THE

COUNCIL OF STATE DEBATES

(Official Report)

VOLUME VII

FIRST SESSION

OF THE

SECOND COUNCIL OF STATE, 1926

DELHI
GOVERNMENT OF INDIA PRESS
1926

CONTENTS.

COUNCIL OF STATE.

Tuesday, 23rd February, 1926.

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

QUESTIONS AND ANSWERS.

Railway Freight on Rice from Khulna to Kalighat on the Eastern Bengal Railway.

107. The Honourable Mr. MAHMOOD SUHRAWARDY: Is it a fact that the rate of railway freight on rice from Khulna to Kalighat on the Eastern Bengal Railway was increased from 1/9 pies per maund in 1912 to 3/1 pies per maund in 1922?

Increase of the Maximum Rate of Railway Freight on Food Grains

108. The Honourable Mr. MAHMOOD SUHRAWARDY: Will the Government be pleased to state why the maximum rate of railway freight on food grains was raised in 1922 from ·33 pies to ·38 pies per maund per mile?

Reduction of the Railway Freight on Food Grains.

109. The Honourable Mr. MAHMOOD SUHRAWARDY: Will the Government be pleased to state if any proposals are under consideration to reduce the present freight on food grains?

The Honourable Sir MUHAMMAD HABIBULLAH (on behalf of the Honourable Mr. D. T. Chadwick): I propose to answer questions Nos. 107 to 109 together.

In 1922, in order to meet the heavy increase in working expenses of Railways, it was found necessary to enhance the maximum rates chargeable on goods traffic from 15 to 25 per cent. The maximum rate for food grains was accordingly raised from ·33 pie to ·38 pie per maund per mile which represented an increase of 15 per cent. The Railways have power to quote rates between the prescribed maxima and minima according to local circumstances and the existing scales for food grains in force over the principal Railways show that the rates generally charged are below the maximum. In the circumstances Government have no intention of recommending any general reduction in rates for food grains.

Congestion of Third Class Passenger Traffic on State Railways.

110. The Honourable Mr. MAHMOOD SUHRAWARDY: Will the Government be pleased to state whether any and, if so, what steps are proposed to be taken to relieve the congestion of passenger traffic in third

class railway compartments on the several State Railways in India, and to give third class passengers greater comforts?

THE HONOURABLE MR. D. T. CHADWICK: It is impossible within the scope of an answer to detail all that the railways have been doing for improving the conveniences for third class passengers. The baldest summary of what has been done for third class passengers occupies 4 pages in print in the Administration Report of the Railway Board for 1924-25. I must therefore invite the attention of the Honourable Member to pages 67 to 71 of that Report. I would mention, however, that during the last two years there has been an addition of two million passenger train miles.

REDUCTION OF FARES FOR THIRD CLASS PASSENGERS ON STATE RAILWAYS.

111. THE HONOURABLE MR. MAHMOOD SUHRAWARDY: Will the Government be pleased to state whether any and, if so, what steps are being taken to reduce third class passenger fares on the State Railways of India?

THE HONOURABLE MR. D. T. CHADWICK: The question of reducing passenger fares has been receiving careful consideration by the Railways, and as a result most of the Railways are reducing third class fares according to local circumstances. A fairly complete list of recent changes is published in the proceedings of the Standing Finance Committee on Railways which was printed about three weeks ago.

CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, I move that the Bill further to amend the Code of Civil Procedure, 1908, as passed by the Legislative Assembly, be taken into consideration.

This is a very short Bill which carries out one of the recommendations of the Civil Justice Committee. Under section 103 of the Civil Procedure Code in a second appeal the High Court may, if the evidence is sufficient, determine a question of fact which has been left undetermined by the lower appellate court. But it has no power to determine a question of fact which has been determined by the lower appellate court, though the lower appellate court came to that finding upon a misreception of evidence or through an error in law. The Civil Justice Committee pointed out that the High Court should have power to determine a question of fact where the decision of the lower appellate court was arrived at through misreception of evidence or other error of law. This Bill is merely to give effect to that recommendation.

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

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

The motion was adopted.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, I move that the Bill to consolidate and amend the law relating to the naturalization in British India of aliens resident therein, as passed by the Legislative Assembly, be taken into consideration.

The law in India on the subject of naturalization for the last 70 years has been regulated partly by the British Statute and partly by an Act of the Indian Legislature, the Act of 1852. The Act of 1852, as necessarily follows from the limitations imposed upon the legislative powers of the Indian Legislature, provided only for local naturalization, that is to say, for naturalization within the limits of British India. That Act was of a somewhat antiquated character and its amendment was under consideration when the Imperial law of naturalization was consolidated and re-enacted in the form of the British Statute of 1914. One of the objects of the British Statute of 1914 was, firstly, to devise a naturalization procedure which should be as far as possible valid throughout the British Empire. It was also devised to restrict as far as possible the provisions for local naturalization. It was obviously inconvenient that there should be any considerable number of persons whose status as British subjects was restricted to one area in the British Empire. That was inconvenient to the grantees of such naturalization certificates themselves because their position was ambiguous and was frequently misunderstood not only by themselves but by others. It was inconvenient also to our authorities abroad, such as consular officers as their assistance was invoked as British subjects by persons who did not hold that status, *e.g.*, in the Straits Settlements. When we came to consider, however, the effect of the British enactment of 1914, although it confers upon the Government in India powers in certain circumstances to grant certificates of naturalization of empire-wide validity, the question arose as to whether that was really sufficient for our purposes. The question arose as to whether the provisions for a certain measure of local naturalization, as they had subsisted hitherto in India, did not in fact perform a really useful function, and though the considerations of uniformity which underlay the re-enactment and consolidation of the British Act were of importance, nevertheless it appeared to us that a very considerable amount of inconvenience would be inflicted if the restrictions on naturalization were carried so far as to abolish the modest provisions already standing on our Statute-book. After some discussion we prevailed on His Majesty's Government to permit us to proceed with this measure. It is based to a very large extent on the provisions of the British Act and those of our old Act brought up to date. I mentioned just now that the British Act does confer on the authorities in British India certain powers for the grant of naturalization certificates which would be of empire-wide validity. One of the prescriptions of the British Act was that all applicants should be able to speak either English or some one language which was accepted in any particular British possession as the equivalent of English. That obviously presented very serious difficulties in India. I do not intend to embark on any of those difficult questions of a linguistic character which we have recently had before us in another connection, but I think it is apparent that it would be impossible to prescribe any one Indian vernacular as being substantially equivalent to English throughout the whole of the presidencies and provinces of India. It was necessary therefore to devise some provision which would enable Local Governments, in respect of their own territories, to certify

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that some particular vernacular was one of the principal vernaculars of the presidency or province.

Those really are the most material provisions arising out of this measure. Perhaps I had better invite the attention of the House to one matter upon which a good deal of misapprehension has been felt with regard to this measure, that is to say, what are precisely the class of persons whom we desire to benefit by this measure. It has nothing to do with persons who already have the status of British subjects or with citizens of States in Europe or America. It has not very much to do with persons whose normal course of acquiring British naturalization would be through the medium of His Majesty's Government. It is mainly concerned with citizens of States bordering upon India, or persons residing in areas bordering upon India who perhaps in many cases have no very definite national status at all, but who have interests in India and who desire to settle in India and to obtain the privileges of British Indian subjects. I may take the instance of a merchant who came from Tibet, settled in Darjeeling, married a hill girl there and acquired very considerable business in the sale of curios and objects of art. His interests lay wholly in India and he had no intention to return to the wilds of Tibet. It would be a great hardship if men in that position were not allowed to acquire the status of British Indian subjects. There is also the pretty large class of subjects of Indian States who are not strictly speaking within the rigid letter of the law, born within the dominions and allegiance to His Majesty. Many such cases necessarily occur among the large flourishing and enterprising commercial communities whose place of origin is in an Indian State but who nevertheless form no inconsiderable part of the enterprising commercial community of such a large city as Bombay. It would, I think, be inequitable if we did not continue provisions which would enable, say the Khoja merchants settling in Bombay to acquire the status of British Indian subjects. That is the object of the Bill which I now commend to the consideration of the House.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill to consolidate and amend the law relating to the naturalization in British India of aliens resident therein, as passed by the Legislative Assembly, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

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

Clauses 7, 8, 9, and 10 were added to the Bill.

Clauses 11, 12, 13, 14, and 15 were added to the Bill.

The Schedule was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

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

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muhammadan): Sir, I wish to say only one word. I am told that there are certain countries which place restrictions upon the rights of Indians to

acquire real property, even if Indians become naturalized subjects of those countries. I am told that in Japan retaliatory provisions exist. The attention of the Government was drawn to this fact in the Assembly and Mr. Tonkinson promised to consider the question and introduce further legislation if it was a fact. I only wish to draw the attention of the Honourable the Home Secretary to this fact that, if there is such a distinction observed in other countries, I hope that Government will be willing to examine the question and take necessary action in the matter.

THE HONOURABLE MR. J. CRERAR: Sir, if I may be allowed at this stage to answer the point raised by my Honourable friend opposite, I would point out that under clause 5 (*1*) of the Bill powers are reserved in granting certificates of naturalization, to except such rights and privileges as may be specifically withheld by the certificate.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill to consolidate and amend the law relating to the naturalization in British India of aliens resident therein, as passed by the Legislative Assembly, be passed."

The motion was adopted.

STEEL INDUSTRY (AMENDMENT) BILL.

