in a petition should be in actual possession while his servant is in possession on his behalf. The complainant should be permitted to state that he was in possession through his servant, and

[Mr. B. Venkatapatiraju.]

therefore, Sir, in order to make the point clear which has all along been accepted by the highest tribunals, I move this Explanation which would serve the purpose of elucidating the point more clearly.

Mr. Chairman: The Honourable Member has not moved the amendment.

Mr. B. Venkatapatiraju: I move the amendment, Sir:

"That in clause 27, (*ii*), add the following:

'and at the end of sub-section (6): insert the following Explanation:

'*Explanation:* A person shall be deemed to be in actual possession where he is in possession of the disputed property through an agent, manager or servant or such other person'."

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, out of compliment to yourself, I should have been very glad if I could have been able to accept this amendment, but I am afraid that I am not able to do this. I think of the position of the poor Magistrate who has to decide what was the object of the Indian Legislature in inserting this explanation in this section. He will think, that it can scarcely mean merely that the Indian Legislature wished again to affirm the ruling reported in 9 Bengal Law Reporter at page 229, which has already been read by the Honourable Mover of this amendment. In that ruling it was stated that by 'actual possession' is meant possession of a master by his servant, the possession of the landlord by his immediate tenant, the person who pays rent to him, the possession of the person who has the property on the land by the usufructuary. Now the Magistrate will say, 'this cannot have been the intention. We all know that. We have been brought up on it. There must have been some other reason.' He will refer to sub-section (1) and will see that that is the sub-section in which the words "actual possession" are used. He will see that the words have to be applied in determining the parties concerned and he will turn, say, to the Full Bench ruling in 31 Calcutta, page 48, Dhondhai Singh *versus* Follet. That was a dispute relating to an indigo factory. Mr. Follet was the Manager of the factory and Dhondhai Singh was the other party. The case came before a Full Bench of the Calcutta High Court. It was held that there was jurisdiction in the Courts under section 145 of the Criminal Procedure Code to make an order in favour of persons who claimed to be in possession of the disputed land as Agent or Manager for the proprietor when the actual proprietors are not resident within the appellate jurisdiction of the High Court. He will begin to think, 'does the word "deem" in this explanation mean that it must be the proprietor who has to be made a party? Is it impossible for the Manager to be made a party? Did the Indian Legislature intend to overrule that Full Bench decision?' Or perhaps, Sir, he will think of the case reported in 32 Calcutta, page 287, Bhola Nath Singh *versus* Wood. Mr. Wood was the Manager for the Nawab of Murshidabad. One point taken in the High Court was that the Magistrate had no jurisdiction to make the Manager a party instead of his employer, the zemindar. As regards this point it was held that the course adopted by the Magistrate was a mere irregularity or at most an error of law which does not affect his jurisdiction. Perhaps, Sir, he will think that the intention of the Indian Legislature was to prevent a tenant being made a party. Then he would think, perhaps, of the case of Beni Prasad Koeri *versus* Shahzada Ojha, reported in 32 Calcutta at page 856. There the Magistrate had

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taken possession under section 146 in a dispute between two sets of rival tenants. It was held that it was quite within the law for him to apply section 145 in such a case, and it was held that the Magistrate's attachment under section 146 was an attachment on behalf of those tenants who might subsequently be found to be entitled to the possession. Perhaps, Sir, he would take the other side and think that the intention is that the zemindar, the proprietor, shall never be a party; that we must have the man who is in immediate possession. It is perhaps unnecessary to refer to rulings on the point, but in 25 Calcutta at page 428, it was held that a person who was in possession of land merely as the Manager for the actual proprietor could not be made a party to the proceedings under section 145 when the circumstances are such that the proprietor himself can readily be made a party. Of course, Sir, these proceedings are usually proceedings preliminary to a civil suit, and it is clearly advisable as a general rule that the proprietor himself should be the party, because it is no use, or very little use perhaps, to say that the Manager is the party in possession when in the subsequent civil suit it must be the proprietor who moves. Perhaps, Sir, the Magistrate will have a brain wave and think that the word "Manager" refers to the Manager of a Hindu joint family. He will have heard perhaps that the amendment was made at the instance of an eminent Hindu lawyer and will think he possibly was thinking of such Manager. Well, Sir, I do not think it is necessary to proceed further. I think that if we add this amendment we shall not make the position of the Magistrate any better. He knows quite well the old ruling in Bengal Law Reporter which has been recited to us, and if once he begins to think of what was the intention of the Legislature in putting in the explanation, his last stage will be worse than the first.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, with the gracious permission of the Chair I rise to oppose this amendment. It seems to me that the introduction of this clause, if it was made law, would not merely place Magistrates in great difficulty, but it would be in the direction of carrying the provisions of this section beyond the scope of the Chapter to which it appertains. What is the primary object of this magisterial interference in disputes over immoveable property? This country has a long record of broken heads and bones and lost lives in disputes over immoveable property? The sole and primary object of this section is to prevent breaches of the peace. It does not exist merely for the settlement of disputes, even as to lawful possession. A Magistrate can only interfere when he finds that the dispute is of such a kind as requires immediate settlement to prevent a breach of the peace. Now, the first part of the section requires the Magistrate to inquire into the fact of *actual* possession. There is nothing particularly technical about that word "actual". A good deal of forensic argument and judicial learning no doubt have been expended on the word. But here it means, in my humble opinion, what one would understand it to mean in the ordinary affairs of life. If I go to the club in the evening leaving my house in charge of my servants, my actual possession is not interfered with or disturbed. If I go to Mussoorie for the season and sublet my house to a tenant my actual possession so far as this section is concerned, with all respect for the contrary opinion whether expressed in rulings or elsewhere, is certainly suspended. All that remains is what lawyers call *constructive* possession. I am one of those who think that the clause which allows a Magistrate to interfere with a trespass one month and twenty-nine days old is a clause foreign to the purpose of this section,

[Colonel Sir Henry Stanyon.]

because, suppose even during my short absence at the club, my servant's possession is interfered with by a trespasser, a Magistrate can restore the servant's possession just as well as my own. I need not go and claim; it is quite enough to put up my servant and the Magistrate will restore actual possession and thereby restore my constructive possession. With regard to my friend's illustration in his earlier speech that when a Legislative Member comes to Delhi leaving his land in the possession of his servant or agents and someone dispossesses him, it would involve a hardship not to treat his possession as actual possession for the purposes of this section, I submit that it is quite unnecessary to do so. It does not follow that the apprehended breach of the peace should be with a person dispossessed. The danger of a breach of peace may be with anybody. It may be when a servant is dispossessed that the danger arises when the master wants to get his property back; that will be danger of a breach of peace between trespasser and owner; but the Magistrate will inquire into the actual possession of the servant. If he finds that it has been illegally disturbed within his jurisdiction, he can restore it. Where a constructive possession is interfered with and a Magistrate is not inclined to use this Chapter, the argument that the owner is left only with the delayed procedure of a regular civil suit entirely overlooks section 9 of Act 1 of 1877, a suit for summary possession. There need be no delay. But if we introduce here this particular clause, we shall then be giving a particular definition, as it were, to the word " actual " which in practice—especially in magisterial practice—will create tremendous difficulties; and for that reason in support of the principle that these preventive sections should be kept as simple and as straightforward as possible, I would oppose this amendment.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): There is some little difficulty, Sir, in understanding the position of the Government. An earlier decision was referred to by Mr. Tonkinson in which it was pointed out that the possession of the tenant is the possession of the owner, and the possession of the agent is the possession of the owner. Later on there have been some doubts, in Calcutta itself. They have held that the object of the section is not to deal with constructive possession. Unless the section is made clear, it is likely to lead to further difficulties. If the possession is with the tenant and the dispute is between the tenant and the principal, it is doubtful whether this section should be applied. There are authorities which hold that this section should not be resorted to where the dispute is between the principal on the one hand and the tenant on the other. But where the possession is by the tenant on behalf of the landlord and a third party encroaches upon it, then the possession of the tenant will be regarded as the possession of the landlord and the matter should be inquired into. There would therefore be difficulties if we leave the section as it is, and it is, I take it, for the purpose of making it clear that this amendment has been put forward, namely, that where the dispute is between a person who is in possession of the property through one of these subordinate agents of his, *e.g.*, the tenant, and if that possession is sought to be disturbed by a third party, the matter should be inquired into. That would bring the law into conformity with what has been decided in the earlier cases, and it would to a certain extent, weaken the force of the later decisions which point out that constructive possession is not what was intended. I believe, Sir, it is desirable when we are revising the Code to make this position clear. There are two points which ought to be made clear, one is that

where there is possession in the tenant and that possession is disputed by the landlord the section has no application; the other is where there is possession in the tenant and that possession is on behalf of the landlord and a third party disputes it, then this section can be resorted to. That must be made clear. I do not see, with all deference to the draftsman of this amendment, that that position is made clear by him. But it is desirable to clear it up. If that is done, I think, it would avoid much trouble that is likely to arise in the construction of this section.

Mr. Chairman: The question is:

"To clause 27 (*ii*) add the following:

'and at the end of sub-section (6) insert the following Explanation:

'*Explanation:* A person shall be deemed to be in actual possession where he is in possession of the disputed property through an agent, manager or servant or such other person'."

The motion was negatived.

Mr. B. N. Misra: Sir, I beg to move the amendment which stands in my name, *viz.*

"Omit the whole of sub-clause (*iii*) of clause 27."

Sub-clause (7) of the same section 145 runs thus:

"When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding, and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding, is, all persons claiming to be representatives of the deceased party shall be made parties thereto; and . . . ."

My friend is asking me to withdraw the motion. I am sorry my conscience does not allow me to withdraw it without placing it before this Honourable House. The object of this section is to prevent a breach of the peace. Whenever breach of the peace is likely to be caused, section 145 is resorted to. If a man is dead, where is the cause? If a man dies, has the widow to come to fight or has she to mourn the loss of her husband? I am putting it to you. A man has got little children, two or three babies, two or three daughters and sons aged 3, 5 or 10 years, will they not be mourning the loss of their father? Are they going to fight? Will they be able to fight? Why are you dragging these innocent representatives, legal representatives, to be brought on record? The Criminal Procedure Code has never contemplated the civil rights of parties to be decided by Magistrates. If you say in a case like this that the legal representatives must be brought on record, what will be the effect? There are three children; they cannot come. In law, they are minors. They cannot represent themselves. You must appoint a guardian. Then, Sir, the Magistrate will see who will be their guardian. Ten persons might claim to be guardians of a particular minor. The brother will claim to be the guardian; the father's brother will claim to be the guardian; the mother's brother will claim to be the guardian, and so many others will also come claiming to be the guardians. Is the Magistrate to decide that? And without deciding that guardianship, can you bring a minor on record? The greatest legal difficulty will arise to bring a minor on record. Of course you bring in the criminal court such minors as are capable of committing some offence or crime, but in a case like this how can you bring the minor into the record of this case unless you appoint a guardian of that minor? Supposing there is a

[Mr. B. N. Misra.]

family of four or five brothers. One brother is dead, you need not bring the children of the deceased, or his widows because there are the other brothers. Supposing there are five brothers and one of them is a quarrelsome fellow who likes to create a quarrel and the others do not like to quarrel, why should you drag the others in who do not wish to quarrel simply because they happen to be the brothers of the man who is dead? I consider, it is very unjust to drag in such legal representatives who have no reason at all to be represented, because with the death of the man the likelihood of committing a breach of the peace has ceased. Suppose a man is dead who has left some property and there are two or three daughters, what happens ordinarily? One says, the deceased had adopted him and he must be made a legal representative? Is the Magistrate going to decide the question of adoption? If the representatives come to fight there will be a report and this section aims about the likelihood of the breach of peace at bringing such persons on record and nothing but that. You say " and shall thereupon continue the inquiry." If the party who was fighting is dead why should you continue the inquiry? You stop there, unless and until you get others coming forward to fight. Of course the object of the Criminal Procedure Code is never to allow any claims of right to be decided by a Magistrate. Clause (4) of section 145 says:

" The Magistrate shall then, without reference to the merits of the claims of any such parties to a right to possess the subject of dispute, peruse the statements so put in, etc."

In clause (4) you say he will not go into the merits of the claims; now you are going to consider the claims. The one is contradicted by the other. The magistrate is concerned only with actual possession and the likelihood of there being a breach of the peace. I submit if we allow power to the magistrate to consider claims as regards the legal representative, of an adopted son, or illegitimate son, or any relation, or all these conflicting claims, this will be giving a really dangerous civil power into the hands of the magistrates. In these circumstances I move my amendment,* that this clause should be omitted.

The motion was negatived.

Mr. T. V. Seshagiri Ayyar: Sir, the speech made just now is one against my amendment†, not against the section as drafted by the Government. The Government do not want that there should be any decision by the magistrate, on the other hand they in the draft want everybody to be brought in and want the proceedings to go on. It is I, Sir, who want the magistrate to decide summarily as to who is the legal representative, so that there may be a speedy termination of the proceedings. The reason of my amendment is this. If one of the parties to the dispute takes it into his head to prolong the decision, he can easily set up a third party, and as this section is worded by the Government every objector should be made a party.

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* " Omit the whole of sub-clause (*iii*) of clause 27."

† " In clause 27 (*iii*) in the proposed sub-section (7) omit all words after the words ' and shall thereupon continue the inquiry ' and substitute therefor the following :

' and if more than one person claims to represent the deceased, the Magistrate shall forthwith decide who shall be the representative for the purpose of the proceeding before him; and it shall be open to the Magistrate to remove, add or substitute representative or representatives in the course of the same proceeding '."

Sub-section (7) proposed in clause 27, sub-clause (*iii*), says:

"When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding, and shall thereupon continue the inquiry and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto."

Therefore once you say the proceedings shall continue, it will be open to one of the parties to the dispute to set up a person who claims to be a legal representative, and thereby prolong the inquiry. The object of this chapter is that there shall be a speedy determination of the dispute between the parties. It is on that ground that I have given notice of this amendment, that where there is a dispute among the legal representatives, powers should be vested in the magistrate to decide summarily as to who is the true legal representative, and to put that representative, on the record to continue the proceedings. I provide that if it is thought by the Magistrate that the legal representative brought in is not the proper one, nothing should prevent him from removing such legal representative and substituting another in his place. I want to bring the rule into conformity with the civil practice in regard to this matter. The old Civil Procedure Code, section 367, says:

"If any dispute arise as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the fact has been determined in another suit, or decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit."

It has been made simpler in the new Code, and it has been held that where once a party has been put on the record, the proceedings shall be continued in his presence and the decision shall even act as *res judicata* against the true representative. For that purpose, there must be a summary decision. And having regard to the fact that a proceeding of this nature is not final, and the rights of the parties in the Civil courts are not affected, I think it would conduce to the administration of justice better if we give power to the Magistrate to arrive at a summary decision. My object is as far as possible, to expedite matters, and as the object of Chapter XIII is to give a summary remedy, and as the section, as now worded, will put into the hands of a person who is disposed to prolong the inquiry, the power of bringing in a person who may have a very shadowy right to come in, I have drafted my amendment. It is in these terms:

"In clause 27 (*iii*) in the proposed sub-section (7), omit all words after the words 'and shall thereupon continue the inquiry' and substitute therefor the following: 'and if more than one person claims to represent the deceased, the Magistrate shall forthwith decide who shall be the representative for the purpose of the proceeding before him; and it shall be open to the Magistrate to remove, add or substitute representative or representatives in the course of the same proceeding."

As I said before it is only, Sir, for the purpose of carrying out the object which the Chapter has in view that I have brought forward this amendment. I know at the same time that the Government think that they alone can draft a section rightly and that no one else is competent to do it. There is that difficulty in my way.

Mr. H. Tonkinson: Sir, the Honourable Member proposes to substitute another sub-section for the proposed sub-section 7 of section 145. He suggests, that Government consider that they are the only people who can draft these provisions properly and that he therefore understands that they object to this provision. I would submit, that this provision was not drafted by Government; it was drafted by Sir George Lowndes' Committee

[Mr. H. Tonkinson.]

(*Mr. T. V. Seshagiri Ayyar*: "It was a Government Committee.") Not a Government Committee at all, Sir. Sub-section (7) of the present section 145 provides that "proceedings under this section shall not abate by reason only of the death of any of the parties thereto." Sir George Lowndes' Committee noted:

"We have expanded this sub-section, which deals with the death of a party while the proceedings are pending, in accordance with sub-clause (*iii*) of the Bill."

That is to say they thought their amendment was an obvious one, and I suggest that that is strictly the case. The Bill says:

"All persons claiming to be representatives of the deceased party shall be made parties thereto."

