18th February, 1926

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(Official Report)

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FOURTH SESSION

OF THE

SECOND LEGISLATIVE ASSEMBLY, 1926

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Legislative Assembly.

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THE HONOURABLE MR. V. J. PATEL.

Deputy President :

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LEGISLATIVE ASSEMBLY.

Thursday, 18th February, 1926.

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

RAILWAY BUDGET FOR 1926-27.

INTRODUCTORY.

The Honourable Sir Charles Innes (Member for Commerce and Railways): In placing the Railway Budget for 1926-27 before the House, I have very few preliminary remarks to make, but I think, I can claim that in one point at any rate the Budget I am presenting is an improvement on its predecessor. The preparation of the Budget last year followed close upon the convention agreed upon between the Assembly and the Government. We had first to work out at high pressure the changes in the procedure and the form of the Budget necessitated by the new arrangement, and the discussion of the actual estimates with the Standing Finance Committee for Railways perforce had to be rather hurried. This year we have been able to do better. The proceedings of the Standing Finance Committee for Railways have already been circulated to Honourable Members, and I have no doubt that they have been studied with that sedulous industry, which is so characteristic a feature of public men in India. Fourteen meetings of the Committee have already been held in 1925-26, and I note that Mr. Sim summoned these meetings in places so far apart as Calcutta, Bombay, Simla and Delhi. I note also that the Agents of three important railways were invited to attend meetings of the Committee held at their headquarters and by supplying further information and local details regarding particular projects materially assisted the Committee in arriving at their decisions. The proceedings of these meetings fill 7 volumes and cover 470 pages of print, and I know that I shall have the whole House with me when I say how grateful we are to Mr. Sim and to the members of the Standing Finance Committee for their labours and for their public spirited devotion to duty. Actual budget work began in earnest in November last. In November and December the Committee examined the Capital programme of each Railway. In January the Budget and a preliminary draft of the Budget Memorandum were placed before them and were subjected to close scrutiny for 3 days. We have made it our aim to take the Standing Finance Committee into our fullest confidence, and it gives me great pleasure to acknowledge that in return we have received great assistance in the framing of our Budget. And the result is that the Budget I am presenting to-day has passed through the scrutiny of a Committee composed almost entirely of non-official Members of the House. Each demand, indeed, has received the approval of that Committee, and I am optimistic enough to believe that this fact will facilitate the passage of the Budget through the House. Criticism, of course, we shall get. But

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in meeting that criticism I confidently expect to receive doughty assistance in debate from the members of the Standing Finance Committee for Railways. Hitherto, the defence of the Railway Budget has fallen almost entirely on the shoulders of the few officials in this House who happen to be specially connected with Indian Railways. But from now onwards I hope that Honourable Members who attack the Budget, at any rate on the financial side, will find themselves up against other Honourable Members, on the same benches as themselves, who in the Standing Finance Committee for Railways have assisted to frame the Budget. I go further still. I think I may legitimately look forward to the time when the actual estimates, as in England, will ordinarily be accepted as a matter of course by the House, and when the voting of the demands will be regarded mainly as an opportunity of raising discussions on questions of policy and matters of general interest. The House has its guarantee of economy in the fact that we have to pay not only our interest charges but a contribution in addition, and that anything we can make in excess of our charges goes to our own reserves.

2. Before I proceed further, I wish to repeat the appeal I made last year. Last year Honourable Members when they gave notice of reductions added a few words to indicate what subject they wished to discuss. The procedure was of great assistance to us, and I hope that it will again be adopted this year.

3. I propose without further ado to come to figures, and I shall arrange my speech much on the same lines as last year. That is to say, I propose rapidly to review the revenue estimates both of the current year and of the year 1926-27. I shall not go into detail. Full explanations of the figures are given both in the Budget Memorandum and in the footnotes to the Demands for Grants and next week the House will have ample opportunities for asking for further information on particular points. My purpose in this speech is to give the House a general idea of the financial results of our Railway property. I will also deal briefly with our Capital programme, and finally I shall have some remarks to make of a more general nature.

Financial Results of 1924-25.

4. I wish to begin my review by saying just a few words about the revenue results of 1924-25. The House is already aware that it was a very prosperous year for Indian Railways. When I made my Budget speech last year, we expected to gain from commercial lines 11·25 crores. We did, however, even better than we expected, mainly owing to phenomenally good earnings in February and March, and, in the event, the actual gain from commercial lines turned out to be 14¾ crores, representing a return on the capital at charge of State lines of 5·85 per cent. This improvement in receipts affected our payments to General Revenues under the convention, and also, of course, the amount available for transfer to Railway Reserves. Honourable Members are familiar with the convention, and I will not go into details. We anticipated last year that our contribution to General Revenues for 1924-25 would be 685 lakhs gross or 564 lakhs net (that is, after deducting the loss on strategic lines). But actually our contribution was 799 lakhs gross and 678 lakhs net. Similarly, instead of placing to Railway Reserves 410 lakhs as we expected we transferred to Reserves a sum of 638 lakhs.

Revised Estimate for 1925-26.

5. Those I think are very pleasing figures, and I am sorry that our revised estimate of the current year does not make quite as satisfactory a showing. The House will remember that on commercial lines we budgetted for gross receipts amounting to 101·34 crores and for expenses amounting to 90·54 crores. That is to say, we budgetted for a net gain from commercial lines of 10·80 crores. The Revised estimate of our net gain is 10·45 crores, or only 35 lakhs less than the budget figure, but the other figures have undergone considerable change. We now expect our gross receipts from commercial lines to be 99·81 crores, a decrease of 153 lakhs compared with the budget figure, and our working expenses and interest charges to be 89·36 crores or 118 lakhs less than we provided in the budget.

Comments on the Revised Estimate.

6. The House will no doubt want to know briefly why our gross receipts are 153 lakhs less than we anticipated. I must first explain, however, that the figure of 153 lakhs is a net figure. We expect a gain of 26 lakhs under the heads of interest on our balances and the Government share of profits from subsidised Companies, and our estimate of gross traffic receipts is really down by as much as 179 lakhs compared with the Budget. But this figure of 179 lakhs is again a net figure. In coaching traffic we have done better than we expected, and the drop in earnings has been entirely on goods traffic. Indeed, the Budget Memorandum shows that we expect our earnings from goods traffic to be down by nearly 2½ crores. I do not know whether the House expects from me any explanation why this is so. The only general explanation I can give is the truism that, in the words of the Acworth Committee, "Railway earnings vary abruptly from time to time in accordance with harvest results and trade fluctuations".

That is such a commonplace that it is hardly worth saying, but I think that it would interest the House if I take two concrete instances and show, in terms of actual loadings, exactly what a bad harvest or depression in any particular trade means to a Railway. When I made my budget speech last year, we had high hopes of a really good wheat crop. In 1923-24 the wheat crop had yielded 9½ million tons. At the end of January 1925, it was reported that the area planted with wheat exceeded the area planted at the same time in 1924 by 1,400,000 acres, and we hoped for a very big crop. But unfavourable weather conditions set in and in the event the final forecast showed a crop nearly a million tons less than in the preceding year. In other words, these unfavourable weather conditions wiped out almost the whole of our exportable surplus. In the 9 months ending December last, exports of wheat from Karachi were only 154,000 tons. In the 9 months ending December 1924, they were 737,000 tons; exports of barley similarly fell away. The North Western Railway is the great wheat railway of India, and the disappointing character of the wheat harvest is reflected in our Railway returns. Between the 1st April 1925 and the 23rd January last, we loaded on the North Western Railway 87,789 wagons with grain and pulse, or approximately 66,000 wagons less than we loaded in the corresponding period of last year. It is not surprising therefore that we expect goods earnings on the North Western Railway to be down by 134 lakhs compared with the budget estimate. Let me give

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another instance taken from another Railway, the East Indian. This Railway, of course, is the coal railway of India. This year has been a year of depression in the coal industry, and we see the effects in our statistics of loadings. Taking the same period for the purpose of comparison, namely, 1st April to 23rd January, I find that this year we loaded 476,000 wagons with coal on the East Indian Railway against 526,000 wagons last year. In view of these figures relating to two of our greatest trades, I think that we may count ourselves fortunate in that our revised estimate of goods earnings has not had to be placed at a much lower figure.

7. I have said that we expect our gross expenditure to be less by 118 lakhs than the budget figure. It is made up partly of working expenses, partly of miscellaneous expenditure and partly of interest charges. The decrease in interest charges is counterbalanced by an equivalent increase in miscellaneous expenditure, leaving the net reduction of 118 lakhs entirely under working expenses. The reduction is mainly due to the facts that for reasons fully explained in the proceedings of the Standing Finance Committee we have been unable to utilise the provision made for automatic couplers and that we expect to spend only 25 lakhs of the special provision of 50 lakhs made for repairs to rolling stock. On the other side of the account there is the special provision of Rs. 37 lakhs for the extension of the Lee Commission benefits to officers of the East Indian Railway, the Great Indian Peninsula and the Company Railways. The supplementary demand for this sum was rejected by the House a few days ago by 1 vote. It is now my duty to announce that the Governor General in Council has restored the demand under the provisions of Section 67A of the Government of India Act.

Contribution for 1925-26.

8. The net result is that we expect to have a surplus of 10·45 crores. Under the convention, our contribution this year, like our contribution last year, is based on the actuals of the year 1923-24. One per cent. on the capital at charge in the year 1923-24 *plus* 1/5th of the surplus profits of that year represents like last year a sum of 630 lakhs. From this sum, however, has to be deducted the loss on the working of strategic lines in 1923-24, namely, 121 lakhs, and the net contribution is 509 lakhs. Now as I have just said, our revised estimate of our gain from commercial lines is 10·45 crores. The loss this year on strategic lines is 168 lakhs. The amount for disposal therefore is 877 lakhs. From this amount we deduct the contribution of 509 lakhs, and there is a balance of 368 lakhs. The excess over 3 crores is 68 lakhs, and under the convention 1/3 of this goes to General Revenues. The final result therefore is that we expect to transfer to our Reserves 345 lakhs and to make a contribution to General Revenues of 532 lakhs. But I would beg the House to observe that this figure is a net figure. The general taxpayer is really taking from commercial lines 653 lakhs. Our net contribution of 532 lakhs is only 16 lakhs less than the amount Sir Basil Blackett budgetted for, and I would here pause to point out one advantage which we derive from the stabilisation of our contribution to General Revenues. When last November, Sir Basil Blackett was considering what effect the loss of the Cotton Excise revenue would have on our finances not only this year but also next year, he knew within a few lakhs exactly what he would receive in either year from the Railways, and I think that he will bear

me out when I say that our announcement on December 1st last was very greatly facilitated by the stabilisation of the contribution to General Revenues resulting from the convention in regard to the separation of Railway Finance from General Finance.

Budget Estimate for 1926-27.

9. I pass on to the Budget estimate for 1926-27. The figures in brief are that we are budgetting on commercial lines for gross receipts amounting to 102·58 crores and gross expenditure, including interest charges, of 92·13 crores. If these figures are realised, the gain from commercial lines will be 10·45 crores, and the net gain, that is, the gain after deducting the anticipated loss on strategic lines, will be 871 lakhs. In 1926-27 our contribution will be based on the financial results of the year 1924-25, and I have just told the House what a prosperous year that was for Railways. General Revenues indeed will take out of us a gross contribution of 760 lakhs. The net contribution payable will be 601 lakhs, and the balance of the 871 lakhs which we expect to have for disposal, namely, 270 lakhs, will be transferred to Railway Reserves.

10. In making these estimates, we have allowed for certain reductions in freights and fares which we have made or wish to make and to which I will refer later. I hope that the bread we are casting upon the waters will return unto us after many days in the shape of increased traffic, but the immediate effect must be detrimental to our earnings and we are allowing for a falling off of about 2 crores as a direct result of the reductions. For the rest, we have assumed that the season will be a normal one and that there will be a normal development of traffic on our existing lines. Also we have taken into account the fact that we have opened 264 miles of new lines in the current year, that we expect to add another 240 miles in the coming year and that we shall acquire the Delhi-Umballa-Kalka Railway. We have taken all these factors into consideration and have felt justified in estimating that our gross traffic receipts from commercial lines will be 101·35 crores or 2½ crores more than the revised estimate of the current year. Our estimate of gross expenditure from revenue, namely, 92·13 crores is 277 lakhs more than the revised estimate of the current year. Part of the increase is due to an increase of 130 lakhs in our interest charges. As regards working expenses proper, we place them at 65·19 crores or 132 lakhs more than the revised estimate of this year. 40 lakhs of the increase is due to larger appropriations to our Depreciation Fund. For the rest the increase is due mainly to the fact that we have increased our provision for repairs to rolling stock by 35 lakhs and to larger provision for operating expenses other than fuel, this larger provision being necessitated by the fact that we expect to handle a larger volume of traffic. On the other hand, in the circumstances set out in the Budget Memorandum, we hope again to effect a considerable saving in our fuel bill.

Capital Budget of 1925-26.

11. I propose now to say a few words about our Capital Budget. The approved programme for the current year provided for a capital expenditure of 32·07 crores. Past experience had told us that Railway Administrations would not be able to spend the full grant, but our policy is not

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in any way to restrict the execution of sanctioned works. Clearly once a work is sanctioned it is desirable that it should be carried to completion as expeditiously as possible. Accordingly we allowed Railway Administrations the full grants asked for for approved works and made a lump sum deduction in their demands for the probable savings we anticipated in their expenditure. The reduction we provided for was 9·17 crores, so that the net grant was fixed at 22·90 crores. We estimate that the actual capital expenditure will be 19½ crores and that there will be a lapse of 3·40 crores. This lapse compares favourably with the lapse of nearly 18 crores in 1923-24 and nearly 17 crores in 1924-25. We have made changes in the system of preparing estimates, in the arrangements for the execution of works and in the procedure relating to the preparation and certification of indents. These changes have already borne fruit, but I frankly admit that there is still room for improvement, and we have reason to hope that in the future actual capital expenditure will approximate more closely to our budget estimates. In this connection, I take the opportunity of announcing that quite recently the Secretary of State largely increased our powers of sanction. He has done so for the reasons I have mentioned earlier in my speech, namely, that the obligation laid upon us by the Assembly to pay not only our interest charges but also a contribution to General Revenues is in itself a guarantee for economy which justifies a relaxation of his control. Many projects which formerly required a reference to him are now within our own powers of sanction, and a considerable saving of time should be the result.

Capital Budget of 1926-27.

12. For next year Railway Administrations have proposed an expenditure on approved works of 34·58 crores on capital account. We intend to authorise Agents to spend up to this amount, but we do not think that actual expenditure will exceed 22 crores. This figure is made up of 15·44 crores for open line works and 6·56 crores for new construction. The actual figure we have included in the estimates, however, is 26 crores, 4 crores having been provided for the purchase of the Delhi-Umballa-Kalka Railway.

Open Line Works.

13. Full details of open line works are given in the Budget Memorandum and in the budget books of individual railways and I have time now only to direct the attention of the House to a few of the more important items. The general object of this expenditure is to make Indian Railways better equipped to handle, remuneratively and efficiently, not only existing traffic but also that natural expansion of traffic which we confidently expect. Possibly the most striking item in the programme is the electrification of the railways in and near Bombay. We have already opened the electrified Harbour Branch of the Great Indian Peninsula Railway and the remainder of the scheme for the electrification of the Great Indian Peninsula and Bombay, Baroda and Central India suburban lines is steadily being pushed forward to completion. Preliminary work has also been begun for the more ambitious scheme, which we also hope will be very remunerative for electrifying the Great Indian Peninsula main lines from Kalyan to Poona and Kalyan to Igatpuri. Again we are

laying heavier rails and strengthening bridges on sections where the existing standard is below that required for modern developments. Other sections are being doubled or quadrupled. I may mention, for instance, that we are providing 30 lakhs for the doubling of the Grand Chord from Gaya to Moghalsarai, and 44 lakhs for quadrupling the Bandra-Borivli and Bandra-Grant Road sections of the Bombay, Baroda and Central India Railway. We have important schemes in hand for the remodelling of station yards, one of the most important being that for the remodelling of the Victoria Terminus at Bombay at a cost of 88 lakhs. There is an almost equally heavy programme of workshop remodelling calculated, we hope, considerably to accelerate repairs to locomotives and rolling stock. And finally, among the additions to rolling stock which we contemplate are included, in terms of 4-wheelers, 2,707 goods wagons and 671 coaching vehicles. Of these latter, 547 are lower class carriages. Indeed, our general position is so much stronger that we have felt justified in providing for a gross expenditure of nearly 1½ crores in additions and betterments to lower class carriages. Apart from and in addition to this, we are spending some 31 lakhs on amenities which may be described as special for lower class passengers.

New Construction.

14. For new construction, Railway Administrations have asked for 9·82 crores. About 6½ crores are required for lines the construction of which is already in progress and the balance will go to new lines. A complete list of all the lines will be found in Demand No. 7, and I will merely say now that the programme comprises more than 60 different projects covering more than 2,500 miles of new construction. The policy we are working to is that we are willing and anxious to construct any new lines provided we are satisfied that they will be remunerative, and our practice now is to draw up the annual programme of new construction on the basis of the co-ordinated recommendations of Local Governments and Local Railway Administrations. We have also impressed on Railway Administrations their responsibilities for developing the areas within their respective spheres of influence by bringing to our notice promising schemes of railway development within those areas. The principal difficulty with which we are now confronted is that of spending the money—that is, of executing rapidly sanctioned projects. This is a matter of organisation, and I hope that it will not be long before we show considerable improvement in this respect. On some Railways where much new construction is in hand, we have adopted, with good results, the expedient of placing a special Chief Engineer directly in charge of all new construction, and we are also experimenting in the direction of more extended use of private contractors, particularly for bridge work.