THE HONOURABLE MR. D. T. CHADWICK (Commerce Secretary): Sir, I beg to move that the Bill to amend the Steel Industry (Protection) Act, 1924, for the purpose of increasing the total amount payable by way of bounties under that Act, in respect of railway wagons and of providing for the grant of bounties in respect of underframes for railway passenger carriages, as passed by the Legislative Assembly, be taken into consideration.

The reason for this amending Bill is very simple and practical. This Council will recollect that it passed the Steel Industry (Protection) Act in June, 1924. Section 4 of that Act permitted the Governor General in Council to pay 7 lakhs a year for three years by way of bounties on wagons manufactured in India. Immediately after that Act was passed tenders for wagons were called for and orders were placed in August, 1924. By that time, however, five months of that official year had passed, and as it takes any manufacturer some time, after getting his order, to collect his material, it was impossible in that year to pay out the whole of the 7 lakhs of bounties that was authorised for that year by the Act. In fact, as every business man knows, and the House will see at once, what the Railway Board wishes to know in this matter of bounties is what bounties are available at the time when they are placing the orders. They are not so much interested as to what is happening at the time at which the wagons are delivered, but it is when they are placing orders and are comparing the different prices of tenders, it is then that they want to know what amount of bounty is available. That is the great reason of this Bill. We are in fact changing the form of this section round, and as the House will see, we are giving the Governor General in Council permission to incur liabilities for bounties at the time when the orders are placed. Arising from the same practical business fact there is

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another difficulty. This Steel Protection Act is in force to the 31st March 1927, and next year there will be a complete inquiry into the steel industry. This Council will probably at about this time next year be considering whatever recommendations are then made, if any. But in August, 1926, it will be about time for the Railway Board to place their orders for wagons for delivery next year, and therefore they will wish to know next August whether for wagons to be delivered during 1927-28 any bounties will be available. The Tariff Board inquired into this point, and they have recommended that bounties should be given to cover wagons ordered for delivery in 1927-28. This Bill provides for that.

Now, Sir, I have given the reasons for this Bill; I will take its practical effect. The Steel Industry (Protection) Act allowed a total amount of 21 lakhs to be spent in three years. This Bill allows Government to incur a liability of 38 lakhs spread over four years instead of three, and for the last two years of this period to bring under the bounty system underframes as well as wagons. I need not detain the Council over clause 4 (*1*) of the Bill. That merely deals with past history; it merely turns into the language of the Bill what has already happened. During the last two years Government have incurred liabilities on wagons of 13·59 lakhs. That is the sum which is referred to as 13·60 lakhs in clause 4 (*a*). Clause 4 (*b*) is the real one of interest because that deals with the present. The Council will observe that this authorises the Governor General in Council to incur an additional expenditure of Rs. 19,40,000 on bounties for wagons and underframes. The Tariff Board recommended 40 lakhs. We have reduced it to Rs. 19,40,000. The Council will quite rightly expect me to give some explanation for this. The Tariff Board found very definitely that there was no need to increase the rate per wagon of bounties, but it did find that the number of wagons that could be delivered in India was very much larger than they had anticipated, with the result that while the total rate of bounty per wagon was less, the total amount required was more than they had anticipated. For instance, in their first report they forecasted it was probable that, under the bounty system the wagon firms in India would, in the course of five years, be able to produce 1,600 wagons a year. Well, Sir, last October the Railway Board placed orders for 3,200 wagons to be delivered in 1926-27. Realising that a larger sum would be needed the Tariff Board had to estimate how much would be required. They sent in their report in October last and they had then only available for calculation the results of tenders of January 1925. From an examination of those tenders they deduced that as much as Rs. 600 per wagon would probably be required for orders this year and Rs. 500 per wagon for orders to be placed next year. Taking as probable an output of 3,000 wagons in 1926-27 and of 3,200 wagons for delivery in 1927-28, the Board calculated that 18 lakhs each year would be required. However, Sir, since the receipt of the Tariff Board's report we have examined the tenders which were called for at the end of 1925. On examining them in November or December last the Railway Board found that it was possible to place orders in India for 3,200 wagons for delivery in 1926-27 instead of the 3,000 the Board expected, and that in order to do so, the total amount of bounty that would be required would be somewhat under 7½ lakhs, instead of the 18 lakhs which the Board had estimated. I do not for a moment think that the Council would agree to authorise the Governor General to spend 11 lakhs extra upon this purpose when the

latest figures available show that 7½ lakhs have been sufficient. It can be assumed fairly safely that about the same sum ought to suffice for the next year. As the House sees, that practically halves the Board's estimate Another two lakhs we expect would be required for underframes which now the Tariff Board say should be brought within the bounty system. Hence it is clear that nineteen lakhs should be ample to cover all orders for delivery in the next two years. That, Sir, is the full extent of this Bill. I submit to the House it is simple; it is straightforward: it is a practical business proposition, and it is conceived both in economy and in fairness, and I ask the House to support it.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill to amend the Steel Industry (Protection) Act, 1924, for the purpose of increasing the total amount payable by way of bounties under that Act, in respect of railway wagons and of providing for the grant of bounties in respect of underframes for railway passenger carriages, as passed by the Legislative Assembly, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clauses 3 and 4 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

THE HONOURABLE MR. D. T. CHADWICK: Sir, I beg to move that the Bill, as passed by the Legislative Assembly, be passed.

THE HONOURABLE SIR ARTHUR FROOM (Bombay Chamber of Commerce): Sir, I merely wish to say a few words with regard to this Bill and those words are in the form of a warning, a warning which I have given voice to in this House on more than one occasion. I would like the House to consider carefully where these protective duties and bounties are leading this country. Bounties sound very nice. They sound like a very pleasing gift. But Honourable Members should remember that when you make a present to anybody you have got to pay for it; and on this occasion the country is paying for these bounties. I think I cannot better illustrate what I have in mind than by a short reference to the speech made in this Council by the Chief Commissioner for Railways in introducing his Railway Budget. On page 10 he spoke as follows:

"The difference between these prices and the equivalent of the lowest satisfactory quotation from abroad will be met from bounties payable under the Steel Protection Act."

By "these prices" he was referring to the prices or the cost of wagons and steel frames bought in this country, and he at once demonstrated that he could have bought them cheaper elsewhere. Now I am not averse to assisting industries, these wagon-building industries, in their infancy; but what I do want to lay stress on is that after they have been in existence for a few years if they cannot manufacture wagons and frames in competition with the wagons and frames which can be purchased elsewhere, then I think the industries had better close down. The Railway Department on this special occasion I think might be considered to be standing on velvet. What are they doing? They are buying wagons, the full cost of which they ought to debit in their accounts and then immediately write them down. And where would they get the money to write down? Not from the railway accounts. That is not keeping your accounts commercially, because you are obtaining your money for writing down from the

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tax-payer of India, through another Department. Sir, I do not wish to say anything further on this. I am not opposing the Bill, because, as I have said, the constituency I represent have not opposed the principle of some assistance being given to these industries in their infancy; but I do maintain that after a few years, during which they have been assisted, these industries ought to walk by themselves.

THE HONOURABLE MR. D. T. CHADWICK: Sir, with regard to what my Honourable friend has said, I would only remark that the object which he has so clearly put before the Council is the object we all have in view in this policy of discriminating protection. As was explained when the Resolution regarding that policy was brought before the Assembly, it was no part of the Government's idea that bounties should be paid for ever. It is our hope—I trust it may not be a false hope—that in a few years these firms will be able to stand and meet competition without assistance. In that direction I would only point out a few facts. In the first year, as is shown in the last Report of the Railway Board, bounties were given at the rate of somewhere near Rs. 600 to Rs. 700 per wagon. On the tenders to which I just alluded, opened in December last, although everybody knows in the last 3 years how the prices of steel have fallen, it was only necessary to give per wagon a bounty of Rs. 228. I trust that in another year that sum per wagon will be considerably less. Lastly, the whole question will be examined again during the current year, 1926-27, by the Tariff Board. Thus the rate of bounty per wagon is coming down and another inquiry is due, but yet I believe the Council, as a whole, endorse the principle which the Honourable Sir Arthur Froom has just enunciated.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill to amend the Steel Industry (Protection) Act, 1924, for the purpose of increasing the total amount payable by way of bounties under that Act, in respect of railway wagons and of providing for the grant of bounties in respect of underframes for railway passenger carriages, as passed by the Legislative Assembly, be passed."

The motion was adopted.

INSOLVENCY (AMENDMENT) BILL.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, I move that the Bill to amend the Presidency-towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920, as passed by the Legislative Assembly, be taken into consideration.

This Bill also seeks to give effect to certain recommendations of the Civil Justice Committee. In the first place, it extends the Presidency-towns Insolvency Act to the town of Karachi where now the Provincial Insolvency Act applies. Then it amends section 104 of the Presidency-towns Insolvency Act as also a similar section in the Provincial Insolvency Act. By that it deals with offences against the Insolvency Act. Hitherto these offences have had to be tried by the High Court in a Presidency-town and in a district town by the District Judge and took up a considerable part of their time. The amendment, which is in accordance with the recommendation of the Civil Justice Committee, enacts that if the Insolvency Court is of opinion that an offence has been committed then it has to complain to the Presidency Magistrate in a Presidency-town or to a Magistrate of the first class in the district towns, and that the

Magistrate is to try the offences in the regular way. The other amendments are more or less consequential amendments for the purpose of carrying out those two objects.

The motion was adopted.

Clause 2 was added to the Bill.

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

Clauses 7, 8, 9, 10 and 11 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

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

The motion was adopted.

CODE OF CRIMINAL PROCEDURE (SECOND AMENDMENT) BILL.

