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LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

VOLUME VIII

(17th August to 2nd September 1926)

FIFTH SESSION

OF THE

SECOND LEGISLATIVE ASSEMBLY,
1926



Legislative Assembly.

The President :

THE HONOURABLE MR. V. J. PATEL.

Deputy President :

DIWAN BAHADUR T. RANGACHARIAR, M.L.A.

Panel of Chairmen :

MR. K. C. NEOGY, M.L.A.

SIR DARCY LINDSAY, M.L.A.

LALA LAJPAT RAI, M.L.A., AND

MR. ABDUL HAYE, M.L.A.

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MR. L. GRAHAM, C.I.E., M.L.A.

Assistants of the Secretary :

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MR. S. C. GUPTA, BAR-AT-LAW.

MR. K. G. HARPER, I.C.S.

Marshal :

CAPTAIN SURAJ SINGH, BAHADUR, I.O.M.

Committee on Public Petitions :

DIWAN BAHADUR T. RANGACHARIAR, M.L.A., *Chairman.*

DIWAN BAHADUR M. RAMACHANDRA RAO, M.L.A.

COLONEL J. D. CRAWFORD, M.L.A.

MR. JAMNADAS M. MEHTA, M.L.A.

MR. ABDUL HAYE, M.L.A.

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LEGISLATIVE ASSEMBLY.

Wednesday, 25th August, 1926.

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

BILLS PASSED BY THE COUNCIL OF STATE LAID ON THE TABLE.

Secretary of the Assembly : Sir, in accordance with Rule 25 of the Indian Legislative Rules, I lay on the table the following Bills which were passed by the Council of State at its meeting of the 24th August, 1926.

They are :

1. A Bill further to amend the Indian Evidence Act, 1872, for a certain purpose.
2. A Bill further to amend the Administrator General's Act, 1913.
3. A Bill further to amend the Indian Companies Act, 1913, for a certain purpose.
4. A Bill to supplement the Sind Courts Act, 1926.
5. A Bill further to amend the Cantonments Act, 1924, for certain purposes.
6. A Bill further to amend the Indian Limitation Act, 1908, for certain purposes.

THE CODE OF CIVIL PROCEDURE (SECOND AMENDMENT) BILL.

The Honourable Sir Alexander Muddiman (Home Member) : Sir, I beg to move " that the Bill further to amend the Code of Civil Procedure, 1908, for a certain purpose, be taken into consideration ".

This, as I explained when I was introducing the Bill, deals with the question of security for costs on second appeals. It lays down that where a second appeal is preferred against concurrent decision, the Court shall, save in circumstances which are specified in the proviso, require security.

I regard this Bill as of considerable importance, but I am unable to say that it is a Bill of immediate urgency. It is desirable no doubt that it should be dealt with as soon as possible. It is based on a recommendation of the Civil Justice Committee. It has been round for opinion— or rather it would be more correct to say that the principle of the Bill has been round for opinion. The actual Bill with the safeguards as now proposed by me has not been considered by the authorities we usually consult on these matters.

[Sir Alexander Muddiman.]

I see no one is apparently objecting to the principle of the Bill, though, apparently, there is a desire that further consultation should take place before it is enacted. Well, Sir, I am not prepared, if there is on the part of the House generally a desire that this Bill should be circulated, to oppose that measure. I should like to hear what the Honourable Member, in whose name the amendment stands, has to say in support of his proposal; but as at present advised I do not propose to oppose it. That being the case I do not desire to take up the time of the House longer on a matter which, perhaps, might be left for future consideration, and I simply move my motion.

Sir Hari Singh Gour (Central Provinces Hindi Divisions : Non-Muhammadian) : Sir, I beg to move :

“ That the Bill be circulated for the purpose of eliciting opinions thereon.”

My reasons for my motion are as follows. Honourable Members will find that this Bill is the outcome of a recommendation of the Civil Justice Committee contained in Chapter 26, pages 361 and 362 of their Report. The Honourable authors of this Report were not quite sure of the ground on which they recommended the curtailment of the right of second appeal. I will read to you what they say at page 361 :

“ The right of second appeal as at present exists gives to a rich litigant a chance of firing out the poor litigant, even although there be little in his appeal. No procedure that can be devised will affect the rich and poor equally in the end.”

So while having enunciated a difficulty as to how to equalize justice between the rich and the poor, they confess that any procedure laid down will not equalize justice, which is their aim to do.

Now turning to page 362 of their Report, I find the following passage occurring there. After stating the case, *pro and con* they frankly admit that there is the risk of injustice being done to the poor litigant who is unable to furnish security and who may have a very good case, as I shall presently point out, not covered by the Bill which is before this House. They go on to say :

“ We think that a very reasonable rule would be as follows, to require the appellant to deposit the amount of any costs awarded against him in the lower courts, *plus* the amount at which the respondent, if successful, could tax his pleader's fee under the High Court rules.”

Now the narrow rule that they advocated was this, that the schedule cost of the successful litigant before the first court, *plus* the schedule cost which would be awarded to him if the appeal is successful, should be alone the subject of security by the appellant.

Now, if you turn to the Bill you find that it goes very much further. I am reading from the Bill itself, clause 2. Honourable Members will find that the Bill provides that :

“ Where the decree from which a second appeal is preferred affirms the decision of the Court by which the original decree was passed, the High Court shall, unless it dismisses the appeal under the procedure prescribed in rule 11 of Order XLI,— it means summary dismissal—

“ require the appellant to deposit, in cash or Government securities, security to such amount as the Court thinks fit for the costs of the appeal and shall not call upon the respondent to appear and answer the appeal until such security has been furnished.”

Now, Sir, I beg to submit that this does not carry out the recommendation of the Civil Justice Committee, and even if it were the case, I should

still object to the enactment of this piece of legislation on various grounds which I shall now give to the House. Honourable Members.....

The Honourable Sir Alexander Muddiman : If my Honourable friend argues the case against the Bill I will withdraw my offer.

Sir Hari Singh Gour : I am not arguing the case against the Bill, so that the Honourable Home Member need not be unnecessarily anxious.

Mr. President : The Honourable Member knows that the Honourable the Home Member has made an offer that he would not oppose the motion for circulation of the Bill, if there is a general desire in the House in that behalf. Under the circumstances I do not think it is proper for the Honourable Member to go into the details of the Bill at this stage.

Sir Hari Singh Gour : I simply wanted to give the country a lead, so that they may be able to see what are the good points and what are the objectionable points of this Bill, and I submit that it is the desire of this House that this House should express its views and go to the country and say, "These are the views *pro and con*. What do you say?" I submit, if we do so, we shall be fortified by the opinions received from the country on the merits and demerits of the Bill. It is with that object in view that I am setting out all the points in favour of it and a great deal more that is against it. I do not wish at this stage to prejudice the issue, but I only wish to say that, so far as we on this side of the House are concerned, we wish to set out what to us seem objectionable features in the Bill, and it is on that that we want the public to give their opinion—Are they in favour of the enactment of this Bill? If they are, then I submit the wind will have been taken out of our sails and we shall say that all the objections that we took to this Bill have been considered by the public, and the Bill has received the blessing of the public after consideration of those objections, and we have nothing more to say.....

Mr. President : Order, order, the Honourable Member is technically in order, but I must remind him that he runs the risk of the offer being withdrawn.

Sir Hari Singh Gour : I do not think, Sir, the Honourable the Home Member will be so unchivalrous as to withdraw the offer. The objections I am raising I am raising in the interests of justice. I am not doing it in the interests of any class at all, and if the Honourable Member still thinks that I should not set out the objections which I have to the Bill, then I certainly will accept his offer and stand muzzled here; but if, on the other hand, the Honourable Member is himself anxious to hear what can be said against the Bill, then Sir I shall proceed.

Mr. President : The Honourable the Home Member has already said that he is not very anxious to hear the Honourable Member. (Laughter). Does the Honourable Member wish to continue?

Sir Hari Singh Gour : I would not continue if the Honourable Member withdraws his offer, but if the Honourable Member's offer holds good, I should like to continue. I shall not be long and shall state the objections very shortly.

The Honourable Sir Alexander Muddiman : Sir, I would only like to say that nothing is further from my thought than to muzzle my Honourable friend from Nagpur, but I do think it is a little wasteful of the time of the House to discuss at length a Bill which must come up after circulation and must then go to Select Committee where ample opportunity will be given to the Honourable Member to state his views. I thought he would take the line that circulation was desirable because special consultation had not taken place ; that is the only justification I can consider for accepting his motion.

Sir Hari Singh Gour : Sir, I am glad of the Honourable Member's assurance that he does not exactly muzzle me, (laughter) but he wants me to be brief, and I shall carry out that condition by being as brief as possible. There are four things, Sir, in this Bill. The first is that if the two subordinate courts decide concurrently upon questions of fact and law, then the unsuccessful litigant can not file an appeal, subject to the proviso to which I shall refer presently, unless he deposits such costs as the court considers fit. Now this Bill, Sir, contains materially the right of second appeal. Under section 100 a second appeal would lie, not only if the decision of the court below is contrary to law or some usage having the force of law, but also, as provided in clauses (b) and (c) of section 100, which have been entirely ignored in the Bill under reference, namely, that a second appeal lies where the decision has failed to determine some material issue of law or usage having the force of law, or omission to decide that question, or where there is a substantial error or defect in the procedure. Clause (c) of this Bill deals only with clause (a) in the proviso, but entirely overlooks clauses (b) and (c), and what is the attitude of the Government so far as clauses (b) and (c) of section 100 are concerned ? That is my first point.

My second point is that in a very large number of cases, as the Honourable the Home Member must be aware, property of over Rs. 10,000 may be indirectly involved : cases of easements, light and air and water and so forth. Now the Honourable Member is aware that all such cases are directly appealable to the Privy Council because they indirectly involve questions relating to property over Rs. 10,000 in value. Now look at the incongruity that this Bill introduces. The High Court is debarred from hearing those appeals if they come under section 100, clauses (b) and (c), but there is a right of appeal to the Privy Council. In other words, though you wish to minimise costs, the chances are that, in some cases to which I have adverted, the costs will be multiplied. Then, Sir, what about the poor man ? The appellants may be a poor man who may have suffered injustice ; he may have no money to pay for security. I beg to ask what provision has been made in the case of a poor appellant ? The Civil Justice Committee referred to that question, but they did not offer any practical solution of it.

My last point is, Sir, I agree with the opinion of the Calcutta Bar that the subordinate judiciary in this country has not yet come up to that degree of judicial perfection as to take away from the High Court the salutary check which exists of revising the judgments of the lower court when they have gone wrong on questions of law. Need I remind the Honourable the Home Member what percentage of cases that go up from the High Courts of India to the Privy Council are upset by that august tribunal on the ground that the High Courts have gone wrong on questions

of law. And may I further remind the Honourable the Home Member how often Their Lordships of the Privy Council have themselves gone wrong ? And is it not a fact that this Legislature has often to intervene to declare and settle the law which has been unwittingly unsettled by Their Lordships of the Privy Council ? Now Sir, law is a very complex problem ; it is a very difficult, it is a life-long, study. Many of us who have devoted all our lives to the service of the law still feel diffident on some of the most elementary principles and upon the most simple questions that are referred to us for solution. I ask the Honourable the Home Member, does he not think that the check which the High Court exercises, and exercises rightly, over the decisions of the lower courts should be continued ? Now Sir these are my objections against the Bill, and now I shall proceed to show that the Bill is not wholly devoid of merit. (Laughter.)

The Rev. Dr. E. M. Macphail (Madras : European) : May I rise to a point of order ? I did not want to interrupt Sir Hari Singh Gour, but I should like a definite ruling whether he is in order, on a motion of this kind, to discuss the Bill itself, to discuss the advantages and disadvantages of the Bill. For example, the other day on the motion that my friend the Honourable Mr. Rangachariar moved, would it have been lawful for us and in order to discuss the merits of the Currency Bill ?

Mr. President : I do not think Sir Hari Singh Gour is out of order. He is perfectly entitled to state what the main objections to the Bill are in order that, when opinions are called for, those objections might be considered by those who are consulted.

Sir Hari Singh Gour : Thank you, Sir. I said, Sir, I do not say that this Bill is wholly devoid of merit. (Laughter.) By one stroke of the pen the bulk of litigation in India would be set at rest. I have not the slightest doubt that the Government and the Civil Justice Committee wanted to curtail litigation, but overlooked the fact that it was curtailment of litigation at the sacrifice of justice ; and I submit that if we place on one side of the scale the advantages which will accrue from the confidence the public have in the High Courts of India as the ultimate court of appeal and on the other the oppression by the rich man and the danger of litigiousness on the part of persons so disposed,—I ask the Honourable the Home Member on which side the scale is heavier. We are all anxious to see that there is no undue delay in the disposal of cases but the difficulty is that there is no human institution yet given that would satisfactorily solve that great problem which we have in view. I have no doubt that with the improvement of the subordinate judiciary and the increase of confidence on the part of the litigating public in the judgments of the lower courts, litigation would be reduced and minimised, but that time is not yet. Upon these grounds I feel confident that, when this Bill goes to the country, the Bar, the Bench and the public will look to both sides of the question and give us or our successors a lead as to whether they are in favour of the Bill or against it. Sir, I move.

Diwan Bahadur T. Rangachariar (Madras City : Non-Muhammadan Urban) : Sir, knowing as I do the temper of the House to get through this Bill as quickly as possible I shall be very brief in the comments I am about to make on this Bill. I consider this Bill to be both un-

[Diwan Bahadur T. Rangachariar.]

necessary and unjust. It is unnecessary because there is already provision in the Code which enables the High Court to call for security for costs in suitable cases, and this is sufficient to secure to a successful litigant the payment of costs which he has incurred in either prosecuting or defending a case. If the respondent has not secured fulfilment of the decree of costs awarded to him in a lower court then he is entitled to apply to the High Court, and on application being made the High Court has power to call for security for costs.

Mr. President : Order, order. The Honourable Member is opposing the motion for consideration, while the debate is now confined to the motion for circulation.

Diwan Bahadur T. Rangachariar : I am supporting the motion for circulation, Sir, with these observations—with your permission, I mean. As I said, it is absolutely futile to enact this provision now which we are asked to enact. Second appeals lie only on particular points, on particular grounds. They can only be preferred if the decree of the lower court is contrary to law or there has been some error of procedure which materially affects the decision of the case. Second appeals are not ordinarily accepted as a matter of course. Generally a Judge of the High Court takes it up as soon as an appeal is filed and he examines it and sees if there is a *prima facie* case for admission. That is the practice in my Court. Second appeals as soon as they are filed are circulated to the various Judges of the Court and each of them takes up a number of cases and they examine each case in order to see whether there is a *prima facie* case for admission or not. If he thinks there is no case, then a bench of two Judges hears the case. The appellant argues the case before it and, if the bench is satisfied that there is a *prima facie* case for admission, then only is the appeal admitted and notice goes to the respondent. If the High Court considers there are grounds for a second appeal, compulsorily to call upon the respondent to deposit security for costs seems to me unjust to the poor man. Justice after all should not be denied to poor people. It is the poor people who will suffer by this compulsory provision being imposed on High Courts to call upon them to give security for costs in second appeals. Take the case of the Government. If the Government have to file such an appeal they will be called upon to give security for costs although they satisfy the bench that it is a case which requires examination by the High Court. I mean it seems to me absurd on the face of it when the High Court Judges are satisfied that a *prima facie* case for admission of the appeal exists for them to demand security, whatever may be the nature of the case and whoever the party may be. That is an absurd piece of legislation which we cannot sanction.

Mr. President : Order, order. The Honourable Member is making out a case for the rejection of the Bill and not for circulation.

Diwan Bahadur T. Rangachariar : It is quite true, Sir, that if it were left to myself I should oppose it and reject it at once, but in view of my Honourable friend's desire that it should be circulated I think these are matters which have to be considered both by the Government and the public in offering their opinion in the final stages of the Bill. I do support the motion for circulation simply because Local Governments and High Courts may have a further opportunity of considering whether

really it is going to be an effective measure for preventing litigation. After all the Civil Justice Committee were appointed upon that idea. By all means prevent frivolous litigation but not just litigation. The parties, whether rich or poor, are entitled to justice. Let there be no delay in cases where you have to award justice. But this measure is in the nature of a punishment. That is the principle underlying the Bill. Should you impose this punishment when the other provisions of the Code already require the Court to be careful in admitting these appeals? That is the point I wish to emphasise, and it appears to me that this Bill is unnecessary and uncalled for.

Colonel J. D. Crawford (Bengal : European) : Sir, I rise to speak on this motion. I have no objection to the Bill being circulated for opinion, but we too would like to give the country a lead in the matter as my Honourable friends Sir Hari Singh Gour and Diwan Bahadur Rangachariar have just been trying to do. Take a very simple case which occurs pretty often in so far as my own community is concerned. We are taken to court by a servant on a proposed non-payment of his wages. Many of these cases are very often fictitious. I have had several before me recently in which it does not pay the officer or employer to go on and defend the case in court simply because he has to pay costs which are far more than paying the servant a month's wages. And when you come to business there are a number of business firms which are constantly being run into court by persons who are totally unable to pay the costs of the case if they fail. This is very frequently the case and a firm has to let them go by rather than defend such cases. There does appear to me then to be a case in which some action is necessary to protect defendants against fictitious cases raised by appellants.

Mr. K. Ahmed : There is no second appeal there, Sir.

The Honourable Sir Alexander Muddiman : Sir, I trust the House will believe I am not naturally pugnacious, but if anything could convince me of the necessity of going on with this Bill, it is the speech of my Honourable friend Sir Hari Singh Gour. I must say a word or two on this Bill now since things have been said which left uncontradicted might possibly lead the country wrong. I had no wish to start a debate but before I sit down I must say a word dealing with one or two points that have been raised.

In the first place as regards what Colonel Crawford said, I might point out that this Bill only deals with security for costs in the case of a second appeal. It does not deal with original suits at all, and I am afraid his community will not be helped much if that is their sole grievance.

But the real point is this. Of course absolute correctness of judicial decision is, I gather, almost hopeless unless one particular Member of this Assembly is the final court of appeal. There must be, humanly speaking, difficulties in regard to decisions, and that is why appellate courts exist. But there is also the fact that it is in the interests of the State that there should be an end to quarrels and that you can not prolong appeals beyond a certain measure, and it is the business of the Legislature and the Government and the people at large to decide when that comes. Whether this Bill, as has been said, unduly restricts appeals

[Sir Alexander Muddiman.]

is a matter that I do not propose to argue. It is undoubtedly what the Bill does restrict ; but when does it restrict it ? It restricts appeals after there have been two concurrent decisions of subordinate courts. Now, my Honourable friend has said that this Bill will be a very good Bill when subordinate courts do not make mistakes. Well, Sir, that will not be in my time and I think it will be a very long time before that is so. But I should like to take this opportunity of saying that in the comparatively short space of my service of twenty-six years the subordinate courts have improved very greatly in their disposal of civil court work, and I desire to take this opportunity of paying a tribute to their very successful labours in this connection. That the Privy Council occasionally upsets subordinate courts' decisions and possibly even the decisions of High Courts (*An Honourable Member* : " Question ? ") is undoubtedly true. But I do not think that is an argument against the Bill, and I am surprised that Sir Hari Singh Gour, whose practice must be largely concerned in appeals from subordinate courts, suggests that they have not improved. Sir, I gather that the general feeling of the House is that they would prefer circulation. I myself in spite of the arguments of Sir Hari Singh Gour am in favour of that proposal too, and I therefore accept the amendment.

Mr. President : The original question was :

" That the Bill further to amend the Code of Civil Procedure, 1908, for a certain purpose, be taken into consideration."

Since which an amendment has been moved :

" That the Bill be circulated for the purpose of eliciting opinions thereon."

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

The motion was adopted.

THE PROVINCIAL INSOLVENCY (AMENDMENT) BILL.

The Honourable Sir Alexander Muddiman (Home Member) : Sir, I beg to move that the Bill further to amend the Provincial Insolvency Act, 1920, for certain purposes, be taken into consideration.

I do not think, in making this motion, I need detain the House any time at all. I explained the Bill when I brought it in. The only criticism I have received is in the form of an amendment which can be conveniently discussed when we come to the clause to which it relates. Therefore, without further delay, I move my motion.

The motion was adopted.

Mr. President : The question is :

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

Sir Hari Singh Gour (Central Provinces Hindi Divisions : Non-Muhammadian) : Sir, I beg to move the following amendment which stands in my name :

" That for clause 2 of the Bill the following be substituted, namely :

' 2. In sub-section (3) of section 33 of the Provincial Insolvency Act, 1920 (hereinafter referred to as the said Act) after the word ' insolvent ' where it occurs for the last time the words ' the receiver ' shall be inserted.'"