Railway Reserves.

15. I mentioned earlier in my speech that in 1924-25 we transferred 6·38 crores to the Railway Reserves. This year, if our estimates prove correct, we hope to transfer 3·45 crores, and our reserves should stand approximately at 10 crores of rupees. As the House knows, the convention lays down the objects for which these reserves are to be used. They are intended, *firstly*, to secure the payment of our annual contribution to General Revenues, *secondly*, to provide, if necessary, for

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arrears of depreciation, and, *thirdly*, to strengthen the financial position of railways in order that the services rendered to the public may be improved and rates reduced. Last year we decided not to take any action which would reduce the amount to be added to our reserves. This year we have felt justified in adopting a bolder policy. I do not mean to imply that we regard reserves amounting to 10 crores as anything to boast about. They represent indeed less than two per cent. of the total capital at charge on commercial lines.

16. In a commercial concern like the railways where the receipts fluctuate widely with seasonal and trade conditions, while the major portion of expenditure does not vary with the receipts, reserves of this amount can only be regarded as insignificant and quite inadequate for any of the purposes for which the reserves are required—much less for all those purposes. It might be argued with considerable force that in the long run the wisest course would be to continue to build up the reserves at the present pace, or even faster, in order that our reserves might, as speedily as possible, be of sufficient magnitude to place the railways in an impregnable financial position. Moreover there is another purpose for which I think the House would also desire that substantial reserves should be built up. The House must remember that as long as we are required not merely to balance our budget, but also to pay a heavy contribution to General Revenues, we must perforce, for some time to come, confine our new construction mainly to remunerative lines, that is, to new lines which can reasonably be expected to be remunerative within 5 or 6 years. The result is that what I may call "development lines" must wait unless we can construct them by special arrangements with the Local Governments concerned. But adequate reserves would enable us to adopt a more forward policy in new construction and to undertake the construction of lines which, though they cannot be shown to be remunerative within a period of 5 or 6 years, may be expected to develop the country they pass through and ultimately to pay their way. While, therefore, I adhere to the opinion that we must continue building up our reserves, we have had recently to consider, from purely practical and business considerations, whether we have not now reached a position where we can safely afford to reduce the pace at which our reserves are being built up. We have been considering in consultation with railway administrations and in accordance with the promise which I made last year to this House, also in consultation with the Railway Finance Committee, whether the general strengthening of the financial position of the railways in the last two years does not justify our making, at any rate, a beginning with reductions of rates and fares and improvement of services. As I explained last year, as a mere matter of business, railway administrations had even then been compelled to reduce first and second class fares. Statistics showed that on most railways we were losing not merely traffic but also revenue—a sure sign that the fares were higher than the traffic can bear. Some railways have been compelled already to come down still further in these fares. The position in regard to third class fares is somewhat different. I gave figures in my budget speech last year to show that taking Indian railways as a whole the last three years showed a steady increase both in the number of passengers carried and in earnings derived from the traffic. The figures of 1924-25 tell the same tale, and it might be argued that there is no very strong case for any reduction in third class fares. But the rate of increase is much slower than it used to

be, and railway administrations are inclined to take the view that some reduction in lower class fares would so stimulate traffic as ultimately to pay the railway. In this view some railway administrations have already made a beginning with the reduction of lower class fares. The statistics are given on pages 39 and 40 of the Proceedings of the Standing Finance Committee for Railways, Volume II, No. 6. It will be seen that six railways have made, or are about to make, some reduction in their passenger fares and we estimate that the immediate cost of these reductions will amount to 111 lakhs, the cost of the reduction of lower class fares being put at 84 lakhs. Since the matter was discussed with the Standing Finance Committee, I have heard the Burma Railways also have decided to reduce 3rd class fares from 4 pies to 3½ pies for the first 300 miles and from 3½ pies to 3 pies for distances beyond 300 miles. Further, some reductions are also proposed in first and second class fares, and the total cost of these reductions will amount in the first year to 12 lakhs of rupees. I may say that these reductions, other than those of the Burma Railways, have been approved by the Standing Finance Committee for the Railways. The possibility of further reductions will be considered in consultation with the railway administrations and I may mention that we have, in framing our budget estimates for the coming year, allowed for the possibility of these further reductions. In considering these reductions in fares there is one point that I hope the House will bear in mind. We regard it as quite impossible for us to fix one flat rate of fare for each class of railway passenger and to impose that rate uniformly upon all railways. If we are to adopt the standard laid down by the Inchcape Committee and make it our aim that Indian railways should pay at least 5½ per cent. upon the capital at charge, we must be in a position to transfer a similar obligation to each railway administration. It is only in that way that we can secure real economy and if we impose upon each railway administration the obligation to pay a definite rate of interest upon the capital sunk in its line, we must take into account the different cost of transportation in the different parts of the country and the financial position of each line. We take the view, that is, that each railway must be considered separately and that its particular circumstances must be taken into account in deciding what fares can properly be charged for the carriage of passengers. The reduction in fares which has already been agreed to will cost, as I have just explained to the House, Rs. 123 lakhs in the coming year. But in framing our budget we have made an allowance for a loss of revenue amounting to Rs. 163 lakhs on account of the reduction in passenger fares. If therefore other Railways follow suit in the reduction of fares, or if the Railways which have already reduced their fares decide to make further reductions, we have made a provision of Rs. 40 lakhs to cover the immediate loss of revenue that will be involved.

17. In addition to the reduction of passenger fares, we propose also to reduce the long distance coal freights, that is, to reduce the freight on all coal carried more than 400 miles. Our actual proposal is that on distances exceeding 400 miles, the rates of freight for public coal should be reduced to the rate now in force for locomotive coal. This means on long distance traffic a reduction of freight amounting roughly to 10 per cent. It will cost us Rs. 37½ lakhs a year. I should like to give the House some concrete instances showing what this reduction will mean in actual freight rates from the Jharia coalfields to certain important industrial centres in India. I take Bombay first. Here we are not merely reducing the

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rates on public coal to the locomotive rate, but we are also lowering the ghat charge on the Great Indian Peninsula Railway. The effect is that whereas coal from the Jharia coalfields to Bombay now pays Rs. 15-6-0 per ton, it will from 1st April, when the new rates will be brought into force, pay Rs. 13-12-0 per ton—a reduction, that is, of Re. 1-10-0 per ton. Coal to Cawnpore which now costs Rs. 8-1-0 per ton will in future pay Rs. 7-3-0 per ton. The charge from Jharia to Delhi goes down from Rs. 10-10-0 to Rs. 9-7-0. That from Jharia to Ahmedabad will go down from Rs. 14-6-0 to Rs. 13-4-0. These rates, I may mention, include terminals. As I have said, the reduction may be taken as equivalent to a reduction of 10 per cent. on existing rates. I may mention that the Indian Railway Conference Association expressed itself as being opposed to reducing long distance coal freights. It took the view that a reduction of 10 per cent. could not be expected to lead to any material increase in the amount of coal transported on Indian Railways. But we have looked at the matter from rather a different point of view. It may be that a reduction of Re. 1 per ton is not sufficient immediately to stimulate traffic. But we cheapen production to that extent and I have no doubt that ultimately we shall get the benefit. We can now say with good reason that we are carrying long distance coal at the lowest commercially possible rate. At any rate, the rates we are charging to the places I have mentioned are only about 20 per cent. higher than the rates we charged as far back as 1905, and I doubt whether there is any other Railway system in the world that can say this.

18. It may be said that there is an element of risk in the course we are taking. I do not deny it. There is always a danger, I suppose, lest in prosperous years we dissipate revenue which in the bad years may be badly needed. But though the action we are taking may for a year or two diminish the amount of money we can add to our reserves, we believe that it will pay us in the long run and that ultimately we shall strengthen the financial position of our Railways. Before I leave the subject, I should like to say that we have not overlooked the point made by the Standing Finance Committee. If the reduction of fares stimulates traffic, we must be prepared to handle that traffic, and our programme for 1926-27 contemplates large additions to and renewals of lower class stock at an estimated cost of 1½ crores.

CONCLUSION.

19. There are many other subjects mostly of an administrative or technical character on which I am tempted to dwell, but I am afraid of wearying the House and I will bring my speech to a close. But before I sit down, I should like, if the House will allow me, to indulge in a brief retrospect. This is the last Railway Budget that I shall defend in the Indian Legislature, and it is natural that I should look back over the five years during which I have been connected with Indian Railways. My first year 1921-22 was one of the most disastrous years in the history of the Railways. For the first time since 1908 they had failed to pay their interest charges; indeed, the net loss of the year amounted to the enormous sum of 9 crores of rupees. There was much to be said in excuse for the Railways. They had rendered magnificent service during the war.

Shortage of tonnage had thrown on them an immense amount of traffic which formerly had gone by sea, and their resources had been strained to the uttermost. At the same time, material and rolling stock had been hard to obtain, and the railways had emerged from the war in a sorely battered dilapidated condition. No money had been laid aside to meet arrears of depreciation, or rather the sums which had been earmarked for the purpose had under stress of necessity been diverted to other objects. And though, in the years immediately succeeding the war, the Government of India, in spite of the desperate condition of their own finances, endeavoured to make liberal provision for what was then known as programme revenue expenditure, yet under the system then prevailing the Railways could not make the best use of the moneys placed at their disposal. For the grants were annual grants. Balances unspent at the end of the financial year lapsed, and it was impossible for Railways to work to a well-thought out programme of rehabilitation, spread as such a programme must be spread over a period of years, for the amount of money which could be spared each year by the Government of India for programme revenue expenditure necessarily varied with the general financial position of the Government of India. We were told by the Acworth Committee that rehabilitation was the first task before us and that new construction could not be thought of, and I remember well what a hopeless task rehabilitation seemed in those days. I am happy to think that they have gone, never I hope to return, and I think that we may contrast the condition of our Railways now with their condition 4 years ago with legitimate satisfaction. The money we have spent on them is beginning to bear fruit. The coal trade is an obvious example. Every industrialist in India must remember the scramble for coal wagons at the end of the war and in the years immediately following and the constant anxiety lest he should have to close his works for lack of coal. Now we have been able entirely to abolish any form of control over wagon supplies, and however necessary that control may have been, I frankly admit that in itself it was an evil. Our Railways now can carry all the coal traffic that offers; indeed, they ask for more. And as with coal, so with our other staple trades. I do not claim that our Railways are perfect. Far from it. Much remains to be done. But I do believe that now they are better equipped to serve the commerce and industry of India than at any previous period of their history. Many factors have combined to bring about the improvement. Much work has been put in in improving the track, in strengthening bridges, in putting in more crossing stations and in remodelling stations. Train control has been extended, our internal organisation has been improved by the introduction of the divisional system, and better statistics enable the Agent to watch the working of almost every department of his Railway. Our rolling stock is more adequate and in better order. But the most important thing of all is that Railway Administrations are in better heart because they are working under a reasonable system of finance. The Depreciation Fund is a safeguard against the return of conditions which prevailed in 1921-22. Agents can now look ahead. They can work to an ordered plan, and they have a real incentive to economy. The improvement in our financial position is, indeed, most striking. It is just 3 years since we received the report of Lord Inchcape's Committee. They set before us the standard that we should aim at yielding a return of 5½ per cent. on our capital, and they calculated that if we did so, there would be a net gain to the State of roughly 8½ crores from its Railway property. But

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this was the figure at which they thought we should aim. They did not regard it as a result which could immediately be realised. On the contrary, under the proposals they made for the postponement of expenditure and for retrenchment in the year 1923-24, they calculated that the Railways should make a net return of 4 crores of rupees to the State. The actual net gain we made in that year was nearly 6½ crores. In 1924-25 our net gain, after eliminating certain adventitious gains due to refund of customs duty and after taking into account the loss on strategic lines, amounted to 11·7 crores, while in the current year we estimate that it will amount to about 9 crores. It is true that since separation the revenue expenditure of the railways has been relieved of the sinking fund payments made towards the reduction of capital, which amounted to more than 2 crores. But against this has to be set the fact that the institution of the Depreciation Fund has resulted in an additional charge to revenue of over 3 crores. The results of these 3 years therefore are not only in excess of the immediate results which the Inchcape Committee wished to see, but have even exceeded the figure which they suggested should be ultimately aimed at by the Railways. We are now even in a position to consider a reduction in freights and fares which in the position in which they found the Railways the Retrenchment Committee could not have considered to be within the range of practical politics, and while the process of rehabilitation goes steadily on, we have also been able to embark on an extensive programme of new construction. We can contemplate these results, I repeat, with sober satisfaction. I say this the more readily because I am not so foolish as to claim the credit for myself. Human energy and human ability have indeed played their part, and since we all believe in rendering honour where honour is due, I shall have the whole House with me when I pay my tribute to Sir Clement Hindley, Mr. Sim, the Railway Board, Railway Agents and the Railway Staff generally. (Applause.) But if there is one thing more than another to which our better prospects are due, it is the Convention of September 1924.

At one point in the debate it looked as if the cause was lost, but good will and good sense triumphed in the end, and this the second Assembly of the Indian Legislature may congratulate itself on the fact that it will go down to history as the Assembly which at long last placed Railway Finance on a proper basis. (Applause.) I sometimes think that we of the Railway Department get more than our fair share of hard knocks, and no doubt we shall get more next week. Nevertheless, we shall always remember this Assembly with gratitude, for it is this Assembly that has given us the chance of managing the Railways as they should be managed. Differences of opinion there have been between us on questions of policy as well as on questions of detail. But whatever causes of complaint there may be against us, I hope that we may be given at least this much credit, namely, that we are animated by a single-minded, even jealous, devotion to the interests of Indian Railways. Already they are a property of enormous value to the State. We wish to make that property more valuable still. For my part, I shall always look back with pride and pleasure on my connection with the Indian Railways and my hope is that they will expand and grow and become more and more an efficient instrument of trade. For, believe me, Sir, the prosperity of India is in no small degree bound up with the prosperity of her Railways. (Prolonged and loud Applause.)

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I move that the Bill further to amend the Code of Civil Procedure, 1908, as reported by the Select Committee, be taken into consideration.

I do not think, Sir, it is necessary for me to say much in respect of the present motion particularly in view of the fact that the Bill contains now only one single operative clause. That clause deals with the hearing of second appeals. At the present time under section 103 of the Code of Civil Procedure the High Court may only dispose of an issue of fact if the evidence on the record is sufficient and if that issue had not been determined by the lower appellate court. If these conditions are not fulfilled, decisions on law points in the second appeal may necessitate a decision on an issue of fact, and the appeal cannot be disposed of at once by the High Court which must remand the appeal to the lower court for the hearing of the issue. The Bill proposes to increase the number of petty cases on which the High Court may determine issues of fact by including, if the evidence is sufficient, amongst those cases which a High Court may dispose of such issues, cases in which the issue was wrongly determined by the lower court, because of a mistake in regard to one of those points which under section 100 of the Code affords ground for second appeal. I assume, Sir, that any discussions on this Bill will be directed mainly to the amendments which I have tabled, and accordingly I propose to say nothing more now. I move.

The motion was adopted.

Mr. President: The question is:

"That clause 2 do stand part of the Bill."

Mr. H. Tonkinson: Sir, I move:

"That clause 2 be re-numbered as clause 4 and after clause 1 the following clauses be inserted, namely:

'2. In section 102 of the Code of Civil Procedure, 1908 (hereinafter referred to as the said Code), for the words 'five hundred' the words 'one thousand' shall be substituted.

3. Nothing in section 2 shall affect any present right of appeal which shall have accrued to any party at the commencement of this Act'."

This amendment, Sir, proposes to restore in the Bill clauses which were in the Bill when it was referred by this House to the Select Committee. It will provide for the reduction of the number of cases in which second appeals are admissible. At the present time under section 102 of the Civil Procedure Code no second appeal lies in any suit of a nature cognisable by a Court of Small Causes when the amount of the subject matter of the original suit does not exceed Rs. 500. We propose in my amendment to increase that amount to Rs. 1,000. That was a recommendation of the Civil Justice Committee. The Committee themselves say that it was a corollary to their suggestion that there should be a gradual increase in the jurisdiction of Small Cause Courts. I admit, however, that this proposal has no necessary connection with that other proposal, and that the Civil Justice Committee's remark is really an inappropriate description. The report of the Select Committee shows that there was a difference of opinion on this point in the Committee. The position which we on the Government

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side take in this matter is that these are simple cases. They could not be otherwise than simple, else they would not be cases of the nature cognisable by a Court of Small Causes. Further we hold that the higher limit which we propose in value is still small. It is not more in real value we hold than Rs. 500 was when that value was fixed many years ago, as I shall show later, and this being so we hold that one appeal should be sufficient. We hold in fact that the respondent should not be kept out of his rights for the long period involved when the applicant files an appeal. The respondent has his rights as much as the would-be appellant, as my Honourable friend, the Deputy President, argued so strongly yesterday. The more appeals you give the more you favour the rich appellant. There ought, we hold, to be some restriction on the filing of second appeals. There is no use in going on and on in order to obtain meticulus accuracy in points of law. Substantial justice should be provided in such cases by one appeal, and justice long delayed has a tendency to fail in being justice—a determination of the right between one party and another—at all. In regard to the petty character of these cases which are cognisable by a Court of Small Causes I would merely now point to the fact that no case in which title to immoveable property was involved would be a case cognisable by a Court of Small Causes.

