

Tuesday, 31st August, 1926

**THE
COUNCIL OF STATE DEBATES**

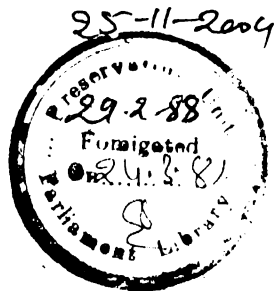
VOLUME VIII

(17th August 1926 to 31st August 1926)

SECOND SESSION

OF THE

SECOND COUNCIL OF STATE, 1926



**THE
COUNCIL OF STATE DEBATES**

(Official Report)

VOLUME VIII

SECOND SESSION

OF THE

SECOND COUNCIL OF STATE, 1926.



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CONTENTS.

PAGES.

TUESDAY, 17TH AUGUST, 1926—

| | |
|---|-----|
| Inauguration of the Second Session of the Second Council of State and the Fifth Session of the Second Legislative Assembly. | 1—8 |
|---|-----|

WEDNESDAY, 18TH AUGUST, 1926—

| | |
|--|-------|
| Members sworn | 9 |
| Questions and Answers | 9—19 |
| Statement laid on the Table | 19—22 |
| Message from H. E. the Governor General—Panel of Chairmen | 23 |
| Committee on Petitions | 23 |
| Congratulations to Members on Honours conferred on them .. | 23—25 |
| Death of Raja Prasnada Nath Roy of Dighapatia | 25 |
| Governor General's assent to Bills | 25—26 |
| Resolution <i>re</i> Pay of the Ministerial Establishment of the Madras Customs House—Negatived. | 26—38 |
| Resolution <i>re</i> The Co-operative Movement in India—Withdrawn by leave of the Council. | 38—48 |

THURSDAY, 19TH AUGUST, 1926—

| | |
|---|-------|
| Indian Evidence (Amendment) Bill—Introduced | 49 |
| Administrator General's (Amendment) Bill—Introduced | 49 |
| Indian Companies (Amendment) Bill—Introduced | 50 |
| Sind Courts (Supplementary) Bill—Introduced | 50 |
| Cantonments (Amendment) Bill—Introduced | 50 |
| Indian Limitation (Amendment) Bill—Introduced | 50—51 |
| Hindu Family Transactions Bill—Introduced | 51 |
| Statement of Business | 52 |

MONDAY, 23RD AUGUST, 1926—

| | |
|---|-------|
| Member sworn | 53 |
| Questions and Answers | 53—70 |
| Statement laid on the Table | 71—72 |
| Resolution <i>re</i> Abolition of the Piece-work system in the Government of India Presses—Negatived. | 72—87 |
| Resolution <i>re</i> Indian Banking—Adopted | 88—93 |

TUESDAY, 24TH AUGUST, 1926—

| | |
|--|---------|
| Question and Answer | 95 |
| Bills passed by the Legislative Assembly—Laid on the Table | 95 |
| Indian Delegation to the League of Nations | 96—97 |
| Indian Evidence (Amendment) Bill—Passed | 97—98 |
| Administrator General's (Amendment) Bill—Passed .. | 98—106 |
| Indian Companies (Amendment) Bill—Passed | 106—108 |
| Sind Courts (Supplementary) Bill—Passed as amended .. | 108—109 |
| Cantonments (Amendment) Bill—Passed | 109—112 |
| Indian Limitation (Amendment) Bill—Passed | 112—113 |
| Hindu Family Transactions Bill—Motion to circulate adopted | 113—118 |

WEDNESDAY, 25TH AUGUST, 1926.

| | |
|--|---------|
| Resolution <i>re</i> Report of the Taxation Enquiry Committee— | |
| Motion to adjourn discussion adopted | 119—135 |
| Statement of Business | 136 |

SATURDAY, 28TH AUGUST, 1926—

| | |
|---|---------|
| Bills passed by the Legislative Assembly—Laid on the Table .. | 137 |
| Message from the Legislative Assembly | 137 |
| Usurious Loans (Amendment) Bill—Passed | 138—139 |
| Workmen's Compensation (Amendment) Bill—Passed .. | 139 |
| Negotiable Instruments (Interest) Bill—Passed | 139—140 |

TUESDAY, 31ST AUGUST, 1926—

| | |
|---|---------|
| Member sworn | 141 |
| Questions and Answers | 141—155 |
| Indian Bar Councils Bill—Passed as amended | 155—179 |
| Indian Forest Bill—Introduced | 179—180 |
| Provincial Insolvency (Amendment) Bill—Passed | 180—181 |
| Code of Criminal Procedure (Third Amendment) Bill—Passed | 181—209 |
| Indian Succession (Amendment) Bill—(Amendment of section 57)—Passed. | 210 |
| Indian Succession (Amendment) Bill—(Amendment of section 33)—Amendments made by the Legislative Assembly agreed to. | 210—211 |
| Message from the Legislative Assembly | 211 |

COUNCIL OF STATE.

Tuesday, the 31st August, 1926.

The Council met in the Council Chamber at Eleven of the Clock, the Honourable the President in the Chair.

MEMBER SWORN :

The Honourable Mr. James Alexander Richey (Educational Commissioner with the Government of India).

QUESTIONS AND ANSWERS.

CANTEEN SERVICE FOR BRITISH TROOPS.

87. THE HONOURABLE SIR EBRAHIM HAROON JAFFER : Will the Government be pleased to say whether the Indian firms and traders serving the British troops in the Indian Army are ready to work in accordance with the desires of the Government and are willing to take over the stock of saleable goods of the Army Canteen Board at market rates if the Government decide to abolish that organisation ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : I presume the Honourable Member is referring to the "Contractors". If so, the answer to his question is that certain proposals for the taking over of the business of the Army Canteen Board, India, were made by a deputation of the All-India Contractors' Association that waited on me recently.

CANTEEN SERVICE FOR BRITISH TROOPS.

88. THE HONOURABLE SIR EBRAHIM HAROON JAFFER : Is it a fact that a representative deputation of the All-India Army Contractors' Association, which waited on His Excellency the Commander-in-Chief on the 12th August, gave an undertaking that should Government decide to abolish the tenancy system and hand over the Institutes to a centralised board, their Association is prepared to constitute itself into a limited company with sufficient capital and take over the Institutes on such terms, conditions and guarantees as Government may decide on ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : The answer is in the affirmative.

CANTEEN SERVICE FOR BRITISH TROOPS.

89. THE HONOURABLE SIR EBRAHIM HAROON JAFFER : Is it a fact that the All-India Army Contractors' Association's Deputation submitted a memorandum and certain points for the consideration of Government in which they offer certain advantages for the benefit of British troops in India ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : Yes, Sir.

REPORT OF MR. POOLEY INTO THE CONDITIONS OF THE ARMY CANTEN SERVICE IN INDIA.

90. THE HONOURABLE SIR EBRAHIM HAROON JAFFER : Will Government be pleased to state when a decision is expected on the report of Mr. Pooley into the conditions of the army canteen service in India, and whether the undertaking and the offer given by the All-India Army Contractors' Association will be taken into full consideration before announcing the decision ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : Mr. Pooley, Deputy General Manager of the Navy, Army and Air Force Institutes, came out to India as a representative of that organization to make an examination on their behalf into the canteen service for British troops in India and all his expenses in connexion with the deputation were borne by the Navy, Army and Air Force Institutes. He has made no report to the Government of India, but presumably has done so to his own Board.

As regards the second part of the Honourable Member's question, I assure him that no decision will be arrived at on the subject of canteen organisation in India without the views and proposals of the contractors being fully considered.

ACTION TAKEN ON THE RECOMMENDATIONS OF THE REFORMS INQUIRY COMMITTEE.

91. THE HONOURABLE SIR PHIROZE SETHNA : Will Government be pleased to lay on the table a statement showing the action taken by them on each of the recommendations of the Reforms Inquiry Committee ?

THE HONOURABLE MR. J. CRERAR : I lay on the table the statement asked for by the Honourable Member.

Statement showing the action taken on the recommendations of the Reforms Inquiry Committee contained on pages 106-114 of their report.

Recommendations Nos. 1, 4, 7, 23 (b), 25 and 36 are under consideration.

Recommendations Nos. 2, 3, 15, 16, 20, 23 (d), 24 (b) and (d) and 40 have not been accepted.

Recommendations Nos. 6 and 14 are pending before the Indian Legislature.

Recommendations Nos. 8, 9, 12, 13, 21, 23 (a) and (c), 24 (c), 27, 31, 32, 33, 34, 35, 38 and 39 have been given effect to.

Recommendations Nos. 5, 11, 17, 22, 26 and 29.—Parliamentary legislation to give effect to these recommendations will be undertaken at a convenient opportunity.

Recommendation No. 10 is not at the moment feasible, in view of the constitution of the Legislative Assembly.

It has been decided to leave recommendation No. 18 for consideration by the Statutory Royal Commission.

Recommendations Nos. 19 and 30.—The necessary amendments to the various legislative rules to give effect to these recommendations are under issue.

Recommendation No. 24(a).—The actual process of land acquisition so far as it relates to a transferred subject has been transferred to the control of Ministers.

Recommendation No. 28.—It has been decided that no action is required on this recommendation as the proposals represent the actual legal position.

Recommendations Nos. 37 and 41.—The principles underlying these recommendations have been accepted and the local Governments addressed accordingly.

Recommendation No. 42.—The proposals were rejected as unnecessary.

Recommendation No. 43.—The experiments in connection with the separation of accounts from audit are still proceeding and the prospects of success are hopeful. No action has been taken as regards the separation of provincial from central balances as it will be necessary to gain some further experience in regard to the experiments.

Recommendations Nos. 44—46.—These recommendations relate to the Public Services and they are covered by the action taken in connection with the report of the Royal Commission on the Public Services. No action is therefore proposed on these recommendations.

ACTION TAKEN ON THE REPORTS OF THE ECONOMIC INQUIRY COMMITTEE
AND THE AUXILIARY AND TERRITORIAL FORCES COMMITTEE.

92. THE HONOURABLE SIR PHIROZE SETHNA: Will Government be pleased to state what action they have taken on each of the following Reports:

(a) The Report of the Economic Inquiry Committee; and

(b) The Report of the Auxiliary and Territorial Forces Committee?

THE HONOURABLE MR. J. E. C. JUKES: (a) As regards the Report of the Indian Economic Inquiry Committee, I lay on the table a copy of a letter addressed to Provincial Governments whose co-operation is necessary and whose replies are now awaited.

(b) As regards the Report of the Auxiliary and Territorial Forces Committee, the Government of India have placed their views before the Secretary of State.

No. D./4299-F.

GOVERNMENT OF INDIA.
FINANCE DEPARTMENT.

FROM

THE HON'BLE MR. A. C. McWATTERS, C.I.E., I.C.S.,

TO

ALL PROVINCIAL GOVERNMENTS.

Simla, the 23rd October, 1925.

SUBJECT.—*Report of the Indian Economic Enquiry Committee.*

SIR,

I am directed to invite your attention to the Report of the Indian Economic Enquiry Committee, copies of which have already been forwarded to you. The record of the evidence of witnesses, which is being separately printed, will be forwarded as soon as available. The appointment of the Committee was, as explained in the first chapter of their Report, the result of Resolutions passed in both Chambers of the Central Legislature. The reference to the Committee embraced not only an examination of the material at present available for framing an estimate of the economic condition of the various classes of the people of British India and a report on its adequacy but they were asked to make recommendations as to the best means by which the existing material might be supplemented and as to the basis on which a general economic survey should be carried out.

2. The report of the majority of the Committee may be said to fall into two distinct parts. The first deals with general statistics other than production, which, as the Committee admit, are more or less complete. With reference to these they make a number of detailed suggestions with the object of their improvement and extension, most of which are primarily for the consideration of the Central Government. A statement of these recommendations is attached as *Appendix A* to this letter. In addition, however, to their detailed recommendations they make two general recommendations (1) that the further improvement of these general statistics, so as to bring them into line with up-to-date statistical systems abroad, might be effected with the aid of a committee or conference of statistical experts, and (2) that their general recommendation (which will be referred to later) for centralisation of statistics should apply also to the statistics in this class (paragraph 40). The intention of this recommendation is, as shown in paragraph 82 that apart from purely departmental publications, which do not contain any information, required for the economic purposes of the Central and Provincial Governments, all publications should come under the technical guidance of a central statistical authority.

On this part of the Committee's report the views of local Governments are invited on such points as concern them in the detailed recommendations and on the general questions mentioned above, the latter of which contemplates a somewhat closer control, than exists at present, over Provincial publications by the Central Department of statistics.

3. The second and more important part of the Committee's Report deals with Statistics relating to (a) production and (b) estimates of income, wealth, cost of living, indebtedness, wages and prices, the object of the Report being to recommend an organization for the collection and publication of statistics of this class which should constitute a survey of the entire economic fabric of the country. The organisation proposed consists first, of a *Central Bureau* under the Government of India, with a Director of Statistics and 2 Assistants (a third Assistant being employed periodically for the work of census of population) and necessary clerical staff. The additional cost to the Central Government is estimated at Rs. 75,000 per annum, plus Rs. one lakh for initial equipment and Rs. 25,000 quinquennially for periodical surveys. This estimate (which for the work contemplated seems exceedingly low) will be examined separately by the Government of India. Secondly *Provincial Bureau* in each Province, with which should be amalgamated existing labour offices where they exist. At the head of each Bureau would be a Provincial Statistician (who might in some provinces combine the duties of the Director of Land Records), one Assistant for Headquarters and a number of Assistants (usually one for each Revenue division) for district work. Under each Assistant would be—

- (1) 20 to 25 inspectors (whose number might be reduced to 10 or 12 after 2 years) for collection of production statistics. These inspectors would, in fact, work under the control of the Revenue Department subject to the guidance of the Assistant Statistician, and their duties would be to collect data regarding forms of production which are not supplied direct by departments. They would work in close association with local agencies, such as Co-operative Credit Societies and Panchayats. (Paragraphs 88 to 91.)
- (2) 15 to 18 investigators, who would ordinarily be graduates, under-graduates or retired revenue officers who would be engaged on intensive enquiries into wealth, income, etc. These would form part of the statistical establishment, though associated in some degree with the Revenue establishment. It is contemplated that each investigator would be able to deal with 12 villages a year in rural tracts and 600 families a year in urban tracts, so that in 5 years data would have been collected for 20 per cent. of the town population and 12½ per cent. of the rural population. (Paragraphs 93 to 96.)

A special staff of tahsil-clerks, would also be required for the compilation of statistics of agriculture and other miscellaneous products. (Paragraph 92.)

Thirdly, *Advisory Boards* of Economic Enquiry are contemplated for each provinces while the present Publicity Advisory Committee of the Central Government would be expanded by the addition of two official and two non-official members with statistical experience to form a Central Advisory Board. It is suggested that non-official members of these Boards should be paid a fee for attending the meetings at all events for the first few years. (Paragraphs 86 and 87.)

• The cost of these proposals to Provincial Governments has been worked out by the Committee roughly on a population basis and is estimated for all provinces as Rs. 56·59 lakhs per annum in addition to 30·61 lakhs for initial equipment, which would be spread over the first 2 years.

4. The general object for which this organisation is recommended is, as explained in paragraph 70 of the Report, that the entire economic fabric of the country should be closely sifted by a survey. For the purpose of this survey the Committee accept, with minor modifications, the division into 12 occupational classes adopted at the last population census and for the larger economic zones the provincial natural divisions adopted in the Census Report of 1921. The survey will concern itself with statistics (a) of production and (b) of income, wealth, etc. Statistics of production will be collected under seven main heads :—(1) Agriculture, (2) Pasture and Dairy Farming, (3) Forests, (4) Fisheries, (5) Mines, (6) Large industries and (7) Cottage industries. For large industries the annual statistics will be supplemented quinquennially by a detailed census of production. For production of all kinds the figures will be obtained through Government departments by means either (a) of the existing agency or (b) of the additional special staff of inspectors already referred to. A summary is attached as *Appendix B* to show in more detail what the Committee contemplate under the various production heads.

Statistics of income and wealth, etc., will be obtained by intensive studies carried out by the special investigators and the results will be included in the summary and published from year to year with the annual provincial statistics. (Paragraphs 76 to 78). Special enquiries will also be undertaken on special subjects by the investigating staff (which may be strengthened for the purpose) on any subjects of local importance which may be prescribed by the local Governments from time to time, such as fragmentation of holdings, unemployment among the middle classes, condition of the depressed classes and unemployment in rural areas. The enquiries of the investigators will include estimates of collective private wealth and national wealth. Additional detail as to what the Committee propose in respect of estimates of income and wealth is given in *Appendix C*.

5. It will be clear from the above summary of the organisation proposed and the scope of its activities, that local Governments are most intimately concerned both financially and in regard to the practical working of the proposals. They are further concerned in two general proposals which are made by the Committee (1) that all work in connection with statistics should be co-ordinated and centralised and that the statistics of all the Departments, both of the Central and Provincial Governments, should be brought under the supervision of one central authority who should be the adviser of Government in statistical matters; and (2) that there should be a Census and Statistics Act the main object of which will be to place the whole organisation on a legal basis and to empower officers to demand the supply of information under legal penalties, guarantees being provided against disclosure of information (Paragraphs 82 and 83).

6. The Minority Report by Professor Burnett Hurst while dissenting from some of the principles and most of the details of the Committee's recommendations, contemplates the organisation of a Central Statistical Bureau and of Provincial Bureaux. He would abandon the idea of carrying out enquiries into individual wealth, but recommends (a) a series of intensive enquiries by the collection and analysis of a large number of family budgets under the supervision of Provincial Boards of Economic Enquiry who will employ special investigators, (quite distinct from the official statistical establishment and (b) the collection of statistics of production, wages and prices by the extensive method through the agency of the department or branch of administration with which the statistics are associated, under the control of the Central and Provincial Bureaux of statistics; e.g., the statistics of agriculture would be taken over by the Department of Agriculture and statistics of production of small scale industry would be collected by the subordinate staff of the present departments of industries or the Co-operative Departments or by a special staff of investigators working under these Departments. Professor Burnett Hurst supports the proposal for a detailed census of production of large industrial establishments quinquennially and for a quinquennial wage-census. He considers, however, that the necessary powers of compulsion can be granted to the Statistical Bureaux by amending the Factories Act instead of introducing special legislation.

Professor Burnett Hurst estimates that the cost of the Provincial Bureaux, where 'no labour offices at present exist, would be about one lakh of rupees per annum for each Province, but he attempts no estimate of cost of the intensive and extensive enquiries recommended, which he would leave on an elastic basis depending on the extent of the enquiries which each local Government or which the Provincial Boards of Economic Enquiry decide to undertake.

7. The Government of India feel sure that local Governments will appreciate the underlying object of this Report which is to improve the standard and extend the scope of the statistical material available for an estimate of the economic condition and resources of the country and will share their desire to give effect to any practical proposals which will contribute to this object and which can be undertaken at a reasonable cost. But in view of the financial considerations involved and of the necessity for co-operation, between local Governments and the Central Government in any measures which may be approved, and in view also of the important administrative considerations implied in proposals such as those for the estimate of individual wealth by a staff of investigators and for legislation to make compulsory the supply of information to the Government Statistical Department, they desire in the first instance to invite the views of local Governments upon the proposals of the Committee, both in the Majority and the Minority Reports, before taking any further action and at the present stage they refrain from comment upon the details regarding which the local Governments will in most instances be in the best position to advise. They would be glad if the views of the local Government could be forwarded to the Government of India at their earliest convenience.

I have the honour to be,

SIR,

Your most obedient servant,

(Sd.) A. C. McWATTERS,

Secretary to the Government of India.

No. O.-4299,F.

Department of Commerce.

Department of I. and L.

Department of E., H. and L.

Copied forwarded to the

Home Department.

Foreign and Political Department.

C. B. R.

By order, etc.,

(Sd.) A. C. McWATTERS,

Secretary to the Government of India.

APPENDIX A.

General Statistics other than production.

- | | | |
|---|---|-----------|
| 1. Report of Joint Stock Companies. | Should contain information regarding the dividends declared. | Para. 26. |
| 2. Statistical Abstract .. | Should contain statistics relating to Insurance Companies for purposes other than Life insurance. | Para. 26. |
| 3. Internal Trade Returns .. | Should be revived and brought into line with the more up-to-date statistics of countries like the U. S. A. | Para. 30. |
| 4. Sea-Borne Trade and Navigation accounts. | Figures as to the crew employed, especially on ships plying in coastal waters should be published. | Para. 34. |
| 5. Other Transport .. | Suggests that in addition to figures for carts, which are taken along with the Cattle census, figures of motor and all other forms of transport, including boats should be collected and published. | Para. 35. |

6. Roads and Navigable canals .. Information regarding length of metalled and unmetalled roads and navigable canals, now maintained by Provincial authorities should be put together for the whole of India. Para. 36.
7. Posts and Telegraphs .. Figures relating to wireless messages and broadcasting stations might be published in Annual Reports of Posts and Telegraphs Department. Para. 37.
8. Education .. Information relating to libraries, museums, zoological and botanical gardens and learned societies might be collected and published in the Statistical Abstract. Para. 38.

APPENDIX B.

Statistics of Production.

1. General recommendation .. That complete statistics of production, including the total value of production, should be collected, if it is possible to do so at a reasonable cost. Para. 41.
- The best method would be by improving and amplifying the existing agricultural statistics, and where a subordinate revenue agency exists, no other agency for compiling the information can be usefully substituted for it. Para. 44.
- What is necessary is to improve the statistics of yield where necessary and to convert the quantities into values. Para. 45.
2. Condition of crops .. System of ascertaining condition of crops in force in Punjab is recommended and could be further improved. Para. 48.
3. Standard yield and crop experiments. The number of crop experiments, on which standard yield is based, should be considerably increased and should be extended to minor crops as well. It is for each provincial Government to decide what methods its officers should adopt for increasing the number of crop experiments performed from year to year. Para. 50.
4. Fruit and vegetables .. Valuation of fruit and vegetables should be included. Para. 51.
5. Valuation of produce .. System outlined for making calculation of value, village by village. Para. 52.
6. Review of agricultural production. If above system is employed a periodical census of agricultural production is unnecessary, but a review of agricultural production might be made quinquennially on the basis of the annual returns. Para. 53.
7. Tracts under permanent settlement. The collection of figures of agricultural production presents special difficulties in permanently settled areas (i.e., Bengal, Bihar and Orissa, also 1/3 of Madras and parts of the United Provinces and Assam). No definite suggestion is made, but steps which are already being taken by some Governments should be persisted in until the statistics of agricultural production are placed on a par with those of ryotwari Provinces as regards reliability of the outturn and values of the crops raised. Para. 54.