I suggest, Sir, that that is entirely in conformity with the spirit of the whole section. If we look at sub-section (1) it will be seen that the Magistrate requires all the parties concerned, all the persons claiming, to put in written statements of their claims. For example, take a recorded case, two parties had been summoned and appeared in Court. A tenant happened to be present; he claimed to be put in as a party and he was allowed to be put in as a party. All persons who have a claim are allowed in these proceedings to put in their respective claims. Further, if we adopt the suggestion of my Honourable friend, we will only be prolonging the proceedings. I remember, Sir, the papers about the amendment to the Code of Civil Procedure, which was passed in 1920, relating to the steps taken to do away with the delays in appeals to the Privy Council. One of the main reasons for delay that was referred to in those papers was the delay in putting in legal representatives. I have here, Sir, the letter received from the Madras High Court on the subject. They say: "Much of the delay is incurred in bringing on the record the legal representatives of deceased parties."

Sir, we have a summary proceeding provided for in this section and we do not want to lengthen those proceedings by adding to the labour of the Magistrate the question of deciding who is the legal representative of the deceased party.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I also oppose this amendment. In addition to the reason given by the Honourable Mr. Tonkinson, I would point out to the House that, if the amendment is permitted, it would in some cases tend to destroy the effect of the order passed under section 145. Suppose A and B both claim to be legal representatives and the Magistrate in a summary inquiry holds that A is the legal representative and passes an order against him. B institutes a civil suit and says that he is the legal representative, being, let us assume for the sake of argument, the adopted son of the deceased. Will this order bind B who is excluded under the inquiry made under section 145? (*A Voice*: "Not at all.") Not at all. Very well. The order therefore would be rendered nugatory if all the persons who claim to be legal representatives are not brought on the record. That is my additional objection to the amendment.

Lastly, I ask what is a legal representative? The present Civil Procedure Code defines a legal representative in very wide language. Any person who is in possession, even in wrongful possession, of the property of the deceased is a legal representative, and, if my friend's amendment prevails, there would have to be a definition of a legal representative

and then an inquiry as to who is a legal representative. If the definition is enlarged to the extent it has been by the Code of Civil Procedure, it will let in all comers, real and pretended claimants to the property, and the inquiry, however small, is bound to be a protracted one.

I therefore submit, Sir, that this amendment should be negatived.

Colonel Sir Henry Stanyon: Sir, the question raised by this amendment is by no means free from difficulty, and the amendment is not one to be lightly brushed aside by this Honourable House. As section 145 stands at present, we have these words only as sub-section (7):

"Proceedings under this section shall not abate by reason only of the death of any of the parties thereto."

These words do not bind the Magistrate in any way. A Magistrate has reached a point in his proceedings where he finds in a dispute between A and B that A was in actual possession of the property on the date of the order. B's death would not prevent the Magistrate, without taking any steps to bring any representative of B on the record from passing the order maintaining A's possession. Now, the framers of the Bill propose to amplify this clause so as to make it necessary in every case, where one of the parties dies, to bring his representative or all persons who claim to be his representatives, jointly or in rivalry, upon the record. A tenant is in possession of a plot of land which his landlord claims to have been obtained by trespass. Within two months of the date on which, at the landlord's instance, the Magistrate made an order under section 145, that tenant dies. From the four points of the compass come four claimants to represent him, each perhaps armed with the usual *lathi*, and each is thereupon brought on the record under this new clause by the Magistrate. What is the Magistrate going to do?

I think, Sir, that in a case like that he will have a case within a case. He will have, first of all, to settle the peace between these four threatening *lathials* before he goes on with the original case. Not only that, but it is a difficult thing at all events, it strains my imagination too much,— to understand how the heir of a deceased person, except in the limited cases where he was joint with that deceased person, was, on the date of the Magistrate's order, in actual possession of the property so as to be entitled to get an order in his favour. The whole of this arrangement of representation is out of place, whether (as put in the amendment) it be on the basis of a summary decision in favour of one person, or lets in, temporarily, everybody who claims to be a representative. I fail to understand how such procedure carries out the original purpose and object of the section. The man who was, or claimed to be, in actual possession on the date of the order is dead. If there is another person on the spot who claims to have been with him in joint possession or claims to have acquired possession at the moment of his death, one can understand the proceedings being continued, though even in the latter case you would be dealing with the actual possession of a new person and not the original possession upon which the matter came before the Magistrate. But why should they be continued for heirs or claimants not in actual possession. Therefore, without absolutely committing myself to the amendment proposed by the Honourable Mover, I would strongly suggest to Government that this point of introducing representatives in a preventive case of this kind should be very carefully considered.

Mr. J. M. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I would not have stood up unless I was of opinion that there are certain points in this very difficult matter which require to be cleared up. I should like to make my position clear by stating at the outset that I am rather inclined to support the amendment of my Honourable friend Mr. Seshagiri Ayyar and that I do so upon a balance of all the difficulties that seem to me to exist on one side or the other of the question. Now, Sir, my Honourable friend Sir Henry Stanyon has pointed out some of those difficulties. But it seems to me, that this section 145 Criminal Procedure Code, as it is, was enacted with a view to obviate some, at any rate, of the difficulties which crops up in connection with the proceedings under it, and which require speedy solution, in case of death of one of the parties to a proceeding during its pendency. Now, Sir, I will take up the question of actual possession, first. In this connection, the difficulty that was pointed out is a difficulty which has not been created by the proposed amendment itself, but it is a difficulty which already exists within the four corners of section 145 itself in enacting that the proceedings under this section shall not abate by reason only of the death of any of the parties thereto. The Legislature evidently contemplated that there should be some sort of decision as to representations after the death of one of the parties to the proceedings, and it evidently contemplated that the actual possession of the person in respect of whom proceedings were drawn up, and who was arrayed either on one side or the other, was the actual possession contemplated by the proceedings. The possession of his legal representative is practically a continuation of the possession of his predecessor in such cases. The next point for consideration is—who should carry on the proceedings, and adduce evidence in support of the case for the party who is dead? There must be some sort of adjudication on that point, and I suppose, the legal representatives of that party must be considered to be the persons who are likely to be interested in the matter and are calculated to adduce proper evidence in support of the possession of the person who is dead. Here again, Sir, I would point out to the House that if my Honourable friend Mr. Misra's amendment had been carried out, what would have been the effect? Supposing there is a powerful party who contests the possession of the opposite party and the latter dies during the pendency of the proceedings and after the death of the original party his successor in *de facto* possession, happens to be his widow, who may be in her bereavement, crying and shedding tears, and being busy with taking care of the fatherless children may feel helpless in asserting her possession. What would be the effect if the proceedings abated by reason of such death? The strong party, though wrongfully attempting to assert his possession, would at once take possession of that land in dispute. . . . .

Mr. Chairman: Order, order. We have disposed of that amendment. The Honourable Member must speak to this amendment.

Mr. J. M. Mukherjee: I am coming to that, Sir. I submit the law as it stands contemplates that there should be some sort of adjudication as to representatives upon the death of a party pending the proceedings. Now, I will pass on to the point raised by Sir Henry Stanyon. He pointed out some of the difficulties. We have here according to him a case within a case under the circumstances because the Magistrate will be called upon to come to a decision as to representative of a deceased party. Suppose there are four persons who are trying to assert possession in respect of the land or immoveable property of a deceased party. Now questions which

such contentions raise havo to be decided, under the existing law, first of all, between the sets of contending persons amongst the four claimants to the property left by the deceased, the original party now dead, and the Court, in order to do justice, must decide that question, and it must be decided, not in the presence of fictitious claimants, but of persons who have a real interest in the matter. Therefore it will be necessary to find out who is the legal representative of a deceased party to a proceeding under this section 145. We cannot in the instance in point admit all the four contending claimants because thereby they would succeed in getting a footing as regards the property in question, by reason of the assertion of their false claims, which they would never be able to do, if left out of the proceedings. If all the four claimants were allowed to represent the deceased, they might all be declared to be in possession, in the event of the Magistrate deciding that possession was on the side of the party who is dead.

Dr. H. S. Gour: How?

Mr. J. N. Mukherjee: The case as to possession has to be decided amongst two contending parties. On the one side is the original party who is not dead. On the other side is a party who is dead. Three false claimants have sprung into existence and the fourth happens to be the rightful claimants. Now what happens? By declaring possession, to be on the side of the deceased party, all the claimants get a footing as regards possession. That is a result which the amendment of my Honourable friend Mr. Seshagiri Ayyar deprecates. That is to say, instead of giving indiscriminately all the false claimants a chance of asserting a false claim through magisterial declaration of possession, the proposed amendment suggests that a third party, however summarily it may decide the question, come to a decision as regards the legal representative of the person who is dead. Now, balancing all the inconveniences and difficulties, it seems to me, that although the determination of the question as to who the legal representative of a deceased party may be, may cost a little time and a little energy on the part of a Magistrate, it is better to have that done at that little cost, than to bring into existence a fresh dispute, among contesting claimants to a deceased person's property and to give a footing to wrongful claimants, in that way. Therefore, Sir, I submit that if a third party,— a Court or a Magistrate,—be vested with powers to give some sort of decision as to who the legal representative of a party is, that, on the whole, will secure to the people better justice than in the case of all persons rightfully or wrongfully claiming as legal representatives, possession of the property which is the subject matter of the proceedings.

These are considerations which lead me to think that my Honourable friend, Mr. Seshagiri Ayyar's amendment solves the difficulty to a larger extent than in the case of the Government proposal.

Sir Henry Moncrieff Smith: Sir, I wish to refer very briefly to a portion of the speech of my Honourable friend, Sir Henry Stanyon. I understood him to deprecate any revision of the law at all for bringing the legal representative on the record. I think the House has expressed its opinion on that point by the very emphatic manner in which it threw out Mr. Misra's amendment,—the House decided that we should have some provision in this respect. Sir Henry Stanyon, if I understood him aright, suggested that there would be very great difficulty in the Magistrate's mind, after the heir of a deceased party had been brought on the record, in holding that the heir was in actual possession. Of course, Sir, the heir himself, unless he was a member of a joint family, could not have been in actual

[Sir Henry Moncrieff Smith.]

possession on the date the Magistrate passed the order; but the sole idea in providing for bringing the representative on the record is that the Magistrate shall not give an *ex parte* decision in the case. The House will remember that at an early stage of the proceeding the Magistrate has to serve a notice upon all persons that he knows to be interested and to have one copy posted in the locality where the property is situated. A person appears with a claim to have been in actual possession on the date of the order; that person dies; is it right that thereafter his interest should not be represented? If the Magistrate finds that the person who has died was in possession on the date of the order, he will put that person in possession through his legal representative who has taken the trouble to appear.

Mr. Chairman: The question is:

"That in clause 27 (*iii*) in the proposed sub-section (7) omit all words after the words 'and shall thereupon continue the inquiry' and substitute therefor the following:

'and if more than one person claims to represent the deceased, the Magistrate shall forthwith decide who shall be the representative for the purpose of the proceeding before him; and it shall be open to the Magistrate to remove, add or substitute representative or representatives in the course of the same proceeding'."

The motion was negatived.

Mr. J. Ramayya Pantulu: Sir, my amendment is that in clause 27, sub-clause (*iv*), omit the words 'and natural' and after the word 'decay' insert the words 'or cannot be conveniently kept in store pending final decision.'"

The clause in the Bill reads as follows:

"(8) If the Magistrate is of opinion that any crop or other produce of the property the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and upon the completion of the inquiry shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit."

The words used are "speedy and natural decay." It seems to me that the word 'speedy' will meet all the cases. I do not really understand the necessity of introducing the word 'natural' there. If the property is subject to speedy decay that ought to enable the Magistrate to sell it; whether the decay is natural or unnatural is immaterial and I do not see that any purpose is served by the use of the word 'natural.' If the property is liable to decay and speedy decay the Magistrate will have power to sell it. That is the first part of my amendment. The second part of my amendment is to add the words 'or cannot be conveniently kept in store pending final decision' after the word 'decay.' Sometimes the produce may not actually decay but it might be extremely difficult and inconvenient to keep it; take a case—which is common in my part of the country—where the property in dispute is a cocoanut tope; suppose there are several thousands of cocoanuts that are plucked from the trees and they have to be taken care of. It would be extremely difficult to find a suitable place where to store all those cocoanuts so that they might not be spoilt. If they are not properly taken care of they will be subject to decay; therefore, you may say you can bring it under the head 'decay' but I think it will be more straightforward to say 'because they cannot be properly stored pending final disposal'; they may be sold. This is my reason for the amendment.

Mr. Chairman: I think it will be for the convenience of the House that we take the amendments separately. The question is:

"That in clause 27 sub-clause (*iv*) omit the words 'and natural'."

The motion was negatived.

Mr. Chairman: The question is:

"That in the same sub-clause after the word 'decay' insert the words 'or cannot be conveniently kept in store pending final decision."

The motion was negatived.

Dr. H. S. Gour: My amendment, Sir, is a very simple one; it simply corrects what I think is a clerical error and if the Government do not accept that improvement, I think the House should unanimously vote them as wholly incorrigible. I only want to restore the numerical sequence of these various clauses and object to the interposition of 8-A where 9 will serve an equally useful purpose, and convert 9 into 10. I do not think I need waste much time over my amendment and the least I can ask the Government is to thank me and accept it.

I therefore move:

"That in clause 27 (*iv*) renumber the proposed sub-section 8A and 9 as 9 and 10."

Sir Henry Moncrieff Smith: Sir, we should be very reluctant to be condemned by the whole House as incorrigible; we have to admit that Dr. Gour's amendment is a most proper one. Dr. Gour's eagle eye has discovered what may be described as for the time being a blot on the Bill. I am surprised, however, that he has not discovered something like a hundred other similar blots throughout the Bill. The point is simply that we did not re-number the clauses, we did not re-number the sub-clauses and the sub-sections of the Code when the Bill was amended by the Joint Committee and when the Bill was passed by the Council of State, for this reason merely, that if this House had had before it another Bill with the clauses differently numbered from the Bill that was introduced and passed by the Council of State, the confusion would have been intolerable. This blot on the Bill which Dr. Gour's eagle eye has discovered we intend to remove by a general motion when the consideration of the Bill is finished, that all the necessary consequential re-numbering be made. I would, therefore, suggest that my Honourable friend withdraws his amendment.

Dr. H. S. Gour: I withdraw it, Sir.

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

Clause 27 was added to the Bill.

Mr. B. N. Misra: Sir, the amendment standing in my name reads thus:

1 P.M.

"In clause 28, in the proposed proviso after the words 'District Magistrate' insert the words 'or the Magistrate who made an order under section 145."

The proposed clause reads as follows:

"Provided that the District Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute."

I have simply added to this that not only the District Magistrate but the Magistrate who made the order under section 145 may also be given

[Mr. B. N. Misra.]

the power. I think the proper wordings should be " The District Magistrate or the Magistrate who has attached the subject of dispute ", etc. It has been suggested to me that if I move my amendment in this fashion Government will accept it. So, I move, Sir:

" That in sub-clause after the words ' District Magistrate ' the words ' or the Magistrate who has attached the subject of dispute ' be inserted."

Mr. Chairman: The motion before the House is:

" That in clause 28 in the proposed proviso after the words ' District Magistrate ' the words ' or the Magistrate who has attached the subject of dispute ' be inserted."

The Honourable Sir Malcolm Hailey: We do not intend to use the bludgeon of our vast majority in this case, and we accept the amendment.

The motion was adopted.

Mr. T. V. Seshagiri Ayyar: Sir, the amendment of which I have given notice is intended to enlarge the powers of the District Magistrate. New power is given to him by the proviso for cancelling an order passed by the Magistrate, on the ground that there is no longer any likelihood of a breach of the peace. Now that the matter will be before the District Magistrate, I want to give him powers to consider whether the original order was properly passed. If he comes to the conclusion that the original order was not properly passed or that there is no necessity for continuing the order, he would cancel it. I want to give him larger powers than are given by this section, because it is not desirable that his discretion should be fettered in the way the section proposes to restrict it. If the matter is once before him, he should be able to decide whether the order was properly passed or whether there is any necessity for continuing the order. For these reasons I move the amendment standing in my name, namely:

" In clause 28 (1) after the words ' satisfied that ' in the proposed proviso, insert the following ' there was no reasonable ground for taking action in the matter or '."

Sir Henry Moncrieff Smith: Sir, I was rather surprised to hear my Honourable friend saying that the intention of his amendment was to introduce a revision of the whole proceeding. If that was his intention, I should have expected him to move an amendment to section 145. He has in fact moved an amendment to section 146. This section merely says:

" If the Magistrate decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them was then in such possession of the subject of dispute he may attach it until a competent Court has determined the rights of the parties thereto, etc."

To that the Bill adds a proviso:

" Provided that the District Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute."