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

Sir, I recently had occasion to present to this House a measure, including three or four distinct items, which involved amendments of the Criminal Procedure Code. These were intended to rectify certain defects which had been found in practice to emerge from the amendment of the Criminal Procedure Code in 1923. Of the measure as originally presented in another place one item was at that time not passed. On further consideration, I am glad to say, it has been passed and it is with respect to that item that I make the motion standing in my name. Until the amendment of the Code of Criminal Procedure in 1923, it was open to the Magistrate, where a person failed to give security under those sections of the Criminal Procedure Code which are commonly called the bad livelihood sections, to order that in default of security the imprisonment awarded might be either rigorous or simple. The effect of the amendment passed in 1923 was to remove from the discretion of the Magistrate the power to award either simple or rigorous imprisonment in cases of orders made under section 108 or section 109 of the Code. The measure which I now present to the House has nothing whatever to do with section 108. It relates solely to section 109, that is to say, to cases where a Magistrate has received information:

(*a*) that a criminal is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself. I invite the very close attention of the House to these two prescriptions which are very material indeed to the objects of the Bill. The discretion of the Magistrate to award either simple or rigorous imprisonment was removed when the Act was amended in 1923 and the effect of that amendment has been found to be extremely inconvénient. A greater part, at any rate a very considerable part, of the persons against whom action of

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this character is necessary are, as the House will readily realize, persons who, under the corresponding English law, which is a more severe law, namely, the Vagrancy Act of 1924, would be denominated either idle and disorderly persons or rogues and vagabonds or incorrigible rogues. Of the total of 3,000 persons now in prison in pursuance of this section no less than one-third were persons with previous convictions against them. They were persons who are in the ordinary parlance called jail birds. Two inconveniences arose or rather two distinct classes of inconvenience arose. It was a matter of great difficulty to the Magistrates that they could not in the cases coming before them really discriminate in cases which required discrimination. There was a large proportion of cases in which the Magistrate was conscious that in awarding simple imprisonment he was ordering a most inappropriate form of imprisonment. Honourable Members are aware that when a sentence of simple imprisonment is awarded either under these preventive sections or for any specific offence, the person so sentenced cannot, except of his own free will, be called upon to do any kind of work while in prison. He can while away his time from morning till night doing nothing. He is fed, clothed and housed at the expense of the State, but he does not do or may not do one single hand stroke to earn his bread or to reduce the charges which fall upon the tax-payers of the country. That is a very unsatisfactory state of things. It is very unsatisfactory that the discretion of the Magistrate should be restricted in this way. I may also mention that there was another kind of inconvenience which emerged from the operation of this amendment. It related to the internal administration of the jails. Every Local Government reports that both their Magistrates and their jail officials have complained of the evil results which are the consequence of the removal of this discretion from the Magistrate. First of all, taking broadly the class of persons against whom action under this section may be necessary, it must, I think, be obvious that to detain a man for 12 months with no honest work which he can be compelled to do is very demoralizing to him. It would be demoralizing to any man. It is particularly demoralizing to a person who from the character of his antecedents and possibly of his environment—I do not entirely blame the man but we have to take things as they are—is naturally indisposed to do any honest work. Further, the manner of his life in jail does not dispose him to do honest work after he emerges from the jail. It is not only demoralizing to him but it is also demoralizing to his associates. The House will realize that besides persons in jail under section 109 there are a considerable number of persons who have been sentenced to simple imprisonment. Simple imprisonment is awarded normally in cases where the character of the offence or the character of the convicted person is such that he ought not to be put to rigorous imprisonment. In other words, you get quite a number of people who are certainly not jail birds, habitual thieves, habitual robbers or habitual bad characters or idlers or vagabonds but are persons who have broken some provision of the law and are sent to jail. Many of them are in other respects quite respectable persons. Now, is it reasonable or proper that they should be mixed up with a considerable number of persons dealt with under these sections who are *ex hypothesi* in the vast majority of cases persons of the *badmash* class? My point is that the award of simple imprisonment without any discretion on the part of the Magistrate is demoralizing not only to the person proceeded against under section 109, but it is also demoralizing to his associates who are not of the same character as himself and, generally

speaking, it is very prejudicial to the maintenance of discipline in a jail where persons of these different classes are confined together. Sir, that is the object of restoring this discretion to the Magistrate.

It has been urged that it is not necessary to grant this discretion to a Magistrate because section 110 of the Criminal Procedure Code is sufficiently wide. Now, I ask the House to give its very close attention to the precise provisions of section 109. I will now, if the House will bear with me because it is a matter of considerable importance, read out to them the provisions of section 110. Action under section 110 may be taken against any person who:

(*a*) is by habit a robber, house-breaker or thief, or

(*b*) is by habit a receiver of stolen property knowing the same to have been stolen, or

(*c*) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property, or

(*e*) habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace, or

(*f*) is so desperate and dangerous as to render his being at large without security hazardous to the community."

Now, it does not require very close examination of these provisions to see that they apply to a different class of persons from those dealt with under section 109. It may be that persons who have at one time been dealt with under section 110 may subsequently come within the scope of section 109, but it is entirely wrong to allege, as has been alleged, that section 110 fully provides for all cases of habitual offenders.

Let me explain that a little more in detail. Under section 110 any of the habitual offenders falling within the terms of that section may be required to give security for good behaviour and on failing to do so may be sentenced to imprisonment not exceeding three years. If it were not necessary after a man has done a period of say one year to find any further cause against him, it will be open to the police officer to arrest the man the moment he has left the jail. He can take him before a Magistrate and if the Magistrate thinks fit he can award another sentence of one year. It has been held repeatedly by the High Court that after a person has been discharged after his period whether of security or imprisonment under section 110 he must be given an opportunity to show whether or not he really intends to take up an honest means of livelihood, and unless and until you give him the opportunity you cannot proceed against him under that section. That explains how it is that a man may have ten or fifteen, in some cases seventeen, previous convictions, or have been proceeded against five or six times before under section 110, but when he comes out from his last period under section 110 you cannot proceed against him unless he has once again brought himself within the danger of that section. He may be concealing himself within the local limits of the Magistrate's jurisdiction, he may have given reasons to believe that he is about to commit an offence, but he has not brought himself within the danger of section 110. He has brought himself within the danger of section 109. I have made this somewhat lengthy explanation because there has been rather persistent misapprehension of the real case. Section 110 deals with classes of cases of a different kind and is not a substitute for section 109. These sections deal with two very distinct classes of cases. While I ask the House to restore that discretion to Magistrates in respect of action taken under section 109, I would like to point out that additional safeguards have been provided and will still be in operation. Formerly a person proceeded

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against under these sections had an appeal to a District Magistrate. Now he has got an appeal to a Sessions Court and the revisionary powers of the High Court still continue. Therefore there is very little likelihood of this section being abused. If it is abused the person concerned has an easy and adequate remedy.

I make the motion standing in my name.

THE HONOURABLE THE PRESIDENT: The question is:

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

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

THE HONOURABLE MR. J. CRERAR: I move that the Bill, as passed by the Legislative Assembly, be passed.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muhammadan): Sir, it is impossible for me to record a silent vote on this motion. It will be in the memory of Members of this House that the same provision which is sought to be introduced by this Bill was twice negatived in the Legislative Assembly on former occasions. It was only in September 1925 that the Honourable the Home Member sought to reintroduce this provision into the Criminal Procedure Code and that attempt failed. It has no doubt succeeded recently in the Assembly, but there was a very wide divergence of opinion on the question; therefore I have decided not to record a silent vote on this motion. Before I say anything, Sir, against the proposal embodied in this small Bill I wish to assure the Government that we who oppose such measures are not so dense or perverse as not to recognise the use of legislative measures which are intended to promote law and order in this country. We recognise that such measures are intended mainly for the benefit of citizens. Therefore, when we oppose some of them, it is not due to any feeling of hostility to measures inaugurated by the Executive Government, but it is only because we feel that the mischief of the Statute which is sought to be introduced far outweighs its benefits in some cases. It is really a sad comment on the political aspect of our legislation that the Legislatures distrust the executive and the executive distrust the Legislatures. But I hope that each of us will make our position clear and that there will be no room for misunderstanding.

So far as this measure is concerned, my objections to it are threefold. Firstly, I maintain that section 109 is intended to be a preventive measure and not a punitive measure. I quite agree with the Honourable the Home Secretary that sections 110 and 109 deal with different classes of persons. I will concede that; but at the same time it is by no means certain that persons who ought to be proceeded against under section 110 are not frequently proceeded against under section 109. I do not contend that we can properly bring persons for whom section 110 is intended under section 109. Many of the persons who are now in jail under sections 110 and 109 should have been run in under section 110, not under section 109. That is the comment I make. Section 109 is intended to deal with two classes of persons.