8. Cattle census and pastoral products. Should if possible be held annually everywhere, Para. 56, as in Burma and the Central Provinces, and should include figures for various animals specified and for production, quantity and value of different pastoral products.
9. Forests .. The methods employed in other provinces for recording forests produce should be applied in Burma.
Figures regarding production from private forests should be obtained, so far as possible, through the Revenue Department and published.
10. Fisheries .. Existing statistics are incomplete. Should Para. 57. aim at ascertaining amount and value of total catch in both inland and sea fisheries, and in respect of special fisheries such as chank, pearl and oyster fisheries.
Organisation suggested, in addition to the Fisheries Department where one exists, and collection of data in regard to big cities, is the revenue agency supplemented by the inspectors who may be appointed for ascertaining the production of cottage industries and other forms of miscellaneous production.
11. Minerals .. The information at present collected through Para. 58. the Chief Inspector of Mines should be supplemented for all mines which are not dealt with by the Department of Mines including indigenous mining, the statistics being collected by the Revenue Department under instructions from the Chief Inspector of Mines. The information required should be quantity and value of minerals produced, the number of persons employed and value of other material used up, including fuel consumed or power employed.
12. Large-scale industries ... In respect of all large-scale industries statistics should be collected through the Department of Industries and published annually in respect of:—
(a) Quantity and value of manufactured goods,
(b) Quantity and value of raw material used up in production,
(c) Added value of manufactures,
(d) Value of fuel or power used,
(e) Number of employees.
A regular census of production of large industries should be taken quinquennially. Legislation will be necessary for the census of production for large-scale industries.
13. Cottage industries .. An estimate of the quantity and value of the Para. 60. total annual production of cottage industries should be ascertained with the estimated value of raw material used up, also number of persons employed wholly or partially in such industries number and kind of machinery, etc.

APPENDIX C.

Statistics of Income and Wealth, etc.

1. Income tax returns .. In the income tax returns greater details of Para. 62.
the sources of income, i.e., of the business,
profession or occupation from which it is
derived, may be given.
2. Investigations as to income General investigations as to income should be Paras. 62
carried out every year for small typical & 63
areas, in both urban and rural tracts, so
as to enable eventually estimates of income
of classes and administrative units and dis-
tribution of income between production
and services and between property and
services to be worked out.
3. Investigation of wealth .. Estimates of local collective wealth should be Para. 64.
prepared from outset by the "inventory
method" for villages, towns and cities by
evaluating area of land, number of houses
and cattle, rough estimate of *furniture and
implements, etc.*, Estimates of public
wealth should be included.

Whenever possible intensive house to house
enquiries should be made by investigators.
4. Cost of living The existing information on the subject should Para. 65.
be supplemented by the preparation of cost
of living index numbers for working classes
in the principal industrial centres and
index numbers based on family budgets of
typical families of other classes.
5. Indebtedness .. Intensive studies should be made and results Para. 66.
published regarding extent of indebtedness
of various classes and tracts, causes of,
indebtedness, rates of interest and sources
of loans.
6. Wage census ... Suggests a quinquennial wage census and Para. 67.
annual wage returns.

See Appendix 7 and Chapters VII, VIII and Para. 69.
IX.
7. Prices The collection of prices should be placed on
a comprehensive basis.

Wholesale prices should be collected fort-
nightly in respect of all agricultural
products in each district at the principal
market towns.

Retail prices should be collected weekly from
the principal towns in each province and
published as at present.

There should be honorary correspondents for
reporting both kinds of prices.

Both wholesale and retail prices should be
published collectively for the year, both
provincially and centrally.

THE HONOURABLE SIR PHIROZE SETHNA : The Report of the Auxiliary and Territorial Forces Committee was published nearly two years back. May the Council know the date when the Government of India have sent their despatch on it to the Secretary of State ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : Without previous notice I am afraid it is impossible to give a reply on that. I can only refer the Honourable Member to a speech of mine in the Legislative Assembly at Delhi last spring in which I informed the Assembly that the whole Report required very great consideration. We had to refer it to every Local Government in turn and after we received it back we again had to refer it to them. It is a matter which requires very great consideration. I am afraid I cannot remember exactly the date on which it was despatched to the Secretary of State.

DISTURBANCES BETWEEN HINDUS AND MUHAMMADANS SINCE JANUARY LAST.

93. THE HONOURABLE SIR PHIROZE SETHNA : Will Government be pleased to lay on the table a statement stating :

- (a) the names of cities, towns or villages in which disturbances between Hindus and Muhammadans took place since January last ;
- (b) casualties in each case ;
- (c) cause or causes of the disturbance in each case ;
- (d) measures adopted in each case to put down the disturbances ;
- (e) cases in which firing was ordered ; and
- (f) measures that have been adopted to prevent such disturbances in future ?

THE HONOURABLE MR. J. CRERAR : (a), (b), (c) and (e). A statement is laid on the table which gives the information required so far as it has been reported to the Government of India.

(d) As the Honourable Member is doubtless aware, the police were assisted by the military during the disturbances that occurred in Calcutta in April last, and in Delhi and Kharagpur on the occasion of the Bakr-Id festival. I have no exact information regarding the measures adopted elsewhere.

(f) On such occasions executive action must be left to the authority in immediate charge of the area in which trouble has arisen or is likely to arise and its character must vary with the circumstances of the place and the moment.

| Date. | Place of occurrence. | Casualties. | Occasions on which firing was ordered. | Cause of disturbance. |
|-------------------|---|--|--|---|
| 1. February 1926. | Agra City, United Provinces. | 1 person roughly handled by hooligans. | | |
| 2. 7th February | Madhi in Pathardi Mahal, Ahmednagar District, Bombay. | 6 persons slightly injured. | | Dispute over a building called the temple of Kambhoba or Dargah of Hazrat Shah Ramzan in which both Hindus and Muhammadans have in past claimed and exercised rights. |

| Date. | Place of occurrence. | Casualties. | Occasions on which firing was ordered. | Cause of disturbance. |
|---------------------------|--|---|--|--|
| 3. 11th February. | Barondi, Patnagiri District, Bombay | 1 killed, 21 injured | | Alleged playing of music before mosques by Hindu procession on Maha Shivratri day. |
| 4. 12-13th April | Rewari, Punjab | 1 killed, several injured. | | Cause alleged to be playing of music before mosque by Hindu marriage procession. A Muhammadan crowd also attempted to take a corpse in procession through main bazar. |
| 5. 2nd to 15th April. | Calcutta | 46 killed, 675 injured. | Firing ordered | The playing of music before a mosque by a Hindu procession. |
| 6. 14th-16th April. | Sassaram, Shahabad District, Bihar and Orissa. | 2 killed, 18 injured. | | The trouble originally arose out of an individual quarrel between a Hindu and a Muhammadan followed by an attack by Muhammadans on a gathering of Hindus and later the looting of shops. |
| 7. 22nd April to 9th May. | Calcutta | 67 killed, about 400 injured. | Firing ordered | The tense feeling resulting from the previous (item 5) rioting had not died down. The immediate cause of renewal of hostilities was a brawl between some Hindus and Muhammadans. |
| 8. 17th to 26th May. | Kharagpur, Bengal | Casualties believed to be 11 killed and 32 injured. | | Playing of music before a mosque by a Hindu funeral procession. |
| 9. 1st June | Hajinagar Paper Mills, Calcutta. | 40 injured | | Objection by Hindus to a Muhammadan passing a Hindu temple to fetch water. |
| 10. 22nd June | Damoh, Central Provinces. | 7 injured | Firing ordered | Bakr-Id celebrations. |
| 11. Do. | A village in Darbhanga District. | 4 or 5 slightly injured. | | Do. |
| 12. Do. | Jhusi village near Allahabad. | 1 killed and 9 injured. | | Do. |
| 13. Do. | Maksudpur Thana Katra, Muzaffarpur District. | 4 injured | | Do. |
| 14. 23rd June | Singhasan, Benapatti thana, Darbhanga District. | 4 killed | | |
| 15. Do. | Shankarpur Surasand Thana, Sitamarhi Sub-division, Muzaffarpur District. | No injuries reported. | | Bakr-Id celebrations. |
| 16. Do. | Bihar Sub-division | No injuries reported. | | Do. |

| Date. | Place of occurrence. | Casualties. | Occasions on which firing was ordered. | Cause of disturbance. |
|----------------------|--|--|--|--|
| 17. 23rd June 1926. | Gaya | No injuries reported. | .. | Bakr-Id celebrations. |
| 18. Do. | Sihali, Bara Banki District, United Provinces. | 9 injured, 1 seriously. | Firing ordered. | Bakr-Id celebrations. Hindus attempted to stop cow-sacrifice by force. |
| 19. 24th June | Delhi | 3 killed, 60 injured. | Do. | Bakr-Id celebrations. Immediate cause was the knocking down of a man by a run-away tonga in Khari Baoli. |
| 20. Do. | Gobindpore Thana, Gaya District. | Riot with murder. Number of casualties not reported. | | Bakr-Id celebrations. |
| 21. Do. | Katra Thana, Muzaffarpur District. | 2 persons attacked by mob. | | Do. |
| 22. 1st to 7th July. | Fabna | 19 persons admitted into hospital. | Firing ordered | The immediate cause is believed to be the taking of a Hindu procession with music past a mosque. |
| 23. 15th July | Karachi | 11 injured | | Alleged annoyance to Hindu girl by a Jew convert to Islam. |
| 24. Do. | Calcutta | 13 deaths 109 injured. | Firing ordered | Raj Rajeswari procession music before mosques. |
| 25. 16th July | Do. | 2 shot | Do. | Muharram celebrations. |
| 26. 19th July | Do. | 6 injured | Do. | Do. |
| 27. 20th July | Do. | 1 killed | Do. | Do. |
| 28. 22nd July | Do. | 7 killed 13 injured. | Do. | Do. |
| 29. 21st July | Purnea, Bihar and Orissa. | 1 person injured. | | Do. |
| 30. 13th-14th June. | Rawalpindi. | 14 killed 46 injured. | | |

REPORTS FROM PROVINCIAL GOVERNMENTS ON THE WORKING OF THE REFORMED CONSTITUTION DURING 1925.

94. THE HONOURABLE SIR PHIROZE SETHNA: Will Government be pleased to state whether they have asked for and received reports from Provincial Governments on the working of the reformed constitution during 1925 and, if so, to place them on the table?

THE HONOURABLE MR. J. CRERAR: The reply to the first part of the Honourable Member's question is in the negative. The second part does not arise.

RECONSTRUCTION OF THE ROYAL INDIAN MARINE AS A COMBATIVE FORCE.

95. THE HONOURABLE SIR PHIROZE SETHNA: Will Government be pleased to state what progress has been made in the reconstruction of the Royal Indian Marine as a combative force?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF: As has been explained before much constructive work has to be done before the Royal Indian Navy can be brought into being. Legislation is necessary both in England and in India; ships have to be acquired and adapted for use in the tropics; details of re-organisation, future administration and finance have to be examined and settled. Considerable progress has been made in regard to all these matters.

It will take some time before final orders can be issued, but I much hope the Royal Indian Navy may be in existence by the end of 1927.

SEPARATION OF JUDICIAL AND EXECUTIVE FUNCTIONS IN THE BOMBAY PRESIDENCY.

96. THE HONOURABLE SIR PHIROZE SETHNA: Will Government be pleased to state whether they have received from the Government of Bombay any proposals with regard to the separation of judicial and executive functions in the Bombay Presidency and, if so, what action they have taken thereon?

THE HONOURABLE MR. J. CRERAR: No such proposals have been received from the Bombay Government.

PROVINCIALISATION OF THE INDIAN EDUCATIONAL SERVICE AND THE INDIAN AGRICULTURAL SERVICE.

97. THE HONOURABLE SIR PHIROZE SETHNA: Will Government be pleased to state what progress has been made in the provincialisation of the Indian Educational Service and the Indian Agricultural Service, and in the preparation of the rules to give effect to the provincialisation?

THE HONOURABLE SIR MUHAMMAD HABIBULLAH: I would refer the Honourable Member to the answer given to parts (b) and (c) of the question (No. 36) asked by Mr. B. Venkatapatiraju in the Legislative Assembly on the 18th August 1926.

EXEMPTION OF AGRICULTURAL INCOME FROM LIABILITY TO INCOME TAX.

98. THE HONOURABLE SIR PHIROZE SETHNA: Have Government made an estimate of the probable amount of additional income-tax that would be realised in each province if the existing exemption of agricultural income from liability to income-tax were removed?

THE HONOURABLE MR. J. E. C. JUKES: Government have made no such calculation.

THE HONOURABLE SIR PHIROZE SETHNA: Do they propose to?

THE HONOURABLE MR. J. E. C. JUKES: They undoubtedly will do so if the particular question becomes a matter of practical politics.

RESOLUTION *re* UNEMPLOYMENT AMONG THE MIDDLE CLASSES.

99. THE HONOURABLE SIR PHIROZE SETHNA: Will Government be pleased to state what action they have taken on the Resolution anent unemployment among the middle classes passed by the Legislative Assembly on 28th January 1926?

THE HONOURABLE MR. A. H. LEY: The Government of India have addressed all major Local Governments on the subject: a copy of their letter has, I understand, been supplied to the Honourable Member.

TRAINING OF INDIANS AS WIRELESS OPERATORS.

100. THE HONOURABLE SIR PHIROZE SETHNA: Have Government prepared any scheme for the training of Indians as wireless operators and, if so, will they be pleased to place it on the table?

THE HONOURABLE MR. A. H. LEY: I understand the matter has been receiving the consideration of the Director-General of Posts and Telegraphs, for sometime, but no scheme has yet been placed before the Government of India.

INDIANS EMPLOYED IN THE BRITISH LEGATION AT KABUL.

101. THE HONOURABLE SIR PHIROZE SETHNA: Will Government be pleased to lay on the table a statement giving the names of Indians employed in the British Legation at Kabul and the duties assigned to them?

THE HONOURABLE SIR J. P. THOMPSON: The Government of India have not yet been able to obtain the desired information.

ENLISTMENT OF MAHARS IN THE INDIAN ARMY.

102. THE HONOURABLE SIR PHIROZE SETHNA: Have Government received from the Government of Bombay any communication requesting them to consider the Resolution passed in the Bombay Legislative Council on 5th November 1925, regarding the question of giving further opportunities to Mahars of enlisting in the Indian Army and, if so, what action have they taken thereon?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF: The answer is in the affirmative. The Government of Bombay were informed in March 1926 that while fully sympathising with the Mahar community, the Government of India regretted that under the present organisation of the Indian Army, it was not possible to give effect to the recommendation made by the Bombay Legislative Council. The matter will, however, be borne in mind should a suitable opportunity present itself in the future.

I may add that I personally received a deputation from the Mahar community when in Bombay last April and informed them of the above facts.

DATE OF THE ARRIVAL OF THE SOUTH AFRICAN DELEGATION IN INDIA.

103. THE HONOURABLE SIR PHIROZE SETHNA: (a) Have the Government of the Union of South Africa accepted the invitation given by the Government of India to send a delegation to India?

(b) Has any indication been given of the probable date of its arrival and of its personnel?

THE HONOURABLE SIR MUHAMMAD HABIBULLAH: I would refer the Honourable Member to the press communiqués on this subject which were issued on the 31st July and 21st August, 1926.

FORMATION OF A UNIT OF THE UNIVERSITY TRAINING CORPS AT NASIK.

104. THE HONOURABLE SIR PHIROZE SETHNA: Has an application been received from the authorities of the Arts College at Nasik for the

formation of a Unit of the University Training Corps ? If so, has the application been granted ? If not, why not ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : No such application has been received at Army Headquarters.

APPOINTMENT OF A ROYAL COMMISSION TO INQUIRE INTO THE QUESTION OF BANKING DEVELOPMENT, ETC.

105. THE HONOURABLE SIR PHIROZE SETHNA : Will Government be pleased to state whether they have received from the Committee of the Indian Merchants Chamber a representation urging the appointment of a Royal Commission to inquire into the question of banking development and organisation of credit facilities and, if so, to state what action they have taken thereon ?

THE HONOURABLE MR. J. E. C. JUKES : The Government of India have not received the representation in question. If, as seems probable, it was addressed to the Government of Bombay, the latter will no doubt transmit it to the Government of India in due course.

GRIEVANCES OF RETURNED INDIAN EMIGRANTS FROM FIJI, BRITISH AND DUTCH GUIANA, THE WEST INDIES, TRINIDAD AND MAURITIUS.

106. THE HONOURABLE SIR PHIROZE SETHNA : Will Government be pleased to state whether it is a fact that many Indian emigrants have returned from Fiji, British and Dutch Guiana, the West Indies, Trinidad and Mauritius and about 600 of them are at Calcutta desirous of returning to their Colonies ? If so, have Government inquired into their condition and grievances and what steps have they taken to enable them to go back to their Colonies ?

THE HONOURABLE SIR MUHAMMAD HABIBULLAH : I would refer the Honourable Member to the reply given by me on the 18th August to the Honourable Saiyid Alay Nabi's question No. 29 on the same subject.

REPORT OF THE ROYAL COMMISSION ON CURRENCY.

THE HONOURABLE MR. V. RAMADAS PANTULU : Sir, I gave private notice of a question to the Honourable Mr. Jukes, and if you will permit me, I will put it to him.

Will the Government be pleased to state whether they will make the Report and Appendices of the Royal Currency Commission available to Members of this Council and, if so, when ?

THE HONOURABLE MR. J. E. C. JUKES : So far we have received only a very limited number of copies from England, of which 15 have been placed in the Library of the Legislature for the use of Members. When we receive a further stock, copies will be made available for sale at the Central Publication Branch, Calcutta, and the various agents of the Central Publication Branch. The Finance Department will also be prepared to supply one copy free to any Honourable Member who may care to write and ask for it.

INDIAN BAR COUNCILS BILL.

THE HONOURABLE MR. S. R. DAS (Law Member) : Sir, with the permission of the Leader of the House may I ask that item No. 9 be taken first—that is the motion for the consideration of the Bar Councils Bill.

THE HONOURABLE THE PRESIDENT : I do not think it is likely to inconvenience the House if the business in to-day's list is taken in the order suggested by the Honourable the Law Member.

THE HONOURABLE MR. S. R. DAS : Sir, I move that the Bill to provide for the constitution of Bar Councils in British India and for other purposes, as passed by the Legislative Assembly, be taken into consideration.

Sir, I trust the House will bear with me if I take a little time in explaining the Bill which I am asking them to take into consideration. It is a very important measure not only from the point of view of the legal profession, which may not interest this House, but also from the point of view of the future administration of justice in which the legal profession play, and always will play, a very important role.

Before I deal with the provisions of the Bill, I should like to point out certain matters with which the Bill does not purport to deal. As the House is aware, the Bill arises out of certain recommendations made by the Bar Committee. They recommended amongst other things that the enrolment and control of legal practitioners who are not entitled as of right to practise in the High Courts should be left to the High Court under the present Legal Practitioners Act and the Bombay Pleaders Act ; so that this Bill does not purport to deal with that class of legal practitioners, but only with the class who are entitled as of right to practise in the High Courts. They also recommended that there should be only one grade of legal practitioners entitled to practise in the High Courts to be known as advocates, not as barristers or vakils, the grade of High Court vakils and pleaders being abolished, but that in Calcutta and Bombay, where special conditions are maintained for admission to plead on the original side, the only distinction should be within that grade which shall consist of advocates entitled to practise on the original side and advocates not so entitled. They also recommended that the distinction as regards practice on the original side should be maintained for a certain number of years after which the Bar Council, to which I shall refer presently, shall determine whether this distinction is to continue or not. The present Bill does not deal with that recommendation. Then they recommended that the dual system, that is, the system under which an advocate pleads and an attorney acts and an advocate has to be instructed by an attorney that that dual system should not be interfered with, but that it should continue in those courts where it now exists that is, in the High Courts of Calcutta and Bombay. The present Bill does not purport to deal either with the original side of the Bombay or Calcutta High Court or with the dual system except in so far as it has been found necessary to make it clear that with regard to these two matters the powers of the High Courts are left unaffected by this Bill.

The recommendations of the Bar Committee with which this Bill deals are those affecting the formation of a single grade of legal practitioners entitled to practise in the High Courts, the establishment of Bar Councils in certain High Courts, their constitution, rights and powers and the disciplinary jurisdiction of the High Court in matters other than contempt of court. The recommendations of the Bar Committee on these matters have not all been accepted in the form and to the extent they recommended : they have in several matters been either amplified or modified in the light of criticisms and suggestions made by the authorities consulted, such as Local Governments, High Courts,

- Bar Associations and so forth. Now with those preliminary remarks I propose
- to deal shortly with the clauses of the Bill pointing out where any important alterations have been made from the present practice.

Clause 1 provides that the Bill applies to certain High Courts, that is, to the High Courts of Calcutta, Madras, Bombay, Allahabad, Patna and Rangoon, but it gives power to the Governor General in Council, if they think fit later on, to make the Bill applicable to other High Courts. Clause 2 deals with definitions and I need not trouble you with that clause. Clause 3 constitutes the Bar Council and gives it perpetual succession.

Clause 4 is an important clause and deals with the composition of the Bar Councils. The House will notice that it provides that it shall consist of 15 members of which one is to be the Advocate General, 4 to be nominated by the High Court and of these four 2 may be Judges of the High Court ; the remaining 10 are to be elected by and from among advocates, but of these 10 the clause provides that 5 at least shall be advocates of 10 years' standing. Then, in order to enable barristers or rather those who are entitled to practise on the original side of the Calcutta and Bombay High Courts to become members of the Bar Councils, it provides that of these 10 members to be elected the High Courts at Bombay and Calcutta, respectively, shall prescribe the proportion to be elected from those entitled to practise on the original side. This clause makes a further provision which, I think, I should explain. Under a recent ruling of the Calcutta High Court about 150 vakils who hitherto were not entitled to practise on the original side have been admitted to practise on the original side. This number is likely to increase with the result that these vakil advocates, if I may use the term, are and are likely to continue to be in the majority on the original side, and it was felt that, if it was left to the High Court merely to determine the proportion of those to be elected from among those practising on the original side, a barrister would have very little chance of being elected since they will always be in a minority on the original side. It has accordingly been provided in the last part of sub-clause (3) that out of the number to be elected from those practising on the original side such number as may be fixed by the High Court shall be barristers. It has been left to the High Court to ascertain on particular occasions what the proportion of barristers to be elected should be. Of course I may point out that as barristers cease to exist in these High Courts, as I am afraid will inevitably be the consequence of this particular Bill, the number of barristers in the Bar Councils will gradually diminish. This clause, the House will notice, also provides that the Advocate General shall be chairman of the Bar Council in Bengal, Madras and Bombay because hitherto the Advocates General in those Courts have always been considered to be the head of the Bar.

Clause 5 deals with the constitution of the first Council ; clause 6 gives power to the High Court to make rules regarding the election, constitution and procedure of the Bar Council, and to the Bar Council the power to add, rescind or amend such rules with the previous sanction of the High Court. That is to say, the first set of rules are to be made by the High Court and after the Bar Council is formed they may amend or rescind or add to the rules with the previous sanction of the High Court. Clause 7 gives the Bar Council power to make bye-laws consistent with the Acts and the rules.

[Mr. S. R. Das.]