Therefore, my Honourable friend Mr. Seshagiri Ayyar merely proposes to enable the District Magistrate to revise the order of the Subordinate Magistrate who has attached the subject of dispute where he could not find that any party was in possession. Now, Sir, as far as that goes, I think that these words are unnecessary. What are the facts? The Magistrate has found for reasons he must have had before him that in regard to the subject matter of dispute there is likely to be a breach of the peace. He cannot discover himself which of the parties was actually in possession, but the fear of a breach still continues, and the Magistrate thereupon

attaches the property until the parties go to the Civil Court. Mr. Seshagiri Ayyar then comes in and says that if the District Magistrate finds there was no reasonable ground for taking action in the matter, he may withdraw the attachment. But surely that is inconsistent. The Magistrate's preliminary order stood. He was satisfied that a breach of the peace was likely to occur. He cannot find who is in possession. They are reasonable grounds which no court can upset. Therefore, I would suggest that this limited revision of tho order of attachment in the special circumstances of section 146 is quite unnecessary and inadvisable.

The motion was negatived.

Mr. T. V. Seshagiri Ayyar: Sir, my next amendment seems to have found favour with the Government. I am thankful for small mercies. But they want as usual, their own language and not mine. I am willing to accept their language; and I do not insist upon my language. The object of my amendment, as the House will understand, is to enable the Magistrate to stay his hands when a Receiver has been appointed by the Civil Court. The proviso as drafted by the Government is in these terms:

"Provided that, in the event of a Receiver of the property, the subject-matter in dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the Receiver appointed by the Magistrate, who shall thereupon be discharged."

Now, Sir, I have had something to do with civil work: very often Receivers are appointed, but they do not take charge at once because there is the question of giving security and if in the meanwhile the Magistrate takes action by a subsequent order, it should not be binding on the parties. If there is a previous order appointing a Receiver, that ought to be enough, and the Magistrate should not interfere in matters of this nature, because a Civil Court receiver is likely to do his business much better than a Receiver appointed by the Magistrate.

Sir, the language used by the Government is this: and I move it in their words:

"That in sub-clause (2) of clause 28 for the words 'to sub-section (2) of the same section' the following be substituted, namely:

'In sub-section (2) of the same section after the words 'think fit' the words 'and if no Receiver of the property the subject matter in dispute has been appointed by any Civil Court' shall be inserted and to the same sub-section'."

I move my amendment as Government wants it.

The motion was adopted.

Clause 28, as amended, was added to the Bill.

Mr. B. Venkatapatiraju: Sir, I beg to move:

"In clause 29 in the proviso to sub-section (2) of proposed section 147, insert the words 'within three months as aforesaid or' between the word 'exercised' and the word 'during'."

The proviso would then run as follows:

"Provided that no such order shall be made where the right is exercisable at all times of the year unless such right has been exercised within three months next before the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised within three months as aforesaid or during the last of such seasons or on the last of such occasions before such institution."

Of course, Sir, this clause inserted by the Joint Committee is a very useful addition but as you find that they have already provided that in cases

[Mr. B. Venkatapatiraju.]

where the right can be exercised at all times of the year three months' grace is given to them in order to complain against the invasion of their rights, my amendment only goes to show that three months' grace should also be allowed where right is exercised on particular occasions or at particular seasons along with the other provisions already in the clause. I don't think, Sir, I need argue the point further because the point is very clear. I only ask you to admit to the seasonal exercise of rights the grace of three months also, so that my amendment will be in conformity with the object of the introduction of this clause. Therefore, I move this amendment, Sir.

Mr. Chairman: Amendment moved:

"In clause 29 in the proviso to sub-section (2) of proposed section 147, insert the words 'within three months as aforesaid or' between the word 'exercised' and the word 'during'."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—29.

Abdul Quadir, Maulvi.	Jatkar, Mr. B. H. R.
Abdulla, Mr. S. M.	Muhammad Ismail, Mr. S
Agarwala, Lala Girdharilal.	Neogy, Mr. K. C.
Agnihotri, Mr. K. B. L.	Reddi, Mr. M. K.
Ahmed, Mr. K.	Samarth, Mr. N. M.
Asad Ali, Mir.	Sarfaraz Hussain Khan, Mr.
Ayyar, Mr. T. V. Seshagiri.	Sarvadhikary, Sir Deva Prasad.
Bagde, Mr. K. G.	Singh, Babu B. P.
Barua, Mr. D. C.	Sinha, Babu Ambica Prasad.
Basu, Mr. J. N.	Sircar, Mr. N. C.
Bhargava, Pandit J. L.	Srinivasa Rao, Mr. P. V.
Das, Babu B. S.	Subrahmanayam, Mr. C. S.
Gour, Dr. H. S.	Venkatapatiraju, Mr. B.
Iswar Saran, Munshi.	Vishindas, Mr. H.
Jamnadas Dwarkadas, Mr.	

NOES—34.

Abdul Rahim Khan, Mr.	Hindley, Mr. C. D. M.
Aiyar, Mr. A. V. V.	Holme, Mr. H. E.
Akram Hussain, Prince A. M. M.	Hullah, Mr. J.
Allen, Mr. B. C.	Innes, the Honourable Mr. C. A.
Blackett, Sir Basil.	Ley, Mr. A. H.
Bradley-Birt, Mr. F. B.	Mitter, Mr. K. N.
Bray, Mr. Denys.	Moncrieff Smith, Sir Henry.
Burdon, Mr. E	Mukherjee, Mr. J. N.
Cabell, Mr. W. H. L.	Percival, Mr. P. E.
Chatterjee, Mr. A. C.	Pyari Lal, Mr.
Chaudhuri, Mr. J.	Sen, Mr. N. K.
Crookshank, Sir Sydney.	Singh, Mr. S. N.
Davies, Mr. R. W.	Sinha, Babu L. P.
Faridoonji, Mr. R.	Stanyon, Col. Sir Henry.
Gajjan Singh, Sardar Bahadur.	Tonkinson, Mr. H.
Haigh, Mr. P. B.	Webb, Sir Montagu.
Hailey, the Honourable Sir Malcolm.	Zahiruddin Ahmed, Mr.

The motion was negatived.

Mr. T. V. Seshagiri Ayyar: I want, in clause 29, in sub-section (4) of proposed section 147 to delete the words "in subsequent" and substitute the word "the." The clause, as it is, reads as follows:

"An order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction."

Supposing on the same day the order is passed, there is also a civil court decision which is not known to the Magistrate. Why should it be held

that, unless there is a subsequent decision, the Magistrate's order should prevail? If there is a Civil Court's decision, it stands to reason that the Magistrate's order should give way. I think in those circumstances it is desirable to delete the words " in subsequent " and substitute the word " the " there. Suppose the decision which has been passed is taken in appeal or in revision. Then the appeal may be withdrawn. Under those circumstances, if you allow the word ' subsequent ' to stand, it is likely to lead to difficulties. Therefore I move that the words " in subsequent " be deleted and the word " the " substituted therefor.

Mr. Chairman: Amendment moved:

" In clause 29 in sub-section (4) of proposed section 147 for the words ' in subsequent ' substitute the word ' the '."

Sir Henry Moncrieff Smith: Sir, I feel truly sorry that I am not in a position to accept the amendment of my Honourable friend. The point is quite a simple one. If the matter has been decided by the Civil Courts already, then the Magistrate should not act under section 147. It has been held by the Courts that if the question of title has already been decided, then there is no dispute between the parties as to the title. The question of title has been set at rest by a judicial decision and the Magistrate cannot conscientiously say that a dispute still exists. But, if, on the other hand, he still fears a breach of the peace, that the parties are not going to observe and follow the decision of the Civil Court, then the High Courts have said that, though he cannot take action under section 147, it is always open to him to take action under section 107. That is the simple reason why this clause does not provide that the decision of the Magistrate should be subject to a previous decision. In any case I much regret to point out that I do not find Mr. Seshagiri Ayyar's drafting quite satisfactory. Surely it is not quite correct to say that the order which the Magistrate has made should be subject to a decision which has been previously passed. He could not make the order. As I have already pointed out, the Courts have laid down that when the Civil Courts have decided the question of title the Magistrate's jurisdiction under section 147 is ousted and he should not proceed at all under that section; if he does, his order would be set aside by a superior Court; he must take action under section 107.

The motion was negatived.

Clause 29 was added to the Bill.

Rai N. K. Sen Bahadur (Bhagalpur, Purnea and the Santhal Parganas: Non-Muhammadan): I move:

" In clause 30 before the words ' In sub-section ' insert the following :

' In sub-section (2) of section 148 for the words ' read as evidence in the case ' the words ' proved and used as evidence in the case ' be substituted '."

In a proceeding under section 145 the Magistrate practically exercises a quasi-civil jurisdiction and the parties thereto are arrayed more or less as plaintiffs and defendants in civil suits. In clause (4) of that section you will find that the Magistrate has to take evidence, *viz.*, such evidence as may be produced by the parties to the proceeding. I understand " such evidence " to mean such evidence as is adduced according to the procedure laid down in the Indian Evidence Act; that is to say, if the evidence is oral evidence, witnesses have to be examined, cross-examined, and re-examined, and if the evidence is of the nature of a document, it has to be proved in

[Rai N. K. Sen Bahadur.]
accordance with law. Now, in a proceeding under section 145, if a Magistrate considers that a local inquiry is necessary he may depute any subordinate Magistrate to make the inquiry and he may furnish him with such written instructions as may seem necessary for his guidance. What generally happens is this, that a Magistrate deputed by the trial Magistrate goes to the spot, gathers all sorts of information, measures the land and submits his report and that report generally consists of a measurement paper, a map and his opinion regarding the question of possession as he finds on the spot. This report as laid down in section 148 (2) is used as evidence without any legal proof against the party against whom the report stands. It has so happened that in certain cases the Magistrates have decided proceedings under section 145 merely on such reports, and I may cite a case in I. L. R. 31, Mad. page 82 where this was actually taken. This mischief is due to the provision in this section 148. I beg to submit to this Honourable House that I have not been able to find any justification as to why such a report should be only read as evidence when in the same proceeding a Magistrate is required to take the evidence of both the parties in accordance with the procedure laid down in the Evidence Act. There is a section in the Code of Criminal Procedure to which I would like to refer. That is section 288, where certain evidence is allowed to be taken in without proof in a Sessions court but there that evidence is taken in the presence of the parties and in the presence of the accused. He may or may not have cross-examined the witnesses, but still that evidence is recorded by the committing Magistrate in the presence of the accused. I find further in the new amendment of section 288 the following words added, " shall be treated as evidence in the case, for all purposes subject to the provisions of the Indian Evidence Act. " This is the new amendment in section 288. I shall be very thankful if the Honourable Member in charge of this Bill will be pleased to explain to us the justification or the necessity of such a provision as this which has done more harm than good up to this time. If the only plea is that it has stood for a very long time, I may submit that it has not justified its long existence or long life. With these submissions, I propose to move the amendment.

Sir Henry Moncrieff Smith: Sir, it seems to me that the Honourable Mover of this amendment has got somewhat confused between a report and evidence. He has cited the case of section 288. That is a case, as he himself pointed out, of evidence taken in the presence of parties by a Magistrate. Now this section 148 (2) contains no idea whatever of enabling evidence taken by a Magistrate making the inquiry to be brought on the record as evidence. It is merely the report of the Magistrate which is going to be brought on the record. What Mr. Sen desires is that the report should be proved and used as evidence. The present law says that it may be read as evidence. What will proving the report of the Magistrate consist of? The Magistrate at headquarters has thought a local inquiry necessary. He has sent directions to the Magistrate of the Tahsil or sub-division, perhaps 50 or 80 miles away, to make a local inquiry. The Magistrate inquires and sends his report to headquarters. Mr. Sen desires that that report should be proved What will happen? The Magistrate will be asked to suspend work for two or three days and come up to headquarters and all he will say is " This is my report. I wrote it." You are not going to require the Magistrate to prove every fact in the report that he has had deposed before him. I would suggest to the House that the only effect of this amendment is to drag Magistrates to headquarters solely to

make a statement that the report is his. Everybody knows that it is the Magistrate's report and to bring him to headquarters would be futile and a waste of time for all concerned. This is no new provision in the Code. I would invite the attention of the House to sections 509 and 510. Section 510 lays down that the report of a Chemical Examiner shall be taken as evidence in the case. It is not required to be proved. It is solely a report of the Chemical Examiner's opinion but it goes on the record as evidence and I see no reason why if a Chemical Examiner's report is allowed to be read as evidence, the report of a Magistrate should not also be allowed to be read.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): After hearing Sir Henry Moncrieff Smith, I think this amendment is superfluous and not needed. From my experience as an Honorary Magistrate I say that ordinarily the report of a Magistrate is read; and if he lives at some distance, the procedure will be cumbrous if you ask him to come simply for the purpose of proving that. I therefore think that this amendment is altogether superfluous and uncalled for.

Mr. Chairman: The question is:

"In clause 30, before the words 'In sub-section' insert the following:

'In sub-section (2) of section 148 for the word 'read' the word 'proved' shall be substituted'."

The motion was negatived.

Mr. Chairman: The question is that clause 30 do stand part of the Bill.

The motion was adopted.

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

The Assembly re-assembled after Lunch at Half Past Two of the Clock. Mr. Chairman (Rao Bahadur T. Rangachariar) was in the Chair.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Sir, my amendment is a very simple one. It arises under section 157 as now amended. Now the clause in question relates to two cases. Under proviso A, section 157, sub-section (1) there are two cases,—one when the officer in charge of the police station does not consider the offence to be of a serious nature, and the other when he thinks there are not sufficient grounds for investigation. Now the amendment in the Bill proposed is that in the latter case when there are not sufficient grounds the informant should also be informed of the same. I do not see any reason why that should not apply to the first clause A also. My amendment is intended to supply that deficiency, that is, that in either case the fact should be notified to the informant where the offence is of a serious nature or where there are not sufficient grounds for investigation. My object is that the same reason which induces the amendment of the clause should also apply to the other case, the object being that whosoever has given information to the police officer should have an opportunity of knowing that his information has not

[Mr. Harchandrai Vishindas.]

been acted upon so that he can get an opportunity of taking further action. With these remarks, Sir, I move my amendment which runs thus:

"That in clause 31 (*ii*) delete the words 'in the case mentioned in clause (*b*) such officer',"

so that both the clauses will be treated in the same way.

Mr. Chairman: The amendment moved is:

"That in clause 31 (*ii*) delete the words 'in the case mentioned in clause (*b*) such officer'."

The Honourable Sir Malcolm Hailey: Sir, Mr. Harchandrai Vishindas will, I think, admit after he has heard our explanation that his amendment is moved under a misapprehension. Clause (*a*) (*i*) provides for two cases: in the first, if the offence is not of a serious nature, the officer in charge of the police station need not proceed on the spot or depute a subordinate officer to make an investigation on the spot, but, of course, he will make an investigation though not on the spot. Clause (*b*) provides that if there are no sufficient grounds for making an investigation, he will not make one at all. Now in our sub-clause (2) we provide that if he does not intend to make an investigation at all, he shall notify the informant, if any, of the fact. It is, I think, quite unnecessary that he should notify the informant of the fact that he proposes to make an investigation but not on the spot. The point is, I think, quite clear.

Mr. Harchandrai Vishindas: After this explanation I ask for leave to withdraw my amendment.

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

Mr. Chairman: The question is that clause 31 stand part of the Bill.

The motion was adopted.

Mr. Chairman: The question is that clause 32 stand part of the Bill.

The motion was adopted.

Mr. J. Ramayya Pantulu: Sir, my amendment is:

"In clause 33 for the words 'for any purpose' substitute the words 'as evidence' and omit the words from '(save as hereinafter provided)' to the words 'such statement was made'."

Mr. H. Tonkinson: Sir, may I suggest that the amendment be taken in two parts, and that we take as the first part:

"In clause 33 for the words 'for any purpose' substitute the words 'as evidence'."

Mr. Chairman: I think it will be for the convenience of Members to take your amendment in two parts.

Mr. J. Ramayya Pantulu: I think the two parts stand together, but I have no objection to moving them separately. I propose that:

"In clause 33 the words 'as evidence' be substituted for the words 'for any purpose'."

This clause relates to section 162 of the Criminal Procedure Code. Sub-section (1) of that section as it stands runs thus:

"No statement made by any person to a police officer in the course of an investigation under this chapter shall, if taken down in writing, be signed by the person making it, nor shall such writing be used as evidence:"

For this the Bill substitutes the following:

"No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:"

My arguments with regard to both parts of my amendment are indivisible. I, therefore, find it somewhat difficult to argue on the first part of my amendment only and I shall state the whole of my argument.

The principle underlying sub-section (1) of section 162 is that, although every witness who is examined by a police officer is bound to answer the questions put to him, he is not bound to speak the truth to him; so that a statement made by a witness to a police officer cannot be used as evidence of the truth of the statement itself. Therefore, the law as it stands takes care to lay down that the statement made by a witness to a police officer shall not be used as evidence in any case whatever. But the section as amended in the Bill says:

"It shall not be used for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statement was made."