I shall very briefly explain to the House what this amendment means. Under section 33 of the Provincial Insolvency Act a creditor has to prove his debt in order to bring his name on to the schedule of creditors, and it is provided in clause (3) that where an application is made to bring a creditor's name on the schedule of creditors the court, after causing notice to be served on the insolvent and the other creditors who have proved their debts and hearing their objections, if any, shall comply with or reject the application. In other words, that where there is a claim that a certain creditor's debt should be recognised by the insolvency court the only two persons who are entitled to be heard and to whom notices are issued are the insolvent and the other creditors. Now, it is perfectly clear that after an application for insolvency the estate is placed in the hands of the receiver, and therefore, it may be that the creditor and the debtor may collude and the other creditors may not have exact knowledge of the circumstances which the receiver possesses, because he is in possession of the estate. I say, therefore, that he should receive notice. In other words, while the Government motion is that the insolvent should be ignored altogether and the only person to whom notice should be issued is the receiver, my amendment provides that the notices should issue both to the insolvent, that is the debtor, and the receiver. If the debtor and the receiver—the trustee and the *cestui que* trust—are both agreed that a particular debt is right, in that case the debt would be regarded as proved. If, on the other hand, the debtor and the creditor have colluded to cheat the other creditors, which the other creditors know not, then the receiver immediately interposes and says "I challenge this debt and I do not admit it because I know from the books in my possession, that this debt does not find a place in the insolvent's account books." And other reasons might be given for the purpose of challenging the admission made by the insolvent regarding the creditor's claim. I, therefore, submit that my amendment is a reasonable one. It gives all the parties interested in the admitting or contesting of a debt an opportunity of coming before the court, and, therefore, I move that the word "receiver" be added after the word "insolvent" in section 33 (3).

The Honourable Sir Alexander Muddiman : Sir, the amendment moved by my Honourable friend has obtained a certain amount of support among the persons consulted, but it is an amendment which is not in accordance with English law. It is a fact that the courts have laid down that a bankrupt cannot come in and interfere in proof of a debt. I am not sure whether the Civil Justice Committee have quoted it, but a case in point is *ex parte* Sheffield *in re* Austin, Chancery Division 10, page 434. There it was pointed out by Jessel, M. R. that the trustee is not a trustee for the bankrupt who has no right in the possibility of a surplus in his estate—nothing more than a mere hope or expectation. The rules under the Second Schedule of the Bankruptcy Act, 1914, do not make any provision for an application by the insolvent himself: they only allow a creditor to move the court to vary the order in regard to admission of proof of a debt. On those considerations and on general considerations, therefore, I think it will be well that we should follow the English Law and exclude the insolvent. The insolvent really, once he is in that position, has no interest; he may have a possible hope, but certainly no legal interest in the estate. On the whole, therefore, I am against the amendment proposed by my Honourable friend.

Mr. President : The question is :

“ That for clause 2 of the Bill the following be substituted, namely :—

‘ 2. In sub-section (3) of section 33 of the Provincial Insolvency Act, 1920 (hereinafter referred to as the said Act) after the word ‘ insolvent ’ where it occurs for the last time the words ‘ the receiver ’ shall be inserted. ’ ”

The motion was negatived.

Clauses 2, 3, 4, 5, 6 and 7 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

The Honourable Sir Alexander Muddiman (Home Member) : I move, Sir, that the Bill be passed.

The motion was adopted.

THE INDIAN SUCCESSION (AMENDMENT) BILL.

The Honourable Sir Alexander Muddiman (Home Member) : Sir, I move that the Bill to amend the Indian Succession Act, 1925, for a certain purpose, be taken into consideration. That certain purpose is to provide, as I told the House in asking leave to introduce, that in every case where a Hindu makes a will, he must reduce it to writing and sign it in accordance with the ordinary law as to the making of wills. As regards those parts of India which are at present governed by the Hindu Wills Act, that is already the law. I have always thought myself that as the right to make a will was conferred on Hindus as the result of the decision of the English Courts, at any rate this ordinary precaution ought to be required. Although the matter has been brought up by the Civil Justice Committee, it has been known to every one in this country for a long time, as a defect in our law. I always found in discussing the question with Hindus who are eminent lawyers that they themselves have always wondered why nothing has been done to require a Hindu desiring to make a will to reduce it to writing. It may be said, and it was possibly the reason that has delayed legislation, though I do not think there is much force in that now, that India is very largely an illiterate country. That is true, no doubt. But that has not prevented the Transfer of Property Act requiring certain transfers to be made by a written agreement. If it is desirable that a certain isolated contract should be reduced to writing, is it not all the more desirable that a document which transfers the whole *corpus juris* of a man's rights should be required in writing ? I really do not think it is necessary for me to say much more in support of the proposition which, I think, would commend itself to every Member of this House.

Sir, I move that the Bill to amend the Indian Succession Act, 1925, for a certain purpose, be taken into consideration.

Diwan Bahadur T. Rangachariar (Madras City: Non-Muhammadian Urban) : Sir, I beg to support this motion. I am quite aware of the great departure we are making now in our law as regards testamentary instruments. What I wish to emphasise to-day is that the provisions of this Bill should be published broadcast to show to the public that it has become law. As the Honourable the Home Member has told us, people in this

country are mostly illiterate. Although such cases of oral wills that have come to the Court have been few and far between,—in my own experience of nearly 36 years I have not seen many cases of oral wills in our Court,—I think it is a practice which we ought to encourage in this country, namely, that people should reduce their wills to writing, and they should also know that hereafter they cannot make oral wills and that they can only make them in a prescribed manner.

My Honourable friend tried to be logical in his argument and pointed out the provisions of law which require certain transfers of property to be made by registered instruments. But if that logic is to be pursued, I fail to see why he has been partial, if it is partiality at all, to Muhammadans in this matter. I think there is a clear ground for accusation that Government are partial to Muhammadans in this respect. My Mussulman friends will take note of that, for I do not think there is any justification at all why oral wills should be encouraged among Muhammadans. I think every will ought to be reduced to writing, and I throw this out for the consideration of the Government and of the Assembly, that if it is good for the Hindu only to make written wills, it is also good for Muhammadans to make written wills. Sir, I support this motion.

***Mr. M. A. Jinnah** (Bombay City: Muhammadan Urban): Sir, I had no desire to take part in this discussion, but I think that my Honourable friend Diwan Bahadur Rangachariar has got Muhammadans on the brain. That a lawyer of his eminence and experience should come forward and say that the Government are showing partiality to Muhammadans in enacting this Bill surpasses my comprehension. Whether this provision is acceptable to my Hindu friends or whether it is not acceptable to them is another matter. I shall be the last person to force any kind of legislation upon the Hindu community against their wishes. But he knows perfectly well that there is nothing in his religion which prevents the Hindu community from accepting this legislation if it is desirable. In the case of Muhammadans, he knows perfectly well that it would be overriding the highest authority which binds the Mussulman law, and that is the Koran. You will therefore raise not a question merely of adjusting certain mundane rights, but you will raise a question of a far graver character if you try to impose that provision upon Muhammadans. I am surprised, therefore, that my Honourable friend should say that the Government are imposing this law upon the Hindu community and that they are leaving out the Muhammadans altogether. Sir, I hope that in the light of what I have said, my friend will probably now revise his views.

Mr. E. S. Roffey (Assam: European): Sir, I wish to support this Bill. My Honourable friend Diwan Bahadur Rangachariar opposed it on the ground of illiteracy of the country:.....

Diwan Bahadur T. Rangachariar: I did not oppose the Bill. I supported it.

Mr. E. S. Roffey: I beg your pardon. All I have to point out is this. The Hindu Wills Act is in force in Assam, and I do not think any one in this House will say that the Province of Assam is any more literate than any other province where the objection has been taken on the ground of illiteracy. In my opinion, this measure will prevent litigation and a mass of perjury. For that reason alone, I support this Bill.

Mr. K. Rama Aiyangar (Madura and Ramnad cum Tinnevely : Non-Muhammadian Rural) : Sir, I beg to oppose this motion. I am really not able to follow my Honourable friend Diwan Bahadur Rangachariar in the knowledge and experience which he has gained when he says that only very few cases relating to oral wills come before the High Courts. Has he taken note of so many oral wills which without contest are being declared and accepted by all the people concerned ? The question is not whether litigation comes up. That does not arise at all. I think the law exists for the people and not the people for the law. If actually the country is using this power of making oral wills, is it proper, in view of the litigation that might arise, that it should be now shut out ? That is the only question that arises. Then, the Civil Justice Committee seems to have thought more of all possible ways of reducing litigation than that it has properly applied itself for the present purpose. I know, Sir, that in some villages it becomes almost habitual for certain people to start writing out wills and the litigation that comes up before the High Court generally comes up in respect of large estates where false wills are executed. But in the majority of cases in which big properties are, in the presence of mere relations or respectable men, disposed of by a dying person it is accepted by all people and is going on, and if only this law is now enacted, the effect of it will be practically to introduce into each village a person who will be busying himself about getting it written in one way or the other, and a hundred cases of undue influence, mistake, &c., will be set up and it will only add to the litigation than otherwise. I have analysed the opinions that have been collected on this Bill and I think my Honourable friend, Sir Alexander Muddiman will agree with me that most of them are not in favour of this Bill. (*The Honourable Sir Alexander Muddiman* : "No.") At least the last two pages relate to all the opinions in which they have refused to agree to this (*Diwan Bahadur T. Rangachariar* : "Madras seems to be in favour of it.") In many other places there are dissentient judges, that is judges who have given a dissentient opinion that it is not proper to take it up at this stage. I submit, Sir, that the proper way of dealing with this question is to see if oral wills are in considerable use just now or not, and if they are not given effect to without litigation ; in most cases of litigation relating to partition or succession or other similar questions, you will find that both sides in the pleadings admit the truth of such oral wills. I really do not know if it will be for the Legislature to go and interfere with such a common practice. Law is meant to be provided where existing circumstances need its aid. Law is not meant to create a position where the rights and practice would be interfered with. If you make this law, the effect of it will be that no will can be proved unless it is in writing and that means that at the last stages of a man's life you create a lot of trouble and a crop of litigation in the country, not that you are really reducing the litigation. I submit, Sir, I am perfectly convinced that it is a wrong step we are taking and it would be well to leave it as it is because in metropolitan towns there is considerable education and probably there is also a lawyer attached to every big household, and in other cases also education is sufficiently advanced and there is not much trouble. There may be certain villages which have people who have started this business only for litigation and nothing more, but there are hundreds and hundreds of villages and families where these last testamentary statements, oral or written, will not be denied but this Bill would cause lot of annoyance and trouble. I submit, Sir the country will be considerably spoiled by enacting this legislation.

Sir Hari Singh Gour (Central Provinces Hindi Divisions : Non-Muhammadan): Sir, when I heard the Honourable the Home Member moving the further consideration of this Bill, I said to myself whether the Honourable Member is not a late convert to a view I unsuccessfully pressed upon this House five years ago. I then introduced a short measure for the compulsory writing of adoption deeds and the then distinguished occupant of that seat used the Government vote to defeat my measure: and the argument then advanced was the argument so ably voiced by my friend Mr. Rama Aiyangar. The then Home Member said: "Your measure is far in advance of the times. It contravenes and tramples upon Hindu law." And my friend Diwan Bahadur Rangachariar was the leader of the opposition of the non-official side on that day. I am glad now, Sir, to count him also amongst the converts. (*Diwan Bahadur T. Rangachariar*: "Not on that point.")

Now, Sir, I do feel that a measure something on the lines proposed by the Honourable Home Member is necessary. But I wish to take exception to one or two statements which the Honourable the Home Member has incautiously made in connection with his motion. He said in the opening of his speech that the Hindu law of wills is a deduction from the decisions of the English courts. Now, Sir, that is not so. The Hindu law of wills is a deduction from the law of gifts. Hindu law recognises gifts as a pious act, and as gifts could be made to a person *in presenti* as also to a person *in futuro*, the courts have laid down from time immemorial that the law of gifts and the law of wills are, therefore, indistinguishable. That is the genesis of the law of Wills. And the courts for the last 30 or 40, indeed for the last 70 or 80 years have uniformly laid down that, while oral wills by Hindus are permissible, the most meticulous care is to be taken by the courts in examining witnesses as to the very words which the deceased testator used in making his will. The result has been that in a very large majority of cases these oral wills fail for want of proof, because, while the substance of what the deceased said is given in evidence, witnesses naturally differ as to the exact words used by the deceased in making his will. Therefore, oral wills for all practical purposes have become obsolete in the sense in which I have explained it to this House. Therefore, we are now here trying to have written wills so that the exact words of the deceased testator may be reduced to writing and may be available for proof after death. I do not agree with the reasons given by the Civil Justice Committee that it is as easy to fabricate false evidence in respect of an oral will as it would be to fabricate false evidence in respect of a written will. I submit, Sir, that while it is easy to fabricate false evidence

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in respect of oral wills it is by no means easy first of all to forge the will and then to fabricate evidence in support of it. Therefore, I submit that we have a distinct advantage in reducing all wills to writing. But I am here confronted with a small difficulty and I should like to have an assurance from the Honourable the Home Member on that point. The Honourable the Home Member must be aware of the recommendation on this point contained in the Civil Justice Committee's Report, page 470, paragraph 8, where they say that it is necessary that wills should be reduced to writing. But at the same time are you going to levy a probate duty upon these wills? If you do so, then Hindu wills would become far too costly to prove, and the opinions that have been collected, of which I have been privileged to read a compilation, all unanimously ask the Government either to remit the probate duty

[*Sir Hari Singh Gour.*]

or to levy a very nominal fee, if at all, on these wills. My support of this measure, therefore, is qualified by whether you are going to levy a probate duty upon these wills, because if you do so the Hindu community will be placed in a position of great invidiousness. While I do not agree with all that has been said by the Honourable Diwan Bahadur Rangachariar, I do not also agree with what Mr. Jinnah has said that his law of wills is contained in the Koran. Now, Sir, the origin of the Hindu law of wills is exactly identical with the Muhammadan law of wills. Muhammadans are entitled to dispose of one-third of their estate by a testamentary disposition.

Khan Bahadur W. M. Hussanally (Sind: Muhammadan Rural): Do you know the Koran ?

Sir Hari Singh Gour : I have read it many more times than my friend the Khan Bahadur will give me credit for. Now that is my first point. But I am not here to ask a community to come in within the salutary provisions of this Act if their representatives are not prepared for it. I am only giving the historical genesis of the law of wills which I submit is identical with that of the Hindu law. The Hindu law of gifts was practically abrogated by the enactment of section 123 of the Transfer of Property Act, and it follows as a logical sequence that the law of wills must follow suit. So far as that goes, I am in agreement with the Home Member, but, as I have said, the Honourable the Home Member must give a definite undertaking to this House that the Hindu community will not be penalised. The probate duty is 2 or 3 or 4 or 5 per cent., which means a very heavy duty for probate of these wills, and unless we get an assurance I shall, Sir, move that this Bill be not passed and that it be circulated for the purpose of eliciting opinions thereon. But if I get an assurance that the community will not be penalised by the exaction of a probate duty upon these wills, I shall be willing to go into the same lobby as the Honourable the Home Member.

There is one more point upon which I wish to draw the attention of the House. It is perfectly true that so far as Hindu wills are concerned we bring them under the provisions of section 63, but the peculiar nature of Hindu property and the constitution of Hindu society would offer some impediment to the facility of proof and, indeed, to the eventual simplification of justice in cases dealt with by wills, and I do not wish that this House should go away with the impression that in enacting this measure we have committed an act which will completely solve all the difficulties from which Hindu society suffers. Now, as Honourable Members are aware, Hindu society recognizes the joint family as the unit and all property is presumably held in the Mitakshara country and for the matter of that in other parts of India as well as coparcener property. Therefore, so far as coparcener and joint property is concerned the testator has no power to make any will at all. The question will arise, and I ask the Honourable the Home Member to bear that in mind. According to the decisions of some of the High Courts a coparcener is under the case law entitled to dispose of *in presenti* his undivided coparcener estate for a valuable consideration. He is not entitled to make a gift of that property and I presume that, if he is not entitled to make a gift of that property, he is equally debarred from making a will in respect of that property. That, therefore, shuts out all coparcener estates which cannot be the subject of testamentary disposition.

The only property therefore, in respect of which a Hindu may validly make a will is the property in respect of which he has absolute and unqualified disposing power, that is, property known as self-acquired property. I have no doubt that with the advent of British rule and the multiplication of individual callings the individual property is increasing in value and importance, and in that respect this Bill would serve a great purpose. But so far as the bulk of the property held by the joint Mitakshara families is concerned this Bill will be innocuous. It will not touch them at all. Therefore a question may arise: it is this. Suppose a Hindu father sends for his sons and says, "My dear sons I am dying and I want you to partition your property in the following shares after my death." It will be a question whether he has got the power to do that. The father has the absolute power under Hindu law of partitioning amongst his sons *in presenti*, and the question may arise as to whether this amounts to a will and whether such verbal death-bed direction having the effect of a will would require a probate duty. I could multiply instances but I do not wish to take up the time of this House by giving a larger number of instances. They all occur to me as I am speaking on the subject. But for the present I will rest content by asking the Honourable the Home Member for a definite assurance as to whether the Government would not dispense with the probate duty upon these wills, and if they are not in a position to dispense with the probate duty altogether, whether a fixed duty of Rs. 5 or Rs. 10 may not be fixed in respect of the probate of such wills. If that is done this enactment would become popular. If, on the other hand, this is not done then the very difficulty which the Civil Justice Committee wished to surmount would stand in the forefront. People will come forward and say this was not a will at all; it was merely a death-bed direction as distinct from a disposition of property and most complicated questions of law will arise and we shall defeat the very purpose which this Bill has in view. Therefore, I submit, Sir, that for the purpose of popularising this Bill, for the purpose of minimising litigation and for the purpose of placing Hindu society upon the same footing as the other large communities in India, the fiscal question should not be ignored in connection with this Bill. These are the observations which I have to make on the Bill, Sir.

Khan Bahadur W. M. Hussanally : Sir, I had no intention of intervening in this debate, for the simple reason that the Bill now before us does not affect my community; but the few words I have to say are inspired by a remark from my learned friend opposite to me a little while ago. While I have the highest respect for his knowledge of Hindu Law, I refuse to accept any interpretation of our Koranic law from Sir Hari Singh Gour.

So far as this Bill is concerned it cannot affect us, and no law on the subject of wills will affect the Muhammadan community, for the very simple reason that wills under Muhammadan law are very rare indeed, and for one reason only, and that is that every will, whether written or oral made by a Mussulman must receive the assent of his legal heirs after his death, except perhaps up to a third of the property. So that whether it is an oral will or a written will it does not affect the question one way or another; so long as that will is not assented to by his legal heirs it is no will at all. Therefore Mussulman wills are very rare and we require no change of law so far as Mussulmans are concerned.

Sardar V. N. Mutalik (Gujarat and Deccan Sardars and Inamdars : Landholders) : Sir, my Honourable friend, Sir Hari Singh Gour, has just reminded us that it was only five years ago that Government took an altogether different view of the situation in the country from what they are taking to-day on this Bill. I do not see any reason why Government should have changed the view that they took at that time. I think, Sir, that this Bill, however salutary it may be in its general effect, is premature in the present conditions obtaining in the country. I am not a lawyer nor a judge. I am taking only a practical view of the whole matter. We must look to the situation *as it is* in the country. It is all right to lay down any restrictions for those persons who are living in the cities where legal help is available, where persons who can draft wills are available, but we have to look also to those places where not only is legal help not available but where a man who can write out any directions given by a dying man is not obtainable. Unfortunately, in many places we do not have even now the ordinary village accountant. According to the new system prevailing in the Bombay Presidency there are only *talhattis* who are given charge of seven or eight villages. There are no men who can write out a will, or only a few who can do so. Under such circumstances is it desirable to lay down this restriction of having written wills? Is the dying man to wait for his death until a man who can write out a will is forthcoming? Why should you deprive a man who is dying of his right of making an unwritten will? He can call a few honourable men in the village who cannot write but can give evidence in court. Why should you deprive a dying man of his right in circumstances over which he has no control?

The next difficulty in this connection appears to me to be that when written wills are made, and we insist on the condition that probates have to be obtained on these wills, it is giving a direct effect to the recommendation of the Taxation Committee to have probate duties imposed, and this appears to be the first step in that direction. Unless and until we decide that point, I think it ought to be definitely laid down here that any wills coming to court and for which probate has to be obtained ought to be free of any duty or tax.

With these few words I oppose the motion.

Mr. K. Venkataramana Reddi (Guntur-cum-Nellore : Non-Muhamadan Rural) : Sir, we must look at this Bill from two practical points of view. One is whether it is in the interests of the people whom it affects; and secondly, whether it really serves the purpose for which it is being enacted. We cannot deny the fact that 90 per cent. of the population in India live in villages and 98 per cent. of them are illiterate and you must see whether this Bill which compels people in villages to reduce their wills to writing, is really conducive to their interests. People in villages are very ignorant and literacy has not spread into them. If we compel a villager who is on his death-bed and who wants to make a will to reduce his will to writing, he may not be able to get a literate man in the village itself, and it may be that he cannot get an educated man within ten miles of the village to write his will. If you pass this Bill into law you may be compelling such a man to die intestate and his property to go to people to whom he would not like it to go. The second point is whether it serves the purpose for which it is intended. Now, Sir, oral wills when taken into court result in

the courts requiring a very high standard of proof, and so oral wills are rapidly going out of use. If you enact this law you will be giving a chance to the reversioners of a man who dies intestate to forge a will. They will have plenty of time to take it to a tout and with his help perhaps they might forge a will and thus you will be putting a premium on forgery and perjury : Now if we analyse these opinions on this Bill you will see that those who are in favour of this Bill are really people who live in cities and as such cannot be expected to know the actual conditions in the villages. There are very many opinions against this Bill. They say that this Bill is not necessary or desirable under present conditions. It is not necessary to quote opinions for this Bill because I do not want to take up the time of the House, and I think that if Honourable Members would care to read these opinions on the Bill, they will find, as I said that people who are not acquainted with the real conditions in the villages are in favour of this Bill. For these reasons, Sir, I am opposed to this Bill.