Another point which I wish to mention is that, if such a case were actually disposed of by a judge with the jurisdiction of a judge of a Court of Small Causes, then there would be no appeal. Such a judge would be an officer of exactly the same class as those we are dealing with in section 102 as it will be amended if my amendment is carried. This section of course deals with cases in which the procedure has been regular. I submit there is no reason why if we have the longer procedure provided for in a regular suit that that should be in itself reason for giving an appeal which would not lie if you had the summary procedure.

The present limit I have said is an old one. Section 27 of the Code of Civil Procedure of 1861 provided as follows:

"No special appeal shall lie from any decision or order which shall be passed on regular appeal after the passing of this Act by any court subordinate to the Sadar Court in any suit of the nature cognisable in a Court of Small Causes under Act 42 of 1860, when the debt, damage, etc., * * * for which the original suit was instituted shall exceed Rs. 500 but every such order or decision shall be final."

That is to say, Rs. 500 was fixed so long ago as 1861 and I take it that there is no one in this House who will dispute the proposition which I have already put to the House that Rs. 500 in 1861 is as much in real value as Rs. 1,000 now. Surely, Sir, if the lower courts were sufficiently good in 1861 to have the rights of second appeal restricted in this manner, the improvements which have been made must enable the small extension of this restriction which I am recommending to be undertaken with safety. Further, the history of the proposal to increase this limit of Rs. 500 to Rs. 1,000 is an old one. It was included in a Bill to amend the Code of Civil Procedure introduced at the beginning of this century in the old Legislative Council. So far as I have been able to ascertain, that provision was not attacked at all by any of the authorities consulted on that Bill. It went to a Select Committee. The Select Committee on that Bill merely said we have with respect to suits of the nature cognisable by a Court of Small Causes restored the existing minimum valuation of Rs. 500 now pre-

scribed by section 586. That is to say they gave no reason for the action which they had taken and I have seen notes recorded at the time, or shortly afterwards, by people who were attending that Select Committee to show that the decision to reduce that limit was received with great surprise. One of the members of that Select Committee was Mr. Justice Rampini, a judge described at that time as of great judicial and executive experience. What he said in his minute of dissent on that Bill was as follows:

12 Noon.

"One of the principal objects with which the present Bill was framed was to curtail the right of second appeal so as to lessen the evils which now follow from the protracted system of civil appeals which prevails in this country * * * * * Clause 584 allows a second appeal in cases of a Small Cause Court nature, unless the amount or value of the subject-matter of such appeal is less than five hundred rupees. * * * * * * * There would seem to me to be no good reason why, as provided in the Bill of last year, this provision should not be extended so as to bar second appeals in such cases when the value of the suit does not exceed one thousand rupees. The restriction of the right of appeal in cases of a Small Cause Court nature is not an innovation. Cases of the class that come before Small Cause Courts are of a simple nature, in which legal questions of any intricacy do not, or should not arise. At present in such cases there is in Presidency towns no first appeal far less a second appeal, and the Presidency Small Cause Courts can dispose of cases up to a pecuniary limit of Rs. 2,000. In the Mofussil the ordinary limit of the jurisdiction of Small Cause Courts in respect of the value of the cause of action is Rs. 500, but this limit can be raised to Rs. 1,000 (*see* section 15 (3), Act IX of 1887), and this special jurisdiction is exercised in Bengal by at least one Mofussil Small Cause Court. In these circumstances, it seems to me that there will be no hardship or danger in making the decision of the First Appellate Court final in all such cases not exceeding Rs. 1,000 in value."

Those were the remarks of a judge of great experience who was a member of the Select Committee and objected to the action taken by the Select Committee in 1903. The Report of the Select Committee in this respect was also attacked by many authorities who were consulted upon it. My Honourable friend the Deputy President interjected a moment ago that the Calcutta High Court had objected to the provision. This is what the Calcutta High Court said upon the action taken by the Select Committee in reducing the limit from Rs. 1,000 to Rs. 500:

"The Court is of opinion that there should be no right of second appeal in any suit of the nature cognizable by a Court of Small Causes, unless the amount or value of the subject-matter of the suit exceeds one thousand rupees. In a suit tried by a Court of Small Causes, whatever its value, the decision is not subject to an appeal. Under the present law, a Judge of a Court of Small Causes may be and is in some places vested with the power to try cases up to the value of one thousand rupees. The same officers, or officers of the same rank as Subordinate Judges, ordinarily try cases of values within the limit of one thousand rupees. It seems anomalous that the decisions of these officers as Judges of Courts of Small Causes should not be subject to appeal, while their decisions as Subordinate Judges trying appeals from Munsifs in the same class of cases should be subject to second appeals. A suit of the nature cognizable by a Court of Small Causes and tried by a Munsif should be subject to only one appeal and the decision of a First Appellate Court should be final in the same way as a decision in a suit which the same officer may be empowered to try as a Judge of a Court of Small Causes."

Similar objections were taken by other authorities. The Chief Justice of the Court of Allahabad, I may mention, was another authority who definitely objected to the action taken by the Select Committee in 1903. I admit, Sir, that the proposal made in my amendment will not affect very greatly the number of second appeals. (Hear, hear.) That is really supported by the figures given by the Civil Justice Committee which we referred to in the Select Committee. They give the figures for Calcutta only, and they show that there the number of appeals between Rs. 500 and

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Rs. 1,000 in value was 125. Those of course are not all appeals which will be affected by my proposal. My proposal only affects appeals in suits of the nature triable by Small Cause Courts. My proposal therefore will not have any really great effect upon the number of second appeals, but I do submit, Sir, that it is important from the point of view of the litigant, and I do submit that the respondent ought not to be kept out of his rights for the year or two years which is involved by a second appeal being filed. To sum up then, the corresponding figure in the provision in force in 1861 was Rs. 500. I submit that, if the courts in those days were sufficiently competent to be able to dispose of these cases without a second appeal, they ought to be more competent now to dispose of such cases when the value of the matter is up to Rs. 1,000, which in fact is not in real value greater than the figure of Rs. 500 in the provisions in force in 1861. The proposal received very considerable support at the beginning of the century and the action taken by the Select Committee of that year was, I think, practically condemned by every authority who dealt with the question when the Report of that Select Committee was published. I have brought this issue as a simple issue before the House. I have tried to state the position as fairly as I can, and I hope that the House will support me in carrying my amendment. I must leave it to the House. Sir, I move.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I do not wish to allow this motion of my friend the Honourable Mr. Tonkinson to go unchallenged on two or three points upon which I have no doubt there has been a misconception on the part of the Honourable Mover. Honourable Members of this House will remember that cases triable by a Small Cause Court may be tried by a judge of the Small Cause Court or they may be tried by a regular court,—whether it is the court of a munsiff or a court bearing any other designation it does not matter. Now look at the anomaly that presents itself. A case of the value of Rs. 500 is tried by a judge of a Small Cause Court. It is, therefore, tried summarily under the provisions, let us say, of the provincial Small Cause Court and a decree is passed thereupon. There is no appeal but the powers of the High Court in revision against this decree are much larger than what this Bill proposes to give if the case is tried by a regular Court. Under section 25 of the Provincial Small Causes Courts Act and an analogous provision which exists in the Presidency Small Cause Courts Act the High Court may set aside a decree of a Court of Small Causes if it is not in accordance with law, and the rulings of the High Courts for at least a generation have established the fact that a Judge of the High Court is entitled to go both into facts and law for the purpose of seeing whether the decree is so justified and is, therefore, in accordance with law within the meaning of that Act. All Courts are agreed that this is a much wider power than what the High Courts possess in second appeal and *a fortiori* in civil revisions. Now, Sir, take the other case, an identical case which may be for a similar right is tried by the Munsiff. When it comes to the High Court the High Court is trammelled and fettered by the special rules of second appeal and revisions, and however grossly erroneous may be the finding of fact the High Court cannot interfere unless there is a question of law and in revision even an error of law is no ground for its interference. The position, therefore, is this. Two cases are tried by two Judges, one perhaps a senior Judge, the other a junior Judge. The judgment in one

case is revisable by the High Court because it is not in accordance with law (*Mr. S. C. Ghose*: "And miscarriage of justice."), and as my Honourable friend, Mr. Ghose, points out, if there is a failure of justice. There is another case tried by a junior Judge, a junior Munsiff, which comes up to the High Court and the High Court has to throw up its hands and say, "This is an erroneous finding of fact, there is a glaring error of law, there has been a failure of justice, but the narrow door through which the second appellant and the applicant for revision under the Civil Procedure Code enters the portals of the High Court prevents the High Court Judge from interfering with that finding of fact or of law". Now, that is an anomaly, and I submit it is a serious anomaly between the two classes of cases identical in value, may be similar in importance, but subject to two different rules of procedure applicable to revisions of the Small Cause Court decrees and to rights of second appeal or revision under the Code. I should have expected the Honourable Mr. Tonkinson to enlighten the House how he circumvents the anomaly which is created by this piece of tinkering legislation. I should have expected that the Honourable Mr. Tonkinson would have examined the provisions of the Small Cause Courts Act and brought forward before this House a more comprehensive Bill eliminating the anomaly which obviously exists and will occur in practice if this Bill is passed in its present form. That is my first objection.

My second objection is this. I join issue with the Honourable Mr. Tonkinson that Rs. 500 in 1861 is equal to Rs. 1,000 to-day. If this House were ever to accede to that principle I have not the slightest doubt, Sir, that to-morrow or it may be later, the Honourable Mr. Tonkinson will come forward with a proposal that there shall be no right of regular appeal to the High Court in cases up to, say, Rs. 10,000, and what is more, that there will be not right of appeal to the Privy Council in cases of less than Rs. 20,000 in monetary value. I therefore ask this House, is it prepared to subscribe to the formula, a startling formula, enunciated by my Honourable friend, Mr. Tonkinson? Now, Sir, the Honourable Mr. Tonkinson has, no doubt, been inspired by the recommedations of the Civil Justice Committee. As a temporary member of that Committee I shall be the last person to decry the work of that Committee, but one thing I would say. The Civil Justice Committee surely have in no place subscribed to this doctrine that Rs. 500 in 1861 were equal to Rs. 1,000 in 1926. The main object of the Civil Justice Committee and the purpose they had in view was to minimise litigation and the two proposals that held the field before the Civil Justice Committee were, first of all, to take away the right of second appeal altogether before the High Court and give it to two experienced Subordinate Judges. Well, Sir, during the short time for which I was associated as a member of that Committee I protested against the curtailment of the jurisdiction of the High Court on this point. The other question was that if the High Courts' powers are not bodily taken away and transferred to a bench of Subordinate Judges, let us increase the monetary value of appealable cases. That was done from a different standpoint. The object of the Civil Justice Committee was to reduce the bulk and number of second appeals. If that is the point upon which this House agrees with the Honourable Mr. Tonkinson, let this Bill go through, but let it not subscribe to the doctrine which has been enunciated by my Honourable friend, Mr. Tonkinson.

[Sir Hari Singh Gour.]

The third point which the Honourable Mr. Tonkinson has raised is a point upon which opinions may differ. That point is that the Judges to-day were superior to the Judges of 1861. Well, it depends upon the Judges. I know of Judges who have left an imperishable mark upon the legal history of this country who flourished in the sixties. (*Colonel Sir Henry Stanyon*: "District Judges?") My friend asks, District Judges? I was speaking of Judges, Sir. I lament that the Judges to-day cannot hold a candle to men like Sir Barnes Peacock. I can say with the utmost confidence that if we were to compare the great Judges that sat in the Privy Council and in the High Courts of Calcutta, Bombay and Madras with the Judges that sit to-day I certainly would pause before committing myself to the statement that the judiciary as a whole to-day is better than the judiciary in 1861. Now, turning to the Subordinate Judges, my Honourable friends would probably say that the subordinate judiciary has improved. But we are not concerned with the subordinate judiciary. We are concerned here with the powers of the High Court to hear appeals and revise the findings of fact and law in cases involving claims up to Rs. 1,000 triable by a Small Cause Court Judge.

Now, Sir, even as regards Subordinate Judges, there may be no doubt places where the subordinate judiciary has improved. There may be no doubt cases where the subordinate judiciary to-day is no better than the subordinate judiciary in 1860. My practice has taken me to provinces where I find that the subordinate judiciary still indulge in the vernacular and refer to books which draw not the admiration but the astonishment of members of the Bar. With that experience at the Bar, how can you expect me to subscribe to the doctrine so generally enunciated that the subordinate judiciary to-day is better than the subordinate judiciary in 1860? Sir, the Honourable Mr. Tonkinson, sitting as he does surrounded by big tomes of learned learning, surrounded as he is by capable advisers—what does he know of the mufassil judiciary unless he stands by my side and practises before the court? I appeal to my learned brethren who practise at the Bar. Are they prepared to subscribe to that doctrine? These are the three grounds upon which he supports his motion Let us be fair and candid. The real reason why the Government have committed themselves to this proposal is to reduce the number of second appeals. If we are prepared to go with the Civil Justice Committee, if we wish to reduce the bulk of litigation even at the sacrifice of some justice, let us pass the Honourable Mr. Tonkinson's motion but if we are not, let us be fair and let us be frank and say so. I suggest that there is a good deal to be said in favour of raising the limit to a thousand rupees. I still have some misgivings if we will not be sacrificing justice to despatch. The Honourable Mr. Justice Rampini is cited as an authority in support of the proposition moved by the Honourable Mr. Tonkinson. It is perfectly true that the Honourable Mr. Justice Rampini was in favour of the opinion which he has quoted but were the other men, who were members of the Select Committee to whom was given the function of revising the Code of Civil Procedure, less capable, less competent, less eminent, than the Honourable Mr. Justice Rampini? If my friend cites the opinion of one learned judge against the combined verdict of the Select Committee, does this House think that it should support the opinion of one individual member

of that Committee, however distinguished, in opposition to the combined and considered view of the majority, nay, the almost unanimous majority of the members of that Committee? That again is an argument which leaves me cold. I therefore feel that if the only ground upon which this House should be prepared to consent to the passage of this Bill is the ground which the Civil Justice Committee have stated, namely, they want to shorten litigation and if that ground prevails with this House, let this Bill go through. Otherwise, I submit every one of the grounds taken by the Honourable Mr. Tonkinson fails and will not bear examination.

Diwan Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Here is an attempt by the Government to change the existing law, which has been in existence, as my Honourable friend admits, from 1861. Now those who want to change the law should make out a ground for it. What was the immediate cause for this proposal? It is the recommendation of the Civil Justice Committee. Now my Honourable friend Mr. Tonkinson has admitted very fairly that the reason given by the Civil Justice Committee for their recommendation is incorrect, inadequate and is not satisfactory. Now, there is only a solitary sentence in the Civil Justice Committee's Report on page 97. They simply say it is a corollary. My Honourable friend very fairly admits that it is not a corollary at all to any other proposal and therefore the recommendation of the Civil Justice Committee is not on the grounds suggested by my Honourable friend Dr. Gour, namely, reducing the number of appeals or anything of that sort. They said their only reason was a corollary to another proposal of theirs which the Honourable Mover admits is inaccurate and incorrect.

Now what is the other ground for changing this law? My Honourable friend Mr. Tonkinson says that the value of the rupee has gone down. Has it gone down by 100 per cent.? May I put him one question? In my early days, when I was a child of 10 or 12, it would be about 1875, what was the value of the rupee. I could buy a sovereign then for Rs. 10-8-0. I get it to-day for Rs. 13 or Rs. 13-4-0. Has the value of the rupee gone down by 100 per cent.?

Sir Hari Singh Gour: That is not the test.

