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LEGISLATIVE ASSEMBLY DEBATES

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FOURTH SESSION

OF THE

FIFTH LEGISLATIVE ASSEMBLY,
1936



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Legislative Assembly.

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Deputy President :

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MR. N. M. JOSHI, M.L.A.

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LEGISLATIVE ASSEMBLY.

Thursday, 3rd September, 1936.

The Assembly met in the Assembly Chamber at Eleven of the Clock, Mr. President (The Honourable Sir Abdur Rahim) in the Chair.

STATEMENT *RE* DEMONSTRATION AGAINST THE RULING OF THE CHAIR.

Mr. President (The Honourable Sir Abdur Rahim) : Before proceeding with the business before the House, it is necessary, for the proper conduct of proceedings in the Assembly, that I should make a statement with reference to the incident of last evening. The incident was of an unusual character, and as Honourable Members remember, all that happened showed that the walk-out accompanied with shouts of "Shame, shame" was a demonstration against the ruling of the Chair, if not against the occupant of the Chair himself. I wish to clear the position, not because I want to give any explanation regarding the ruling I gave yesterday, and I may say at once that on further reflection I am confirmed in the view that my ruling was absolutely correct. But I do not want to go into that and I do not want to raise any further question regarding it. The ruling is there ; I gave it and I abide by it. What happened yesterday, the House will remember, was this. The motion of adjournment was moved by Mr. Chettiar to the effect that the House should censure the conduct of Government in reducing the duties on textile imports from the United Kingdom without consulting the Legislature. In that debate, after Mr. Chettiar moved the motion, Sir Abdul Halim Ghuznavi, who does not belong to any particular group or political party in the Assembly, spoke, mainly on the constitutional issue. Then, Mr. Ramsay Scott spoke on behalf of the European Group against the motion. He was followed by Sir Srinivasa Sarma, a nominated Member, who does not belong to any particular group. He was followed in turn by Pandit Malaviya, and, after him, spoke Dr. Ziauddin Ahmad. Then, one of the leaders of the Congress Party, Pandit Govind Ballabh Pant, spoke. His speech was replied to by Mr. James of the European Group. Mr. Joshi who represents labour in this Assembly next spoke on the motion, and then there were several shouts for closure, and I from the Chair pointed out to the Treasury Benches that, if any of the Members of Government wanted to speak, it was time that they should rise and take part in the debate. Thereupon, Sir Muhammad Zafrullah, the Member in charge of Commerce, replied to the debate as had gone so far. In the meantime, the Chief Whip of the Congress Party, Mr. Asaf Ali, had come to me more than once. He had come to me first almost immediately after the Mover had spoken and informed me that the Congress Party did not propose to put up any other speakers, implying thereby that they wanted a division on the motion and that the debate

[Mr. President.]

should be closed as early as possible. I told him plainly, not only then, but also afterwards, when he spoke to me again, that I must see how the debate goes on, because it was a debate on an important matter involving very important issues. Then, what happened was that after Sir Muhammad Zafrullah spoke, Mr. Satyamnath, one of the leaders of the Congress Group, also approached me and intimated that the closure should be accepted and that it was the intention of Government Benches that the Honourable the Finance Member should ask leave to speak so that there might be no division. I told him that if the Finance Member wanted to intervene in the debate, I would have to give him an opportunity, specially as his Department also is affected by the motion. I may also mention that Mr. Spence, Secretary of the Legislative Department, had also intimated to me that the Finance Member wanted to take part in the debate. Therefore, when I saw Sir James Grigg rise in his seat, I called upon him to speak. At that moment, the Leader of the Congress Party rose and said that this was a mere subterfuge so that there might be no division. Whatever is the attitude of the two parties towards each other, the Chair is not concerned with that, and the Chair is not in a position to impute motives to any party in this Assembly or to any individual Member. When on an important motion like this the Finance Member wanted to speak, I made it clear from the very beginning, as soon as the matter was brought to my notice, that I was bound, according to the Rules and Standing Orders, and according to common sense, to give him an opportunity to take part in the debate. I need hardly remind the House again that the motion was a very important one. Its object was to censure Government for having reduced certain import duties. It raised certain constitutional issues, and various parties were interested in it,—the textile industries of the country, the British commercial interests, the consumers in this country, the general public and tax-payers, and the two Departments of Government. That being the nature of the motion, I cannot say that the time of the House was unnecessarily taken up by too many speakers. In fact, I find that those who took part in the debate stressed special points of view, and raised certain issues in which they were specially interested, and, as I have already said, on a motion of this character I was bound to give to Government every opportunity to put forward their case. I pointed out to the Government Benches at the time that I expected the Members of the Government, who are concerned with the subject, to take part at an early stage of the debate. I made that absolutely clear, and then I made it equally clear that as things happened, I was bound to give a chance to the Finance Member when he rose in his seat. I have stated this to make my position as occupant of the Chair quite clear. Whether any group of Members chose to remain in the Chamber during the particular debate or not is no concern of the Chair, but the demonstration of yesterday was against the Chair and the ruling of the Chair; and I want to make it clear that once the Chair, which is always willing to listen and does listen to any points of order raised, has given a ruling on any particular point, it is up to every Member and every section of the House to accept that ruling with good grace; and I need hardly assure the House that so long as I happen to occupy the Chair, I shall do my best to uphold the dignity of the Chair and to enforce the Rules and Standing Orders which are there to guide me in the discharge of my duties.

I may also mention that latterly I received and my office received two or three letters from Members of the Congress Party specially, calling in question my decision on admissibility of questions or other rulings couched in very disrespectful language.....

Sir Muhammad Yakub : Shame.

Some Members on the Congress Benches : Shame, shame on you.

Mr. President (The Honourable Sir Abdur Rahim) : Order; order : I have ruled that it is not a proper parliamentary expression.

An Honourable Member : But he started it.

Mr. President (The Honourable Sir Abdur Rahim) : My ruling is binding on both sides, and I want both sides to abide by it.

Sir Muhammad Yakub : I hope it will be followed in future.

Honourable Members on the Congress Benches : You follow it first.

Mr. President (The Honourable Sir Abdur Rahim) : Having regard to what has happened and to the tendencies that I have observed recently, I want to make it clear that there is a procedure open to the House by which they can express their want of confidence in the Chair if they want to do that. But it is up to the Members, so long as that procedure is not adopted, to accept the rulings of the Chair, if not cheerfully, at any rate to submit to them without raising any further question. Personally, so far as I am concerned, every Member of this House knows that I was not at all eager to come to the Chair, and I can assure the House that it will not cause me a moment of regret if I find that the House as a whole would rather have me on the floor of the House than in the Chair.

I do not want any debate on this statement. I wanted to make my position quite clear, and I want Honourable Members to think over the situation calmly. They will have ample opportunity to think over what I have said, and I will give them as early an opportunity as I possibly can to express their views on the situation, if they so desire.

Mr. S. Satyamurti : Sir, as my Leader is not here, I hope, when we have considered your statement, as becomes us when it comes from you, you will give us an opportunity to make a statement.

Mr. President (The Honourable Sir Abdur Rahim) : I will give as early an opportunity as possible. I give them time now to think over the situation calmly and dispassionately.

QUESTIONS AND ANSWERS.

REDUCTION OF FREIGHT ON YARN ON THE SOUTH INDIAN RAILWAY.

86. ***Mr. M. Ananthasaynam Ayyangar :** (a) Are Government aware that the President of the Coimbatore Chamber of Commerce represented to the Agent, South Indian Railway, the need for the reduction of freight on yarn with a view to helping handloom industry ?

(b) Have any steps been taken to reduce the freights by means of recommendation to the Railway, or otherwise ?

(c) If so, with what result, and, if not, why not ?

The Honourable Sir Muhammad Zafrullah Khan : (a) The Agent of the South Indian Railway states that the Coimbatore Chamber of Commerce asked for a reduction in the rates for piece-goods and yarn booked from Coimbatore and Singanallur to Madras and subsequently their representatives discussed the matter with him.

(b) and (c). The Agent asked the Chamber for certain information regarding the anticipated traffic before considering the question of quoting reduced rates but he has not yet received this information.

INAUGURATION OF FEDERATION.

87. ***Mr. M. Ananthasayanam Ayyangar :** (a) What is the earliest date when the Federation will be made to function according to the preparations made at present ?

(b) Is His Majesty, the King Emperor, expected to inaugurate the Federation ?

The Honourable Sir Nripendra Sircar : (a) It is not possible at this stage to make a forecast as to the date of the inauguration of Federation.

(b) The Government of India have no information in the matter.

Mr. M. Ananthasayanam Ayyangar : Is it not possible to state even approximately what the time may be for the introduction of the Federation ?

The Honourable Sir Nripendra Sircar : No, Sir.

Seth Govind Das : Is it not possible to state even the year ?

The Honourable Sir Nripendra Sircar : No.

Mr. M. Ananthasayanam Ayyangar : Is the Honourable Member aware that in the papers it appeared that His Majesty the King Emperor is expected to inaugurate the Federation ?

The Honourable Sir Nripendra Sircar : I cannot help what appears in the papers. I may assure my friend that it appeared in the papers that I was dead when I was very much alive.

Mr. President (The Honourable Sir Abdur Rahim) : Next question.

Mr. K. Ahmed : Is it not a fact that the Government of India are making preparation for receiving the King Emperor when he comes here in 1938 before the 1st April for inaugurating the Federal Legislature ?

Mr. President (The Honourable Sir Abdur Rahim) : The next question has been called.

CORONATION OF HIS MAJESTY THE KING EMPEROR.

88. ***Mr. M. Ananthasayanam Ayyangar :** (a) Is the Coronation of His Majesty, the King Emperor, going to take place at Delhi and, if so, when ?

(b) What might be the probable cost of such a ceremony to the Indian exchequer ?

The Honourable Sir Henry Craik : (a) No decision has yet been taken in the matter.

(b) Does not arise.

Mr. M. Ananthasayanam Ayyangar : Has not the cost been calculated even approximately in case it happens here ?

The Honourable Sir Henry Craik : No.

Sardar Mangal Singh : Will the Indian States also be asked to contribute some share of the expenses ?

The Honourable Sir Henry Craik : To what ?