The Honourable Sir Alexander Muddiman : Sir, I am very grateful to the House for the large measure of support that I have received in connection with this Bill. It is in my judgment a small measure of reform which has been long called for.

As regards my friend Mr. Rangachariar's request, I agree with him entirely that we should do all we can to give publicity to a measure of this nature, and we will address Local Governments on this point.

With regard to the reference to Mussulmans which was made by my friend Mr. Rangachariar, I think he was joking and I do not think he had any intention of offending anyone in this House.

Then Mr. Roffey I think made a good point when he explained that the Hindu Wills Act was already in force in places which are certainly not the most literate part of India.

I am much obliged to Sir Hari Singh Gour for his interesting lecture on the history of wills. I said, and I still affirm, that the Hindu will is a creation of the English courts, in spite of his interesting explanation of the manner in which that has been grafted on to the law of gifts. Sir Whitley Stokes, not altogether a man without authority, observes as follows :

“ Although the Sanscrit text-books of Hindu law nowhere recognise the posthumous disposition of property, the legality of the Hindu will has long been established in our courts.”

Now, I will not detain the House longer on the point ; I merely say I do not agree with my Honourable friend's correction of my statement.

The only opposition that has been raised to this Bill has come from the fear that the requirement of writing may weigh with the villager to prevent him making a will. Now honestly I cannot believe why, if the villager is required to make transfers of land in writing, and no one has ever protested against that being the law, a will, which disposes of the whole of a man's property, should not be reduced to writing.

Sardar V. N. Mutalik : He disposes of his land when he is not dying.

The Honourable Sir Alexander Muddiman : I did not gather exactly what my Honourable friend said, but I think men generally make their

[Sir Alexander Muddiman.]

wills in good time and not *in articulo mortis*, and if the Sardar is contemplating making a will, I would advise him to start long before he is in that dreadful position.

Sardar V. N. Mutalik : It is not of persons like myself I am thinking; it is of persons in the villages.

The Honourable Sir Alexander Muddiman : I have heard a great deal about persons in villages, but if they want to make a will, they can make it just as easily as they do the documents for the transfer of their land.

Sir Hari Singh Gour asked me another question. He said "What about probate duty?" If he had read the Statement of Objects and Reasons, he would have seen that this Bill neither requires probate nor deals with probate duty; it is merely an improvement in the law. If the question of probate is brought up that will be the time for the House to discuss it.

I do not propose to enter into the interpretation of Muhammadan law which has been a matter of some discussion between various Members of the House. It does not seem to me germane to this question; nor will I be led into the subject of coparceners which my Honourable friend has so much at heart.

Mr. President : The question is :

"That the Bill to amend the Indian Succession Act, 1925, for a certain purpose, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

The Honourable Sir Alexander Muddiman : Sir, I move that the Bill be passed.

The motion was adopted.

THE CODE OF CRIMINAL PROCEDURE (THIRD AMENDMENT) BILL.

The Honourable Sir Alexander Muddiman (Home Member) : Sir, I move that the Bill further to amend the Code of Criminal Procedure, 1898, for a certain purpose, be taken into consideration.

Sir, the certain purpose with which this Bill is concerned is the conferment of certain extra powers to deal with inflammatory publications likely to cause communal trouble. The form which the Bill takes is an amendment of section 99A of the Criminal Procedure Code, and that section with your permission, Sir, I will read to the House. It runs as follows :—

"Where—

(a) any newspaper, or book as defined in the Press and Registration of Books Act, 1867, or

(b) any document,

wherever printed, appears to the Local Government to contain any seditious matter, that is to say, any matter the publication of which is punishable under section 124A of

the Indian Penal Code, the Local Government may, by notification in the local official Gazette, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to His Majesty, and thereupon any police officer may seize the same, wherever found in British India, and any Magistrate may by warrant authorize any police officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.'

Now this section 99A of the Criminal Procedure Code was inserted by section 5 of Schedule III of the Press Law Amendment Act (XIV of 1922) Put briefly and stripped of legal language, it gives power to declare certain publications of a seditious nature forfeited, and it also gives power to issue search warrants for the same. Now I cannot for the moment find out why, when this section was added to the law, the question of matter punishable under section 153A was not included, but it was not included. Now section 153A is, as the House knows, a section which is devised with the intention of preventing enmity being promoted between classes. I do not know whether it is necessary in a House like this, where almost every one is familiar with the Indian Penal Code, to read the section. Section 153A is the section which can be used where people endeavour to stir up ill-feeling between communities. It is a section which, I am sorry to say, it has been found necessary in the last few months to have a recourse to very frequently. It is a section which, however useful, can only be used where a substantial offence can be established. It is not possible to use it for preventive purposes ; it is a punitive section, and it is not sufficient to meet all our needs. It does not enable us to catch hold of matter punishable under the section ; it only enables us to punish for a substantive offence.

Now I do not think the House, specially after the speeches yesterday, will need any words of mine to bring home to them the state of communal feeling which is now existing in this country. Sir, I have been away for four months and I come back to what is in some respects a different India. Communal feeling has for several years been undoubtedly rising, but the development that has taken place in these short months has really surprised me. I laid on the table a long statement in reply to a question put by one of my Honourable friends opposite specifying those cases which had been reported to the Government of India. Sir, they were very many. It is quite possible there were more which were *not reported* ; but what is quite certain from the papers in my possession is that had not the officers of Government throughout Northern India exercised the utmost precaution there would have been not ten-fold but a hundred-fold more. From Calcutta to Peshawar every civil officer has been straining every nerve to do his best for months to keep the King's peace and prevent any outbreak. I think our thanks—the thanks of this House—are due to all those officers, civil and military, British and Indian, who during this long and very trying hot weather have successfully endeavoured to maintain the peace in so many parts of India where trouble has not occurred. It is not only of places where trouble has occurred that we should think but also of places where trouble might and could have occurred but for judicious action and the utmost care and caution. On this picture of the situation I think we all agree and it will hardly be challenged. Now the measure that I am bringing forward to-day ought, therefore,

[Sir Alexander Muddiman.]

if it is a reasonable measure, to command the sympathy and support of all Members of this House, and I am most anxious that it should do so. I am most anxious that the House should show that it is, as a body, on the side of law and order in endeavouring to prevent these terrible affairs. It may be said that a measure of this kind will not strike at the root of the trouble. Of course it will not. That is impossible. No law can deal with trouble as deep-seated as this. But if it in any way strengthens the hands of Government and the hands of those good thinking citizens—who I believe are the large majority of both communities—in dealing with these difficult matters, I hope I shall command the whole-hearted support of the House.

Then what is the actual measure I am bringing forward? It is a comparatively small thing. It merely enables the same power to declare publications forfeit when they are found on search where they are of a nature contemplated by section 153A as already exists in the case of seditious publications. I do not think—and I will not conceal it from the House—that this measure will be very effective in dealing with newspapers. I do not think it will, for this reason that the harm done by a newspaper is immediate on its issue. It has already gone to all its ordinary subscribers before action can be taken. Where I consider the proposal I am now bringing forward will be more useful is in the case of pamphlets inflammatory of the feelings of one or the other of the great communities. This is no idle fear. They have been issued in the past and they may be issued to-morrow. They have been found in the past, they might be found to-morrow if searches are made. The Bill is one of the results of a consultation with Local Governments which was undertaken by the Government of India quite recently. The Government of India have not been blind nor have they been idle in considering what can be done to deal with these matters, and though this Bill is a comparatively small product of that consideration yet we attach importance to it. I do not know whether at this stage I need trouble the House at great length with them but I have here an extract containing a list of press prosecutions recently undertaken by the Government of Bengal. They are numerous. They were successful, but their results were largely vitiated by the fact that there was no power to check the output of inflammatory matter. My object in this Bill is not merely to punish. It is to lay hold of this firebrand and so prevent the fire catching into the hay stack. In my judgment pamphlets and inflammatory writings are terribly dangerous—aye, in some of the northern parts of India they are more dangerous than the accumulation of explosives. It is no use punishing the law breaker only. It is necessary, where possible, to prevent the consequences of his acts affecting the outside public. The need for the measure is immediate and urgent. If you think the measure is sound and justifiable, I cannot concede that you should delay an hour in enacting it. It cannot be said that the situation is one which brooks delay. I see various suggestions for dilatory motions. I ask the House not to consider them. I ask the House, if they do not agree with me, to come and deal with the measure here and now. There is no time for delay. The Bill is one which, if it saves one serious riot in any part of India, I am perfectly sure every Member of this House will be most willing to support. I do not think at this stage I need say much more on the necessity, the urgency of this measure. I have endeavoured to

show that it is necessary, that it is urgent, and it is particularly desirable that this House should collaborate with Government in showing that they are willing in a matter of this kind to give the fullest support to those who are charged with the difficult duty of preserving order in these troublesome times.

Mr. B. Das (Orissa Division : Non-Muhammadan) : Sir, I do not see the necessity of this Bill at all. The Executive has got too much power. It has got various Acts, Ordinances and Regulations in its hands to do anything it likes. We are seeing editors of papers and writers being prosecuted every day. The public does not see any necessity for further strengthening the power of the Executive. This Bill suggests that there is no provision which enables similar action to be taken against publications calculated to promote feelings of enmity between different classes of His Majesty's subjects. Sir, my interpretation of the situation is that it is the Anglo-Indian Press that fosters most communal bitterness and communal hatred in India. Sir, only the other day, when the Bengal Government saw the wisdom to withdraw their prosecution against my revered friend Pandit Madan Mohan Malaviya, a Lahore paper, *the Civil and Military Gazette*, mentioned that the Bengal Government by withdrawing the prosecution have dishd the Muhammadans and have yielded to the demands of the Hindus. That is a white lie. It is in this way that Anglo-Indian papers are helping to foster communal bitterness. The other day I alluded on the floor of this House to the fact that the Government as the third party have not done their proper share to end these communal disturbances.

The Honourable Sir Alexander Muddiman : The Honourable Member is not helping Government to do their share by opposing this Bill.

Mr. B. Das : To-day I go further and say that there is a fourth party and it is the Anglo-Indian Press. To-day the Anglo-Indian Press is trying to separate community from community and to foster communal bitterness. (Here Sir Denys Bray interjected). But, Sir, will you as Member of the Executive assure me that you will prosecute the Anglo-Indian Press with impartiality ? Can you give me a single instance when you have prosecuted any Anglo-Indian paper—the *Times of India*, the *Statesman* or the *Pioneer* or any other paper of that sort ? The Indian papers are always accused of *lese majeste* ; but when it comes to an Anglo-Indian paper saying that the Bengal Government have abdicated their function and have been insulted by the Government of India, neither the Government of India nor any of the Provincial Governments take any steps to prosecute the editors of such papers ; and it is the editors of these papers and reporters in the Anglo-Indian Press that foster more communal bitterness. Before I am a party to give my consent to this Bill or to the consideration of this Bill, I want assurances from the Government that they will show impartiality in prosecuting Anglo-Indian papers as they do Indian writers and publicists.

Maulvi Muhammad Yakub (Rohilkund and Kumaon Divisions : Muhammadan Rural) : Sir, I rise to support the motion. I entirely welcome this Bill from the bottom of my heart. Sir, yesterday I moved a Resolution asking the Government to undertake legislation in order to remove or to solve the problem of bitterness of relations between the two communities and I think, Sir, that the Bill which is now under discussion before the House is a step in that direction. Sir, it is my firm

[Maulvi Muhammad Yakub.]

conviction that the Press has played a very great part in creating the present situation. (*Cries of "No"*.) By reading the volume of communal papers you will find that it is on account of the publication of objectionable pamphlets and objectionable articles in the papers that this fire of antagonism has spread from place to place. They take the spark from one corner of the country to another and the result is that the whole country is ablaze. If there is a small disturbance or a small riot in a small village or town, the next day you will find in the communal papers big articles giving exaggerated accounts of the happenings of that incident. It is in this way that like the germs of plague these papers carry the germs of bitter feelings from one place to another place. If any measure is adopted by which the circulation of this obnoxious literature is stopped I think that half the bitterness which is now found in this country will be stopped. Certainly, Sir, it is no use punishing the editor or a writer of a pamphlet if the poisonous matter is not checked, and is left there to germinate; and I think it is quite right that the Executive should have power to destroy the real thing which is the cause of spreading communal feelings and bitterness.

My Honourable friend, Mr. Das, says that the Executive has still got much more power than is required. Well, I do not want to have any quarrel with him upon this question. I think there are certain things in which the Executive has got more power than it ought to have; but certainly in this matter the Executive has not got the power which is required, that is the power to destroy the poisonous literature—the provoking and objectionable pamphlet. My Honourable friend, Mr. Das, has said that it is the Anglo-Indian Press which is more responsible for creating this situation. I do not hold any brief on behalf of the Anglo-Indian Press, neither have I any sympathy with them, but I can only say that the Anglo-Indian Press will not be exempted from the operation of this Bill, and if the Anglo-Indian Press is more responsible for creating this situation I think it is still more necessary that such an amendment be made in the Indian Penal Code and Government should be empowered to confiscate and destroy the objectionable matter, because from the trend of my Honourable friend's speech I find that he thinks that the Government show partiality towards the Anglo-Indian papers and they are not prosecuted. I say it is for this very reason that you want a provision like this, because the Government may not like to prosecute and send to jail an English editor of an English newspaper; but certainly if they have got power to confiscate the objectionable matter, at least they will take this measure without doing any harm to the person of that Englishman; and they would at the same time be gaining the object which is desired. For these reasons, Sir, I support this motion and I heartily welcome the Bill.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I have listened with great patience to the speeches that have been delivered on this Bill. The Honourable the Home Member made an impassioned appeal to this side of the House to support the cause of law and order. Well, Sir, I would ask the Honourable the Home Member to support us and then by supporting us he would be supporting the cause of law and order. (*Khan Bahadur W. M. Hussanally*: "What do you mean by 'us' ?") Now, what is the history of this measure ?

Section 153-A of the Indian Penal Code was added by an amending Act of 1898 ; and in 1910 the odious Press laws were enacted. When the Reforms were inaugurated the Government of India then thought that the Press laws must be repealed and by the Act of 1922 the Press laws were repealed, and these sections, sections 99 A, B, and so on, were added to the Code of Criminal Procedure. Honourable Members of this House must remember it. Only as far back as four years ago these sections were deliberately added to the Code of Criminal Procedure after repeal of the Press laws of 1910. At that time there was no thought of re-enacting the operative provisions of the Press Act of 1910 which this Bill now proposes to do. If Honourable Members will turn to the provisions of the Press Act of 1910, Act I of 1910, they will find that the present Bill seeks to re-introduce some of the obnoxious provisions of the Press Act repealed in 1922. Now, what is the justification for it ? The Honourable the Home Member appeals to a transitory and passing phase of communal tension in this country. I hope, Sir, I am voicing the sentiments of the non-official Members of this House when I say that the communal tension in this country is only a transitory and passing phase (*An Honourable Member* : " I hope so. "), and does that justify the permanent strengthening of the law which would be a menace to the liberty of the Press and of the public ? That, I submit, is a short question which this House has to answer. For, what are the provisions of this Bill ? It gives the police a right to confiscate all kinds of printed matter, whether it is a newspaper, a leaflet, pamphlet or a book, and the only remedy open to the person against whom the order of forfeiture had been made is the exceptional remedy provided in the clauses 99-B. onwards, namely, an appeal to the High Court. The Honourable the Home Member has said in one part of his speech that the daily or weekly Press—I think he meant the daily Press—would not be affected by it. Well, Sir, reading the language of the Bill, I do not see any clause safeguarding the rights of the daily Press. If it was the intention of the Legislature, if it was the intention of the Honourable the Home Member, to limit the operation of this Bill to leaflets and pamphlets and to exempt the daily Press from its operation, then I submit, we might have looked upon this Bill with a more favourable eye, but the sweeping provisions would not prevent a raid upon a daily newspaper, or for the matter of that, upon the office of my Honourable friend the Managing Director of the Associated Press, or the conductor of a weekly or monthly newspaper, or the printer and publisher of a pamphlet or a book. I, therefore, submit that it is a menace to the liberty of the people, it is a menace to the liberty of the Press ; and in the guise of a short Bill the Government are now trying to re-enact the Press laws of 1910, and they are also trying to take, if I may be permitted to say so, an undue advantage of the present passing phase of communal tension, happily subsiding, if not dying, to take large powers for house searches in respect of objectional matters.

Now, Sir, apart, therefore, from the objection which I have to the Bill, I see further objections, and I shall state to the House why this Bill is not only not necessary but that it would, if enacted into law, be a standing menace to the liberty of the people. Section 153-A of the Indian Penal Code was hesitatingly enacted in 1898. Its language is wide, and it is not quite possible to say in all cases where section 153-A. of the Indian Penal Code ends. Let me give Honourable Members a passage, the effect of which they will realise for themselves. Macaulay's portraiture

[Sir Hari Singh Gour.]

of the character of the Bengali or Shakespeare's description of the Jews would conceivably fall within the purview of section 153-A and so would that famous opera known as the Mikado. It is only by the use of a wise and judicious discretion that the operation of section 153-A of the Indian Penal Code has been kept within limits, and, so far as I am aware, there have been only two or three cases under section 153-A. of the Indian Penal Code. It is a most difficult question to interpret and almost an impossible section to understand. Now, Sir, that being the position of the substantive law, you give the police *carte blanche* to judge for themselves whether a particular newspaper, leaflet or pamphlet offends against the provisions of section 153-A.

The Honourable Sir Alexander Muddiman : I would ask the Honourable Member not to mis-state the law at any rate.

Sir Hari Singh Gour : Yes, Sir. We have had a very edifying spectacle of a Local Government within the last few weeks. We know what the Local Governments sometimes do, and we will not think whether a Local Government acts upon its own initiative, or as is done generally, upon the initiative of the subordinate executive. Well, Sir, whether it is a Local Government or the police, they decide that a particular thing tends to promote communal tension, and the newspaper is confiscated. Then you have the remedy which, as I have pointed out, is provided by the subsequent sections of the Criminal Procedure Code. Well, Sir, these are the provisions of the Bill upon which I, at any rate, am not able to make up my mind, and I cannot give my support to the Honourable the Home Member particularly in view of the fact that on the day this Bill was introduced, Honourable Members will remember, I questioned the Honourable the Home Member on one or two points. I first of all told him that they were giving this large power, they were substantially re-enacting the provisions of the Press Act of 1910. Now, have you consulted public opinion ? The answer was that public opinion was not consulted. That is the first thing that Honourable Members will remember.

Mr. K. Ahmed (Rajshahi Division : Muhammadan Rural) : Who are the public, Sir ?

Sir Hari Singh Gour : My Honourable friend Mr. Kabeerud Din Ahmed is a member of the public. Now, Sir, the Provincial Governments are going to be armed with that power. Well, I should like to have had before me the opinions of the Local Governments. The Honourable the Home Member replied that the Local Governments had not been consulted specially upon this Bill, but in a general correspondence upon the present situation a reference was made to the Local Governments, and their replies have been received, and that he would refer to those replies in the course of his speech on the motion to take the Bill into consideration. I then asked the Honourable the Home Member whether the relevant correspondence relating to the Bill would be made available to the Members of this House. The Honourable the Home Member said no. The result, therefore, is this. This Bill is being forced upon this House during its last days, and, so far as this House is concerned, without giving the non-official Members even an opportunity of seeing what the Local Governments say and without giving them an opportunity of consulting public opinion. Now, is it fair to the Government ? I appeal to the Honourable the Home

Member—this is an attenuated House. I recognise that he has loyal supporters behind him. I also recognise, Sir, the attenuated ranks on this side of the House, and it is upon that ground, Sir, that I ask the Honourable the Home Member to remember that we are now winding up this Session, and a Bill of this controversial character should not be rushed through without consulting the people and persons who would be primarily affected by it. Is it fair, I ask, that we should be asked to consent to this

1 P.M.

Bill without consulting our constituents or the persons who would be directly affected by it? Sir, I submit that it has been a rule and I know, Sir, that you also gave it as a ruling from the Chair that controversial measures should not be introduced during the residue of the Session. But I am not appealing to you, Sir. I am appealing to the good sense of the Honourable the Home Member and I know he possesses plenty of it. I only ask him not to use his majority, his standing majority, to rush this measure through, for it is an unpopular measure and one which, I submit, is not required in the present circumstances of the country. It is perfectly true that, if this measure had been introduced during the occurrence of the recent Calcutta riots as a temporary measure, as an Ordinance, there might have been something to say in its favour, but to place it permanently on the Statute-book, to re-enact, as I have said, some of the most obnoxious provisions of the Press Act of 1910 and to incorporate them in the standing criminal procedure of the country is a thing to which, I submit, no responsible Member of this House can assent without further consideration, and it is on that ground, Sir, that I have given notice of a motion that the Bill be circulated for the purpose of eliciting opinions thereon. We have no opinions at all—absolutely no opinions. I therefore submit that a measure of this character which, I submit, is *prima facie* a measure which curtails the liberty of the subject, should not be passed without consulting the persons affected by it. Four months would not make any difference to the Honourable the Home Member. (*The Honourable Sir Alexander Muddiman* : “It would not make any difference to the Home Member but it might make a considerable difference to the Honourable Member.”) Four months, Sir, would not make any difference to me or to my fellow Members. We are after all birds of passage, we are here to-day, we are not here to-morrow, but I submit that now that we stand doing our duty with our faces to the west about to mutter “*Nunc dimittis*” is it fair that you should at this moment charge us with the heavy load of having to take the responsibility of giving our consent to a measure which we know would not be liked by the public at large and which we feel would seriously jeopardise and threaten the liberty of the people. Upon these grounds, Sir, I ask the Honourable the Home Member to accede to the motion I wish to make, namely, that the Bill be circularised.