Diwan Bahadur T. Rangachariar: It may be incorrect to my friend. It is not incorrect to me. In the next place we have to see if we are going to afford any relief to the High Court by changing this law. My Honourable friend Mr. Tonkinson admits the relief so given is small. The figures are given on pages 318 and 319 of the Civil Justice Committee's Report. The number of second appeals between Rs. 500 and Rs. 1,000 is only 125 in the Calcutta High Court out of 3,700 or so. That number includes not only cases of small cause nature but immoveable property suits, suits relating to interest in immoveable property and various other claims which will not be of a small cause nature. Therefore, out of the 125 how much of them were really money claims or rent claims, we do not know. Are we going to give relief to the High Court by enacting this law? Is the relief so substantial that you must change the law of procedure and make the people learn new laws as it were? Looked at from this point of view, the relief is so insignificant to every High Court. In Calcutta the number of second appeals is about 3,700 whereas in the Madras High Court it is about 1,800 to 2,000 per annum. Therefore the relief you are going

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to give to the High Courts is so small that you can discount it altogether. Now, my friend Mr. Tonkinson said "Oh, the respondent is the man to be cared for". In money cases, as Honourable Members who practise in the High Courts know, in the case of money claim decrees you are not able to get stay of execution easily in the High Courts. It is no doubt true in cases relating to immoveable property and such other cases you can get stay of execution. The respondent will be entitled to execute the decree and no High Court will stay execution of decree for merely money claims unless a very very substantial case is made out. He will only have restitution in case the decree is reversed. I know from my own knowledge of the practice of the High Court in Madras that they refuse to stay execution as regards money claims. These will be mostly Small Cause Court cases. The High Courts will not grant stay of execution in second appeal unless the respondent is a pauper and unable to give security. If the respondent is able to give security for restitution, then the High Court will not stay execution at all. Probably in a very small percentage of cases there will be stay of execution. Therefore, considering that ground also there is no ground for making this change in the law. I ask Honourable Members to remember that what the Government are now asking us to do is to make a change in the existing law. They have to make out a good case for making that change. According to my Honourable friend the Civil Justice Committee's decision goes by the board. Then what remains? Why change the law in a way that might be regarded as an injustice by poor people? In Madras the ryots are ordinarily ryots paying small *kisths* to Government. They have now the satisfaction of being able to go to the highest court in the land whenever they feel that injustice has been done to them. No doubt Rs. 500 to Rs. 1,000 does not seem very much to us who earn thousands either from wretched clients or from the wretched Government. But it is a different matter with the ordinary small traders and others in district towns. They have small suits based on contract, suits relating to agency, suits involving intricate questions regarding negotiable instruments, of between Rs. 500 and Rs. 1,000; and often Subordinate Judges make woeful mistakes in administering the law relating to negotiable instruments, the law of contract, the law of agency, consideration and various intricate questions of this sort which come up for decision in such cases, although the value may be small. And so they go as far as the High Court in order to get justice done. Why should you deprive them of the chance? The percentage of such cases is small and the appellants have all the satisfaction of having gone to the highest court and got a wrong rectified. Therefore, I submit that the Government ought to have much better grounds than they have advanced for making this change.

There is one reason more, Sir. This proposal is not new. It was put forward in 1900 and again in 1907. My Honourable friend Mr. Tonkinson cannot say that the value of the rupee has gone down still further between 1900 and 1925 or between 1907 and 1925. Two Select Committees sat on it and opinions were taken from all the High Courts. On both occasions the Government withdrew this proposal out of deference to the opinions which they received. May I refer to the Civil Justice Committee's Report itself. This is what they say in paragraph 18, page 339:

"In 1900 Government circulated for opinion a draft Bill to amend the law of civil appeals. It prohibited second appeals in suits of a Small Cause Court nature under Rs. 1,000 unless the decree involved directly some claim to or question respecting property of the value of Rs. 1,000 . . . . "

—this is identical with the present Bill—

"So far as the Calcutta High Court Judges were concerned, the proposals were all rejected. The Court referred to 'the recognized want of experience and efficiency of many, if not an actual majority of the lower appellate courts' and said 'that so far as the final disposal of suits is concerned it is not advisable to entrust the officers at present presiding over these tribunals generally with more extensive powers than they at present exercise whether in their original or in their appellate jurisdiction'."

Then again, Sir, in 1901 Sir Thomas Raleigh's Bill proposed a revision of the Code.

"It was proposed that no second appeal should lie in suits of a Small Cause Court nature of value under Rs. 1,000 unless the decree involved directly some claim to or question respecting property exceeding such value."

"This Bill of 1901 after much discussion and the collection of many opinions, was finally withdrawn altogether."

So that, Sir, this is the third attempt by Government to change the law. On the first two occasions Government themselves feeling the weight of opinion against it withdrew the Bills. Now this Bill is brought forward merely on the recommendation of the Civil Justice Committee on a ground which the Government themselves admit is not correct, and my Honourable friend Mr. Tonkinson has adduced two new grounds. I have shown that those two grounds also fall to the ground. Then what is the necessity for our changing the law? Let us stick to the law as it is. For, as I have said, even if in a small percentage of cases the High Court is able to render justice the satisfaction thereby caused is very great indeed to the small litigant. After all we must remember that it is by the administration of even-handed justice by the highest courts in the provinces that people rest content. And therefore it will be taking away a valuable right if you introduce this change, and I submit no ground has been made out for it. Therefore I oppose this motion and I hope the Government will not bring their forces to bear in passing this measure. I know that it is merely out of courtesy to the Civil Justice Committee that this motion is brought forward, not because the Government believe in it. I know something about that. My Honourable friend has had his say, we have had our say, and so let the matter rest where it is.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, with the highest respect for my learned friends, Sir Hari Singh Gour and Diwan Bahadur Rangachariar, I venture to rise to support this amendment. The amendment is a simple one. It is intended to provide that there shall be no second appeal in cases of a small cause court nature where the value does not exceed Rs. 1,000, the present limit being Rs. 500. As the Honourable Mr. Tonkinson has pointed out, Rs. 500 was fixed as far back as 1861. No doubt it was fixed with reference to what was then the ordinary limit of Small Cause Court jurisdiction. Since then, as the Honourable Mover has pointed out, the Small Cause Court limit has been increased in some cases to Rs. 1,000, and I agree with him that money to-day is much cheaper than it was in 1861. All who have had occasion to purchase articles of food within the last 20 years, such as gram, wheat, etc., and who have compared what you could get 20 years ago with what you get now, will realize the truth of that proposition. My learned friend, Sir Hari Singh Gour, fancied he saw an anomaly between the High Court's power over cases tried by Courts of Small Causes and the High Court's power over cases tried by regular courts. If there is an anomaly, that anomaly exists just as much in the case of Rs. 500 cases as in the case of Rs. 1,000 cases. But, in point of fact, with all respect, I am unable to see any anomaly.

[Colonel Sir Henry Stanyon.]

The Small Cause Court procedure involves a very summary trial, and there is no first appeal. Hence the interference by the High Court is placed in wider terms. But I think it may be said with some confidence that the High Courts have made it a practice to interfere very rarely with Small Cause Court decisions except upon grounds very similar to those on which they interfere in second appeals. In a regular suit, tried by a Munsif or by a Sub-Judge, there is a full record and a first appeal. Therefore, the Legislature limits the interference of the High Court to questions strictly of law. As to the argument of my learned friend that we are not to support a reasonable proposal because hereafter we may be asked, upon the same ground, to vote in favour of a preposterous proposal, that is an argument I think that does not deserve the serious consideration of this House. The High Courts are congested with second appeals, and the number of such appeals that are summarily rejected is itself ample proof of the soundness of first appeal decisions at the present time and the reasonableness, therefore, of this amendment. The Code of Civil Procedure was revised nearly 20 years ago, and the views of the Select Committee which assisted in that revision cannot I think be quoted as a contraction of the equally weighty views of the Civil Justice Committee at the present day. Sir, I have had some experience at the Bar and some on the Bench. I cannot go back, like my friend, Mr. Tonkinson, to 1861, but speaking from a continuous experience since 1881, I say without hesitation that the legal training of the Judges who preside in the first appellate courts, that is divisional and district courts, is infinitely higher than it was even 20 years ago. In this period civil justice has been separated from revenue and executive administration. The first appellate courts now have up-to-date libraries and the presiding Judges are very largely the holders of degrees in law.

Sir Hari Singh Gour: Is that so in the Punjab?

Colonel Sir Henry Stanyon: I can go back to the days when civil appeals were heard by a Revenue Commissioner who had no civil law books at all and who had to go by rule of thumb. Nothing of that kind, even in the Punjab, exists at the present day. I see no point in making invidious comparisons between High Court Judges of the past and those who now adorn the Benches of the High Courts. The comparison was made by my Honourable and learned friend, Sir Hari Singh Gour, but it is irrelevant. The issue before us is whether the first appellate courts should be given a larger final jurisdiction, and the question relevant to that issue is whether the courts of first appeal have improved sufficiently to justify that extension. That question, after a continuous experience of 45 years on both sides of the fence, I have no hesitation in answering in the affirmative.

Maulvi Muhammad Yakub (Rohilkund and Kumaon Divisions: Muhammadan Rural): I submit that in such cases this power of a second appeal to the High Court should not in any way be curtailed . . .

Colonel Sir Henry Stanyon: There is no right even of first appeal in Small Cause Court cases.

Maulvi Muhammad Yakub: Sir, it is really surprising that a retired Judicial Commissioner and a gentleman who still claims to have some practice at the Bar should stand up and support this amendment. Sir, it is said, and truly said that justice is the corner-stone of British rule, and I submit that this right of appeal is the corner-stone of the edifice of justice.

If you take away this right of appeal, you greatly impair the administration of justice in British India. Now, Sir, the case for depriving the people of the right of second appeal or depriving them of the right of going up to the highest tribunal in the land has not been made out by the Honourable Mr. Tonkinson. The only reason that he has given before the House, and the only reason that my Honourable friend Sir Henry Stanyon has also stated, is that the High Courts are congested with a large number of second appeals. I submit, Sir, that this very fact that the number of second appeals is increasing in the High Courts is an argument in favour of retaining this power of second appeals. And what do Government lose after all by these second appeals? It is after all the appellant who has to pay the court fee and all the expenses of the appeal and not the Government. Why should you not allow him to go to the highest tribunal in the land where justice is administered by Judges possessing sound knowledge of law and free from local biases and local impressions? Well, I find that the number of Judges is being increased in all the High Courts now-a-days. In my province, the High Court of Allahabad is very soon going to increase the number of Judges by two, and therefore I think that the Government should not concern themselves so much with the question that there is a congestion of work. If there is a congestion of work, the number of Judges may always be increased, because the Government do not pay anything from their own pocket; it comes from the pockets of the litigants. Now, Sir, I consider that in suits of the nature of Small Cause Courts suits, it is still more necessary that the power to go to the High Court should be given because in cases triable by the Small Cause Courts, as my friend Sir Henry Stanyon has stated, it is something like a summary trial where even the full evidence is not recorded. In such cases the lower courts are liable to commit more errors than in cases which are regularly tried; and therefore, I submit that in such cases this power of a second appeal to the High Court should not in any way be curtailed.

Colonel Sir Henry Stanyon: There is not even power of a first appeal in Small Cause Court cases.

Maulvi Muhammad Yakub: Therefore the power of revision is more valuable in such cases than in the regularly tried cases. My learned friend, Sir Henry Stanyon, says that the Judges are now more experienced, and they have got a better training, and therefore there is no need for a second appeal, but, Sir, I would point out—I do not know what is the case in other provinces—that in the United Provinces, formerly the Munsifs were recruited after practising for three years, but now they have done away with this rule, and a man who has passed his LL. B. to-day will become a Munsif to-morrow, and he will try suits of the nature of Small Cause Court suits. Now if you take away the power of appeal, do you think, Sir, that the judgments of a man who has passed his examination to-day will be so faultless that the power of appeal should be curtailed? Again, Sir, cases of the nature of Small Couse Court suits are sometimes very intricate, for instance, cases of rent, which are followed by ejectment and certain other cases, Negotiable Instrument Act cases and other cases, involving sometimes very intricate questions of law, and certainly it would be very dangerous to curtail the power of appeal in such cases. Sir Henry Stanyon has referred to the fact that the revenue officers now do not try civil appeals. As my Honourable friend, Sir Hari Singh Gour, pointed out, it is not the case in the Punjab and also it is not the case in the unsettled districts of

[Maulvi Muhammad Yakub.]

the Kumaon Division in my province. There a Deputy Collector administering only revenue law in Moradabad to-day is to-morrow transferred to Kashipur and he is empowered to hear intricate civil appeals; he gets the powers of a Sub-Judge without knowing a bit of civil law. In such cases it would certainly be dangerous to curtail the power of appeals. In fact, this system of revenue officers trying civil cases is in itself a very dangerous system and it ought to be done away with as soon as possible.

Khan Bahadur W. M. Hussanally (Sind: Muhammadan Rural): What about military men becoming District Judges?

Maulvi Muhammad Yakub: Yes, sometimes military men, who come from the battle field only with the knowledge of cleaning their swords and bayonets, try intricate questions of contract and mortgage. If you curtail the power of appeal, it would be a very dangerous thing.

As regards the recommendations of the Civil Justice Committee, I would submit that this is not the only faulty thing recommended by the Civil Justice Committee, but that Report is full of many very impractical and faulty decisions and really it would be very dangerous if action is taken upon this Report without giving this House an opportunity to discuss that Report as a whole. That Report contains some very dangerous recommendations and very difficult problems. For instance they recommend as regards the statement of witnesses that in certain cases only a summary should be written by the judge and the statements should not be written *in extenso* in the language of the province. That is a recommendation which is very dangerous. I submit that for these reasons the recommendations of this Committee should not form a basis for making amendments in the Civil Procedure Code.

As regards the value of money, it has been pointed out that the value of money is now decreasing and therefore the limit for appeals from Rs. 500 should be increased to Rs. 1,000. I submit that this question of the increase or decrease of the value of money may be a question for wealthy persons who are big men, mill-owners and other business persons some of whom come to this Assembly, but for a poor villager and for a poor man, who generally borrows money from the moneylender, and whose cases are the cases which are of the nature of small causes, money is getting more costly every day; and therefore this question of the value of money should not come in the way of the administration of justice. For these reasons, Sir, I oppose this amendment.

Sir Darcy Lindsay (Bengal: European): I move that the question be now put.

Pandit Nilakantha Das (Orissa Division: Non-Muhammadan): Sir, eminent lawyers on this side of the House have given their opinion and they generally view justice as absolute from their own technical point of view. It has been said that the value of money has decreased. It may have decreased for very rich men who do not care for going for a second appeal for a sum of Rs. 600 or Rs. 800. But from the point of view of the common man, money is not cheap for him. Though the purchasing power of money has decreased, there are other considerations for which money is not cheap for the common man, but still I cannot think of any technical or absolute justice in case of the common man for Rs. 600 or Rs. 800 or even Rs. 900. We must look to the monetary value of the justice

too. If he goes for the second appeal for a sum of Rs. 800 or Rs. 900, we must see what harassment it means to him and how much he has got to spend in the High Court. It is only to save him that this measure should be supported.

Maulvi Muhammad Yakub: Second appeal is not compulsory; it is optional.

Pandit Nilakantha Das: It is practically compulsory. If there is one litigious man on one side, the other is dragged, though he may not wish it. Therefore, this absolute justice, to which my Honourable lawyer friends are accustomed, should not be applied in this case, when by supporting this measure we should save to a certain extent the common man.

Mr. Devaki Prasad Sinha (Chota Nagpur Division: Non-Muhammadan): Sir, if I have risen to take part in the debate on this Bill, it is because a struggling junior like myself is more concerned with second appeals than learned seniors like Diwan Bahadur Rangachariar and Sir Hari Singh Gour. Sir, my Honourable friend Mr. Tonkinson has clearly admitted that by his amendment he does not intend to bring any relief to the High Courts, because, as the Civil Justice Committee themselves have pointed out, the number of second appeals valued between Rs. 500 and Rs. 1,000 is very small and of that small number, in my province, at any rate, a lot of them are rent appeals which do not come within the purview of this amendment, because they do not arise out of suits cognisable by a Small Cause Court. The only argument which has been offered by my learned friend Mr. Tonkinson in favour of his amendment is that he wants to bring relief to the respondents. Now, Sir, in order to see what relief he brings to the respondent, we must examine the nature of these appeals that come before different High Courts. In our High Court, at any rate, a large number of these second appeals valued between Rs. 500 and Rs. 1,000 are rent appeals which do not come within the purview of this Bill or appeals that arise out of suits regarding compensation for trees. Now, Sir, these are suits instituted by landlords for the purpose of realising compensation for trees cut down by tenants. During the brief period of my practice I have had to file a lot of second appeals that arose out of suits of such a nature, and from my own small experience I can say that in most of these cases the respondents are not the poor tenants who have to pay compensation, but the big landholders who with the large machinery at their disposal succeed in getting a decree in the first appellate Court. What will be the position? A Munsif, as my Honourable friend Mr. Tonkinson must know, in my province has now got jurisdiction to try suits up to the value of Rs. 4,000. His judgment is considered by the first appellate Court, which in most cases is a Subordinate Judge. The question which this House has to decide is this: Does it consider that the judgment of a Subordinate Judge sitting as the first appellate Court in such cases should be held as final? If my Honourable friend seriously contends that the litigant, whether he is a tenant or a rich landlord, a poor man or a big man, is to be satisfied with the judgment of a Subordinate Judge, then I must submit that he has not studied the mentality of litigants in this country. A lot of litigants who come to file revisions in cases, the value of which is less than Rs. 500, come with a feeling of dissatisfaction writ large on their brow. They cannot file second appeals because the law as

1 P.M.

[Mr. Devaki Prasad Sinha.]

it stands prohibits second appeals in cases cognizable by Small Cause Courts, the value of which is below Rs. 500. But if you extend the limit from Rs. 500 to Rs. 1,000, you will increase the number of persons who would be disappointed thereby. My Honourable friend Mr. Tonkinson said that the value of rupees has come down. Sir, this is not a question of economics or finance or currency. So far as the litigant is concerned, it is not the value of rupees or the value of sovereigns that he is concerned with, but the value of his property which is considered in terms of the rupee or the sovereign. May I know if my Honourable friend Mr. Tonkinson seriously contends that the value of the subject-matter of a suit has come down to such an extent as the value of rupees in the country? The litigant, after all, is not concerned with the exchange value of the rupee. He is concerned with the value of the subject-matter of his suit. Therefore, to suggest that we should be guided in amending this law by the fact that the exchange value of the rupee has come down is to mislead this House. We are not considering the question of exchange, but we are considering the value of the subject-matter of a suit. And, if it be so, I submit that there is nothing in the contention of my Honourable and learned friend Mr. Tonkinson. For these reasons, Sir, I consider that an amendment of the kind suggested by my Honourable and learned friend will be highly prejudicial to the interests of those honest litigants who go to the High Court in order to get relief from the tyranny of those who on account of their wealth and resources succeed in getting the decree in their favour in subordinate courts. (*An Honourable Member*: "How?") We all know how it is done. Any lawyer who has practised in subordinate courts or in a High Court knows how a rich man succeeds in getting a decree in his favour against a poor man.