Sardar Mangal Singh : To the Coronation expenses here ?

The Honourable Sir Henry Craik : I have said that no decision has yet been taken as regards the Coronation Durbar.

Mr. Lalchand Navalrai : May I know, if no definite decision has been arrived at, whether there is any communication on this point, and at what stage it is ?

The Honourable Sir Henry Craik : I have nothing to add. No decision has been arrived at.

Mr. Lalchand Navalrai : My question is different. Is there any correspondence going on over this coronation taking place in India between His Majesty's Government and the Government here ?

The Honourable Sir Henry Craik : The decision clearly depends upon His Majesty's pleasure : there will be no question of correspondence.

Mr. Lalchand Navalrai : Has any opinion or advice been asked from the Government of India on that point ?

The Honourable Sir Henry Craik : No.

Mr. Lalchand Navalrai : Is the cost or expenditure one of the considerations that will weigh in fixing the coronation here or not ?

The Honourable Sir Henry Craik : That is a hypothetical question.

NEGOTIATIONS FOR AN INDO-JAPANESE TRADE AGREEMENT.

89. ***Mr. M. Ananthasayanam Ayyangar :** (a) Are negotiations going on between Japan and this Government regarding the revision of the trade agreement, and have any items been settled so far ? If so, what are they ?

(b) Have Government considered the effect of the agreement on the handloom weaving industry in India ?

(c) Have Government taken any measures, and if so, what for the absorption in India of all the raw cotton ? If not, why not ?

(d) Have Government considered the desirability of prohibiting the import of all cloth from Japan of and below 40 counts, with a view to protecting the handloom industry ? If not, why not ?

The Honourable Sir Muhammad Zafrullah Khan : (a) The Honourable Member is referred to the Press Communiqués on the subject recently issued by the Government of India, copies of which are in the Library.

(b), (c) and (d). The views of all interests concerned are receiving the careful consideration of the Government of India in connection with

the negotiations for the renewal of the Indo-Japanese Trade Convention and Protocol, which are now in progress.

Mr. T. S. Avinashilingam Chettiar : May I know, Sir, what is the percentage of imports from Japan of cloth below 40 counts ?

The Honourable Sir Muhammad Zafrullah Khan : I would require notice of that question.

Prof. N. G. Ranga : Is it not a fact that handloom weavers in Southern India have been asking for an increase in the import duties on Japanese cloth ?

The Honourable Sir Muhammad Zafrullah Khan : I would require notice of that question.

Sardar Mangal Singh : Is it a fact, Sir, that there is a deadlock in the Indo-Japanese negotiations ?

The Honourable Sir Muhammad Zafrullah Khan : That question was put two days ago, and I gave a reply to it.

Mr. M. Ananthasayanam Ayyangar : Are Government aware that a conference of handloom weavers was held in Southern India at which resolutions were passed asking the Government to prohibit the entry into India of cloth below 40 counts ?

The Honourable Sir Muhammad Zafrullah Khan : I have just replied to that question which was put by Prof. Ranga.

Mr. M. Ananthasayanam Ayyangar : I have not been able to follow that answer.

The Honourable Sir Muhammad Zafrullah Khan : I said I would require notice of that question.

Prof. N. G. Ranga : Are Government considering the desirability of importing cloth from Japan below 40 counts with a view to protecting the handloom industry ?

The Honourable Sir Muhammad Zafrullah Khan : That is part (d) of the question, to which I have already given a reply.

EXHIBITION OF INDIAN PRODUCTS IN THE THIRD ANNUAL EXHIBITION OF MOMBASA.

90. **Mr. M. Ananthasayanam Ayyangar :** (a) Are Government interesting themselves in the third annual exhibition of Mombasa in East Africa to be held from the 19th to the 21st August ?

(b) Are any products from India being exhibited there ? If so, who is in charge of the arrangements ?

The Honourable Sir Muhammad Zafrullah Khan : (a) The Government of India are not participating officially in the third annual Exhibition at Mombasa but a notice relating to the Exhibition was published in the *Indian Trade Journal*, dated the 23rd April, 1936, for the information of persons likely to be interested.

(b) Government are not aware of the extent to which persons interested in products from India have complied with the invitation to take

part in the Exhibition, the arrangements for which are in charge of the Honorary Secretary of the Exhibition.

Mr. M. Ananthasayanam Ayyangar : Why are not Government interesting themselves in this matter ? Would it not increase the export trade of India in various articles ?

The Honourable Sir Muhammad Zafrullah Khan : Government are of the opinion that the kind of article that is exported to East Africa from India does not lend itself easily for purposes of exhibition.

Mr. M. Ananthasayanam Ayyangar : Has the Agent General taken any steps in this matter, apart from the Government of India ?

The Honourable Sir Muhammad Zafrullah Khan : Which Agent General has the Honourable Member in mind ?

TRADE LICENSE BYE-LAWS PASSED IN MARIKBURG, SOUTH AFRICA, CURTAILING INDIAN INTERESTS.

91. **Mr. M. Ananthasayanam Ayyangar :** (a) Has the attention of Government been drawn to a leading article in the *Hindu* of the 16th May, 1936, regarding the oppressive Trade License Bye-Laws passed in Marikburg, South Africa, to kill Indian trade there ?

(b) What steps have Government taken to get the laws repealed, and with what result ?

(c) Is it a fact that under the bye-laws Europeans are prevented from patronising Indian feeding houses, tailoring shops, or their clothing stalls ?

(d) Are Government aware that under the bye-laws the Durban Licensing Officer refused to renew a licence for a mess house to an Indian and that the said order was set aside by the Supreme Court of Natal as it would inevitably lead to racial discrimination ?

(e) What steps has the Agent taken to prevent the passing of such measures as to curtail the Indian interests ?

Sir Girja Shankar Bajpai : (a) Yes.

(b), (c) and (e). The Bye-law regarding 'eating houses' referred to in the article has not yet been confirmed or promulgated by the Government of Natal ; representations regarding it have been made to the appropriate authority. The new bye-laws do not prohibit Europeans' patronising Indian tailoring shops and clothing stalls. As regards the provincial licensing laws, it is understood that these are being examined by a special committee.

(d) No.

Mr. M. Ananthasayanam Ayyangar : Have they come into immediate operation or they have been suspended ?

Sir Girja Shankar Bajpai : As I have already informed my friend, they have not even been confirmed by the Government.

Mr. Lalchand Navairai : May I know if this new law will really kill the Indian trade ?

Sir Girja Shankar Bajpai : That is a hypothetical question.

DELAY IN GIVING NOTICE OF TERMINATION OF THE OTTAWA TRADE AGREEMENT.

92. ***Mr. T. S. Avinashilingam Chettiar** : It is enough, Sir, if part (c) of my question† is replied.

The Honourable Sir Muhammad Zafrullah Khan : "No, Sir."

Mr. T. S. Avinashilingam Chettiar : What is the reason for the delay ?

The Honourable Sir Muhammad Zafrullah Khan : That is part (b) which the Honourable Member has not asked.

Mr. T. S. Avinashilingam Chettiar : Then, may I have an answer to that part (b) ?

The Honourable Sir Muhammad Zafrullah Khan : Not having put it, how can he ask for a reply now ?

Mr. T. S. Avinashilingam Chettiar : I am putting it now, Sir. I am putting clause (b) now. What is the reason for this long delay ?

The Honourable Sir Muhammad Zafrullah Khan : There was no undue delay ?

Mr. S. Satyamurti : What was the reason for the due delay ?

The Honourable Sir Muhammad Zafrullah Khan : Due delay is time which is requisite for the necessary action to be taken.

Seth Govind Das : Are the Government of India aware that on account of this delay the trade of India has been very much affected ?

The Honourable Sir Muhammad Zafrullah Khan : No, Sir.

EFFECT OF THE VICTORY OF ITALY ON THE INDIANS SETTLED IN ETHIOPIA.

93. ***Mr. T. S. Avinashilingam Chettiar** : Will Government state :

- (a) the effect of the victory of Italy in the Italo-Ethiopian war on the Indians settled in Ethiopia ;
- (b) the attitude of the new Italian Government in Ethiopia over the Indian settlers and traders in Abyssinia ;
- (c) whether any Indian properties were seized or Indians sent out, and
- (d) whether they are making arrangements with the present Government of Abyssinia to allow the Indians the same status and privileges of trade as allowed by the previous Emperor ?

†92. ***Mr. T. S. Avinashilingam Chettiar** : (a) Will Government state whether it is true that notice of termination of the Ottawa Pact was given only on the 18th May, 1936, long after the Resolution was passed by the Assembly ?

(b) What is the reason for this long delay ?

(c) Were any consultations going on with the British Government over this matter in the interim period, and what was the nature of these consultations ?

Sir Aubrey Metcalfe : I have here a statement which answers all the parts together. I propose, with your permission, to read it to the House.

There have been only two instances in which British Indian subjects have been involved in difficulties with the Italian authorities. On June 9th, an Indian carpenter was arrested at Addis Ababa on the charge of having instigated men working under him to abstain from work and not to resume it unless they obtained an increase of wages. His Majesty's *Chargé d'Affaires* requested an immediate investigation of this case by the Italian authorities and, if possible, the release of the accused man. The latter was visited in prison by His Majesty's Consul, who reported that his treatment there gave no cause for complaint. The prisoner (for whom, at his own request, counsel had been retained) was released on June 25th.

In the second case, two employees of Messrs. Mohamed Aly were condemned by the Italian authorities to pay a fine of 20,000 lire, on the ground that they had clandestinely exported 80,000 lire on June 10th, contrary to the provisions of an Italian decree of the previous day. His Majesty's *Chargé d'Affaires* entered a protest against these proceedings on the grounds of competence.

The situation in Addis Ababa is becoming increasingly difficult for foreign merchants, who find themselves obliged under the Italian regulations to accept Bank of Ethiopia notes and subsidiary nickel coinage in unlimited amounts but cannot dispose of them owing to the suspension of banking and legal exchange facilities. Furthermore, a rigid system of foreign exchange control has been instituted and the export of lire from Ethiopia is forbidden. These restrictions are bound to have a very serious effect on all import and export trade otherwise than with Italy or Italian possessions.