The class of persons covered by clause (*a*) are those who conceal themselves with intent to commit an offence, and clause (*b*) deals with the class of persons who are vagrants or vagabonds and who have no ostensible means of livelihood and are not able to give a satisfactory account of themselves. It is meant to apply to persons of bad livelihood or persons who adopt a dishonest means of livelihood or persons who harbour criminal intent. And these persons are sought to be prevented from committing any crime. My submission is that the requirements of the State and the requirements of the citizen will be absolutely met by preventing these people from committing the intended crimes by putting them in jail and imposing simple imprisonment upon them. To give them hard labour and treat them like other criminals who are convicted for substantive offences is unjustifiable under a civilized law. That is my first objection. The second objection is this. The Honourable the Home Secretary said that all that was asked for was mere discretion for the Magistrate either to give simple imprisonment or rigorous imprisonment, and that it was not necessary to give in every case rigorous imprisonment. It is true that all that the section seeks to secure is merely discretion, but, Sir, we know that when the judicial and executive functions are not separated and the Magistrates are mostly responsible to the executive head of the district, this discretion is a very illusory one. The Magistrate is likely to exercise the discretion more by executive bias or executive exigencies than in a judicial manner. We were told by the Home Secretary that a substantial improvement was made in the law when section 406 was amended so as to make the appeal lie not to the District Magistrate, but to the Sessions Judge in the case of mofussil courts, and to the High Court in the case of Presidency Magistrates. But those of us who have been practising in the courts for some time know that appellate courts rarely interfere with discretionary orders. Therefore it is no use telling us that the original Magistrate exercises discretion subject to an appeal. Then, Sir, the third objection is that no case has been made out within the last three or four months, since September 1925, to ask for a law which was then deliberately turned down by the Assembly. The Assembly refused in September last to embody this provision in the Criminal Procedure Code and then to come up after six months' time with the same proposal requires a very strong case, and I submit no case has been made out. I note in this connection that a White Paper was put in the hands of Members of the Assembly embodying the opinions of the Local Governments and authorities concerned in the administration of the jails. The same courtesy has not been shown to the Members of this House. I do not complain. I can assure my Honourable friend opposite that I had an opportunity of looking into that book by the kind courtesy of a Member of the Assembly who had it. It does not impress me at all. The only reasons stated there are that the Local Governments considered that in some cases simple imprisonment was absolutely inadequate and the jail authorities considered that putting people into jail without work would demoralise the other inmates in the jail. These are certainly no arguments in favour of sentencing to hard labour people who are merely convicted on suspicion and sent to jail to prevent them from committing some crime in the future and not because they committed some offence under the Penal Code. These arguments are unconvincing and I do not think they form any basis for the change in the law such as is now advocated.

Then, Sir, finally this section 109 has been misused very badly in many cases. The most glaring instance of it was the Nagpur Flag case.

[Mr. V. Ramadas Pantulu.]

Hundreds of persons who had good means of livelihood were run in under that section and sent to jail for long terms. I know personally many of those young men who went to jail. Some of them were graduates of the Universities and had ample means of livelihood in their own homes, but when they went from my part of the country to Nagpur they could give no satisfactory account of themselves because they had no property in Nagpur. Many of them were sent to jail on the charge of being persons who had no ostensible means of livelihood. That is enough to show that that law is an engine of oppression in the hands of those who wish to use it so. I know I will be told that if a section is misused, it is no use saying the form of imprisonment should be simple and not rigorous, and if a section is misused it is no argument against the section. If however the mischief of the section cannot be remedied, we at least want some restraint on that mischief by seeing that people who are run in under the section escape the hardship of rigorous imprisonment. I am able to say, from a perusal of the debate in the Assembly, that the fact that the section was misused was not seriously disputed even by the Government. Therefore, Sir, we are not impressed with the Government's case for a change in the section, and the Government have not really disclosed their motive or their reasons for this demand for a revision of the Statute at such a short interval since September 1925. There is a widespread belief that there is some dark motive underlying this enactment, and whether it is so or not, I am content to base my objection on the broad grounds that no case has been made out, that the discretion is an illusory one, and being a preventative and not a punitive section, hard labour is not justified. I will only add one word; if keeping people who are sent to jail, without doing any work is considered to be objectionable from the standpoint of the State, because they are fed there while doing nothing, and it is considered that such people are likely to demoralise other inmates of the jails, I would suggest one remedy. Such people who are not really criminals and who are sent to jail because they are not able to give a satisfactory account of themselves, should be provided with work in some kind of institutions like workhouses where their services could be utilised and where at the same time they are not subjected to the humiliations and hardships of rigorous imprisonment like persons who are convicted of substantial offences. The State ought to be humane in the treatment of such persons who are imprisoned merely on suspicion for failure to give security. For all these reasons, Sir, I cannot but vote against this motion.

THE HONOURABLE RAI BAHADUR NALININATH SETT (West Bengal: Non-Muhammadan): Sir, on a consideration of the debate that took place in the Assembly over the Bill, I had to look into the history and decisions regarding sections 109 and 123 of the Code of Criminal Procedure as amended in 1923. I find that the Select Committee then appointed went into the matter fully and were deliberately of opinion that "in cases under sections 108 and 109, imprisonment in default of furnishing security should be simple." The said Select Committee consisted of men of experience in the legal line such as Sir Tej Bahadur Sapru, Sir William Vincent, Mr. J. Chaudhri, Sir B. C. Mitter, as well as you, Sir. That the above was not a mere passing observation is also evidenced by a consequential amendment of section 397 of the Code by the addition of a proviso under clause 103 of their report.

That proviso laid down that "imprisonment for a subsequent offence will not be concurrent with *detention* under section 123." This shows not

only deliberation on the part of the Select Committee as also their point of view that an order under section 123 is not a sentence but merely detention. And this is quite consonant with judicial decisions. This order of imprisonment for failure to give security is not a conviction for an offence under section 75 of the Indian Penal Code. The person proceeded against is not an accused under section 167 or under section 250 of the Code. He is committed to prison and not sentenced. It is upon these judicial decisions, I think, the learned Members of the Select Committee made it consistent with the idea of mere detention and made the term of imprisonment merely simple.

Sir, I have not been able to find any mention of these obvious facts either in the speech of the Honourable the Home Member at the time of the consideration of the Bill in the Assembly or by any of the supporters. Nor was any reason given by any one as to why the weighty opinion of the said Sub-Committee, as I have shown, should be brushed aside. I have also gone through the White Paper circulated along with the Bill, and I have not missed the appeal made by the Honourable the Home Member when he said:

"The implications of this are far beyond the mere amendment I am moving. I am asking the House to co-operate in making an amendment which has been recommended by executive authority in India. I am asking this House to say once for all whether they will, in any circumstances, under any conditions, carry any measure which is brought forward with the **united force of the executive.**"

I have on my part equally to put it to the Government: the implications of this are far beyond the amendment asked for. I ask them, has not the executive from the very start of the Code in 1923 moved to restore the discretionary power of the Magistrate to award simple or rigorous imprisonment in default of furnishing security under section 109? Do not the reports furnish an ample answer that they did not co-operate to appreciate the view of criminal jurisprudence taken by the Select Committee? Do not the reports suggest that their view of the order under section 123 is punishment and not detention? Do not the jail reports point to the only conclusion that the vanities of the jail authorities have been touched by men who are not guilty of any insubordination but only "wear an expression of superiority" over other prisoners? The White Paper furnishes an example that our executive is very slow to move and to assimilate advanced ideas of criminal law that hard labour and harsh measures are often incentives to harden a prisoner. I would have been glad if any amendment could be moved that rigorous imprisonment should not be awarded to any one who had not been previously convicted under any sections of Chapters XVI and XVII of the Indian Penal Code (offences against person and property) but as it is, I have no other alternative but to oppose it.

THE HONOURABLE MR. T. C. DESIKA CHARI (Burma: General): Sir, in opposing this amendment I shall lay before the House certain legal considerations and my humble experience in the working of the Criminal Procedure Code in some of the provinces of India. Section 109, sub-clause (*b*), as it stands, applies not only to cases of bad livelihood which the Legislatures intended to deal with, but also covers cases of misfortune where a person fails to get some means of livelihood. Of course the original object was to deal with persons of bad livelihood, but as it stands the section is broad enough; and when the principle underlying that preventive section is taken into account the present amendment is certainly very objectionable As my friend the Honourable Mr. Naliniath Sett,

[Mr. T. C. Desika Chari.]

Rai Bahadur, pointed out, the action to be taken by the Magistrate under the provisions of the preventive sections was not by giving a substantive punishment but by taking only a measure of prevention or safeguard against certain classes of persons doing injury to the safety of person or property in the State. My objection to this amendment is that it tries to overlook the principle on which these sections are based and to bring in a measure of punishment into the Criminal Procedure Code in dealing with persons under section 109. I have carefully gone over the White Paper which was placed in the hands of Members of the Legislative Assembly, and from a reading of the opinions of the various Local Governments and the jail authorities it is perfectly clear to me that they want to make out a case for giving rigorous imprisonment in the cases covered by section 109 by pleading that there are a large number of people convicted under that section who are persons who can easily come under section 110. It is this way. There is an abuse of section 109 and as a result of the abuse persons who ought to have been dealt with under section 110 have been dealt with under section 109. And so there is a large proportion of people dealt with under section 109, who are persons of notoriously bad character, who have had several previous convictions and who ought to be differently dealt with from persons who have had no previous conviction at all. I tried very carefully to follow the speech of the Honourable the Home Secretary, and there also I found his reason for bringing in this amendment is that soon after a person is released from imprisonment under section 110 he cannot be dealt with under the same section without being given an opportunity of showing that he was trying to reform himself. His object, I take it in bringing in this amendment, is to make away with that safeguard by proceeding under section 109 against those persons. That is the purpose, as I understand it, of the Honourable the Home Secretary in bringing in this form of punishment for a purely preventive measure.

My second objection is that it is no good saying "It is discretionary and the discretion will be properly exercised; there are cases where discretion may be properly exercised and so provision ought to be made to give discretion to the Magistrate to give either simple imprisonment or rigorous imprisonment." The principle to be applied to all these cases from a purely judicial point of view is this. It is better to make provision which may allow a number of people to escape from the clutches of justice rather than that one man who ought not to be dealt with under the provisions of this section should be brought under it. That is better in cases of doubt. It is no explanation to say that Magistrates are all right, they know how to exercise discretion and so on. The question is they ought not to be allowed to exercise a discretion which may possibly work hardship in the case of at least some people who ought not to be given rigorous imprisonment.