Clauses 8 and 9 deal with the qualifications, admission and enrolment of advocates. These are important clauses. They provide that no one shall be entitled to practise in any High Court unless his name is entered in the roll of advocates which the High Court has to prepare and maintain, but a copy of this roll is to be sent by the High Court to the Bar Council because they will need this roll for the purposes of the election of members. This provision, however, does not affect attorneys as you will notice, because, as I told this House in the beginning, it is not intended to deal with attorneys at all. With the previous sanction of the High Court the Bar Council may make rules to regulate the admission of persons to be advocates. But the clause points out that these rules are not to limit the power which the High Courts now possess of refusing admission to any person at their discretion, nor can they disqualify a woman for admission by reason only of her sex. Sub-clause (4) of clause 9 is important and I would draw your attention to that. That sub-clause is intended to make it quite clear that the right of a Bar Council to make rules as to qualifications for admission as advocates does not in any way limit the power of the High Court to prescribe qualifications for those who intend to practise on the original side of the Bengal and Bombay High Courts: that is to say, the qualifications for practising on the original side are left to the High Courts: they have to prescribe the necessary qualifications: the Bar Councils have nothing to do with them. This is really in consonance with the recommendation of the Bar Committee that for the present at any rate the original side should not be interfered with. In fact throughout the Bill the intention has been to keep the original side of the High Courts outside its scope.

Clauses 10, 11, 12 and 13 deal with questions of discipline. Shortly, the scheme is that the ultimate right of the High Court to deal with matters of professional or other misconduct is left untouched, but it is provided that, before passing final orders, the High Court should refer the matter for investigation to the Bar Council or after consultation with the Bar Council to a District Court, that the inquiry by the Bar Council should be conducted by a tribunal of not less than three members of the Bar Council to be appointed by the Chief Justice, that the finding of the tribunal is to be forwarded to the High Court who shall pass final orders after giving an opportunity to be heard to the advocate concerned, to the Bar Council and to the Advocate General. I should perhaps explain that the reference to the District Courts with regard to which there has been a certain amount of controversy in the other House is merely intended for those cases where it would be difficult or expensive to bring witnesses from a District Court to the High Court and facts calling for evidence have to be inquired into.

Clause 14 deals with the question as to the Courts where the advocate is entitled as of right to practise. As I am moving an amendment to that clause I will deal with it at length later on; but I may point out that it does not entitle an advocate as of right to practise on the original side—he can only do so if he has the qualifications which under clause 9 (4) the High Court has to prescribe. This clause, however, entitles him to practise in any other High Court if that other High Court or the Bar Council attached to that High Court have not imposed any conditions with regard to it. If they have imposed any conditions

• then he can only practise in those other High Courts subject to those conditions. It has altered the present practice to this extent that now before an advocate of the Calcutta High Court can appear in a case in the Bombay High Court the permission of the Judges has generally to be applied for ; but the right is given under this Bill to the Bar Councils to make rules if they like as to the conditions under which members of other High Courts should be entitled to appear in a case in that High Court. If no such rule has been made then he is entitled as of right to go and practise there, but if any rules are made then he would be subject to those rules.

Clause 15 gives the Bar Councils the general power to make rules with regard to the rights and powers of the advocates, facilities for legal education, the conduct of any examinations they may hold, the charging of fees therefor and the investment and management of their funds ; but they can only make these rules subject to the previous sanction of the High Courts. I would only point out this important fact that throughout this Bill with regard to the powers that have been given to the Bar Councils, they are, so far as disciplinary matters are concerned, in the nature of advisory bodies ; and so far as other powers are concerned such as qualifications of advocates, etc., they are subject to the previous sanction of the High Court.

I do not think I need draw your attention to any other clauses of the Bill. The other clauses are not important—they amend certain previous Acts and so forth. Before I conclude perhaps the House will allow me to strike a personal note. Up to a very recent time I had the honour of being the head of the Calcutta Bar, a Bar which has, I am proud to say, for nearly a century upheld the very high traditions of the English Bar. It is a matter of regret to me that it should fall to my lot to take the first definite step towards the extinction of that Bar, for this Bill undoubtedly will have that effect in time. But India is now passing through a stage when it seems to me that sentiment rather than practical considerations seems to guide its course, and I felt throughout when I was serving on the Bar Committee that the best course I could take—personally, I am talking of myself personally,—was instead of trying to resist this sentimental force, to try and guide it into the safest channel possible, and I claim that this Bill goes, as far as it is possible to go, consistently with the future of the legal profession and the administration of justice. Sir, I move the Bill.

THE HONOURABLE THE PRESIDENT : The question is :

“ That the Bill to provide for the constitution of Bar Councils in British India and for other purposes, as passed by the Legislative Assembly, be taken into consideration.”

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : Nom nated Non-Official) : Sir, I am afraid I cannot give my willing consent to this measure. This Bill is of a revolutionary character making changes of a very drastic nature in the traditional constitution of the Indian Bar. It is an irony of fate that one of the most distinguished members of the Calcutta Bar should, by virtue of his office, be the unwilling instrument for moving a Bill of this sort in this Council. (*An Honourable Member* : “ Not unwilling.”) I am coming to that if you will give me time. Sir, before I enter into a discussion of this Bill I want to make my position clear.

[Sir Maseeki Dadabhai.]

I had the honour and privilege of belonging to the English Bar for nearly 59 years. I was called to the Bar in 1887, and had the privilege of being an Advocate of the Bombay High Court as well as of the Central Provinces Judicial Commissioner's Court. Sir, I mention this fact in order that there should be no doubt as to the motives which guide me in taking this opposition to-day. I have regularly practised for 50 years, but since 1920 I have altogether ceased to practise, and I have therefore no axe to grind. I have no relatives at the Bar and what I am speaking to-day is absolutely in the interests of the Bar, and as I am desirous that the legal profession in this country should always follow the high traditions of the English Bar and should not be impaired by sickly sentimentality which is to be met with sometimes in this country.

Sir, I also want to make it clear that in the expression of views that I offer to-day, I do not desire to cast any reflections on the vakil class with whom I had the privilege for many years to be associated in the course of my practice. I have the highest respect and admiration for many vakils in this country. I know in the Bombay and Madras High Courts a number of names can be mentioned of vakils of great distinction who have shed lustre on the legal work of those Presidency Bars. In Calcutta and all over this country the names of Dr. Rash Behari Ghose and Sir Ashutosh Mukerjee will ever be cherished with reverence and admiration. My fault with this Bill is regarding the important principles and procedure which it covers, and therefore I trust that my Honourable Colleagues, some of whom are vakils here and for whom I have much respect will not misunderstand me in any way. Sir, the Honourable the Law Member has said that it is a simple Bill. It is true it looks very innocuous but if I was not afraid of the many potentialities which it involves, if I was not afraid of this Bill being made in future the thin edge of the wedge, if I was not apprehensive of many other amending Bills being brought in a short course of time after this Bill has been passed, I would perhaps refrain from offering any criticisms. I am afraid I shall take some time of this Council and I ask this Council to be indulgent towards me as it is very necessary that I must very briefly trace the history and genesis of this legislation.

Sir, it is not such an innocuous Bill as it seems to appear. We are all aware of the tempestuous times and the excitement that prevailed in this country after the partition of Bengal; that one of the painful results of that partition was that in Bengal a great deal of ill-feeling was created and unhappily the English Bar to a certain extent was boycotted. Unfortunately the poison permeated into the Presidencies of Bombay and Madras, and there also to my personal knowledge some Indian Solicitors refused to brief English barristers, and the result was a diminution in the number of the English Bar and a fall, a deleterious reduction, in the prestige, position and general talent of the Bar. Sir, that spirit continued when the Reforms were introduced, and at that time the atmosphere was simply electrified. There was a wild talk of national schools, national education, national colleges, national universities, and the Bar was not even left alone. The agitation then started about a national Bar. Those were the first seeds that were sown and to which this Bill partly owes its origin. After the introduction of the reformed constitution unfortunately Lord Haldane had expressed an opinion in 1920 that there should be a Bar for legal education in this country. Unfortunately His Lordship had not visited this country, nor

was he aware of the conditions then prevailing in this country. Moreover, His Lordship's recommendations were not only of a singular character; in addition His Lordship had recommended the creation of King's Counsels and had suggested other avenues for the purpose of compensating for the disabilities which the creation of an Indian Bar would impose on barristers practising in this country. In 1921, a definite Resolution was brought before the Assembly by Munshi Iswar Saran who asked that legislation should be undertaken with a view to create an Indian Bar so as to remove all distinctions enforced by Statute or by practice between barristers and vakils. He recommended that all persons should be called to the Indian Bar in the same way as they may be called to the Bar in the self-governing Dominions. He further advocated the removal of all distinctions between vakils and barristers as regards precedence, pre-audience and production of Vakalatnamas and eligibility for higher judicial appointments. Immediately after that Mr. Neogy introduced a Bill in the Assembly to remove all distinctions between barristers and vakils as regards the right to practise on the original side of the High Courts at Calcutta and Bombay. As if this was not enough, Mr. Rangachariar introduced another Resolution immediately after that in the Assembly to amend the law relating to legal practitioners in India, and to empower the Central Government and the Local Governments to establish a Bar Council in each province.

Sir, the combined effect of all these Resolutions was too much for the Government of India to withstand. I do not know what to say, but it is certain that either in a moment of weakness or in a moment of enthusiasm, the Government submitted without deep consideration to the proposals of the vakil hierarchy in the Assembly. Sir, this Bill which is said to be of a tentative character is intended to be a first step towards the unification and eventual autonomy of the legal profession in this country. The Government immediately referred this matter to the Bar Committee and the proposals of the Bar Committee were formulated, and Government sometime after that introduced a Bill in the Legislative Assembly which was enthusiastically passed and brought forward for the approbation of this Council to-day. I must express my disappointment here that the Government, when they had decided to embark on legislation of such great importance, which was going to undermine the bar constitution of this country which has existed for over a hundred years, did not give this House an opportunity at the earliest or even at a later stage of expressing its opinion on the subject. Sir, even the Bar Committee's Report was not placed before this House for consideration, and the Government proceeded to legislate without taking this House into their confidence, or consulting it.

Sir, the Bill, it is true, as the Honourable the Law Member has said, is of a tentative character; I do not dispute it. It may even be said that some of its provisions are of a harmless character, but, as I have pointed out, this Bill is the precursor of many other Bills which will follow, and I feel that it will undermine the foundations of the established constitution in this country without any reasonable warrant or justification. Sir, the idea underlying this Bill, on which there is a great deal of divided opinions, is to aim at the unification of the various grades of practitioners in this country, and to obtain a measure of autonomy and to accord some measure of self-government to the Bar in this country. In my humble opinion this ideal is entirely wrong. This

[Sir Maneckji Dadabhoy.]

unification, if it will be attained, will be at a great sacrifice. The unification of all grades of practitioners will result in lowering the standard of professional efficiency and professional conduct. Sir, no one can possibly deny in this House that it is to the contact with members of the English Bar, who in previous years used to come here in large numbers, that the present position of the legal profession in this country is mainly due. By contact and association with men of talent, men of ability who came from England, Scotland and Ireland, this Bar grew in intelligence and importance and in the acquisition of judicial ability and knowledge. There is no gainsaying that the present position of the Bar is due to that fact. My Honourable friend the Law Member had the candour to admit this morning that the passing of this Bill will diminish the strength of the English Bar coming out to this country. Here, Sir, is an important admission. Further, Sir, I am not satisfied that this is a measure of self-government which can be introduced safely and in a profitable manner. The object of the creation of these Bar Councils is to give them autonomous powers in the administration of their own bar affairs, but is it possible, is it conceivable that these Bar Councils under the present circumstances can be useful and effective in any way and successfully perform the work which this Bill aims at? Can they ever undertake the legal education? Have they got the necessary finances? Can they detach themselves from the Presidency universities which undertake the imparting of legal instruction and knowledge? These are matters which are beyond the power of these Bar Councils ever to attain. I do not feel that these Bar Councils will ever develop into efficient bodies. My apprehension is that these Bar Councils will in time become effete bodies and develop internecine quarrels and professional jealousies and rivalries. Sir, let us take the provisions of clause 4 and examine if what I say is borne out by the projected constitution of these Bar Councils. Clause 4 gives power to create a Bar Council in each Presidency with 15 members, of whom 4 shall be persons nominated by the High Court, of whom not more than two may be Judges of that Court. We know that many of the Judges in some of the Presidencies have already expressed their unwillingness to sit on these Councils, in which they would be in a position of helpless minority. As regards the 10 other members elected to these Bar Councils, the method of selection is indicated in clauses 2 and 3. Can my Honourable friend the Law Member guarantee that the election of these 10 members will be conducted strictly on lines of professional etiquette and ability? Is there any guarantee that where there is a preponderance of Hindu vakils at a particular Bar such vakils will not find admission into these Bar Councils to the detriment of the members of the profession of other communities and that elections conducted on communal lines will gradually sow seeds of bitterness between the members of the various communities and will result in unpleasant controversies and jealousies? I cannot possibly conceive that such things are not likely to happen. We have only to cast our eyes on what is going on in this country to-day; we have only to cast our eyes back to the debate which took place only three days ago in the Assembly, where the Hindus and Muhammadans attacked each other and Members made charges against each other in connection with a debate on a simple Bill for the amendment of the Criminal Procedure Code. Sir, I am firmly of opinion that these Bar Associations or Councils, call them what you may, will not be free from political, communal

- and religious controversies. Further, in my opinion, the tendency of this
- clause 4 will in time have the effect of tearing off the established control of the Presidency High Courts over the profession. These bodies started under these conditions, must in time claim absolute autonomy and independence of control, and they will protest against and oppose all interference from the High Courts. It is true that a provision has been made in clause 9, sub-clause (4), for exempting the original side of the High Courts from the operation of this Bill for the present. This was done under strong protest from Calcutta and Bombay, but though this provision appears for the present in this Bill, I fear, before long, the same powers and privileges will be claimed by the entire profession.

In this connection.....

THE HONOURABLE SAIYID RAZA ALI: May I offer my services? Can I help my Honourable friend to find the passage?

THE HONOURABLE SIR MANECKJI DADABHOY: I am quite able to look after myself; thank you very much! Sir, I refer in this connection to paragraph 56 of the Report of the Indian Bar Committee:

"We have already said that we look forward to the time when pleaders and others entitled to practise only in subordinate courts will disappear and all legal practitioners will be entitled to practise in the High Courts as well as in the subordinate courts..... For this reason and also because we think that it would be better for the present to confine the membership of the electorate for the Bar Councils to the highest grade of legal practitioners, that is, those who are advocates of the High Court, we propose that all legal practitioners should continue as at present to be enrolled and controlled by the High Court."

Sir, there you have an explicit expression of opinion about the abolition of all distinctions and the placing even of vakils practising in subordinate courts on the same level as advocates. I am sure my Honourable friend the Law Member will see in this recommendation an impending demand. Before long, I prophesy, that practitioners practising in various Courts subordinate to the High Courts will come forward with a request and ask on the authority of this Report, to be placed on the same footing; and I wonder how my Honourable friend will then be in a position to refuse their request! Sir, in my opinion this provision, though it gives a temporary relief, is of no value at all.

Sir, I have no desire to take up the time of the Council by going into various clauses and explaining them in detail. I will take only one or two more clauses to show whether my point of view is right and proper or not. Clause 10 is framed for the punishment of advocates and pleaders for misconduct. Now what is the effect of clauses 10, 11 and 12? My Honourable friend the Law Member said there is a sentiment and we must satisfy that sentiment. If this Bill is introduced for the purpose of satisfying mere sentiment, I have nothing further to say. But what is the effect of these provisions? What are you doing? The Bill is simply creating a dual machinery and thereby complicating matters. The High Courts will send cases of misconduct to the Bar Councils. The Bar Councils will take evidence—I mean the tribunals appointed by the Bar Councils will look into the case, record evidence and send the cases up for the final orders of the High Court. What is the result of this? The result of this is that a member of the Bar

[Sir Maneckji Dadabhoy.]

who unfortunately becomes the victim of a prosecution or a charge under this clause will have to appear before his brother lawyers for adjudication. Putting aside for the moment the professional jealousy and the strong individual feeling against successful barristers which prevail in many parts—I do not wish to attach more than necessary importance to that; but will not this unfortunate practitioner have to undergo a serious expenditure? And what are you doing further? On account of their larger numbers in time the vakils will monopolise all the seats in these Councils. What you are simply doing is that you are placing barristers of eminence and ability who will come out and practise in these Courts or who are now practising there—you want these vakils with inferior education, equipment and knowledge to sit in judgment on them. To my mind, Sir, this is simply monstrous, that the barristers qualified in England, who are under the jurisdiction and control of the Benchers of their Inns of court—barristers whose misconduct if any can only be dealt with by that body,—you are transferring that to a local body created from classes who are not free from communal, political and professional jealousies. I, Sir, cannot reconcile myself for a moment to a position of this kind. Secondly, Sir, what is going to happen? The Judges may, if they like, make further enquiry. The waste of time and the expenditure of money will be enormous. These provisions will not be of a useful character. It is true that the Assembly has cheerfully accepted this Bill but I know that they have accepted this Bill not because they are enamoured of it or because they like the emasculated provisions of this Bill, but because they feel that this is the thin end of the wedge. You may take steps to establish the Bar Councils, and the conferral of all other privileges and the destruction of the existing traditions of the Bar will inevitably follow. Sir, it has been said that the object of the Bar Committee was not to prevent or discourage the coming out of barristers from England or Indians going to England and qualifying themselves for legal instruction there. That is true but may I know, Sir, if these Bar Councils are established and if this Bill is passed, is it conceivable that English barristers will come out to this country under such conditions of indignity and disability? Sir, is it likely that Indians who can afford to go and take their education in England will go there only to receive that education and become barristers and come out to be placed on a footing of equality with the latest recruit of the vakil class in this country? Sir, will that lead to the expansion and development of legal talent in this country? Sir, already indications are not wanting that the several High Courts are unhappily suffering from a lack of judicial and legal talent. As for the Bar most of the lawyers found now-a-days are absolutely poor, there are some of moderate and average ability and with a few exceptions on the Bench in regard to the majority of Judges it could be safely said without any disrespect or disparagement that there is no outstanding legal ability or talent such as distinguished the various High Courts of this country only a few years ago. Sir, in clause 5 special provision is made regarding the constitution of the first Bar Councils, full franchise has been given to all practitioners irrespective of the nature of their qualifications. Advocates, vakils and pleaders all will have a right to vote and aspire to seats in the Councils on their first formation.

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• THE HONOURABLE MR. S. R. DAS : Those entitled to practise in the High Court.

THE HONOURABLE SIR MANECKJI DADABHOY : I know that and I have already drawn the distinction that the Bill does not extend to practitioners in subordinate courts. I wonder how my Honourable friend Mr. Das welcomes this proposal.

Sir, I do not desire to take up any further the time of this Council. I feel that this is a retrograde measure. I am not personally interested as I have already stated in the profession any longer. (*An Honourable Member* : "Hear, hear.") I am only speaking from a disinterested point of view for the maintenance of the status, dignity and the prestige of the profession which has been built up in this country by custom and tradition during the last century. To oppose this Bill at this late stage is to cry in the wilderness. The Government are determined to pass this Bill. This Bill is introduced on the last day of the Session to be forced down the throat of this Council. So far as the Government are concerned the Bill is a *fait accompli*. But, Sir, I cannot ignore the important apprehensions that I have felt in connection with this Bill. Though I know that to-day the Government will pass this Bill with their official vote and with the help of the majority of the Members here including my esteemed vakil friends, I feel that, if I had not said this much to-day on this subject and failed to place on record my views, I would have been remiss in my duty to this Council. I know that this Bill is going to give trouble to Government ; I am confident that this Bill is going to give trouble to the several High Courts ; I know that this Bill will create bitterness of feeling which will be too late to dissipate or avoid. I also prophesy that in another ten or twenty years you will see the Bar in India reduced to a low standard, a sort of mukhtear Bar with pettifoggers all over the country. That consummation is certain to be reached to the chagrin and disappointment of men who are supporting the Bill to-day.

THE HONOURABLE MR. P. C. DESIKA CHARI (Burma : General) : Sir, I am not prepared to take up much of the time of the Council, and I propose to reply in the main to the objections taken by my Honourable friend Sir Maneckji Dadabhoy. I am sorry that I have to make a venture of this kind as I heard from him that he was called to the Bar in the year 1887, which happens to be the year in which I was born. But, Sir, I have been long enough in this profession from the year 1911 onwards, and I can say with some little confidence that the fears and anxieties which trouble my Honourable friend will not trouble other Members of this Council who do not take such a gloomy view of things. I am glad to note that my Honourable friend in opposing this measure says he has no axe to grind and that he does not mean any reflection on the vakil class. But I am afraid, having heard fully the arguments adduced by him and the statements made by him in the course of his speech, I am inclined to think that he had at the bottom of his mind some remote idea which, though not amounting to a reflection on the vakil class, was something approaching to that. But let it pass. I also further note that he would have had no serious objection to the measure which has been introduced, if it were not the thin end of the wedge. But I hope and trust that the small beginning made by the Government in laying the foundations of the constitution of the Bar and in giving self-government to the Bar will be only the thin end of the wedge, and that in the course of time the self-government now granted to the Bar will be placed on

[Mr. P. C. Desika Chari.]

broad foundations by successive stages of successive Bills introduced in the Legislature of which I hope the present Bill is only the precursor. The gist of the arguments of my Honourable friend, Sir Maneckji Dadabhoy, comes to this, that there has been an ancient institution of the English Bar with ancient traditions which are likely to be wiped out by the present Bill. But I hope and trust that the Honourable Members of this House will take a proper view of the case and that they will agree with me when I say that English barristers have been allowed in this country only as advocates of Indian High Courts. As English barristers they had no standing in Indian Courts, though on account of the importance and influence which they were commanding they could enforce some of their own traditions on the Bar which consisted from the earliest times of not only English barristers but of Indian vakils as well. It is too late in the day to question the capacity of the Indian vakils, and I can now say without fear of contradiction that among the vakils practising in the various High Courts you can easily pick out any number who are equal to, if not better than, their English compeers.

It is not necessary for me seriously to contest the position taken by my Honourable friend, Sir Maneckji Dadabhoy, that of late the members of the indigenous Bar, that is, the Indian High Court vakils, have not produced men of any outstanding merit during the last fifteen years. I do not think it is necessary for me to quote instances. It is well known that during the last fifteen years we have come across men of outstanding merit who can hold their own in any country in the world in the legal profession. I am inclined to think my Honourable and learned friend has been somewhat pessimistic in his view of the effect of the constitution and the working of the Bar Councils. Perhaps being younger in age and outlook I take a different view, and I hope my views do not differ from the views of the majority of the Members in this Council that the introduction of the Bar Councils will be a happy augury in the constitution and development of the Bar in India. My honourable and learned friend has been quoting several of these clauses as regards discipline to show that they are unnecessarily complicated. On the other hand, I am inclined to think that there are various safeguards in each and everyone of those clauses which provide ample safeguards against the so-called tyranny of the brother members of the Bar towards the unfortunate people who may be hauled up before them for enquiry and punishment. My Honourable and learned friend has been waxing eloquent over the troubles which the Government are inviting by introducing a measure of this kind. I do not know what troubles there can be; the members of the profession have been working shoulder to shoulder all these years, and the traditions of the Bar are surely maintained by the various members of the profession who are drawn from various classes. I believe an *esprit de corps* between members of the Bar will continue and in the near future produce amity and concord between the various religionists whom they represent.