Mr. K. C. Roy (Nominated Non-Official) : Sir, I rise to move my amendment—

“That the Bill be referred to a Select Committee consisting of the Honourable Sir Alexander Muddiman, Mr. L. Graham, Mr. M. A. Jinnah, Lala Lajpat Rai, Mr. K. C. Neogy, Mr. N. M. Dumasia, Colonel J. D. Crawford and myself, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be four.”

Sir, all the members were good enough to give me the necessary permission, except Lala Lajpat Rai, who gave me provisional permission. I am

[Mr. K. C. Roy.]

glad, Sir, that he is here to-day and I welcome his presence. He is the doyen of our profession and expressions of views coming from him will carry great weight with my fraternity. Sir, at the outset I wish to make my position fully clear. I entirely accept the underlying principle of the Bill. I do not deny for a moment that there exists in India a communal situation almost unparallel in her history. I do not for a moment deny that there is any amount of objectionable writing in the Press and in leaflets. Nor do I deny that Government have the right to demand some power from us in this connection. But are the Government right in demanding this Bill from us to-day and without further examination by the Select Committee? Sir, if the Honourable the Home Member gives us a Select Committee we shall only require two hours, or possibly a day, and we shall be able to produce a report as we are very anxious to assist him in his undertaking. We are fully sensible of the exceptional emergency which is arising in the country. Now, Sir, I am fortified in my opinion by the opinion of a most competent authority. A newspaper of great eminence and standing, called the *Leader*, has written as follows :

“ It goes without saying that the authors and publishers of such disgraceful literature must be punished promptly as well as adequately whenever they can be got at.”

This is a view which I for my part fully endorse, but, Sir, I want the Select Committee to examine the opinions of the Local Governments. I want the Select Committee to examine whether it would not be right to limit the life of the Bill to two years. I want the Select Committee to examine that very suspicious clause, clause 2 (a) of the Bill, which runs as follows :

“(a) after the words ‘ seditious matter ’ the words ‘ or any matter calculated or likely to promote feelings of enmity or hatred between different classes of His Majesty’s subjects ’ shall be inserted ;”

I should like, Sir, to see the following substituted in its place :

“ matter which promotes or attempts to promote feelings of enmity or hatred, etc.,
.....”

The Honourable Sir Alexander Muddiman : I might point out to the Honourable Member that if he wishes to put forward any amendments he should have put them on the paper. I should have been prepared for them.

Mr. K. C. Roy : I claim, Sir, that I had not sufficient time. Again, Sir, another matter I would like to discuss in the Select Committee is whether confiscation should not take place after a verdict of a competent judicial authority. These are matters, Sir, which I place before the Home Member and I know that they will receive the utmost consideration at his hands.

I am sorry, Sir, to sound a note of warning. The Government of India have taken no notice of the failure of Provincial Governments to maintain law and order. They have overlooked the ringleaders of the riots, they have overlooked the real rioters. It is the Press that has been singled out for public chastisement.

The Honourable Sir Alexander Muddiman : Might I inquire, Sir, before any other speakers address the House, what is the actual amendment before us ?

Mr. President : The original motion for consideration of the Bill and the two amendments to it are all before the House. All the three are

being discussed together. When the debate is over, I propose to put the amendment for circulation to the vote first and, if that be defeated, I propose to put the amendment for Select Committee, and, lastly, the motion for consideration, if necessary.

The Honourable Sir Alexander Muddiman : I am much obliged, Sir.

Lala Lajpat Rai (Jullundur Division : Non-Muhammadan) : Sir, I rise to oppose the motion that the Bill be taken into consideration with all the emphasis that I can command. The Bill is not so simple as the Honourable Mover seems to think. It is a very serious encroachment on the liberties of the people and is liable to be used for the purpose of adding fuel to the fire instead of allaying it. And, therefore, it is not such a measure as can be passed in such a hurry as it is attempted to be passed. The measure can be divided into three parts for the purpose of consideration : the confiscation of matter upon which there has been a finding by a judicial court under section 153A, the stopping of circulation of matter for which a person is under trial, and the summary forfeiture of matter which has never come before a judicial court. The Bill under consideration extends all the summary powers of determination and confiscation conferred by section 99-A on a Local Government, for this last mentioned object. There may be something to be said for the first two points, and if the Government will give us time we shall be very glad to co-operate with them in finding suitable remedies for the purpose of preventing the circulation of any matter which is likely to come under section 153-A, during the pendency of a trial, or after a trial has been concluded. But to give such wide powers to the Local Governments or to the police as are contemplated under section 99-A, without any of these qualifications, will be a serious encroachment upon the liberties of the people and they are liable to be abused as powers like that have so often been abused in the past. So far nothing has been said here which goes to the core of the matter except perhaps the speech of Sir Hari Singh Gour. It is really an attempt to reintroduce those provisions of the Press Act which have been done away with, deliberately, after a long agitation and after a complete inquiry by the Government, an inquiry made by a very competent Committee. And after those provisions have been superseded this is an attempt now to reintroduce them in this insidious form. No one deploras more than I do the religious quarrels and communal troubles that have been going on, and I would welcome any measures taken by the leaders of the people or by the Government to stop that state of affairs or even to minimise the evil, if it cannot be stopped altogether. All such measures will have my fullest sympathy. But we cannot be a party to a measure which may be used for purposes other than communal. This insidious Bill practically goes much beyond the need of stopping the circulation of matter likely to lead to communal quarrels. You will see that if this amendment is made in the law as proposed it may be used—I do not say it will be—but it may be used not only for the purpose of confiscating or forfeiting such literature as is likely to come within the purview of section 153A on account of its communal nature, but it may also be used or rather abused when something may be said by labour against capital or *vice versa*. That is an aspect of the question which Honourable Members should keep in view. Section 153A is wide enough. It does not confine itself only to religious quarrels between communities professing different faiths. For when it refers to a matter which is likely to promote enmity and feelings of hatred and contempt between different classes, it is by no means likely to be confined to disputes between Hindus and Muhammadans only. There are

[Lala Lajpat Rai.]

other classes also. Therefore the effects of the present Bill may have very far-reaching consequences and it should not be regarded as a simple measure for strengthening the hands of Government in dealing with religious disputes for the maintenance of law and order. I have every respect for the maintenance of law and order but I do not know of a single instance where this Legislature has done its best to strengthen the hands of the Government by giving it special powers to meet an emergency and where the law thus enacted has not been abused and has not been kept on the Statute-book for a longer time than was necessary. We have known that to happen in the case of many measures which at the time we did not take serious exception to because we thought that the emergency existing at the moment demanded them. We know that in the past measures have been enacted in the name of law and order for temporary purposes due to passing emergencies, and we also know that those measures have been kept on the Statute-book when the emergency had passed and have been used for purposes for which they were not originally intended. Now I am not quite sure but I think it was said by the Honourable the Home Member that the daily press is not likely to be affected by this Bill. Well, I do not know. You are asked to give vast summary powers to the magistracy or the Executive for the purpose of determining what matters are likely to come under section 99-A. and it is quite possible that the issue of a daily paper may be stopped and it may afterwards prove to have been quite unnecessary. Under the last sub-section of this section they will have no remedy, by way of a claim for damages. I do not want to oppose the Bill tooth and nail, but what I am submitting is that no case has been made out for passing the Bill in such a great hurry without giving the people sufficient time to consider its provisions fully. Also we cannot make up our minds at once as to how far to support or to oppose it or in what modified form it may be passed. All these things have to be gone into before this Bill could be accepted. Of course the Honourable the Home Member is very strong to-day on account of his voting strength in this House, and probably he is going to use it. But I can not help saying that that will be very unfair. This is not one of those uncontentious measures that can be passed in this House in such a hurry ; and this is not an emergency measure also because an emergency measure is meant for a small period. Here it is proposed to put this on the Statute-book for all time, and as such it is likely to cause harm. Also, Sir, no facts have been placed before us as to events between the date when the Legislative Assembly last sat in March and now to justify this Bill. Many riots have taken place on doubt, but is there any evidence to show that besides what the newspapers said, which could not be stopped, any large number of pamphlets have been circulated in the country which have brought about the existing state of affairs ? The case of Kohat has been quoted, but I do not know whether the Honourable Member remembers that in Kohat it was after the pamphlet had been destroyed by the Magistrate and no more copies were left for circulation that the trouble broke out. The conflagration took place after the pamphlet had been destroyed. So that we are not at all sure that the measures proposed under this Bill are likely to be effective. Is it even true that any large numbers of pamphlets have been issued during this period ? As regards newspapers I quite agree that they are to a very large extent responsible for the present state of feeling. I say that without discrimination. The papers of all communities, Hindu, Muhammadan and Anglo-Indian—all these three classes of newspapers

have added to the feelings of tension and have contributed to this trouble. But you cannot stop them. In extreme cases you can stop them under the powers which you have at present, for there are several provisions of the Criminal Law under which they can be hauled up. It has been said that this Bill will not affect newspapers and is meant primarily for the kind of pamphlets to which I have referred. But to add to the powers of the Executive in this way is I submit a gross encroachment upon the liberties of the people and should not be indulged in in such a hurry. I want to assure the Government that in any measures they may want to take to stop this communal tension and to stop the publication of matter which is likely to add to the communal tension or to bring about riots or quarrels, the Government will have the fullest sympathy and support of all sections of the people. But what is now proposed is not the proper remedy. The remedy is different. Even if this be a part of the remedy, the present form of the Bill is, I submit, not the proper remedy and this legislation should not be undertaken. I would earnestly appeal to my friend Mr. Yakub not to support the Government in such a way that the trouble may be aggravated, rather than stopped. It is for us to take to heart the present troubles and their consequences and try to stop them honestly. No amount of legislation will stop this communal tension. Unless the leaders of the Hindu and Muhammadan communities take steps to stop it, it will never cease. We must do our best outside the Legislature. The legislation that is proposed is entirely misplaced. After we have exhausted our resources it will then be time to come to the Legislature.

An Honourable Member : Have you not exhausted your resources ? At Delhi, for instance.....

Mr. President : Order, order. The Honourable Member is not entitled to make a speech.

Lala Lajpat Rai : I make the deliberate statement in this House that we have not tried all our resources to stop these communal troubles.

An Honourable Member : Why not ?

Lala Lajpat Rai : Because we were engaged in some other business. I do not want to go into particulars, but I will say that we have not exhausted all the resources.

With reference to the Unity Conference, my friend says it was a fiasco. I cannot accept that statement as a true representation of facts. The conference was not a fiasco. After several days' deliberations we came to very good conclusions. We were not able to induce the country to take action on those conclusions for certain reasons which I do not want to go into at this time. After that time we did not make very serious efforts. We did not expect a conflagration to such an extent. But I am perfectly prepared to state from my place in this House that we have not exhausted all the resources that we had at our disposal to prevent a certain amount of this communal tension, and we ought to do it now before we come to legislate here. What can legislation do, until you change the heart of the people ? Legislation cannot prevent the riots if the people are determined to break each other's heads. The other day I read a speech in which it was said, "The moment we come down to a settlement of the Hindu-Muhammadan question, these riots will cease." I do not want to say anything bitter ; I do not want to say that that statement is perfectly correct, but there is a certain amount

[Lala Lajpat Rai.]

of truth in that statement. So you will see legislation in this matter will not help us very materially, and this legislation particularly. You know the atmosphere of these troubles. I am not going to bring any charge, but in this atmosphere of Hindu-Muhammadan bitterness, there are Hindu police officers and Muhammadan police officers, Hindu informers and Muhammadan informers who might add to these troubles by the exercise of extraordinary powers this Bill confers on them.

An Honourable Member : Not sufficient, Sir.

Lala Lajpat Rai : The law gives them more employment, more business instead of stopping their business. It is in our interest to stop their trades, but this Statute will give them more power and give them greater facilities to bring about quarrels. This section should be entirely deleted from the Statute-book. In fact if I were at liberty to do so I would introduce a Bill to remove that section from the Statute. I have seen it sometimes abused, but to extend it and to extend it in such a way as this, is not, I respectfully submit, a wise course, not a statesmanlike one. If Government wanted any temporary measures in order to check the expansion or spread of these communal quarrels, that would be an entirely different thing. But this is not a temporary measure ; it is a permanent one, and on principle should be disapproved of by the House. It is the reintroduction of a measure which has been cancelled by the deliberate vote of this House. This Bill introduces a measure which we have deliberately repealed. The day before yesterday a speech was made by the Honourable the Finance Member in which he appealed to us not to hit below the belt. That is exactly what Government are doing by the introduction of this Bill and by the determination to pass it at such time as this, without any consideration by the people and without eliciting any further opinion on the matter. I submit that the Bill should not be passed in this manner. I have had no time to study it, as it was not circulated for public opinion, and to make it an emergency measure is not fair. The Government think otherwise and they will take advantage of the opportunity they have got. But I would respectfully appeal to every Member of this House not to be actuated by these passing events but to think of the permanent injury that this Bill would cause to the liberty of the Press, to the liberty of conscience, and to the interests of the country if it goes on the Statute-book in this form. I would not hesitate to say that it would practically be playing false to the people and to the country. I therefore strongly protest against this Bill being passed in this way and I support either of the two measures proposed by Sir Hari Singh Gour or Mr. K. C. Roy.

Mr. C. A. H. Townsend (Punjab : Nominated Official) : Sir, as a district officer who has served in the Punjab for over twenty-five years I rise to cross the t's and to dot the i's of the speech made by the Honourable the Home Member in so far as he spoke of the great anxiety and worry from which district officers in the North of India now suffer, owing to this most unfortunate communal tension. Sir Hari Singh Gour has told us that that tension has subsided. I do not know what are the grounds for his statement, and I wish from my heart that I could agree with him. I see, I am sorry to say, no signs whatever of its subsidence. Leaving, however, that point, I will try to depict to the House the grave anxieties caused to district officers in the North of India during the last few

years by this communal feeling. It is never absent from the minds of those who have to maintain law and order. There are Members in this House who have said that the officials of Government are anxious that communal friction should remain. They know but little of our anxieties. We have this matter ever in our minds, but particularly when some big Hindu or Muhammadan festival is approaching. Some time before the occurrence of each important festival we have to take the most careful and elaborate measures in every big city in the Punjab, and also in many small towns nowadays, in consultation both with the police with the local leaders of each community, and often, I am sorry to say, with the military authorities, as to how law and order are to be preserved. Fortunately, our efforts in the matter in the Punjab this summer have not been unsuccessful, except in one or two instances. But anxiety is never absent from our minds. I read in the newspaper the other day that the Deputy Commissioner and the Superintendent of Police of Lahore both spent the night preceding a big festival recently at the Sadar Police Station in that city—a pleasant place in which to spend a Punjab summer night. I personally arranged with my district officers—and I, in no way, wish to blow my own trumpet,—that my district officers should send me telegrams as soon as the recent Id and Mohurrum festivals in their districts had passed without trouble. As I received the telegrams from each district informing me that everything had passed off well, I said “Thank God”. You cannot realise the relief we district officers feel when an important festival passes off without any disturbance.

There is another aspect of the case, I should like to put before the House. Apart from riots, which are the outward and visible signs of communal friction, it affects all Government servants in administrative posts in the Punjab, in every branch of the administration. If we have to make nominations for appointments to a District Board or Municipal Committee, to make appointments to Government service, to promote Government servants, to make enquiries into charges of corruption or inefficiency against them even in the administration of criminal justice, we have always to bear in mind claims of the different communities or the possibility of communal jealousy being at the bottom of the complaints, before reaching a decision.

Sir Hari Singh Gour in his eloquent speech not infrequently used the query, “Is it fair to the House?” I would ask this House a similar question: Is it fair to the men serving Government in Northern India, both European and Indian—the great majority are Indian—that this unfortunate state of affairs should be allowed to continue a minute longer than this House can help?

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

The Assembly re-assembled after Lunch at Half-Past Two of the Clock, Mr. President in the Chair.

Mr. N. M. Dumasia (Bombay City : Non-Muhammadan Urban) : Mr. President, this is a very simple but a most important Bill. It involves no complicated issue, and its urgency is evident. My Honourable friend Lala Lajpat Rai, whom I do not see here now, opposed the

[Mr. N. M. Dumasia.]

Bill with all the emphasis in his power, yet he also recognised the necessity of adopting some measure for the preservation of peace and the prevention of the spreading of feelings of communal bitterness and hatred. To my mind the imperative need of the country is the restoration of friendly relations between the two great sister communities. Without harmony, without co-operation, the progress of the country will be impeded. The pressing need of the hour is tranquillity for which it is our duty as peaceful citizens to co-operate with the Government with all the might that lies in our power. The riots have already resulted in enormous loss of life and property and caused incalculable damage to trade and dislocated business and created a feeling of distrust and suspicion in the country. The atmosphere is charged with the spirit of dangerous hostility and it is the duty of every citizen to strengthen the hands of Government in the restoration of peace and amity, even if it involves a little sacrifice. But if this measure is rushed through this Assembly without being carefully considered in the Select Committee, it will create a feeling of suspicion in the country. I think, in order to consider what improvements or modifications are necessary in the Bill and to allay the feeling of suspicion, it is necessary that the Bill should be carefully considered in the Select Committee, in its various aspects. I know that the measure does not admit of delay, but what we have to consider is that it is the right kind of action. Before the next Assembly meets several months must be lost and the country wants rest and peace. Sir, any measure which is contemplated to allay this racial bitterness should not be delayed, but as I have said, we should not take a hasty step which may be misunderstood in the country. My friend Lala Lajpat Rai said that communal representation was the cause of these riots. I beg to differ from him. It was the late Mr. Gokhale who, for the sake of compromise and continuance of friendly relations between the two communities, advocated communal representation, and he went so far as to say that, even if in proportion to their numbers one or two more seats were given to Muhammadans, it would not matter provided it secured peace and harmony. Sir, I was one of those who was at first opposed to communal representation, but now I stand here to-day as a convert. If communal representation which has been a settled fact were done away with to-morrow, there would be riots, disturbances and bloodshed all over the country again, and it was with the view of avoiding this that the late Mr. Gokhale, who was a great and patriotic Hindu of the Hindus, and who believed that for the peace of his country and the progress of his country unity between Hindus and Muhammadans was necessary, went the length of saying that even if the representation granted to the Muhammadans was a bit more than was actually required, he had no objection to it. Then my friend Lala Lajpat Rai said that riots were continued after the inflammatory literature was burnt, but he forgot that the mistake which was once done could not be undone. As I have said, Hindus, Muhammadans, Christians, Parsis, we all want tranquillity in the country, and to secure that purpose it is our duty to strengthen the hands of the Government even if it involves a bit of sacrifice on our part. But I think that should only be temporary as this question affects the liberty of the people. I do not want that a wrong impression should be created in the country by hasty action. I therefore strongly support

the motion moved by my Honourable friend Mr. K. C. Roy for the committal of this Bill to a Select Committee, and in doing so I beg to say, that if I think that this Bill would encroach upon the liberties of the Press and the people permanently I would oppose it outright and vote for its rejection. But, as I have said, this is a simple Bill, conceived in the best interests of the country and it is necessary that it should be considered in Select Committee. It may be argued that we have no time for this purpose. But the Select Committee may meet at once and finish the business with as little delay as possible.

Mr. K. Ahmed : Will you sit this evening and finish by to-morrow morning ?

Mr. N. M. Dumasia : Sir, I am in the hands of the Honourable the Home Member. If he calls the meeting to-day we are ready to discuss it to-day and come to a settlement, but even one who was one of the strongest opponents of the Bill, Lala Lajpat Rai, has said there is a necessity for some measure, but he wanted to leave these things to the leaders of the community, stating that the leaders had not exhausted all their resources. If the leaders have not exhausted all their resources, it is not the fault of the Government ; it is the fault of the leaders themselves. They should have bestirred themselves and not waited till Government were compelled to bring in this Bill.

Colonel J. D. Crawford (Bengal : European) : Sir, there is one point in the debate which has emphasised and forced itself upon me, and that is that everyone is sincere in their desire to see whether they cannot allay this communal tension which stands in the way of the ordered progress of this country. Every Indian, be he Muhammadan or Hindu, who has spoken so far in this debate has emphasised his desire to assist ; and may I say that we Europeans too desire to do all we can to assist in a settlement of this present communal discord. We are often charged, as the Government are often charged, with helping to foment communal hatred. I desire emphatically to repudiate on behalf of my community any comments of that description. It is not in our interest to foment communal discord, and any body who has had experience of the Calcutta riots will know that British commerce was one of the heaviest sufferers from the discord in that city.