Pandit Nilakantha Das: He is one who is among the oppressed.

Mr. Devaki Prasad Sinha: I was rather surprised how my Honourable friend Pandit Nilakantha Das could support the amendment of my Honourable friend Mr. Tonkinson. This amendment, Sir, if it is meant to do anything, is meant to bring relief to the rich man and not to the poor man. (*Honourable Members*: "No, no.") This amendment is not for the purpose of saving the poor man the expenses of further litigation in the High Court but it is for the purpose of depriving the poor man of the chance of vindicating his rights.

Sir Hari Singh Gour: The High Court is the only court where you get justice.

Mr. Devaki Prasad Sinha: As my Honourable friend Sir Hari Singh Gour has pointed out that is the only possible way in which he can get justice and get out of the clutches of the rich men who oppress him. For these reasons I strongly oppose the amendment of Mr. Tonkinson and I hope the House will not accept it.

Mr. W. F. Hudson (Bombay: Nominated Official): Sir, I move that the question be now put.

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

The motion was adopted.

Mr. President: The question is:

"That the following amendment be made:

'That clause 2 be re-numbered as clause 4 and after clause 1 the following clauses be inserted, namely:

2. In section 102 of the Code of Civil Procedure, 1908 (hereinafter referred to as the said Code), for the words 'five hundred' the words 'one thousand' shall be substituted.

3. Nothing in section 2 shall affect any present right of appeal which shall have accrued to any party at the commencement of this Act'."

The Assembly divided:

AYES—40.

Abdul Qaiyum, Nawab Sir Sahibzada.
Abul Kasem, Maulvi.
Ajab Khan, Captain.
Akram Hussain, Prince A. M. M.
Bajpai, Mr. R. S.
Blackett, The Honourable Sir Basil.
Bray, Sir Denys.
Burdon, Mr. E.
Calvert, Mr. H.
Carey, Sir Willoughby.
Clow, Mr. A. G.
Cocke, Mr. H. G.
Crawford, Colonel J. D.
Dalal, Sardar B. A.
Donovan, Mr. J. T.
Gidney, Lieut.-Colonel H. A. J.
Gordon, Mr. R. G.
Graham, Mr. L.
Hezlett, Mr. J.
Hira Singh Brar, Sardar Bahadur Captain.
Hudson, Mr. W. F.
Innes, The Honourable Sir Charles.
Jatar, Mr. K. S.
Lindsay, Sir Darcy.
Lloyd, Mr. A. H.
Macphail, The Rev. Dr. E. M.
Mitra, The Honourable Sir Bhupendra Nath.
Neave, Mr. E. R.
Owens, Lieut.-Col. F. C.
Rahman, Khan Bahadur A.
Roffey, Mr. E. S.
Sim, Mr. G. G.
Singh, Rai Bahadur S. N.
Singh, Raja Raghunandan Prasad.
Stanyon, Colonel Sir Henry.
Sykes, Mr. E. F.
Tonkinson, Mr. H.
Vernon, Mr. H. A. B.
Vijayaraghavacharyar, Sir Tiruvalangadi.
Willson, Mr. W. S. J.

NOES—45.

Acharya, Mr. M. K.
Ahmad Ali Khan, Mr.
Aiyangar, Mr. C. Duraiswami.
Aiyangar, Mr. K. Rama.
Aiyer, Sir P. S. Sivaswamy.
Alimuzzaman Chowdhry, Khan Bahadur.
Ariff, Mr. Yacoob C.
Badi-uz-Zaman, Maulvi.
Chetty, Mr. R. K. Shanmukham.
Das, Mr. B.
Duni Chand, Lala.
Dutt, Mr. Amar Nath.
Ghose, Mr. S. C.
Ghulam Bari, Khan Bahadur.
Goswami, Mr. T. C.
Gour, Sir Hari Singh.
Hussanally, Khan Bahadur W. M.
Ismail Khan, Mr.
Ivengar, Mr. A. Rangaswami.
Kasturbhai Lalbhai, Mr.
Lajpat Rai, Lala.
Lohokare, Dr. K. G.
Mahmood Schamnad Sahib Bahadur, Mr.
Makan, Khan Sahib M. E.
Mehta, Mr. Jamnadas M.
Murtuza Sahib Bahadur, Maulvi Sayad.
Mutalik, Sardar V. N.
Naidu, Rao Bahadur M. C.
Nehru, Dr. Kishenlal.
Nehru, Pandit Motilal.
Nehru, Pandit Shamlal
Neogy, Mr. K. C.
Ramachandra Rao, Diwan Bahadur M.
Rangachariar, Diwan Bahadur T.
Samiullah Khan, Mr. M.
Sarfaraz Hussain Khan, Khan Bahadur.
Shafee, Maulvi Mohammad.
Singh, Mr. Gaya Prasad.
Sinha, Mr. Ambika Prasad.
Sinha, Mr. Devaki Prasad.
Talatulev, Mr. S. D.
Tok Kyi, U.
Venkatapatiraju, Mr. B.
Yakub, Maulvi Muhammad.
Yusuf Imam, Mr. M.

The motion was negatived.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

Mr. H. Tonkinson: I move that the Bill be passed.

The motion was adopted.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I move that the Bill further to amend the Legal Practitioners Act, 1879, as reported by the Select Committee, be taken into consideration.

Mr. A. Rangaswami Iyengar (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural): On a point of order, Sir, may I know if it is permissible for Mr. Tonkinson to move this in place of the Honourable Sir Alexander Muddiman?

Mr. President: If he is authorised by the Government Member in charge of the Bill.

Mr. A. Rangaswami Iyengar: I put it that, except in respect of Resolutions, there is no question of delegated authority in this House. I merely want to say, Sir . . . .

Mr. President: Order, order. (To Mr. Tonkinson) Has the Honourable Member anything to say on the point of order?

Mr. H. Tonkinson: I merely invite your attention to the definition of "a Member of Government." I have been authorised by the Honourable the Home Member to submit this motion and I submit I am in order in doing so, and I believe I have done so on several occasions before.

Mr. President: The fact that the Honourable Member has previously done so does not give him any authority to do so on this occasion, but it is absolutely clear that a Member in charge means any Member acting on behalf of Government and, therefore, as the Chair has already ruled, the Honourable Member is perfectly entitled to move this motion.

Mr. H. Tonkinson: Sir, I will begin again. I move that the Bill further to amend the Legal Practitioners Act, 1879, as reported by the Select Committee, be taken into consideration.

This Bill has already been before the House on several occasions, and on the last occasion by the reference made by this House to a Select Committee, this House has committed itself, on one occasion at any rate, to the principle of the Bill. The amendments made by the Select Committee are indicated in detail in the Select Committee's Report, and I do not think it is necessary for me to say much in regard to them. I would merely invite a reference to the amendment made in the Explanation which is proposed to be added to section 36 of the Act. As originally drafted the Bill provided that the passing of a resolution by a majority of two-thirds of the members of a Bar Association should be evidence of general repute in regard to the question of whether a person was or was not a tout. The Select Committee has amended that so as to provide that the passing of a resolution declaring a person to be or not to be a tout by a majority of persons present at a meeting of the Bar Association which shall have been convened for the purpose of considering the matter shall be sufficient. I submit that that is an amendment which is framed to enable legal practitioners to associate themselves in putting down this evil of touting which is, I believe, universally condemned by all responsible members of the legal profession. I do not suggest that by this Bill we are likely to be able to put a stop to this evil. It is only an attempt in a few particulars to increase the efficiency of our existing provisions. It is practically

entirely, I submit, upon the legal profession that we must rely if we are to take any really substantial steps to do away with the evil which has been found to be rampant by two Committees, the Indian Bar Committee and the Civil Justice Committee. Sir, I move.

The motion was adopted.

Mr. President: The question is that clause 2 do stand part of the Bill.

Sir P. S. Sivaswami Aiyer (Madras: Nominated Non-Official): Sir, may I ask for an explanation with regard to clause 2 (*a*), which defines "tout" as a person, " who procures, in consideration of any remuneration moving from any legal practitioner or from *any person interested in any legal business* . . . ." What class of persons does that refer to, "any person interested in any legal business"? Would it mean from the client? If a client employs an agent to engage a vakil and instruct him, would the agent come under this definition?

Mr. H. Tonkinson: This point I think was explained to some extent in the Statement of Objects and Reasons. One of the definite recommendations in the Bill was the extension of the definition of a tout so as to include, firstly, persons whose remuneration comes from any person interested in any legal business. A person interested in a legal business will include the client who engages the legal practitioner. If the money comes from him to a person that person will become a tout in the same manner as if the money moved from the legal practitioner.

Clause 2 was added to the Bill.

Mr. President: The question is that clause 3 do stand part of the Bill.

Mr. C. Duraiswami Aiyangar (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, I have given notice of two amendments with reference to sub-clause (*d*) of clause 3. The first amendment of which I have given notice is that in the proposed sub-section (6) of section 36 the words, " with imprisonment which may extend to three months or " be omitted. Sir, so far as the question of treating the offence of touting in as severe a manner as possible is concerned, there is a consensus of opinion throughout. Opinions have been collected from various quarters, judges, lawyers, bar associations and from all quarters, and opinion is certainly unanimous about this, and in fact the record of the opinions expressed in various quarters, even from those under whose ægis the tout is prospering, reminds me often that the confirmed drunkard is more eloquent about prohibition than the teetotaler. There can be absolutely no question that on all sides touting is condemned. But how far this touting can in practice be put down, about that many judges have expressed doubt, and to-day Mr. Tonkinson has also expressed the same doubt. The question therefore arises whether a tout should be given three months' imprisonment for a transaction in which the principal offender is not the tout himself but some other person, that is the legal practitioner. Sir, it will look as though, as I have already said on a previous occasion, on the analogy of the offence of adultery, the man is punished and the woman escapes. In this case the converse occurs. There the stronger man is punished, the woman escapes: here the weaker party is punished and the stronger man escapes. So, Sir, you find that the amendment of the Legal Practitioners Act, while it does not contemplate any punishment more

[Mr. C. Duraiswami Aiyangar.]

than what is already prescribed there in the nature of suspension or dismissal of the legal practitioner who engages a tout seeks to impose a punishment of a severer nature upon the tout. On this point, Sir, I am not alone in expressing the view that such a severe punishment is not needed. The ground upon which a severe punishment is recommended is the ground which is stated in the Civil Justice Committee, but not in the Bar Committee. The Bar Committee rightly appreciates the position by saying:

"The law with reference to touting was strengthened in 1896, but has proved entirely ineffective. The plain fact is that unless the legal profession assist the courts to suppress touts, little can be done by way of legislation."

They, Sir, allocate the blame to the right quarters, whereas the ground upon which the Civil Justice Committee wants to put down touting by making it an offence on the part of the tout only is stated in the Statement of Objects and Reasons in the following words:

"The Civil Justice Committee also referred to the fact that the employment of touts is the evident and immediate cause of many false claims and defences and of much waste of time in the courts."

Now, Sir, I ask, is it correct to say that the increase of litigation, or the wastage of the time of the courts is due to the tout? Is it the tout that files suits in court? Is it the tout that files appeals and revision petitions of a frivolous or vexatious nature? It is certainly not the tout that does it, but the greedy legal practitioner. It is the greed of the legal practitioner and the idiosyncracies of the judges that are responsible for the increase of litigation. Sir, a tout may take a case to a legal practitioner, but if the legal practitioner says there is no ground for preferring an appeal, nobody can take it into court. But what do the legal practitioners say? They depend also on the ways and whims of the judges. If an appeal or revision petition or a petition for stay of proceedings is taken to a lawyer practising in the High Court, what does the lawyer do? Immediately he takes up the cause list and sees which Judge sits in the admission court that week and he says, "Not this week, Justice So and So sits this week and he will not allow this petition. Wait for another week, another Judge sits then and he will allow this petition." It is in this manner that petitions increase in the courts and frivolous appeals are filed, and to say the tout is responsible for all this litigation is, Sir, very uncharitable.

Khan Bahadur Sarfaraz Hussain Khan (Patna and Chota Nagpur *cum* Orissa: Muhammadan): Punish the legal practitioner also.

Mr. C. Duraiswami Aiyangar: That is what I say; my contention is that in any transaction in which two parties are involved, make them equally punishable as we do in the offence of bribery. The giver is punished in the same manner as the taker is punished. Of course that is one way of making it a dead letter. If you make both the giver and the taker punishable, no case of bribery comes out. Similarly, if you make this punishable in both ways probably you are afraid that no case will come out. But that is not a reason why you should not treat it in the proper way. If you do not do that, you treat the tout more severely than the other party. On this point opinions have been collected and opinion is strongly in favour of not treating this offence as severely as this proposed Bill wants to treat it. In the proposed Bill you do not even say that the imprisonment should be simple, but leave it indefinite, which means in other words that

the imprisonment may be either simple or rigorous. You are aware that the preponderance of opinions that you have collected from responsible judges and practitioners and Advocate Generals and so many quarters is all in favour of making the punishment simple and not rigorous, and from several quarters you have received recommendations to the effect that a heavy fine is quite enough. Now, I may refer to the opinion given from Bombay. Mr. Kennedy, the Additional Judicial Commissioner of Sind, says that this must be made punishable by fine. (*Sir Hari Singh Gour*: "What page?") There is an abstract published and on page 7 of that abstract you will find it. From the High Court of Calcutta the Chief Justice and the Judges of the Court suggest that the substantive punishment provided for a first offence should be a fine and not imprisonment. The Chief Justice of the Allahabad High Court agrees with Mr. Ali Ausat, District Judge, that the sentence should be a fine up to Rs. 500 or in default imprisonment up to six months. Justice Kanhya Lal thinks that the Court should be empowered to demand security from a declared tout for good behaviour, if it considers necessary, for a year and subject him to simple imprisonment for the period fixed if such security is not furnished. The Governor in Council of Madras agrees with the Honourable Judges of the Madras High Court that the proposed section 36 (6) should specify the Court which should try offences under that section as also the agency by which such offences should be investigated. Justice Sadasiva Ayyar suggests that imposition of repeated fines and a provision for imprisonment in default of payment of fines are quite appropriate. The District Judge of East Tanjore is of opinion that imprisonment is not necessary and that a fine to the extent of Rs. 500 and, in default of payment, simple imprisonment appears to be enough. The Government Pleader, East Tanjore, the Government Pleader, Madras, and the Advocate General, Madras, think that the penalty proposed is too severe and that the offence should not be punishable with imprisonment. The Commissioner of the Lahore Division says that the Bill should not provide for a sentence of imprisonment except in default of payment of fine. Now, Sir, there is, therefore, a strong opinion in favour of making this offence punishable only with fine. (*Mr. Devaki Prasad Sinha*: "Only in Madras.") If you think that touting is more severe in your province then put it down by all means and make even a special law to meet it.

Mr. President: Order, order. The Honourable Member must address the Chair.

Mr. C. Duraiswami Aiyangar: What I submit to the House is not that I am specially fond of touts, for in a place like the one in which I live—for instance, my Honourable friend, Diwan Bahadur Rangachariar pointed out the other day that I live in some nook and corner of the Madras Presidency—in a place like Chittoor where there are only 40 or 50 vakils and where every vakil is known to every client touting is not rife. I am only speaking of places where there is a congestion of lawyers, where touts are numerous and are more in the nature of brokers, and canvassing agents, just like journalists have, merchants have, insurance companies have—these touts are all canvassing agents. I am dealing with places like these. I therefore plead for them that before we take disciplinary action against the legal practitioners who encourage such touts we should not be too severe with these touts alone. That is my plea for this amendment.

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

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

Lala Duni Chand (Ambala Division: Non-Muhammadan): Sir, I have very great respect for Mr. Duraiswami Aiyangar and his views but I beg to differ from him. I am a believer in stringent and effective laws or no laws at all. It has been recognised all round that touting is a great evil. It is a growing evil. We have to discover an effective remedy for it. As the law stands at present the only punishment that can be awarded to a tout is the declaration that he is a tout. This punishment is no punishment. It is a certificate of reputation given to him. These touts are to be found in large numbers. They are not a mere nuisance. They are a positive evil. They cheat many innocent and ignorant litigants. They involve them in litigation which proves in many cases ruinous. I am at one with my Honourable friend Mr. Duraiswami Aiyangar that the legal practitioners are as much to blame as the touts. I go further and say that the legal practitioners are much more to blame than the touts.

Mr. Devaki Prasad Sinha (Chota Nagpur Division: Non-Muhammadan): Not all the legal practitioners.