With these words I heartily support this Bill and hope it will be received with great thanks by the members of the legal profession who are also members here.

THE HONOURABLE SIR PHIROZE SETHNA (Bombay : Non-Muham-
madan) : Sir, I had actually no intention whatsoever of speaking upon this

Bill, for I am neither a vakil nor a barrister, and yet if I do so it is because I think it is necessary for the Council to refute some of the arguments advanced by my Honourable friend, Sir Maneckji Dadabhoy even to a greater extent than the speaker who has just resumed his seat was endeavoured to do.

The Honourable Sir Maneckji Dadabhoy regards this Bill as of a highly revolutionary character. He thinks Government are going to lower the prestige and position of the members of the Bar. The Honourable the Mover, Mr. S. R. Das, is himself a barrister, and as he has told us, he was also a member of the Committee responsible for these recommendations. He has further told us that perhaps we have in this age to yield to sentiment to a certain extent, though on practical grounds the suggestions made may not be quite satisfactory. I would like to remind my Honourable friend, Sir Maneckji Dadabhoy, that on that Committee there were also other eminent barristers including Sir E. Chamier, Mr. Justice Coutts Trotter, Colonel Stanyon and others, and in spite of that we have before us a perfectly unanimous report, so that all the points which my Honourable friend has advanced to-day before the Council must have been seriously weighed and considered before the Committee arrived at unanimous conclusions.

THE HONOURABLE SIR MANECKJI DADABHOY : In the light of events in 1921.

THE HONOURABLE SIR PHIROZE SETHNA : There are some perhaps—I am not amongst them—who are of opinion that we are so far advanced that instead of going to the Privy Council we should have a Supreme Court in this country. The time may not be ripe now for a Supreme Court but we are gradually progressing towards it, and this Bill is one of the stepping stones which will eventually give us a Supreme Council when we are ready for it.

The Honourable Sir Maneckji Dadabhoy said that the attitude of the vakils towards English barristers is most questionable, and he referred to instances in Calcutta and Bombay where he says English barristers were boycotted. I was exceedingly glad to find that the Honourable the Law Member emphatically interjected by disputing this statement. I hope that in the course of his reply he will tell us more about this subject. Not being a lawyer myself but as one who has tried to follow events happening in this country, so far as I know, there has never been a boycott of British barristers either in Bengal or Bombay as a class.

THE HONOURABLE SIR MANECKJI DADABHOY : Question !

THE HONOURABLE SIR PHIROZE SETHNA : There may have been a boycott of individuals for some particular reason, and I remember an instance of such a boycott for a very few days, such attitude was taken up not only in regard to a barrister or barristers but also in regard to a High Court Judge or Judges, but that was only temporary, and perhaps justified. In fact what the vakils or solicitors did cannot possibly be regarded as a boycott. On the other hand, although that also cannot be called a boycott, I am not wrong in saying that there was a time up to only fifteen or twenty years back when there was an absolute boycott of Indian barristers, and by whom ? This boycott was by English solicitors. I do not blame those English solicitors for the boycott of Indian barristers at that time. There was good reason for such boycott, if you call it a boycott.

THE HONOURABLE SIR MANECKJI DADABHOY : They merely followed the first boycott. The first boycott was directed towards the English Bar., Then the European solicitors in their turn refused to brief Indian barristers.

THE HONOURABLE SIR PHIROZE SETHNA : I have allowed Sir Maneckji Dadabhoy to intervene, but he will correct himself when I remind him that the so-called boycott he refers to happened in the last decade. The so-called boycott I refer to existed twenty and thirty years ago. I say that in those days there were no Indian barristers of high repute, and I do not blame the English solicitors therefore for not retaining at that time the services of Indian barristers. What are the conditions to-day ? In Bombay and at Calcutta English solicitors retain the services of Indian barristers just as freely as do Indian solicitors the services of English barristers. The point is that if there is real merit, whether a barrister is English or Indian, the legal profession are prepared to engage him.

This Bill has not been introduced with the intention, as my Honourable friend contends, of lowering the position of British barristers. On the other hand, it is for "levelling up" the position of vakils and advocates. To-day there are scores of vakils of repute. He has named only one or two of bygone days, Dr. Rash Behari Ghose and Sir Ashutosh Mukerjee. I am not conversant with the names of men outside Bombay, but I give the names of some eminent Bombay men such as Mr. Bhulabhai Desai, Mr. Kanga, Sir Chiman Lal Setalvad, Mr. Dinshaw Mulla and many others who are only advocates but can take rank with the ablest English barristers in the land. As I have said, this Bill merely contemplates the levelling up of the position of such vakils and advocates.

My Honourable friend said that Government have yielded in a moment of weakness or of enthusiasm. Sir, I am surprised at this statement. I give my friend credit for the courage of his convictions, and perhaps he believes in all what he has said as absolutely correct ; but I must add that my Honourable friend is not moving with the times when he makes the observations which he has made before this House to-day. We are progressing in almost every direction, and particularly in the direction of law. My Honourable friend himself interjected when another speaker was addressing the House and himself admitted that in the High Courts Indians have proved their worth. In every department Indians have proved their ability but in no department have they proved their ability as much as in the department of law. I would remind my Honourable friend that vakils are advancing and progressing in their profession just as much as doctors are in this country. My Honourable friend opposite, the Honourable General Symons, the head of the Indian Medical Service, will bear me out when I say there was a time in this country, 20 or 25 years ago, when the only consultants were I. M. S. men. That is all changed now. There are still some I. M. S. consultants but there are many others almost all Indians, who have attained the highest medical and surgical distinctions. The same is the case with vakils.

On the whole we have more eminent men amongst the vakils than perhaps among the barristers. My Honourable friend distinguishes between barristers and vakils, but he forgets that there are barristers and barristers and vakils and

vakils. Permission will only be given to appear in the High Court to really able men, whereas at present a barrister is allowed to practise so long as he has passed his examinations. There are many Indian barristers who do not even speak English correctly and yet my Honourable friend would give them power and prestige and run down vakils much their superior. So far as I know the Advocate General of Bengal has never been a vakil, but I am glad to say that the position of the Advocate General of Bombay and even previously to that, the position of the Advocate General of Madras have been filled by vakils. The Advocate General at Madras to-day is Mr. T. R. Venkataram Sastri and the Advocate General of Bombay is Mr. Kanga, the former a vakil and the latter an advocate. Therefore the observations of Sir Maneckji Dadabhoy are not justified and it is not right for him to run down the vakil class as he has attempted to do to-day.

In drawing attention to clauses 10 and 11, Sir Maneckji says by giving the right to Bar Councils to try cases this will lead to very considerable confusion and perhaps victimisation of individuals. Now, Sir, in this connection nothing is likely to be done in the future than what is being done at the present moment. We have Bar Councils to-day, but they are not legally recognised. This Bill attempts to do that. Even to-day, whilst there is a Bar Council or Bar Association which is not legally recognised, if anybody is pulled up in regard to unprofessional conduct, the High Court does not decide without reference to the Chairman of such Bar Council and attaches the greatest importance to his views, which are the views of his Council or his Association as it may be called.

THE HONOURABLE SIR MANECKJI DADABHOY : There are separate Bar Councils for pleaders as well as for barristers.

THE HONOURABLE SIR PHIROZE SETHNA : And therefore my Honourable friend ought to be pleased that they are going to be united. My Honourable friend said there will be a danger to the High Court by having too many vakils in these Bar Councils. There was a time when there were not many Indians in the Legislative Councils, but they have now come in in large numbers. Are they giving so much trouble to the Government that they cannot carry on the work of the administration ? Surely the High Court will be able to carry on its work, and carry it on more efficiently because of the proposed Bar Councils.

THE HONOURABLE SAIYID RAZA ALI (United Provinces East : Muhammadan) : Sir, my friend Sir Maneckji Dadabhoy has introduced in the course of his speech more heat than light on this subject. I, Sir, do not propose to follow his example. I on my part shall try very briefly to induce him to see the injustice of the present practice. The Honourable Sir Maneckji Dadabhoy, I am sure, knows a good deal about the profession of law, to which he was called, according to him, in 1887. I was glad to learn from his biography given by himself that he practised at the Bar till 1920. I for one would have liked to know a little more about himself and his doings. How many years was he in active and actual practice during which he did nothing but practise at the Bar. That, however, is only by the way. I will ask Sir Maneckji Dadabhoy and others who are of his way of thinking just to consider how the present system is worked. If this Bill is withdrawn by the Honourable the Law Member, the present practice will continue in force, and what is the present practice ?

[Saiyid Raza Ali.]

A has a son B. B appears, we will say, at the Matriculation or Intermediate examination and gets "plucked." The father being a rich man, sends his son B to England. There, after passing an admission examination, he is admitted to the Inns of Court and after eating the necessary number of dinners and passing an ordinary examination, B comes out as a fullfledged barrister. Now take the case of a man who has taken the highest degrees from one of the Indian universities. He may be an M.A., an M.Sc., or D. Sc., and after that he may have taken not only the LL.B. degree but may have taken honours in law. He gets himself enrolled in one of the High Courts. Being a vakil, the result is that the Indian M.A., M. Sc., LL.D., is, by virtue of his position as a vakil, junior to B, who went out after having failed in the Matriculation or Intermediate examination and has come out as a barrister. I ask Sir Maneckji Dadabhoy, is this what he calls justice and fair play? Is this the system he wishes to be maintained? Sir, I must congratulate the Honourable the Law Member that, though he is a barrister, he has had the courage of his convictions, and because he agrees with the Bar Committee's Report he has, after going into the whole question, brought forward a motion of this momentous character. Sir, I need not dilate on the present iniquitous manner in which the present system is working. I shall only give this Council a very short story from which Honourable Members will be able to see for themselves how unjust and iniquitous the present system is. A well known vakil, a very senior man, was engaged at a fabulous fee, to argue a very complicated mortgage appeal. The claim involved several lakhs of rupees. It so happened that because some miscellaneous work had to be done in connection with the appeal, a barrister-at-law of about six or seven years' standing was engaged to do it. When the case came up for hearing the junior man, the barrister, who unfortunately was not in very flourishing practice, insisted on his right to argue that most complicated mortgage appeal. He had in fact been paid a very small sum to do that miscellaneous work; but, Sir, my informant told me that simply to get rid of him a thousand rupees had to be paid. Let the Honourable Sir Maneckji Dadabhoy note this.

THE HONOURABLE SIR MANECKJI DADABHOY: Are there no black sheep among vakils?

THE HONOURABLE SAIYID RAZA ALI: There is no question of black sheep. I am not mentioning this to lay any charge. My Honourable friend has wholly misunderstood my point. The barristers as a rule are a body of men who care very much for their professional honour. That is not the point. The point is that it is a question after all of efficiency; it is a question after all of competency. I do not say that all the vakils are efficient and all the barristers inefficient. There are barristers of whom the Honourable Sir Maneckji Dadabhoy would have every reason to feel proud just as I have on my side of the Bar hundreds of vakils who can hold their own against any barrister in this country. But that is not the point. The point simply is, why subject to disqualifications a man of high ability, a man of high intellect, a man of high education? In fact where the Honourable Sir Maneckji differs from the Government is that he does not look upon the principles of the Bill from the right view point. The two main principles of the Bill, if Sir Maneckji will carefully go through the Bill, he will find are (1) to entrust the Bar with a certain measure of autonomy; that is the first principle; the second principle,

as was hinted at by the Honourable Sir Phiroze Sethna, whom I must congratulate on his very well informed speech considering it dealt with a profession to which he does not belong, is to level up and not to level down. I do not know whether the Honourable Sir Maneckji Dadabhoy would like this uniform system to be created in India by bringing down the barristers to the level of the vakils. I hope he will not. My humble view is—and I am very glad that that is the view taken by the Government of India—that instead of lowering the barristers to the level of the vakils the vakils should be raised to the level of the barristers. I really do not see what objection my Honourable friend Sir Maneckji Dadabhoy has to that.

In the course of a very lengthy speech he has made some points which really deserve careful consideration at the hands of this Council as also of the Government. One of these points was that it may be that at the time of elections to Bar Councils communal strife and communal discord may have free play. Now that is a point, I am free to confess, which should be borne in mind. It may be that there will be a tendency in the election of certain Bar Councils to rely mainly on prejudice and passion—I mean communal prejudice and communal passion. It may be so, but that is no reason for turning down the whole Bill. Should not the Bill be given a fair chance? Personally I should say that I would have been immensely delighted if the Government had gone further than they have actually done; but after all being one who is pledged to support, uphold and safeguard the interests of minorities, I think clause 4, sub-clause (3) of the present Bill affords sufficient protection to the interests of barristers. In any case, so far as this question is concerned, in which I daresay Sir Maneckji is no longer keenly interested, he should have confined himself to safeguarding the interests of his class. On the main question, Sir, I submit let us have these Bar Councils and let us see how they work. If we find there are any defects which experience shows should be removed, it will always be open to the Legislature and the Government of India to make the necessary amendments. But it is for the reasons which I have already stated shortly before this House that I think it is high time that an attempt, an honest, earnest, serious attempt were made by Government to introduce a uniform system regulating the conduct and rights of the Bar.

Before I finish, Sir, let me say one word about the great part played by the Calcutta Bar not only in creating high traditions which have been followed in other High Courts in regard to professional conduct but the very great services that have been rendered by the Calcutta Bar in enlarging the sphere of public liberties. The Calcutta Bar has always enjoyed a unique position and in spite of the pessimistic remarks made by the Honourable Mr. Das regarding the Calcutta Bar, of which he was an ornament for such a long period, I have no reason to doubt that in spite of the passing of the present Bill many men will continue to send their sons to England for a more liberal education than is possible in certain cases in this country and that the Calcutta Bar will continue to attract members of the English Bar in sufficient numbers and that they will uphold the glorious traditions that their predecessors have built up during the last century. Sir, I support the Honourable Mr. Das's motion.

THE HONOURABLE MR. V. RAMADAS PANTULU : Sir, let me congratulate the Honourable Mr. Das on the foresight and courage which he dis-

[Mr. V. Ramadas Pantulu.]

played both as a Member of the Indian Bar Committee and as sponsor of this measure. I am not congratulating him because I am satisfied with the measure. I may at once tell this House that the measure has satisfied neither barristers nor vakils. To a certain extent it trenches upon the privileges and monopolies of the barrister; therefore the barrister is dissatisfied with it. To the vakil it has not given even a tenth part of what he wants, and therefore he is also dissatisfied. But we are all prepared to support it because we think it is a step in the proper direction—that is, the unification of the Bar of the country. The Honourable Mr. Das need not in the slightest degree feel that he is responsible in any way for the extinction of the English Bar. I assure him that in this country the vakil profession will welcome distinguished members of the English Bar from time to time. We never fail to recognise their merits, their capacities and the high traditions and character which they have maintained and tried to foster in this country. The Honourable Mr. Das is right in saying that he conceded to the sentiment of Indian public opinion. After all, in my opinion, Indian public sentiment is a matter that ought to weigh with the Legislature. Of course if there is any reason to maintain the distinction between the English barrister and the Indian vakil, and if the exigencies of the State or administration of justice require it, by all means do it. But is there such a justification to-day? I am afraid the Honourable Sir Maneckji Dadabhoy is hopelessly out of touch with the conditions in India. He has not told us when he retired from practice. I must strongly protest against the line he has taken with regard to Indian sentiment. Is Sir Maneckji going to look to England for the supply of legal talent to India? Is there any reason for such an attitude? To-day the British Parliament has passed an enactment by which an Indian vakil without being enrolled as an advocate of any High Court can sit on the Judicial Committee of the Privy Council and try appeals from the highest courts of justice in India. And recently, Sir, the Honourable the Home Member assured us that he was going to initiate legislation to qualify a vakil to be a permanent Chief Justice of any High Court in India. The Advocates General of High Courts have been vakils. In my High Court Sir V. Bashiam Iyengar was the first Advocate General, and the Secretary of State for India appointed my Honourable friend, Sir Sankaran Nair, as the first permanent Advocate General of the Madras High Court. Since then several vakils have held the position with distinction and honour. Therefore, if a vakil can be a Judge of the Privy Council and the Chief Justice of a High Court and Advocate General of a High Court, is there any earthly reason to maintain this distinction between the English Bar and the Indian Bar except the mentality which looks up always to foreign agencies for our salvation? I am sure that the arguments of the Honourable Sir Maneckji Dadabhoy have not impressed anybody. He began his speech by paying a compliment to the vakils and held them up to admiration for their high character and tradition. But a few minutes later he said that the traditions of the Bar would be considerably lowered if vakils were put on the same footing as barristers; and he also said that the Bar Councils would be largely permeated by the vakils and would therefore be infected with political and communal poison. These are charges, Sir, which I emphatically repudiate and I would ask the Honourable Member to substantiate them by reference to instances if he has any.

THE HONOURABLE SIR MANECKJI DADABHOY : Time alone can show.

THE HONOURABLE MR. V. RAMADAS PANTULU : He was afraid that when questions of disciplinary action were brought up before the Bar Councils, the Councils permeated with vakils might not do justice. At present I may tell him that in my High Court whenever a case of professional misconduct comes up before a bench of the High Court the President of the Bar Association there is always given notice and he is present and the greatest consideration is shown to the views expressed by him. For some time my distinguished friend, Diwan Bahadur Rangachariar, was President of the Bar Association and at present another distinguished member of the Bar, Mr. T. R. Ramachandra Iyer, is President. On no occasion have the Judges of the High Court found any difficulty in accepting their recommendations as to how questions of professional conduct ought to be disposed of, and there was no disposition on the part of any President of a Bar Association in India to shield one of his own brothers ; they have tried to do their best to maintain the highest level of professional integrity and honour according to the best of their traditions. Sir Maneckji speaks of maintaining the traditions of the English Bar. I would ask the Honourable Member to read the evidence tendered before this Bar Committee. Judge after Judge, vakil after vakil, counsel after counsel, testified to the high traditions the vakil Bar maintains. I would ask my Honourable friend, further, to read the evidence given before the Students' Committee in London by students who go to the Inns of Court. They said that they felt humiliated at being asked to go to England for legal training in order to get a right place in their own Courts out here ; and I would ask him to read the evidence tendered by other witnesses before both these Committees. I think the Honourable Member has been carried away by sentiment of a false character.

With regard to my friend's very elaborate attempt to show that this is the thin end of a wedge, I assure him that it is and I wish it had been much thicker than it is, because I do not conceal the fact that the idea of the promoters of this legislation is to see that all the distinctions are completely annihilated and that the Bar in India is unified ; there will not be one grade of practitioners qualifying in India and another qualifying in England enjoying higher privileges. Our idea is to do all we can to see that unification is carried to fruition in the shortest possible time. I assure him of it.

There is one thing which I wish to say before I finish. The present system of dual agency—barristers and attorneys—prevails in two High Courts only, Calcutta and Bombay ; in Madras it has partially been abrogated to a large extent. Thanks to the foresight and wisdom of the Judges of the Madras High Court—they have enrolled many vakils as advocates and even without such enrolment vakils can practise on the original side just as barristers do. Those who are enamoured of this dual system, which is intended to give a preference to members of the English Bar, have failed to convince us. This dual system is costly. The Madras Government recommended its abolition. The barristers of Madras with one voice have asked for its abolition. Lord Haldane was for unification of the Bar in India and many other authorities are of the same opinion. The cost to the litigant is so great that no litigant

[Mr. V. Ramadas Pantulu.]

will ever ask for its retention. In America as you all know there is no dual system and Viscount Bryce has borne eloquent testimony to the position and social status enjoyed by the profession there, a position not yet attained by the Bar on the east of the Atlantic. As the Americans say, it will not suit the Indian litigant to be lathered in one shop and shaved in another! I think that the Honourable Sir Maneckji Dadabhoy has put a lot of false sentiment into his speech.

I will say one word more. We are now trying to make India a self-governing country. The British bureaucracy is willing to surrender some of its monopoly to us and they are recruiting persons to the highest service in the land, the Indian Civil Service, in the country itself: those who are eager for the maintenance of the British character of the services are willing to yield to Indian sentiment. Is the Honourable Sir Maneckji Dadabhoy going to say that the Indian Civil Service man recruited in India should be treated in a different way from the Indian Civil Service man recruited in England? That is exactly what he says; that is what it comes to when he says that the Indian vakil should be treated differently from the barrister coming out from England. I believe he is not even prepared to go to the extent that the British bureaucracy is prepared to go. I am sure he is playing the role of being more Royal than the King, and I hope this House will not pay the slightest attention to what he has said or support him in the least.

THE HONOURABLE MR. S. R. DAS : Sir, I confess I feel tempted to wish that I could for a few minutes be a free lance to reply to some of the observations which have fallen from my friends here and particularly to apply a little cold douche on the youthful enthusiasm of my friend Sir Phiroze Sethna. But I am afraid that my position as member of the Government precludes me from taking part in a controversy between barristers and vakils. Therefore I refrain from making any observations; but there is one remark which fell from my Honourable friend, Saiyid Raza Ali, to which I think I should make some reply. Speaking of the incident which he narrated of a junior barrister having to be paid a thousand rupees to get out of a case for which he had been retained, because he happened to be a senior by reason of his position as a barrister to a senior vakil, the Honourable Mr. Raza Ali said that it had nothing to do with any question of misconduct. I was rather surprised to hear that because ordinarily, certainly to a barrister practising in Calcutta who has got the traditions of the Bar, it would have appeared a matter of very serious misconduct for a barrister to charge a thousand rupees to give up his brief in a case where his client felt that he could not do justice to the case. To them I am afraid it would savour of blackmail, of taking advantage of the difficulties of the position of his client to charge such a large fee as a thousand rupees in order to get out of the case. I think it right that I should make this observation because when the Bar Councils come into existence these are questions which would come up before them, and I trust that the Bar Councils will look upon conduct of that description not merely as a matter of seniority of call or position of the two practitioners, but as a matter involving very serious misconduct of the practitioner. Sir, I move that the Bill be taken into consideration.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill to provide for the constitution of Bar Councils in British India and for other purposes, as passed by the Legislative Assembly, be taken into consideration."

The motion was adopted.

Clauses 2, 3, 4 and 5 were added to the Bill.

Clauses 6, 7 and 8 were added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is that clause 9 do stand part of the Bill.

THE HONOURABLE MR. KUMAR SANKAR ROY CHOUDHURI (East Bengal: Non-Muhammadan): Sir, I beg to move the amendment that stands in my name, namely:

"That the following proviso be added to clause 9 of the Bill:

'Provided that no person shall be disqualified for admission as advocate into any High Court merely on the ground of his not being domiciled within the jurisdiction of that High Court.'