There are three points at the moment before the House. There is the Bill and there are two delaying motions. One delaying motion is for circulation for opinion which, if accepted, would necessitate the Bill and the consideration of the Bill being postponed till the next Session. The other delaying motion is one for a Select Committee, and I presume the Honourable Mover of that motion considers that he will have time to have his Select Committee finished and his Bill passed through both Houses of this Legislature before this Session ends. Let me first speak of the necessity for legislation of this nature. I had considerable experience of the riots in Calcutta and anybody who went round the Indian quarters during those riots must have been struck by the number of little groups which one saw sitting around in the streets with one man with a pamphlet in his hand reading it out to the others. There can be no doubt that those pamphlets and I think many newspapers too did a great deal to foment and maintain the tension that was current in Calcutta. I do not think there can be any doubt of the necessity for action of some

[Col. J. D. Crawford.]

sort. From what the Honourable the Home Member has said, it appears that under the existing law you can punish the people who publish these pamphlets but you have no power to go out and seize the pamphlets on the spot and prevent their circulation in the town and in the mofussil, and that is the power, I understand, which this measure seeks to give to the Executive.

I do not find any difference of opinion among Members of this House as to the necessity for legislation of some sort, but let me deal with the question of delay. My Honourable friend Sir Hari Singh Gour has put forward certain proposals that this measure should be circulated for opinion. Well, my Honourable friend Lala Lajpat Rai stated that there will be no great abatement of communal tension till the question of Muhammadan and Hindu representation is finally settled. That is, as a matter of fact, a very true statement. But as regards the position to-day there can be no doubt that there will be no immediate abatement of the present tension until the forthcoming elections are over. Now those elections are to take place before this House sits next January and it is during this period that we may expect considerable and increasing communal tension. If you want the measure at all, you must have the measure now or leave it alone for good. Therefore, I cannot support his proposal for a delaying motion of circulating for opinion.

As regards Mr. K. C. Roy's amendment, I personally do not see the necessity for a Select Committee. The need of the country to-day is that Government shall act and do all that lies in its power to put down a state of affairs which in any European country would have raised the whole country to a demand that Government shall take action. If you had been in Calcutta city as I was, you would have seen the poor people who were not really concerned with the riots—what were they doing?—running out of the city, unable to perform their local jobs, their houses looted or burnt. What is needed is that Government should come forward and take these citizens under their protection.

Mr. K. C. Roy : Whose incompetence was it due to ?

Colonel J. D. Crawford : I am not concerned with whose incompetence it was due to. If the Government is incompetent it is for the non-official Members to see that it is competent and to press it to take adequate action to suppress these disturbances.

Mr. K. C. Roy : I hope you will give us your support then.

Colonel J. D. Crawford : As regards the suppression of the liberty of the press, Honourable Members have said they are here to defend the liberties of the people and the liberty of the Press. That is true, but we are here also to see that the Press performs its responsibilities to the people, and when you get in papers, as I have got here, articles too terrible to read out in this House, I feel that the Press or portions of the Press at least have not fulfilled their share of the bargain, and that if they do not fulfil their share of the bargain, then it is up to us to keep them to it. There is one thing which we all desire and that is that communal discord shall cease. There is one duty forced therefore on every Member of a legislature in this country, be it provincial or be it central, and that is to give to-day, as an earnest of his desire to assist in allaying communal discord, his support to the Executive in a reasonable measure of this nature. I therefore support the principle of the Bill.

Diwan Bahadur T. Rangachariar (Madras City : Non-Muhammadan Urban) : Sir, I confess I rise to speak on this motion with some reluctance for it is a case of choice of evils which we have to face to-day. I may say at once that I lend my wholehearted support to the principle underlying the Bill not because of the vague statement made by Colonel Crawford that he saw people in the streets of Calcutta reading something of which we know nothing and of which we have heard nothing but what he infers from the reading.....

Colonel J. D. Crawford : Would you like me to read it here ? Do you think it desirable ?

Diwan Bahadur T. Rangachariar : If you have got it I should like to read it, because it will enforce the argument.

Colonel J. D. Crawford : I will show it to you afterwards.

Diwan Bahadur T. Rangachariar : Well, it is not because of that statement but because the case for the principle of the Bill rests on more substantial grounds. I myself have seen reproductions of some pamphlets or leaflets only last week reproduced in the *Hindustan Times* which appeared to me to be very provocative indeed, and I have heard it stated by people in these parts that such inflammatory leaflets and pamphlets do circulate, and I do not think any Honourable Member of this House has questioned the accuracy of the statement made by the Honourable the Home Member that most of these riots are due to such a cause in a large measure. Even my Honourable friend, Lala Lajpat Rai, for whose return to the Assembly to-day we are all grateful, although he says he has not seen many pamphlets of that sort, even he does not question the accuracy of that statement. So we start with that fact. Here are riots which end in bloodshed, which end in injuries to our own countrymen.

Now, if there is one thing clear more than another it is this. Preventive action is needed in this case more than in the case of seditious matter. Seditious matter, I am sure, will fall flat upon the people of this country. It does fall flat ; and however much there may be writings preaching sedition, unless it amounts to inciting to actual rebellion and all that, I am not at all afraid of any amount of seditious matter being uttered or spoken or written or published or printed. But in a case of this sort where an appeal is made to religious fanaticism creating discord among communities, it is very necessary that we should take ample safeguards. The principle underlying this Bill is that prevention is better than cure. I would perhaps state it that prevention is better than punishment. Now, what is the power which the Executive Government now possess ? They can prosecute people who circulate or print such pamphlets, inflammatory pamphlets, leading to communal or class discord. No doubt that might have some effect, but it is far better to prevent the spread of such literature because then we will be doing a great deal of good to people who are likely to fall a prey to such incitements. Therefore, Sir, the question is whether the Executive have now got that power under the existing law. It is true that after conviction the pamphlets can be confiscated. It is true that you can make a search after instituting the prosecution and get hold of the papers and produce them in court. It will be for the court to pass orders regarding the disposal of papers so seized. But prosecution under this section, all will agree, should not be lightly launched. It requires the careful consideration of Government before such a prosecution can be launched, because many issues arise

[Diwan Bahadur T. Rangachariar.]

out of a prosecution. Probably you give greater publicity by a prosecution of that sort to inflammatory matter and perhaps it would be wise to ignore such things. Therefore, Sir, I accept the principle underlying the Bill that the existing law does not arm the Executive with the necessary power for prevention. This is highly essential and therefore an amendment of the law is needed. Now, we all have an instinctive dislike to the Executive Government of this day, and, I am sorry to say, with ample justification. Justification, Sir, we need not go far afield to seek. We have it in what happened only the other day in Bengal. Sir, it is a matter of all-India importance. Now, why do the people distrust this Executive Government? If there is any opposition to this measure from my non-official friends here, it is because such power has not been properly used before, and that is why they dislike to arm the Executive with more power of this sort. Therefore, I appeal to the Honourable the Home Member, while I for my part am prepared to lend my support to this Bill, to keep a close watch upon the way in which this power is exercised. Home Members have often said on the floor of this House that they are doing it and that they will take care to do it; and I am glad to acknowledge in one case to my own knowledge they have exercised their supervising authority to the satisfaction of the public—I will not mention that instance. But at the same time I am not at all sure that they are keeping that close and strict watch over the Executive Governments all over the country in the way in which Central Governments should do. For no doubt under the section, as Honourable Members will have noticed, the power to decide whether the matter is one coming within the scope of the section is vested in the Local Government. But what is the Local Government? Does the Governor in Council really consider this matter? He ought to, I quite agree. But oftentimes they are misled by the executive officers; in the excitement of the moment the executive officers do not bestow that calm and cool consideration which the Home Department of the Government of India often does in matters of this kind. That is where the trouble comes. It is abused, it is misused, it is misapplied; influential papers escape; rich people escape; troublesome communities escape; in that way people are apt to look with suspicion. If the Government will administer impartially the power entrusted to them, I am sure the distrust which now exists in the minds of the public will disappear. That, Sir, is where we are crying for responsible Government; for then they will take care to see that they do not exercise the power in the way in which they are doing it now. But at the same time that cannot be helped. In the meanwhile the country cannot wait for Swaraj and say "We will not arm the Executive with power of this sort, though it is essential in the interests of preservation of lives and of peace and of the limbs of the people of this land". We have to tolerate the Executive Government as it is. We have to trust them; we are here to see that they behave properly, and I am quite sure if we do our part here we can keep the Executive Government somewhat in check. But my Honourable friends argue "Why do you rush a measure of this sort in a thin House like this?" Is the Executive Government responsible for the thin House? The people are responsible for the thin House. Let them take note of it. Here is a most important measure affecting, it is said, the liberty of the subject and the liberty of conscience; and where are the people's representatives? What are they

doing ? Sir, I say that is no excuse at all. We cannot shirk our responsibility simply because some people happen to be absent. We have to do our duty. We have to do our duty to the extent to which it lies in our power. At the same time, when I give my support to this measure, I cannot help feeling that amendment of a substantial nature is needed in the Bill as introduced. I hope this communal feeling, this tension between the communities is a passing phase. I hope that is so, although whether there is ground for my hoping so is a matter perhaps to be judged later on. So, whether there is necessity for enacting a permanent measure and placing it on the Statute-book, arming the Executive in this manner is a matter for serious consideration. This acute tension is only of recent growth and I hope it will disappear soon. It will disappear not merely by preserving law and order. As I said yesterday some more elaborate measures are needed. I will not go into that question now, but merely keeping the peace or preserving law and order and preventing riots is not going to remove the root cause of the evil. The root cause of the evil is elsewhere and requires greater consideration. I support this measure not on the ground that it is going to bring about communal concord—not at all ; perhaps, as my friend, Lala Lajpat Rai, mentioned, it may lead to further discord if it is abused. If the Executive Government is suspected of bias towards one community or another then it is likely to embitter feelings still further between the communities. That is why the careful exercise by the Local Government of the power entrusted to it under this measure requires consideration.

Sir, I do consider there has been a departure from the language of section 153A in enacting this clause. The language of section 153A is not reproduced although the object is apparently the same. The language of section 153A is not reproduced in this clause because the language here is somewhat wider. It requires to be carefully examined before you can give your consent to this measure. The Honourable the Home Member will notice that the language of section 153A is " promote or attempt to promote feelings of enmity or hatred between different classes ", whereas here the wording is " or any matter calculated or likely to promote feelings of enmity or hatred between different classes of His Majesty's subjects ". There is a wider scope given thereby. What is the necessity

for such wider language is a matter which must be examined by a Select Committee alone ; and the other suggestion that I made whether a clause should not be introduced in the Bill making the Act endure for two years or three years as the Select Committee may decide, is also a matter for the consideration of the Select Committee. I have no doubt in my mind, Sir, that this is a measure which must be passed in this Session of the Legislature. Even if some prolongation of the Session were needed, I for my part would be quite prepared to stay on and see that this Bill becomes law in a modified form. Therefore, Sir, the shortness of the Session need not deter us from giving our support to this motion for reference to a Select Committee. After all, Sir, the Select Committee can report by the day after to-morrow, and we can meet on Saturday and pass this measure. Even if some prolongation of the Session were needed, I do not see why this Session should not be prolonged. Simply because the Executive Government have made up their minds that this Session should close on the 2nd September, should it close if the interests of the country require that the Legislature should sit longer ? Therefore, Sir, I think that the matter

3 P.M

[Diwan Bahadur T. Rangachariar.]

should be considered and passed in this Session. I for one would suggest for the earnest consideration of the Government that it will not be wise or politic on their part to rush through this measure without referring it to a Select Committee. This matter has to be examined carefully by the Select Committee and additional safeguards have to be introduced. The language is too wide, and I do want the Select Committee to consider this very carefully, and they can do it in two or three hours. I therefore support the motion of my friend Mr. K. C. Roy for whose opinions on this matter I have got the greatest respect, and I do hope that my suggestion will commend itself to the House.

Sir, I have only one suggestion to make. My Honourable friend Mr. K. C. Roy would, I am sure, accept this suggestion of mine, and it is this. I should like to add the name of Sir Sivaswamy Aiyer to the Select Committee, and I hope the House will accept it.

Mr. K. C. Neogy (Dacca Division : Non-Muhammadan Rural) : Sir, I am afraid some of the Honourable Members who have spoken this morning have tried to anticipate the debate on the Resolution that was moved yesterday by my Honourable friend Maulvi Muhammad Yakub and which was adjourned for further consideration till the 1st of September, because I feel that this little Bill does not give sufficient justification for covering the entire communal problem as some Honourable Members have attempted to do. When my Honourable friend Mr. Townsend was speaking this morning, I was really wondering as to whether his tale of woes, the woes of the district officer, had any relevancy at all to the present Bill. For instance, the present Bill is not expected to help him in his difficulties in the matter of making nominations to the District Boards. However, Sir, I hope that in the further discussion of this Bill we shall be able to keep ourselves strictly within the limits of the present measure.

Sir, the Honourable the Home Member has not carried out his promise of placing at least the relevant portions of the opinions of the Local Governments.....

The Honourable Sir Alexander Muddiman : I will explain to the Honourable Member why I have not done it. If he wishes me to do so, I will in my final speech. I did not desire, as the Honourable Member apparently does, to revive communal tension, but I will do it if I am challenged.

Mr. K. C. Neogy : It is rather difficult to follow the Honourable the Home Member from this distance. I have no desire to rake up communal matters. But all the same I would insist on the Honourable the Home Member giving us at least those observations made by the Provincial Governments which may have a direct bearing on the necessity of this measure. However, Sir,.....

The Honourable Sir Alexander Muddiman : If the Honourable Member asks for it, he shall have it.

Mr. K. C. Neogy : If the Honourable the Home Member thinks that it would not be proper to discuss the matter across the floor of this House, that certainly is a very great reason for supporting the motion moved by my Honourable friend Mr. K. C. Roy, because the Select Committee

would then be in a position to know the exact situation and come to a considered conclusion. Sir, I daresay that when the Honourable the Home Member was referring to the fact that the authorities in Calcutta strained every nerve to maintain peace during very troublous times recently, he forgot the fact that, while the riots broke out in Calcutta, the Local Government was nowhere near Calcutta. He further forgot the fact that the head of the Local Government was enjoying the cool breeze of Darjeeling.

The Honourable Sir Alexander Muddiman : How does this arise out of this Bill ?

Mr. K. C. Neogy : It does arise in this way, Sir. Under the proposed amendment to section 99A, you are arming the Local Government with authority to take immediate action in certain emergent circumstances. What I want to point out is this, that when those emergent circumstances arose in Calcutta, the headquarters of the Local Government, the Local Government was nowhere near the scene, so that even if you were to arm the Local Government with this drastic power, there would be absolutely no guarantee that a proper use of the power would be made at the proper time. That is the relevancy of my observation on this point.

Sir, as I was saying, when Calcutta was weltering in blood, the head of the Government of Bengal was enjoying the cool breeze of Darjeeling

.....

The Honourable Sir Alexander Muddiman : How does this arise ?

Mr. K. C. Neogy : Sir, I can quite understand that the Honourable the Home Member feels rather uncomfortable.....

The Honourable Sir Alexander Muddiman : I do not in the least, Sir, feel uncomfortable about that, but in the interests of the debate, I would suggest that the debate must be confined to matters which are really before the House.

Mr. K. C. Neogy : I claim, Sir, that I have some sense of relevancy of the observations which I have made. I do not know whether it is necessary for me to repeat what I have already said. This power is proposed to be given to Local Governments, and my point is that you cannot depend upon the Local Governments being even at its headquarters when an emergency like this arises. That is the relevancy of this point. Anyway, I leave it at that.

The Honourable the Home Member stated that the newspapers have not very much to fear from this Bill, because from the very nature of things preventive action is very difficult to be taken in respect of newspapers. So whatever action could be taken under this section would mainly be directed against pamphlets and leaflets containing mischievous writings. Sir, I do not know why at the same time the Honourable the Home Member referred to the prosecutions in Bengal, prosecutions exclusively of certain newspapers under section 153A of the Indian Penal Code. Well; if that had any relevancy at all, I do not think that the assurance which he held out to the Press that they had not much to fear from this Bill has not got much to commend itself. Sir, I take it that the circumstances in which action under section 99A as now sought to be amended, may be taken will be such as would justify also a prosecution under section 153A, because the language used in this Bill is taken from

[Mr. K. C. Neogy.]

section 153A. Therefore, I take it that the circumstances in which preventive action is taken on this extraordinary power will be similar to the circumstances in which prosecution has been undertaken or may be undertaken. Well, I do not think the Honourable the Home Member will dispute this point. However, Sir, what did the Government of Bengal do? I am entitled to know from him as to when it was that the attention of the Government of Bengal was drawn to the fact that offending articles were being published in the newspapers by the different communities. When was attention first drawn to this fact? Because, I maintain, that the disturbances in Calcutta were in a larger measure due to the fact that they were fomented by injudicious writings in the Press, and I further maintain that, as soon as the riots broke out, leaders, may be of both communities, drew the attention of the authorities to this fact. And when was it that prosecution was actually undertaken in certain cases? Will the Honourable the Home Member ascertain these dates from the Government of Bengal?

The Honourable Sir Alexander Muddiman : I will read out to the Honourable Member the number of prosecutions that were undertaken.

Mr. K. C. Neogy : The number of prosecutions has very little to do with my point. The point is, have the Government of Bengal made sufficient use of the powers that they possess? Have the Government of Bengal made use of section 153A at the proper time? My answer is "No." If they had, then they could arrest the mischief at a much earlier stage. That is my point. I will tell the Honourable the Home Member what a District Magistrate in an affected area, with whom I had a talk, and whose name I do not wish to disclose, said on this point. It was just when the prosecutions of the newspapers were undertaken, that I was having a long discussion with him with regard to the communal situation. He admitted to me that he had seen some offending articles in certain newspapers. I asked why he did not move the higher authorities to take action. He said that he did not think it worth his while to move in the matter, and he thought that they were quite wide awake to the situation, and he regretted that the Government of Bengal had not taken action earlier.

Then, Sir, the Honourable the Home Member says that this measure will be specially directed against leaflets and pamphlets. I myself have seen certain offending leaflets that were in circulation at a very early stage of the troubles in Bengal. I know it is a fact, and I know it will not be denied by the authorities themselves, that some of these pamphlets were actually brought to their notice, copies of them were delivered to them. But has there been a single prosecution in any case? I do not want to insinuate that they were taking sides or anything of the kind. What I say is that in the circumstances it is very difficult to trace the quarter from which these pamphlets were being circulated; and how it is possible, even if you enact this particular measure, how is it possible, for you to discover the source from which the poison is disseminated like this? (*Mr. K. Ahmed :* "The source is the Arya Samaj.") Well, I hope my Honourable friend will desist from making observations of this character, because I have taken great care not to bring in any communal issue on this question; and I do hope that my Honourable

friends will put aside communal issues as much as they can. The existence of the evil is admitted, the only question is what are we going to do to combat the evil? Is the present measure a suitable measure for the purpose? I am not going to apportion blame on this occasion to anybody—(*The Honourable Sir Alexander Muddiman* : “Except to the Government.”) Exactly. Yes, when they have offended against the dictates of ordinary prudence and ordinary humanity, as they have in Bengal. (*Mr. B. Das* : “Government have no humanity.”) I know that the Government of Bengal are not beyond misusing or abusing their extraordinary powers in matters in which they feel interested. Sir, I should be very loth to make any concessions to that Government and agree to any petulant demand for further powers. I want to be satisfied, as I began by saying, that the Government of Bengal have made full use of the powers they possess, before I can be a party to an extraordinary measure like this. That is the reason why I am prepared to support Mr. Roy's amendment, because in the Select Committee we will be in a better position to know what the Government have done, and whether they deserve further assistance in this matter.

Pandit Shamlal Nehru (Meerut Division : Non-Muhammadan Rural) : Sir, I do not propose to go into the details of the things which have happened or are happening to-day. It is enough for me to know that something very bad is happening, very bad for the country, very bad for me, and very bad for the Government as well. I love my country; and I am sure my “Trustees” also love it—it may be for different reasons—but the fact is there that we all love our country, and I think it is our duty to stop this communal tension at once. I am prepared to go to any length and to sanction any punishment for anyone of any community provided the offence is proved in a court of law. I am even prepared to sanction, for serious communal offences, the punishment of hanging. But I am afraid that the Bill presented by the Government will be absolutely useless. It will certainly disaffect the people still more. The Government will be still more unpopular among the people. Will it be possible to find out which press and when and at what time is composing or printing or publishing certain pamphlets which are offending against the law? (*Mr. W. M. Hussanally* : “There is the C. I. D.”) Yes, there is the C. I. D., as my friend says. Half a dozen people of the C. I. D. will have to be allotted to every press to search it from morning till evening. How would you know whether it is going for printing at 6 o'clock in the morning or 4 o'clock in the afternoon? It will virtually mean that you will have to allot a certain number of men, educated or uneducated (it does not matter to the bureaucracy so long as they can get hold of all the papers in the press), take them to a Magistrate, who will only see them at leisure. But what is to become of the paper in the meantime which is to come out the next morning? Will the District Magistrate find it possible to go through all the papers at once? Or does the Government mean to appoint a censor for every press? I am afraid I cannot support a measure like this, a measure which is not likely to do any good but only create more disaffection amongst the people.

As for the reasons of the communal riots and communal tensions, the reasons are many and I think the Government ought to go into the reasons and remedy the evils thereof. In my opinion the chief reason among many others is not the communal representation but the communal electorates. The communal electorates in my opinion should be

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done away with at once. I do not object to communal representation but only because the Muhammadans want separate representation....