As regards Jimma, His Majesty's *Chargé d'Affaires* has received a report that banditry is reported to be rife in that province, which has not yet been occupied by the Italian forces. His Majesty's *Chargé d'Affaires* has been instructed to endeavour to communicate with them and to suggest that if in their opinion the local situation renders it advisable and practicable they should endeavour to arrange for their own evacuation to Addis Ababa by caravan. It must be assumed that disturbances will continue in Jimma until the Italian forces have occupied that province.

Disturbed conditions also prevail, though possibly to a lesser extent, in other parts of Western Ethiopia (including Nekempti, Wallega and Kumbata), owing to the friction between the local Galla tribesmen and their former Amhara governors, and the bands of Amhara soldiery who have arrived in the country from the East and are engaged in looting, marauding and murdering.

His Majesty's Consul at Gore has been instructed, at his discretion, to take such steps as he can to facilitate the evacuation of British subjects and foreigners from Western Ethiopia. It appears however that the majority of these prefer to remain.

It is reported that the trade of Western Ethiopia with the Sudan has not been interfered with in any way by the course of hostilities, and that in fact the district enjoyed a particularly prosperous trading season. It is not anticipated that this trade will be sensibly modified unless or until this district is occupied by the Italian forces. Should such occupation

take place, it is naturally impossible to forecast what effect this would have on local trading interests, but regard should be had in this connection to the regulations which the Italian authorities have introduced in Addis Ababa and other places where their occupation is effective.

REFUSAL OF THE BRITISH LEGATION TO GIVE PROTECTION TO THE INDIANS IN ADDIS ABABA.

94. *Mr. T. S. Avinashilingam Chettiar : Will Government state :

- (a) whether they are aware of the press statements made on page 11 of the *Hindu*, dated 13th May, 1936, regarding the refusal of the British Legation to give protection to the Indians in Addis Ababa during the recent Italo-Abyssinian War, even when asked by the Association of the Indians ;
- (b) whether it is true ; and
- (c) if so, what action they have taken in the matter ?

Sir Aubrey Metcalfe : (a) Yes.

(b) No.

(c) Does not arise.

Mr. T. S. Avinashilingam Chettiar : Will Government inquire from the person who published this news in the paper as to the real facts of the case ? Have Government inquired of the gentleman, who wrote this news in the newspaper, the grounds for his writing like that ?

Sir Aubrey Metcalfe : No.

Mr. T. S. Avinashilingam Chettiar : Why did they not ?

Sir Aubrey Metcalfe : Why should they ?

Mr. T. S. Avinashilingam Chettiar : To get information. I want to know if the Government of India are aware that a gentleman who had come from South Africa had written a piece of news quite contrary to the Government reply ; did Government inquire the grounds for his writing like that ?

Sir Aubrey Metcalfe : It is not their business to inquire why lies are published in the press.

Mr. S. Satyamurti : Is the word " lie " a parliamentary expression, Sir ?

Sir Aubrey Metcalfe : I would say untrue statements if you like. (Laughter.)

Mr. President (The Honourable Sir Abdur Rahim) : Next question.

Mr. T. S. Avinashilingam Chettiar : I do not propose to " put " the next question, I will put No. 96.

†95°.

DISCRIMINATION BY MALAYA AND CEYLON AGAINST INDIA.

36. *Mr. T. S. Avinashilingam Chettiar : Will Government state :

(a) in view of their answers during the last Session, whether they have considered what action they should take against Malaya and Ceylon for their discrimination against India ; and

(b) what is the result of this consideration ?

The Honourable Sir Henry Craik : (a) and (b). The matter is still under consideration by the Secretary of State and no final decision has yet been reached.

Mr. T. S. Avinashilingam Chettiar : For how many years has this been under consideration ?

The Honourable Sir Henry Craik : I think we first referred the question to the Secretary of State as long ago as 1933, but I do not suppose he was able to do anything till the passing of the Act of 1935.

Mr. T. S. Avinashilingam Chettiar : Have the Government of India sent any proposals in this matter to the Secretary of State ?

The Honourable Sir Henry Craik : Yes, we have stated our views.

Mr. T. S. Avinashilingam Chettiar : May I know the views of the Government of India in that matter ?

The Honourable Sir Henry Craik : No. It is not in accordance with the usual procedure to disclose the views of the Government of India communicated to the Secretary of State, at any rate, until orders are passed by the Secretary of State.

Pandit Lakshmi Kanta Maitra : Is it favourable to Indians ?

Prof. N. G. Ranga : Have Government received any replies from the Secretary of State ?

The Honourable Sir Henry Craik : No final reply as yet.

Seth Govind Das : When is a decision expected ?

The Honourable Sir Henry Craik : Our last letter was written about three weeks ago—it was a reminder.

Mr. T. S. Avinashilingam Chettiar : Will Government kindly expedite a reply ?

The Honourable Sir Henry Craik : We are doing our best.

This question was not put by the questioner.

ENCOURAGEMENT OF THE COTTAGE AND SMALL INDUSTRIES.

97. *Mr. T. S. Avinashilingam Chettiar : Will Government state :

- (a) whether they have considered the Resolution passed by the Assembly on the necessity of giving protection to the cottage and smaller industries ;
- (b) whether they have enquired as to which of the smaller industries require support ; and
- (c) what is the result of this investigation ?

The Honourable Sir Muhammad Zafrullah Khan : (a), (b) and (c). The Honourable Member is referred to the reply given by me to starred question No. 39 by Mr. S. Satyamurti on the 1st September, 1936.

Prof. N. G. Ranga : Have Government ever considered the effect of the Japanese and other imports of cloth upon the handloom weavers, if so, when, and what were their conclusions ?

The Honourable Sir Muhammad Zafrullah Khan : Government have the position constantly under review.

Prof. N. G. Ranga : For how long have the Government of India considered the effect of the Japanese imports upon the handloom weavers ?

The Honourable Sir Muhammad Zafrullah Khan : They have the matter under consideration even now.

Sardar Mangal Singh : Have Government forwarded the Resolution to the Provincial Governments ?

The Honourable Sir Muhammad Zafrullah Khan : Yes. I said so in my reply to question No. 39.

Mr. T. S. Avinashilingam Chettiar : Have they received any replies from the Provincial Governments as to the steps that they have taken or propose to take ?

The Honourable Sir Muhammad Zafrullah Khan : I should require notice of that question.

Prof. N. G. Ranga : Have the Madras Government made representations to the Government of India during last year that the South Indian handloom weavers were very much affected by the Japanese imports, and, therefore, additional protection should be offered to them ?

The Honourable Sir Muhammad Zafrullah Khan : I have already stated that all these matters are under consideration with reference to the negotiations that are now proceeding between India and Japan.

Prof. N. G. Ranga : What other additional steps do the Government of India propose to take in order to assist these handloom weavers ?

The Honourable Sir Muhammad Zafrullah Khan : Those were detailed in the debate on the Resolution last Session.

Prof. N. G. Ranga : The details that were given last year by the Honourable the Commerce Member in regard to the help that the Government of India were rendering to the cottage industries concerned with steps being taken by Provincial Governments. I want to know what additional steps the Government of India themselves propose to take in order to help this handloom industry.

The Honourable Sir Muhammad Zafrullah Khan : Speeches on behalf of the Government on that occasion also detailed the steps that the Government of India had taken or proposed to take.

STRENGTH OF CLERKS IN THE OPIUM AGENT'S OFFICE, GHAZIPUR.

98. *Mr. Muhammad Azhar Ali : Will Government be pleased to state :

- (a) what the total strength of clerks was, before reduction, in the Opium Agent's Office at Ghazipur, United Provinces this year ;
- (b) what their serial numbers were according to seniority, names, designation, substantive pay, acting allowance, total of pay and nature of appointments ;
- (c) how many of them were Muslims and how many non-Muslims ;
- (d) how many Muslims there should have been according to the minimum percentage fixed by Government in 1934 ;
- (e) what the total strength of the clerical staff is after the reduction ;
- (f) what their serial numbers were according to seniority, names, designation, substantive pay, acting allowance, total of pay and nature of appointments ;
- (g) how many of them are Muslims and how many non-Muslims ; and
- (h) how many Muslims there should be in accordance with the orders of Government ?

Mr. A. H. Lloyd : (a) Eighteen.

(b) and (f). The Government do not consider that the compilation of such detailed information would serve any public interest.

(c) Three Muslims, 15 non-Muslims.

(d) and (h). The orders of 1934 apply to new recruitment and not to the total numbers in the establishment, much less to the total numbers in one particular section of the whole clerical staff in the department.

(e) Fifteen.

(g) Two Muslims, 13 non-Muslims.

EMPLOYMENT OF MUSLIM CLERKS IN THE OPIUM AGENT'S OFFICE, GHAZIPUR.

99. *Mr. Muhammad Ashar Ali : (a) Is it a fact that there was no permanent Muhammadan clerk in the Opium Agent's Office at Ghazipur, when Mr. Gaskell revised the establishment in 1928 ?

(b) Had Mr. Gaskell made G. Fasihul Hasan permanent and left a note for his successors that two or three Muslims in Agent's Office should be made permanent ?

(c) Was that order also observed by Mr. A. P. Collet, the then Opium Agent, when M. Afzal Uddin was appointed in 1929 ?

Mr. A. H. Lloyd : (a) Yes.

(b) The Government of India have no definite information as to the first point in this part of the question but are willing to accept it as a fact that Mr. Gaskell did make such an appointment.

As regards the second point in this part of the question and part (c), the Government of India are not prepared to discuss confidential office notes, the existence of which could only have come to the Honourable Member's knowledge as a result of a breach of Rule 17 of the Government Servants' Conduct Rules.

EMPLOYMENT OF MUSLIM CLERKS IN THE OPIUM AGENT'S OFFICE, GHAZIPUR.

100. *Mr. Muhammad Ashar Ali : (a) Is it a fact that Government have been issuing instructions repeatedly for the increased employment of Muslims in the Government services from time to time, from 1926 to 1934, and were those Government orders endorsed by the Central Board of Revenue, New Delhi, to the Opium Agent, Ghazipur ?