THE HONOURABLE MR. J. CRERAR: But how could these Magistrates at all on that basis?

THE HONOURABLE MR. T. C. DESIKA CHARI: My answer to that is Magistrates deal with this section, and if they are given this discretion there may be some chance of a person who ought not to be given rigorous imprisonment being given rigorous imprisonment under this section. It may be an extraordinary circumstance, but all the same it is the duty of the Legislature to frame the law in such a manner as not to give any scope of such abuse of discretion at all. I, therefore, oppose this amendment of the Code

because it goes against the very root of the principle underlying section 109 and other preventive sections of the Criminal Procedure Code. They are not sections which deal with substantive offences but they deal with extraordinary safeguards against injury to the person and property of individuals. These are cases where measures are taken against persons not in the form of punishment but cases where they are dealt with under measures of extreme precaution in the interests of the public so that they may not commit mischief against the public at large. For these reasons, Sir, I oppose the Bill.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAO (Madras: Non-Muhammadan): Sir, not being a lawyer myself, I do not wish to say anything which will involve the expounding of legal quibbles and legal technicalities and I have therefore decided to leave them to hair-splitting lawyer friends in this Council. But, I think, I would be failing in my duty if on the present occasion I should record my silent vote and not enter my emphatic protest against what I consider to be a dangerous and iniquitous piece of legislation. This Bill raises a plain issue. Are you or are you not prepared to arm the Magistracy with discretionary power to award simple or rigorous imprisonment in security proceedings taken under section 109? This section is, under normal conditions, intended to haul up a habitual criminal who has not been caught red-handed in the act of thieving or committing any other offence but who, for the purpose of committing an offence, is taking the necessary precautions to conceal his presence or who is looking about with no ostensible means of subsistence or cannot give a satisfactory account of himself. Such a person is asked to furnish security for good behaviour under this section, and if he fails to do so, is punished with simple imprisonment only under the recently amended section 123 (*b*). The complaint now is that simple imprisonment has no deterrent effect on these habitual criminals who lordly while away their time in jails refusing to do any work and are therefore a burden to the State, and the law should therefore be amended giving Magistrates discretionary power to award hard labour in such cases. A Bill was introduced in September last in the Legislative Assembly making the necessary amendments but was thrown out then on cogent grounds. The Honourable the Home Member reintroduced this Bill in the Assembly a few days ago and in doing so made a curious statement which I consider to be an insult to this House and which I do not like to pass unnoticed. He said:

> "I would not lightly invite another rebuff in this House. It was open to me to take the Bill to another place, to endeavour to secure—(*mark these words, please*)—the re-insertion of this clause and bring it back here again. I did not wish to do that out of respect for this House."

Is it not an implication, Sir, that this House is ever ready to play to the tune and do anything to the dictation of the Honourable the Home Member? Let us at least wipe out that impression from his mind by throwing out this Bill this time. According to the Bill, Sir, any person who has no ostensible means of subsistence or cannot give a satisfactory account of himself can be booked and sentenced to hard labour, if he fails to find security. If it is expressly mentioned that this section applies only to a habitual criminal, then there can possibly be no objection to this Bill. But, as it stands, this section has a very wide range of application extending its scope from a habitual criminal to an innocent pauper, a true patriot and an honest politician. Anybody can come under the clutches of this law and be

[Dr. U. Rama Rao.]

awarded rigorous imprisonment if the Police and the Magistrate are so minded. This section gives into the hands of the Police and the Magistracy a very dangerous weapon to suppress not merely crime but the shame of poverty and unemployment, to suppress political agitation and demand for national freedom, in fact, anything that comes in the way of the Government and is repugnant to the Government. There has been a gross abuse and misuse of this section by the Magistrates in the past by their applying it to political offenders, which the Government has never denied nor taken any steps to prevent. No guarantee is held out to prevent its recurrence in the future. As long as the executive and judicial functions are combined in one, so long will this abuse of power continue. The Legislature is asked to give a *carte-blanche* to the Executive to deal with the people in any arbitrary manner they like under this section. I hope our appeal will not be in vain and this House will consider the question calmly and without any bias or prejudice and reject this Bill in the interests of the people at large.

THE HONOURABLE PANDIT SHYAM BIHARI MISRA (United Provinces: Nominated Official): Sir, I rise to support the Bill, the consideration of which has so ably been moved by the Honourable Mr. Crerar. I had thought, Sir, that this Bill was not a controversial measure. It should not have been treated as a controversial measure. As a matter of fact, those who have experience of criminal administration of the country know that it is only the worst criminals who are usually dealt with under sections 109 and 110 of the Criminal Procedure Code. I have, Sir, personal experience of more than a quarter of a century of administration of criminal justice in the country. Unfortunately, I was only a Magistrate, but I think I can conscientiously say that never in my experience of 25 years was my judicial discretion interfered with by any District Magistrate. A reference to this point has been made by one of the previous speakers. Well, Sir, I can confess that there are Magistrates whose decisions and actions are sometimes interfered with by District Magistrates. But I must say that those subordinate Magistrates themselves are largely responsible for this state of affairs. We cannot be justified in believing and assuming that District Magistrates are always wrong and subordinate Magistrates are always right. I know—I must confess with shame—of instances where some subordinate Magistrates sought the help of District Magistrates for the sake of their own convenience, perhaps unworthy convenience. I must repeat that they wanted to seek the advice of District Magistrates for their own motives and it is such Magistrates whose discretion and action are sometimes interfered with by the District Magistrates. But I must add that no District Magistrate has ever been known to me to interfere with the discretion or action of an honest and intelligent subordinate Magistrate. This is my reply to the insinuation of my Honourable friends.

Then, Sir, it has been suggested that this section 109, Criminal Procedure Code, is liable to abuse and that therefore the discretion of awarding simple or rigorous imprisonment should not be given to Magistrates. May I ask, Sir, if any other section is not liable to abuse? Even the best thing in the world is liable to abuse, but we deal with the rule and not with the exceptions. The rule is that we must provide and legislate for what is usually done, and not for what may happen by an abuse of something. I do not know.

but there might have been instances of an abuse of this section. There might have been instances of an abuse of any other section of the Indian Penal Code.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAO: What about the Nagpur flag case?

THE HONOURABLE PANDIT SHYAM BIHARI MISRA: I do not say that there is no possibility of abuse. I do not know about the Nagpur case. It is said that some Nagpur flag Satyagrahis were dealt with under section 109. They might perhaps have been rightly dealt with under that section, or the section might have been abused. I have already admitted that every section is liable to abuse. But shall we scrap the Indian Penal Code because every section of it is liable to abuse? If so, then let us repeal the whole of the Indian Penal Code. Because a man might be wrongfully hanged, is it right that therefore section 302 should go? Then there would be no end to murders. My experience is that *pax Britannica* is more due to the discriminate exercise of the discretion of Magistrates under sections 109 and 110, Criminal Procedure Code, rather than to all the penal laws of the land put together. That is my firm conviction. *Pax Britannica* is really based on sections 109 and 110, provided they are properly worked. Any sections might be abused, but I think that such cases are rare. In my experience I do not remember that any abuses of section 109 ever took place in my court. Section 110 has been at times abused, but I do not remember section 109 being abused. I admit it is liable to be abused, but a salutary section cannot go because it is liable to be abused.

Mr. Ramadas Pantulu has put forward three objections. One is that prevention should not be punitive. I admit that and I do not think that it ever was the object of the Legislature to provide that prevention should be punitive. But how are we to deal with confirmed criminals? It is a question of discretion. I do not say the Magistrates must always give rigorous imprisonment to a man unable to furnish security. We must give discretion to the Magistrates. I think, Sir, that Mr. Bipin Chandra Pal, if I remember aright, said in the lower House, when somebody remarked that he had been to jail, that he was in jail when jail was really a jail and not a father-in-law's house. If you give simple imprisonment to a hardened criminal, it means sending him to his father-in-law's house to be the guest of His Majesty at the expense of the ratepayer. The honest man has to subscribe towards his maintenance, while he lives in jail a life of peace and perhaps luxury. That cannot be the intention of any Legislature. We must deal with each case on its merits, and this is why discretion is being asked to be restored. If there is a hardened criminal, and he is found to be sitting behind my house at mid-night with instruments of housebreaking in his possession—he has not begun his housebreaking operations—and if he runs away when seen and is captured and produced under section 109 before a court, shall we say: "You were going to commit housebreaking, but nevertheless you can comfortably be lodged in your father-in-law's house"? No, this would be preposterous; therefore to refuse restoration of discretion to Magistrates in such cases is to my mind absolutely wrong.

Then Mr. Ramadas Pantulu also pointed out that some persons who could be proceeded against under section 110 were wrongly proceeded against under section 109. It is a surprising suggestion and a surprising

[Pandit Shyam Bihari Misra.]

argument. Section 110, as Honourable Members are aware, provides for imprisonment on failure to give security, either rigorous or simple, for three years, whereas section 109, so far as I remember (I have not been dealing with these sections for three or four years), provides for imprisonment for only one year; so why should section 109 be substituted for section 110? My friend Mr. Chari has pointed out that this section is substituted for section 110, because in case of a person dealt with under section 110, some time must be allowed to elapse to give him a chance of reforming himself, before he can again be proceeded against under that very section, and that therefore such persons are wrongly proceeded against under section 109. This is a very ingenious suggestion, but to me with all my criminal court experience it looks rather funny. Section 109 can hardly be substituted for section 110. Section 109 is really used against criminals when they are actually caught under very suspicious circumstances, and at least I think I can be justified in hoping that I shall be credited with *bona fides* when I tell you that my experience has never shown that section 109 has been abused. I never knew this to happen in the 25 years of my experience.