That greatly qualifies the effect of the section as it stands, which states that such a statement shall not be used as evidence for any purpose whatever. The amended section limits the prohibition of the use of the statement only in connection with the inquiry or trial arising out of the investigation at the time. It is therefore greatly to the disadvantage of a man making such a statement; for there is a chance of his statement being used as evidence against himself in some other proceeding, or as evidence against other persons in some other proceeding. The principle being that nobody is obliged to speak the truth to a police officer, just as he is obliged to speak in a Court of law, a statement made to a police officer should not be taken to be such as can be used as evidence in any case except as already provided for in the proviso to the section. It can be used for the purpose of contradicting that witness in further proceedings. Therefore, I think, Sir, that the section as amended in the Bill will take away the safeguard which the existing section provides against statements made to the police being made use of to the annoyance or inconvenience of the public; not only of the person who makes the statement, but also of other people. I therefore think the amendment made in the Bill encroaches greatly upon the liberty of the people and is altogether unwarranted. I therefore propose, Sir, that the amendment which stands in my name. . . .

Mr. Chairman: On further consideration, I think the amendment, if it is limited to the first portion, will not be quite intelligible to the House. I think therefore that it is but right that the Honourable Member should move the whole amendment as it stands. If he desires to say anything more on that he may do so now.

Mr. J. Ramayya Pantulu: My objection to the section in the Bill as it stands is that it greatly restricts the effect of the existing law, which lays down that a statement made to the police is not to be used as evidence:

[Mr. J. Ramayya Pantulu.]

it can only be used for the purpose of contradicting that man in the course of the same proceeding. And I submit that such a statement should not be capable of being used as evidence against the man making it or any other person in any proceeding whatever. I submit that the law must stand as it is and the proposed section is bad. Therefore I move the amendment which stands in my name.

Mr. Chairman: The motion before the House is:

"In clause 33 for the words 'for any purpose' substitute the words 'as evidence' and omit the words from '(save as hereinafter provided)' to the words 'such statement was made'."

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member): Sir, the portions of this clause which my Honourable and learned friend's amendment seeks to delete may be divided for our purposes into three parts. The first portion seeks to substitute the words "as evidence" in place of "for any purpose" and the second portion seeks to delete the words within the brackets. Now, in regard to . . . (*Mr. J. Ramayya Pantulu*: "To the end of the paragraph.") No. I am dividing your proposal into three parts because our position in regard to the first two portions is different from our position in regard to the third portion. So far as the substitution of the words "as evidence" in the place of "for any purpose" and the deletion of the words within brackets is concerned, Government is prepared to accept these two modifications of the clause proposed by my Honourable friend. "As evidence" was no doubt the expression in the old Act. That was also, as far as I recollect, the phrase used in the Bill as originally drafted. The expression "for any purpose" was substituted by the Lowndes Committee, so that so far as the Government is concerned, the words "as evidence" having been the original expression proposed by them, they are willing to accept the amendment in so far as this substitution is concerned. We further agree that the retention of the words within the brackets, *viz.*, "save as hereinafter provided" is unnecessary, for the proviso being a portion of the section itself, the repetition of these words in the first part of the sub-section is redundant.

But as regards the elimination of the concluding words of this clause, it seems to me that the position has not been well understood by my Honourable friend; otherwise, I fancy that he would not insist on the elimination of those words. It is quite true that if those words are eliminated from this clause, the result would be that neither the statements nor the record of statement referred to in this clause would be admissible as evidence in any case whatever; that is to say, neither in the trial of that case nor in the trial of any other case against that particular accused or against anyone else would those statements and the record of these statements be admissible. It is a well known rule of law that a special enactment providing for particular set of facts overrides the general provisions of a general enactment and in consequence if these words were to be left out, the clause would exclude the applicability of the Indian Evidence Act to these statements and to this record would make these entirely inadmissible in evidence. But is that conducive to the administration of justice? That is the question which the House has to bear in mind; I submit not. Now, let me give you but one or two instances, instances which I feel will appeal to those Honourable and learned gentlemen who are members of the profession to which I am proud to belong. Let us assume a case in which a Sub-Inspector of Police had concocted a false charge against a person

residing within the jurisdiction of his police station who had given him some cause for offence. Or take another case. Suppose a rich and influential person residing within the area of a police station had induced the Sub-Inspector to concoct a false case against an enemy of his. Suppose yet another case; a rich and influential zemindar or other person brings about the murder of an enemy of his through one of his own dependents or through a hired villain and then greases the palm of the Sub-Inspector to let the real culprit off and substitute in his place some other person, possibly another enemy of this rich and influential zeinindar. Imagine yet another case in which a murder has been committed and the real murderers have remained untraced. Honourable Members are aware that a serious offence of that kind if untraced is counted to the discredit of the Sub-Inspector in charge of a police station. It results in a blackmark against him. We have come across, those of us who have practised at the bar and have had to do with criminal cases, have occasionally come across cases in which in order to avoid the resulting censure or disgrace the Sub-Inspectors of Police run in innocent persons. Now, in all these cases where a Magistrate subsequently trying the case finds that the Sub-Inspector of Police has concocted a false case against the accused and the accused is able to establish his innocence at the trial, even though the Sub-Inspector of Police may have prepared false diaries, may have not recorded statements of witnesses produced by the accused before him or even the statement of witnesses who are subsequently produced in Court as witnesses for the prosecution correctly, yet if the law is to be amended, as my Honourable friend would have it amended, the result would be that in case the Court ordered the trial of the Sub-Inspector for having concocted a false case, for having prepared a false record, all these statements and the records of those statements in the handwriting of the Sub-Inspector of Police himself, and therefore constituting the most valuable evidence in the subsequent trial of the Sub-Inspector for having concocted a false case or prepared false documents, would be absolutely inadmissble if the amendment proposed by my Honourable friend were to be accepted. Surely that would not be conducive to the administration of justice. Indeed by the acceptance of this amendment you would be excluding from admissibility most valuable evidence which could be produced against dishonest police officers, and I submit that that is in the highest degree undesirable in the interests of justice. Other cases can also be conceived in which a sweeping provision like the one that my Honourable friend wants to retain in the Code by the elimination of the last words of the clause would be highly detrimental to the interests of justice. It should be remembered that the retention of these words which we have produced does not make these statements or records of these statements admissible in all other cases. It does not override the provisions of the Indian Evidence Act. All it says is that these statements shall not be admissible in this trial, in the trial of the case in connection with which the inquiry has been held. In order to make these statements or this record of evidence in a subsequent case, you would have to look at the provisions of the Evidence Act. Now, section 5 of the Evidence Act lays down in express terms:

> "Evidence may be given, in any suit or proceeding, of the existence or non-existence of every fact in issue, and of such other facts as are hereinafter declared to be relevant, *and of no others.*"

These words "*and of no others*" are very significant, so that the result of the provision embodied in section 5 of the Indian Evidence Act is this.

[Dr. Mian Sir Muhammad Shafi.]

The statements recorded under section 161 referred to in section 162 of the Code of Criminal Procedure would be evidence in a subsequent case only if they were either themselves facts in issue or facts relevant to the issue.

3 P.M. Now in a case such as I have already mentioned to the Assembly, that is to say, if a Sub-Inspector of Police were charged with having fabricated a false case or false documents, the record of those statements and the statements would be facts in issue, and at any rate, these certainly would be relevant to the issue at that trial. But in another case it is obvious that they would not be admissible; they would not be admissible against a third party. And the reason is very simple. Unless those statements are dying declarations, they would not be admissible in any of those sections which relate to previous statements, section 32, etc. It is obvious therefore that the circle of admissibility, if I may use that expression, of these statements and of this record in any subsequent case is very limited, and limited only to such cases in which their admissibility is conducive to the best interests of justice. In those circumstances I submit that the elimination of these concluding words of this clause would result not in the interests of justice, but would be highly detrimental to the administration of justice. The one case which I can think of in which these statements and this record would, without any doubt, be admissible, is the case of the sub-inspector of police, and in that very case the acceptance of this amendment would make these documents and these statements admissible in the subsequent case against the sub-inspector of police. I submit therefore there is not only no *a priori* reason justifying the elimination of these words, but on the contrary the elimination of these words would be in the highest degree detrimental to the administration of justice.

Mr. Chairman: I think before the discussion proceeds further, in view of the remark which fell from the Honourable the Law Member, I propose to put the first portion of the amendment, namely:

> "In clause 33 for the words 'for any purpose' substitute the words 'as evidence' and omit the words 'as hereinafter provided,"

which are purely verbal changes. I put them to the House now, so that the discussion may proceed on the rest of the amendment, that is "nor shall such statement be used as evidence."

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I wish to oppose the amendment and give some reasons for doing so.

Mr. Chairman: You want to oppose the verbal change?

Mr. K. B. L. Agnihotri: Yes, and show why the change is undesirable. I rise with some hesitation to oppose the amendment moved by Mr. Pantulu to substitute the words "as evidence" for the words "for any purpose." Sir, the word "evidence" is rather more restricted in its meaning than the phrase "for any purpose." This by itself is a sufficient reason for not substituting the words "as evidence," for "for any purpose." It is better to have under this section a word of a wider meaning than of a restricted one. If we look to the object of section 162 we find that this section was inserted in the Code to provide as a safeguard against an unscrupulous police officer. As Mr. Pantulu has pointed out, a witness is not bound to state the true facts to the police, he may come and state anything he wants to. It may be false or it may be true, or it may be only to

please the police officer, or it may be with some ulterior motive to implicate some person. It was therefore thought necessary that such a provision should be included in the Code and that the evidence of such a person should not be an *ipso facto* evidence before the court, and the accused should not be convicted on such statements. It has also been pointed out by the Honourable the Law Member, that there may be certain unscrupulous police officers who may take advantage of the want of such a provision and may have such evidence brought on to the record in order to implicate certain persons. We therefore find that the insertion of section 162 in the Code of Criminal Procedure is an essential one to do away with the mischief of the police officers or of an untruthful witness. The words " for any purpose " as put into the Bill seem to be very desirable and guard against all possible injury to accused. For instance, a man is summoned by a police officer to make a certain statement before him. He goes and makes a statement to please that police officer, and to avoid the trouble which may otherwise be the result if he refuses to state that which the police officer wants him to state. He states that such and such a man has committed this offence. Now if we do not admit this portion as evidence, that person against whom he has made a statement may not be liable to be convicted, and at least the truthfulness or the veracity of the witness could not be challenged and the witness could speak the truth before the Magistrate. Supposing I have made a statement before a police officer, and I am a witness for the defence. A police officer comes forward and says " this witness has made a different statement before me, and therefore the statement he has made in the court is contradictory and should not be believed." On that statement made by the police officer, or on that statement recorded in his diary, the judge will be perfectly justified in holding that I am not telling the truth, even though I have stated the truth on oath and I may have spoken a falsehood before the police officer to please him. So if we retain these words " for any purpose," in this section the prosecution can not produce such a statement and challenge my veracity on the ground that I had made a different statement before the police officer. Therefore the words " for any purpose " should be retained in this Bill, and should not be substituted by the words " as evidence," because in that case the police diary may be brought before the Magistrate to contradict the witness and show that he had stated something contradictory before the police officer. That would not be promoting justice and would be encouraging unscrupulous police officers and would fail in its very object. I therefore oppose the amendment.

Colonel Sir Henry Stanyon: I also rise to oppose the amendment. It has been sufficiently demolished by the illuminating exposition of the clause in the appeal made by the Honourable the Law Member, and I rise only to draw attention to one point in connection with this clause.

The clause reads:

" Nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) . . . ."

The only point I think which requires to be made clear, so that the House may vote correctly on this amendment, is whether these words " hereinafter provided " refer only to that proviso, because, if they do, then a most important use of these diary statements provided for by section 172, clause (2) is shut out. I see no amendment in this Bill to section 172, clause (2), which provides that for the purpose of aiding any

[Colonel Sir Henry Stanyon.]

inquiries in trials the Judge may use the police case diaries. The words "save as hereinafter provided" are ambiguous. "Herein" may refer to the Code or it may refer to the section. That is the only point I have to make.

Mr. Chairman: The question before the House is to substitute in clause 33 the words "as evidence" for the words "for any purpose (save as hereinafter provided.")

The Assembly then divided as follows:

AYES—3.

Muhammad Ismail, Mr. S.	Samarth, Mr. N. M.
Ramayya Pantulu, Mr. J	

NOES—47.

Agarwala, Lala Girdharilal.	Jatkar, Mr. B. H. R.
Agnihotri, Mr. K. B. L.	Ley, Mr. A. H.
Aiyar, Mr. A. V. V.	Misra, Mr. B. N.
Akram Hussain, Prince A. M. M.	Mitter, Mr. K. N.
Allen, Mr. B. C.	Moncrieff Smith, Sir Henry.
Asad Ali, Mir.	Mukherjee, Mr. J. N.
Ayyar, Mr. T. V. Seshagiri.	Nag, Mr. C. C.
Barua, Mr. D. C.	Neogy, Mr. K. C.
Bhargava, Pandit J. L.	Percival, Mr. P. E.
Blackett, Sir Basil.	Pyari Lal, Mr.
Bradley Birt, Mr. F. B.	Sarfaraz Hussain Khan, Mr.
Burdon, Mr. E.	Sarvadikary Sir Deva Prasad.
Chatterjee, Mr. A. C.	Sen, Mr. N. K.
Chaudhuri, Mr. J.	Shahani Mr S. C.
Crookshank, Sir Sydney.	Singh, Babu B. P.
Faridoonji, Mr. R.	Singh, Mr. S. N.
Gajjan Singh, Sardar Bahadur.	Sinha, Babu L. P.
Gulab Singh, Sardar.	Sircar, Mr. N. C.
Haigh, Mr. P. B.	Srinivasa Rao, Mr. P. V.
Hailey, the Honourable Sir Malcolm.	Stanyon, Col. Sir Henry.
Hindley, Mr. C. D. M.	Subzposh, Mr. S. M. Z. A.
Holme, Mr. H. E.	Vishindas, Mr. H.
Hullah, Mr. J	Zahiruddin Ahmed, Mr.
Innes, the Honourable Mr. C. A.	

The motion was negatived.

Mr. Chairman: The rest of the clause is now under discussion. I must read it to the House so that Honourable Members may follow it. It runs:

"Nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided)."

We are carried so far.

The further words thereafter, *viz.*:

"at any inquiry or trial in respect of any offence under investigation at the time when such statement was made";

the proposal now is that all those words be omitted.

The Honourable Dr. Mian Sir Muhammad Shafi: Sir, with your permission I should like to say a few words. My Honourable friend, Mr. Seshagiri Ayyar, and other Honourable gentlemen having agreed to the retention of the concluding words in this clause we have, as must have become clear from the division which has just taken place, agreed to the retention of the words "for any purpose" instead of "as evidence";

and I understand the position now to be that Honourable Members are prepared to accept the clause as it originally stands in the Bill. But I must make it clear that this will not in any way affect the provision embodied in section 172.

Mr. T. V. Seshagiri Ayyar: Subject to any further amendments.

The Honourable Dr. Mian Sir Muhammad Shafi: Yes, quite.

Mr. K. B. L. Agnihotri: Sir, I have been placed in a somewhat false position. The leader of my party has accepted a certain compromise with the Government. I do not question that compromise, but at the same time I wish to put before the Members of this Honourable House my difficulties in the matter, and if on re-consideration the Honourable Members still agree to the compromise, then I shall be satisfied. My reasons for moving for the omission of those words are, Sir, that it may happen that an unscrupulous police officer may know that a statement made by a certain witness before him is not admissible for the offence under investigation at that time, but may be admissible in respect of some other offence that may be before him but may not be under investigation at that time,—and with this knowledge this unscrupulous police officer may record that evidence which, as the clause now stands, will make it admissible later on. This would be a very real danger if we allowed the clause to stand as it is. The Honourable the Home Member said if an unscrupulous police officer were to behave in this way, why should he not be prosecuted. That certainly is a real difficulty, and if the Government were to make special provision to that effect, that in the case of a police officer making a false diary just as they have done in respect of section 32 of the Indian Evidence Act, such statements should not be admissible; if the Government were to make such a provision, it would I think satisfy the purpose and solve some of the difficulties. I have known a case under the Arms Act in which a man was prosecuted for not having intimated to the police about the transfer of certain arms. The police were investigating this offence—that is, his omission to report the matter to the police; but under this offence they also recorded evidence in the same diary about the arm having been exported by another man from a Native State into British territory, without a license with a view to compromise that man if the prosecution for omission to report failed. If this clause is allowed to stand, that evidence would be certainly admissible and will create additional hardships. Therefore it would be better if this clause were omitted and the Government might except the case of police officers in the second sub-clause of section 162. I therefore move the amendment that:

"In sub-section (1) omit the words under investigation at the time when such statement was made."