(b) Will Government be pleased to lay before the House the copies of all those Government orders and Mr. Gaskell's orders, such as Home Department, Government of India Office Memorandum No. F. 176/25-Ests., dated the 5th February, 1936, and F.-21/2/30-Ests., dated the 22nd March, 1930, etc. ?

(c) Is it a fact that Government had adopted the policy of 1925 of reserving a certain percentage of vacancies with the object of increasing the representation of the Muslim community in the Public Service ?

(d) Is it a fact that, in 1934, Government, after having satisfied themselves by the inquiries they had made that Muslims were not getting their due share, fixed 25 per cent. of the vacancies for Muslims in order to safeguard their legitimate interest ?

The Honourable Sir Henry Craik : (a) Yes.

(b) A copy of the Office Memorandum No. F. 176/25-Ests., dated the 5th February, 1926 (and not 1936 as presumed by the Honourable Member) is already in the Library of the House. I lay on the table a copy of the Office Memorandum of 22nd March, 1930. Government are, however, not prepared to lay on the table a copy of Mr. Gaskell's orders.

(c) The object was to increase the representation of the minority communities, including the Muslims.

(d) Yes.

No. F. 21/230-Est.

GOVERNMENT OF INDIA.

HOME DEPARTMENT.

New Delhi, the 22nd March, 1930.

OFFICE MEMORANDUM.

SUBJECT:—Increased employment of Muslims in Government services.

A representation of Muslim Members of the Legislative Assembly who waited on the Honorable the Home Member on the 1st instant represented to him the following grievances of the Muslim community :

- (i) that some Departments of the Government of India tend to regard the general instructions in the Home Department office memorandum No. F. 178/25-Est., dated the 5th February, 1926, as being sufficiently observed if one-third of the appointments are given to any members of minority communities without special regard to the position of the Muslim community ;
- (ii) that in appointing the staff both superior and inferior, but particularly superior, of the numerous Commissions and Committees appointed by Government, Muslims do not receive adequate consideration and they seldom receive the higher Secretariat appointments ;
- (iii) that there is only one Assistant Secretary in the whole of the Secretariat who is a Muslim and this handicaps the community in its effort to obtain offices.

2. As regards the first complaint the undersigned is directed to say that though it has always been recognised that there are practical objections to any hard and fast apportionment of the one-third reservation among the several minorities, it is clear that the Muslim community is far the most important of the minority communities and should receive in consequence very much the greater share of the reservations made for the benefit of these communities. It is not possible to attempt any mathematical division of the posts reserved and there must be latitude to apply the principles in order to secure generally equitable results. But in the opinion of the Home Department the results will not be equitable, unless the Muslims receive the consideration which their very preponderant position among the minority communities entitles them to. The undersigned is accordingly to request that this point may be most carefully borne in mind in applying the instructions of the 5th February, 1926.

3. The second complaint has also been the subject of interpellations in the Legislature. The complaints which appeal to be justified, may have arisen from the fact that such staffs are usually selected from the Secretariat, in which there is comparatively speaking, a paucity of Muslims in the higher grades. But in making such appointments, there is no necessity to restrict selection to the Secretariat and selections have in fact been made freely from outside it. In these circumstances there should be no difficulty in finding a reasonable number of well-qualified Muslims for such appointments and the undersigned is to request that this fact should be given due weight whenever the question of selecting the staff of Commissions and Committees arises.

4. As regards the last complaint, in cases where Assistant Secretaries are appointed by selection from the Secretariat Staff, the selection must be made on grounds of merit. But it may occasionally be desirable to go outside the Secretariat in making selections for these appointments, and in such cases, I am to suggest that the question of appointing well qualified Muslims should be considered. It would undoubtedly give

the Muslim community a sense of greater assurance were there more Muslim officers of this class, which has a great deal to do with selection for, and promotion in, the clerical establishment.

(Sd.) S. N. BOY,

Deputy Secretary to the Government of India.

To

All Departments of the Government of India.

REDUCTION OF MUSLIM CLERKS IN THE OPIUM AGENT'S OFFICE, GHAZIPUR.

101. ***Mr. Muhammad Azhar Ali :** (a) How many clerks were reduced in the Opium Agent's Office at Ghazipur this year ?

(b) How many of them were Muslims and how many non-Muslims ?

(c) Will Government please state their names, seniority, designation, substantive pay, acting allowance, total of pay and nature of appointments ?

(d) Is it a fact that instead of increasing the percentage of Muslims in the Agent's office, their percentage has further been decreased by reducing one more Muslim ?

(e) Is it a fact that the share of Muslims in the reduction of clerks in the Agent's office this year was 50 per cent. ?

(f) Is it a fact that in the reduction of the District staff on the abolition of Opium Divisions, the share of Muslims was always one-third and not half, as in the Agent's office this year ?

(g) With regard to the reduction of the District staff, excluding low paid servants such as Ziladars, etc., will Government please lay on the table a statement showing, since the year 1928 uptill now, (1) year, (2) name of Opium Divisions abolished, (3) name of the Opium Agent, (4) existing percentage of Muslims before reduction, (5) number of Muslims and Hindus proposed by office, (6) number of Muslims and Hindus reduced by the Opium Agent, and (7) percentage of Muslims in each reduction ?

(h) Will Government please lay on the table a statement showing the same information as called for in part (i) above, regarding the reduction of clerks in the Agent's Office this year ?

Mr. A. H. Lloyd : (a) Three.

(b) One Muslim and two non-Muslims.

(c) The Government do not consider that the compilation of such detailed information will serve any public interest.

(d) It is not correct to say that one more Muslim has been brought under reduction, since the Muslim clerk recently discharged was the first to be so discharged from the Agent's Office.

(e) No.

(f) It is not a fact.

(g) and (h). Two statements are laid on the table. The names of the Opium Agents have not been given and the Government are not prepared to give any information regarding office notes, which are confidential documents.

Statement showing Reductions in the District Ministerial Staff from 1928 up to date.

Year.	Name of Opium divisions abolished.	Existing strength before reduction.		Number of Muslims and Hindus reduced by Opium Agent.		Percentage in each reduction.	
		Muslims.	Hindus.	Muslims.	Hindus.	Muslims.	Hindus.
		Percentage.					
1928	Partabgarh division and Haraiya and Zaimaria sub-divisions..	27.6	72.4	5	16	23.8	76.2
1929	No reduction .. .. .	..	..	..	..	..	..
1930	Bahraich and Rai Bareilly divisions	30.0	70.0	3	13	18.8	81.2
1931	Moradabad division	32.0	68.0	..	8	..	100.0
1932	Akbarpur sub-division	33.9	66.1	3	3	50.0	50.0
1933	Mainpuri division and Utraula sub-division	32.7	67.3	4	10	28.6	71.4
1933	Debaganj sub-division	32.6	67.4	1	6	14.3	85.7
1934	Basti and Fatehgarh divisions	34.1	65.9	4	9	30.8	69.2
1934	Budaun, Bareilly and Fyzabad divisions	34.7	65.3	9	18	33.3	66.7
1935	No reduction.						
1936	Totals .. .. .	..		29	83	25.9	74.1

Statement showing Reduction of Clerks in the Opium Agent's Office from 1928 up to date.

Year.	Existing strength before reduction.		Number of Muslims and Hindus reduced by Opium Agent.		Percentage in each reduction.	
	Muslims.	Hindus.	Muslims.	Hindus.	Muslims.	Hindus.
	Percentage.					
1932	15.8	78.9		1	..	100.0
1936	16.7	77.8	1	2	33.3	66.7

Note.—No reductions in 1928 to 1931 and 1933 to 1935.

REDUCTION OF MUSLIM CLERKS IN THE OPIUM AGENT'S OFFICE, GHAZIPUR.

102. **Mr. Muhammad Azhar Ali** : On what principles was the reduction made in the Opium Agent's Office at Ghazipur this year ? Will Government please lay a copy of those principles on the table for the information of this House ?

Mr. A. H. Lloyd : There were three clerks to be retrenched. Of these, the first two to be selected were : one clerk who was on leave preparatory to retirement and one clerk of more than thirty years' service. For the other reduction, one of the two junior men, both provisionally appointed, had to be selected. This selection was made on merits.

These decisions were reached in accordance with generally accepted principles and there are no definite orders to lay on the table.

Mr. Muhammad Azhar Ali : Is thirty years' service not to be counted by Government favourably ?

Mr. A. H. Lloyd : I understand that, when the general arrangements governing retrenchments were made and they provided that amongst the first to be selected should be the very senior officers, the consideration was that they had practically earned their full pensions, so that they were not exposed to any very severe hardship in being retrenched.

Sir Muhammad Yakub : The Honourable Member just now said that the orders of the Government of India were restricted to new recruits, and he now says that these two new recruits were regarded on their merits. If that is so, how can any effect be given to the orders of the Government ?

Mr. A. H. Lloyd : The Honourable Member did not hear me correctly. It was not a question of recruitment on merits ; but of the two men (they were not really new recruits, they were the two most junior men), one had to be selected for discharge, and that selection was made on merits.

Pandit Lakshmi Kanta Maitra : Why was he not taken on nomination ?

Mr. A. H. Lloyd : For all I know, he was taken on nomination. We are not talking about his recruitment, we are talking about his discharge.

LOW PERCENTAGE OF MUSLIMS IN THE OPIUM AGENT'S OFFICE, GHAZIPUR.

103. ***Mr. Muhammad Azhar Ali :** (a) Will Government please lay on the table a statement showing names, caste, date of appointment and qualifications of the clerks in the Opium Agent's Office at Ghazipur ?

(b) What is the reason for Muslims being less in percentage in the Agent's Office ?

(c) Will Government please lay on the table a statement showing the names, qualifications and caste of the candidates who were given chances and thereafter removed from 1928 until now ? What is the Muslim percentage among such candidates who were removed ?

Mr. A. H. Lloyd : (a) The Government do not consider that the compilation of the detailed information asked for will serve any public interest.

(b) The Honourable Member has not specified the standard with which he invites me to make a comparison, and I regret therefore that I am unable to answer the question.

(c) If by 'chances' is meant temporary or officiating vacancies the number, by communities, of candidates who were given chances and thereafter removed from the waiting list is six Hindus and one Muslim.

INDIAN LABOUR IN MALAYA.