Then the third objection of the Honourable Mr. Ramadas Pantulu was that no case has been made out for restoration of this discretion which was rejected by the Assembly in 1925. The Honourable the Home Member's speech in the other House should convince all who are open to conviction that a very good and strong case had been made out, and all the opinions of the Local Governments and High Courts and jail authorities go to show that this discretion should be restored. I really do not see why it should not be restored. All cases must be dealt with on their merits. Nobody can say that all persons dealt with under section 109 are good people and that none of them must be given rigorous imprisonment when they have failed to furnish security. If the merits of the case demand it, why should this discretion be refused to Magistrates? To say that Sessions Judges are unwilling to interfere with the discretionary powers of Magistrates is quite wrong. Sessions Judges always interfere when they think it necessary, and I think it would be an absolutely salutary provision. I think under such conditions the fear of abuse is very, very remote. I support the Bill.

THE HONOURABLE MAULVI ABDUL KARIM (East Bengal: Muhammadan): Sir, I had a mind to undergo my ordinary period of apprenticeship like a good old boy, but just now after hearing what has fallen from some of the Honourable Members of this House on a subject in which I have dabbled for 25 years of my life exclusively as a criminal practitioner, I think I would be doing an injustice to myself and also to the Honourable Members of this House if I did not place at their service a little bit of personal experience and knowledge which I have acquired in connection with the operation of sections 110 and 109.

Sir, I rise to support the motion of the Honourable Mr. Crerar, not only heartily but most whole-heartedly, and I will endeavour as best I can to supplement the arguments that have been advanced in this House by the Honourable Mr. Crerar, and also by the Honourable Sir Alexander Muddiman in the debate on this question in the other House. Sir, I come from a province or a part of a province which has given birth to political thoughts as they are now widely understood and expressed, I

mean I come from Eastern Bengal, and as the Honourable Members of this House are fully aware, circumstances connected with the partition of Bengal and its subsequent modification are circumstances which have widened the Indian political outlook and have given not a little trouble to those who have had to administer the law in this country. Sir, I do not dogmatically assert things because I have dabbled in this law for 25 years of my life, nor do I prefer to look at the question merely from an academician's point of view. I will place my own personal experience of this matter before the Council. The present political situation has arisen after 1905. The law of 1898 that is going to be restored by the present enactment provided for simple or rigorous imprisonment according to the discretion of the Magistrate. Now, Sir, as the Honourable Members of this House have already learnt from the Honourable Mr. Crerar, and as they themselves already know, in 1923 that law was modified, taking away the discretionary power of the Magistrate. In the year 1926 that power is going to be restored. In the debate in the other House I beg to submit that as a matter of fact legal opinion veered round under the somewhat politically atmospheric pressure and what was enunciated there does not exactly commend itself to those who have studied the law very carefully. I will not go over it again in this House because I am sure the Honourable Mr. Crerar has been able to make a full presentment of the Government's case on this subject. I will only just refer to one point. It is said that discretion to the Magistrates in the matter of ordering either simple or rigorous imprisonment in the case of failure to give security under both provisions (*a*) and (*b*) of section 109 should not be given because, as the principal argument advanced therefor has it, that sort of discretion is sometimes abused. My submission to the Members of this Honourable House is that, because discretion may be abused sometimes, that is no reason why discretion should not be given at all. All laws that are progressive in their nature must have the merit of elasticity. Without that there can be no advance worth the name. Now, Sir, the question is whether the law as it stands gives sufficient scope and opportunity to the Magistrate to exercise that discretion properly or not in appropriate cases. The whole question may be looked at from that point of view. My submission is that there may be cases, and there have been cases to my knowledge, in which simple imprisonment under section 109 would not meet the ends of justice. I will place one such case for consideration before this House which has come to my personal knowledge. A man comes as a forerunner—I call him a forerunner because he comes first—to help in the perpetration of a dacoity. That forerunner comes forward in the guise of a " Sannayasi ". I refer to " Sannayasi " because his case was mentioned in the other House as a case in which the Magistrate might wrongly exercise his discretion to punish a *sannayasi* and sentence him to rigorous imprisonment. Now suppose that man who comes in the guise of a *sannayasi* to my house, makes a plan of my house showing therein the approaches and the ins and the outs of my house with the intention of going back to his confederates at some centre of the conspiracy from which he is an emissary taking all the material particulars necessary to enable the dacoits to come and raid my house afterwards. Now, Sir, this man is arrested by the police and he is actually found with a notebook in his pocket which shows the plan of my house, the house of a rich millionaire. He does not give a satisfactory account of himself; he does not like to disclose the names of the persons who have sent him out. " What is your name !"

[Maulvi Abdul Karim.]

he is asked and he does not give a satisfactory reply to that. He is not a photographer or an artist by profession and the Magistrate has absolutely every reason to think he must be a criminal forerunner of that kind—I do not say political. Now, Sir, is the present law sufficient to meet a case of that kind? That section of this House who are lawyers know, as a matter of fact, that there are certain stages of a crime which are not touched by the substantive criminal law. I cannot say this man had been preparing to commit a dacoity. I cannot say that he is there with the object of committing dacoity, although he is there with the object of furnishing such valuable information to the persons who have conceived the idea of committing the dacoity. With regard to that man I cannot say he is preparing to commit a dacoity or concealing himself with the object of committing an offence. I cannot bring him under clause (*a*), section 109. I cannot haul him up under the Indian Penal Code because it is the preparatory stage of only one crime that is taken account of by the Indian Penal Code. I cannot say I can bind him down under the Criminal Procedure Code, section 110, because he is not a habitual offender. Section 110 will not touch him, nor clause (*f*) of that section which is intended only for those persons who are dangerous or of desperate character. Now, Sir, is the man to go scot free? I cannot bring him under any of the conspiracy sections which have lately been enacted to meet the larger requirements of the country, due to the larger political movements of the day, because he refuses to disclose the names of his associates or principals. Unless there are at least two persons, I cannot *say* that he is a party to the conspiracy. Now, Sir, certainly a case of that kind is intended to be covered by section 109 (*b*). If he were to be given simple imprisonment under the law as it was remodelled or recast in 1923, the man would be sent to jail and live, as an Honourable Member on the other side said, like a son-in-law in the Government House. Would not the circumstances of a case like this behove the Magistrate in inflicting upon the man, on his failure to give security, no other punishment than that of rigorous imprisonment? My submission before the House is this that such cases have actually come before me and I have conducted a number of cases in which the accused were actually found in possession of such notebooks showing the plans of the houses of well-to-do and respectable people. As a matter of fact it was this that opened the eyes of the Government, and my submission is that it was in the light of these recent experiences now coming to the notice of the Government that the Government in their wisdom thought of bringing up a Bill like this and restoring the old power to the Magistrate. It is in view of these considerations and other considerations with which I will not tire the House now that I not only strongly but whole-heartedly support the motion brought forward by the Honourable Mr. Crerar, that this Bill as passed by the Legislative Assembly, though with some difference of opinion, be passed here also.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, the speeches made by my two immediate predecessors relieve me to a very large extent from replying to the objections which have been raised to this Bill, and in particular I am obliged to my Honourable friend Maulvi Abdul Karim for an able and comprehensive speech, his first speech in this Council, which gives us every prospect of important contributions from him to our debates in the future.

I was very much gratified, Sir, to have from the Honourable and learned gentleman from Madras an assurance that when Government move measures in this House relating to questions of law and order it is always his strong instinct and desire, as far as in him lies, to support any legitimate appeal made by Government for any reasonable proposition in the matter of powers to maintain law and order. My gratification was however on reflection slightly qualified when I recalled that I had heard preliminaries of that character several times from my Honourable and learned friend and that he invariably followed it up by some measure, usually a very strong measure, of opposition to the particular provision of that nature with which I myself happened to be concerned. I was also particularly struck by the fact that the Honourable and learned Member appeared to express some preference for measures of a preventive rather than a punitive character. Nevertheless it has usually been on occasions when it has been my duty to lay before the House measures of a preventive or precautionary character that I have found more particularly my differences of opinion with my Honourable and learned friend to be fundamental.

Sir, he said he had three special grounds of objection to this Bill. The first was that the section was intended to be preventive and not punitive, and he was therefore inclined to think the measure we proposed to be in the direction of being punitive rather than preventive. Well, in the first place, I should point out that an objection of that character would equally apply to any action taken under section 110 though I think the common consent of persons conversant both with the law and with the practical application of the law, both in this House and elsewhere, has been that in the case at any rate of section 110 it would be absurd to deprive the Magistrate of a discretion to order rigorous imprisonment. In so far as that argument rests upon the undoubted fact, which I fully admit, that these provisions are primarily of a preventive and not a punitive character, the objection ought to go further and induce my Honourable and learned friend to adopt the same proposition in regard to section 110, which I venture to suggest would not be supported by anyone who has a knowledge of the law or any considerable experience of its application in practice.

He then put forward his second objection which related to the discretion of the Magistrate and an Honourable Member who spoke on this side of the House urged the same point, apparently suggesting the view that you are not only not to give a Magistrate a discretion but you are to remove from him all power in any circumstances whatsoever of committing an indiscretion. Well, Sir, all I can say is if you attempt to legislate on those lines, and if you fail to find an undeviating succession of archangels to fill your magisterial and judicial chairs, you will never succeed in putting into form any form of penal legislation whatsoever.