Mr. Chairman: The question before the House is:

"That the words 'at any inquiry or trial in respect of any offence under investigation at the time when such statement was made' be omitted from sub-clause (1) of clause 33."

The motion was negatived.

Mr. Chairman: Amendments Nos. 129 and 130 (*a*) fall through.

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

"In clause 33 in the proviso to sub-section (1) insert the words 'allow inspection to the accused and'; after the word 'shall' omit the words 'may then if the Court thinks it expedient in the interest of justice,' and omit the words 'if duly proved'."

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

Sir, the proviso as it stands in this Bill is to the effect that if the accused requests a Magistrate to go through the statements of certain witnesses before the police, the Magistrate shall go through the statements and if he finds that in the interests of justice a copy of such statements be provided to the accused for purposes of the defence, the copy of the statements will then be given. Sir, the statements that are taken by the police are generally made in the absence of the accused, and the accused cannot be in a position to know the statements that any particular witness may have made before the investigating officer. It therefore generally happens that though the accused knows nothing about the statements still he requests the Court to go through the statements and to find out if there was any contradictions and the Magistrate has thus to waste his time unnecessarily in going through those statements to find subsequently that the statements made by a particular witness before the police were exactly the same as he made before the Court. This procedure involves much waste of public time that could very well have been avoided had the statements of the witnesses appearing before the Court been supplied to the accused beforehand and the accused would then have found out for himself any statement contradictory to that made before the Court, and could then ask for permission from the Court to contradict that witness on that statement. I think the proposed amendment will be more wholesome and will save much of the public time than will otherwise be the case if the clause is allowed to remain as in the Bill. Secondly, Sir, there is a provision in the proviso—" and may then, if the Court thinks it expedient in the interests of justice, direct that the accused be furnished with a copy thereof."

Mr. Chairman: The Honourable Member might perhaps put his amendment in three parts—first, allowing inspection to the accused—that will be better.

Mr. K. B. L. Agnihotri: I therefore submit that the inspection of the statement ought to be allowed and with this view I beg to move that in the proviso to the same sub-section insert the words " allow inspection to the accused and."

Dr. H. S. Gour: Sir, I strongly support this amendment. Honourable Members will observe that this clause has been the battle-ground for the last thirty years that I have been practising at the bar. In the old Code copies were furnished to the accused; later on in the consolidating Act this proviso was modified and found its place as it does in the current Code of Criminal Procedure. Ever since this proviso was inserted I have had numerous cases in which I have asked the Judge or the Magistrate as the case may be to refer to the statements of witnesses made before police; he has looked at it and he says to me " I have referred to it and thus complied with the provisions of this proviso." But I was none the wiser by the Judge's reference to the police diary, and the result was that I was not able to cross-examine witnesses with reference to their previous contradictory statements which in the appellate Court was a revelation to me, because when these very statements were read out I found in several cases that they were diametrically opposed to the statements made in the lower Court. I therefore submit that it is a perfectly innocuous provision which does nobody any good and is calculated to lead to a dereliction of judicial duty to say that the Judge or the Magistrate as the case may be shall refer to the statements made by a witness to the police, on a request being made to that effect to the Court. In the statement of objects and reasons which

heralded this proviso it was stated that as the statements of witnesses to the police were very inaccurate and were not taken down by persons accustomed to the recording of evidence, therefore it was unsafe to treat them substantially and practically as pieces of evidence. On the other hand, it was pointed out that in a very large number of cases witnesses go back upon their own statements either because they are tutored to do so or because they feel that by going back upon their statements they will improve the case of the side they represent, and if the counsel for the accused exercises his power and asks the Court to refer to the case diary, the Court does not look at the case diary from the same point of view as the accused and his counsel. He has got certain things in his mind, the Court has got quite a different thing in its mind, and the result therefore is that the object with which this latitude was allowed in the present Code has been practically neutralized by reason of the fact that the Court is not bound to give a copy or to allow the inspection of the statements of witnesses made to the police on a request being made to that effect to the Court concerned. I therefore submit, Sir, that the insertion of these words in this provision, namely, "to show the statements to the accused and to allow inspection to the accused," would be a salutary improvement and I hope the Honourable the Law Member and his colleagues on the Treasury Bench will see the strength of our arguments and accede to the amendment proposed by the Honourable Mover.

Colonel Sir Henry Stanyon: Sir, I also rise to support this amendment very strongly. Perhaps my experience of this proviso has not been as great as that of other Members of this Honourable House, but I have had a certain amount of experience in its working. The existing proviso has been absolutely useless. In many places it had been the habit for investigating police officers to write in one book their diaries interpolated by statements of witnesses examined by them during the investigation. The diary is a sealed book in such cases to the accused; yet under this proviso the accused is expected, by some process of divination which I cannot understand, to make a request to the Court to examine the statements of certain prosecution witnesses; and then discretion was left to the Court to give him a copy of those statements for the purpose of cross-examination. Now in actual practice a date is fixed for the Sessions Court to begin its labours. It starts to follow the procedure for trials laid down in this Code. I do not remember one single instance in 7 years' work as a Divisional Sessions Judge in which I was ever asked to delay the trial so that copies of these statements might be prepared and handed over to the accused. The thing was really unworkable. What I found it necessary to do and what I dare say a great many other Sessions Judges have found it necessary to do, was, where the witness's statement in Court differed widely from his statement made at the police investigation, to ask him questions on it myself. Well, that is not carrying out the section. The clause which is now proposed to be substituted is no better. Once again, it leaves the initiative in the matter to the accused person who knows nothing whatever about the contents of the statements recorded by the police. I have never been able to understand why these statements, which in a proper investigation should be recorded quite separately from the case diary but which are not so recorded in many cases, why the statements should be put any more behind the veil than that important document—the first information. They are merely statements made by witnesses in the course of an investigation—sometimes they are made publicly, sometimes they are made very privately. But they are there, whatever they are worth. Why not

[Colonel Sir Henry Stanyon.]

let the accused person see them and then, when he finds that certain of the prosecution witnesses have gone right away from what they said to the police, let him have copies and leave the cross-examination to him and relieve the Sessions Judge or the Inquiry Magistrate from the duty of cross-examining Counsel. Therefore, I urge that this amendment is entitled to the support of the House. It asks for nothing more than this that these statements which are recorded and should be recorded, apart from the diary, may be shown to the accused in order that he may be in a position. . . . .

The Honourable Dr. Mian Sir Muhammad Shafi: *Shall* be shown, not *may* be shown.

Colonel Sir Henry Stanyon: I still think that he ought to be allowed to inspect these statements because there is no question that they do influence decision. Section 172, clause 2 refers only to *diaries*: but Courts and Judges who look at these diaries under that clause, though they do not use them as formal evidence, are still very much influenced in their judgments by what is written there in the form of statements of witnesses. Therefore, I think that this amendment ought to have the support of the House.

The Honourable Dr. Mian Sir Muhammad Shafi: Sir, I venture to point out to the House that the position taken up by my friend, Dr. Gour, is materially different from the position of the Honourable the Mover of this amendment. Honourable Members will recollect that my Honourable and learned friend emphasized the fact that, when the Court had a discretion in the interests of justice to furnish the accused with a copy, there was no reason why similar discretion should not be given to the Court to allow inspection of these statements if the accused wants that inspection. There is something in that position taken up by my Honourable and learned friend. But what the Honourable Mover asks for is this that the House should introduce into this clause the words " allow inspection to the accused " and, if you look at the proviso, the only place where these words do fit in at all is after the word " shall " " shall allow inspection " and so on. Now, if I may venture to say so, this is a case in which it would not be conducive to the interests of justice if it were to be made obligatory on the part of the Court to allow inspection in any and every case. As a matter of fact. . . .

Dr. H. S. Gour: That was in the Code of 1882.

The Honourable Dr. Mian Sir Muhammad Shafi: With all deference, I would remind my Honourable friend, Dr. Gour, of what he said only a short while ago. It seems to me, Sir, that just on the very grounds on which the Code of 1898 and the present clause makes it discretionary for the Court to permit copies of these statements, on these very grounds it would be in the highest degree detrimental to the interests of justice if it were made obligatory on the part of the Court to allow inspection. In fact, the two portions of the clause would almost become contradictory of each other. To say that in one case the Court is bound to give inspection and in the very next breath to say that the Court shall have discretion to direct that a copy of that statement be given to the accused would become self-contradictory. Had the Honourable Mover chosen to move an amendment to the effect that just as the Court is given a discretion to allow copies of these statements being furnished to the accused, similarly it

may be allowed discretion to allow inspection, that would have been quite a different matter,—a position with reference to which possibly the Government would have been prepared to meet him halfway. But as he makes it obligatory on the part of the Court to allow inspection, I regret that the Government cannot accept that proposition. It seems to me that in cases of this kind the Court ought to be allowed discretion, for these statements really are not part of the judicial record at the trial. Of course, if they were part of the judicial record at the trial, every accused person would be entitled as of right to demand inspection and to demand copies. But when these statements do not form part of the record at the trial but form part of an entirely different record, record prepared by the police during the police investigation, it is only where the Magistrate thinks that in the interests of justice the accused ought to be furnished with copies or ought to be allowed inspection that the Legislature ought to allow him that discretion: but to make it obligatory on the part of the Magistrate to allow inspection, I submit, would be going beyond what is required by justice as well as by the equities of the case.

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, to put this matter in ordinary common language is better I think than using legal phraseology. When an offence is committed, an investigation proceeds. That is, policemen come there, examine the various people, take down their statements, write down what those men tell them. So they go on for a number of days. Latterly, they believe that a particular man is guilty of the offence and put him up before the Magistrate in the first instance in serious cases. When the accused person comes before the Magistrate, he or his pleader wants to know on what materials he is placed before the Magistrate, on what materials he is charged with this serious offence. He asks the Magistrate. The Magistrate says, " I do not know. You will learn. Witnesses will speak in Court and then you will learn." The witnesses do speak. The accused or his adviser believes that the witnesses at that time have improved their story, or to fit into other circumstances, are giving an altogether different story from what they told the police at the earlier stages, that is, before they had time to cogitate, to think and to find out the consequences of their statements. That is they make their story fit in with other circumstances, from the unimpeachable circumstances, which have transpired. Now those are the conditions in which often times an accused person is placed. Then it becomes very important and material to know what these witnesses had in the first instance told the police and it is then that an application is made to the magistrate to see the originals, that is the statements where these depositions are recorded. Now looking at that position, I think in the interests of justice an accused person must have the right, not as a matter of discretion of the magistrate, to see what is it in black and white made at a very early stage, when there was no opportunity to coach up the witnesses or to improve or to embellish their statements. Now, I ask, apart from all technicality and apart from other arguments, is it or is it not fair to give the accused person a chance, as much chance as the prosecution has at that stage. Now what is the harm. If your policemen have been doing their duty honestly what is the harm in telling the accused what they have done. Should the law be made enacted in a manner to shield a slovenly policeman or a dishonest policeman or an over-zealous policeman? Why should you give that opportunity? I say nothing will be lost. Justice will not suffer if you show the accused person the earlier statements recorded in writing by the policeman

[Rao Bahadur C. S. Subrahmanayam.]

who made the investigation of the offence and if those witnesses have swerved from what they had said substantially, well the magistrate or the court will be in a position to judge of their veracity. If the swerving is slight in some matter of minor detail, then also the Court will see that the charge is not of substance. Therefore it seems to me on grounds of ordinary justice it is fair that the accused person should have the right, not merely at the discretion of the magistrate which will vary and which we have never found exercised properly on occasions like this, to inspect these statements. Now, Sir, I have for a large number of years had direct experience of trials and inquiries. I know this was one of the sore points in every magisterial inquiry and in every Sessions trial. Some judges used to read these diaries, those who have some patience. These statements are recorded in the vernacular. Most of the judges are not able to read the originals in the vernacular. They would not therefore take the trouble to read these early statements and to ask a judge to read those statements and then tell me whether in the interests of justice I should get it or not is too much to ask of a judge in the hurry, in the hustle and in the pressure of a trial. You cannot ask a judge to read all these illegible manuscript documents and tell you whether they are important or not. You cannot ask that. Therefore, I think this provision has been very considerably misused. The accused person till a very very late stage is not in a position to know what the materials against him are,—and what is the good of a trial like that? And what happens? Justice fails in the original Court, and in the appellate Court, by the help of counsel and others there, things are raked up, re-trials are ordered, or convictions are upset, and all this delay, all this annoyance and worry is caused. Therefore I think in the interests of justice it is better to give the right to the accused person. There is one other argument which I feel strongly, and it is a strong argument in support of this request, and it is this: you will make the policeman write down, take down statements with greater care; he will not write them out in an indifferent manner. He will know that these statements will be brought up before the Magistrate, and therefore in taking down these statements he will take them down with care, with precision. And now what happens now in these times? Things are mixed up; there is one paragraph of the statement, and two or four paragraphs of information, opinion and suspicion,—and all to the prejudice of the accused person. And when the judge reads it all, he naturally gets prejudiced against the accused because there are so many things against him, which cannot be evidence in a Court, embodied in that diary. He is told, the accused is a notoriously bad man; he is a great gambler. All these impressions are formed. So it is a salutary thing if you will allow, as a matter of right, the inspection of these documents, for then the police will enter in these statements only useful matter, and if he has got opinions and impressions, he will record them in another place, and so the two will be separated, and what the accused gets will be a mere statement. What is a confidential document will be a confidential document and no inspection of it will be claimed. It will work in the interest of the efficiency of the police, for the integrity of the work, and also it will save a lot of unnecessary worry and annoyance to the accused.

Mr. T. V. Seshagiri Ayyar: I move, Sir, that the consideration of this section be adjourned.

Mr. Chairman: It will automatically be adjourned at Four.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): I move that the question be put. (*Cries of* 'No, no.')

Dr. H. S. Gour: I understand, Sir, that the matter will automatically close for the day as soon as it is Four of the Clock.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): I venture to make a suggestion which will cut short this discussion,—that 'shall' should be changed into 'may.'

Dr. H. S. Gour: I rise to a point of order. I understood the Honourable the Law Member to indicate a desire to compromise this matter with Members on this side of the House; and if I understood him aright, he was in a compromising mood. We also are anxious that there should be a settlement, so that the official bludgeon may not descend upon the non-official Members on this side of the House; and I therefore submit that we should give the Government a little more time to think. They will come better prepared to meet our wishes at the next sitting. I therefore submit that it is one of those cases in which nothing is lost in giving time.

MOTION FOR ADJOURNMENT.

APPOINTMENT OF A ROYAL COMMISSION ON CIVIL SERVICES.

Mr. Chairman: Order, order. The Council will now proceed to discuss the motion for adjournment of the House to discuss a definite matter of urgent public importance, namely, the decision of His Majesty's Government to appoint a Royal Commission on the Civil Services in India.

4 P.M.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I rise, Sir, to move the adjournment of the House to consider the announcement made yesterday by the Honourable the Home Member that His Majesty's Government in England have decided to appoint a Royal Commission to inquire into the financial and other conditions of the Civil Service.

Before I proceed very much further, Sir, I should like to advert to a sentence in the letter of Mr. Montagu—one of the greatest friends of India—which he addressed to the London "Times" on this subject. Speaking of the Legislature in relation to the Civil Services, he says, that the Legislature has very often exhibited hostility to that Service and has occasionally used violent language towards it. I am sorry that such a good friend of India should be so unfair to the Members of the Legislature. Sir, during my career as a Judge of the High Court I have worked with many Civil Servants. I have very many friends among them even to-day; I have supervised their work, I say with confidence that they are good friends, loyal colleagues and willing subordinates. They have done exceedingly good work in the past and I have no doubt they will continue to discharge their duties as efficiently and as willingly in the times to come. In fact, Sir, when I look at the Treasury Bench, which contains such a large number of Civil Servants in this House, which is supposed to be a popular Assembly and when I find how wholeheartedly they give their time and intellect to the work, I have every hope that the Civil Service in the years to come will discharge their duties even better than they did in the past. Therefore, Sir, I do not expect that any friends of mine, certainly not myself, will use any language which will be hostile to the Civil Servants and which would show that we are not willing to treat them justly and generously. Sir,

[Mr. T. V. Seshagiri Ayyar.]

I doubt whether this move on the part of His Majesty's Government is in the interests of that Service. I am inclined to think that the best minds in that Service do not like an inquiry of this nature as that would antagonize the Indian people and would probably not result in any good to them.