104. ***Mr. Ram Narayan Singh :** Has the attention of Government been drawn to an article published in the *Hindustan Times* of the 21st May, 1936, by Mr. M. N. Nair, M.A., LL.B., on Indian Labour in Malaya and if so, will Government make a full statement on the subject with special reference to the following items dealt with in the same article :

(i) standard minimum wage ;

(ii) constitution of the Immigration Committee which fixed the minimum wage ;

(iii) labour settlement ;

(iv) housing problem ;

(v) abolition of toddy shops ;

(vi) co-operative movement ;

(vii) estate schools ;

(viii) Kapoo and Koottoo ;

(ix) sex ratio ;

(x) marriage registration ;

- (xi) free emigration ;
- (xii) steamer convenience ;
- (xiii) medical help ;
- (xiv) representation in Legislatures ;
- (xv) repatriated labourers ; and
- (xvi) proposed Overseas Department ?

Sir Girja Shankar Bajpai : (i) to (xv). A statement is laid on the table. Such of the points as need attention and can be usefully looked into by the proposed deputation to Malaya will be remitted to that body.

(xvi) The attention of the Honourable Member is invited to the reply given by me to Mr. Satyamurti's question No. 420 on the 17th September, 1935, and to the supplementaries arising out of it.

Statement showing briefly the position of Indian Labourers in Malaya.

(1) *Standard Minimum Wage.*

Standard rates of wages for Indian labourers in Malaya were fixed for certain key areas after an elaborate enquiry. They were not only based on a labourer's daily and monthly family budget but included provision for dependents, passages and old age.

(2) *Immigration Committee.*

This is a statutory body composed of—

1. The Controller of Labour, Malaya,
2. The Deputy Controller of Labour, Malaya,
3. The Director, Medical Services,
4. The Director, Public Works,
5. The Director, Drainage and Irrigation,
6. The General Manager, Federated Malay States Railways,
7. The Chairman, United Planting Association of Malaya,
8. A planting representative from each of the States or settlements of Kedah, Province Wellesley, Perak, Selangor, Negri Sembilan, Malacca and Johore,
9. An Indian member representing the Colony,
10. An Indian member representing the Federated Malay States, and
11. A prominent business man usually living in Penang.

Out of 17 members only 7 represent planting interests. It has also been invested with the functions of a wage board. In all enquiries relating to fixing of wage rates, the Agent of the Government of India in British Malaya was closely associated and the rates were settled in consultation with him.

Labour settlements.

There are a few successful Indian settlements in Malaya, e.g., at Bagan Serai in the Perak State, near Chua and in Sungai Ujong in Negri Sembilan, and it is understood that the question of inducing Indian labourers to settle down permanently in Malaya is receiving attention.

Housing of labourers.

Under the labour laws of the Colony, employers are required to build separate lines for labourers of different races according to standard designs. The usual back to back barrack lines type of housing is falling into disfavour and slowly yielding place to single line barrack type and to detached and semi-detached single room and

double room cottages for married labourers. The housing conditions are reported to be, on the whole, satisfactory.

Toddy shops.

The sale of foreign liquor and Samsu (a Chinese liquor) to Indian labourers is prohibited but they are allowed to have cocoanut toddy.

Co-operative movement.

The Co-operative Department has been doing excellent work, so far as estate labourers' societies are concerned and gives promise of great advance in the future. The number of such societies has already increased from 172 to 198 and the number of members from 26,322 to 31,577. There are now seven Indian Co-operative officers.

Estate schools.

Under the local labour laws schools have to be maintained by employers in estates where there are 10 or more children between the ages of 7 and 14. There are 581 Tamil schools (including one Malayalam and 3 Telugu aided schools) with 20,240 pupils of the labouring classes in Malaya. The number of aided estate schools has increased from 314 to 356 in the Federated Malay States and the grant-in-aid paid by Government which had been reduced to \$6 per year per pupil in Tamil schools has been restored to the original figure of \$8 per year per pupil.

Kappoo and Kootu.

Every effort is made to discourage these practices.

Sex ratio.

Under rule 23 of the Indian Emigration Rules, men who are unmarried or unaccompanied by their wives cannot be assisted to emigrate to any one country in any one year to a number exceeding one in five of the total number of persons so assisted. The rule has not so far been applied to Malaya but there is no evidence that this has resulted in increasing the sex-disparity in that country. As the Honourable Member is aware the exemption of Malaya from this rule is not permanent.

Hindu Marriage Registration.

There exists in the Federated Malay States and in Kedah an enactment for the registration of Hindu marriage but advantage has not been taken of this law to any appreciable extent by the Hindus of the labouring class.

A Bill to provide for registration of marriages among persons other than those professing the Christian or Mohammedan religion has already been published by the Straits Settlements Government.

Free emigration.

Recruitment of assisted emigration has been done by the headman of Indian labour gangs who are known as Kanganies but in recent years only voluntary assisted emigration has taken place.

Steamer convenience.

On board the steamers of the British India Steam Navigation Company which runs a fortnightly service between India and Malaya, there are inspectors and inspectresses to look after the emigrants. There are also food inspectors and there have been no serious complaints about feeding, etc., during the last year. Nor have there been any complaints about the treatment of females in the quarantine camps maintained by the Malayan Governments in Malaya.

Medical relief.

Hospitals are maintained by estates either singly or conjointly with a group of estates for the treatment of labourers. They are generally in charge of dressers, the majority of whom hold pass certificates for the local tests of 1st, 2nd or 3rd grade dresser. Where no qualified registered medical practitioner is employed, arrangements are made for periodical visits by such practitioners. Serious cases from estates are sent for treatment to the nearest Government hospital at the cost of the estates.

The labour laws provide for maternity allowances to working married women in case of child birth for one month before and after confinement. Women are often

reluctant to go to hospitals for confinement and the provision of maternity wards in some estates themselves has proved of great advantage.

Creches are provided in most estates where young children are kept in charge of ayahs when the mothers go out for work and some estates provide free milk for children in the creches.

In some cases orphans are removed to the Indian Labourer's Deceperit Home in Kuala Lumpur where they are looked after and sent to school. Christian orphans are generally handed over to the nearest convent. In most cases orphans continue to remain on the estates in which their parents worked where they are adopted and looked after by other labourers.

Representation in Legislatures.

There is no political franchise in Malaya and members of all public bodies are nominated by Government. There is one Indian member nominated to the Legislative Council and one member to the Federal Council. There is also one Indian member nominated to the Negri Sembilan State Council. There have been nominations of Jaffna (Ceylon) Tamils to the Perak, Selangor and Johore State Councils to represent Indians and Ceylonese.

Repatriated labourers.

Repatriation is allowed on grounds of ill-health, old age, family affairs, etc., and the repatriates are sent to their villages on their arrival in India at the expense of the Indian Immigration Fund. The very heavy repatriation that took place in 1931 was due to unemployment as a result of the economic depression. An asylum has been provided for disabled, sickly and decrepit labourers in the Home for decrepit Indians in Kuala Lumpur which is under the supervision of the Deputy Controller of Labour. They are kept in the Home till they are discharged as fit for work.

Sir Leslie Hudson : On a point of information, Sir. May I know what these terms, "Kapoo" and "Koottoo" mean?

Sir Girja Shankar Bajpai : They are Madrassi customs, a definition of which, if I were to enter upon it, would take more time than would be commensurate with their importance.

INDIANS IN CEYLON.

105. ***Mr. Ram Narayan Singh :** Has the attention of Government been drawn to an editorial note in the *Hindustan Times* of the 21st May, 1936, on Indians in Ceylon and if so, what is the information of Government with regard to the reported discriminatory measures of the Ceylon Government against Indians in Ceylon?

Sir Girja Shankar Bajpai : Government have seen the article referred to by the Honourable Member. Apart from admission into the Ceylon Civil Service, Government are not aware of any racial discrimination against Indians in Ceylon.

Mr. Lalchand Navalrai : Is there any racial discrimination against Ceylonese people in India?

Sir Girja Shankar Bajpai : That question has already been answered by the Honourable the Home Member more than once.

Mr. Lalchand Navalrai : Will the Honourable Member enlighten me on the point?

Sir Girja Shankar Bajpai : The Honourable Member can refresh his memory by reading the proceedings of the House.

Mr. Lalchand Navalrai : I would request the Honourable the Home Member to give me that information.

RESERVATION OF KENYA HIGHLANDS TO EUROPEANS.

106. ***Mr. T. S. Avinashilingam Chettiar :** (a) Will Government state whether they are aware of the Associated Press of India message published in the *Hindu*, dated the 21st May, 1936, regarding the protest of the Indians in Kenya regarding the reservation of High Lands to the Europeans and the scheme of European Defence Force ?

†(b).

(c) What is the scheme of European Defence Force and how does it affect the Indians in Kenya ?

(d) What steps have Government taken in the matter ?

Sir Girja Shankar Bajpai : (a) Yes.

(c) and (d). It is understood that a Committee appointed for the purpose has made recommendations regarding the reorganisation of the local defence forces in Kenya. A copy of the report of the Committee is awaited.

Mr. T. S. Avinashilingam Chettiar : What is the reason for the objections to the European Defence Force ? What is the point of objection ?

Sir Girja Shankar Bajpai : So far as the Government of India can make out, their point is that they wish to be given opportunities to take part in the defence of Kenya.

Mr. T. S. Avinashilingam Chettiar : As soon as the Government get at the facts, will they go into the matter and make suitable representation to the Kenya Government ?

Sir Girja Shankar Bajpai : That is the object of the request for the report.

Prof. N. G. Ranga : Is the defence force to serve the same purpose as the Klu Klux Klan in America ?

Sir Girja Shankar Bajpai : I hope not.

An Honourable Member : Hopes are dupes.

RELEASE OF MR. SUBHASH CHANDRA BOSE.

107. ***Mr. T. S. Avinashilingam Chettiar :** Will Government state :

(a) what is the condition of the health of Srijut Subhash Chandra Bose ;

(b) whether it has suffered after his arrest ;

(c) whether proper arrangements have been made for his treatment ; and

(d) in view of the grave state of his health, whether they propose to consider the advisability of releasing him ?