THE HONOURABLE MR. T. C. DESIKA CHARI: I am sorry the Honourable the Home Secretary did not understand me. I merely said section 109 ought not to be so worked as to make an honest person come within the clutches of the law and punished under the amended section and it must be made clear that particular provisions are not intended to be applied to particular persons. That is all that I said.

THE HONOURABLE MR. J. CRERAR: I am afraid I am not much more illuminated with regard to the Honourable Mr. Chari's objection now than I was before. But my reference was to the point relating to the discretion of the Magistrate, and the objection to which I particularly wish to

[Mr. J. Crerar.]

reply is not that of the Honourable Mr. Chari (which I confess I do not understand) but that raised by my Honourable and learned friend from Madras. The Honourable and learned gentleman from Madras took this point in particular, that inasmuch as judicial and executive powers had not been completely separated there was a very grave fear that the discretion imposed on Magistrates in regard to this particular section would be abused. Well, I should like to make two points in reply to that. The first is that *ex hypothesi* we are both agreed on this that this particular measure is preventive; it is not punitive. That is to say, we are not concerned with the formal conviction of an accused person of an offence, nor with the sentence which is duly to be passed upon him. Those are judicial functions. We are concerned with preventive measures; and I maintain preventive measures are essentially executive measures and must be in the hands of persons who have executive authority. My second point is this. If it is necessary to appeal to any well-known analogy, that is to say, if we are to refer to the source of most of our conceptions of criminal law in India, which is the English law, I would remind my Honourable and learned friend what the state of the English law in the matter is. The English Vagrancy Act enables an idle and disorderly person, that is to say, a person who has once infringed section 3 of that Act to be at once sent to prison with hard labour for one month, and no security. If he comes once more within the danger of that Act he is liable as a rogue and vagabond forthwith to be sent to prison for six months' hard labour, and no security. If he comes under the Act for the third time he then becomes an incorrigible rogue and is liable to 10 months' hard labour; he is also liable to whipping and no security again. Moreover, those orders are to be passed not by a bench of persons who exercise solely judicial power but by the Justices of the Peace, who, as Honourable Members are very well aware, though the matter is not always fully recognised are in some of the most important aspects of their functions undoubtedly executive functionaries. Indeed until quite recent times the most important local executive functionaries in the United Kingdom were the Justices of the Peace; and it is to them that the operation of the analogous and as the House will see much more severe laws relating to vagrancy and bad livelihood is entrusted.

The third objection raised by my Honourable and learned friend was this. He inquired what has happened since September 1925, to justify Government in bringing this measure into this House. I will only say this, Sir, that if wiser counsels had prevailed elsewhere in September 1925, this measure would have been long ago before this House and what has occurred since 1925, regarding which my Honourable and learned friend desired to be informed is the gratifying fact that Honourable Members in another place have changed their mind, and changed it for the better. Those, Sir, are the three main points raised by the Honourable gentleman and by those who spoke after him, and I hope and trust that I have met them to the satisfaction of the House.

THE HONOURABLE THE PRESIDENT: The question is:

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

The motion was adopted.

THE HONOURABLE MR. S. R. DAS: Sir, I move that the Bill further to amend the Madras Civil Courts Act, 1873, as passed by the Legislative Assembly, be taken into consideration.

This, Sir, is another small Bill to give effect to one of the recommendations of the Civil Justice Committee. I will explain shortly the object of this Bill. Under the Indian Succession Act, outside the High Courts, it is only the District Judges who can take cognizance of proceedings under that Act. Practically all the provinces other than Madras have by their local Civil Courts Acts empowered the High Courts to authorize subordinate courts as also the District Judges to enable subordinate courts to take cognizance of proceedings under the Indian Succession Act. The Civil Justice Committee recommended that that power should also be given to the Madras High Court and to the District Judges under the Madras High Court and this Bill simply proposes to give effect to that recommendation.

The motion was adopted.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 2 stand part of the Bill."

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

"That in clause 2 in the new section 29 proposed to be inserted in the Madras Civil Courts Act, 1873:

(*a*) the words 'or District Munsif' wherever they occur, and

(*b*) the proviso to the proposed sub-section (*3*)

be omitted."

The matter arises in this way. The Bill as originally drafted and passed by the Legislative Assembly empowers the High Court as also the District Judge to authorise all District Munsifs as also Subordinate Judges to take cognizance of these proceedings. The proviso to sub-section (*3*) enacts that an appeal from an order of a District Munsif in any such proceedings shall lie to the District Judge. A question was raised during the debate in the Assembly as to whether under the present law an appeal would lie from the order of the District Judge on appeal from the District Munsif to the High Court, and it was pointed out that it would not be right that there should be no appeal to the High Court in some of these contentious proceedings which might be taken by the District Munsif. At that time, my Honourable colleague, the Home Member, gave an undertaking that he would look into the matter. It now appears that there would be no appeal to the High Court from an order of the District Judge passed on appeal from the District Munsif. Under those circumstances, we have thought that the best course would be to take away the power of the High Court to authorise District Munsifs to hear these proceedings and restrict that power only so far as subordinate Judges are concerned. With that view I have to move the amendment that the words "or District Munsif" wherever they occur and the proviso to the proposed sub-section (*3*) be omitted.

THE HONOURABLE THE PRESIDENT: The original question was:

"That clause 2 stand part of the Bill."

[The President.]

Since which an amendment has been moved:

"That in clause 2 in the new section 29 proposed to be inserted in the Madras Civil Courts Act, 1873:

(*a*) the words 'or District Munsif' wherever they occur, and

(*b*) the proviso to the proposed sub-section (*3*)

be omitted."

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

The motion was adopted.

Clause 2, as amended, and clause 1 were added to the Bill.

The Title and Preamble were added to the Bill.

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

The motion was adopted.

RESOLUTION *RE* GRANT OF SUPPLEMENTARY ASSISTANCE TO THE TIN-PLATE INDUSTRY.

THE HONOURABLE MR. D. T. CHADWICK (Commerce Secretary): Sir, I beg to move:

"That this Council recommends to the Governor General in Council that no action be taken on Chapters IV and V of the Report of the Indian Tariff Board regarding the grant of supplementary protection to the steel industry, except that supplementary assistance should be given to the tin-plate industry in India, (*a*) by increasing from Rs. 60 to Rs. 85 per ton the specific protective duty on all steel tin-plates and tinned sheets, including tin taggers, and (*b*) by reducing the duty on tin, block, from 15 per cent. *ad valorem* to a specific duty of Rs. 250 a ton."

With this Resolution I bring before the Council the remaining portions of the third report of the Tariff Board on Steel. Last September the old Council disposed of their recommendations on rolled steel. This morning we have disposed of their recommendation in regard to wagons and now there remain only two Chapters to be dealt with, one on fabricated steel and the other on tin-plates. My Resolution covers those two Chapters. The Council will see from the terms of my Resolution that Government propose to take no action whatever in regard to fabricated steel. To that extent perhaps it might not have been necessary to bring it to the notice of the Council but we think it advisable for the Council to have a chance of discussing these recommendations of the Tariff Board even when the Government do not accept them. I am also very anxious that the Council will endorse the interpretation that the Government place upon one of the important sections in the Steel Industry (Protection) Act. The engineering industry in India applied under section 3 (*4*) of the Indian Tariff Act for additional protection on the ground that there had been such a change in prices as to render the protection afforded by that Act ineffective. The Tariff Board thereupon made their inquiries and, as we all know, they found that prices had fallen considerably. Their original recommendation for the engineering industry was to raise the duty from 10 per cent. *ad valorem* to 25 per cent. *ad valorem*. I think it will be clear to the House that an *ad valorem* rate, when prices are falling, means an actually smaller number of rupees. On the whole, therefore, the

Tariff Board found that in order to restore the figures which they calculated in 1924, an additional protection of 7½ per cent. would be required. The Government do not challenge those calculations or those figures in any way. If it be held that the meaning of those words which I have read out from section 3 (4) of the Steel Industry (Protection) Act is, in effect, that when prices fluctuate additional protection must be imposed from time to time in order to restore the exact measure of protection contemplated at the time of the original inquiry, then the finding of the Tariff Board is perfectly logical and perfectly correct. But, Sir, I have said when speaking on these questions of protection before, that it is not a portion of the policy of protection to guarantee prices. Prices must fluctuate and it is beyond the wit of any Government to be repeatedly altering tariff duties in order to chase prices either up or down. It is also most undesirable from the point of view of trade and commerce to be perpetually altering our customs duties, and in a policy of protection this idea of guarantee of a fixed measure of protection is not necessarily inherent. The Honourable the Commerce Member in another place, when speaking on this very Bill in 1924, explained that in his opinion that section only ought to be used on rare occasions, when the need is very real and also very urgent. That is the proper way in which this section ought to be used, not as a weapon for adjusting rates by mathematical calculations, but for reasons of urgent or unforeseen emergency. The Government therefore examined this proposal to give additional protection to the steel industry from that point of view, and at once one notices that we are really dealing not with a new industry but with one which has been going on for the best part of a hundred years. It has had its ups and downs, and has been through a period of depression before. At the present moment it is not suffering from the flood of imports, but if it is suffering it is suffering from general depression in trade. Imports have not been phenomenally large during the last twelve months, and lastly the Tariff Board itself have reported that these firms said in evidence that although orders were difficult to obtain the difficulties were not so great as they had been before the Steel Industry (Protection) Act was passed. In view of those circumstances it seems to Government that an emergent need has not arisen in regard to the fabricated steel industry, especially when it is remembered that that Act has only one more year to go. I hope the Council will endorse that interpretation because it will be a most unsettling thing for the trade and commerce of this country if it is given out that the Government and the Legislature are prepared to vary their customs duties so as to meet any fluctuation in prices. It would also have, I think, a very enervating effect on those who were receiving protection if they thought that when prices fall somewhat they could come to the Legislature and have the difference made up to them. So much for fabricated steel.