Maulvi Muhammad Yakub : Sir, is this relevant to the point at issue ?

Mr. President : Order, order.

Pandit Shamlal Nehru : ... I have no objection to give it to them. But why have separate electorates ? If there are separate electorates, Muhammadan or Hindu we generally go to our electorates on a communal basis. Supposing nobody knows me : I am a nobody in politics, I want to come to the Assembly, I go to my electorate, whether I am a Muhammadan or Hindu. Unless I call the other community names and damn them before my electorate, I have absolutely no chance of being elected. (*Raja Ghazanfar Ali Khan* : " You are absolutely wrong.") I am absolutely correct and my friends know it. I have been told so by my friends and have personal knowledge of it. (*Mr. K. Ahmed* : " What about the Cattle Bill ?") My friend Mr. Kabeer-ud-Din must say something or other, whether it is relevant, irrelevant, wise or otherwise. So I will not take notice of his interruptions in future. I would suggest to the Government to withdraw this Bill to-day and take it up another day—tomorrow or the day after or any other day. And let them have very drastic penalties for communal offences but *after* conviction, and I will support it with the greatest pleasure.

Raja Ghazanfar Ali Khan (North Punjab : Muhammadan) : Sir, I must confess that it does not give one happiness to support a measure of this nature. I also admit that the things which are going on now in the country have assumed such alarming proportions that probably the Government have been forced to come forward with this measure. It is on this account that I congratulate the Honourable the Home Member for bringing in this Bill. My only grief is that he did not think of it earlier, because I am sure that, if this measure were passed earlier and if it had been properly administered, things would have been in a very different state to what they are at present. As he himself remarked in his speech when introducing this Bill, the unfortunate happenings at Kohat were mainly due to the circulation of a pamphlet which was very obnoxious in its contents. I am very sorry that he did not then think of coming out with this piece of legislation. I must admit that this House is not the proper place to discuss communal matters and to find out means of putting an end to them. There are only two agencies in existence in the country which can deal with communal questions ; one is the leaders and the other is the agency of the Government. The leaders have tried their best. I must say that they have left no stone unturned in trying to bring about a compromise, at least those leaders who are true well-wishers of the country and who are really anxious to get Swaraj. But they have failed in their efforts not because of any fault of the masses, but, in my opinion, because there was selfish rivalry for leadership, trying to throw out one party from power and trying to establish their own supremacy. These are the men who have always stood in the way of a settlement of the communal differences. Anyhow, Sir, the fact remains that the leaders have failed in spite of trying very hard to bring about a settlement. The only other agency left, whether we trust it or not, is the Government. Therefore, I think, if we realize that this communal tension must be stopped

immediately, we should, if not actively support the Government in adopting methods which they think necessary and reasonable for putting an end to these riots, at least watch quietly and give them an opportunity, for a short time at least, to try their methods and means and see if they can bring about better results. I concede, Sir, that these various religious and political questions can be permanently solved only by the leaders of both communities. If I support this measure it is merely due to the fact that in my opinion, if the proposed law is well administered, it will produce that calm atmosphere which is necessary before the leaders sit together and try to find out some means of a final settlement of various questions.

Sir, there has been a proposal that this Bill should be circulated for public opinion. I do not think that will serve any useful purpose. As was remarked by my Honourable friend Colonel Crawford, now is the most suitable time when this Bill should be enacted into law. On account of the coming election so many different parties have come into existence in the country and some parties, though under different names, are really communal parties. I know that they have got nothing in their policy and many individual members of those parties have got nothing in their past political careers which could persuade the electors to trust them and to send them to the legislative bodies as their representatives. Therefore, the only course left open to them is to play on the religious feelings and sentiments of one community or the other. The result will be that most of the election speeches, manifestoes, and various articles in the papers, would generally be of an inflammatory nature. I think it is very necessary that the Government should devise some means to stop that. Sir, the only political group of any importance in the country and which always took a comparatively fair view of communal matters was the Swaraj Party. But efforts are being made to overthrow that party and my information is that some of the most responsible men who were in great agreement and love with the principles of that party have resigned from it for the only reason....

Mr. President : Order, order. These observations are not at all relevant to the motion before the House.

Raja Ghazanfar Ali Khan : All I wanted to make out was that this was the time for the application of this remedy when the elections are approaching fast. (*Lala Lajpat Rai* : "Why not join that party.") Sir, it is not because I do not agree with their policy on communal matters that I do not want to join or remain in the Swaraj Party. It is on different grounds. Sir, my Honourable friend Mr. Neogy was complaining about the Bengal Government. I would also submit that the laws which are already in existence are quite sufficient if they are rigidly acted upon by some of the officers who are entrusted with the duty of administering these regulations. If they would only realize that such laws, under these abnormal circumstances, are very rigidly enforced I am sure that some of these communal riots could have been avoided. With your permission, Sir, I will just make a passing remark about that unfortunate happening at Rawalpindi only recently. This is a place situated within my constituency. I think that the trouble may not have happened at Rawalpindi if the local authorities had shown more courage. In October 1925 the Punjab Government issued instructions to the District Magistrates that no religious procession should be taken out without a

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license.* I think there is a section in the Police Act to that effect. One community at Rawalpindi passed a resolution that they would defy this order and take out a procession in defiance of the order, without getting a license, and they actually did take out a procession. The authorities did not take any notice. After two months they took out another procession in defiance of that order, yet the authorities did not take any action. This naturally encouraged those people and again for the third time they took out another procession, and there was a riot. I do not want to say which community was responsible for the riot. But in any case, if the law had been enforced rigidly, I am sure the trouble would not have happened at Rawalpindi. So, there will be no use in passing this Bill unless the authorities make up their minds to act upon it very rigidly and honestly.

Allegations have been made to-day that the Honourable the Home Member is taking undue advantage of his official majority to press this Bill. But I am sure it will not be with the help of the official majority but with the help of the non-official majority that this Bill will be passed. We all realize, that every Act can be misused and it is quite possible that some local officials might make a wrong use of this Act too. But for matter of that, they can misuse any section they like and this should not stop us from passing a measure which we think is really a sound one.

My Honourable friend Pandit Shamlal Nehru made a remark that communal electorates are to a great extent responsible for this trouble. I do not want to go into details, but I simply want to assure him that his information is entirely wrong. So far as my province and community are concerned, we are not standing for election on any communal party ticket.

Sir, another statement was made, and I think it was by my Honourable friend, Lala Lajpat Rai, who said that these things are only of a transitory nature, and that after 1929 they will end. I absolutely agree with him so far as this particular remark is concerned, because my conviction is that there is a certain group of politicians who think that these separate electorates must go at any cost, and so probably it will make their case very strong, for the Royal Commission of 1929 if during the preceding four or five years there have been riots all over the country, because they can very well try to attribute it to these separate electorates.

With these remarks, Sir, I strongly support this Resolution. I have got no objection to the amendment which has been moved by the Honourable Mr. K. C. Roy that the Bill be referred to a Select Committee, provided there is no obstacle in the way of the report of the Select Committee coming up before this House at once. If there is any likelihood or possibility of the Bill's thus being postponed to the next Session of the Assembly, I would strongly oppose that amendment as well, because I know that a Select Committee is not very necessary. Even a layman like myself can understand that those people who would create communal troubles or write such pamphlets should be prosecuted and the pamphlets confiscated. I do not see what useful purpose would be served by a Select Committee, but if the Select Committee has power to make some change which would restrict the continuance of this section to some period, I will certainly support that amendment, otherwise I do not think any other useful purpose would be served by referring it to a Select Committee.

Khan Bahadur A. Rahman (Bengal : Nominated Official) : Sir, I can assure the House that automatous as we are described to be by the Leader

of the Independent Party sitting serene and unruffled in the Bench opposite we do not rise up to support the Home Member on each and every occasion and in support of every proposition put forward by him ; but it is only when palpably unfair and ungenerous criticisms are made against very sound and reasonable proposals that we rise up to support the Honourable the Home Member.

Sir, in rising to support the amendment in the present Act it is not my intention to repeat those reasons which are given in the Statement of Objects and Reasons, but to confine myself to my personal experience of the Calcutta riots which perhaps necessitated this urgent legislation on the lines indicated by the Home Member.

Sir, it is very difficult for Members coming from provinces far away from the scene of communal riots and unaffected by communal horrors and sitting in the serene heights of the summer resort of the Imperial Government to appreciate the urgency for such legislation ; but to us who passed sleepless nights and undergone anxieties for weeks and months together, the matter is most serious. To us the part played by the circulation of thousands and thousands of most mischievous and inflammatory pamphlets, exciting the worst elements in both communities, and working up to frenzy the unfortunate creatures who committed all sorts of horrors in the name of religion, was a serious matter. Can you imagine, Sir, that within 300 yards of the Bengal Secretariat murders were committed in broad daylight and with impunity, and that between the 2nd and 12th April as many as 44 persons were killed and 584 injured, while between the 22nd April and 9th May 62 persons were killed and 359 persons injured ? Can you think for a moment without a shudder that Hindus during the height of the riots cut the throats of the Mussalmans simply because they had Moslem dress on, and *vice versa*, and would you believe that two Hindus were murderously assaulted by Hindus themselves because they had long beards ? Can communal frenzy go further ? Sir, I know that the Calcutta police arrested a person who was distributing thousands of leaflets urging the Hindus to beat, stab and murder all Mussalmans wherever caught. But fortunately for the man there was an accident in which two motor lorries came into collision and in the motor the man escaped. And during these Calcutta riots I can assure you that thousands of such leaflets were distributed broadcast throughout the town and were sent to the mofussil by post.

Sir, I can reasonably ask the House, are not Government justified in taking drastic measures to remedy all evils that contribute to encourage such a perversity of the human mind ? Sir, it must be a curious manifestation of perverse mentality indeed to see apparitions of evil genius in every act of Government and to attempt to throw obstacles in the way of every sound and reasonable proposition of Government to legislate where legislation is urgently required for the peace and tranquillity of the country and for the safety of law-abiding citizens. Coming back to the amendment itself what do we find ? It is a simple amendment of Section 99A, giving Government power to confiscate newspapers tending to incite communal hatred. I ask, is it an arbitrary power we want to give to the Government without any remedy to the aggrieved person ? Certainly not. It is provided in Section 99C that every application of an aggrieved person shall be determined by a Special Bench of the High Court composed of three Judges, and the person can bring his grievances to the notice of the High Court and get

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proper remedy. Nothing, Sir, will satisfy a certain section of our people, and they will try to delay matters which are urgently required to nip in the bud any cause that might increase communal tension. It has been said, Sir, that Section 153A of the Penal Code is sufficient for the purpose, but may I ask whether this section can catch those strange persons who distribute leaflets inciting people to commit horrible outrages? Certainly I do not think any legal authority would say that it can, and besides it is not possible to trace the authors of those leaflets. Naturally enough Government are bound to search suspicious places where these leaflets are printed, as has been done in Calcutta, and in the course of those searches leaflets inciting people to commit all sorts of outrages on members of the other community have been found; but I am afraid Government were not able to deal with those leaflets or their authors. It is therefore necessary that a special section should be enacted giving full power to the Government to seize such mischievous and inflammatory articles and leaflets, so that they cannot reach the masses and cause mischief as they have already done in Calcutta. Sir, it has been said by Sir Hari Singh Gour that the Calcutta and other riots were a passing phase of communal tension, but with due respect for his opinion, I think it is not a passing phase, but it has come to stay. Members of the House are well aware of the extent to which communal feeling is running high among members of both communities and, unless all possible steps be taken to strengthen the hands of the Executive, the result may be disastrous. It has been also said that this Bill interferes with the liberty of the people. I do not know what the Honourable Member who said so means by the liberty of the people. Is it the liberty of the few, or the liberty of the millions, millions of law-abiding citizens who look up to Government for protection? Then there is a proposal that the Bill should be circulated before it is taken into consideration. That means that the Bill should be shelved for six months at least, and until the election is over, which is just the contingency for which the Government seek to provide themselves by enacting special laws to prevent further riots. There is a further amendment that the Bill should be referred to a Select Committee of eight persons. I do not know what magic eight members in Select Committee have which will do away with the necessity of circulating the Bill before final consideration as proposed by Sir Hari Singh Gour. Mr. Roy said it could be finished in two hours. If it could be finished in two hours, probably the Government would have accepted it without further opposition. Then, Sir, my benevolent friend Lala Lajpat Rai deplored religious quarrels in Calcutta and other places and shed crocodile tears a thousand miles away from the scenes of occurrence. It would have been much better if he and other leaders of the community had extended their helping hands and tried their level best to prevent the riots and to induce members of their community to cease excesses and outrages; but I am sorry to say nothing was done. It is rather an easy matter to deplore such occurrences; it is quite another matter when questions of actual interference come in. Sir, Mr. Roy inquired whose incompetence was responsible for these riots....

Mr. B. Das (Orissa Divisions : Non-Muhammadan) : Your incompetence the Government's incompetence.

Khan Bahadur A. Rahman : It is my incompetence and your incompetence too. The members of your community have failed to do anything. So I do not think it is the Government's incompetence ; it is principally the incompetence of the leaders of the Hindu and Muhammadan communities. Sir, this is an emergency Bill and it should be enacted without further reference to a Select Committee and without circulating it.

Lieut.-Colonel H. A. J. Gidney (Nominated : Anglo-Indians) : Sir, if I rise at this late hour to take part in this debate, it is because I think that the situation to-day is so serious and a remedy is so vitally necessary, that I think it is the duty of every community and of its representatives in this House to offer its support to the Government.

I stand here as representative of a small community, one that is prepared to offer its entire support to the Bill. My Honourable friend Lala Lajpat Rai has just said a lot about the efforts that the leaders have made to arrive at an amicable settlement on this problem. I was invited to the Unity Conference held in Delhi and as it were occupied the position of one of the small pawns in the game of political chess that was being played by the various communities towards Peace and I will tell you what I saw. I saw two of the leading players, Lala Lajpat Rai and Mr. Jinnah—Mr. Gandhi was the umpire. On Lala Lajpat Rai's shoulders had fallen the mantle of Ranjit Singh and on Mr. Jinnah, had fallen the mantle of Aurangzeb. These two were playing this political game of chess, one holding the Queen piece and the other the King piece ; and instead of trying to mate with each other they did their very utmost to checkmate each other. The Conference, I am sorry to say, ended in an absolute fiasco.

Now this communal dispute can be settled either by the people or by the Government. If the people fail, it is certainly the duty of Government to settle it if they can. I do not, as does my Honourable friend who hails from the land of oranges, Sir Hari Singh Gour, view the situation as a passing phase. If Dr. Gour had come down to Calcutta instead of sitting in Nagpur, he would have found what the real position during the riots was. I wish he had spent a night in Calcutta during the riots. I do not think he would then have talked about this as a passing phase. Sir, the points to settle are these : Does communal tension exist to-day ? No one can deny that. Are seditious and inflammatory pamphlets being circulated ? All agree they are. Is it a passing phase ? Every one denies it is, but our friend, Sir Hari Singh Gour. Is it harming the country ? It is certainly harming it. Have the Government got sufficient power in the Criminal Procedure Code to stop it ? Government say they have not. Our friends on the opposite side say the present law is adequate to deal with these offenders—Mr. Neogy introduced a personal element affecting the Bengal Government in his speech and I think he was very wrong in doing so. It was absolutely unmerited. Should this condition be stopped ? No one can deny that it should be stopped and we all want it stopped. The next point to decide is how can it be stopped. Is this additional legislation urgent ? Every one admits it is. Can we postpone it till the next Assembly sits ? No one desires this to be done. It therefore is apparent that the whole House is in agreement that some legislation should be introduced and that it should be introduced this session. There is however an amendment moved by my Honourable friend, Mr. K. C. Roy, that it should be sent

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to a Select Committee for certain alterations and further consideration. Sir, I think the Honourable the Home Member is as solicitous for the peace and welfare of India as anybody on the opposite benches ; and I think if there were a chance of modifying this Bill to suit the wishes of the other Members without weakening its powers and so obtaining the unanimous approval of this House for this measure, and if time permitted this being passed this Session : moreover, I think he would readily acquiesce to the wishes of Honourable Members who have appealed to him. I hope the Home Member will reply to this question as to whether it is possible to refer this Bill to a Select Committee, which I understand could reconsider the matter within a couple of hours and present it for our consideration and deliberation within the present Session. If such is possible I do not think any one would refuse to lend his support to the amendment of Mr. K. C. Roy. But I certainly can not lend support to any amendment that would curtail the powers of this Bill as it is presented to us to-day, because I consider the position is so acute and the dangers ahead so great that we should not curtail the powers of the Executive rather we should enhance them. Sir, I look upon the present political condition in India to-day with this lamentable communal tension as a very serious one and it affects my community also for this is my country as much as it is that of any Honourable Member on the other side. I, therefore, as a humble Member, representing about a quarter million of my people wish to state here and now before this Honourable House that the greatest harm this communal tension has done for my country is that it has put back the hand of the reform clock about twenty or thirty years, and it is up to us to cry a halt at once and to stop this ruinous activity. Government have brought in this Bill to stop it, and it will be your fault and India's loss if you refuse to accept it and have peace. Refuse it and have murder and blood-shed and lose Swaraj. What is your choice, my Hindu and Muhammadan friends ? I, therefore, Sir, support the amendment to this Bill if it is possible to pass it unshorn of its present power in this Session ; otherwise I wholeheartedly support the Bill that we have before us now.

Sir P. S. Sivaswamy Aiyer (Madras : Nominated Non-Official) : Sir, I wish to say a word or two in support of the principle of this Bill. The object of this Bill is merely to implement the policy which underlies section 153-A of the Penal Code. That section strikes at all attempts to promote enmity and hatred between different classes of His Majesty's subjects. The object of this measure is to take preventive action and prevent the diffusion of any literature which is calculated to produce the effects which are dealt with in section 153-A. I am therefore in favour of the principle of the Bill.

Two objections have been urged against the Bill, one, that it is unnecessary and that in this matter we ought to leave it to the communities concerned to come to a reconciliation among themselves, and another, that the powers are liable to be abused. With regard to the view that the matter should be left to the action of the communities concerned I am sorry that our past experience does not justify a very optimistic view. Several conferences have been held and they have all failed to bear any fruit. I have no objection to any amount of pious efforts for the purpose

of bringing about this much-desired object of re-conciliation between the communities. I have no objection to prayers or good wishes and I do not in fact deprecate any attempts made by the communities concerned to bring about an adjustment of differences and a better state of feeling between them. But at the same time I am one of those who have no objection to trust in God but prefer to keep their powder dry and ready for use. In fact my complaint against the Government is that they have failed to make an adequate use of the powers with which the law has vested them. If the Government had made an adequate and prompt use of the powers conferred upon them under section 153-A, I imagine it would have been possible for them to nip much of the evil in the bud. Now, whatever might have been the attitude of the Government in the past, let us hope that they are now fully alive to the dangers of inaction and that they will take measures for the purpose of preventing a continuance of this state of things and that they will make a prompt, vigorous and impartial use of the powers with which the law has vested them. I approve of the principle of the Bill inasmuch as it is merely intended to carry out further the objects which have already been provided for in the substantive law as enacted in section 153-A of the Indian Penal Code.

Now, Sir, with regard to the objection that the powers may be liable to abuse, we have to remember that the exercise of this power is not left entirely to the sweet will and pleasure of the Executive uncontrolled by any judicial authority. Under section 99-B of the Criminal Procedure Code any order of forfeiture passed under section 99 can be revised by the High Court, and I see no reason why we should distrust our High Courts. At the same time I agree with my friend, Diwan Bahadur Rangachariar in thinking that the language of this Bill is somewhat too widely expressed and that it requires some revision. I therefore support the amendment which has been moved by my friend, Mr. K. C. Roy for the appointment of a Select Committee. I believe that any defects which may now be found in the language of the Bill may be remedied on reference to a Select Committee and that any safeguards which may be considered to be necessary may be introduced in the Bill. For instance I will just mention one possible use of the provisions which might occur. Let us suppose there is a book published—say an encyclopaedia or something of the kind—and let us suppose that in some one volume of that encyclopaedia there is some remark or passage which may be considered likely to offend the feelings of a particular community and therefore promote ill-will. Surely it would be a very absurd exercise and an extravagant exercise of the power to order that all copies of the book itself, the entire book, to be confiscated. It may be possible to separate the objectionable passage from other passages and to forfeit only the offending portions. Some kind of discretion ought to be left to the magistrate and to the executive authorities to discriminate between the offending matter and the matter which is not open to objection. That is one possible abuse which occurred to me, as likely to arise under the application of the provisions of this Bill. It might be quite possible to suggest other defects in the Bill against which it may be necessary to provide some sort of safeguard. One such defect has been pointed out by my friend, Diwan Bahadur Rangachariar, namely that the language of the Bill is somewhat different from that used in the case of section 153-A. However, all these defects are of a minor character and are quite capable of being remedied in

[Sir P. S. Sivaswamy Aiyer.]

Select Committee. I therefore heartily support the proposal for a reference to Select Committee.