Lala Duni Chand: Only those practitioners who take work through touts. I could not possibly mean all legal practitioners. Now, my friend provides punishment only by way of fine. This, I say, is no punishment. A successful tout can make money out of the duped clients and pay the fine. This can hardly be called an effective punishment. Further, we have to take into consideration that there are very few cases in which the tout can be brought to justice or prosecuted even under the law that is proposed to be made. At any rate we should see that whenever in any case he is successfully prosecuted he should get a deterrent punishment. I have gone through some of the opinions. There is one opinion given by Mr. N. K. Kelkar with which I entirely agree. He says:

"I have discussed this Bill only from one point of view and that is the reason why I have taken such a serious view and suggested what no doubt are very drastic remedies. I have discussed this measure from the point of view of the purity of judicial administration and in order to safeguard the interests of the ignorant and innocent litigants. If we believe that touting is an evil injurious to judicial administration, if we believe that touting is in existence and that it is on the increase, we must not shirk our duty and we must be prepared to face the responsibility even though unpopular without caring for the frowns of any persons or class of persons. I do not believe in half-hearted or ineffective laws such as the one under consideration."

I say, Sir, that if it is possible to make a law which will provide punishment against the delinquent legal practitioner I shall equally welcome it, but that is no reason why I should not support the law that is proposed to be made against another evil doer. I have got very strong views against every wrong doer. The truth of the matter is that if we want to purify the several branches of the existing administration we should take to very drastic remedies. It has been my sad experience that the Government are rarely earnest about eradicating evils. I believe that where there is a will there is a way. I know that there may be very great difficulties in getting touts punished and in getting this evil removed but if really the courts are earnest a good deal can be done by way of minimising the evil effects. I fully realise the obligation of the legal profession or the Bar Associations in this respect. Much cannot be done unless the moral tone of the legal profession is considerably raised but the courts can also do a good deal in raising the moral tone of the legal profession. Finally, we come to the source

that is really responsible for purifying the administration. I mean the Government. If the Government are earnest to improve the legal profession, to eradicate the evils connected with the legal profession, the Government can do a good deal in that direction. I welcome this measure which proposes an effective punishment against the evil of touting. With these words I generally support this measure and oppose the amendment that has been put forward by my Honourable friend Mr. Duraiswami Aiyangar.

Maulvi Muhammad Yakub (Rohilkund and Kumaon Divisions: Muhammadan Rural): Sir, a member of the Bar when he relegates himself to the position of a tout is really a more dangerous person than the tout himself. I really cannot understand what makes my learned friend Mr. Duraiswami Aiyangar to plead the cause of the touts so much. He himself admits, and it has been admitted on all hands, that touts must be severely punished, that the profession of touting should be as severely dealt with as possible, and then to say that a mere sentence of fine would be sufficient has no meaning in it. My friend Mr. Duraiswami Aiyangar has said that in this connection only one party is punished, while the other party escapes. He says that the members of the Bar are themselves a party to this crime. I admit that they are, but it is not right to say that they escape from being punished. You have got the Legal Practitioners Act under which if a member of the Bar is found guilty of taking cases through touts he is liable to be debarred permanently, or for any period of time, that the High Court may think proper and in this way his whole career is ruined. It is not right to say that the members of the Bar are not punished. Now, what do these touts do? As has been pointed out by my friend over there, they are really a menace. They not only deprive clients from taking the best legal advice obtainable but they make such false statements that they would not allow them to have the best legal advice they want to have. Some times I have heard in my district of cases when a tout has met some ignorant village litigant and asked him to whom he was going, and when the man said to such and such a legal practitioner the tout has said, "Oh, that poor gentleman is dead, he is no more." These are cases which have come to my own knowledge and if touts do such things I do not think that they should be lightly punished with only a sentence of fine. Of course there was a defect in the definition of "tout" in this Bill; but the Select Committee has tried its best to improve that definition; and they have also put in safeguards against touts being recklessly punished. In the 5th clause they have added this proviso:

> "Provided that such authority shall hear any such person who, before his name has been so included, appears before it and desires to be heard"

A man, if he is reported to be put on the list of touts, will have two opportunities of being heard. The district court will send the case to be heard by a lower court and he will have an opportunity to defend himself. Also after that inquiry if the lower court considers that his name should be put on the touts' list, he will again have an opportunity of giving an explanation to the District Judge, and then and then alone will his name come on the list of touts. So, after full inquiry if a man is found to be a regular tout, there is no reason why a severe punishment should not be given to him. It is not an easy thing to find out these touts, and if they earn two or three hundred rupees a month by means of touting I think they would not mind paying a fine of Rs. 200 or Rs. 250 every two or three years; a tout

[Maulvi Muhammad Yakub.]

would consider it something in the nature of a licensing fee. I think, unless you give him a sentence of imprisonment, this profession of touting cannot be dealt with adequately. In the Bill originally the maximum punishment provided was six months, but now in the Select Committee they have considered this question and the sentence has been reduced to three months. Moreover a sentence of imprisonment is not the only sentence which will be given under this Bill. It gives power to the court either to inflict fine or to inflict imprisonment as the court may deem necessary. In the case of a first offender the sentence of a fine may be appropriate, but in the case of a second or third offence I think the punishment of a fine certainly will not suffice. For these reasons, Sir, I support the Bill as it stands and oppose the amendment of my friend Mr. Duraiswami Aiyangar.

Khan Bahadur Sarfaraz Hussain Khan: Sir, I rise also to oppose the amendment moved by my Honourable friend Mr. Duraiswami Aiyangar. In fact he does not defend the touts. His only argument is that instead of punishing only the touts it should be the vakils as well, who encourage touts who should be punished. But that in itself is no reason why touts should be exonerated. In my experience of 25 years as a zemindar where I have seen touts working not only in towns but in villages as well, and I have found these touts to be not only a source of very great inconvenience, but a scandal. I would go so far as to say that at times they are a cause of miscarriage of justice. My friend Maulvi Muhammad Yakub very correctly says that they make all sorts of false statements, not only to litigants but to the pleaders. They move from place to place and concoct all sorts of stories to gain their ends, by praising and maligning pleaders, just as it suits them. Sir, Vakils in the mufassal are not expected to be so clever and accomplished as the vakils in the towns. (*An Honourable Member*: "Why?") I said they are "not expected to be". It is thus that both the poor litigants and vakils are deceived at times. Now, Sir, as to the seriousness of the offence I will just read an extract from the recorded opinions of the Government of Bihar and Orissa:

> "His Excellency the Governor of Bihar and Orissa suggests that provision should be made that the legal practitioner who employs a tout is also liable to punishment."

Which means that His Excellency goes so far as to think that the seriousness of the offence committed by the tout is so great as to make the vakils also liable to punishment. So it is that if the touts are considered such a great nuisance a punishment of only three months is not in my opinion sufficient. What I mean is that if you propose a remedy let it be a proper remedy and if there is a punishment of imprisonment it will have a deterrent effect on these rascals, I mean the touts. With these words I beg to oppose the amendment.

Mr. C. Duraiswami Aiyangar: Sir, I do not like any more time to be spent over . . . .

Mr. President: The Honourable Member has no right of reply . . . .

Mr. C. Duraiswami Aiyangar: I only wanted to say . . . .

Mr. President: Will the Honourable Member resume his seat when the Chair rises?

Mr. C. Duraiswami Aiyangar: Yes, Sir. I only want to make a personal statement, Sir. Some Members have misunderstood my statements and think I have a soft corner for the touts. It is not so. I clearly said it . . .

Mr. President: It is a reply and not a personal explanation.

Mr. C. Duraiswami Aiyangar: No, I am not replying. I want to withdraw my amendment, Sir.

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

Mr. C. Duraiswami Aiyangar: Sir, I move my other amendment: (*Several Honourable Members*: "Withdraw.") Certainly not. Sir, I move:

"That in clause 3 (*d*), to the proposed sub-section (*6*) of section 36 the following proviso be added:

'Provided that a prosecution under this sub-section shall be instituted by an officer of a court deputed for the purpose by a judge of any court in whose list the tout's name is included'."

The purpose of my amendment is simply this, that if a court takes the initiative then it will draw into its inquiry also the legal practitioners who are connected with the tout and an inquiry will take place before the judge as to who are concerned with it, because no prosecution can be laid against a tout without also exposing the legal practitioners who had to do with such a tout. I want therefore that the inquiry should be made by the judge and then a sanction should be accorded by him with an officer deputed for prosecuting. In this view, Sir, I quote the authority of Rai Bahadur N. K. Kelkar who says at page 2 of the opinions:

"If it is meant to make the law really effective, we must have some agency responsible and independent whose duty it will be to collect evidence and place the same before a competent authority for scrutiny in the course of a judicial trial. The offences under this law are not cognizable and therefore the Police cannot take any initiative and it would perhaps not be a quite sound policy to empower the police to take cognizance of offences under this law. In these days of growing competition it is conceivable that proceedings started at the instance of private persons or even at the instance of lawyers are likely to be frivolous and harassing. To meet such cases and others in which private persons hesitate to come forward to start proceedings we must have a responsible investigating agency empowered to collect evidence for the consideration of judicial tribunals. If it is not meant to have such an agency I am afraid, as remarked before the law will practically remain a dead letter."

Sir, he has given sufficient reasons for making this law more effective than it would otherwise be if it is left alone. No private man will be inclined to do that if he is a respectable man. A tout might prosecute another tout—that would be the only result,—but on the other hand, in order to make the law more effective, the courts might pay attention to the class of touts whom they have listed in their courts, watch their movements, and institute proceedings immediately, and in doing so they will have a full inquiry made, so that the conduct of the legal practitioners who are connected with these touts must also come prominently before the judge before whom they are practising. In this view, Sir, I am also supported by Justice Sir Sadasiva Ayyar quoted at page 30 of the "Opinions". He says there:

"I think that frivolous complaints from private parties (proclaimed touts having usually numerous enemies) ought to be discouraged as leading to persecution through private grudge, especially as, in complaints against touts, legal practitioners might not infrequently be also involved as abetters of the touts."

[Mr. C. Duraiswami Aiyangar.]

Sir, I am fortified by these two opinions—and there are also other opinions expressed by others that some agency must be created by which these prosecutions must be made certain. I think, Sir, it is a defect in the law that is now being enacted that no agency should be created, or that no responsible officer should be entrusted with the duty of seeing that these parties, although they are in the list, do not escape prosecution. In order to make sure and make the law more effective, I propose this amendment. If it is accepted by the Government, I think it will be well and good.

Mr. H. Tonkinson: Sir, my Honourable friend, I am surprised to find, has supported this amendment on the ground that it would make the provisions more effective, that is to say, presumably you would have more prosecutions if this machinery were provided. That is rather an unusual view to hold of provisions in regard to sanction to prosecutions, as such provisions are usually introduced in order to prevent undue harassment by prosecutions. He says that he wants a preliminary inquiry to be made by a judge, and a prosecution to be sanctioned by a judge: the amendment which he has proposed does not provide for this. If we were to take the course desired by my Honourable friend, we should have to introduce much more elaborate provisions such as those contained in section 476 of the Code of Criminal Procedure. I think, Sir, it is quite unnecessary to complicate the measure by a provision of this kind, and I think it may be left, as in the case of most offences, to be prosecuted in the ordinary manner according to the ordinary law given in the Code of Criminal Procedure. I therefore, Sir, oppose the amendment.

Mr. C. Duraiswami Aiyangar: Sir, I beg leave to withdraw the amendment.

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

Clause 3 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

Mr. H. Tonkinson: Sir, I move that the Bill be passed. In making this motion I think it is advisable for me to refer to the question raised by my Honourable friend, Sir Sivaswamy Aiyer, at the consideration stage, He referred to the question of persons interested in any legal business. I informed him then of the persons whom we intended to cover. The proposal as made by the Civil Justice Committee was in these words:

3 P.M.

> "The definition of 'tout' in section 3 seems to require amendment so as to include the large class of people who in Serais, railway stations and other places intercept prospective litigants for a consideration whether paid by the pleader or the client to take their business to particular legal practitioners."

I invite attention to the words paid by the client. That, Sir, is the class of person, the class of tout, which we wish to cover by this change in the definition. It may be, Sir, that we have cast our net too wide, and I can only promise that we will consider that point. It is impossible now at this stage under our rules to make any amendment which would meet that point because no amendment of this clause has been made at the consideration stage. I can therefore, Sir, only promise that it will be considered before the Bill is taken into consideration in another place. Sir, I move.

Diwan Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I also regret that on the Select Committee I omitted to notice the definition of the word ' tout '. The class of persons who are contemplated in the Civil Justice Committee's Report, my Honourable friend Mr. Tonkinson will note, are provided for in clause (*b*):

" who for the purposes of such procurement frequents the precincts of Civil or Criminal Courts or of revenue offices, or railway stations, landing stages, lodging places or other places of public resort."

That class of person referred to there is provided for in clause (*b*). Therefore clause (*a*) is rather too wide, and I press upon him the necessity for modifying the definition.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I heartily welcome this Bill, but the observations I am about to make do not detract from the welcome I accord to it. I also feel, Sir, that the definition of the word ' tout ' in clause (*a*) is too wide, and that such a phrase as:

" or from any person interested in any legal business * * or to any person interested in any legal business "

has a possibility of including a class of persons who cannot ordinarily be classed as touts or answer that description even by a figure of speech. Let me give an example. A zemindar has got an agent, a paid agent. He takes one of his retainers, the retainers of the zemindar, to his own counsel, and because he takes the trouble of taking him to his counsel, the retainer or the tenant pays him Rs. 10. He has not selected that counsel. He is not a tout in the ordinary sense of the term, but yet he would conceivably fall within the provisions of clause (*a*). My friend, Diwan Bahadur Rangachariar, has disposed of the point regarding loiterers and frequenters of courts . . . .

Mr. President (Looking at a member who was reading a newspaper) Order, order. The Honourable Member is not in order in reading a newspaper here. Will he stop doing so?

Sir Hari Singh Gour: Loiterers and frequenters and such persons are dealt with in clause 2 (*b*) and I submit, Sir, that it is a good clause and a clause which should receive and has rightly received the support of this House. I wish, Sir, to point out that there are some misgivings in the mind of my friend Mr. Duraiswami Aiyangar and a few others who might think with him that this is a one-sided piece of legislation in that while it punishes the tout it leaves the legal practitioner who profits by his toutism practically immune. I wish to draw his attention to the provisions, the very large provisions, of section 22 of the Legal Practitioners Act which lays down that a legal practitioner may be suspended or dismissed from his office for various things including for any other reasonable cause. Now, I cannot conceive of any court not taking action against a legal practitioner who is proved to have aided and abetted, encouraged or entertained, a person who is a proclaimed tout, and I therefore submit, that the legal practitioner is not free from the punishment to which he would be exposed if he obtained cases through touts. Sir, there is one fact upon which I am not in agreement with the Honourable Mr. Tonkinson. I lament that the punishment of six months has been reduced to three

[Sir Hari Singh Gour.]

months by the Select Committee. I agree with my friends who are of opinion that if this practice of toutism is to be stopped at all, the punishment must be a deterrent punishment. Everybody who knows anything about touts will bear me out (Laughter) that the essential point about touts is that they are hangers-on in courts and the offices of legal practitioners and that they practise their vocation mainly by cheating. A tout goes, frequents the roads where the senior counsel live, the senior counsel returns the brief giving very good advice that it is not an appealable case or a good case for appeal. (*An Honourable Member*: "Very rarely.") There comes the tout and says "Oh, you have been to the wrong man. That man is flooded with work; he is otherwise engaged; I will take you to a big barrister who has just come from a very high, very big, place and he has defeated the first counsel here three times. Come along." He takes him and gives him a case, and accumulation of such cases adds to the work of the profession to which my Honourable friend on the right (Sir Henry Stanyon) once belonged. I submit these cases, appellate cases, which are disposed of by dozens by the Judges every week are cases which owe their existence to the instrumentality of touts. My friend Mr. Yakub is perfectly right in saying that if a man wants to go to a senior counsel and the tout interposes on the way and says "That man is dead or has gone away, he has suffered a bereavement, he is engaged on the other side" this is cheating pure and simple; and acting upon that belief he takes you to another man who is hard up for briefs. He makes a contract with him or rather an agreement with him that he will bring a good client provided he gets a certain percentage.

Pandit Shamlal Nehru (Meerut Division: Non-Muhammadan Rural): Fifty per cent.

Sir Hari Singh Gour: My friend Pandit Shamlal Nehru, who ought to know something about it, says it is 50 per cent.

Pandit Shamlal Nehru: I am not a lawyer, Sir. (*An Honourable Member*: "Touts are not lawyers.")