Look at the matter, Sir, from the point of view of the mode in which this announcement has been made; look at the time of the announcement; we have been asking for the Indianization of the Services; a Circular has been sent round for eliciting opinion on that question. It is only yesterday, or day before yesterday, that a bombshell was thrown by the Secretary of State's decision not to make any further advance in regard to constitutional reforms. The financial position of the country is very unfavourable; and at this period, and at this time to have resolved upon appointing a Commission with the avowed object of making the position of the Civil Servants better financially is a step which is calculated to damp the ardour of the most earnest amongst us who want to befriend the Civil Service. Sir, is there any country which enjoys self-Government in which such an idea has been entertained? I think I am right in saying, Sir, that the idea of appointing a Royal Commission is opposed to the pronouncement made, time after time, in the Houses of Parliament; it is opposed to the Preamble of the India Act; it is opposed to the language used by Mr. Montagu at the time when he made the famous pronouncement. What does the Preamble to the Act say? It says that Indians should be increasingly associated with Europeans in the service of the country. It also says that the object of the Parliament is to develop the self-governing capacity of the people with a view to progressive realization of responsible Government in this country. Now, Sir, I ask the question, is it possible to have progressive realization of responsible Government in this country if the Indian Government and the Indian people are not to consider the pay and prospects of the services, but that Parliament should appoint a Commission to consider the grievances and the conditions of service of the Europeans. What does it come to? It means this, that these European Civil servants will have their pay fixed by a body outside India, although they will have to work under Ministers who represent the people of this country. Now, is that a position which can be contemplated with equanimity—a service which will be irremovable, which will have its pay fixed by an outside body, to work under the people's Ministers? That would mean that the Ministers can have no control over them. Certainly that is not the way by which you can facilitate "progressive realisation of self-Government in this country." I began by asking is there any self-governing country in which such an idea has been entertained or could be entertained? Certainly you do not find in the self-governing Colonies any attempt made by the British Parliament to impose a civil service on them. I was reading, Sir, the other day an interesting debate in the House of Lords on the question of the civil service in Ireland. An amendment was moved in these terms by Lord Glanaway.

The amendment was:

"The civil servants in Ireland should have a statutory right to compensation on retiring owing to the change of Irish Government."

This was opposed by the Government, and there were not half a dozen Peers to stand up for this proposition. That shows that in the House of

Lords such an idea was considered to be too ridiculous to be pressed for a division. In this country however without consulting the Legislature, without understanding our views on this matter, already a decision has been come to that there must be a Royal Commission to examine into the grievances of civil servants. Sir, I must point out at this stage that if a Commission is appointed the inquiry will be practically one-sided. The whole country has been against the appointment of a Commission and it is not right to expect that we, the representatives of the people, would co-operate with a Commission which may come out here for the purpose of making such an inquiry. It is impossible to think of any co-operation being given to a Commission which has been forced on us. The country from one end to the other has raised its voice against this step and if against our will, notwithstanding our protest, a Commission comes, it will find that we are not prepared to co-operate with them; the whole inquiry will be one-sided and will have no effect upon the people or on the Government. Sir, if a Commission is necessary, there are means by which it can come into being. Why should not the powers given under the Government of India Act be availed of? There is section 96B. (*A voice*: '96C.') yes. 96C—thanks—which enables the Government to appoint a Public Services Commission which can go into the question of pay, prospects and pension, etc., of the services. If that is done, the Legislature will have a voice in the matter; then there will not be as much grievance as we have now. Instead of availing themselves of the powers given under the Government of India Act, against the teeth of that very power, an outside body has resolved upon appointing a Commission which the people do not want and which the Legislature resents. Sir, as there are a large number of my friends who wish to speak on the subject, I do not want to take up much more time. But I must say this that there has been a feeling in this country, and the feeling is growing, that the Conservative Government at Home is not friendly to Indian reforms, Indian progress. The practical dismissal of Mr. Montagu was at the instance of a large number of Conservative Members of the House of Commons. Ever since his disappearance from the India Office, we have heard of attempts being made by Whitehall to limit and to resist any attempt made by the Government of India to give to the people of this country more privileges. It has been said, times without number, that mandates have come from Whitehall to stop attempts made by the Government on the spot to take the people into their confidence and to invest them with larger powers. These apprehensions exist, and the people call to memory that in the old days the Conservative Government have never shown itself friendly to progress in this country. Sir, this attempt on the part of the present Government to force upon us a Royal Commission which the people do not want is another instance in point. They want to prevent, as far as possible, all attempts at reforming the constitution. They may say, Sir, that they will not go back on the pronouncement made by Mr. Montagu. They may say that the preamble of the Act is there and that they will give effect to it. They may keep themselves within the letter of the law, but the spirit to carry the people with them, the spirit to assist the people in obtaining responsible self-government is certainly not in evidence, and I am sorry that Lord Peel should have fallen into the mistake of appointing this Commission, which is certainly ill-advised and uncalled for. For all these reasons I move that this House shall adjourn as a protest against the appointment of the Commission which was announced yesterday.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, in supporting this motion, I desire in the first instance to convey our

[Sir Deva Prasad Sarvadhikary.]

thanks to the Honourable the Leader of the House for making as early an official announcement here as he could and thus giving us an opportunity of entering a strong, I shall not add indignant, protest at the way that this Commission is proposed to be appointed. It emphasizes Lord Curzon's pronouncement that the Government of India is but a subordinate branch of the British Government. Well, I rubbed my eyes hard when I got a copy of the pronouncement, thanks again to the courtesy of the Home Member, and I asked myself what the authority and the constitution was under which this Commission was going to be appointed. At one time it had occurred to me that the authority was what Mr. Seshagiri Ayyar has referred to—section 96 (*c*) of the Government of India Act. Well, whoever is responsible for the decision, and we are considering the *decision* now because the appointment has not yet been made, was however wide awake. Section 96 (*c*), clause (2), gives authority to the Public Services Commission mentioned there to discharge in regard to recruitment and control of public services in India such functions as may be assigned thereto by rules made by the Secretary of State in Council. The bomb thrown two days ago has been spoken of by Mr. Seshagiri Ayyar. That is the Despatch of the 2nd of November, published here on the 24th. But it was a bomb that was well expected. In that Despatch occurs memorable advice to the Legislature to explore the structure of the present elastic constitution for development within the limits of what would be probably called expanding conventions. The Secretary of State himself however did not explore what was provided for under the Government of India Act. Though near upon three years have elapsed the rules contemplated in section 96C and the Commission suggested there have yet to come. Supposing, Sir, this Commission and the rules were there, as they should have been long ago, and if the Services made their grievances known through the usual channels, what would there have been to prevent " two people sitting down of a morning," as Lord Islington puts it and setting right those grievances in the light of growing exigencies and changing circumstances, economic and otherwise? In 1915, at the expenditure of near upon six lakhs of public money, and three years of time, the Public Services Commission made recommendations which were published in 1917. What has happened since? The question of percentage whether of 25 or 33 per cent. or something else has been somehow dealt with. Though we are not satisfied with the percentage, we are waiting and watching. That is not what is troubling those who are responsible for this Royal Commission. Questions of pay and prospects, statutory security, thereabout and, adroitly enough, the question of Indianisation have been more or less vaguely introduced in this scheme which probably could not be done by the machinery under section 96C of the Government of India Act. The country will probably be called upon to pay another six lakhs. I should like to know what the Honourable Sir Basil Blackett or the House will have to say in regard to that or whether the charges are to be borne by the Secretary of State or the British Treasury. Sir, the Retrenchment Committee is sitting. Supposing, like the Bengal Retrenchment Committee, this Committee were to suggest a lower scale of pay right through and the Royal Commission makes other recommendations, where shall we be? How are these not unlikely extremes to meet? It is more than inopportune, therefore, it is unfortunate that, without taking all these circumstances into consideration, without invoking in the first instance the machinery at the disposal of the Secretary of State, this Royal Commission should have

been decided on. Who is in its favour? Is the public opinion in India in its favour? Is the thinking public opinion, as voiced in the Press—Indian and Anglo-Indian—in its favour? Are men who know all about these things, men like Lord Islington, who has dealt with the question of the public Services, here, fully in its favour? No. Mr. Montagu has no doubt indicated that an investigation is necessary; that may be in his own justification. But there is other machinery for investigation than a Royal Commission. Why, for example should not that investigation have been made by a Committee like the one which your (Mr. Rangachariar's) intended motion in this House suggested that the Government of India should undertake as the Secretary of State has failed to appoint his Commission under section 96C of the Act. Are we quite sure again that the Services like it? My friend, Mr. Seshagiri Ayyar, has suggested that they do not; that is my belief also. The chances on the other hand are that under the Fundamental Rules and many other rules which we very little understand they are really not doing badly, some of the gain may not bear examination.

Then, Sir, there is the question of reconciling public opinion. We had only two days ago the dictum about its being "too early to think of revising or going back upon what has been done." The very significant word "now" comes in this announcement. Within two months of the Secretary of State's pronouncement that certain other things of a revisionary nature are not to be undertaken because of things that are not before the public.

Is the Government of India in favour of this Commission? Of course, the Government of India will never tell us. Yesterday, however, in another place, not very far from here, it was suggested that the Government of India did not like this Commission and was in fact opposed to it, and I believe that that was not denied, certainly not stoutly denied. (*Mr. N. M. Samarth*: "Not categorically denied.") Not categorically denied. I am thankful to my Honourable friend for that suggestion. If my reading of the situation is correct, if the Government of India is opposed to it, if the thinking Indian public is opposed to it, if men like Lord Islington are opposed to it, if the Service itself as some of us think, is opposed to it, where is the necessity, or justification, where is also the authority under the constitution for this Commission?

Sir, belittling of and constant interference with the Government of India does not and cannot make for progress. Mr. Seshagiri Ayyar has spoken of likely non-co-operation. When the Commission come I hope he and others like him will not take up any attitude like that but will, when the Royal Commission comes place all materials before the Commission, and make them see that much of what is proposed cannot be done. But there are other and real non-co-operators. Will not this sort of action be strengthening their hands? Will they not be able to say and say with great force: "Here is your machinery; you have been toiling hard; you have been given a constitution which is not to be interfered with for 10 years (as we were told in November last) and now here is an attempt to go back upon the whole question, because the scope of the reference is to be wide enough to permit question of organisation, general conditions, financial and otherwise of a certain Service, being gone into and for ensuring and maintaining satisfactory recruitment of such numbers of Indians and Europeans respectively as may be 'now' decided to be necessary." The go by is thus to be given if possible to the previous agreement—I shall not call it decision—about percentage and various other questions relating to the Services. What has happened since November that we are told now that for the purpose of

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maintaining the standard of administration in conformity with the responsibilities of the Crown and the Government of India, a new step has to be taken. Has anything happened within the last twelve months that this new departure is necessary, or has the Crown *now* had further responsibilities imposed upon it that it had not, when the Government of India Act was passed?

Then, Sir, we have a reference in this announcement about the necessity of promoting the increasing accession of Indians to every branch of the administration. It is put in a way that will prove acceptable from certain points of view. I do not know whether the Military Service also is going to be taken up by this Commission or not. It would depend on the actual terms of reference, but we have in the announcement a widely suggestive indication. There is certainly nothing according to this announcement to prevent even the Military Services being taken up, because there also we want increasing association of Indians. Sir, the right way of looking at the question, the practical way is as Lord Islington has put it. No inquiry will get rid of what is the real trouble in the mind of the people agitating for the Commission. What does Lord Islington say:

"It is inevitable that the gradual pruning of political power of the service shall come,"

No inquiry can get rid of that possibility for that is in the day's work under the Reforms. Whoever suggested or can suggest that the pay or prospects or even the status in the ordinary sense of Indian Civilians are or will be in jeopardy, unless the Government of India become absolutely Bolshevik and revolutionary,—who is going to say that section 96B of the Government of India Act is to be inoperative? Time will not permit my drawing the attention of the House to the details of the guarantee provided in that section—every possible safeguard is there, when Parliament or Government in England or here is powerless in enforcing these statutory regulations there will be more than chaos. What jeopardy, earnestly and seriously speaking, does the Superior Civil Service as it is called in the announcement apprehend that it requires to be protected against? I desire to associate myself with every word that Mr. Seshagiri Ayyar has said with regard to the members of the Civil Service and with feelings like those animating the Legislature, no harm can come to it. We have our differences. We have our grievances. We are trying to put them right and square; there are, I believe, many who will remain with us and earnestly and loyally co-operate with us. What is the good of upsetting all this friendly and amicable feeling and why should the situation be forced upon them and upon us which will put us on the defensive. (*An Honourable Member*: "What about their convictions?") They will take care of their convictions whatever that may mean. We are here to speak upon our convictions and to put the case before the country and the Government here and the Government and the public in England in the best of our light.

Sir, it will take a whole sheet of foolscap paper to enumerate the various Commissions and Committees we have had of late. Lakhs and lakhs of rupees have gone on the Decentralisation Commission, the several Financial and Exchange Commissions, Public Service Commissions, Railway Commissions, University Commission, Industrial Commission and Fiscal Commissions. What has come of them? What will come of this Commission particularly, I repeat if the Retrenchment Committee does its duty and lays down dicta that no Royal Commission will be able to reconcile themselves

to? If any revision was necessary and it is undoubtedly necessary in someways why could not they do it by the machinery permissible under the Act? Supposing—I am assuming it—Lord Ronaldshay comes out as the President of the Commission, does he not know all about the situation? He was a member of the Public Services Commission; he was a very successful Governor of Bengal; he knows Indian conditions and Service conditions; his articles in the Magazines show that he is in touch with the country. Supposing he comes as President—I am only supposing it—would he advance matters here—would he not have been able to help the Secretary of State with advice which would be in addition to what a Commission under section 96C of the Government of India Act would have and had to secure? Therefore on constitutional grounds, on financial grounds, on grounds of public opinion, on grounds of expediency, on grounds of the need of keeping up the status and prestige of the Government of India, we oppose, if we can oppose, a Royal Commission. Certainly we protest against its appointment, and its appointment in the way that has been indicated. We shall be doing less than our duty if this House as far as possible, unanimously—because we cannot expect the Government to vote with us—if this House does not unanimously voice the opinion of the country that this Royal Commission is unnecessary, unfortunate and undesirable.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I should like to take the House through a few facts for the purpose of demonstrating to it not only the utter futility of the Royal Commission but of its intrinsic and inherent illegality considered in its unconstitutional aspect. Honourable Members will remember that only two days back the Honourable the Home Member read out the Secretary of State's despatch on the subject of further reforms. In that despatch occurred these pregnant sentences:

"The new constitutional machinery has to be tested in its working as a whole Changes have been made as the results of the Act of 1919 in the position, powers and responsibilities not only of the legislature but also of the executive government."

Then later on His Lordship says:

"It is clear that sufficient time has not elapsed to enable the new machinery to be adequately tested."

This was written on the 2nd of November 1922. And now mark the language of the Communiqué published to this House yesterday by the Honourable the Home Member:

"It is contemplated that the Commission will be required, having general regard to the necessity of maintaining a high standard of administration in conformity with the responsibilities of the Crown for the Government of India, and to the declared policy of Parliament in respect of the increasing association of Indians in every branch of the administration and having particular regard to the experience now gained of the operation of the system of Government established by the Government of India Act."

The experience had not been gained on the 2nd of November when the Secretary of State dated his despatch. Within six weeks the experience has been gained and has so accumulated that a Royal Commission has been appointed. I ask, Sir, is this not a contradiction in terms? The Secretary of State assured this House that the reforms cannot be re-examined until sufficient time elapses and experience is gained, and within a few weeks we have the announcement of the decision of His Majesty's Government to appoint a Royal Commission to re-examine the question of the superior Civil Services. Honourable Members will note the wording of the Communiqué:

"Having general regard to the necessity of maintaining a standard of administration in conformity with the responsibilities of the Crown."

[Dr. H. S. Gour.]

Now, Sir, I ask the Honourable the Home Member what are the responsibilities of the Crown, and are not the responsibilities of the Crown in a state of transition? We have been told that the reforms are an experiment, and it was explained that the experiment means that it is in a state of transition. Further reforms will be conceded to this country after the statutory period. If so, I ask, is it not a fact that the responsibilities of the Crown to this country will vary from time to time, and has not the Secretary of State himself pointed out that we have not yet fully exploited the existing Reforms Act? If further progress under the Reforms Act is to be achieved, the responsibilities of the Crown must correspondingly diminish. How is a Royal Commission, then, to inquire into the condition of the Imperial Services without at the same time inquiring into the responsibilities of the Crown? How is the financial question to be dissociated from the political question? That, I submit, is the crux of the whole question. The Secretary of State says that so far as the political side of the question is concerned it is not time yet, but when it comes to the question of the pay and promotion of the superior services, he says the time has arrived for a further inquiry.

Then, Sir, I said at the outset that I have a shrewd suspicion that this Royal Commission has not only been forced upon the people of this country but also upon the Government of India. Only the other day, I think only yesterday, the Honourable the Home Member was challenged to deny a statement that the Government of India had opposed the appointment of a Royal Commission. . . . .

The Honourable Sir Malcolm Hailey (Home Member): The Honourable Member will, I am sure, excuse me in interrupting him. No such challenge was made to me.