Pandit Madan Mohan Malaviya (Allahabad and Jhansi Divisions : Non-Muhammadian Rural) : Sir, I have no hesitation

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in saying that all criticisms of the action of the Honourable the Home Member in introducing this Bill at this stage on the ground of the thinness of the House, etc., are not quite relevant to the discussion. I believe the Honourable the Home Member has been prompted by the best of motives and that is to try to seek one more means of preventing the spread of literature which is inflammatory. I believe also that the Honourable Member has not the least intention of taking advantage of the thinness of this House to pass this Bill. I am sure that the consideration which has weighed with him is that this Assembly will be dissolved in a few days and that there will not be another meeting of the Assembly for the next few months and that the matter is of such importance that he has thought it right to bring forward this Bill to-day. I am entirely at one with him in his desire to push this Bill through in this Session. Neither do I agree with the criticism that the failure of leaders, such as they are, has anything to do with this Bill. The leaders have failed, I regret to say—in my opinion, they have failed miserably. I think they have failed in coming forward to address the members of the communities to which they belong and pointing out their mistakes and their folly, failed in condemning unequivocally the action of the members of their communities when they have been to blame. If we leaders on both sides had done our duty fearlessly and courageously in this direction, I believe that much of the misery which has been borne by innocent people would have been avoided. We have not had the courage to go and address the Muhammadans and the Hindus at mass meetings to point out their mistakes. We may come here and make speeches expressing our fervent desire that this communal discord should cease ; but we have not discharged one of the most responsible duties which we owe to our own people, the Government and the country. But that also is not relevant to the discussion on the Bill now before us. The fact that the Government have failed to do their duty, or rather that certain officers of Government have failed to do their duty, is also not relevant. It is undoubtedly the case that in certain places Government officers have failed to take note of the situation and to take prompt and impartial action. I believe that in some places where these riots broke out, if the authorities on the spot had taken prompt decisions, and taken action which the situation demanded, the misery and suffering caused would have been much more limited than they have been. In many places too owing to the pusillanimity of officers or owing to their not being able to come to a correct decision, much avoidable misery has resulted. At the same time I must bear testimony to the fact that the great bulk of officers, Indian and European, have done their duty well and honourably. If they had not done their duty well and honourably there would have been more suffering and more trouble. But that also is not relevant to the discussion. The fact that the Local Government has failed is also, I submit, not relevant. It has been said that communal dissensions were partly promoted by communal electorates. I agree they have done so ; but it need not have been so. The violent outburst of communal feeling is not

the direct result of the communal electorates though it has been partly due to them ; and the solution of the question of joint or communal electorates need not be the first condition of our putting an end to communal outbursts. This is a matter of law and order, of the maintenance of law and order in simple style in which every civilised Government maintains it, in which this Government has maintained it for a long time past all over the country, in which it maintains it now over a great extent of the country, and in which it should maintain it all over the land. But there is no doubt that the tension produced by communal electorates has contributed to the extent of the outburst and is no doubt partly responsible for it. The thing to be done on the part of those who wish to be regarded as leaders or are believed to be the leaders of the people and on the part of the officers of Government was to take prompt and firm action to prevent or promptly suppress these outbursts.

Now, Sir, what is relevant to the discussion is whether pamphlets are published, leaflets are published, which inflame the minds of the people of one community against those of another. Have such pamphlets been published ? I am sorry to say they have been published and they have been published by men of both communities. Reference has been made to a pamphlet published in Kohat, but probably those who spoke on the subject did not remember that the first pamphlet to be published was published by a member of the other community. The pamphlet to which they have referred was published in reply to the other pamphlet. I think my Honourable friend opposite will bear me out.

Sir Denys Bray (Foreign Secretary) : Not in Kohat.

Pandit Madan Mohan Malaviya : It was circulated in Kohat. Now, Sir, in Calcutta also pamphlets or leaflets were published on both sides which were very objectionable. There were attacks made by members of one community on those of the other and they were replied to. The whole thing was most deplorable. These pamphlets to my belief contributed in no small measure to keep up the communal feeling in Calcutta. I went to Calcutta 20 days after the riots had broken out. I was there several days and saw the miserable condition in which people were living. Innocent Hindus and Muhammadans walking in the streets hacked to pieces, and the great bulk of the citizens of Calcutta sitting quiet and enjoying their leisure and their meals and their sleep. I did see that condition of things. Happily subsequently attempts were made and a joint appeal was issued by some members of both communities to condemn the excesses committed by the men of their own communities, but unfortunately those attempts had been delayed too long. I do think that if those pamphlets had been got hold of at the earliest stage and their circulation stopped, quite possibly and even probably much misery would have been avoided in the case of men of both communities. I believe that such pamphlets have done harm, and everybody will agree that if they come into existence their circulation should be stopped.

Now the law does not give power to the Government to confiscate these pamphlets as the law does give the Government power to confiscate pamphlets which contain seditious matter. Section 153-A of the Indian Penal Code provides that :

“ Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of Her Majesty's subjects, shall be punished with imprisonment which may extend to two years or with fine or with both ”.

[Pandit Madan Mohan Malaviya.]

This is the operative section which provides for punishment for any attempt to promote feelings of enmity or hatred between different classes of His Majesty's subjects. Section 108 of the Criminal Procedure Code permits a Magistrate to bind over a man to be of good behaviour if he disseminates or attempts to disseminate or in any wise abets the dissemination of any seditious matter or any matter the publication of which is punishable under section 153-A of the Indian Penal Code. It does not say anything about the confiscation of the publications which may contain inflammatory appeals. Section 99-A says :

" Where any newspaper or book as defined in the Press and Registration of Books Act, 1867, or any document, wherever printed, appears to the Local Government to contain any seditious matter, that is to say, any matter the publication of which is punishable under section 124-A of the Indian Penal Code, the Local Government may, by notification in the local official Gazette, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to His Majesty, and thereupon any police officer may seize the same, wherever found in British India ", etc., etc.

This does not refer to section 153-A, and I submit that if any matter is printed which offends against section 153-A there should be some provision in the law like what there is relating to 124-A. to empower the Local Government to declare that these papers wherever found shall be forfeited to His Majesty. Now, Sir, it is true that the Local Governments are liable to err in their decisions. It is, unfortunately, too true. But if the circulation of obviously inflammatory literature in times of excitement is to be checked, we have no other remedy. We must trust somebody to do the task, and we must hope that the Local Governments will not err in this matter many times. Section 99-A says :

" Where, (a) any newspaper, or book as defined in the Press and Registration of Books Act, 1867, or (b) any document, wherever printed "

So the first guarantee you have is that the objectionable matter must be printed before it can be the subject of any notice under the proposed Bill. The second point is that it is the duty of the Local Government which is given the power under section 99-A by notification in the local official Gazette to *declare* every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to His Majesty to state the grounds of its opinion in the notification. It is true unfortunately that some times the Local Governments, for the time being it may be, accept the opinion of the District Magistrates without sufficient examination, and do not exercise all the discretion that the law expects them to exercise. But the law does expect that they should exercise their discretion properly, and if a Local Government does so, it has to state the grounds of its opinion upon which it should declare that a certain matter offends against the provisions of section 153-A, and I submit that there is a safeguard in that provision against mistakes. No doubt, we have to remember that Governments, as individuals, do sometimes err, but I submit there is a safeguard in the provision that the Local Government must state the grounds of its opinions upon which it declares that a certain matter has offended against the provisions of section 153-A. Then, as my Honourable friend Sir Sivaswamy Aiyer has pointed out, there is also a safeguard against a wrong order in the provision for a revision of the order by the High Court. All these no doubt are circumstances

which should minimise our apprehensions regarding the abuse of the power which the Bill proposes to give to Local Governments.

But I submit, Sir, that there is also need for a great deal of caution in dealing with this Bill. While I am entirely in favour of the principle of this Bill, I do think, Sir, that in view of the importance of this measure, it should receive much greater consideration than it has yet received. I recognise that it is somewhat unfortunate that owing to the exigencies of the situation the Honourable the Home Member wants to push this Bill through in this Session of the Assembly. But I am certain that the Honourable the Home Member will agree that there is time enough to refer it to a Select Committee, so that the Members of the Select Committee may know, and through them, if necessary, the House may also know, what opinions have been expressed by the Local Governments. I do not want to provoke the Honourable the Home Member into publishing those opinions to this House, if his better judgment tells him not to do so. But I do think that those opinions should be laid before the Select Committee, and if after those opinions have been considered by the Select Committee, the Honourable the Home Member and the other Members of the Select Committee agree that those opinions should be laid before the House, I do not see why those opinions should not be made accessible to Members of the Assembly so as to remove the suspicions which exist in the minds of some Honourable Members and also to enable them to consider the Bill in its proper light. I submit, therefore, Sir, that the proposal which has been made to refer the Bill to a Select Committee before passing it in this Session, should commend itself to the Government. Now, Sir, I shall point out some of the causes which have led to these misgivings. In addition to those to which I have referred, I would refer to the blunders which Local Governments sometimes make,—I could mention a number of blunders which Local Governments have made at one time or another, but I will confine myself to some of the blunders which have been made by more than one Local Government during the last five years which they should not have made. In some cases, some of the Local Governments committed these blunders in clear disregard of the provisions of the law, and were responsible for depriving many of our fellow subjects of the liberty which they should have enjoyed. I do not wish to take up the time of the House over it. I refer to this only to show that the apprehensions which exist in the minds of some Honourable Members who are opposed to this Bill being passed during this Session are not groundless. I refer to this merely to show that Local Governments who are to be armed with this fresh power and who are to take action under the new act, have after deliberation failed and failed very regrettably in the application of section 144 in the Punjab, in the United Provinces, in Bengal and in some other provinces as well. During the last five years this section has been misapplied, times out of number, and men have been unjustly deprived of their liberty, because the Local Governments did not study the law properly, and because unfortunately many of my friends of the non-co-operation party did not care to defend themselves against the improper encroachments so made upon their liberty. It is undesirable that the Local Governments have failed to take a correct view of some provisions of the law and have misapplied them, but in my opinion that does not furnish a reason for refusing support to the Bill which is needed in times of excitement to enable the authorities to stop

[Pandit Madan Mohan Malaviya.]

the circulation of matter of an inflammable character which in the interests of society and good Government ought not to be allowed to circulate. But while I say so, I yet submit that there is reason for the apprehensions which have been expressed by my friends who have opposed the Bill and I hope nobody will make light of these apprehensions. I hope everybody will recognise that mistakes have been committed by the Local Governments in the past, and that that justifies the apprehension that the provisions of the proposed law might be abused in some cases. And in this connection I wish particularly to draw attention by the language of the last portion of section 99-A (1) which furnishes grounds for that apprehension. It says that when the Local Government has declared any copy of the newspaper containing such matter and every copy of such book or other document be forfeited to His Majesty :

“ Thereupon any police officer may seize the same, whenever found in British India, and any Magistrate may by warrant authorise any police officer not below the rank of a sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.”

Now, Sir, it is a matter for regret that at the present moment there is a great deal of communal feeling between Hindus and Muhammadans in this country. We are ashamed of that fact. But it is a fact which we have to take note of. I ask the Honourable the Home Member to consider what the situation will be when a declaration has been made by a Local Government that a certain book or pamphlet has been forfeited to His Majesty. Any Magistrate may authorise by warrant any police officer not below the rank of a Sub-Inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected. Unfortunately, in these days of communal tension, even a Member of this Assembly is capable of making an unjust accusation against an association quite as respectable as any other association. In these days of communal tension, therefore, it is unfortunately likely that some Sub-Inspectors may make a search for condemned documents in places where in normal times they would not think it their duty to do so ; but they may be prompted by communal considerations to make searches in the houses of persons with whom they may not be friendly. Therefore, this measure is likely to cause a great deal of hardship. The apprehension that the power of search is likely to be abused, is therefore not ill-founded and this is a matter to which I should like to invite the particular attention of the Honourable the Home Member. It is a thing which requires looking into and to be provided against. I am not prepared at present to suggest what should be the safeguard to be provided against it. The Government must employ the police officers, and it must ask these police officers to go and make a search if the law is to be enforced, but I do want to draw the attention of the Honourable the Home Member and also of the House to the fact that, in view of the communal tension which unfortunately exists at present, this matter requires to be considered carefully, and that some real safeguard should be provided to prevent any abuse of this power, without which it is likely to do great mischief.

But there is one suggestion I should like to make. The Local Government have to be empowered to declare that a certain printed matter is to be forfeited to His Majesty.

Without any disrespect to any Local Government, may I suggest to the Home Member and the House to consider whether an advisory board of three persons may not be constituted to advise the Local Government when a printed matter of the description under consideration has to be dealt with? I do not wish to go into the details, I merely throw out a suggestion to guard against a mistake being committed under this section. I can not think at present of any better course than having three gentlemen to assist the authority which has to come to a conclusion, which has to make a recommendation to the Local Government as to whether a pamphlet or publication is one which should be taken notice of. There is a tendency among some officers who are solicitous of maintaining law and order of being unnecessarily meddling at times. They may be very zealous officers, very capable officers, but they are unnecessarily meddling at times, as Lord Macaulay pointed out in discussing section 144 read with 188. I submit, Sir, that we have to guard against their mistakes and no other suggestion occurs to me than this that there might be a committee constituted of an advisory character in order to judge whether the language of a pamphlet is such that it should be taken notice of and proceeded against or whether it is a case in which the attention of the publisher might be drawn to the matter and he may be asked not to publish it again in its existing form. That is one suggestion I make. And, Sir, I again draw the attention of the House to the great necessity of having this Bill examined in Select Committee. It might be said: here we are, the whole House is giving its mind and its time to a consideration of this Bill; what more can be obtained in a Select Committee? But we know the value of a Select Committee. We know that members will come prepared and equipped, may be by the Home Department, with facts that will help them in coming to a conclusion, and I submit that if the Bill goes to a Select Committee it is likely to come out improved. Even if it does not come out improved, I expect that Members of the House will feel greater satisfaction when the Bill has been examined and the misgivings which obtain at present will probably partially or entirely disappear. And we will be able to vote on the Bill with clearer minds than we are able to do at present. I therefore support the proposal of Mr. Roy that the Bill be referred to a Select Committee.

***Mr. M. A. Jinnah** (Bombay City: Muhammadan Urban): Sir, I have no desire to cast any kind of censure on the Government, the Local Governments, the Hindu community or the Muhammadan community. I am concerned with one thing alone and that is this Bill; and on examining this Bill the first question that I have got to ask myself is this. Are the Government at the present moment justified in presenting this Bill to this House or not? On that point I myself was inclined to believe that the Government are justified, but after listening to the speeches of my Honourable colleagues, and particularly the speech of my friend Pandit Madan Mohan Malaviya, I am convinced that the mischief does exist; on that question I do not think there can be two opinions in this House now. Well, if that is so, are we or are we not going to eradicate this evil? Are not the Government then justified in coming to this House with this Bill? My Honourable friend, Pandit Madan Mohan Malaviya, accepted the principle of this Bill. Now, he pleaded, having accepted the principle of the Bill, for a Select Committee. Sir, I find that the justification

*Speech not corrected by the Honourable Member.

[Mr. M. A. Jinnah.]

for this Bill is the grave crisis that has arisen, but I think even the Government will not go as far as to say that the crisis which has arisen is going to be with us permanently. If that is so, are we going to put this measure on the Statute-book permanently? I think my Honourable friend the Home Member will admit that this is a power which is an extraordinary power, an unusual power, and there are other interests which have got to be taken into consideration. And that is the liberty and freedom of the Press, and printing and publishing your opinions. That is a matter which ought not to be ignored. Now, are you going to put this Bill permanently on the Statute-book? Well, Sir, I have given thought to it and I appeal to this House not to allow the Government, however much they may be scared by the crisis which faces us, to take away from this House the power of enacting it into a Statute permanently. Therefore, I should say that this Statute should be enforced for a limited period. That would be my first point if ever I get to the stage of moving an amendment. But, apart from that, the second point is that the definition which is adopted here, is, I submit, much too wide. And it is a clear departure from the terms of section 99-A which defines seditious matter. You will find in the Act that seditious matter is defined as matter punishable under section 124-A. The object the Home Member has is to deal with the matter which would come under section 153-A. Instead of confining himself to that definition of section 153-A, the words which we are asked now to accept are as follows :

“ After the words ‘ seditious matter ’ the words ‘ or any matter calculated or likely to promote feelings of enmity or hatred between different classes of His Majesty’s subjects ’ shall be inserted.”

Well, now, these words, let me tell you, are very wide and it will be impossible, I fancy, for the High Court to deal with any application for revision and come to a different conclusion from the decision of the Local Government if you have these words. You will at once negative the right which is given under the Criminal Procedure Code to go to the High Courts. It will become useless. Therefore, these are the two matters about which I am very anxious, namely, that we must carefully define the matter which it is intended to confiscate or forfeit and the Statute should be enforced for a limited period. It is for these two reasons that I appeal to the Home Member to allow this Bill to go to a Select Committee. These two matters cannot take a very long time. I think—and I think the House will agree with me—that, if your Select Committee sat to-morrow for a few hours, two hours or three at the most, these two matters could be discussed and thrashed out. (*Mr. K. Ahmed* : “ Why don’t you do it to-night ? ”) I am prepared to do it to-night if the Honourable Member will persuade the Home Member. But I do ask the Government not to carry this Bill because they happen unfortunately to have a majority in this House to-day. I know that the responsibility is ours, because many of the elected Members who ought to be here in their seats are not. As responsible men they ought to realize what is happening every day and what is being passed every day because of the weakness of the unofficial opposition. It is to be regretted. Here is a very important measure. We have got to consider that once you pass this Statute it is going to operate throughout the country and it is a very serious matter indeed to place these powers in the hands of an executive which must necessarily work with all the defects to which all executives are subject, and perhaps ours the worst because it is not

responsible to anybody. I therefore really do appeal to the Home Member not to be intoxicated with his power of the majority in this House and to take a sober view and not press this Bill upon us, when he knows perfectly well that he can defeat us at any time he likes in the absence of the other non-officials.

Mr. T. G. Jones (United Provinces : European) : I have listened with great attention to Honourable Members who have opposed this measure and in spite of the length of those speeches I only find one point which deserves attention and that is that they complain that the liberty of the Press is being curbed. Now Sir, liberty is a very fine thing in the abstract, but if that liberty is abused we must curb that liberty. If a man goes dashing down the street waving a large stick and threatening everybody, none of us will object if the police arrest him and curb his liberty. We have to curb the liberty of our criminals, and, Sir, I maintain that the Press that has published some of the articles that have been published is criminal and its liberties must be curtailed. Sir, I cannot understand the mentality of some men who howl and squeal when there is a riot and when the Government bring in a measure asking for powers to deal with this Poisonous Press and for power to prevent riots, they turn round and say, "You are taking away our liberty". Now you cannot have it both ways. You cannot have security and also unbridled liberty. You must curb your criminals and stop criminal incitement to riots. Several Honourable Members have remarked that communal tension is temporary. I am afraid I do not agree with that. Communal antagonism is deep rooted in the history of this land. Ever since I have been in this country, 25 years, I have noticed that the executive officials, as festivals come round, have with the greatest care and with the greatest tact handled the different communities who come together in antagonism on those occasions. They have handled them with the greatest skill, with tact and with firmness. Within the last four or five years we have had political agitation, and I am afraid that there are some Honourable Members in this House who by leveling irresponsible criticism at the Government over matters of this kind have made the communal tension as acute as it has now become. It is absolutely necessary now that we should give the Government every power possible to deal with it. I hope, therefore, that Honourable Members will vote for this measure and not criticise it any more. It is all very well to say that the powers are too wide. I think that the Government require wide powers, for I am very much afraid that acute communal tension is not only for this year or for two years; it may possibly last for five or ten years. The House always has it in its power to repeal this Act if communal tension comes to an end. But that is a matter of slow development. After all how long did it take Great Britain to overcome the tension between the Roman Catholics and the Protestants? Several centuries, and it is only within the last hundred years that every disability of the Roman Catholics has been removed. There will never be a complete removal of communal tension in India until the majority learn to tolerate the minority and to give them fair play. Therefore, Sir, in the meanwhile we have to adopt measures such as the Government have put before us, and I trust that Honourable Members will not level further criticisms at a very simple measure like this, which is undoubtedly necessary and which nearly everybody has admitted is necessary. As to the motions for delaying it, I do not see the necessity for them. The Government should have the greatest powers possible and I do not see what you are going to gain by delaying. I therefore hope that this House will vote for this measure now.

Mr. K. Ahmed : Sir, at the fag-end of the day I rise to take part in the debate. I have considered the matter fully in its pros and cons, firstly, because it has been discussed and threshed out by my Honourable friend Pandit Madan Mohan Malaviya who has brushed away all the arguments advanced by the previous speakers on this Bill. He has, Sir, brushed away many of the important arguments of the other side. I see my friend the Lalaji sitting there, and I see my friend the redoubtable Member from Bengal, Mr. Neogy, who has been abusing the Local Government. The sum and substance of it is that my friend the Panditji from Benares wants that further consideration should be given to the Bill. He says that there is time enough to consider it. His first point is, Sir, that the Sub-Inspector of Police, who may be either a Hindu or a Muhammadan, may abuse the power contemplated in the Bill and such power should not be handed over by this Assembly because the Sub-Inspector might recklessly go and arrest persons. (*An Honourable Member* : "Not arrest.") Well, he may seize and confiscate the subject matter, namely the objectionable publication, that is under discussion, and enter into a house and then do all those harmful things already stated. But my friend Pandit Madan Mohan Malaviya has forgotten a little bit, namely, that before the warrant is issued and is handed over for execution to the Sub-Inspector in charge of the police station, the District Magistrate has got to go into the matter, before he orders the issue of the search warrant ; and the District Magistrate after all is not a layman. He is probably as much a lawyer as many of us here.