Sir, the object of this amendment is merely to provide a safeguard against inter-provincial jealousies which greatly prejudice the national cause of the country. This is all the more necessary in view of the strong attitude taken by the Burma Government and the Burma High Court. The Burma Government has given expression to anti-Indian feeling in the opinion submitted by them, and the Burma High Court has also embodied and enforced a strict rule of domicile in admitting vakils into the rolls of vakils at Burma. This is highly objectionable and should be provided against. I therefore move my amendment for the acceptance of this House.

THE HONOURABLE MR. S. R. DAS: Sir, I regret I cannot accept the amendment which was also moved in the other House and was also rejected. The Honourable the Mover will notice that whatever the rule may be which the Burma Government have passed with regard to domicile, under the present Bill it is left to the Bar Councils to make rules for qualifications for practice in the particular High Court to which the Bar Council is attached. The Government do not think that their discretion should in any way be fettered, but that it should be left to the Bar Councils to regulate the admission of practitioners, subject to the previous sanction of the High Court. I think my Honourable friend may trust, now that we are going to have Bar Councils, that they will make rules which will not discriminate between different provinces.

THE HONOURABLE MR. P. C. DESIKA CHARI: Sir, the amendment which has been moved is felt to be a desirable amendment by all those who have known the disabilities under which vakils and advocates of other High Courts are suffering in getting enrolment in the Burma High Court. I may be permitted to state that my going over to Burma after practising in the Madras High Court has been to some extent the reason for introducing this sort of invidious distinction requiring that in the case of persons who are not barristers, who have been practising in England or in Scotland, they should satisfy this condition that they are domiciled in Burma before they get enrolled. If the rules as to domicile and rules as to the passing of certain examinations were made applicable to one and all alike, to the English barristers as well as to the Indian High Court vakils, there would have been no reason to complain, but as it is, though the rule as to domicile is ostensibly intended to protect the indigenous Bar it is really intended to protect the European element of the Bar as

[Mr. P. C. Desika Chari.]

against the Indian element getting into Burma from the various Indian High Courts. The Honourable the Law Member has been giving the reason that under these rules the Bar Councils would have the power to regulate qualifications for admission. I am sorry to have to say that in this matter the Bar Councils may not relax the rule which has been in force for the last few years, because so far as I can remember I was the only witness before the Bar Committee who gave evidence against the removal of all these distinctions, which savour of racial distinction, introduced with a view to keep out the Indian element as against the European element. I submit, Sir, that the representatives of the people of India assembled in this Council should not give any support to a disqualification of this kind, and I hope and trust that the Members of this Council will extend their hearty support to the amendment proposed by my Honourable friend, Mr. Kumar Sankar Roy Choudhuri.

With these words I support the amendment.

THE HONOURABLE THE PRESIDENT: The original question was:

"That clause 9 do stand part of the Bill."

Since which an amendment has been moved:

"That the following proviso be added to clause 9 of the Bill:

'Provided that no person shall be disqualified for admission as advocate into any High Court merely on the ground of his not being domiciled within the jurisdiction of that High Court.'

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

The Council divided.

AYES—11.

Desika Chari, The Honourable Mr. P. C. Mehr Shah, The Honourable Nawab Sahibzada Sayad Mohammad. Mukherji, The Honourable Srijit Lokenath. Oberoi, The Honourable Sardar Shivdev Singh. Ram Saran Das, The Honourable Rai Bahadur Lala. Ramadas Pantulu, The Honourable Mr. V.

Roy Choudhuri, The Honourable Mr. K. S. Sett, The Honourable Rai Bahadur Nalininath. Sinha, The Honourable Mr. Anugraha Narayan. Umar Hayat Khan, The Honourable Colonel Nawab Sir. Zubair, The Honourable Shah Mohamad.

NOES—29.

Abdul Karim, The Honourable Khan Bahadur Maulvi. Alay Nabi, The Honourable Saiyid. Bell, The Honourable Mr. J. W. A. Charanjit Singh, The Honourable Sardar. Commander-in-Chief, His Excellency the. Corbett, The Honourable Mr. G. L. Crerar, The Honourable Mr. J. Das, The Honourable Mr. S. R. Emerson, The Honourable Mr. T. Froom, The Honourable Sir Arthur. Gray, The Honourable Mr. W. A. Habibullah, The Honourable Khan Bahadur Sir Muhammad, Sahib Bahadur. Jukes, The Honourable Mr. J. E. C. Langley, The Honourable Mr. A. Ley, The Honourable Mr. A. H. Misra, The Honourable Pandit Shyam Bihari.

Muhammad Hussain, The Honourable Mian Ali Baksh. Nawab Ali Khan, The Honourable Raja. Raza Ali, The Honourable Saiyid. Richey, The Honourable Mr. J. A. Sankaran Nair, The Honourable Sir Chettur. Sethna, The Honourable Sir Phiroze C. Smyth, The Honourable Mr. J. W. Stow, The Honourable Mr. A. M. Symons, The Honourable Major-General T. H. Thompson, The Honourable Sir John Perronet. Tireman, The Honourable Mr. H. Wacha, The Honourable Sir Dinshaw Edulji. Weston, The Honourable Mr. D.

'The motion was negatived.

Clauses 9, 10, 11, 12 and 13 were added to the Bill.

THE HONOURABLE THE PRESIDENT : The question is :

"That clause 14 do stand part of the Bill."

THE HONOURABLE MR. S. R. DAS : Sir, I move :

"That to clause 14 the following sub-clause be added, namely :

'(3) Nothing in this section shall be deemed to limit or in any way affect the power of the High Court of Judicature at Fort William in Bengal or of the High Court of Judicature at Bombay to make rules determining the persons who shall be entitled respectively to plead and to act in the High Court in the exercise of its original jurisdiction.'

This amendment is moved with a view to correct an error of drafting. As I told the House when I moved for consideration of this Bill, the Bar Committee recommended that the dual system, that is the system of one set of practitioners acting like attorneys and another set pleading like barristers and advocates should be maintained. But clause 14 unfortunately, as it is now drafted, would have the effect of destroying that system. The Bar Committee, speaking of this dual system in Calcutta and Bombay, say in paragraph 26 of their Report :

"It follows from this division of opinion between us that we do not recommend any change in this respect of the existing system in India. It would only be possible to make such a recommendation, involving as it would the uprooting of long-established arrangements on the original sides of the Presidency High Courts, if we, as a Committee, were strongly of opinion that the present system is a bad one. As it is we are all agreed that where in India a compulsory dual system is now in existence that system should be allowed to continue. It is on the basis of this conclusion that we shall proceed to discuss the distinctions between advocates and vakils on the original sides of the High Courts at Calcutta, Bombay and Madras."

That is their recommendation, which the Government of India have accepted, and in accordance with it this Bill was framed. It was never intended that the dual system should be in any way affected by this Bill, so far as the original side of the High Courts at Bombay and Calcutta were concerned. But as the House will notice, clause 14 says :

"An advocate shall be entitled as of right to practise—

(a) subject to the provisions of sub-section (4) of section 9, in the High Court of which he is an advocate."

Now the provision of sub-section (4) of clause 9, as the House will remember, is merely that the High Court shall prescribe the qualifications for practising on the original side. But a legal practitioner who has those qualifications, say a barrister, would, under clause 14 as it has now been drafted, be entitled to practise on the original side of the High Court. Now practice means to appear, act and plead, so that, if the clause is left as it is, a member of the legal profession who has got the necessary qualifications prescribed by the High Court would be entitled on the original side to practise both in the nature of acting and pleading at the same time, which would entirely destroy the dual system which prevails there and which the Bar Committee recommends should not be interfered with. It was not noticed at the time clause 14 was drafted, and I am therefore moving this amendment for the purpose of correcting that drafting error, making it clear, so far as the original side is concerned, that the High Court shall prescribe what persons shall act and what persons shall plead

THE HONOURABLE MR. KUMARSANKAR ROY CHOUDHURI : Sir, although I pointed out the defect in the original Bill which has necessitated this amendment, I rise to oppose this amendment, not because I am opposed to the interests of the solicitors, but because I am opposed to the dual system. It is a costly system which does not prevail in most other countries and in other provinces of India, and in spite of what might be said about its efficiency on account of division of labour, I do not agree that it does lead to any efficiency of work at all; for after all, a division of responsibility between those who act and those who plead, with no liability for negligence on the part of those who plead, leads, to my mind, to the most inefficient state of things. This division of labour, moreover, takes place in the unitary system as well without any shirking of responsibility on the part of anybody, for even there a busy lawyer is bound to leave the less important work of day to day detail to a junior, thus giving him full opportunity and scope for getting into practice. The unitary system is thus not only beneficial to the litigant public as being more efficient and less costly but it is equally beneficial to the profession as well. The clause as it stood without the proposed amendment would have enabled advocates practising on the original sides of the Calcutta and Bombay High Courts also, to act as well as to plead, but the amendment seeks to make that impossible. I therefore oppose the amendment.

THE HONOURABLE RAI BAHADUR NALININATH SETT (West Bengal : Non-Muhammadan) : Sir, I support the amendment of the Honourable the Law Member but I think the amendment ought to have been in this form, namely, the words "qualifications of the" should have been placed after the word "determining"—that is to say, the amendment should have run thus : " . . . determining the qualifications of the persons who shall be entitled respectively to plead and to act in the High Court, etc." I think, Sir, the Law Member should add those words. As it is I think the Bill as passed by the other House leaves the point as to whether an advocate enrolled in the two High Courts, namely, at Calcutta and Bombay respectively, could not plead on the original side. As a matter of fact there was no prohibition in the Bill that an advocate would not act on the original side although the intention of the Bill is quite clear on that point. Sir, I do not think that this measure ought to have been applied to the High Court of Calcutta at all. The High Court at Calcutta has already rules which lay down the qualifications for the enrolment of the several branches of the legal profession. As a matter of fact, the High Court has allowed vakils to be enrolled as advocates for the purpose of appearing before the original side and there are at present about 150 of them practising or entitled to practise on the original side. Sir, the Bill seeks the unification of the various classes of the legal profession except the attorneys, and I am glad that the Honourable the Law Member has made it clear that this Bill will not apply to the qualifications which may be laid down by the High Courts of Bombay and Calcutta with regard to the advocates who will be able to plead and act respectively in those High Courts on their original sides. I therefore support this amendment.

THE HONOURABLE MR. S. R. DAS : Sir, with regard to the suggestion made by my Honourable friend Rai Bahadur Nalininath Sett, I do not think

it is necessary that the words "determining the qualifications" need be added. As a matter of fact sub-clause (4) of clause 9 leaves it to the High Court to prescribe the qualifications for practising on the original side and this gives the High Court power, or reserves the power which they already have, of determining which of those persons for whom qualifications have been set shall be entitled to plead and which shall be entitled to act.

THE HONOURABLE THE PRESIDENT: The original question was:

"That clause 14 do stand part of the Bill."

Since which an amendment has been moved:

"That to clause 14 the following sub-clause be added, namely:

'(3) Nothing in this section shall be deemed to limit or in any way affect the power of the High Court of Judicature at Fort William in Bengal or of the High Court of Judicature at Bombay to make rules determining the persons who shall be entitled respectively to plead and to act in the High Court in the exercise of its original jurisdiction.'

The question is that that amendment be made.

The motion was adopted.

Clause 14, as amended, was added to the Bill.

Clauses 15, 16, 17, 18 and 19 were added to the Bill.

Clause 1 was added to the Bill.

The Schedule was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. S. R. DAS: Sir, I move that the Bill, as passed by the Legislative Assembly and as amended here, be passed.

The motion was adopted.

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

The Council re-assembled after Lunch at Half Past two of the Clock, the Honourable Sir Phiroze Sethna in the Chair.

INDIAN FOREST BILL.

THE HONOURABLE SAIYID RAZA ALI: (United Provinces East: Muhammadan): Sir, I move for leave to introduce a Bill to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce.

The present Bill is a purely consolidation measure that has been carefully gone into by the Statute Law Revision Committee. As Honourable Members are aware, for several years the Statute Law Revision Committee has been doing useful work and the chief thing with which it is concerned is to consolidate those laws which are to be found in a number of scattered Acts. The present measure is also largely the outcome of the labours of that Committee. The general law is to be found in the Indian Forest Act, Act VII of 1878, and

[Saiyid Raza Ali.]

subsequent amending Acts. The present Bill brings the entire law within the scope of one enactment. I need hardly assure the Council that no conscious attempt whatsoever has been made to change the existing law in any way. But I think I might mention that there has been a departure on two points only. In the first place, the present Bill does not reproduce section 34 of the existing Act (VII of 1878). The reason is obvious. On investigation it was found that section 34 was spent and it was no longer possible to make use of it. Under this section persons having certain claims could prefer such claims within a period of twelve months from the date when that Act came into force. Therefore, it is no longer necessary now to reproduce that section. The second point which I think I must mention is that the language of section 42(2) of the existing law is extremely ambiguous. It is open to question whether under the sub-section it is the rules that can prescribe penalties which are double the maximum mentioned in sub-section (1) of section 42, or it is the courts that can inflict double the penalties prescribed by the rules. In all likelihood, the intention of the Legislature was that it should be the rules that should prescribe penalties double the maximum of those mentioned in the first sub-section of section 42. This is the view that has commended itself to the Statute Law Revision Committee and the Government also have agreed with that view. That is the only departure that has been made in the present law.

Clause 42 of the existing Bill makes the intention of the Legislature quite clear.

The motion was adopted.

THE HONOURABLE SAIYID RAZA ALI : Sir, I introduce the Bill.

PROVINCIAL INSOLVENCY (AMENDMENT) BILL.

THE HONOURABLE MR. S. R. DAS (Law Member) : Sir, I move that the Bill further to amend the Provincial Insolvency Act, 1920, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.

The Bill, Sir, is intended to give effect to certain recommendations of the Civil Justice Committee. Under section 36 of the Provincial Insolvency Act the Court has power to examine a third party who may be supposed to be indebted to the insolvent in order to elicit information. There is, however, no such provision in the Provincial Insolvency Act, and this Bill is intended to give such powers to such provincial courts as the Local Governments may think fit.

This Bill also incorporates the provisions of sections 88 and 89 of the Presidency-towns Insolvency Act. Under these sections the Court is authorised to appoint from among the creditors committees of inspection. There is no such provision in the Provincial Act, and this Bill intends to incorporate that.

Sub-section (3) of section 33 of the Provincial Insolvency Act provides that when a creditor applies to prove his claim, notice of such claim should be given to the insolvent who may contest the claim if he chooses to do so, but there is no provision of any notice being given to the receiver, and this Bill

provides that notice of such claim should be given to the receiver instead of to the insolvent, because he is the proper person to resist the claim and not the insolvent between whom and the creditor there may be collusion.

Then section 80 of the present Act entitles the High Court by rules to delegate to the receiver certain powers, namely, to hear insolvency petitions, to examine the debtor, to make orders of adjudication, to grant orders of discharge and to approve compositions or schemes of arrangement. The Civil Justice Committee recommended that the High Court should not have the power to delegate these powers to the receiver, and this Bill omits those powers from section 80.

Clause 3 of the Bill carries out a suggestion of the Rangoon High Court. At present fraudulent transfers by an insolvent or payment by way of undue preference to a creditor can only be annulled on a petition by the receiver or at the instance of the court itself. The Rangoon High Court suggested that that power should also be given to a creditor because it was pointed out that in certain cases the receiver may not be willing to make the application for want of funds or for other reasons, and clause 3 of this Bill gives that power to the creditor, that is to say, a creditor can apply to the Court to annul a transfer which he alleges to be a fraudulent one. These are the amendments which are intended to be given effect to by this Bill.

The motion was adopted.

Clauses 2 to 7 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. S. R. DAS : Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

CODE OF CRIMINAL PROCEDURE (THIRD AMENDMENT) BILL.

THE HONOURABLE MR. J. CRERAR (Home Secretary) : Sir, I move that the Bill further to amend the Code of Criminal Procedure, 1898, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration.

Though this measure is of very considerable importance, it is brief, and I think I can observe a similar brevity in presenting it. It is unnecessary for me to dwell at length on the melancholy circumstances which have induced Government to lay this measure before the House. They are indeed the most disturbing, the most disquieting feature in the present state of the affairs of India. Their gravity is not limited solely to the loss of life, the loss of property, the danger to and the disturbance of the liberties of citizens proceeding on their lawful avocations, but their implications are of even greater import to the ordered progress of India in all directions. Those being, as I think, the admitted facts, I am not concerned now to inquire into their causes or to impute blame, but those being the circumstances, every member of this House will, I think, recognise that a very grave responsibility rests upon all whom they can in any sense be deemed to concern, and I can hardly imagine that there is a single right-minded man in India who does not deem those responsibilities his close concern. They must rest in many quarters, but they must rest with special force and

[Mr. J. Crerar.]

insistence on those of the various communities concerned who lay claim to enlightenment and public spirit, and on those who claim to be leaders rests the heaviest responsibility. But it is not my purpose to deny or to deprecate in any way the very great responsibility which also rests upon Government. A very large share of that responsibility is discharged—is daily being discharged—by the officers of Government who, in the course of their anxious and heavy duties, bear the burden and heat of the day and no small share of its dangers and its perils, while therefore it is generally incumbent upon Government to do all they can to cope with these unfortunate conditions, it is in my judgment especially incumbent upon them to do all that lies in their power to assist the local officers in the discharge of their heavy burden of duty. Every consideration urges the necessity of neglecting no measure which holds out a reasonable prospect of doing something definite and useful to curb the causes of these disturbances under which India is suffering. That is the intention of this Bill.

Honourable Members who have read the Statement of Objects and Reasons will see that there is a great defect in the existing state of the law, which it is necessary to remedy. We have already certain powers, more particularly we have the powers conferred by section 153A of the Indian Penal Code. That power, however, is solely a punitive power, and if we are to arrive at a proper estimate of the problem before us, the first point to emphasise is that punishment in cases of this kind is by no means the only or the most effective method of dealing with the matter in hand. We must not only punish, we must do our best to prevent. Section 99A of the Criminal Procedure Code, which this Bill proposes to amend, gives certain powers to the Local Governments to forfeit publications which offend against section 124A of the Indian Penal Code, that is to say, publications which are of a seditious character. This Bill has the object of granting the same powers to the Local Governments in respect of publications which offend against section 153A of the Indian Penal Code. It is quite obvious that to punish the culprit is not enough. The power of the word is great and words once liberated cannot easily be stayed. But obviously we have an absurd condition if, while the culprit is being tried, or while he is undergoing his punishment, the material substance of his words should be at large working all the mischief of which the culprit has been guilty, while he himself is temporarily under restraint. I may say that during the course of the last few months a large number of instances of that kind have been brought to the notice of Government. I mention this because it has been alleged that Government have not sufficiently used the powers already in their hands. In a large number of cases where action has been taken under section 153A, the mischief has continued simply because Government had no power to prevent the further dissemination of the matter which had formed the subject of the offence. That is what the Bill sets out to do.

(At this stage the Honourable Sir Phiroze Sethna vacated the Chair which was resumed by the Honourable the President).

There are two features of the proposal to which I invite the special attention of the House. It has been alleged, for example, that a measure of this kind permits some irresponsible Inspector of Police, actuated possibly by motives of communal animosity himself, to take vindictive measures against some of the

opposite faction. That is entirely a misconception. The powers conferred by this Bill cannot be exercised by subordinates. The decision must in all cases be the decision of the Local Government. In the second place there is an effective remedy. There is an opportunity for a reference to the High Court. It is not sufficient for the Local Government to hold that in its own opinion the matter impugned is open to objection. It is necessary for them to show that it actually constitutes an offence against section 153A of the Indian Penal Code. That is a matter in which the High Court can exercise very effective powers of supervision.

Now I propose to deal very briefly with a few of the general objections which are likely to be taken to the Bill. It has been said, "What do you propose to do? This is really not a solution of the evil. It is not a panacea for all the troubles that you are legislating for." No one suggested that it was a panacea; but it is an irrational position to adopt that, because it does not purport to be a complete solution, if nevertheless it is capable of achieving something, you should refuse to avail yourselves of it. It has been said that this measure would result in a serious encroachment on the liberty of the Press, and the great authority of Milton has, as I have seen, been invoked on that side of the controversy. I should like to point out in the first place that the case against which Milton was arguing was one which has no relevancy whatever, or only a remote relevancy. Milton was arguing in favour of the liberty of unlicensed printing which is a very different matter. What kind of liberty, if this measure is passed, can it conceivably be supposed to curb? Only the liberty to stir up strife and to promote hatred. That is a kind of liberty which is honoured beyond its deserts by being called liberty. It is not liberty but license, and I contend that the consequences of this measure will simply be to curb that license. I submit to the House that there is a wider and better form of liberty which it is our duty to preserve, even if we have to do so at the expense of curbing license of this kind, liberty for every citizen to go about his lawful occasions without constant danger to his life, his person, his property and his rights.

I have admitted that the Bill does not pretend to be a panacea. It does not go to the root of this very serious problem. We all know what the real remedy is, the growth as Lord Reading said not very long ago, of the spirit of toleration and enlightenment. Obviously the first necessity is to promote the growth and flourishing of that spirit, and I submit that our first duty, in order to do so, is to see that the conditions in which alone it is possible for that spirit to grow and to be fostered are maintained and preserved. The first of these conditions is that we should have a cool and firm and steady Government. If any Honourable Member of this House is inclined to suggest that there is anything drastic in the measure, I would invite him to examine the proposal made by a very well-known leader of political opinion.

He says:—

"In any area where a communal riot has taken place, all persons resident in that area should be immediately disenfranchised."

That proposal was not only approved by the Leader of the Swaraj Party, but it was even extended. The Leader of the Swaraj Party, in referring to Sir Tej Bahadur's proposal, said:

"It should be clearly laid down that no person residing in any area where a riot declared by competent authority to be communal has taken place shall be recommended

[Mr. J. Crerar.]

for honours of any kind, that no such person shall, for a term of years, be appointed in any department of the public service, and that if any such person is already in service he shall not for a similar term of years, be allowed any promotion or other advancement to which he may otherwise be entitled."

Well, Sir, it appears to me that those who are prepared to give powers to the Executive Government to disfranchise any and every constituency in India might not be exercising a very great degree of complaisance if they permitted the Government of India and the Local Governments to see that incitements to communal violence are restrained in the manner we now propose. At any rate I may point out that the measure which is actually before the House is a very mild, a very limited measure, compared with the measures which have been advocated on such high authority.

I have only one word more to say and I have done. During the course of the previous debates in this House Honourable Members opposite have expressed their readiness, if ever Government should come before them with a reasonable request for powers necessary to deal with law and order, to confer those powers. I have no doubt that those assurances were made in all sincerity. I have no doubt that Honourable Members opposite, in dealing with this measure, will not

"Palter with us in a double sense.

And keep the word of promise to our ear.

But break it to our hope."

Those being the assurances that we have received, that being the disposition which has been so frequently impressed upon us by nearly every gentleman opposite, I venture to say to them that here and now is their opportunity.