Sir Hari Singh Gour: It is in the interest of the legal practitioner, it is in the interest of the purity of the administration of civil, criminal and revenue justice, it is in the interest of the clients themselves, that this evil practice must be put down with a heavy hand, and on that ground I would have been prepared to support the original sentence which was prescribed for the commission of these offences. Half a loaf is better than no bread and I, therefore, welcome this Bill and congratulate the Honourable the Mover for having brought it forward before this House.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, I also welcome this Bill. When it passes into law that fact should be welcome to Government: it should be more welcome to the litigating public: but it should be welcome, most of all, to the legal profession in India. As a member of the Bar Committee, I unfortunately had to accept as true evidence which went to show that touting is rampant all over India. It is practised in many varieties,—local variations—but the general principle and the general disease is the same. This Bill represents an effort by this Legislature to help the legal profession to put their house in order. A common practice by those who have not had to face the difficulties

of the legal profession in this country to say such things as we have heard said to-day, that the tout is a small offender compared with the legal practitioner who helps him in his nefarious work. But the problem for the Bar is a very big one. It is an evil which has grown up very largely, owing to the ignorance of many of the litigants who have to go to courts to get their work done; and its proportions have become so large now that legal practitioners require an amount of combination and co-operation very difficult indeed to obtain. Unless all the members of the Bar agree and sincerely carry out an agreement not to make room for touting, it is very difficult for any individual to avoid it. If two or three members of a Bar are unscrupulous enough to admit touts, such is the ignorance of the litigating public, that only those two or three members will be able to make a living at the Bar. Nevertheless, we are going to have Bar Councils who will take up this matter seriously. How much can be done may perhaps be understood if I mention a small effort made some 30 years ago. A Bar Association of a comparatively small place like Jubbulpore, to which I had the honour to belong, agreed that they would give the District Judge a list of well known touts. We did so. At that time I had the honour to be the President of that Association, and I received a threatening letter from a gentleman whom we had not till then included in the list, saying he had heard rumours that his name was going to be included, and if it was included he would run us in for defamation of character. We met and decided that this afforded us sufficient ground to include this gentleman's name in the list. It was expressly included and he was informed of the fact. He brought no charge of defamation, and his business as a tout disappeared. That is what combination can do. I hope that the members of the Bar all over India will combine in this way sincerely and honestly to put this evil down. Touting, after all, takes money out of the pockets of the practitioner. The senior practitioner can avoid it by insisting that anything that goes out of his fee shall go to a junior. The junior works: the tout does not work,—not the professional tout. That is one way of combating the evil. There are other ways also. But there must be combination. Until there is combination, not even this Act—well as it is drawn—will help.

Pandit Shamlal Nehru: What about the lawyers?

Colonel Sir Henry Stanyon: I am talking about the combination of lawyers. So far as the punishment is concerned, I not only agree with my learned friend Sir Hari Singh Gour in regretting that the punishment of imprisonment was reduced from six months to three, but I should have had something more, something after the style of expulsion to Burma on a second conviction. (Laughter.) Well, Sir, I welcome this Bill and I hope that legal practitioners throughout India will treat it as a genuine effort on the part of the Legislature to help them to get rid of something that is eating into the reputation and the financial position of the profession like a cancer.

Mr. C. Duraiswami Aiyangar: Sir, I also join in according a welcome to this Bill and I may also say that it pleases none more than myself that this provision about the touts which was filled with dust in the Statute Bureau has been now taken out of it and a fresh polish is given to it. Sir, I am not satisfied with the definition of tout that has been given in the Bill, and I would have been very glad if no definition was given to

[Mr. C. Duraiswami Aiyangar.]

it at all, because the word " tout " itself conveys all the notoriety and the bad meaning that is attached to it. But, having got the definition of the word " tout ", I wish very much that they had made it a little better than what it is, so that the real spirit of it may also be conveyed by the letter of it. If, Sir, only the letter of it is taken and not the spirit, I am afraid there is a class of refined touts who may also come under it. I call those persons refined touts who have in them combined both the legal practitioner's capacity as well as the tout capacity. There are vakils and lawyers in district courts who send up regularly cases to some gentlemen in the High Court. Suppose, for instance, a pleader practises in a district court and his son is a junior to a High Court Vakil. This district court vakil systematically sends his cases to the High Court Vakil who in his turn helps his son who is junior to him. I consider that, according to the letter of this law, this pleader is also a tout because he procures employment for the senior in consideration of the senior giving regular payments or junior engagements to his son who is attached to him. If you take the letter of the law he is certainly a tout, but if you take the spirit of it he is not. Therefore, I am of opinion that some clear definition of a tout must be made which should be something to the following effect: A " tout " is a person who makes touting his profession or means of living, in which case this detestable class of touts will come under it. I may also say that there is another class of refined touts and that is newspaper reporters. They go to the High Courts and they go on systematically reporting the cases in which a particular man whom they favour appears. You may always find under the " Legal Intelligence " in a newspaper that there was "an important question of law involved." And if you look into it, it will be nothing more than a question as to onus of proof when the defendant admitted execution and denied consideration. The judgment is also reported if it is in his favour. If not the judgment at the time the report goes to the press is said to be reserved and the result never appears after that. Some help might be given in that way and it is competent for the newspaper reporters to make a man and unmake a man wherever they may be.

Diwan Bahadur T. Rangachariar: Even in the Assembly!

Mr. C. Duraiswami Aiyangar: Yes, they might magnify an interjection or a sneeze and they might minimize the speech. It is all within the power of the reporters to make or to unmake a man. They can also make and unmake lawyers. They can also push them up and thus procure them further employment. Of course, I do not blame the reporters generally for this. But I do not want that this class, refined class as I call them, should come within the definition of your tout. Therefore you should make the definition clearer. A " tout " should be a man who makes it his means of livelihood to procure employment and thereby get money. That, I think, will serve the real purpose of the Act. I hope, therefore, Sir, that when the Honourable Mr. Tonkinson revises the definition of " tout ", he will kindly make it a little more definite or omit the definition altogether.

Mr. President: The question is that the Bill be passed.

The motion was adopted.

THE DELHI JOINT WATER BOARD BILL.

Mr. President: The Chair understands that the Honourable Sir Bhupendra Nath Mitra does not wish to move his motion.*

The Honourable Sir Bhupendra Nath Mitra: No, Sir.

THE PROMISSORY NOTES (STAMP) BILL.

The Honourable Sir Basil Blackett (Finance Member): Sir, I rise to move that the Bill to provide for the validation of certain promissory notes, be taken into consideration.

Sir, this is a very small Bill and I cannot hope—indeed, I may say, I do not hope—that it will need such an extensive discussion as the exciting subject we have just left. Before I deal with my motion, I should like to congratulate Sir Hari Singh Gour on the addition of a new word to the English language in "toutism." This Bill is explained very shortly in the Statement of Objects and Reasons and there is very little that I can add to it. When the duty on promissory notes was raised from the uniform rate of one anna to rates varying from one to four annas, the Government did not intend to allow postage stamps of a value of more than one anna to be used for the purpose of denoting the stamp duty. But as the people were using larger stamps, the Government at a later date—about a year and a quarter after the Bill came into force—issued a notification allowing the use of the higher value stamps. But it was not possible for the Government to issue a notification validating those notes which had been stamped by the higher value stamps in the interval. The only way in which to validate those notes therefore is to pass this amending Bill. To leave things alone would be a considerable hardship on those—not I think a great number—who might suffer by the absence of validity in their documents which, after all, was really due to an accidental cause.

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Sir Basil Blackett: I move that the Bill be passed.

The motion was adopted.

RESOLUTION *RE* RATIFICATION OF THE DRAFT CONVENTION REGARDING WORKMEN'S COMPENSATION FOR OCCUPATIONAL DISEASES.

The Honourable Sir Bhupendra Nath Mitra (Member for Industries and Labour): Sir, I beg to move:

"That this Assembly having considered the Draft Conventions and Recommendations adopted by the Seventh International Labour Conference recommends to the Governor General in Council that he should ratify the Draft Convention concerning workmen's compensation for occupational diseases."

Sir, my reasons for moving this Resolution are as follows. India is a signatory to the Treaty of Versailles. She is a member of the League of

*"That the Bill to provide for the maintenance of the works established to supply drinking water in bulk for the urban area of the city of Delhi, and for that purpose to constitute a Joint Water Board to undertake such maintenance, be taken into consideration."

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Nations and also of the International Labour Organisation. Under Article 405 of the Treaty each of the members has undertaken that it will bring the recommendations and draft conventions passed at any session of the International Labour Conference before the competent authority or authorities within whose competence the various matters lie, for the enactment of legislation or other action, within a period of one year or at most eighteen months from the closing of the session of the Conference at which the recommendations and draft conventions have been adopted. The competent body in this country in respect of matters which require legislation is the Central Legislature and I am accordingly obliged to take up the time of the House by moving this Resolution.

The International Labour Conference at its seventh session held at Geneva last year, adopted four recommendations and four draft conventions. We have carefully examined these draft conventions and recommendations and we have come to the conclusion that under present conditions in India it is necessary and practicable to take legislative action at present in regard to only one of the draft conventions. That draft convention relates to workmen's compensation for occupational diseases. Copies of all the draft conventions and recommendations are contained in the Bulletin and in this White Paper which have already been circulated to all the Members of this House, and I need not therefore take up the time of the House by reading out at length the particular draft convention to which I am referring. If the House accepts my Resolution, action will be taken to make the necessary amendments to the Workmen's Compensation Act of 1923. Section 3 (*2*) of that Act already provides for the payment of compensation for certain occupational diseases; and all that will be necessary is to bring the occupational diseases contemplated in that section in line with those mentioned in the schedule to article 2 of the draft convention. This will be done either by the amendment of section 3 (*2*) of our Act, or, where this is possible, by notification issued by the Governor General in Council under section 3 (*3*) thereof.

I desire at the same time to explain to the House the action which we propose to take in regard to the other three draft conventions and to the four recommendations adopted at Geneva last year. I shall take the draft conventions and recommendations in the order in which they appear in this White Paper and I shall deal first with the draft conventions.

The first of the draft conventions relates to the equality of treatment for national and foreign workers as regards workmen's compensation for accidents. The only definite obligations which this draft conventions imposes are: *firstly* to grant to persons belonging to other States which ratify the convention of the same terms in respect of compensation as are granted to Indian subjects; *secondly*, the institution of a system of workmen's compensation; and *thirdly*, the supply to the International Labour Office of any changes in the law and regulations in force relating to workmen's compensations. The first two obligations are already met by the terms of our Workmen's Compensation Act and there should be no difficulty in fulfilling the third obligation. We accordingly intend to ratify this draft convention but as no legislation is involved in this ratification we have not asked this House for a definite recommendation in respect of this draft convention.

The second of the draft conventions relates to night work in bakeries. The main operative article of this draft convention prohibits the baking of bread, pastry or other flour confectionery during night, such prohibition

applying to all persons—proprietors as well as workers—engaged in the making of such products, with the exception of members of the same household engaged in the making of such products for their own consumption. It will be obvious to the House that whatever the arguments may be for a measure of this kind in Europe it is entirely unsuited to Indian conditions. Quite apart from the fact that the majority of bakers in many provinces consider working by night preferable to working by day, baking is mainly carried on in India in small establishments which could not possibly be controlled without maintaining a large inspecting staff for the purpose.

Mr. Chaman Lall (West Punjab: Non-Muhammadan): What about biscuit factories?

The Honourable Sir Bhupendra Nath Mitra: They are already excluded from the terms of the convention. There is a clause in the convention . . . .

An Honourable Member: On a point of information, Sir. This convention does not apply to wholesale manufacturers of biscuits. There are other small factories . . . .

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): They are wholesale.

Pandit Shamlal Nehru (Meerut Division: Non-Muhammadan Rural): There are many retail.

The Honourable Sir Bhupendra Nath Mitra: May I proceed? This draft convention clearly lays down the classes of factories to which it applies. There is, as Honourable Members will observe, a clause in the convention which permits the competent authority in each country, after consultation with the employers' and workers' organisations concerned, to make such permanent exceptions to the operation of the convention as are necessary in the particular circumstances of the baking industry in tropical countries. In India the exception would have to become the rule and we have not at present any employers' and workers' organisations which we can consult. We therefore propose not to ratify this draft convention.

The third draft convention relates to workmen's compensation for accidents. Certain articles of this draft convention, if ratified, would involve an extensive revision of the scheme and scope of our Workmen's Compensation Act, which was enacted after considerable deliberation, in 1923, and which came into force only from the 1st July 1924. We consider it highly undesirable to embark upon any radical amendment of our law until we have gained fuller experience of its working and are in a position to judge how far it has achieved the end for which it was designed and whether there is any need for a further advance in the conditions prevailing in India. When such experience has been gained and we find it necessary and desirable to undertake an extensive revision of our law, the provisions of this draft convention will not be overlooked? But for the present we do not propose to ratify this particular draft convention.

The fourth of the draft conventions relates to workmen's compensation for occupational diseases, and I have already dealt with it.

I shall turn next to the recommendations.

The first recommendation is designed to facilitate the application of the draft convention relating to equality of treatment for national and foreign workers as regards workmen's compensation for accidents. As already

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stated, our workmen's compensation law makes no distinction between national and foreign workers and no action on our part is accordingly required in regard to this recommendation.

The second recommendation relates to a minimum scale of workmen's compensation. Its acceptance would involve a material amendment of our present law, and, for reasons which I have already given, we do not propose to accept it.

The third recommendation relates to jurisdiction in disputes in regard to workmen's compensation. Its second part is practically covered by our workmen's compensation rules. Its first part is designed to secure arbitration boards to deal with disputes relating to workmen's compensation, such boards including representatives of workmen to be appointed according to certain prescribed methods. Whatever may be the merits of this arrangement in countries where workmen are well educated and well organised, nothing could be gained by the adoption of the arrangement in India in present day conditions. If there is a growth of properly organised trade unions in this country, it may be possible to adopt the arrangement at some future date. For the present it is proposed not to accept this part of the recommendation.

The fourth recommendation relates to the adoption of a simple procedure for revising the list of diseases regarded as occupational under the law on the subject of workmen's compensation. This is already fully met by the provisions of section 3 (3) of our Workmen's Compensation Act, and no further action on our part is necessary.

To sum up, we propose to ratify two of the draft conventions and not to ratify two others. Two of the recommendations, as well as a part of a third recommendation, are already met by the existing law and regulations, and we do not propose to take any action at present in regard to the rest.

Sir, India has no cause to be reproached with backwardness in this matter of giving effect to the conventions of the International Labour Conference. As has been pointed out on several occasions by Members not only on this side of this House, but by those on the other side, India stands in the forefront of nations that have given effect to a large number of conventions and recommendations adopted at the sessions of the International Labour Conference, and I wish that some other nations would take a leaf out of India's book on this subject. (*An Honourable Member:* "Japan.")

Sir, I move.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, the procedure which the Honourable Member in charge of the Department of Industries and Labour has adopted in placing these conventions and recommendations before this Assembly is inconvenient for discussing the question which is before the House now. In one Resolution he tries to place before this House a large number of conventions and recommendations. Not only that, but by putting in that Resolution one convention to be adopted, he makes it difficult for the House to defeat that Resolution. It may be necessary for us to suggest to Government that other conventions also should be ratified . . . . .

Mr. Kasturbhai Lalbhai (Ahmedabad Millowners' Association: Indian Commerce): Move another Resolution.

Mr. N. M. Joshi: The Honourable Member for Ahmedabad says "Move another Resolution." But it is not my duty; the Peace Treaty requires that the Government should place these conventions and recommendations before the legislative authorities. It is therefore their duty to place these conventions and recommendations before the Assembly and not my duty to place them before the House. (*An Honourable Member*: " Nor of Mr. Kasturbhai Lalbhai. ") Sir, I therefore think the course which has been adopted is not suitable for the discussion of this subject. Moreover, Sir, I would like to know from the Honourable Member whether he proposes to bring forward another Resolution asking the permission of this House to ratify the convention on the equality of treatment for national and foreign workers as regards workmen's compensation for accidents. He mentioned that he is going to ratify that convention. I should like to know why he does not take the permission of this House for the ratification of that convention. Will he say why he does not do it? Sir, he is not disposed to give me a reply . . . . .

The Honourable Sir Bhupendra Nath Mitra: I am quite willing to give a reply. I have already explained the position in regard to that in moving my Resolution. The Peace Treaty requires that the draft conventions are to be placed before the authority or authorities within whose competence it lies to undertake legislation or to take other action. I have fully explained in my speech that in regard to that particular convention no legislative action is required, and therefore I have not asked this House to adopt a definite recommendation in regard to that particular draft convention. I am sorry that my Honourable friend was not listening when I was making my speech.

Mr. N. M. Joshi: I was listening to the Honourable Member, I think, quite attentively, but I wanted to get that point made quite clear by him. According to the Peace Treaty, section 405, the Government is bound to place before this Legislature all the recommendations and conventions.

Mr. A. G. Clow (Industries Department: Nominated Official): No. That is a misquotation.

Mr. N. M. Joshi: Let me finish. You will have a chance of speaking. This is what the relevant portion of the section says:

" Each of the members undertakes that it will within the period of one year at most from the closing of the session of the conference or if it is impossible owing to exceptional circumstances to do so, within the period of one year, then at the earliest practicable moment and in no case later than 18 months from the closing of the session of the conference bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action."

Now, Sir, it has become a question of the competence of this Legislature. The Honourable Member perhaps thinks that whenever no legislation is necessary it is the Government of India, the executive, that is the competent authority. Such an interpretation of section 405 of the Peace Treaty takes away the power of this House. This House has not only power in the matter of legislation but it has also power to tell Government what action they should take otherwise. Therefore when Government interpret that the competent authority to deal with those conventions and recommendations which do not require legislation is not this House but the executive

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Government of India, then certainly, as I say, the Government of India are trying to encroach upon the powers of the Legislative Assembly. Now, I am not speaking without authority. I want the Government of India to study the past proceedings of this Legislative Assembly and then they will find that at least at one time they did not hold the view which they are holding to-day. I can point out to them cases where Government had placed these conventions and recommendations before this House, when no legislative action was necessary and if they had done so before, I want to know the reason why they should not do this on this occasion.

The Honourable Sir Bhupendra Nath Mitra: Will the Honourable Member quote the particular draft convention he is referring to?