I now turn to the other Chapter, namely, the tin-plate industry. The Government consider that the circumstances are somewhat different here. The Council will remember that in that case the Tariff Board originally raised the duty from 10 to 15 per cent., not from 10 to 25 per cent. They certainly made the duty specific which has been a great advantage to the tin-plate industry, but yet the increase given was compared with others small. They have made calculations similar to those they made in regard to the fabricated steel industry; and conclude that there is a gap required of Rs. 38 a ton in order to restore the measure of protection for tin-plate

[Mr. D. T. Chadwick.]

that they had anticipated two years ago. They recommend that this gap should be made good. They, however, do not suggest that they should put the whole of the Rs. 38 as additional duty on tin-plate, but only Rs. 29 as additional duty and make up the remaining Rs. 9 by remitting the duty which the company have to pay on the block tin imported for galvanising. In this case the Council is dealing with an absolutely new industry, not with one that has been here a hundred years. The industry has started well I am bound to say. The industry has made very great technical advance in its first three years. It has reached very nearly its full maximum output of 622 thousand boxes a year and is using some 45 thousand tons of steel a year. Technically it has done well, also as a new industry it stands in a different category from the fabricated steel industry. I have already said that in regard to this section 3 (4) of the Act, we ought not to use it to make up mathematical differences but only to use it when the need is urgent and real and then only to the minimum extent. It is perfectly clear from what the Tariff Board has reported that although the industry has made this technical progress, prices and conditions have changed so much that it is by no means meeting even its work costs at the present day. Therefore, the Government propose that the amount of additional benefit which should be given to this company should be restricted to just covering and meeting the works cost, that means additional benefit of Rs. 29 a ton. The Government also do not like the idea of making a remission of duty to only one company as would be the case by remitting only to this company the duty on tin block. It would be fair to reduce it for every body who uses that article and consequently the proposal I place before this House is that the duty on tin be reduced to Rs. 250 a ton, practically half, and the duty to be placed on tin-plates should be increased from Rs. 60 to Rs. 85 a ton. The revenues which we should get from the additional duty on tin-plates will balance the loss incurred by reducing the duty on block tin; therefore, as far as general revenue is concerned, there is no difference. At the same time I wish to point out to the House that the question of giving protection to the tin-plate industry is not now in question. That is settled up to the 31st March 1927. It is only a question of meeting a present need over the next year. Next year an inquiry will be held to consider whether this industry should or should not be protected. While the company has made great technical advance, one point arises affecting next year's inquiry, and that is that there has been a good deal of doubt in regard to the capital arrangements of this Company, which in the opinion of many is badly arranged and probably excessive. No doubt the Company will bear that in mind.

THE HONOURABLE SIR ARTHUR FROOM (Bombay Chamber of Commerce): Sir, here again the question of protection is raised. The House this morning has already heard my views on protection and those are that when protection is intended to foster a national industry in its infancy I have no great fault to find with it. This Resolution moved by the Honourable the Commerce Secretary has my support up to a certain point, in so far as it refers to the question of fabricated steel, but when he gets on to the tin-plate industry, I am afraid I must differ from him. This tin-plate industry is a small industry and why the Commerce Department should consider it worthy of protection I am at a loss to understand.

except perhaps that it is a sort of offshoot of the Tata Iron and Steel Industry. I have said this morning that protection always costs something to the country and if you provide protection for one particular article, something else has got to pay for it. I gathered from the Honourable the Commerce Secretary's speech that he did not agree with me in this instance because he pointed out that, when he proposed to reduce duty on tin block, he proposed to increase the duty on imported tin-plates. Well, I am afraid I cannot agree with his mathematics. What would be the position if you increase the duty on an article which is being imported to this country? I presume it is with the idea of striking at that article coming into the country, and therefore the duty on that article must be correspondingly less, and I very much doubt whether the proposal of the Honourable the Commerce Secretary that the increased duty obtained from imported steel plates will meet the amount that the country has got to pay. I will not detain the House very much longer; they are aware of my views on this question of protection, I insist that protection is expensive. As I said, I do not oppose protection to a great national industry, but I challenge anybody in this House to say that this little tin-plate—I very nearly said tinpot—industry is a national industry. I do not suppose the Commerce Department, in moving this Resolution, had in mind the large shareholders of this industry. I do not suppose the shareholders, and I hope they do not, interest the Commerce Department at all, but I take it they moved this Resolution from the point of view that this industry is a sort of offshoot of the Tata Iron and Steel Industry; in fact it receives its supplies of steel for this industry from the Tata Iron and Steel Company. Sir, had the Commerce Secretary been able to show that this very small, minute, industry was a national industry, he would have received my support. As I have said before, I contend that this is merely an offshoot of the Tata Iron and Steel Industry which is the grandparent, and there may be some other grandchildren springing up. Are you going to provide protection for them? Once the thin end of the wedge is introduced there is no knowing where it will stop, and I am afraid I must oppose that portion of the Honourable Member's Resolution which refers to the tin-plate industry.

THE HONOURABLE MR. D. T. CHADWICK: Sir, earlier in the day when my Honourable friend spoke on the Bill in regard to wagons, I heartily agreed with him. Now I join issue with him entirely. He has not spoken on the Resolution a single word. The matter that is before the Council is not the question, as I explained, of protection to the tin-plate industry. That has been settled. That is settled up to March 31st, 1927. Nor was it settled by the Commerce Department. It was settled by the Legislature of the country. To-day we are dealing purely with the addition of protection that is required to meet the particular circumstances which have arisen. Therefore, Sir, it is not incumbent upon me to prove that this industry is a national industry, or is any other description of an industry or even that it is not a " tinpot " industry; the point is it is already protected. And I can assure my Honourable friend—besides he knows it because he was here in the House at the time—it was not protected by the Legislature because the Tata firm is one of the shareholders, nor because the Burma Oil Company is a shareholder . . .

THE HONOURABLE SIR ARTHUR FROOM: I never referred to the Tata firm being one of the shareholders.

THE HONOURABLE MR. D. T. CHADWICK: I am sorry, Sir, because I thought the Honourable Member would have known from the report of the Tariff Board that this Company has only two shareholders, one being the Tata Steel Company and the other the Burma Oil Company.

THE HONOURABLE SIR ARTHUR FROOM: Yes, the Burma Oil Company.

THE HONOURABLE MR. D. T. CHADWICK: I thought that knowledge was common property. This industry came under the general scheme of protection in the same way as the engineering industry, namely, that it used steel. It came in for inquiry exactly in the same way as the wire industry. When these subsidiary industries were examined by the Tariff Board and when their report was placed before the Legislature,—the Legislature, including this Council, decided that it was a worthy industry to protect.

THE HONOURABLE THE PRESIDENT: The question is that the following Resolution be adopted:

"That this Council recommends to the Governor General in Council that no action be taken on Chapters IV and V of the Report of the Indian Tariff Board regarding the grant of supplementary protection to the steel industry, except that supplementary assistance should be given to the tin-plate industry in India, (*a*) by increasing from Rs. 60 to Rs. 85 per ton the specific protective duty on all steel tin-plates and tinned sheets, including tin taggers, and (*b*) by reducing the duty on tin, block, from 15 per cent. *ad valorem* to a specific duty of Rs. 250 a ton."

The motion was adopted.

NOMINATIONS TO THE PANEL FOR THE CENTRAL ADVISORY COUNCIL FOR RAILWAYS.

THE HONOURABLE THE PRESIDENT: The following Honourable Members have been duly nominated for the Panel of the Central Advisory Council for Railways:

The Honourable Mr. P. C. D. Chari,
The Honourable Mr. V. Ramadas Pantulu,
The Honourable Rai Nalininath Sett Bahadur,
The Honourable Rao Sahib Dr. U. Rama Rao,
The Honourable Mr. Mahendra Prasad,
The Honourable Mr. Mahmood Suhrawardy,
The Honourable Sir Arthur Froom,
The Honourable Mr. Phiroze C. Sethna,
The Honourable Rai Bahadur Lala Ram Saran Das,
The Honourable Mr. J. W. A. Bell,
The Honourable Raja Sir Rampal Singh,
The Honourable Mr. K. C. Roy,
The Honourable Sir Sankaran Nair.

As only eight members are required on the panel and thirteen have been nominated, an election will have to take place. As I announced the other day, the election will be conducted on Thursday, the 25th of this

month, and it will take place, according to the regulations laid down for the conduct of an election according to the principle of proportionate representation, by means of the single transferable vote.

As the House is aware, to-morrow was one of the days allotted for the disposal of business promoted by non-official members, and the list of business which has already gone out contains one item of business only, a Resolution to be moved by an Honourable Member from Madras. He has now given me notice that he does not intend to move that Resolution and there will therefore be no necessity for the House to meet to-morrow.

THE HONOURABLE MR. V. RAMADAS PANTULU: I should like to withdraw.

THE HONOURABLE THE PRESIDENT: Does the Honourable Member wish to withdraw his nomination?

THE HONOURABLE MR. V. RAMADAS PANTULU: If I am permitted to do so.

THE HONOURABLE THE PRESIDENT: The Honourable Member is in time.

The Council then adjourned till Eleven of the Clock on Thursday, the 25th February, 1926.