THE HONOURABLE SIR CHETTUR SANKARAN NAIR (Madras: Non-Muhammadan): Sir, I fully recognise the gravity of the situation, in fact I accept fully the description that as things are now going on life is in danger, property is not safe, and there is no chance of any political progress as long as the feelings between the various communities continue what they are now. Fully recognising that, you will understand that, if I make any observations on the proposals now before the Council, I am not actuated by any hostility to them. I fully realise also that under these conditions it is our duty and the duty of the Council to give to the Government any powers that they may ask for if they think that those powers are essential in the interests of law and order. The first and main question therefore is, how far these powers will enable the Government to cope with the situation. I quite agree that the fact that it is no panacea is no argument against it, but there is not the same force in that argument when you find that what is now put forward is an interference with the liberty of speech. If it were not an interference with liberty of speech, if some proposal were put before the Council which was not an interference with liberty of speech, even if they were more drastic, I for one would have no hesitation in according my support to such proposals.

Now, Sir, let us consider this proposal for a moment, because we have an experience of the working of these sections for the last 20 years and more. We have the history of these sections. Section 153A came into existence on account of a sedition charge. How has that section been worked? We know that there were articles both in the Anglo-Indian and Indian papers. We know that the Government did not proceed against the Anglo-Indian papers, while they did proceed against the Indian papers. What was the

result? The result has been an intense bitterness against the Government for having made this difference between the Indian and the Anglo-Indian papers. The Reforms came and the Anglo-Indian papers have changed their tone, and in fact there is no longer that kind of attack against the Indians that prevailed before, but did the feeling in India subside? No, the feeling remained though the cause disappeared. The Anglo-Indian papers changed their tone, but the change of that tone did not eradicate the feeling that had already been created in the mind. We pass on to the next Acts, the Press Acts of 1908 and 1910. Under those Acts steps were taken against various newspapers and against the persons who wrote certain pamphlets from 1915 to 1920. The Government of the Punjab utilised those powers more than any other. What has been the result? I was receiving remonstrances and letters from those publishers and writers and newspapers against whom proceedings were taken by notice or otherwise. The result was that each and every one of them had a lot of things to say against the Government. Every one complained. Muhammadans complained; Arya Samajists complained. The Punjab is a place of tremendous religious upheaval among the Arya Samajists, Hindus, Muhammadans and Sikhs; there is also Christian religious propaganda going on. The result was there were attacks by Arya Samajists, Muhammadans, Sikhs and Christians, each one of them against the others. Well the Government took these steps; I doubt not they were in many cases justifiable; in some cases they may not have been, but that is not the question. Those steps were actually taken and the result has been a growth of the feeling against the Government. Every one against whom any step was taken became an enemy of Government. You cannot imagine the strong feeling shown by one or two Muhammadan editors against whom notices were issued. Arya Samajists too.

Now what would be the result of another measure like this? You have somebody, a Hindu or a Muhammadan, writing a strong pamphlet against the other. The Government take steps against it. The result of that would be, if he is a Hindu he will say: "They have been attacking me; here are the Muhammadans playing the devil with my religion; I put forward a defence and yet Government are interfering with me". And there is no use disguising it because the Secretary of State himself has referred to it; he will also say the Government are taking the side of the Muhammadans (*The Honourable Saiyid Raza Ali*: "Question, question."). My Honourable friend does not agree. If we did agree we would not have this Bill before the House. That will be the result of any action taken by the Government. Suppose you take any step against the Muhammadans, it will be just the same. "I defend my religion and here is the Government going against us." (*The Honourable Saiyid Raza Ali*. "That is a better argument.") After that what will be the result? The Honourable the Mover went on to say that we have to undo or rather to prevent the mischief for which no punitive measures will do; that if we try the man the result will be that while he is in jail everything will be before the public under discussion. But supposing a pamphlet is written and steps are taken against it and the pamphlet confiscated, don't you give the power to the man who has written it to go to the High Court? Every thing is discussed there. It is therefore just the same as if you had taken the step later. I could have understood it if Government had come forward and said: "These things are being done and

[Sir Chettur Sankaran Nair.]

therefore we cannot leave these matters to the judiciary ; you must give us powers to interfere summarily by prohibiting the publication of these things, or by attaching them or confiscating them at once and giving no power to the person whose pamphlet we have confiscated to appeal to the civil courts." That would have been a very different thing. That would prevent the distribution of the pamphlet, the ventilation of the man's views ; that, as I know, was advocated before, but this is not the same thing.

Now I pass on to another part. Though I view this proposal with disfavour—I am afraid of it—I am not going to oppose it because I dare not oppose it under the conditions now existing in the country, and when the Executive Government come forward and say : " We want these powers." But I cannot help telling them what I feel about it. Then, Sir, the Honourable Mover's speech is disappointing in one respect. After saying all these things the Honourable Member referred to this measure as a step which they are going to take in order to put down this communal trouble, but he did not say what the Government are doing. All that he said was—and it is there I join issue with him—all that he said was, " we must look for the termination of all these troubles to the leaders of the various communities." Well, Sir

THE HONOURABLE MR. J. CRERAR : The Honourable Member does not correctly quote what I said. I distinctly said that while the responsibility rested partly upon the leaders of the communities, it also undoubtedly rested upon Government.

THE HONOURABLE SIR SANKARAN NAIR : It may be so ; I apologize. Those were the words I took down. However I am not disposed to question that, that is what he might have said. But the real remedy lies in the hands of Government and in the hands of Government mainly,—not partly in the hands of the leaders and partly in the hands of Government. In fact, there are no leaders now because the leaders follow the crowd. Neither the Muhammadan nor the Hindu leaders are leaders in the sense that they lead their followers and the others follow them. The Muhammadan leaders profess to be leaders, but what do they do ? They take their cue from the most fanatical of their followers. The Hindus do just the same. They profess to be leaders, but they are not so. How in these circumstances can we look to the leaders to improve the situation ? No, they cannot improve the situation. The masses are not educated, they are not sufficiently educated to realise their responsibilities. They are simply actuated by religious motives. If the Government say to these district officials in the localities concerned where riots have taken place once, they must not take place again, and if they do take place again we will know the reason why and the men responsible will have to pay for them. I feel quite certain, because we have dealt with riots far more important than these, far more dangerous than these, they will soon be things of the past. Let them not appeal to any leaders at all ; let them put their foot down and make an end of it. But so far as I can see the Punjab tragedy and the Khilafat agitation seem to have unnerved the Government altogether. There is an uneasy feeling all over the country that the Government are not putting their foot down, that they are not doing everything that should be done and could be done in order to put down these riots. Look at the list that has been placed on the

table to-day. The most dangerous of the disturbances we have had was that in Malabar. That was not a religious dispute between Hindus and Muhammadans. In Malabar it was a spirit of lawlessness that was abroad and it was against the Government.

THE HONOURABLE SIR ALEXANDER MUDDIMAN : Who suffered—the Hindus or the Muhammadans ?

THE HONOURABLE SIR SANKARAN NAIR : It was the Muhammadans against the Government, not against the Hindus. Look at what took place yesterday or the day before in Delhi, if the newspapers have rightly reported what has happened in Delhi. It was not a religious dispute there. Look at the list laid on the table to day by the Honourable Mr. Crerar. You will find many instances where these disturbances took place with which religion had nothing to do. What it shows is that it is the spirit of lawlessness that is abroad in the country which is due to the non-co-operation movement. But that does not excuse the Government for not taking the necessary steps to put down that spirit of lawlessness, and it is owing to the failure on the part of Government to put it down that these riots are going on like this. Unless the Government put their foot down, these measures are of no use. There is no use in simply telling the Council, as the Honourable the Home Member said this morning in reply to a question, “ We leave it to the local officers ”. That sort of thing will not do. If there has been any outbreak, any riot, in any one place it is not for the Government simply to say, “ The local officer has dealt with it ”. It is for them to see that the local officer deals with it in the way they want him to deal with it—that is, in a way that no riot shall ever take place there again. I have been reading all the reports about the riots which I could get hold of and the press communiqués issued by the Government. They all say: “ In this case the Muhammadans have been looting the Hindus ” or “ In this case the Hindus have been looting the Muhammadans ”. Well, we do not want to know that ; because when there is a breach of the peace there must be one party who is more guilty than another : that is for the courts to decide ; they will punish the guilty party. But what we want to know is this —and that element has been strangely wanting in the reports so far as I can see—was it or was it not in the power of the local officer to stop it ? The question is not whether he took the necessary steps to stop it after it commenced, but could he not have prevented it ? In all these reports placed before us, where is there any indication that the Government directed their attention to that fact ? Do the Government say this in any of their press communiqués ?

THE HONOURABLE SIR ALEXANDER MUDDIMAN : Certainly.

THE HONOURABLE SIR SANKARAN NAIR : I have not seen them ; I should like to read them if you have any. I have not seen any of them. That is one thing. If the local officers know that the Government will be down on them if a riot takes place there, you may be sure that even if it takes place once it would not take place twice. I do not propose to throw any obstacles in the way of this Bill or to oppose it in any respect. I fully accord my support to it. My only complaint has been that this Government are weak, that they have not dealt with the issue as it should have been dealt with ; that is my only complaint on that matter. I do not agree with my Honourable friend on my left when he says that the whole thing will be over in two years' time, because I do not think it will be over in

[Sir Sankaran Nair.]

two years' time ; it will take a longer time ; but if the Government act as I hope they will act, it will be over in two years' time.

THE HONOURABLE MR. D. WESTON (Bihar and Orissa : Nominated Official) : Sir, in view of what has fallen from the last Honourable speaker I should like with the permission of this House to give them my personal experience of the last Bakr Id. I may say in preface that when I am not attending this Council I am in charge of a division in Bihar. And I was so in charge at the time of the Bakr Id. For some weeks—more than a month—previous to this festival, the district officers had taken the very greatest pains they could to prevent any outbreak of any sort occurring. In addition to the ordinary police precautions, they had formed not only at the divisional headquarters, but at district headquarters, sub-divisional headquarters, in thanas and in big villages, conciliation committees, and I must say that the Hindu and Muhammadan gentlemen who joined those did very excellent service which I am very glad to have this opportunity of acknowledging. Afterwards when all the occurrences were over, I had deputations of leading Hindus and Muhammadans waiting upon me ; they were full of praise for the preventive action taken by the district officers, both magisterial and police, and, further than that, the Hindus said they had no complaints against the Muhammadan police and the Muhammadans said they had no complaints against the Hindu police. I submit, Sir, that appreciation cannot go any further than that in these days. Well, Sir, in spite of all these preventive measures that were taken, there are at present—and I ask the Council to mark this—there are at present no less than 300 men under trial in two districts for mischief, looting, rioting, arson and murder. As soon as the days on which *kurbani* or cow-sacrifice takes place were supposed to be over, I went out into the district where there was the greatest trouble and found to my astonishment that there were no Magistrates in headquarters. We have a rule in our province—I do not know whether it obtains anywhere else—that armed police should not be sent out unless they are accompanied by a Magistrate. The disturbances were so wide-spread that every Magistrate was out with bodies of armed police,—they were practically turned into policemen. In fact so great was the demand for them that we even had to put probationary deputy sub-magistrates in charge of armed police. Fortunately we had not to use arms because most of these young gentlemen have never even seen a bullet fired, much less fired one themselves. Now it may be argued that this trouble is due to the Bakr Id and is not likely to occur again. We all know that disturbances always do occur at that time and we always are prepared for it. But on this occasion there were only one or two instances where the trouble did occur owing to cow sacrifice ; but they were very few indeed. Most of them occurred over the most trivial matters. I will give an instance of one such incident. There was an old woman—a Hindu—who went into an orchard belonging to a Muhammadan and stole some mangoes ; the owner or his servant came and seized her, took away the mangoes and turned her out. She went to the village and told the people there how she had been beaten very badly by the Muhammadans. I may say that she did not have a mark on her ; but they at once turned out and a riot ensued with very dire results. There were other cases, too, in which harmless wayfarers

were molested and beaten. In cases like that we could not take preventive measures ; we could not foresee that an old lady would steal mangoes and that a whole village would turn out to support her ; we could not foresee that attacks were going to be made on certain wayfarers passing along the roads. So when it is said that district officers were not taking preventive measures I say they are unjustly attacked ; they had done all that they possibly could. When I inquired into what they had done I found that several of them for two or three nights in succession had never been to bed—the District Magistrate himself had been out for two nights—and that was because, as soon as they heard that mobs were assembling at a particular place they at once went out in any conveyance they could get and endeavoured to stop the disturbances before they got out of hand entirely ; and some of the inferior officers too exhibited the greatest courage. There was one case in which a constable who was out on some other duty, heard that a mob had assembled in a certain village ; he called for the local chaukidar, rushed there and found a mob of some five hundred people assembled with *lathis* ; he ran up to them and said : “ Look here ; the District Magistrate is coming in a motor car with cars full of armed police ; you had better be off.” I may say that the District Magistrate and the nearest armed police were then about twenty miles away. However, I presume this constable in his spare moments at the thana probably played poker ! Anyhow the bluff came off, and the mob dispersed. Sir, when the officers are doing their best, it is our duty to do everything we can to assist them. It has been pointed out by the Honourable Mover of this amendment that this is a preventive section, and I think it must be admitted that if we can seize inflammatory literature—while it is only a spark and before it becomes a blaze—if we can confiscate the poison before it is administered—there is no use in letting it be administered and then trying to find an antidote for it—we want to seize it before it is administered. The district officers want this power, the Local Governments want it, and I think, Sir, it is our duty here to give them what they ask for and see what effect it has. If it has not the desired effect, then we must ask for more power. But I have shown that they have been doing their utmost and now that they ask for this power, I hope this Honourable House will see that they get it.

THE HONOURABLE SIR PHIROZE SETHNA (Bombay : Non-Muhammadan) : Sir, the Honourable the Home Secretary concluded his remarks with an appeal to this side of the House to live up to their professions and support Government in a measure of this kind. I am sure his appeal has not fallen on deaf ears. Even my Honourable friend, Sir Sankaran Nair, while he explained the operation of other similar Acts with which he found fault, has informed the House that he does not intend to oppose this measure. It is therefore for the House to consider whether the exceptional powers which Government are asking for should be given to them or not, and whether the time has arisen for it or otherwise. What they ask for is the power to search for and confiscate books, newspapers or any other documents which in the words of clause 2 (a) of the Bill “ would promote or are intended to promote feelings of enmity or hatred between different classes of His Majesty’s subjects ”. In other words Government are now wanting the power which exists in regard to seditious literature to extend also to any inflammatory literature which

[Sir Phiroze Sethna.]

will tend to excite hatred amongst different communities. As a layman, and not being conversant with law, so far as I understand the position, sections 153A and 99 do enable Government to prosecute people for seditious literature as also for inflammatory literature, but while they can confiscate seditious literature, they are not in a position to confiscate inflammatory literature which this Bill proposes to enable them to do. If that is so, then they are not asking for anything which may be considered extravagant, particularly in times like the present. One cannot help admitting, with great regret, with great chagrin—nay with great shame—that communal riots in this country have extended very considerably, and Government do require every possible support in order to enable them to maintain law and order. There is perhaps another reason as well, and that may be due to the decision in a case in the Calcutta High Court. A leading paper in that city, the *Forward*, was prosecuted for reproducing in its columns a pamphlet, the language of which might be described as inflammatory. That paper in its defence urged before the Court that it did reproduce the pamphlet, but that it certainly was not in sympathy with the contents of the pamphlet, as was proved by a leading article in the same issue of that paper. The Judge who tried this case,—I believe it was Mr. Justice Rankin,—decided that the paper could not be prosecuted for reprinting a copy of the type of such literature with which that paper itself did not sympathise. I suppose that this decision has made Government think that it does leave a loophole for irresponsible papers to publish with a vengeance inflammatory leaflets in their columns, and therefore, if this power is given to them, the mischief can be stopped.

Whilst, therefore, I support the Bill, I must confess that I do not agree that it should remain permanently on the Statute-book. In every land, where there are religious differences, there are bound to be differences of opinion which sometimes result in communal riots and disturbances. This has been so in India in the past, but such occasions were few and far between. If they were oftener, then surely Government would have come forward many years ago to ask for the present exceptional powers which they are now demanding. They certainly consider it necessary to do so now on account of the repeated and frequent communal riots that have taken place during the last few months, but let us hope these riots are only a passing phase. Let us hope that with the advice given by His Excellency Lord Irwin to the communal leaders and also the steps which the communal leaders themselves are taking, they will prove a passing phase, and that, before long, we shall be rid of these disturbances which seem to be the order of the day to-day. My Honourable friend Sir Sankaran Nair said that he does not think that this is a passing phase, and that these riots and disturbances will not stop in the course of the next two or three years. I am not so pessimistic as he is. I certainly believe that with proper action taken by Government with the help of the powers which we shall give them by this Bill and with the steps which the communal leaders are taking, things will be restored to their pristine condition before long, and consequently, I appeal to the Government Benches not to put this measure permanently on the Statute-book. I am glad my friend sitting on my right has tabled an amendment whereby he would limit the

measure to two years. It may be argued that at the end of two years the position may not be very different. If that be so, then there is nothing to prevent Government from coming forward and asking this House, as well as the other House, for a continuance of the measure for a further period, and if that is done, I am confident that both the Houses will readily give their support to the Government if the circumstances warrant it. Perhaps some Member on the opposite side might get up and say that at the end of two years we might propose that the Bill be repealed, but asking for a repeal is very different from Government themselves limiting it to a fixed period and only coming forward to ask for a continuance of the measure should it be found necessary to do so. I may remind Honourable Members on the opposite Benches of the irritation caused by similar Acts, the Rowlatt Act and many others of the same kind. They certainly created a tension between the Government and the public, and I do say that to allow this Bill to remain permanently on the Statute-book will help to accentuate such tension. I certainly say the Bill requires to be supported but I do appeal to Government to see that this Bill is not made a permanent measure.

It will be regarded as an encroachment on the rights of the Press, as my Honourable friend Sir Sankaran Nair has put it to the House. I may ask Government to consider what its own supporters in the Press have said on this question. I do believe that if any newspaper has consistently supported Government more than another it is the *Statesman*, and yet what does that paper say? In its issue of the 24th August, it says:

"The Bill wears the aspect of panic legislation, and panic legislation is almost invariably bad."

Then it goes on to say:

"As it is scarcely possible to write a sentence upon Hindu-Muslim differences that is not regarded as offensive by one party or the other the Bill may conceivably be taken as a general licence to confiscate all publications on the subject. To put polemical writing on the same plane as sedition seems to us a very dangerous extension of the law into the field of conscience."

Now, Sir, no matter what that paper has said, I may assure the Honourable the Home Secretary who has moved this Bill that, so far as Honourable Members on this side are concerned, they are willing to extend to Government in times like the present the powers they ask for but with the reservation that I have mentioned in regard to time.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : Nominated Non-Official): Sir, I whole-heartedly support this Bill. There is practical unanimity in support of the principles underlying this Bill that the mischief done by the spread of inflammatory literature should be stopped. My Honourable friends on the opposite Benches while supporting this Bill have asked Government not to put it on a permanent footing, but the provisions of the Bill are not really such as should cause any apprehension in the minds of my friends. What does this Bill really seek to do? That is the first point to be considered, and in judging of the question whether this legislation should be of a permanent or a temporary character, we have to ascertain what is the exact nature of the legislation that is brought forward.

[Sir Maneckji Dadabhoy.]

Now we have in this country a law which permits confiscation of presses for seditious matter. The Government come here and ask the House to give them sanction to a similar power being embodied in the Criminal Procedure Code for the confiscation of literature which is calculated or intended to promote feelings of enmity or hatred between different classes of His Majesty's subjects.

THE HONOURABLE SAIYID RAZA ALI: "Any matter which promotes or is intended to promote feelings of enmity, etc."

THE HONOURABLE SIR MANECKJI DADABHOY: If there is justification for the retention of the power regarding seditious literature, is any Member of this House in a position to contend that there is less justification in more important cases where enmity and bitterness are created between races, and if in one case this power of a permanent character is required, can it be logically argued that in another that power should be permanently withheld? I am unable to understand any distinction drawn in a matter of this kind. If the power is good, give it; if the power is not proper and not reasonable, by all means reject it, but do not say: "Keep this legislation only for two years or one year or three years." The danger of adopting piecemeal measures is much more serious. Once the law is passed, whether it is good or bad, it will remain on the Statute-book. Nobody thinks of it, but if we go in for a limited period then when it expires a fresh motion is made in the House and the controversy is unnecessarily kept alive. I say it is an unwise policy; it is inexpedient from all points of view that when legislation of a salutary and wholesome character is brought forward that it should only be fixed for a limited period. I abhor bitterness and controversy being kept continuously alive in the country with a fresh motion every two years for the continuance of the measure.

THE HONOURABLE SIR ARTHUR FROMM: Sir, on a point of order, we are not discussing the amendment that this Bill should remain in force for a period of two years.

THE HONOURABLE THE PRESIDENT: The Honourable Member is aware of the fact that I allowed the Honourable Sir Phiroze Sethna to deal with the question of the permanent or temporary nature of the measure, and I am allowing the Honourable Sir Maneckji Dadabhoy and other Honourable Members also to deal with that point on this motion.

THE HONOURABLE SIR ARTHUR FROMM: Will the Honourable Sir Phiroze Sethna be allowed to speak again on the same subject?

THE HONOURABLE THE PRESIDENT: The Honourable Member should not ask a hypothetical question.

THE HONOURABLE SIR MANECKJI DADABHOY: I therefore do not see the advisability of such a restrictive legislation. I think, therefore, that all this agitation is unnecessary. Perhaps our friends are not aware that the Legislature had this power in the Press Act. That Act was repealed a short time ago and unfortunately through an oversight, Government's attention was not drawn to the provisions of section 99A.

THE HONOURABLE SAIYID RAZA ALI : Why did not you do so.

THE HONOURABLE SIR MANECKJI DADABHOY : It was also an oversight on my part.

Now, Sir, Government are not asking for any new piece or form of legislation. The Press Act among other powers gave the power of confiscation. The law did exist. I say by an omission advisedly, because I am not inclined to believe that it was a deliberate omission on the part of Government. I do not believe Government could have abandoned such an important power. During the last few years since 1922 when the Act was repealed, special powers of this nature were perhaps found to be unnecessary, but during the last few months riots have taken place in Calcutta, in Rawalpindi, at Kohat and various other places, which have made it necessary for Government to be armed with a weapon more useful, more prompt, and of a more determined and effective character, and Government come and ask for this additional power. Now my friend, the Honourable Sir Phiroze Sethna, in his exuberance of displeasure has referred to the Rowlatt Act. Does my friend know that the Rowlatt Act, though it existed on the Statute-book for several years, was not put into operation on a single occasion ?

THE HONOURABLE SIR PHIROZE SETHNA : I know that quite well.

THE HONOURABLE SIR MANECKJI DADABHOY : Why ? Because the legislation was there, the Act was there, there was the deterrent effect of that legislation.

THE HONOURABLE SIR PHIROZE SETHNA : Why then did they allow it to be repealed ?

THE HONOURABLE SIR MANECKJI DADABHOY : On account of the clamour of the party to which the Honourable Member has the honour to belong.

THE HONOURABLE SIR PHIROZE SETHNA : Thank you.