The Honourable Sir Henry Craik : (a) to (d). I would refer the Honourable Member to the reply given by me to parts (b) and (d) of

†Part (b) of this question was not put by the questioner.

Mr. Satyamurti's question No. 9 the other day. It is not the fact that Mr. Bose is in a grave state of health.

Mr. T. S. Avinashilingam Chettiar : May I know if Mr. Bose's health has suffered after his arrest ?

The Honourable Sir Henry Craik : I replied to that the other day. He had an attack of influenza. Nothing else. He has now recovered.

Mr. T. S. Avinashilingam Chettiar : In view of his present state of health, will he be allowed to be examined by his own doctors from Calcutta ?

The Honourable Sir Henry Craik : Yes, that suggestion was made in Mr. Satyamurti's questions. I did not see any justification for it but on thinking the matter over, I have decided to allow Mr. Bose to be examined by a doctor of his own choice from Calcutta. I am arranging for that to be done and he has named his own doctor by whom he wishes to be examined. I am arranging to have him sent to Kurseong.

ABOLITION OF DUTY ON MIMOSA EXTRACT.

108. ***Mr. T. S. Avinashilingam Chettiar :** Will Government state :

- (a) whether it is true that wattle bark was used for tanning and so the duty on it was abolished some years back to encourage the tanning industry ;
- (b) whether now an extract of wattle bark called the mimosa extract is used instead of wattle bark ;
- (c) whether the mimosa extract is taxed ; and
- (d) if so, whether they propose to consider the advisability of abolishing the duty on the mimosa extract ?

The Honourable Sir Muhammad Zafrullah Khan : (a) Yes.

(b) Government have received representations to the effect that mimosa extract is being imported into India to be used in place of wattle bark for tanning hides. Enquiries however indicate that the extract is being used at present only for experimental purposes in certain local tanneries in the Madras Presidency.

(c) Yes, like other extracts used for tanning, none of which is free.

(d) The proposal has been noted for consideration along with other similar requests for exemption from duty of the materials of industries.

Mr. T. S. Avinashilingam Chettiar : What is the proportion of the imports of wattle bark as well as mimosa extract ?

The Honourable Sir Muhammad Zafrullah Khan : I would require notice of that question.

SIMLA EXODUS.

109. ***Mr. T. S. Avinashilingam Chettiar :** Will Government state :

- (a) whether the question of stopping or minimising the Simla exodus is engaging their attention ;
- (b) whether they have come to any conclusion in the matter ; and
- (c) if so, what ; if not, when they hope to come to a conclusion ?

The Honourable Sir Henry Craik : (a) The question is not under consideration at present.

(b) and (c). Do not arise.

Mr. T. S. Avinashilingam Chettiar : Is not the question being considered again with the arrival of the new Viceroy ?

The Honourable Sir Henry Craik : Not that I am aware of.

Seth Govind Das : What will be the total saving if this exodus is stopped ?

The Honourable Sir Henry Craik : That is a hypothetical question which I am not prepared to answer.

Mr. T. S. Avinashilingam Chettiar : You can never imagine that it will be stopped ?

The Honourable Sir Henry Craik : Oh, yes, I can, but I cannot estimate the saving, if any.

APPOINTMENT TO THE POST OF THE FINANCIAL ADVISER AT ARMY HEADQUARTERS.

110. ***Mr. T. S. Avinashilingam Chettiar :** Will Government state :

(a) whether it is true that Mr. Staig, the Financial Adviser at Army Headquarters, is going on leave ;

(b) whether an army major-general is proposed to be appointed to that place ; and

(c) whether they contemplate appointing army men to posts which were given to members of the Finance cadre ?

The Honourable Sir James Grigg : (a) and (b). Mr. Staig proceeded on leave for a little over five months with effect from 17th April, 1936, and Major-General G. H. Addison has been appointed to officiate for him.

(c) The post of Financial Adviser, Military Finance, is usually reserved for members of the Indian Civil Service, but as no suitable Indian Civil Service Officer was available to fill the post during the comparatively short period of Mr. Staig's absence on leave, Major-General Addison was appointed and I am satisfied that this arrangement was in the circumstances the best possible in the public interest.

Mr. T. S. Avinashilingam Chettiar : May I know if it is not the policy to fill permanent posts with officers who belong to the financial side ?

The Honourable Sir James Grigg : This question relates merely to a temporary post. No question as to the policy of Government about permanent posts can arise out of it.

Mr. S. Satyamurti : Will Government consider the question of the creation of a separate cadre for such financial appointments, and not depend upon the Civil Service or the Army for giving men who, *ex hypothesi*, must have some special knowledge for this highly specialised work ?

The Honourable Sir James Grigg : I will consider the Honourable Member's suggestion.

CONTEMPLATED APPOINTMENT OF A EUROPEAN AS FINANCIAL COMMISSIONER OF RAILWAYS.

111. *Mr. T. S. Avinashilingam Chettiar : Will Government state :

- (a) when the terms of office as Financial Commissioner of Railways of Mr. P. R. Rau are going to terminate ;
- (b) whether they contemplate appointing a European in his place ; and
- (c) if so, why a European should be appointed when an Indian is occupying it with ability ?

The Honourable Sir Muhammad Zafrullah Khan : (a) April, 1937.

(b) No decision has yet been arrived at. The best man available, irrespective of race, will be appointed.

(c) Does not arise.

Mr. T. S. Avinashilingam Chettiar : May I know if the Government contemplate the appointment of a European ?

The Honourable Sir Muhammad Zafrullah Khan : No question can be put on what the Government contemplate.

Mr. T. S. Avinashilingam Chettiar : When an Indian is filling it with ability, may I know why the question of another appointment should arise ?

The Honourable Sir Muhammad Zafrullah Khan : Because his tenure will expire by April, 1937.

Mr. T. S. Avinashilingam Chettiar : May I know why the question of race will not be considered at all in this matter ?

The Honourable Sir Muhammad Zafrullah Khan : Why should it be considered ?

Mr. T. S. Avinashilingam Chettiar : Because this is India and belongs to Indians. Why should not an Indian be appointed ?

The Honourable Sir Muhammad Zafrullah Khan : What is to be done with competent and senior European officers ?

Mr. T. S. Avinashilingam Chettiar : Ask them to take rest and look after their health.

The Honourable Sir Muhammad Zafrullah Khan : That suggestion is, I am afraid, unacceptable.

Mr. T. S. Avinashilingam Chettiar : In view of the important nature of the post, will the Honourable Member do his utmost to appoint an Indian to that post ?

The Honourable Sir Muhammad Zafrullah Khan : No, the best man available will be appointed.

Mr. B. Das : Will the Honourable the Railway Member kindly bear in mind the fact that a promise was given by Government on the floor

of this House that one of the members of the Railway Board will always be an Indian ?

The Honourable Sir Muhammad Zafrullah Khan : If the Honourable Member will give me the reference, I shall certainly make every attempt to adhere to the promise that may have been given.

Mr. B. Das : You will find it in the proceedings of the House.

Mr. T. S. Avinashilingam Chettiar : Are not the Government of India in favour of nomination, and do they not favour nepotism ?

The Honourable Sir Muhammad Zafrullah Khan : What has that got to do with this question. I want to get the best man available.

Seth Govind Das : What is the definition of best man ?

The Honourable Sir Muhammad Zafrullah Khan : The one most fully qualified to discharge the duties of this post.

Seth Govind Das : Who is to decide ?

The Honourable Sir Muhammad Zafrullah Khan : Government.

Mr. Lalchand Navalrai : May I know from the Honourable Member if there is any objection or hindrance to the extension of the period of office of such a competent officer ?

The Honourable Sir Muhammad Zafrullah Khan : That question does not arise.

Mr. T. S. Avinashilingam Chettiar : As an Indian is in charge of the Railway Department, may I know, Sir, whether the appointment would go to a competent Indian, especially as it has been filled with distinction by an Indian ?

The Honourable Sir Muhammad Zafrullah Khan : Whether an Indian is in charge of the Department or not is entirely immaterial.

Mr. T. S. Avinashilingam Chettiar : I am very sorry to hear it. I thought the presence of an Indian at the head of the Department will make a difference.

Mr. Lalchand Navalrai : May I know whether Government will give an extension of office to Mr. P. R. Rau himself ?

The Honourable Sir Muhammad Zafrullah Khan : That is a question entirely within the discretion of Government, and I do not think that suggestions from the Legislature on a matter like this can be entertained.

Mr. Lalchand Navalrai : Will the Honourable Member say if the Government will consider the question of the extension of such an officer ?

The Honourable Sir Muhammad Zafrullah Khan : That is a hypothetical question.

Mr. S. Satyamurti : Does the Honourable Member accept the principle that all Government appointments should be held by the best men, European or Indian, without reference to any other consideration ?

The Honourable Sir Muhammad Zafrullah Khan : The question is with regard to a specific appointment and I have given the answer.

When the question of selection for any such post arises, so far at any rate as I am concerned I shall endeavour always to get the best man.

Mr. S. Satyamurti : May I know what are the categories of posts, with respect to which the best men are appointed, and what are the other categories where colour plays the predominant part ?

The Honourable Sir Muhammad Zafrullah Khan : I am not aware of any post with regard to which colour plays the predominant part.

Mr. S. Satyamurti : Will the Honourable the Commerce Member say if he is the best man for the post, and that a European is no better than he ?

The Honourable Sir Muhammad Zafrullah Khan : I do not claim to be the best man for the post, but the selection did not lie in my own hands. That is a question to be addressed to people who were responsible for my selection.

GRIEVANCES AGAINST THE BENGAL AND NORTH WESTERN RAILWAY.

112. ***Mr. Ram Narayan Singh :** Has the attention of Government been drawn to an article appearing on the fourth page of the *Search Light*, dated Patna, the 27th May, 1936, headed "Grievances against Bengal and North Western Railway", and if so, what steps do they propose to take to remove the grievances mentioned in the said article ?

The Honourable Sir Muhammad Zafrullah Khan : Government have seen the article referred to, and are also also aware that the question of replacing one of these level crossings by an overbridge was raised through the Local Advisory Committee and that the final decision now rests with the Local authorities. Government have no doubt that the services of the Local Advisory Committee could be similarly utilised in removing the other grievances.