Dr. H. S. Gour: If such a challenge was not made, Sir, in another place, I make it here and now. Is the Honourable the Home Member prepared to deny that at no time and at no stage the Government of India resisted the appointment of a Royal Commission?

I say, Sir, I shall assume, till a direct categorical contradiction is given by the Honourable the Home Member, that the Government of India did resist the appointment of a Royal Commission. If that is so, it raises a grave constitutional issue. It imperils the reforms. When these reforms were inaugurated, we were told by high personages of authority that the reforms will be worked alongside of the report of the Joint Parliamentary Committee which annotates them. In clause 83 of the Joint Parliamentary Committee's Report it has been said that, whenever the Government and the Legislatures are in agreement, the Secretary of State should not ordinarily interfere. Now, Sir, the Government of India are not unaware of the strong feeling in this country against the appointment of a Royal Commission. They could not have been unaware of the strong feeling in this House against such an appointment. I take it, therefore, that the Legislature and the people of this country were opposed to the appointment of a Royal Commission. And I further state, Sir, the Honourable the Home Member has not yet contradicted me,—I further state, Sir, that the Government of India were opposed to the appointment of a Royal Commission. There being, therefore, an agreement between the Government of India and the Legislature on the question of the appointment of a Royal Commission, the appointment by the Secretary of State of this

Commission is unconstitutional and contravenes the recommendations of the Joint Parliamentary Committee. This, I say, Sir, raises a grave constitutional issue. And I further submit that it is not really a question of necessity, expediency or of general policy—it is a question which cuts at the very root of the fundamental principle upon which the Reform Act is based. Then, Sir, passing on to the question of the utility of the Royal Commission, we have had Royal Commissions galore. We have had Royal Commissions after Royal Commissions, but what is their result? Is it not, in fact, ordinarily said, if you wish to shelve a question appoint a Royal Commission? And I ask Honourable Members in this House what are the Royal Commissioners to do? The grievances of the Civil Services in this country are known and well known. If you wish to redress them, redress them. If you do not wish to redress them, do not appoint a Royal Commission. We have been told that the appointment of a Royal Commission is a costly luxury. One Honourable Member of this House has lent me a copy, Sir, of a communication he received from the Home Department, the purport of which is that, though they have no figures showing the cost of Royal Commissions, they can say (1) that the cost of the Royal Commission of 1912-15, debited in the accounts of the Accountant General, Central Revenues, was Rs. 5,91,874—roughly speaking six lakhs. And that was a smaller Commission. This is going to be a much larger one. And we shall be told that the cost of a Royal Commission—we may safely say that the cost of a Royal Commission will run into several lakhs. This raises another grave constitutional issue. Who is going to pay for it? Is it to be included in the Indian Budget? Will it be submitted to the vote of this House? If it will be submitted to the vote of this House, it would be adding insult to injury. You have not been consulted on the subject of the appointment of a Royal Commission and you are made to pay for it. I submit, Sir, on every conceivable ground the people and the representatives of the people of this country should oppose the appointment of a Royal Commission, and I have no doubt that the Government of India must be sympathising with the people of this country in this year of financial stress when every effort is being made to economise in national expenditure. It has been said . . .

Mr. Chairman: Is the Honourable Member intending to proceed to another point? His time is very nearly up.

Dr. H. S. Gour: My speech also is very nearly over. We have been told Sir, in another place that we should welcome this Royal Commission, because the terms are large and liberal. We have been told that it is not merely to inquire into the general condition of service, financial and otherwise, but it will also inquire into the " best methods of ensuring and maintaining the satisfactory recruitment of such numbers of Indians and Europeans respectively as may be decided to be necessary in the light of the considerations above referred to." I beg to ask, Sir, how is this reconcilable with the statement made in the Montagu-Chelmsford Report which lays down the programme of progressive Indianisation of the superior services for the next ten years? Are we to go back upon that report? Are we to scrap it? Are new problems to be presented to the Royal Commission, and if they are, they would be inconsistent with the Montagu-Chelmsford Report, inconsistent with the Government of India Act, inconsistent with the recommendations of the Joint Parliamentary Committee. I therefore support the motion on the ground that the appointment is unconstitutional, it is unnecessary, it will serve no useful purpose and will unnecessarily antagonise the people.

Mr. R. A. Spence (Bombay: European): Sir, the need for Englishmen in the various services of the Government, not merely in the Indian Civil Service, but in the Public Works, the Police, and the other Services of Government, and the necessity of securing to them due recognition of their services and security of tenure, are, I think, recognised by every thinking man in India. The Secretary of State has full power to appoint a Royal Commission for any purpose which the Government at Home considers right, but if this is not desired by the Government of India, if it is not desired by the people of this country, one can but deprecate the appointment of a Royal Commission which is bound to disturb public opinion. The various tributes, the various just tributes which have been paid to-day and which are daily paid throughout India to the work done by Englishmen in the services in this country are surely a justification to us that their services will be recognised and looked after by the Government in this country without the appointment of a Royal Commission.

Mir Asad Ali, Khan Bahadur (South Madras: Muhammadan): Sir, it is my policy, that I should not speak on every subject in or out of season except when there is need for it. Now, I think, Sir, that it is essential to say a few words on this occasion. After hearing the best speeches of the Presidents of the Democratic and National Parties and the case made by them, and after hearing Mr. Spence's speech, there is very little for me to say on this subject. As one of the representatives of the Mussalmans of Madras, it is my duty to join with the sentiments expressed and to protest on behalf of myself and my community against the Provincial Royal Commission on the services.

Lieut.-Colonel H. A. J. Gidney (Nominated: Anglo-Indians): Sir, it was last year when I entered into the discussion of the Budget, I likened this House to a married couple, the Legislature as the husband and the Government of India as the wife and I foresaw in the Sessions of 1921, evidence of family disturbance which almost ended in a divorce in 1922 and I also said to this House "what the Honourable Edwin Samuel Montagu had joined together, let no Budget put asunder." It seems as if the marriage bond is being put asunder by that very man who brought it about and I am very doubtful which way to view this proposition which involved the appointment of a Royal Commission; whether it spells the obituary notice of Mr. Montagu, or the I. C. S. or the Indianisation of the Services. I think it will be viewed from this triangular point. There is no doubt, Sir, that it has dealt a severe blow to Mr. Montagu, for the idol of this House seems to have fallen. I have heard the views expressed to-day by some of the leading Members and it seems to be very unnecessary for me to offer a wail in the wilderness opposing those views, especially after hearing what my friend, Mr. Spence, said. There may be something more than meets the eye in the case of this Royal Commission. The Indian Civil Service has certainly a lot to complain about. We accept that and one Member said "Why not institute an inquiry in this country so as to remedy these grievances?" How can you institute that inquiry and at the same time dissociate from that Committee the official element? There is no doubt that the Indian Civil Service has not been viewed as it should have been since the last Public Services Commission of 1918. There is not the faintest doubt also that in the minds of many members of this Service there exists a feeling of insecurity mainly in regard to their pension. It is very nice to publicly state here that no fear need be entertained on that score. But

has the Government made that pronouncement? Have the Government at Home made that pronouncement and allayed this fear? Then there are certain other difficulties which present day living has forced upon the Civil Service. Has that Service been treated in the same generous way as other Services in this country? I submit with all respect we must prove in this House that it has not been treated with such generosity. If that Service needs certain revision, is it the duty of this House to oppose the appointment of a Commission that is going to remedy it? And again is it the duty of this House to oppose a Commission whose object may be—the furtherance of Indianization, or may not. We have nothing to go upon. The point is that it may decide for greater Indianization, or it may say it is against it. Nobody knows. It may be that the intention of this Commission is to seek out the root of the dissatisfaction that exists—and it does exist to a large extent among the members of the Indian Civil Service—and it may be that this Commission will be more productive of good to India than anything else. I desire to ask in this House why are we afraid of the Commission coming out? If the Commission is going to investigate the condition as it exists to-day in contradistinction to what it existed in 1913 when the last Commission sat, why should we as a body oppose it simply on the ground of not having been consulted, in the first instance. It must be remembered that the Home Government has the power to appoint a Royal Commission. I repeat why are we not prepared to give it a chance? Let us see what it is going to do. Rs. 5 lakhs 6 lakhs is nothing, is nothing if it gives you Indianisation. Whatever it costs, if it is going to do any good to India—and I should like to see whether it is going to do any good to my community,—why object? I therefore, Sir, do not oppose this, but at the same time I think there is another side to this picture. Honourable Members may say it is the wrong side, but I say it may be the right side, and therefore I do not oppose it.

Sir Montagu Webb (Bombay: European): Sir, I desire to join my voice to that of those who have protested against the appointment of this Committee. I cannot myself understand at present the necessity, or even the desirability, of the appointment of a Commission of this kind. I find it still more difficult to conceive that the Government of India can possibly have demanded the appointment of a Commission of this character; and that being so, it seems to me that the appointment of this Commission merely lends a weapon to those hostile and adverse critics who suggest that the Government of India and the Legislature are being discredited, or overruled by the Secretary of State. It seems to me, Sir, that the appointment of a Commission at this particular juncture is particularly unfortunate. It can but create suspicion in more directions than one, and I myself cannot see that it can possibly do any good, at this stage. Reference has been made to the anxiety which some members of the Services may feel with regard to their position or their pensions. Well, to me, Sir, I confess it is inconceivable that any Legislature in this country, or that Government here or at Home could do otherwise than carry out Government's obligations to all the Services strictly and to the very last letter. In these circumstances, Sir, I agree with the previous speakers, that the appointment of this Royal Commission is inopportune and ill-advised, and I have no hesitation in supporting the motion now before this House.

The Honourable Sir Malcolm Hailey (Home Member): I recognize that I have at this moment a difficult task, for I have to meet not arguments but an atmosphere, not facts but suspicions: not definite statements,

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but insinuation based on no surer ground than prejudice. See the words in which Mr. Seshagiri Ayyar described the object of this Commission. Its avowed object, he said, is the improvement of the conditions of the Civil Service. The House has heard the terms of the announcement: is that statement of the scope of the Commission within even measurable distance of the truth? Again; the consequence of the appointment of this Commission, he says, will be that the pay of the services will be fixed by an outside body, and as a result, that Ministers will have no control over them. So then, a Royal Commission is appointed to advise as to conditions of services, as Royal Commissions have been appointed to advise in the past; and his conscience actually allows him to describe it as an outside body which will exercise authority over the transferred subjects. That is his suggestion, and it is the atmosphere created by unfounded suggestions of that nature which I have to meet;—an atmosphere further vitiated by imputations that the Government of India itself has been, aye, and still is opposed to this Commission. Dr. Gour vociferated a demand that I should state categorically, here and now, whether the Government of India had or had not opposed such a Commission. Yet Dr. Gour knows as well as I know, and as well as the House knows, that as a matter of practice we never do, and I would add that we never ought, to yield to demands to reveal either difference of opinion or consensus of opinion between ourselves and the Secretary of State on topics which can be held to be controversial. For if on demand we reveal a consensus of opinion, we expose ourselves to the implication that in other cases such consensus of opinion does not exist. It is for this reason, proper and sufficient in itself, that we habitually maintain the practice of refusing demands for information whether we do or do not agree with the views of the Secretary of State on any particular topic. But because I will not break a long-established and a most reasonable practice, because I have no intention of revealing to him what the Government of India said on this occasion and what it did not say, because I am as equally impervious to his request that I should state that the Government of India disapproved as I am to his demand that I should make confession if the Government of India approves of this proposal, he proceeds to raise a monstrous fabric of his own concoction, and, standing on the pedestal of that unsavoury and unreliable structure, he preaches to me that His Majesty's Government are breaking a constitutional convention; he states that the Government of India and the Legislature being in full accord and against this proposal, the Secretary of State is guilty of an illegal breach of the constitution in overriding them by the appointment of this Commission. I say, Sir, that this breach of convention is a figment of his own imagination. He is as little entitled to raise prejudice by this assumption, as he is to declare that this Commission is the creation of an ultra-conservative Government and a reactionary Secretary of State. Is Mr. Montagu also now among the reactionaries? For Mr. Montagu has endorsed if he did not actually anticipate the demand for this inquiry.

5 P.M.

The limits of time allotted to me by the Rules of the House are narrow; I cannot attempt to destroy the whole unsubstantial fabric of prejudice that we have heard to-day. I must limit myself to speaking of the necessity or otherwise of an inquiry of this nature, and the question of the agency which it is intended to employ. I cannot touch on more than bare essentials. But I must remind the House that the history of India

for the last hundred years has been the history of an administration—of a great administration—far more than the development of a political entity. Activities which in other countries have been left to private enterprise or which have matured under the impetus of individual effort, have in India depended for their development on the activity of the State. In every sphere of life, material, scientific, educational, or intellectual, the main impetus or development has come from the administration. History may be left to say whether that development has been on right lines or not; I am not now on that point. Nor am I concerned with the causes which have produced this result; the fact remains that Government activities have penetrated into every sphere of life and work; and the State acts, and can act only through the vast body of servants which those manifold activities have called into existence. Further, because in India there has not hitherto been a ready recruiting ground, from which we could engage State servant on a temporary or contract basis, we have everywhere had to engage them on practically a life tenure; in other words to create a vast and organized system of Services. Now India was still at that stage when the reforms were inaugurated; we are still indeed at that stage; but the reforms will have the effect of changing a purely administrative Government into one of another type. I am not here speaking of the adequacy of the advance already made. Those who stand upon the bank and watch the running of the waters are perhaps better able to judge of the direction of the current than we who are swimming in it; they realize that the new channel is every day widening and deepening and that every day the new current is taking a more definite and determined course. A new development of this nature, though primarily political in its aspect, nevertheless in a body constituted such as the Indian administration connotes much more than a political change. It involves an adjustment of the administration itself and consequently an adjustment also in the services which are so integral a part of the structure of that administration. Looking back, I think it might have been well if when the constitutional change was carried out, an inquiry had been made at the time as to the changes which would be necessary in the structure of the services. But there were difficulties; at that time attention was focussed on the character of the impending political changes. There are references to the matter in the Montagu-Chelmsford Report; and there were at the time doubts expressed in the services whether we could safely proceed without consideration of this question for it was felt by many that the political changes involved as a corollary changes so great in the whole structure of the services that the organisation and future development of the latter should come under review. But if inquiry had then been made, it would inevitably have had the disadvantage that its decisions would have been taken on *a priori* grounds; and again we might in any case have been compelled to revise its conclusions by the light of our subsequent experience. But as to the necessity of such an inquiry, either at the time, or later in the light of the experience we have gained of the Reforms, I have no doubt, and I believe that few people who consider the question earnestly and soberly will differ from that view. I have heard references to the late Public Services Commission, but it is one of our misfortunes that its conclusions, arrived at in a different atmosphere and envisaging different developments, were already becoming out of date at the moment at which they were introduced. Admitting, then that such an inquiry is necessary, what is to be its proper scope? Let me begin only with a minor problem. It will be necessary to decide in regard to our services

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whether the continuation of the services at all is necessary in many technical departments; whether you could not, that is, substitute short-term service or contract officers, particularly in departments controlled by Ministers. I emphasise these because it is there if financial conditions permit, that progress must be most rapid, and novel experiments most quickly worked out. That, as I say, is a minor point. But I come to more important question, less one of organization than of personnel. I need not dwell on the insistence of the demand for further Indianisation of the services. If I deal with it here, it is not to argue its merits, but to state some of its implications, which have perhaps escaped some of those who have voiced the demand most strongly. It is not a mere question of arithmetic. It is not a question of taking a present rate of 33 per cent. of recruitment and increasing it to 50 or 60. It goes far beyond that. Everywhere in India the question is now being discussed whether in view of a larger recruitment of Indians, we ought any longer to recruit them on an all-India basis. The growing sense of provincial independence and individuality, the necessity for satisfying Provincial aspirations, seems to demand that they should be recruited by the Province for service in the Province and at Provincial rates of pay. Burma has already made this demand in the most emphatic form; I see an equally emphatic demand coming from other Provinces in their turn. Here is a question to find the solution of which you will have to dig deep into the roots of our present system, and I say you cannot do this, and you cannot solve the large question of what numbers of Europeans and Indians respectively are required in the light of experience of the Reforms without a thorough, an independent and far-reaching inquiry. Let me pause for a minute; I pause because I remember, as no doubt the House will remember, what Dr. Gour said on the latter subject. He suggested that this Commission is likely to go back on the proportions laid down in the Montagu-Chelmsford Report. Well might I refer to the creation of an atmosphere of prejudice, and the difficulty of my task in meeting it. I ask anybody here whether they feel themselves honestly able to join with Dr. Gour in such a suggestion? We have already gone far beyond what the Montagu-Chelmsford report laid down. Our percentages are far higher; not only are our percentages far higher, but our rate of recruitment is in excess of those percentages. (*Mr. Jamnadas Dwarkadas*: "Because you cannot get candidates in England.") I shall come to that presently. Yet Dr. Gour finds it in his conscience to suggest that the Royal Commission may now go back on the Montagu-Chelmsford percentages.