These magistrates, Sir, are the local magistrates of the place. They know the people and the local conditions and are quite aware of the fact of what sort of newspapers there are in the place where they are. I suppose they are the best judges, and therefore, it is not necessary at all, according to what Panditji has said, that the Bill should be considered in Select Committee. The Panditji has said that the leaders have failed, and yet I find the same leaders going to be members of the proposed Select Committee. They are going as members of that Select Committee to settle matters which they could not settle for the last two or three years. My Honourable friend, Lala Lajpat Rai, who could not do anything at all and even refused to preside over a meeting of leaders at Delhi on the 28th February 1924, has been sitting over it for the last two years. Is there any chance from him, though we are obliged to him for the trouble he has taken to come and occupy his seat here to-day ? No doubt his mind has been changed a great deal, but what is the good ? He is stepping into a Select Committee for the purpose of probably acting in conformity with the principle that he has adopted already in the matter of settlement. How can we expect that this matter will be settled in this way ?

The Panditji said that he wanted three persons to form an advisory board to advise. These three persons, as the Panditji said, will settle the matter when so many leaders have failed ; but who those three persons are, I do not know, who will be advising in the matter as to how these search warrants should be issued and what sort of things should be seized. Mr. Jinnah asked if this Bill is going to be passed for 2 years or to be passed for many years to come ? He continued saying that we are not going to subscribe and help the Government if it is going to be passed for many years, and the attitude of the Home Member is bad and that he is intoxicated ; that is what my friend Mr. Jinnah said. Well, Sir, I do not

see any sense at all in the argument of my Honourable friend from Bombay when he says that we are not going to pass legislation which is going to be permanent. My answer is, is he going to guarantee that the tension of feeling, the ill-feeling between the Hindus and the Muhammadans is not going to last longer than a couple of years? Is it a transitory period for which the Bill is going to be passed? Is there anybody who can tell the Government, "Look here, the Hindus and Muhammadans are going to settle their differences within this period and you had better pass this legislation for that period only?" There is no knowing. On the contrary, the matter is so urgent that it must be thrashed out to-night. If it is put off, Panditji and Mr. Jinnah said the elections will probably be over in next November, and I think I heard one of the important speakers in this House say that after the elections are over probably the tension will be better. These leaders want to establish their leadership over the country and this has brought about all the difficulties. The life of no man is safe in the town of Calcutta, which is the premier city in India, in spite of the fact that we have got Fort William full of soldiers. And in spite of having all this force near us, the people are not frightened, because these leaders who want to form the Committee to-day, will not decide the matter to-day or to-morrow, and will also not decide it until the elections are over. How will these leaders serve the poor people of the country? It is they who are fomenting difficulties in this country and on account of this, the Government got tired. None of us should think of rivalry but of how to remove the difficulties in the country, and that being so, we who represent the constituencies of these poor people, whose lives and whose property are at stake, should join together and put an end to these difficulties. We should hand over the power to the Government and the Honourable the Home Member, and we should arrest these people for the safety of the poor and innocent. Many people have been killed in the town of Calcutta within my knowledge and within my eyesight. I saw an innocent gharrywallah or coachman, not educated, not properly clad, not properly fed, who was ruthlessly killed. That is the position. We cannot wait any longer. We ought in a body to support the Bill and the Government in this matter, and the sooner we do it the better both for the people and the country.

The Honourable Sir Alexander Muddiman : Sir, when I listened to the debate in this House yesterday I was extremely hopeful that I should have been able to address a House united on the main point of the necessity of the action contemplated by this Bill. I have been charged with making an appeal to the feelings of the House this morning—I admit it. I wanted to give the House a chance of showing that it is in earnest in the desire which it frequently expresses to help to stop these communal troubles. I acknowledge that there are two schools of thought in the House, but I had hoped that there would be only one opinion and that there would not be any discordant note in the general desire to meet these difficulties, or to try to meet them at any rate in a fair and open spirit. I find, however, that that is not so, and I will not again exhaust myself in attempting to make any appeal to the emotions of the House. I will endeavour, as far as I can, clearly and logically to put before the House the position as I see it, and it will be for the House to act, and as the House acts so it will be judged.

The first speech to which I will make allusion is that of Mr. Das. Mr. Das a few days ago was good enough to suggest that the main factor

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in these communal troubles, or one of the main factors, was the Government who deliberately fostered them. It has been a matter of great satisfaction to me that no other Member has repeated that accusation, and I hope the House will at any rate definitely express its feelings on that. Mr. Das naturally holding those views would oppose any action on the part of Government calculated to help the situation, and I think that is sufficient for Mr. Das.

The next speech to which I will refer is, that of Sir Hari Singh Gour. I must say I should have expected it from him that he would have stated the effect of the Bill correctly. He however made two misstatements of law in his anxiety to oppose this measure. One was that he attributed powers to the police which are vested in fact in the Local Governments. The next misstatement he made was that he stated that this Bill was re-enacting the worst features of the Press Act.

Now, Sir, that is either an intentional misstatement of the law or a misapprehension of the Bill. I leave it to the House to decide which it was. When Bills are being opposed, it really does not strengthen the case for or against the Bill to misstate the position.

Sir Hari Singh Gour : I rise to a point of order. I never made the statement that this Bill is intended to reproduce the worst features of the Press Act. What I did say, and repeat, is that this Bill incorporates some of the noxious provisions of the Press Act.

The Honourable Sir Alexander Muddiman : The House heard Sir Hari Singh Gour and will judge between us.

I will now turn to another of the same school of thought who sees no necessity for this legislation and is opposed to it. I will deal with my Honourable friend Mr. Neogy, who made a very bitter attack on the Government of Bengal. He charged me with not having read passages from the Local Governments' letters which I promised and he said generally that the Bill was unnecessary and useless, if I heard him rightly.....

Mr. K. C. Neogy : I did not say that. What I said was that I am not satisfied that the Government of Bengal, or any other Local Government for that matter, has made sufficient use of the powers they already possess, and I am not prepared to accept the Bill unless I am satisfied that they have exhausted their resources.

The Honourable Sir Alexander Muddiman : I will accept that from my Honourable friend. In other words he charges the Local Government with general negligence and says there has been no case made out to legislate. With regard to the question of necessity for legislation, I will deal shortly ; for the moment I will confine myself to deal with the point about the Local Governments. The Government of Bengal wrote as follows :

“ As has been pointed out by the Government of India, it is at present open to the Governor in Council either to institute proceedings under section 108 of the Criminal Procedure Code or to prosecute offenders under section 153A of the Indian Penal Code. Both of these courses have been freely followed with the object of checking the flood of inflammatory matter poured out by the Calcutta press since the beginning of the recent disturbances. A list of the proceedings instituted and their results is attached to this letter. It shows that the proceedings have been successful in the sense that the courts have in no case held that the writings complained of did not bring the persons

complained against within the provisions of the law under which action was taken. But they failed in achieving their object, which was immediately to check the output of inflammatory matter."

And they cite a number of very violent passages which I am not going to read to the House because I do not think it is in the best interests of the public that they should be read to the House.

The Government of the Punjab write as follows :

" It is difficult to classify, in order of mischief, the various agencies now in use for the promotion of communal excitement or the embitterment of sectional feelings. At times speeches at meetings or in religious institutions appear to be doing the greatest harm ; on other occasions a booklet or pamphlet will cause wide resentment and a desire for active retaliation."

They then go on to point out the difficulties in regard to section 153A in so far as that section is said to be a check. They point to a well known prosecution in which an attack was made on a personage who was greatly revered by one community. As a result of it a prosecution was instituted. What was the result ? The defence endeavoured to prove their case by selecting passages from books which were greatly revered by one community. The trial went on for a long period, much evidence was admitted by the magistrate, with the result, as the Punjab Government say, that " his Court became for some months the scene of a bitter religious controversy which was fully reported in the newspapers, and which had the worst possible effect on the state of communal feeling in the City ". That shows to what extent prosecution sometimes fails as a remedy. You prosecute under 153A and the mere fact that you prosecute causes the trouble to go on. By the very action you take to put a stop to it you really provoke worse communal feeling than ever. That shows that prosecution under 153A is not always advisable. The Local Governments are charged, as I understood Mr. Neogy, with not using the powers they have got. Here is a case of when Government had with the best of intentions used its powers, which resulted in a state of things that was worse than before the prosecution. Well, Sir, I am happy to say that the bulk of opinion in this House is not on those lines. A large number of Members have said quite definitely that they support the principle of the Bill. One or two Members have clearly shown that they are very earnest in their desire to support Government in all reasonable measures to deal with this evil. Sir, what is the principle of the Bill ? The principle of the Bill is this, that as section 124A is implemented by section 99A, so section 153A should be implemented by an addition to that section. That is the sole principle of the Bill ; there is no other. If you water that principle down, there is nothing left to the Bill and it will be useless for me to proceed. I should be entirely lacking in frankness to this House if I told them that the passage of this minor Bill will have any great effect on the communal situation. I will be frank with the House when I say I do not think it grapples even with the whole of the difficulties created by the existing law. It is a step which this House should take and take at once. It is a step in which I suggest they should support Government without the slightest hesitation, but it is not a complete solution to the legal and other difficulties to which the communal situation has given rise. Now I take it that the general sense of the House is against the proposal for circulation, and I therefore do not propose to waste much breath in dealing with that. Obviously if you circulate, you stop the passage of this Bill till the next Assembly is constituted, and that is a delay which, with the excep-

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tion of Dr. Gour, I think no one in the House wishes to contemplate. So we may pass from that. The next proposal, and one that I find more difficulty in dealing with, especially as it comes from quarters which command and rightly command, the attention of anybody speaking from the Government Benches, is that this Bill should go to Select Committee. Now, as I have said, the principle of this Bill is to implement 153A. As 99A implements 124A, so the Bill I have brought before the House implements 153A. If you accept that as the principle of the Bill, I fail to see what there is to go to Select Committee on.

Two points remain. I will deal with them *seriatim*. The first point was this, that the Bill should be only a temporary measure. Now, Sir, I must tell the House quite frankly that I do not bring forward this Bill as a temporary measure, I bring it forward to stop a definite leak in the law, and a leak the existence of which has contributed very seriously to the communal trouble that has arisen. The lack of this power has had a cumulative effect. Lacking power to search for matter of the kind described in the Bill has led to the circulation of a great deal of that matter, and in consequence thereof the communal situation has definitely and progressively deteriorated. Now even if the communal situation improves, as I hope and trust it may, though no one in this House has given me any very great hope of any immediate improvement, there always will be the danger that on the next occasion when two communities are at loggerheads—there are many communities in India—unless you have this power, the law will be defective in that you cannot take the necessary precautionary measures which are in my judgment, and I trust in the judgment of this House, essential for controlling the issue of these abominable pamphlets and the like. That is my view on the question whether the Bill should be temporary. That is not a matter for the Select Committee; it is a question of principle and, as far as I am concerned, I do not bring this Bill in as a purely temporary Bill; I bring it in as a permanent measure to stop a defect in the law. I should not be fair with the House if I let this Bill go to a Select Committee with the idea that I, on behalf of the Government, could accept any amendment which would limit the period of duration of the Bill. Therefore, from that point of view there is no point whatever in the Bill going to Select Committee.

The next point made was one that had a certain amount of apparent substance.

I think the first speaker who drew attention to the point was my

5 P.M.

Honourable friend the Diwan Bahadur, but other Members have certainly mentioned the same point. It is said that clause 2 as it is worded differs in some respects from the wording of section 153-A. Now if Honourable Members will examine the matter more closely, they will see there is nothing in that because it would be impossible, in view of the drafting of 99-A, to incorporate in exactly the same terms the words of section 153-A. The matter is fully cleared from doubt by the second clause in section 2, clause (b), which does actually draw in section 153-A and incorporate by reference the words of that section in the Bill. There is, therefore, nothing in that point, certainly nothing which would justify a reference to Select Committee.

Then it is said, "Why are you so stubborn about this? Even if it is not necessary why not meet us? I ask the House to believe that I am not one of those who would invoke the Government majority to check what I thought was a reasonable and proper desire on the part of this House to have a Select Committee. My record in this respect can leave no doubt on this point. I have frequently acceded to the wishes of the House in this kind of matter. Nor can I be charged with acting differently because it so happens I may or may not be in a majority at the moment. In these matters I do what I consider to be my duty. If I was single and had no vote to support me, I should bring in this Bill and insist on the House considering it, though I might be well aware that it would be thrown out on the first reading. It is not a question of political tactics. I do not bring in this Bill to inflict a defeat or from any motive of that kind. I bring it in because in my judgment it is a very necessary and urgent Bill and, therefore, in dealing with this question of reference to Select Committee I do want the House to believe that I do not oppose it out of any desire to use the power that I have or may have; I oppose it on the ground that it is unnecessary and undesirable. As I have said, I could not on behalf of Government accept the limitation of the term of the Bill and therefore that ground for reference to Select Committee fails. And as I pointed out, the language of the Bill is not open to the objection which has been brought against it. Moreover, neither of those points is really a Select Committee point, because they can be better dealt with by an amendment being brought on the floor of the House.

Now, Sir, the time has come for this House to take a decision definitely on whether they will take this Bill into consideration or whether they will refer it to Select Committee or whether they will circulate it. The decision is one of very considerable importance. It is a decision which must be taken now if it is to have any effect. I hoped this debate might have a great effect on the general communal situation. It is therefore most desirable that this House should be reasonably unanimous on the subject. I am well aware of the appeals being made to me from very influential quarters of the House to have a Select Committee and I dislike exceedingly to appear to be unreasonable and to refuse a request of that kind. May I in my turn ask those gentlemen, after hearing the reasons why in this particular case I am reluctantly opposing a reference to Select Committee, to consider whether they cannot meet me on this occasion and instead of terrifying me with their minority oblige me with their majority and withdraw the motion for reference to Select Committee.

Pandit Madan Mohan Malaviya : May I ask the Honourable the Home Member what would be the loss to Government if the Bill is referred to a Select Committee and taken up on the last day of the Session?

The Honourable Sir Alexander Muddiman : I have already explained in my speech the difficulties I have in regard to a Select Committee. I am not going to Select Committee to deceive this House. I ask the House to approve of the principle of the Bill which I have brought in. This Bill implements section 153A in the same way as section 99A implements section 124A. That is the principle and the only principle of the Bill and it would not be frank to the House to say that I

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would go and sit in a Select Committee with a proposition that the Bill should be made temporary when I am, as I have already told the House, completely opposed to that course.

Pandit Madan Mohan Malaviya : If I may once again ask my Honourable friend, with the expression of opinion which he has made regarding the limitation of the Bill to a time, what objection have the Government to giving a little time to the Members of this House to have the matter examined in a Select Committee. In his own experience has he found that often enough a Bill was not improved by reference to a Select Committee, and would it not be some satisfaction to the House if their request was acceded to by the Honourable Member on this occasion ?

The Honourable Sir Alexander Muddiman : I would have had very great pleasure in acceding to such a request which comes, as I know, from influential quarters of the House if I felt it right to do so. But I am afraid I cannot. I have explained my reasons and I cannot be cross-examined on them. It is for the House now to decide.

Mr. K. C. Roy : On a point of order, Sir. Might I ask the Honourable the Home Member if he would agree to postponement of the debate to-day, so that Mr. Jinnah and myself might put our heads together ?

The Honourable Sir Alexander Muddiman : As regards taking the formal discussion of clauses, I am prepared to do that if the Honourable Member is prepared to withdraw his motion for reference to Select Committee.

Mr. K. C. Roy : I am in the hands of the House. I have no objection whatever to withdraw the motion if the House will allow me.

Mr. President : Does the Honourable Member ask leave to withdraw his motion ?

Mr. K. C. Roy : I leave it to you, Sir.

Mr. M. A. Jinnah : Do I understand, Sir, that the Honourable the Home Member does not agree to allow us to move an amendment unless we withdraw the motion for reference to Select Committee ?

Mr. President : It is not for the Honourable Member to decide whether an amendment shall be allowed. It is within the competence of the Chair to allow amendments without notice to be moved.

Mr. M. A. Jinnah : I am fully alive to that fact but objection might be raised by any Member.

Mr. President : Even then the final decision rests with the Chair.

Mr. M. A. Jinnah : In that case, if that is your ruling I want the House to be divided on the motion for a Select Committee.

Mr. President : The original question was :

“ That the Bill further to amend the Code of Criminal Procedure, 1898, for a certain purpose, be taken into consideration.”

Since which the following amendment has been moved :

“ That the Bill be circulated for the purpose of eliciting opinions thereon.”

The question I have is that that amendment be made.

The motion was negatived.

Mr. President : Further amendment moved :

“ That the Bill be referred to a Select Committee consisting of the Honourable Sir Alexander Muddiman, Mr. L. Graham, Mr. M. A. Jinnah, Lala Lajpat Rai, Mr. K. C.

Neogy, Mr. Dumasia, Colonel Crawford and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be four."

To which the following amendment has been moved, namely :

"That the name of Sir P. S. Sivaswamy Aiyer be added to the Select Committee."

The question is :

"That the name of Sir P. S. Sivaswamy Aiyer be added to the Select Committee."

The motion was adopted.

Mr. President : The question is :

"That the Bill be referred to a Select Committee consisting of the Honourable Sir Alexander Muddiman, Mr. L. Graham, Mr. M. A. Jinnah, Lala Lajpat Rai, Mr. K. C. Neogy, Mr. N. M. Dumasia, Colonel Crawford, Sir Sivaswamy Aiyer and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be four."

The Assembly divided :

AYES—25.

Aiyangar, Mr. K. Rama.
Aiyer, Sir P. S. Sivaswamy.
Badi-uz-Zaman, Maulvi.
Baptista, Mr. J.
Chanda, Mr. Kamini Kumar.
Das, Mr. B.
Datta, Dr. S. K.
Dumasia, Mr. N. M.
Ghazanfar Ali Khan, Raja.
Ghose, Mr. S. C.
Gour, Sir Hari Singh.
Jinnah, Mr. M. A.
Joshi, Mr. N. M.

Kasturbhai Lalbhai, Mr.
Lajpat Rai, Lala.
Lohokare, Dr. K. G.
Malaviya, Pandit Krishna Kant.
Mutalik, Sardar V. N.
Nehru, Pandit Shamlal.
Neogy, Mr. K. C.
Rangachariar, Diwan Bahadur T.
Roy, Mr. K. C.
Venkatapatiraju, Mr. B.
Vishindas, Mr. Harchandrai.
Yakub, Maulvi Muhammad.

NOES—50.

Abdul Qaiyum, Nawab Sir Sahibzada.
Ahmed, Mr. K.
Ajab Khan, Captain.
Akram Hussain, Prince A. M. M.
Alimuzzaman Chowdhry, Khan Bahadur.
Allison, Mr. F. W.
Bhore, Mr. J. W.
Blackett, The Honourable Sir Basil.
Bray, Sir Denys.
Clow, Mr. A. G.
Coatman, Mr. J.
Crawford, Colonel J. D.
Dalul, Sardar B. A.
Donovan, Mr. J. T.
Dyer, Mr. J. F.
Ghulam Bari, Khan Bahadur.
Gidney, Lieut.-Colonel H. A. J.
Graham, Mr. L.
Haig, Mr. H. G.
Hezlett, Mr. J.
Hira Singh Brar, Sardar Bahadur
Captain.
Hudson, Mr. W. F.
Hussanally, Khan Bahadur W. M.
Hyder, Dr. L. K.
Innes, The Honourable Sir Charles.
Ismail Khan, Mr.

Jones, Mr. T. G.
Lindsay, Sir Darcy.
Macphail, The Rev. Dr. E. M.
Makan, Khan Sahib M. E.
Mitru, The Honourable Sir Bhanendra
Nath.
Muddiman, The Honourable Sir Alexander.
Muhammad Ismail, Khan Bahadur Saiyid.
Norton, Mr. E. L.
Owens, Lieut.-Col. F. C.
Paddison, Sir George.
Parsons, Mr. A. A. L.
Rahman, Khan Bahadur A.
Rajan Bakhsh Shah, Khan Bahadur
Makhдум Syed.
Raj Narain, Rai Bahadur.
Rau, Mr. B. R.
Reddi, Mr. K. Venkataramana.
Roffey, Mr. E. S.
Roy, Sir Ganen.
Sastri, Diwan Bahadur C. V. V.
Sheepshanks, Mr. J.
Singh, Rai Bahadur S. N.
Sykes, Mr. E. F.
Townsend, Mr. C. A. H.
Willson, Sir Walter.

The motion was negatived.

Mr. B. Venkatapatiraju : Sir, may I suggest that the further consideration of this Bill be taken up to-morrow, as it is already late, and as we have to make several amendments to the Bill ?

Mr. President : I am entirely in the hands of the House. I am perfectly prepared to sit late and finish the Bill if there is a general desire on the part of Honourable Members to do so. I see there is a desire on the part of non-official Members that I should adjourn now in order to enable them to give notice of amendments. I do not know if the Government have any objection.

The Honourable Sir Alexander Muddiman : I have no objection to that ; but I would like the motion for consideration put to the House and passed now.

Mr. President : The question is :

“ That the Bill further to amend the Code of Criminal Procedure, 1898, for a certain purpose, be taken into consideration.”

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 26th August, 1926.