Mr. N. M. Joshi: I have not finished my speech yet. The Honourable Member wants to know which draft convention or recommendation which did not require legislation was placed before this Assembly. I refer him to the proceedings of 1921 and there he will find that the Government of India had placed these conventions and recommendations in separate Resolutions. By some Resolutions they recommended legislative action. In the convention as regards unemployment, there was no legislation necessary. The Government of India had ratified the convention as regards unemployment. So far as I know no legislation has been passed or was thought necessary for the ratification of that convention. The Resolution regarding that convention was placed before the Legislative Assembly in the year 1921 by the then Member for Industries and Labour, Sir Thomas Holland. This is the Resolution:

"This Assembly recommends to the Governor General in Council that he should ratify the draft convention concerning unemployment adopted by the general conference of the International Labour Organisation of the League of Nations convened at Washington on the 29th October, 1909."

The Resolution regarding this convention was passed by the Legislative Assembly and then Government took action. At that time Government did not suggest that any legislation was necessary for ratifying that convention and as a matter of fact no legislation for that ratification has so far been passed by the Government of India and still they placed that convention before this House for its consideration. Now, Sir, I want to know why the Government of India should not have followed that course as regards the convention regarding the equality of treatment for national and foreign workers as regards workmen's compensation for accidents. I have been a member of this House for some years now. I know what the spirit of the Government of India in 1921 was. I know the spirit of the Government of India has changed now. A new angle of vision has come into existence. At that time they thought that the Legislative Assembly should be consulted on everything. To-day they are trying to avoid consulting this Assembly as far as possible. Otherwise why should they place that convention regarding unemployment before this House and not this convention regarding the equality of treatment for national and foreign workers as regards workmen's compensation for accidents? Then, Sir, whenever Government did not want to take action they also put forward Resolutions before this House saying that no action was necessary. What do they do now. In this Resolution they have jumbled up everything and they want to take the sense of the House in one Resolution. The Resolution is that a particular draft convention should be

ratified but what about the non-ratification? Do you give a chance to this Assembly to say whether the other conventions and recommendations should be ratified or should not be ratified. By this Resolution you certainly do not give us that chance. I am in favour of ratifying this convention but I am also in favour of ratifying some others. How can I vote on this Resolution as it stands before this House? If I vote against it, I am voting against the thing for which I want to vote. You make it impossible for me now not to vote for it and to suggest that the other conventions and recommendations should also be adopted. I am therefore saying, Sir, that the Government of India have not taken the proper method or at least have not followed the proper course of procedure in placing these conventions and recommendations before this House. Now, Sir, what am I to understand the meaning of this Resolution? This Resolution says:

"That this Assembly having considered the Draft Conventions and recommendations adopted by the Seventh International Labour Conference recommends to the Governor General in Council that he should ratify the Draft Convention concerning workmen's compensation for occupational diseases."

May I ask, Sir, is it the implication of this Resolution that the other draft conventions and recommendations should not be ratified? The Honourable Member nods his head. He says that the implication of this Resolution is that the other conventions and recommendations should not be ratified.

The Honourable Sir Bhupendra Nath Mitra: I do not want to interrupt the Honourable Member at the present moment.

Mr. N. M. Joshi: The Honourable Member ought to make it clear whether the other conventions and recommendations should not be ratified. Is that the implication? The Honourable Member may quote his speech and say that they will take action in a particular manner. You ought to have put that in your Resolution. The Resolution does not say anything. The Resolution does not show whether you propose to take any action as regards the other conventions and recommendations or not. I think the Resolution is faulty in this respect and it is not convenient to this House to express its opinion on this question in a convenient manner. Now, if the Government of India's view is that the other conventions and recommendations should not be ratified they could have at least used the word "only" after "ratify". If they had said that, I could have understood their attitude, as it would imply that the other conventions and recommendations should not be ratified. If this Resolution is passed as it is, it is their clear duty to place the other conventions and recommendations before this House for its consideration.

Then, Sir, as regards his attitude towards these other conventions and recommendations, unfortunately I must say a few words . . .

Mr. President: The Honourable Member has only two minutes now, and he will adjust his remarks accordingly.

Mr. N. M. Joshi: Sir, it is very difficult to perform that feat. That is exactly what I was pointing out. There are several conventions and recommendations to be dealt with and you only allow me 15 minutes to finish my speech and to discuss all these conventions and recommendations within a speech of 15 minutes. How am I to do it? (*An Honourable Member*: "One minute is over.") One minute may be over, nor does it matter, because I know that I cannot deal with these conventions in two minutes. It is a hopeless matter and I therefore think that

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I need not go into these conventions and recommendations, and I would only protest that the Government of India in dealing with these conventions have not given a fair chance to this House to discuss this matter.

Sir P. S. Sivaswamy Aiyer (Madras: Nominated Non-Official): Sir, I should like to ask the Honourable Member who has moved the Resolution for some explanation on points upon which I entertain some doubts. The Resolution itself is somewhat curious in form, as has been pointed out, and the substantive part of the Resolution desires only a recommendation for the ratification of the draft convention regarding compensation for occupational diseases. It recites that the Assembly has considered the draft conventions and recommendations. Why the Assembly should be invited to consider all the draft recommendations and conventions when its consideration is not to lead to anything either positive or negative I do not quite see. Then again, Sir, the Honourable Member was kind enough to inform us that the Government propose to ratify the first convention regarding equality of treatment. There is one point upon which I am far from clear and it is this. According to Article 1 of the first draft convention, each member of the International Labour Organisation which ratifies the convention undertakes to grant to the nationals of any other members which shall have ratified the convention and who suffer personal injury due to industrial accidents the same treatment in respect of workmen's compensation as it grants to its own nationals. This equality of treatment has to be given to foreign workers and their dependants. I do not know if as the result of the ratification of this draft convention we should not be bound to make compensation to a white workman of South Africa. Shall we or shall we not be bound to make compensation to workmen coming from countries which exclude Asiatics or which subject Asiatics to serious restrictions? Of course, Sir, there are two maxims of conduct. Do unto others as you wish to be done by, and do unto others as they do unto you. For my own part I may be inclined to think that the first maxim is the higher maxim and ought to be followed; but it is quite conceivable that some of my friends may prefer to follow the latter maxim, "do unto others as they do unto you". Now if a workman is a national of a country which subjects Asiatics to restrictions have you made up your mind that that workman should receive the same treatment as a workman who is your own national. It may be said that if you employ a workman who is a foreigner you are bound in justice to treat him as well as any workman who is a national of yours. On the other hand in view of the small facilities for equality of treatment or reciprocity, or retaliation, by whatever name you may call it, that we have, whether it is desirable to extend the workers of foreign nationalities the same rights that we accord to our own nationals is a matter for some consideration. The next point that I wish to elicit information about is this. Supposing we do not pass this draft convention No. 4, what will be the result? Shall we nevertheless be bound by it or not? My difficulty arises out of one of the articles of this draft convention No. 4, article 7, which is not printed *in extenso* (see page 9) but which is said to be identical with article 9 of the 1st convention. Article 9 of the 1st convention says:

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"Each member of the International Labour Organization which ratifies this convention engages to apply to its colonies, *possessions* and protectorates in accordance with the provision of article 4 (2) . . . . ."

Suppose Britain ratifies the convention and we do not, will British India nevertheless be bound by that ratification owing to the fact that she is a possession? That is a point upon which some light would be welcome. In regard to the question of the other conventions also I think there is a considerable amount of force in what my Honourable friend Mr. Joshi has said, and it seems desirable that they should all be placed before the Assembly for an expression of its opinion, instead of merely inviting it to express an opinion upon this question, unless it is contended that the form of the Resolution means and implies that this draft convention No. 4 should alone be ratified and that the others should not be. I think it desirable that the opinion of the Assembly should be invited as to all the conventions.

Mr. Chaman Lall: Sir, I rise to make a suggestion to the Honourable Member opposite. My suggestion is that he should withdraw this Resolution and bring it up on another day in a more comprehensive form. My reason for that proposition is this. Here in this Resolution the Honourable Member has stated that this Assembly having considered the draft conventions and recommendations adopted by the Seventh International Labour Conference does so and so. Now, Sir, I do not think that that is a correct statement of fact. This Assembly has not considered the draft conventions and recommendations.

Mr. President: Order, order. The Assembly is asked to consider the whole report. Government have come to the conclusion that this one convention only should be ratified. It is open to any Member of the Assembly having considered this report to move any amendment recommending that other draft conventions should also be adopted.

Mr. Chaman Lall: May I inquire on what particular date and at what particular hour this Assembly did consider these draft conventions?

Mr. President: The Assembly is now asked to consider the report and the ratification of this particular convention.

Mr. Chaman Lall: May I ask if the report has been placed formally before this House for consideration?

Mr. President: Order, order. Every Member of this House is expected to have read the report. The Chair rules that the whole report is open to discussion under this Resolution. The Government having considered it have come to the conclusion that only one convention should be ratified. If the Assembly says, "No, we suggest that other conventions should also be adopted," it is open to the Assembly to carry such an amendment, but no Honourable Member has taken the trouble to give notice of any such amendment.

Mr. Chaman Lall: I quite see that point, Sir, about other amendments being admitted. But that is not the point I want to raise. The point I want to raise is this. Since it is stated that this motion is brought formally before this House and the only motion is merely this statement that we are supposed to have considered all the draft recommendations and conventions. I submit again most humbly that all that we are being asked to consider formally is this one draft convention plus merely the statement made by the Honourable Member that we have considered all the draft conventions and all the draft recommendations formally. I submit again, Sir, that is one of the reasons why I wish to ask the Honourable Member to withdraw this Resolution and bring it up on another day. But I have another reason and the other reason is this. As pointed out by my friend Mr. Joshi, this is a question of constitutional privilege that we are fighting

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over, and the question of privilege is this, that in the Peace Treaty, article 105, in paragraph 5, it is clearly stated that every member undertakes to place these draft recommendations and conventions before the legislature of each national Government. Now, Sir, the Honourable Member must follow the practice that has been adopted by the Government of India in previous years, and in doing so he must place all these draft conventions and recommendations before us, either to take action on them or not to take action on them. All that he is doing at the present moment is that he is asking us to take action upon one particular draft convention: he is not asking us not to take action upon the others to which he has referred in his speech. Here, Sir, you will find a precedent for this particular suggestion that I am making. In the year 1922 there was one convention in regard to which the Honourable Sir Charles Innes asked permission to move:

> "That this Assembly do recommend to the Governor General in Council that no action be taken on the recommendation concerning the limitation on hours of work, etc."

Now, Sir, time and again this procedure has been adopted by the Government of India, and we are now being asked to give up that privilege which we have of discussing on the floor of the House the merits and demerits of a particular convention or recommendation. And I submit, Sir, that this is a very important matter of privilege, and I cannot understand why the Honourable Member should not have followed the precedent laid down by his predecessors in this behalf. This is a matter of very great importance to us. The Honourable Member has dismissed one of the Conventions by saying that the question of workmen's compensation is not going to be raised because we have not yet tried fully the Workmen's Compensation Act in this country. To some of us that is of very grave importance. We say that the International Labour Office, which has the privilege of listening to the opinions of the Government of India as it has the privilege of listening to the opinions of all Governments, has come to the conclusion, after considering the laws on the subject prevailing in all countries of the world, that this draft convention is the right model to be adopted by all civilized Governments. Sir, it is not a question of your having tried a particular Act. Here is a recommendation coming from the International Labour Office asking you to model your laws on a particular basis, and you are rejecting it merely on the assumption that you have not yet tried the particular Act that you have in this country. Sir, it is for that particular reason that I would again ask the Honourable Member to withdraw this Resolution and to move on another day a more comprehensive Resolution with the idea of asking this Assembly to vote upon the acceptance or the rejection of any particular recommendation or convention.

Diwan Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): I see the drift of your ruling, Sir, but it seems to me, having regard to the speech made by the Honourable Member in charge, that we can not read the first clause, "That this Assembly having considered the draft Conventions, etc.", as if the Government have approved of them or not approved of them. The Honourable Member's speech indicates that he has approved of some and that he has disapproved of the rest. We do not know on reading the Resolution what the Government's attitude in this matter is—what they recommend, and what they do not recommend, so that the Government Resolution, I submit, is indefinite and vague. We must know, I submit, before we table our amendments what it is they

approve, and what it is they do not approve; so I beg to submit that there is a great deal of force in the objection as regards the form of the Resolution.

Mr. President: What is it that the Honourable Member wants to know from the Chair?

Diwan Bahadur T. Rangachariar: The point I wish to know, Sir, is this, with reference to your ruling that we could send in amendments, that, as the Resolution runs, it was not open to us to do so, as we did not know whether the Government approved of the other draft recommendations and conventions, so that if the Honourable Member had tried to send in an amendment, it would have been ruled out of order . . . .

Mr. President: The Chair has already ruled that the whole report is open to discussion under the Resolution and therefore any amendments arising out of that report are admissible. But no Member has cared to give notice of any such amendment. The Chair is prepared to consider the admissibility of any such amendment even without due notice, but Members do not seem to have studied the report.

Mr. Chaman Lall: The point that we are raising is merely this, Sir, that it is the privilege of this House to ask the Government to place these recommendations before us when they do not intend to take action upon them.

Mr. President: That is not a point for the Chair.

Mr. Devaki Prasad Sinha (Chota Nagpur Division: Non-Muhammadan): Sir, with your permission may I move that the consideration of this Resolution be adjourned? The reason which I have for moving the adjournment of the consideration of this Resolution is contained in the very speech with which my Honourable friend, Sir Bhupendra Nath Mitra, has introduced his Resolution. The terms of the Resolution as it stands on the paper do not show what recommendations of the Seventh International Labour Conference the Government have accepted and what they do not propose to ratify. It is for the first time that we learn from the speech of the Honourable Member in charge of Labour that the Government have decided to give effect only to one of the recommendations of this Conference and propose to throw into the waste-paper basket the other recommendations of this valuable Conference. Sir, it is necessary that, having had an inkling of the desire of the Government and of the steps that they propose to take upon the report of this Conference, we, the Members of this Assembly, should also make our attitude quite clear. For this reason, Sir, I submit that the House will agree with me that the report of this Conference should be very carefully considered and the House should have an opportunity of fully expressing its own views on this question regardless of what action the Government propose to take on it. For this reason, Sir, I move that the debate on this Resolution be adjourned, and I hope the House will accept it.

The Honourable Sir Bhupendra Nath Mitra: Sir, the procedure which we have followed on this occasion in placing before this House all these draft conventions and recommendations with the specific Resolution that the House should ask the Government to ratify a certain convention follows what I understand to be the practice of the House of Commons in this respect. It was some days ago that a bulletin which included all the draft conventions and recommendations was circulated to Members. Further, as soon as this Resolution came on the agenda paper, another White Paper was circulated. Therefore, my Honourable friends on the other

[Sir Bhupendra Nath Mitra.]

side of the House had the fullest opportunity given to them for studying the subject, as well as the time for moving amendments to my Resolution. Apparently, however, in their anxiety to deal with other more important work, they have over-looked this particular question (*Cries of* "No, no.") That being so, so far as the Government are concerned, we are quite willing to adjourn the debate to some other day. But, then, as I have said, the Resolution itself is perfectly complete. In fact I believe the Chair has already ruled that all these draft conventions and recommendations *have* been placed before the House, and that the action which the Government desires this House to take in regard to these draft conventions and recommendations has also been submitted to the House in the form of this Resolution. All the relevant papers have been before the Members for some time; and as the Chair said a short while ago it was open to any Member of this House to study the papers and to bring in any amendments which he wanted to move enlarging the scope of this Resolution. Anyhow that has not been done, and I understand that there is an anxiety among a large number of Members that they should now proceed to study the papers and bring forward amendments which they may consider to be necessary. Government have no objection to giving more time for this purpose. If time is available later on, the Resolution could be taken up again.

Mr. President: The question is that this debate be now adjourned.

The motion was adopted.

THE INDIAN INCOME-TAX (AMENDMENT) BILL.

Mr. W. S. J. Willson (Associated Chambers of Commerce: Nominated Non-Official): Sir, I beg to move that the Select Committee to which the Bill to amend the Indian Income-tax Act was referred do consist of the following persons, namely, the Honourable Sir Basil Blackett, Mr. Tonkinson, Diwan Bahadur T. Rangachariar, Diwan Bahadur Ramachandra Rao, Mr. K. C. Neogy, Mr. Jamnadas M. Mehta, Mr. Shanmukham Chetty, Mr. H. G. Cocke and myself, with instructions to report by the 8th March, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five.

Mr. Chaman Lall (West Punjab: Non-Muhammadan): I propose that Mr. Devaki Prasad Sinha's name be also added.

Mr. President: The question is that Mr. Devaki Prasad Sinha's name be added to the Committee.

The motion was adopted.

Mr. President: The question is:

"That the Select Committee to which the Bill to amend the Indian Income-tax Act was referred do consist of the following persons, namely, the Honourable Sir Basil Blackett, Mr. Tonkinson, Diwan Bahadur T. Rangachariar, Diwan Bahadur Ramachandra Rao, Mr. K. C. Neogy, Mr. Jamnadas Mehta, Mr. Shanmukham Chetty, Mr. H. G. Cocke, Mr. Devaki Prasad Sinha, and the Mover, with instructions to report by the 8th March, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Friday, the 19th February, 1926.