Here then are two outstanding questions which you must solve before you can make progress with the consideration of the Indianisation of the services. The consideration of those questions will involve an inquiry far beyond the scope which has to-day been assigned, but wrongly assigned, to the reference to a Royal Commission. I do not say that it will not also have to consider the question of the conditions under which the services are now working. It is not true, as was stated, that the sole purpose of the Commission was to go into the pay and prospects of the services. I claim emphatically to have proved that this is not the case. But, equally, the circumstances regarding the services must be considered. I take, for I must be as brief as I can, one or two points only. In the debate on the Indianisation of the services, more than one speaker declared that he and his friends did not wish to exclude entirely the European element in the services. For my own part, I sincerely believe that in thinking India at

large there is on the contrary a firm determination that a strong European element in the services should be maintained. But what are the facts at present? We are failing to obtain recruits. I could support that statement with figures, but I do not desire to take up the time of the House, and the House may safely take the fact from me. There are two reasons. The first is the economic condition of the services out here which re-acts on recruitment at Home; secondly, the doubt that exists in the minds of those who might be candidates as to their future in India. Now, I agree with Sir Montagu Webb that it is unthinkable that any Indian Parliament would seek to repudiate its obligations in respect of pensions and the like. I welcome the recent declaration made by Mr. Seshagiri Ayyar, speaking on behalf of the largest party in this House that they regarded any such suggestion as damaging and pernicious. But that is not the whole of the case. The case is that men who are entering on life now desire to know what is to happen to them if, as a result of the recommendations of the first Parliamentary Commission, it should be necessary for Government to dispense with their services, some six or seven years hence. I do not think they ask for funds to be set aside in trust to provide for such a contingency. They merely desire to know, and it is a reasonable request, what the conditions of compensation will be if, after some years' service their careers out here are brought to a close. Then again, as regards the economic conditions under which present servants of the State are suffering and which, as I say, are re-acting on recruitment. There is no more tangible proof of these difficulties than the heavy list of premature retirements which are every month depleting our services of some of their best men. It has been admitted here to-day by Dr. Gour—and I thank him for the admission—that the services have difficulties; it was admitted by others to-day; it was stated in our Indianisation debate that India was prepared to see those difficulties adjusted. I desire to say nothing more than to refer, Sir, to your own Resolution, which stated that those difficulties should be inquired into though you preferred to have them inquired into here. But there is a final factor in regard to the services which I am bound to mention. If one can accept what one hears here, what one sees in the reports of Provincial Retrenchment Committees, or what one hears again in such bodies as our own Standing Finance Committee, it is clear that we now have to face a different atmosphere in regard to Indian pay to that which was represented before the Public Services Commission. Everywhere now we hear Indians complain that we have left them an onerous legacy; we have fixed the pay of our services on a European basis and on European requirements, and, insensibly, the pay of Indian members of those services has crept up towards the European standard. It is suggested that we must revise the whole scheme of emoluments from a different aspect. We have to lay down a basic pay which will be appropriate to India, to Indian requirements, and Indian conditions. We are told that if India has to employ Europeans, it is prepared to face the necessity of paying them their market value, but is not prepared to pay Indians emoluments in excess of those which a man should expect who is serving his own country and in his own country. We hear that view expressed, everywhere, and I think I can claim that I have stated the proposition fully and fairly. But, Sir, that proposition is not an easy one either for the Indian Government or for Local Governments to investigate or to carry into effect, for they would have a very powerful body of vested interests against them. Yet, unless that can be investigated fairly and independently, unless the body which investigates is so authoritative as to carry the utmost weight, any

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new basis of remuneration cannot be carried into effect; and if so, what becomes of the Indianisation of the Services—at all events as an economic proposition? It may be well enough to satisfy national aspirations or national feelings by Indianising your services, but unless that process is carried out on a purely Indian basis of pay, you will lose the whole of the financial saving which has been held out as a principal attraction to the scheme.

Mr. Chairman: Your time-limit is up.

The Honourable Sir Malcolm Hailey: I ask indulgence for one minute more. I claim that at all events I have established the necessity for an authoritative investigation of these grave problems on wide and liberal terms of reference. And if it is admitted that such an investigation as I have outlined is necessary, than three-quarters of the opposition to the Royal Commission should go. For let us face the facts. It is admitted that we need an enquiry. It might be that an inquiry undertaken entirely by the Government of India might be more rapid, less expensive and perhaps under influences which would appeal to this Assembly as more suitable. But would it carry the necessary authority? I say again, there is no use shutting our eyes to the facts. You have to meet two influences, and satisfy two elements. You have not only India to consider. It was Parliament that was associated at every stage with the inauguration of the Reforms. Parliament has an equal right—nay, an equal duty— to associate itself with an inquiry into those changes in the structure of the administration which the Reforms have necessitated. The Indian public can safely banish any suspicion that this inquiry has been dictated by unworthy motives, that its sole object is to retard the Indianisation of the Services—to me an unthinkable suggestion; or that its sole or main purpose is to satisfy the existing members of the services. And so far from the appointment of this Commission being unconstitutional, I take the opposite ground. Parliament, I say, initiated the Reforms; His Majesty's Government equally has a duty to associate itself with an inquiry into administrative changes which are corollary to the Reforms; and it has a duty to ensure not only that the development of our services shall comply with the requirements of the Government of India Act, but that the constitution and conditions of service for all branches shall be such as to give members of our great services, so far as the new conditions permit, as full opportunities as in the past of exhibiting the character, the independence and the high sense of duty which have done so much for India.

Rai Bahadur G. C. Nag (Surma Valley *cum* Shillong: Non-Muhammadan): Sir, I move that the question be now put.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): I rise, Sir, further to support the motion for adjournment so ably placed before the House by my Honourable friend, Mr. Seshagiri Ayyar; and I feel bound to say that the splendid advocacy of my Honourable friend, the Leader of the House, has left me absolutely unconvinced as regards the necessity and wisdom of the appointment of this Commission. I do not find fault—no one in this House or outside can find fault—with the splendid advocacy of the Honourable Sir Malcolm Hailey but in this case he had the misfortune of advocating a very, very bad cause. What has Sir Malcolm Hailey told us to justify the appointment of this Commission? Sir Malcolm Hailey says the terms are wide and liberal. They may be

wide, but there is not the slightest doubt that the terms are vague also, and the existence of this vagueness makes us suspect that the vagueness is due to the fact that a lot of harm may be done to the interests of this country by raising the emoluments of the services and a set-back may be given to the cause of Indianisation. My Honourable friend, Colonel Gidney, suggests "Who knows? The Commission may make a recommendation which might accelerate the pace of Indianisation." Is it likely, Sir, I ask, that a Commission appointed by the reactionary Government of Great Britain at the present moment could ever help the acceleration of the pace of Indianisation? Why, Sir Malcolm Hailey himself said one of the reasons why a Commission is being appointed is that you cannot get recruits in England; you cannot get away from that fact; Sir William Vincent replying to my own Resolution here said it was a fact that you cannot get recruits in England to-day. The reasons assigned by Sir Malcolm Hailey are in the first place economic and secondly that a doubt exists among the present incumbents as regards their own and their successors' prospects. Colonel Gidney says the pace of Indianisation may be accelerated. In order to attract recruits for the Indian Medical Service this very reactionary Government has just given out special terms and thirty appointments have been made on special terms in the teeth of the opposition of the whole country. In answer to a clamour for further advance, this very reactionary Government through the Secretary of State for India has given us a Despatch which is—although it pretends to have been written after very careful consideration—hardly worth the paper on which it is written; and we are told that we should expect that a Commission appointed by this Government is going to accelerate the pace of Indianisation. Sir Malcolm Hailey has given two reasons for not being able to find recruits in England. May I give a more substantial reason, not a reason which is a concoction of my own imagination, to use his words, but a reason given in the letter of Mr. Montagu himself to the London "Times"? This is the reason that he assigns. He says: "Some of those who lament the difficulties of recruitment most vociferously are apt to forget how much a bearing the altered circumstances of the day have on this question. Commercial enterprises are enlisting more than they ever did before the assistance of University graduates. For those who seek Government employment the opportunities for such employment have increased at Home and the over-riding factor of all this is to be found in the destruction of a generation as the price that was paid for victory in the war."

The Honourable Sir Malcolm Hailey: Nevertheless he advocates a Commission.

Mr. Jamnadas Dwarkadas: That may be, on that we differ from him; this is the last paragraph of his letter that he sent to the "Times." Let us not forget that of all the reasons the greatest reason why you cannot get recruits in England to-day is that the flower of your community has yielded to the necessities of the war, and perished fighting for its country. Those that are left they have the best prospects in England itself and no one while he has prospects at Home would ever like to go out to a foreign country under the present circumstances. Then, Sir, is it merely the economic reason that prevents recruits from coming to India, to appear as candidates for the Services? There is one more additional reason and that reason is this: after the establishment of representative institutions in accordance with the Government of India Act, however

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much you may increase the salaries of the Services, you can never give to the Civil Servant in future that amount of power which he enjoyed in the pre-reforms days. Is not that perhaps the reason? Can that reason be remedied by any one, and if it is the intention of the Commission to remedy that reason, then, Sir, our protest against the appointment of the Commission is all the stronger than it ever can be. For, while we do not in any way run down the Services,—we appreciate, and we have never failed to appreciate in this House the services they have rendered in the past and are still rendering. We fail to understand how, consistently with our demand for self-Government at an early date, we can ever again restore the power that they used to enjoy in the pre-reform days. In this very House many Members including myself have re-asserted that if the present incumbents of the Civil Services have any grievance with regard to lack of social amenities or have economic grievances, the reasonable among them will be handled sympathetically and generously, if I may say so, by the Members of the Legislature. What other grievances can there be? Sir, the cause of Indianisation can never prosper at the hands of a Commission appointed by a reactionary Government. So far as the grievances of the Services are concerned, they can never be remedied except by the Members of the very Legislature who are prepared to go into the legitimate grievances of the Services and remedy them. So far as their political power is concerned, it is beyond any one, even the Royal Commission, to remedy it. So far as the recruitment of Englishmen is concerned, you have the solid reason given by the late Secretary of State himself that it is difficult to find recruits in England now, that the war has taken away so many, and of the others that are left, many are attracted to the Services in England, and others to commercial enterprises. What, then, Sir, I may rightly ask, is this Commission going to do? What is the use of appointing this Commission in the teeth of the opposition of the whole country? Is it not because the forces of reaction have been triumphing ever since the resignation of Mr. Montagu? You have a demand made by the whole country, represented to the Government through its Legislature for a further advance. That demand is summarily dismissed. You have another blow thrown at the country in the appointment of those 30 men to the Indian Medical Service on special terms, and now, here is a third. I ask if the Home Government is helping those that have stood by the Constitution at the most critical moment to carry out their duties in the face of the strong opposition that prevails in the country? I submit, Sir, as one who has always spoken plainly in this House, and as one who has always stood for the maintenance of the British connection, at any cost, I feel that it is acts like these that render our task most difficult; it is colossal blunders, political blunders of this character resulting from ignorance of men who sit six thousand miles away that will make the position of constitutionalists difficult. Sir, I support this motion.

(*Loud cries of* "The question be now put" from all sides of the House.)

Khan Bahadur Zahiruddin Ahmed (Dacca Division: Muhammadan Rural): Sir, I oppose this Resolution moved against the appointment of a Royal Commission tooth and nail, fully knowing that my Honourable friends, the intelligentsia of the country, the Honourable Non-Officials of this Assembly will call "shame" on me. Here is my humble explanation for my conduct. To me the truth, however unpleasant, is very dear

and must be told, the duty, however thankless, must be done. It is imperative, in my opinion, that a Royal Commission is most needed to find out the reasons why these lions' cubs are not coming or refusing to come to the Indian jungles as they used to do before. It is better that the Majestic lions' cubs should be the masters of the Indian jungles rather than the pack of wolves or that of the wild dogs. I boldly assert that misgovernment by my countrymen is no proper substitute for good Government by the Britishers. Some of my Honourable friends argue: "Let us fail one hundred times and even after that, if we succeed, that is something." But I humbly submit that each failure may end in a great catastrophy to the country, may bring endless sufferings to countless millions. I shudder to think of it.

I emphatically say that any extravagance on the British portion of the Indian Civil Service at the present moment is the greatest economy for the country at large in the interests of the millions of the masses. Even for the success of these reforms we need the services of the British portion of the Indian Civil Service. I may admit that Indian-born Civil servants may be suitable in some respects but a poor substitute for the British-born ones, just as a square peg will suit as nearly as may be a round hole, just as a wooden leg suits a legless man.

I appeal again and again to the good sense of my countrymen composing the Honourable Non-Official Members of this Assembly not to sacrifice the interest of the masses in the interest of a few intelligentsia of the country, though that intelligentsia may be our kith and kin.

It was my sad experience for years that in whichever district an Indian becomes a District Magistrate and Collector, the efficiency in the administration suffers, the bribery and corruption increase. This is very, very unfortunate, but this is a fact. Honesty compels me to admit this sad truth and I do so in the interests of the millions of the dumb masses.

May I quote in conclusion a Persian proverb *Khatai bojurgan gireftun khata ast* which means "To find fault always with superiors is also a great fault."

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I came down to the House this evening without the slightest intention of intervening in any way in this debate. I would not have done so had it not been for Mr. Jamnadas Dwarkadas' intervention—his intervention, I may say, in his very best style. He stood up and he tore his passion to tatters before us. He flung his papers about and in his usual way he appealed to the emotions of the House. But, Sir, in the excitement of the moment, he made just one or two statements which I should like to contradict. He referred to the reasons why we cannot get Englishmen to come out to the Indian Services. He explained the reluctance of the Englishman to come out to the Indian Services to his own satisfaction and he quoted Mr. Montagu. He stated that one reason was that England had lost practically a generation in the war. He stated that the flower of the English youth was now going in for commerce and was refusing to enter the Services in the way that they used to. And he said also that another reason why the young Englishman could not come out to India was owing to the changed conditions under which the Indian Civilian works and the fact that he does not now exercise the same power as he used to exercise before the war. Now, Sir, let me state my views on this point. I come from a family which has served India from father to son for over

[Mr. C. A. Innes.]

a hundred years. (*Sir Deva Prasad Sarvadhikary*: "May the race go on.") My grandfather joined the Madras Presidency about 1880. My father served in this country for 20 years. I myself have served in this country for 24 and 20 years. And I have got four sons. One of these sons is now at Oxford. He is just the sort of boy who in the ordinary course would have followed in his father's footsteps in the Indian Civil Service. He writes out to me and asks me: "Shall I go into the Indian Civil Service?" And he tells me what they are saying about the Indian Civil Service at Home. He has no desire—there are many other lads at Oxford in like case—no desire at all to go in for commerce. They would like to do as their fathers have done before them and serve the country and serve India in accordance with the traditions of their family. But there are the obstacles in the way. What do they know about the position of the Civilian out here? They know absolutely nothing. What they do know is that India at the moment is in a transition stage. As Sir Malcolm Hailey pointed out, in 1929 there must be a Commission and there may be great changes and they want to know, "Supposing I come out to India, am I going to lose my appointment five years hence?" That is the obstacle which is keeping these young boys from coming out to India. That is what paralyses them, and that is the feeling which is common in Oxford and Cambridge. That is the main reason why you cannot get the English boys now to come out to the Indian Civil Service. It is common, and that is one of the reasons why it is not sufficient merely to have an inquiry out here, either an inquiry by Members of this House or of the Indian Government. You must have the sort of inquiry which will carry conviction to the people at Home, and I assure you that that is the only reason—to remove these fears and to get the English boy of the right stamp to come out to India in the future in the way that he has done in the past, and I think that I may assume that every one in this House does want the English boy of the right stamp to come out and serve India in the service of this country.

There is only one other remark. I do not propose to traverse all the grounds which have been so ably covered by my Honourable friend, Sir Malcolm Hailey. There is only one word, there is only one remark that I wish to make. Mr. Jamnadas Dwarkadas referred more than once to this reactionary Government at Home. He tried to create again that atmosphere which I had hoped, fondly hoped, Sir Malcolm Hailey had succeeded in dissipating. What is all this cry about a reactionary Government? Reactionary Government merely because they have appointed this Royal Commission? (*Cries of* "No, no.") Why? Mr. Montagu himself, a friend of India—Mr. Montagu also asked for a Royal Commission of this kind. (*Cries of* "Let the question be now put.")

Mr. Chairman: The question is that the question be now put.

The motion was adopted.

Mr. Chairman: The motion before the House now is: "That the House do now adjourn."

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Monday, the 29th January, 1928.