NEW RULES FOR RECRUITMENT TO THE INDIAN CIVIL SERVICE.

113. ***Seth Govind Das :** Will Government be pleased to state :

- (a) whether Indian candidates in the Indian Civil Service competitive examination in England during the last five years, have come out successful in larger numbers than the candidates of the British Isles ;
- (b) whether they are prepared to recruit for the Civil Service in India, all or a comparatively larger percentage of Indians ;
- (c) what is the policy behind the modification of the rules, recently made, to recruit 50—50 per cent. of Indians and British candidates for the Indian Civil Service ;
- (d) whether they are aware of the fear in the country, that as a result of the new rules for recruitment, severe test will be imposed on the Delhi examination for the selection of candidates for the Civil Service ; and

- (c) what assurance they can give regarding the fairness and the equal level of test for both the Delhi as well as the London examinations ?

The Honourable Sir Henry Craik : (a) No.

(b) The restrictions imposed on the Indian candidates appearing at the London examination are chiefly intended to achieve the object of the Honourable Member, i.e., to recruit a larger number of Indians in India.

(c) Since 1925, recruitment of Europeans and Indians has been on a 50 : 50 basis. The revised system is, as explained in the Home Department Press Communiqué, dated the 27th April, 1936, designed to secure a normal annual intake of Europeans and Indians in equal numbers.

(d) No.

(e) The Delhi and the London examinations are intended for the recruitment of two separate sets of candidates. There has not been any unfairness in the competitive examinations held annually for recruitment to the Indian Civil Service and I can assure the Honourable Member that there will not be any in future.

Mr. M. Ananthasayanam Ayyangar : Has the Honourable Member communicated to the Secretary of State in relation to the revised rules Government's view of the result of the adjournment motion the other day ?

The Honourable Sir Henry Craik : No, Sir.

Mr. M. Ananthasayanam Ayyangar : Why not ? Do not Government propose to take any action in that matter ?

The Honourable Sir Henry Craik : I will send a report of the debate to the Secretary of State in due course.

Mr. M. Ananthasayanam Ayyangar : What will be the recommendations of the Government of India in that matter ?

The Honourable Sir Henry Craik : They will not make any recommendations.

Mr. S. Satyamurti : May I know if Government consider the results of the adjournment motions in this House at all ?

The Honourable Sir Henry Craik : That does not arise out of this question.

Mr. S. Satyamurti : May I know if they propose to consider the results of this adjournment motion ?

The Honourable Sir Henry Craik : I do not think that arises either.

Seth Govind Das : Was this adjournment motion not moved on this very topic ?

The Honourable Sir Henry Craik : The Honourable Member knows that as well as I do.

Mr. S. Satyamurti : Then, I submit, it does arise ? I submit, Sir, that this habit of Members on the Treasury Benches of saying that this does not arise is wrong : it is for you to rule.

The Honourable Sir Henry Craik : Might I explain that a question has to be put on a point of information regarding which the Member

to whom it is addressed has personal knowledge. The Honourable Member's question is, in essence, a suggestion that Government should take certain action, and I submit that it is not in order to make any such suggestion with reference to this question.

Mr. S. Satyamurti : I am simply asking, if the Government propose to take any action. I want to know what his intentions, as Member in charge, are.

The Honourable Sir Henry Craik : I submit, Sir, it is not in order on a question to suggest that Government should take action.

Mr. President (The Honourable Sir Abdur Rahim) : It is a well-known formula that has been adopted in practice. In the opinion of the Chair, it is quite in order to ask whether Government propose to take any action.

Mr. S. Satyamurti : What then is the answer, Sir ?

The Honourable Sir Henry Craik : I said we would send a copy of the debates to the Secretary of State, but we did not propose to make any recommendation about it.

INTEREST OF INDIANS AFFECTED BY THE ENACTMENT OF LABOUR LAWS IN IRAQ.

114. ***Seth Govind Das** : Will Government be pleased to state :

- (a) whether they are aware that the recent enactment of labour laws in Iraq do not permit foreigners to work as blacksmiths, barbers, masons, printers, weavers, motor drivers, shoe-makers or even porters ;
- (b) the total number of Indian artisans, and other labourers, both skilled and unskilled in Iraq today ;
- (c) whether they have thought of any ways and means of protecting the interests of Indians affected by such enactments in Iraq ;
- (d) the number of Iraqis that are today in India :
 - (i) engaged in trade, and
 - (ii) living as workers ; and
- (e) whether they made any representation to the Government of Iraq to show retributory treatment to Indians in Iraq as Iraqis are treated in this country ?

Sir Aubrey Metcalfe : (a) The attention of the Honourable Member is invited to the answer given by me to Mr. Satyamurti's short notice question on the 23rd March, 1936. A copy of the law was laid on the table and if the Honourable Member will refer to that law he will find the information for which he asks.

(b) The total number of Indians of these classes in Iraq is reported to be approximately 4,500.

(c) The Honourable Member's attention is invited to the answer given by me to the short notice question referred to in my reply to part (a) of this question. As has already been frequently stated by me in this

House during the last Session, everything possible has been done to protect Indian interests in Iraq.

(d) According to the information available the total number of Iraqis in India is approximately 51 of whom 30 are engaged in trade and the remainder are manual labourers.

(e) No.

QUALIFICATIONS OF THE PRINCIPAL OF THE DHANBAD SCHOOL OF MINES.

715. **Seth Govind Das** : Will Government be pleased to state :

- (a) the name and qualifications of the present principal of the Dhanbad School of Mines ;
- (b) whether it is a fact that the present principal has no mining or geological qualifications to his credit to hold the position ;
- (c) whether they could not find any Indian qualified enough in mining and geology for the post of the Principal of Dhanbad School of Mines ;
- (d) what the salary of the Principal of the Dhanbad School of Mines is ;
- (e) why this post has been given to the present principal in preference to one having geological and mining qualifications, the two essential sides of mining education ; and
- (f) whether they are prepared to consider the advisability of appointing a qualified man to the post immediately ; if not, why not ?

The Honourable Sir Frank Noyce : (a) Dr. D. Penman. A statement showing his qualifications is laid on the table.

(b) No.

(c) Does not arise.

(d) Rs. 1,250—50—1,750 plus overseas pay of £30.

(e) and (f). Do not arise.

Statement showing the qualifications of Dr. D. Penman, Principal, Indian School of Mines, Dhanbad.

Educational.

Diploma in Mining, Heriot-Watt College, Edinburgh.

B.Sc., 1st Class Honours, Mining and Geology, London University.

D.Sc., Edinburgh University.

1st Class Colliery Manager's Certificate.

Other qualifications.

Six years' practical experience as Assistant Mine Manager.

Government Research Work on Mine Rescue Apparatus for two years.

Prior to his appointment as Principal, Indian School of Mines in 1921, he was the Head of the Mining School, Buckhaven, Fife, and had been lecturer in Mining for eight years. He is also a Fellow of the Royal Society of Edinburgh and a Member

of the Institution of Mining Engineers. He is at present Chief Inspector of Mines and holds the post of Principal in addition.

Mr. S. Satyamurti : With reference to the answer to part (c) of the question, may I know how it does not arise ?

The Honourable Sir Frank Noyce : Dr. Penman has been Principal of the School of Mines for some years past. His qualifications were duly taken into consideration when he was first appointed. Dr. Penman has the highest qualifications in mining and, I think, also in geology.

Seth Govind Das : Is it not a fact that a better-qualified Indian applied for the post ?

The Honourable Sir Frank Noyce : I have no hesitation in saying that Dr. Penman is the best qualified officer for this appointment in India.

Mr. S. Satyamurti : Is he the most senior man ?

The Honourable Sir Frank Noyce : I think so. The fact of the matter is that my Honourable friend is mixing up the present appointment of Principal with the appointment which is about to be made. My Honourable friend, Mr. Satyamurti, has a question down on that subject which I shall be answering in the course of the next day or two.

Mr. S. Satyamurti : Is this a case of appointing the best man, turning a blind eye to the colour ?

The Honourable Sir Frank Noyce : It is certainly a case of appointing the best man. My Honourable friend has pressed on the Government of India the very important question of safety in mines. I should have thought that for an appointment of this character he would have been the first to agree that the best man was necessary.

Mr. S. Satyamurti : Does the Honourable Member mean that there is no Indian qualified to look after the safety of Indian mines ?

The Honourable Sir Frank Noyce : Not of the necessary seniority ; that also has to be taken into consideration in this matter.

Mr. S. Satyamurti : Is seniority always taken into account by the Government of India in making appointments, or is it sometimes neglected, when it is a question of an Indian senior ?

The Honourable Sir Frank Noyce : For the appointments in which I personally am concerned, seniority and merit are taken into consideration.

INITIALLING OF THE NOTES ON RESEARCH MADE BY READERS BY THE LIBRARIAN OF THE IMPERIAL LIBRARY.

116. ***Seth Govind Das :** Will Government be pleased to state :

(a) whether it is a fact that the Librarian of the Imperial Library insists upon inspecting and initialling the notes on research made by readers ;

(b) whether they are aware that such readers and students as may not submit to such scrutiny in the hands of the Librarian are not allowed to take notes out of the Library ; and

(c) the reasons for enforcing such rules on matters of pure research and study ?

Sir Girja Shankar Bajpai : (a) The attention of the Honourable Member is invited to the reply given by me to part (c) of starred question No. 1413 asked by Dr. P. N. Banerjee in this House on the 23rd March, 1936.

(b) No.

(c) To ensure that the privilege is not abused.

Prof. N. G. Ranga : Is the Honourable Member aware of the fact that this restriction imposed upon the readers and the powers given to the Librarian establish an extraordinary and unprecedented precedent, that of restricting the freedom of reading and writing also ?

Sir Girja Shankar Bajpai : No, Sir. My Honourable friend does not seem to appreciate that it is not the ordinary freedom of reading and writing which is restricted. What happens is that this particular room is limited in area and only a certain number of *bonâ fide* research workers can be admitted. The first admission is made on the basis of recommendations made by people competent to testify to the fitness of the man to do research work ; generally the period is for six months. If a student wishes to continue to occupy that room beyond six months, then the Librarian is required to satisfy himself that the research work is really being continued and that the privilege is not being abused.