THE HONOURABLE SIR MANECKJI DADABHOY : Sir, therefore I am firmly of opinion that when Government are armed with this power, when people know that the disseminators of poisonous literature and literature of an inflammatory character calculated to promote ill-feeling between races, when the organizers and perpetrators of such mischief themselves know that their property is liable to be confiscated, they will soon stop indulging in pursuits of this character, and so in my humble opinion this legislation is most urgent and very welcome. Government think that this power will be useful to them. What right then have we, particularly, when we know that this power existed before and when we know the harmlessness of the power, to take objection ? Sir Sankaran Nair said : "Why did not Government put its strong foot down and stop all this lawlessness ?" Government are asking you to equip them with this power to stop this lawlessness and how logically can you refuse to give them that power ? Let us not be swayed by sentiment. It does not take away the liberty of any man. As the Honourable the Home Secretary said, it will only take away the liberty of the man who is ready to commit mischief and a breach of the common law. We are not here to protect the malcontents and the wrongdoers ; so for God's sake do not mix up liberty with license and the unpardonable crime of some of these people who are bringing

[Sir Maneckji Dadabhoy.]

ruination to the country and who are fanning and fomenting discontent and causing grave nuisance in the country. Remember that they are destroying all chances, all possibilities of your obtaining self-government. If you have got self-government at heart, whenever measures of this character come up, give your ungrudging support to them. It is in that way alone and by recognising our responsibilities as citizens that India will attain to the status of self-government.

THE HONOURABLE MR. A. M. STOW (Delhi : Nominated Official) : As one with some practical experience of the last five months in Delhi, I may, perhaps, be permitted to give the House an account of some incidents which illustrate what communal bitterness means in the great cities of Northern India. For months the atmosphere has been charged with open suspicion and suppressed excitement. The most trivial incidents have been seized upon as opportunities for displays of communal feeling. On one occasion a tramway conductor, a Hindu, sought to recover his fares from some Mussalman boys who were enjoying a free ride by jumping on and off his car. Before he knew where he was, he found himself the centre of a mob of excited partizans of either community, and he was with difficulty extricated by the kind offices of a passer by and by the arrival of the police. On another occasion a game of *kabaddi* indulged in by some Hindu and Mussalman boys suddenly developed into a communal quarrel of such dimensions that the police had to be called in to suppress it. Both these incidents, I am glad to say, ended before the parties actually came to blows. But I could quote dozens in which serious trouble was only averted by the action of the police or by some interested and kindly intentioned citizen. I regret to state that on two other occasions we were less fortunate. As is well known, the rioting during the Bakr-Id festival was caused by a run-away tonga driven by a Mussalman knocking down a Hindu. Only last Friday the Chandni Chowk was the scene of a somewhat serious affray in which brickbats and *lathis* were freely used. Now the immediate cause of this outbreak was this. A bank messenger, a Hindu, had been severely reprimanded by his bank manager, also a Hindu, for impertinence to a Muhammadan client of the bank. Thereupon the chaprasi took certain of his friends and proceeded for some act of revenge to the shop of the Mussalman, and thereupon a disturbance arose. Now, Sir, I would ask the Honourable Sir Sankaran Nair whether he thinks that it is easy to take precautions and measures against incidents such as those I have described. In fact, Sir, the situation may be summed up in the words of a War Office notice which I once saw displayed on an artillery range : "Caution! these explosives are liable to explode." Should we be surprised that the Government, having the power to deal with the man who throws a bomb into this explosive material, should also seek to take power to deal with the accumulation of bombs collected by that misguided individual?

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN (Punjab : Nominated Non-Official) : Sir, during the last two decades I have not only taken part in all the debates on the Bills which have been brought before the Legislature for preserving law and order, but also have whole-heartedly supported them ; this is no exception to the rule. There was only one occasion

when I was on active service, that I did not participate in the debate, and that was on the Rowlatt Act. There were certain speeches made in the House on that occasion, and when reported in the papers, they inflamed all the country, and we all know the trouble which ensued and which was so difficult to cope with. In the same way we are now confronted with the communal trouble and if we do not stop the same sort of inflammable literature from circulation, we must have similar results. The Arabic saying is "*man jarrab-al-mujarrab kallat bihin nidamat*". "If any man wants to experiment with something already experimented with, he feels sorry for his labours as he finds no new results." Before the Reforms when the power was mostly in the hands of the Government, the chief trouble was sedition against the State to snatch that power from it. Since more of that power has been delegated to the country, the line of action has been altered and communal troubles have synchronised more or less with the advent of the Reforms. I think there is no hiding this fact. The Honourable Mover has referred to the leaders. Well, there are leaders and leaders. There are leaders who have got the power to bring forward some thousands of men who will be ready to fight and die for them, but there are others who have got perhaps a syce and a cook, and they too would not obey them and would not be led by them when there is a danger. So it is only when there is trouble and when there are strained relations between the communities, that such leaders put themselves at the heads of their communities, and it is for this reason that I quite agree with the Honourable the Mover that the trouble has got a great deal to do with the so-called leaders. Just as we had previously to formulate laws to stop sedition against the State, so now when we know that the power is going to be divided between the contending communities, which is the main cause of the communal strife, it is absolutely necessary that literature which inflames the different communities should be at once forfeited, and that is why it is useful to have such a power which we should give to the Government.

Then, Sir, my friend Sir Sankaran Nair (he is, I am sorry to say, not here now) said that Government if they liked, could easily put a stop to such troubles. Well I absolutely agree with him that it could be done. It was done. Some brave officers did do it, but from that day neither my friend who has suggested that such a thing should be done, nor others of his class have forgiven them up to now for doing so. There was a famous speech once delivered in the House of Lords in England for which the great Indian personage who delivered it got a great honour and a high post, in which, with reference to such controversies he said that such storms come and pass away and there is no use worrying one's head about it; but when those theories had to be worked in practice, it could not be done.

One of the Honourable Members said that this Bill will create evil between the two communities, as if you will punish one man, a Hindu or a Muhammadan, for such literature, he will be angry and perhaps will be against the Government.

Well, we should consider which is the lesser of the two evils, whether these men should be angry if their literature is confiscated or whether they should be allowed freely to pour out such literature on to the public, that people should go for each other's throat and neither life nor property should be safe. I being a Punjabi, Sir, am particular that such things should be nipped in the bud because

[Sir Umar Hayat Khan.]

to begin with our soldierly people are apt not to fight with words but to fight with their hands. That is one danger ; and the other is that our people being nearer to the Frontier, have somehow smuggled a good deal of arms in various places. Hitherto the scene of trouble has been only the cities where there are big offices employing a large number of educated clerks. These men of different communities get into trouble amongst themselves in the offices and they being more or less intelligent than the ordinary uneducated citizens are able to infect them with their ideas. If later on the trouble spreads to the countryside it will be a great nuisance because, Sir, there are places where there are hundreds of villages within one police station and that thana has not perhaps got more than 8 or 9 constables who are employed for different purposes. If trouble arises there it would be very difficult to stop it. It is for this purpose, Sir, that I strongly support the measure and hope all the House will agree in granting this power and not for two years only or such short period but permanently. And why should it be for a short period ? Do Honourable Members want that all this trouble should be hushed only for two years and then start afresh ? If it is to be stopped it ought to be stopped permanently and this ought to be a permanent law. With these few words I support the measure.

THE HONOURABLE SAIYID ALAY NABI : (United Provinces West : Muhammadan) : Sir, I must begin by congratulating the Government on this most important and necessary measure which has been brought forward by them not a minute too soon. When one reads section 153 and section 99-A and finds that the author of any seditious matter has not only to be punished but the literature has also to be confiscated, one wonders how it is that a man who is the author of a work which creates hatred between different classes is punished, while the literature goes about from hand to hand poisoning the minds of people. I could not for myself, when I considered this matter in this relation, find what the reason was of this defect in the law. But then I thought to myself the reason might be that the Government are loth and reluctant to legislate for matters which relate to communities so far as they can help it, and they intend to leave these matters to the communities to settle for themselves if they can. If my idea is correct, then I think they were not far wrong, because on occasions like these when legislation has to be undertaken and when disturbances have to be put down, there is always a cry on one side or the other that the Government are partial to one community or another. This has been the case more than once. It has gone so far that we heard Lord Olivier in the House of Lords, speaking on false information supplied to him, say that the Government were partial to one community as against another. It has gone too far. In those circumstances if Government have shown themselves loth to enter into communal matters, preferring to leave it to the leaders of public opinion of the different communities to settle their differences among themselves—that is perfectly right. After all, for a disease like this there are two remedies so far as I can understand it—either the leaders of public opinion, the leaders of public thought, must come forward and put down disturbances like these, devise all possible means to put down disturbances or, if they fail in their duty, then of course the Government have to come in and devise means to put down these kinds of troubles and disturbances. Now I must be

true to myself and I must be true to others. I say that the leaders of public opinion have failed in their duty to put down these disturbances all over the country. They had a unity conference; they went down, they sat there and came away. They did not do anything. Then later on efforts were made on their behalf to bring about better relations between the two communities but nothing came of it. The Honourable Sir Sankaran Nair who has been talking a good deal about it has not been able to say that on his part he has been able to do anything in that direction.

Now, Sir, there is no question, and I think there is nobody in this House who will disagree with the proposition, that this is a very necessary piece of legislation, and that this Bill should go out of this House to be enforced whenever it is necessary. I do not think there is anybody in this House who does not agree with that proposition.

Now the other question is about the limit that is to be given to this Bill. I do not see any justification whatever for the life of this Bill to be limited only to two years. Of course I have heard a good deal about it from the Honourable Sir Phiroze Sethna, but I have not been able to convince myself that it would be wise at all that the life of this Bill should extend to two years only. After all, why do you want it for two years? There can be only two reasons, and, if I am wrong in my assumptions, my Honourable friends can correct me. Either the reason would be that it is not to the credit of this country, that it is to the shame and disgrace of this country that a Bill like this should take its place permanently on the Statute-book, or the other reason may be that it is liable to abuse by the powers that will use it. Now, Sir, so far as the first part is concerned, when I heard Sir Phiroze Sethna it at once struck me that after all things are happening in this country which cannot possibly be concealed, whether it be on the Statute-book in the form of an Act or in the form of writings in the shape of history. After all the chronicler of modern events, the historian of the day, is bound to record these facts and they will find their place in history. I do not think it will be possible that these pages in the history of these times will be torn off after two years. They are there for all time; and as they have to be there I think it is the duty in these circumstances of legislators to realise the difficulties of the position. We must rise to the occasion, we must be equal to the occasion, and we must legislate and say that we cannot possibly tolerate this sort of thing going on any longer in this country. Then, so far as the abuse of the power is concerned, I do not think there is anything in that argument. After all you have got a judiciary: whatever judiciary it is, it is there. It is responsible for carrying out the administration and interpretation of the law. There are so many sections of the Indian Penal Code and there are so many enactments which are more serious in their nature and the judiciary is responsible for carrying them out. You cannot possibly say that this particular section alone is bound to be abused by the judiciary which is responsible for the administration of justice in this country. I do not think there is anything, and my personal view is there is nothing, to be nervous about. After all you have a country which has no parallel in the world to-day. There is such a diversity of races, creeds and castes that you cannot possibly expect that things will be ideal in this country; they can never be; and you want a weapon in the armoury of your law like this to be applied whenever there is need for it. There is nothing to be ashamed about it. My idea is that when

[Saiyid Alay Nabi.]

you get Swaraj you will require it all the more owing to the peculiar conditions of this country. I would say, therefore, that we should not hesitate at all, that we should grasp the situation and take this opportunity of putting down this evil. Let the country at large give its verdict upon it. We are asked in the interests of the country to take a step which is absolutely essential for the welfare of the people. That is my view, Sir, about this piece of legislation.

THE HONOURABLE SIR DINSHAW WACHA (Bombay: Nominated Non-Official): Sir, I strongly support this Bill. I am especially confirmed in my opinion that I should support it after what has fallen from the Commissioner of Delhi and the other Honourable gentleman on the opposite side from Bihar, and also after what has fallen from my Honourable friend Sir Sankaran Nair. The fact is that this inflammatory literature is spreading and spreading and there is no doubt that this inflammatory literature is one of the causes of recent riots; and therefore when Government take strong measures for the purpose of protecting the lives and properties of the most peaceful and law-abiding citizens to be counted by millions, I think this law is essentially necessary and should be supported wholeheartedly. But I will give you another reason for giving it my cordial support. I do not know whether my colleagues, the Honourable non-official Members, know that there has been a Parliamentary blue-book just published by the Home Office in England in which no less than fifty out of a large number of letters, which were seized by order of the Government at home last October are published. Surprise raids were made on many of the mischievous Communist organizations here and there in England by Scotland Yard. The Government considered it necessary, particularly in view of the attempted General Strike by the coal miners, to publish them in order to prove the revolutionary character of these organisations. The book, which can be had for three shillings, has been specially published for popular information. Honourable gentlemen who read it will find that these organisations are broadcasting inflammatory literature in all parts of the British Empire, including India, by various means. What those abominable means are will be found in that blue-book which he who runs may read. This poisonous literature is vastly increasing and gathering great force. When such a state of broadcasting exists who will deny that it is time for Government to take what steps they deem most proper as a precautionary measure? Honourable Members will probably be astonished to hear that these organisations are growing stronger in spreading their literature, the sole object of which is revolutionary, and are in communication with some of the well known members in India among whom there are three belonging to the Legislature. They are named in the glossary and you can read them for yourselves. What those are doing in communication with these revolutionary bodies we cannot say. But I would ask you to read that publication in order to learn for yourselves what I am saying and how India is being gradually drawn into their vortex more and more by their inflammatory literature, the sole objects of which is, I repeat, a bloody revolution. Here the British Government's first and most responsible duty is to keep law and order. What is the British Government here for? They have been here for the last 150 years; they have brought law and order and established Pax Britannica; and now that the mischievous "organizations of a foreign Government are trying to incite the population of

India by means of their propaganda in an indirect way, to create trouble in the British Indian Empire particularly on the Frontier, as my Honourable friend Sir Umar Hayat said, it is absolutely necessary that our Government should be fore-armed. I do not believe that this inflammatory literature will cease to circulate. It will increase; and I entirely agree with Sir Sankaran Nair when he said that it was no use having a law like the one now before us for only two years. You can repeal it later if you do not want it after two years; but it is of no use asking the Government to come again every now and then and have to reintroduce it. A permanent law is like Damocles' sword always hanging over the heads of those who are keen on giving trouble to the Government and it is but right and proper that the Government in their efforts to protect millions of peaceful citizens in their avocations should have brought up this Bill. I repeat, therefore, that I strongly support the Bill.

THE HONOURABLE MR. J. CRERAR: Sir, the course of the debate has, I am gratified to say, relieved me of the necessity of replying at any length, because no Honourable Member in any part of the House has so far raised any objection to the principle of this measure. As regards the question of its duration, to which a certain amount of attention has been directed, I should prefer to reserve any remarks I may have to make for the stage when the amendment on the paper may be moved. At present I shall only say that this question was very carefully considered by Government. It was their deliberate intention that this amendment of the law should be permanent and, after giving careful consideration to all the various arguments to the contrary, they still remain of that opinion.

The only observations I have to make refer to the remarks made by the Honourable and learned Member from Madras whose absence from his place I regret. He supported—at least I understood him to say that he supported—the measure, but his support was given in language which I cannot allow to pass without some comment. In the first instance the Honourable Member criticised the Government: he imputed to Government a large measure of inactivity and almost of pusillanimity. He criticised even the wisdom of this measure because he said it would do nothing more than excite further ill-feeling against Government. Now I should like the House clearly to understand that in introducing this measure Government were not in the least degree actuated or influenced by any consideration as to whether the measure would be unpopular in the sense in which it was represented as likely to be unpopular by the Honourable and learned Member. I take it that the ill-feeling which the Honourable and learned Member referred to was on the part of persons who offended against the law, and I think that as against the ill-feeling entertained against Government by persons of that character, the Government would have a good deal of sympathy from all right-minded people.

I would only observe that, in so far as the Honourable Member's remarks are criticisms of Government, while he has been very free in his strictures, he is exceedingly reticent in his practical suggestions. He said Government should put their foot down. I am not quite sure whether some of the remarks which fell from my Honourable and gallant friend, Sir Umar Hayat Khan, were not a reply to the Honourable and learned member from Madras, but I do not propose to dwell further on this question. The only concluding words which I desire to say relate to the strictures passed by the Honourable

[Mr. J. Crerar.]

and learned gentleman upon the district officers. He gave it as his deliberate opinion that if, wherever a communal riot occurred, the local officers responsible were strictly called to account, these riots would speedily cease. In other words he imputed the main cause of these riots to laches on the part of local officers. That is a position which I desire to repudiate in the most express terms. Two Honourable Members of this House have given to the House their own personal experiences relating to the disturbances and I need not recapitulate what they said. I would have inquired of the Honourable Member if he were here: Does he really and seriously expect the House to support him when he suggests that the local officers should have some strange clairvoyant premonition of the intentions of an old woman in the matter of mangoes, or that they should have some preordained knowledge that a tonga pony is going to bolt or have some inspired insight into the regrettable tendencies towards insolence of the chaprassi of a bank in his dealings with a Muhammadan merchant? If the Honourable Member seriously considers that any failure to predict beforehand such unfortunate aberrations of the human mind should be punished he does, in effect, I think, attribute a degree of almost supernatural wisdom to local officers, which may perhaps be justifiable but which should not lead up to the inferences which he draws.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill further to amend the Code of Criminal Procedure, 1898, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

The motion was adopted.

Clauses 2 to 5 were added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 1 do stand part of the Bill."

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muhamadan): Sir, I beg to move the following amendment which stands in my name. It reads thus:—

"That clause 1 be re-numbered as sub-clause (1) of clause 1 and the following be added thereto, namely:—

'(2) It shall remain in force for a period of two years.'

Sir, the effect of my amendment is to limit the operation of this Bill to a period of two years and to prevent its being placed on the Statute-book permanently. Sir, I move this amendment with considerable diffidence. A similar amendment which was supported in the Assembly by what the Honourable the Home Member sweetly termed "*reasonable opinion*" was turned down by him, not however as he assured us, without such "*earnest consideration*" as that opinion deserved. But here I am not so fortunate as to be classed among men holding reasonable opinions, for the simple reason that no Swarajist is a reasonable man in the estimation of my Honourable friends on the opposite Bench. I may therefore not have even the consolation of receiving an earnest consideration at the hands of the official spokesman in this House. I am not, however, much perturbed by that unpleasant prospect as it is not a new experience to me. But there is another reflection that has certainly a more real depressing effect on me. Some prominent elected

representatives of the other House found fault with the Honourable the Home Member for his unreasonably stiff attitude in ignoring even "reasonable opinion," and attributed it to the thinness of the non-official ranks owing to Swarajist defection and the consequent consciousness of his own voting strength. But the Honourable the Home Member, very rightly in my opinion, repudiated that charge and asserted that he would have assumed precisely the same attitude even if the Swarajists attended in their full strength and would not have flinched from the duty of putting the enactment permanently on the Statute-book. In other words, he proclaimed to all those whom it may concern that the Government of India did not hesitate to disregard public opinion as voiced by the Assembly, whatever might be its volume or strength. By this declaration, Sir, both the Swarajists and the Honourable the Home Member stood vindicated, the former by their right perception of the futility of their participation and the latter by his outspoken admission of the truly autocratic and irresponsible character of the Government of India even under the so-called reformed constitution. In these circumstances, Sir, I cannot pretend to be able to summon the enthusiasm and courage needed for the discharge of my task. Nevertheless, I cannot desist from doing what I consider to be my duty to give expression to the general public opinion on this Bill.

I shall now proceed, Sir, to state my objections to placing this measure permanently on the Statute-book. It is unquestionably an extraordinary measure and arms the Executive and its agents with dangerously wide powers. The practically unrestricted power of search of all conceivable places, where offensive literature may be reasonably suspected to be found, certainly constitutes a serious menace even to law-abiding and innocent citizens. In the anxiety to trace the offending leaflet every Hindu or Muhammadan house can be searched by the police; and thus the peace and tranquillity of many a home may be threatened and several persons may be subjected to indignities even without any intentional abuse of powers. (*The Honourable Saiyid Raza Ali*: "Not without a warrant.") A warrant can be issued at the request of the police, and it is always issued. Added to this there is the fact that the powers are also easily liable to abuse. In the first place, action is normally taken by Local Governments on the information of its Intelligence Department or similar agencies. In an atmosphere of communal tension the guarantee for the accuracy of such information is small, and so the chances of preventive or punitive action of a serious character being taken on unsubstantial grounds are great. In the next place, Sir, when communal feelings are embittered, it is not easy, humanly speaking, to expect officials belonging to the warring communities to act with that degree of care and impartiality which we have a right to demand from them. The probabilities in favour of their acting according to their communal predilection and harassing under the colour of law, members of the opposite community, are very real and should be guarded against. Such an abuse of power, which is not unlikely tends to promote instead of allaying communal bitterness.

Then, Sir, there is another vital consideration of a very disquieting character, the effect of this Bill on the Press. The freedom of the Press is one of the most valued and cherished rights in every country. It is doubly so in this country where an infant nation which is subject to autocratic rule is struggling for its liberty. If newspaper offices are frequently searched under the pro-

[Mr. V. Ramadas Pantulu.]

visions of the new law, a serious blow will be inflicted on the liberty of the press. It is a notorious fact that the disposition of the bureaucracy is not a particularly friendly one to the Indian Press, specially the nationalist section of it, and the bureaucracy cannot be trusted to safeguard the rights of the Press. The Press, under the law as it exists even without the addition of this new Bill, is exposed to serious risks. A very respectable paper in the metropolis of Calcutta, the *Forward*, was prosecuted for doing a very legitimate duty and it had to go to the High Court to get justice. If a search precedes a prosecution under section 153A the trial of the Editor or Publisher will be seriously prejudiced as the preventive action taken by the Government may influence the judgment of the Magistrate.

I have said enough to give the House an idea of the extraordinary and repressive character of the measure. The Government were undoubtedly conscious of this fact and therefore dexterously chose a psychological moment for its introduction. They calculated that the Bill might not provoke violent opposition at a time when communal feelings attained their high water-mark and when people were disposed to acquiesce in, if not welcome, any device which has a pretence to ease the situation. But it must be remembered that even those who gave their support to the measure, merely expressed their readiness to tolerate it as a necessary evil for the time being. It is therefore unreasonable on the part of the Government to exploit the situation more than the circumstances justify. It is wrong to take advantage of the present phase of communal strife and make it a pretext to give a measure of this character a lasting place on the Statute-book. Section 99A of the Criminal Procedure Code as it stands now is rightly confined to seditious literature. Sedition is a most serious offence against the State and is punishable with transportation for life. An offence under section 153A on the other hand is a much less serious one in the opinion of the framers of the Indian Penal Code and is consequently made punishable with imprisonment for two years. Inflammatory communal literature, therefore, bears no analogy to seditious literature and the attempt to place these two permanently on the same footing for the purpose of section 99A is absolutely unjustifiable. Section 99A permits the Executive seriously to trench upon the liberties of the subject and can only be justified by the need for protecting the paramount interests involved in the safety of the State. A similar encroachment on the liberties of the subject for the prevention of less serious risks cannot be justified on any sound principle of jurisprudence. There is reasonable opinion on my side on this point. If you agree that the editor of the *Statesman* is a reasonable man, I would like to quote one sentence from what he says :—

“To put polemical writing on the same plane as sedition seems to us a very dangerous extension of the law into the field of conscience. We can imagine circumstances in which a report of a speech by a communal leader on the one side or the other would tend to promote feelings of enmity or hatred and the newspaper which reported that speech in the effort to discharge its duty of giving information to the public might subject itself to destruction. As it is scarcely possible to write a sentence upon Hindu-Moslem differences that is not regarded as offensive by one party or the other, the Bill may conceivably be taken as a general license to confiscate all publications on the subject.”

If there is an emergency, let the Executive take from the Legislature limited powers to tide over the situation. It should not use its domination

over the Legislature to grasp power which is not absolutely necessary. I believe it is in recognition of this sound principle that the bureaucracy agreed to the repeal of the obnoxious Press Law in 1922, in one of its lucid intervals. But the morbid desire for the intoxication of power is responsible for this attempt to re-introduce permanently a portion of that law within four years of its repeal.

My friend the Honourable the Home Secretary said that it was not a drastic measure, and that a very responsible leader of public opinion and the leader of the Swaraj Party had suggested an even more drastic measure. I wish he had paid some attention to some other proposals made by the Swaraj Party. It suited him now to do so, and I hope it will suit him on other occasions also to listen to what they say. One clear fact he forgets and that is that the disenfranchisement proposed by the leaders in question is not an encroachment on the primary liberty of the subject and does not involve curtailment of personal freedom.

THE HONOURABLE SIR ALEXANDER MUDDIMAN: Is that not a primary right?

THE HONOURABLE MR. V. RAMADAS PANTULU: It is not a primary right. I would remind the Home Secretary that at present that right is enjoyed by not more than 2 per cent. of the population of this country, while your measure really exposes to danger millions of citizens. Therefore, I request him not to bring that analogy into this question especially when he pays no attention to what Swarajists say on other occasions.

I am not disposed to say anything about Sir Maneckji Dadabhoi's declamation against Sir Phiroze Sethna's party and the party to which I belong. I do not feel called upon to reply to him, as I used to in the last Council because he does not now represent any constituency. He represents either himself or the Government. Having failed to come in by the front door of election he entered this House by the back door of nomination.

THE HONOURABLE SIR MANECKJI DADABHOY: I do not. I oppose Government; I opposed them many times this week.

THE HONOURABLE MR. V. RAMADAS PANTULU: Therefore he represents only himself or the Government, so I need not answer him. I may remind him, however, that he is not the only man who has a stake in this country. All of us love peace and order in this country and all of us will be affected adversely by disorder. I would like to state for the benefit of the Government that when proposals come from this side of the House they do not come with any ill-feeling or with any bad motives. The interests of the country are dear to us as much as to them.

In conclusion, I desire to point out that the measure at best is of doubtful utility. The Government can do little to cure communal trouble by repressive legislation. The real remedy lies in dealing with the inner causes and not with merely outward symptoms of the disease.

With these words I commend my amendment to the acceptance of the House.

THE HONOURABLE SIR ALEXANDER MUDDIMAN (Home Member) : Sir, I should not have inflicted any remarks on this House except for two reasons ; the first is that I very rarely have the opportunity of coming herê, and the second is that this is a Bill of very considerable importance. Anything I say is not likely in the least to add to the able presentation of the case made by my Honourable friend Mr. Crerar, nor indeed is a very forcible presentation of the case necessary in a House which appears to be decidedly friendly to the Bill. My Responsivist friend opposite who has recently spoken, said that reasonable opinion should support his amendment. At any rate I will congratulate him on taking a more reasonable course than the rest of his Party in being here to represent their views in opposing the Bill. It looks to me as if had his friends in the other House taken the opportunity of which he availed himself, it is improbable that the Bill would be before this House to-day, and he would not be in a position to say I had not attended to reasonable opinion. Sir, the case before the House is in a nutshell. With the exception of my Honourable friend who has just spoken the House is favourable to this Bill. He undoubtedly is in effect opposing the Bill, and merely moves on his two years' extent because he knows he will get no support for direct opposition. It is not a real two years' amendment. The choice he puts to the House is not a question of a temporary or permanent measure, but of a measure or no measure. I have no doubt that many gentlemen who spoke on the motion for consideration do take the view that they would like the Bill for two years, but it is quite clear that the actual Mover of the amendment is against the Bill. He says in effect that " I cannot hope to throw the Bill out and will therefore make it as limited as I can." From his point of view I do not blame him. It is quite reasonable tactics. If I were in his position, I would probably do the same thing ; but it is well to call a spade a spade. Now, Sir, I have from the beginning made it perfectly clear in the other House, and I will endeavour to make it perfectly clear in this House that this Bill was not brought forward by Government as an emergency measure at all. It was brought forward as a definite proposal to stop a leak in the law. Prior to the repeal of the Press Act of 1922, at which time section 99A was inserted in the Criminal Procedure Code, Government had the power of forfeiting these inflammatory writings. I explained to the other House, as I explain now, that I do not understand why, when section 99A was under consideration, that point was not taken up. I have had the papers searched and the only thing I can find is a note by one of my predecessors that this is a power which Government should retain. Why in the general welter of the discussion around the repeal of the Press Act that escaped attention is more than I can say. But these are the facts and therefore it is quite wrong to say that I ever brought this forward as an emergency measure, or that I base any arguments on emergency. I say there is a defect in the law and that it is a defect which must be remedied. That defect has remained since 1922 and we are suffering from the accumulative effect of that defect now. That is one of the reasons why we are in such a bad position. If you are deprived of a power which you ought to have, the accumulative result of that defect is considerable, for the power is not merely useful for the purpose of its actual exercise, but exists, as I think my Honourable friend said, *in terrorem*. If a man knows you have that power, he is careful not to bring himself within the scope of the exercise of that power. So I wish to make it perfectly clear that this is intended as permanent legislation. Therefore, I am not in a position to accept any

amendment to reduce the term of its duration because we should be in exactly the same place in 1928 as we were in 1922. That, I think, was the main point which was made against the Bill.

• Another point made against the Bill was that we were hitting below the belt in using a time of communal excitement for framing a Bill of this kind. Now I do ask the House, when is the time to bring forward a Bill, when it is needed or when it is not needed? If I were to bring forward the Bill when it was not needed, you might say, "What are you doing, filling a theoretical leak in the law when there is no practical need for it?" To say I am taking advantage of a time of popular excitement does seem to me a most peculiar argument. Then my Honourable friend has pointed out that this is a Bill which confers dangerous rights on the executive authorities. That it confers powers on the executive authorities I agree; that it confers considerable powers on the executive authorities I also agree; that it confers powers on the lower officers of the police is not true and should not be said. The case is not bettered by overstatement. Furthermore, the restrictions with which this Bill is hedged round are remarkable. What sort of appeal has the man whose pamphlet or newspaper has been forfeited? A most extraordinary tribunal, three Judges of the High Court. Why the Legislature in its infinite discretion ever thought fit to constitute a tribunal of three Judges of the High Court I cannot imagine, but that is so, and we have given an appeal to that same tribunal. A man can be sentenced to death and hanged by the order of two Judges, but a tribunal of three Judges is necessary to uphold the confiscation of what is admitted on all sides of the House is often poisonous matter. Now, Sir, I hear day and night of the rights of the people, people's rights. Now everybody's rights are necessarily limited by the rights of others, and that is a thing I do beg the House to bear in mind. There are no absolute rights; no individual, no person lives *in vacuo* where he can say "I have the right to do this". And let me remind those who speak so loudly of right, that there is such a thing as duty; duties should be the correlative to rights. And, mark you, there is more required of a good citizen than a mere escape from the consequences of the criminal law. A citizen cannot be said to have discharged his duty merely because he does not fall within the scope of the law. He must do more. He has to live on those terms of amity with other citizens that make and alone make civilization possible.

There was one argument, a small thing, but it struck me as curious when I heard it. I do not wish to go into the actual point of whether the deprivation of the right of the franchise is a serious deprivation or not. I should like to say it does seem to me a curious argument to say that this Bill would affect more people than a proposal to deprive a whole constituency of the franchise. Now numerous as the newspapers are in India, I do not think—perhaps I might even say I rejoice in the thought—that they are as numerous as the two per cent. of the population which possesses the franchise in India. I trust, Sir, in these remarks I must not be considered as in any way controverting in a contentious spirit those who put forward the view that this should be a temporary Bill.

I do feel and I ought to feel quite strongly that while one Honourable Member put forward that view merely with the object of opposing the Bill, there are others who would be glad to see it on the Statute-book for a short time. But, as I said, I cannot accept any amendment of that kind. The Bill

[Sir Alexander Muddiman.]

was brought forward to stop a permanent leak in the law, and I trust this House will not be long in stopping that leak.

THE HONOURABLE SAIYID RAZA ALI (United Provinces East & Muhammadan): Sir, so far as the merits of the amendment moved by the Honourable Mr. Ramadas Pantulu in relation to the Government are concerned, I do not think it is necessary for me to enter into them after the speech that has been made by the Honourable the Home Member. I, however, deem it my duty to say a few words so far as the present amendment is going to affect future progress and specially the constitutional advance of this country. Sir, I have not the least doubt that my friend Mr. Pantulu is a patriot. I must also confess that the party of which he is a member, whether I agree with or differ from the views of that party, consists of men who are trying to serve the interests of this country according to their own lights. Having said so much, let me invite the attention of my Honourable friend and his Swarajist colleagues to the conditions which obtain in the India of to-day. Sir, I distinctly remember that in 1920-21—rather up to the middle of the year 1922—the Government were feeling extremely anxious owing to the agitation that was being carried on in those days. It is a matter of common knowledge how the Government and their responsible officials felt in those days. In fact, very high officials of Government plainly admitted that they were sitting on the top of a volcano and there was no knowing when the eruption would come. Now, may I invite the attention of my Swarajist friends to this fact. Is it not a fact that whereas the Government were sitting in the crater of a volcano in the year 1920-21, we, the people of this country, we Hindus and Muhammadans, who live and have got to live in this country side by side, actually find ourselves in the midst of a prairie that is on fire on all sides. What is going to be the end of this unfortunate communal strife and discord that is spreading on all sides? Sir, it is not a question of mere loss of property worth hundreds of thousands of rupees, nor is it a question of 10, 20, 100 or 1,000 lives being lost. The population is large enough, and the country after all, though poor, can yet at times I believe afford to waste property worth lakhs. Sir, what is most objectionable and dangerous is that atmosphere of distrust and suspicion which makes every Hindu distrust a Muhammadan and every Muhammadan distrust a Hindu. Instances have already been given by my Honourable friend Mr. Stow and the Honourable Mr. Weston. I am one of those who watched the incidents of three riots at Allahabad. I also know what gave rise to these riots. In fact, if you were to ask me what was the real cause of those riots, I would plainly say that there was absolutely no cause why these riots should have taken place except the utter want of trust and the existence of suspicion between the two communities. That was the real cause. Nobody actually knows what is going to happen at any particular moment, or what might not happen at any particular moment. If that is so, I put it to my Swarajist friends what is the duty of a Swarajist? I ask myself—I pride myself on being a true nationalist—what is my duty as a true nationalist? Never mind what the Honourable Mr. Cregar thinks; never mind what the Honourable Sir Alexander Muddiman has said. What is the duty of our people? What is the duty of all those who want this country to be a self-governing country in as short

a time as possible? Now is it possible that anybody can imagine for a moment that with the present poisonous atmosphere working its way from north to south and from east to west, though this atmosphere continues, though the country remains divided into two rival armed camps, one consisting of Muhammadans and the other consisting of Hindus—is it possible for the people of this country, is it possible for us Hindus and Muhammadans, to go to the Government and say: “No doubt there are quarrels amongst us, we are cutting each other’s throats, we are also looting each other’s houses, we are behaving in this most barbarous fashion, yet we ask you to give us self-government because the moment you concede it we will be able to do away with all these quarrels among ourselves!” Now is any sane man going to listen to a plea of this character? I say, therefore, whatever may be the duty of Government—and as the Honourable Mr. Crerar has pointed out the Government realise that they are responsible, as undoubtedly they are, for maintaining law and order in this country,—I submit that more even than the duty of the Government is it the duty of all those who have got to live in this country and who are not going on a campaign of *hejrat* to settle in another country, it is the duty of all of us so to conduct ourselves that these communal bickerings and strife and discord should become a thing of the past. May I ask my Honourable friend through you what have the Hindus and Muhammadans done since the year 1923 when that big riot took place at Multan followed by other big riots elsewhere? I am taking the biggest only. I am not mentioning the minor riots which in themselves had they taken place at any other time would have been important enough to attract the attention both of the Government and of the country. Now what have you done to remove that atmosphere, I ask? One big riot is followed by another and the feeling is growing from bad to worse all the time. Multan is followed by Kohat, Kohat by Amritsar and Amritsar by Lucknow, Allahabad and Calcutta, while it is simply an impossible task to enumerate all the riots, big and small, which have taken place in the Imperial capital, namely, Delhi. Now is that a record of which we can feel proud? Sir, unfortunately we have done nothing. I am not here to apportion blame between Hindus and Muhammadans. I have never attempted to do that in the course of recent rioting, but this much I must say, the leaders on both sides have failed, the leaders on the Hindu side have no more succeeded than the leaders on the Muhammadan side.

AN HONOURABLE MEMBER: What have the Government done?

THE HONOURABLE SAIYID RAZA ALI: I am very glad my Honourable friend has put me a very pertinent question. I will say this—speaking frankly on the floor of this House—that courageous as is the measure brought forward to-day by the Honourable Mr. Crerar the Government ought to have done more than they have done to-day and ought to have brought special legislative measures earlier. The Honourable Mr. Crerar’s measure meets only one case, namely, the case of poisonous pamphlets being published and handed round from one person to another. Now what about the authors of these poisonous pamphlets that incite people to commit excesses? Have the Government done anything against them? No, except in a few cases. And who is responsible? Very largely the vocal elements. Even in the case of this small measure brought forward by the Honourable Mr. Crerar we find

[Saiyid Raza Ali.]

the Swarajist ranks opposing it and trying to put the blame on Government officials to whom the country ought to be thankful. I do not think I can congratulate Mr. Ramadas Pantulu on the speech he has made. That speech was very much like the speech made by my Honourable friend Sir Sankaran Nair. The whole argument was devoted against the Bill—with this difference that whereas Sir Sankaran Nair wound up by saying that he was prepared to give his support to the Bill, Mr. Ramadas Pantulu came to the contrary conclusion—though no doubt he said that under the circumstances he was prepared to agree if it was to be operative only for two years. Sir, if this is the attitude of the Swaraj Party in this House, for which I am exceedingly sorry, is it open to the Swaraj Party to turn round and say to the Government: “You have failed to do your duty.” How could the Government do their duty if the Swarajists are not going to co-operate with the Government on this vital question? I have got with me the full text of the letter that Pandit Motilal Nehru wrote to the *Pioneer* on Sir Tej Bahadur Sapru’s proposal, but at this late hour I do not propose to detain the Council by reading it out; but Pandit Motilal Nehru has committed himself to one thing of which the Honourable Ramadas Pantulu and the other Swarajists might take note. Writing on the proposal of Sir Tej Bahadur Sapru, Pandit Motilal Nehru says:—

“I do not share the misgivings that are expressed in your editorial note about the attitude of the Legislative Assembly towards such a measure. As the Chamber is constituted to-day it is not likely to show any tenderness to the class of gentry Sir Tej Bahadur Sapru has in view. Speaking for the Swarajist members I can say with confidence that if a measure of the kind were to come before them it would receive their willing support as a step in the direction they are working.”

Sir, this is what the leader of the Swaraj Party has got to say and that is the amendment of my honourable friend, Mr. Ramadas Pantulu. They are speaking absolutely with two voices. I do not know whose voice we should listen to; but so far as I can see it is absolutely impossible to reconcile the two tunes. (*An Honourable Member*: “Amendment is not opposition.”) No, I do not say that; but the point is this. To whose interest is it that this Bill should be placed on the Statute-book? And why for two years? Really if communal strife is a bad thing and if communal strife to this extent has manifested itself now that we have got no more than four annas in the rupee in regard to self-government, what is going to be our fate when we get self-government full sixteen annas in the rupee? I am not a pessimist, but truly I do not know if the tension is going to increase with further constitutional advance as some people want to make out, on which question I am not expressing any opinion. I think it ought to be the duty of the Swarajists to see—indeed the demand should come from the Swarajists—that this Bill should be permanently placed on the Statute-book. An honest Swarajist should be the last man to say that its operation should be limited to a certain period only. Sir, with these words I strongly oppose the amendment of my Honourable and respected friend, Mr. Ramadas Pantulu.

THE HONOURABLE THE PRESIDENT: The original question was:

“That clause 1 do stand part of the Bill.”

Since which an amendment has been moved :

" That clause 1 be renumbered as sub-clause (1) of clause 1 and the following be added thereto, namely :—

(2) It shall remain in force for a period of two years.' "

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

The Council divided :

AYES—8.

Desika Chari, The Honourable Mr. P. C.
Mukherji, The Honourable Srijut
Lokenath.
Ramadas Pantulu, The Honourable Mr.
V.
Roy Choudhuri, The Honourable Mr.
K. S.

Sethna, The Honourable Sir Phiroze C.
Sett, The Honourable Rai Bahadur
Nalininath.
Sinha, The Honourable Mr. Anugraha
Narayan.
Zubair, The Honourable Shah
Mohammad.

NOES—30.

Abdul Karim, The Honourable Khan
Bahadur Maulvi.
Bell, The Honourable Mr. J. W. A.
Charanjit Singh, The Honourable
Sardar.
Commander-in-Chief, His Excellency
the.
Corbett, The Honourable Mr. G. L.
Crerar, The Honourable Mr. J.
Dadabhoi, The Honourable Sir Maneck-
ji Byramji.
Das, The Honourable Mr. S. R.
Emerson, The Honourable Mr. T.
Froom, The Honourable Sir Arthur.
Gray, The Honourable Mr. W. A.
Habibullah, The Honourable Khan
Bahadur Sir Muhammad, Sahib
Bahadur.
Jukes, The Honourable Mr. J. E. C.
Langley, The Honourable Mr. A.
Ley, The Honourable Mr. A. H.

Misra, The Honourable Pandit Shyam
Bihari.
Nawab Ali Khan, The Honourable Raja.
Ram Saran Das, The Honourable Rai
Bahadur Lala.
Raza Ali, The Honourable Saiyid.
Richey, The Honourable Mr. J. A.
Singh, The Honourable Raja Sir
Harnam.
Smyth, The Honourable Mr. J. W.
Stow, The Honourable Mr. A. M.
Suhrawardy, The Honourable Mr. M.
Symons, The Honourable Major-General
T. H.
Thompson, The Honourable Sir John
Perronet.
Tireman, The Honourable Mr. H.
Umar Hayat Khan, The Honourable
Colonel Nawab Sir.
Wacha, The Honourable Sir Dinshaw
Edulji.
Weston, The Honourable Mr. D.

The motion was negatived.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. J. CRERAR (Home Secretary) : Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

INDIAN SUCCESSION (AMENDMENT) BILL.

(AMENDMENT OF SECTION 57).

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, I move that the Bill to amend the Indian Succession Act, 1925, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration.

This is a very short measure. Under section 57 read with section 63 of the Indian Succession Act, wills by Hindus, Jains, Sikhs or Buddhists have to be reduced to writing, signed and attested, but these sections apply only to certain Provinces and certain Presidency-towns and outside those areas it is not necessary that wills should be in writing; oral wills may be made. The Civil Justice Committee recommended that the provisions of these sections should be made applicable to every part of British India, and that in future no wills should be made except in writing, and that they should always be signed and attested.

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. S. R. DAS: Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

INDIAN SUCCESSION (AMENDMENT) BILL.

(AMENDMENT OF SECTION 33).

THE HONOURABLE SIR ARTHUR FROOM (Bombay Chamber of Commerce): Sir, I beg to move that the amendments made by the Legislative Assembly in the Bill to amend the provisions of section 33 of the Indian Succession Act, 1925, be taken into consideration.

Sir, I am almost inclined to offer an apology to this Council, because this small Bill has popped up again. It has popped up on several occasions; I hope this will be the last occasion, but at the same time I almost think I shall miss it. Honourable Members of this House will no doubt have read the amendments made in the other place. The first one is, I understand, a purely drafting matter. The second one introduces an additional sub-clause in sub-clause (5) in clause 3. Sub-clause 5 of clause 3 will now read:

“(i) any Indian Christian,

(ii) any child or grandchild of any male person who is or was at the time of his death an Indian Christian, or

(iii).”

I must admit, Sir, that this did not occur to me, but it is a point which apparently occurred to the Honourable Mover of the amendment in another place, namely, that under certain circumstances the child or grandchild of an Indian Christian would not be held to be an Indian. When I introduced this Bill, Sir, I explained I intended it to be an entirely beneficiary Bill, and I do not

quarrel in any way with the small amendment made in the other place, and I think Honourable Members will have no fault to find with it.

I move, Sir, that the amendments made by the Legislative Assembly in the Bill to amend the provisions of section 33 of the Indian Succession Act, 1925, be taken into consideration.

THE HONOURABLE THE PRESIDENT : The question is :

“That the amendments made by the Legislative Assembly in the Bill to amend the provisions of section 33 of the Indian Succession Act, 1925, be taken into consideration.”

The motion was adopted.

THE HONOURABLE THE PRESIDENT : Amendment No. 1.

In clause 3, in the proposed section 33A—

- (i) in sub-section (3) for the words “ in the same way as if such residue had been ” the words “ and such residue shall be distributed in accordance with the provisions of section 33 as if it were ” were substituted.

The question is that this Council do agree in that amendment.

The motion was adopted

THE HONOURABLE THE PRESIDENT : Amendment No. 2.

In clause 3, in the proposed section 33A in sub-section (5) for the words “any Indian Christian or of” the following words were substituted, namely :—

- “ (i) any Indian Christian,
- (ii) any child or grandchild of any male person who is or was at the time of his death an Indian Christian, or
- (iii) ”.

The question is that this Council do agree in that amendment.

The motion was adopted.

MESSAGE FROM THE LEGISLATIVE ASSEMBLY.

SECRETARY OF THE COUNCIL : Sir, a message has been received from the Legislative Assembly indicating that, at their meeting of the 31st August, 1926, the Legislative Assembly agreed, without any amendments, to the following Bills which were passed by the Council of State on the 24th August, 1926 :—

1. The Bill further to amend the Indian Evidence Act, 1872, for a certain purpose.
2. The Bill further to amend the Administrator General's Act, 1913.
3. The Bill further to amend the Indian Companies Act, 1913, for a certain purpose.
4. The Bill to supplement the Sind Courts Act, 1926.
5. The Bill further to amend the Cantonments Act, 1924, for certain purposes.

The Council then adjourned *sine die*.