Prof. N. G. Ranga : Will it not be enough for the Government of India that these readers should satisfy the Librarian in the initial stage with an additional certificate or a testimonial taken from the Principal or the Supervisor ?

Sir Girja Shankar Bajpai : I think there is nothing in this rule which prevents a *bonâ fide* research worker from having the privilege extended.

Prof. N. G. Ranga : In view of the fact that every day this Librarian can insist and does insist upon the exercise of his right of inspecting the researches made by readers, will the Government of India realise the difficulty that is experienced by these readers and the absurdity of imposing such a restriction upon these readers who are, according to the Government of India themselves, testified already as competent research workers ?

Sir Girja Shankar Bajpai : They are testified as competent research workers but it does not necessarily follow that their research will continue till eternity.

Sir Abdul Halim Ghaznavi : Is it not a fact that the rules pertaining to private reading room have been in force for the last two years and that there is none but one person who approaches Honourable Members to put these questions ?

Sir Girja Shankar Bajpai : I am not aware really of the source from which these questions are inspired.

Prof. N. G. Ranga : Are Government aware of the fact that there are as eminent scholars as Sir Jadhu Nath Sarkar who continue to carry on their research work from year to year and to impose a restriction

like this and allow people to continue their work only for six months and thereafter to compel them to get their notes initialled is really restriction on the ordinary liberty of the people, especially of scholars ?

Sir Girja Shankar Bajpai : I can assure my Honourable friend that if any scholar of the eminence of Sir Jadhu Nath Sarkar wishes the privilege extended for more than six months, there will be no difficulty about the extension of that privilege.

Seth Govind Das : But people in course of time do become as distinguished as Sir Jadhu Nath Sarkar has become ?

Sir Girja Shankar Bajpai : Not everybody, anyhow.

Seth Govind Das : Some of them do.

Sir Girja Shankar Bajpai : Why does my Honourable friend assume that these individuals who have the potential greatness of Sir Jadhu Nath Sarkar do not have their permits extended beyond six months ?

MOTIONS FOR ADJOURNMENT.

PROHIBITION OF THE PRINTING OF PICTURES OF MAHATMA GANDHI AND OTHERS, ETC., ON CARDS AND COVERS.

Mr. President (The Honourable Sir Abdur Rahim) : Order, order : the next motion for adjournment stands in the name of Mr. Chettiar which relates to the " issue of a circular letter, dated the 28th May, 1936, by the Director General of Posts and Telegraphs, prohibiting the printing of pictures of Mahatma Gandhi and others, etc., on cards and covers ".

Mr. T. S. Avinashalingam Chettiar (Salem and Coimbatore *cum* North Arcot : Non-Muhammadan) : Sir, in view of the fact that the particular clause has been withdrawn, I do not want to move my motion.

ALLEGED ACTIVE ACQUIESCENCE OF THE GOVERNMENT OF INDIA IN THE RECENT POLITICAL ACTIVITIES OF SIR SIKANDAR HAYAT KHAN, A DEPUTY GOVERNOR OF THE RESERVE BANK OF INDIA.

Mr. President (The Honourable Sir Abdur Rahim) : The next motion for the adjournment of the House stands in the name of Mr. Satyamurti, the subject of which is " the active acquiescence of the Government of India in the recent political activities of Sir Sikandar Hayat Khan, a Deputy Governor of the Reserve Bank of India, who has publicly announced that he will be relieved of his post of the Reserve Bank by the Government of India to enable him to lead the Unionist Party in the Punjab for the ensuing Provincial Elections ".

Does the Honourable Member wish to move it ?

Mr. S. Satyamurti (Madras City : Non-Muhammadan Urban) : Sir, with due deference to certain Honourable Members who have pressed on me that it will not serve any purpose if I were to move it, I do not propose to move it.

REDUCTION OF THE IMPORT DUTY ON GREY COTTON GOODS AND ON BORDERED AND BLEACHED COTTON GOODS IMPORTED FROM THE UNITED KINGDOM.

Mr. President (The Honourable Sir Abdur Rahim) : The next motion* for adjournment standing in the name of Mr. Ananthasayanam Ayyangar has been withdrawn.

STRICT NEUTRALITY ON THE PART OF LOCAL GOVERNMENTS IN RESPECT OF PROVINCIAL ELECTIONS.

Mr. President (The Honourable Sir Abdur Rahim) : Then comes Mr. Satyamurti's next motion for adjournment which relates to "the failure of the Government of India to enforce strict neutrality on the part of Local Governments in respect of political parties and their propaganda for the ensuing provincial elections, especially in the North-West Frontier Province". This has been disallowed by the Governor General.

Mr. S. Satyamurti : Sir, I rise on a point of order. I took up the same point of order last year, and, with your indulgence, I propose to take it up again, for luckily your own rulings are not binding upon you. I have looked into this matter carefully, because a long time has elapsed—nearly a year—when I took up this point of order. The relevant rules and Standing Orders on this point are to be found at pages 16 to 18 of the Manual of Business and Procedure. Rule 11 prescribes :

"A motion for an adjournment of the business of the Assembly for the purpose of discussing a definite matter of urgent public importance may be made with the consent of the President."

That is the governing section. Then, Sir, paragraph 44 reproduced Rule 12.

Mr. President (The Honourable Sir Abdur Rahim) : But what is your point ?

Mr. S. Satyamurti : The point is this. There is no motion, until I ask for leave and you rule that the motion is in order. Then you ask the leave of the House, and the House either agrees to the leave being given or, if objection is taken, not less than 25 Members rise in their places. Then, Sir, you state that leave is granted, and it is only then that the stage of a motion comes. Till that stage is reached, the Governor General does not come into the picture at all. Rule 22 (2) is the governing section which gives the power to the Governor General to disallow motions for adjournment. That rule says :

"That notwithstanding anything in this Chapter, the Governor General may disallow any motion for adjournment."

But he cannot disallow leave to ask for an adjournment. Today, I have given notice to ask for leave to make a motion for adjournment, and I have not yet asked for leave. Even before I get up to ask for leave, comes the fiat of the Governor General that the motion is disallowed. I submit it is a fraud on the power of the Governor General.

Mr. President (The Honourable Sir Abdur Rahim) : What is the previous ruling which I gave ?

"The reduction by the Government of India of the import duty on grey cotton goods and on bordered and bleached cotton goods imported from the United Kingdom, as such reduction affects the handloom weaving and the mill industry of India."

Mr. S. Satyamurti : I have not got the reference. I raised this point some time last year, and I did not then look it up as carefully, as I have done this morning. There must be at least a motion, before the Governor General can disallow it. He cannot disallow even the leave being asked for it.

Mr. President (The Honourable Sir Abdur Rahim) : What purpose will be served if he disallows it after the leave has been granted ?

Mr. S. Satyamurti : Publicity. We know that we are knocking every day against the stone wall, but all the time we are securing publicity. ("Hear, hear" from Official Benches.) I want to expose you all, as you are.

Mr. President (The Honourable Sir Abdur Rahim) : So far as publicity is concerned, it can be had in other ways than by moving adjournment motions.

Mr. S. Satyamurti : Rule 22 (2), that is Article 49 of the Manual, becomes practically infructuous, that is to say the power of the Governor General to disallow may never have to be exercised at all, if it is disallowed even before leave is asked for by the Member. Therefore, rule 22 (2), contemplates that, notwithstanding your consent as President and the leave of this House, the Governor General may disallow a motion.

Mr. President (The Honourable Sir Abdur Rahim) : That is your point.

Mr. S. Satyamurti : Yes.

Mr. President : A similar question was raised last year which appears on page 1670, Vol. II (5th March, 1935, Debates). Mr. Gauba gave notice of a motion for adjournment and this point of order which Mr. Satyamurti is raising now was also raised then.

Mr. S. Satyamurti : I know that ruling, Sir. I want you to reconsider that matter.

If objection is taken, I get 25 Members to rise in their places. Why should I not get that privilege ? After all supposing I ask for leave and you rule it in order, and, if some Honourable Member objects to it, then you have got to ask whether the Honourable Member has the leave of the House.

Mr. President (The Honourable Sir Abdur Rahim) : What I have to decide is whether it is a motion.

Mr. S. Satyamurti : It is for you to decide.

Mr. President (The Honourable Sir Abdur Rahim) : Apart from that, what is the object served ? What I have to decide is whether it is a motion when notice is given

Mr. S. Satyamurti : Unless there is a motion, the Governor General cannot come into the picture at all. He can only disallow a motion.

Mr. President (The Honourable Sir Abdur Rahim) : Would you go further than this and say that until leave is asked for and granted, it is not a motion.

Mr. S. Satyamurti : That is a perfectly relevant question. You will notice the language used in the Manual. Article 47 says :

" If the President is of opinion that the matter proposed to be discussed is in order....."

the word used is " matter ",

" he shall read the statement to the Assembly,....."

mark the word " statement ",

" and ask whether the member has the leave of the Assembly to move the adjournment."

The word " motion " has not occurred at all, till now. Further, the Article proceeds :

" If objection is taken, the President shall request those Members who are in favour of leave being granted to rise in their places, and if not less than 25 Members rise accordingly, the President shall intimate that leave is granted and that the motion will be taken, etc., etc."

Mark that the word " motion " occurs only at the end. That is the period when it becomes a motion.

Mr. President (The Honourable Sir Abdur Rahim) : Your contention is that it does not become a motion before that.

Mr. S. Satyamurti : Quite so. The Article says :

" The President shall intimate that leave is granted and that the motion will be taken at 4 P.M."

There comes the word " motion " at the very end. Till then, it is only a leave, and the moment the leave is given and that phrase " leave is granted " comes out of your august mouth, it takes the shape of a ' motion ' and it is only then the Governor General comes into the picture. Till then, it is only " leave ".

Mr. President (The Honourable Sir Abdur Rahim) : Even if leave is granted to move, it may not be moved by the Member.

Mr. S. Satyamurti : Because the Governor General may disallow it, or the Member may not be in his place or he may not care to move it.

Mr. President (The Honourable Sir Abdur Rahim) : What has been the practice till now ?

Mr. S. Satyamurti : So far as I know, there are no precedents like the present one. The Governor General has been furious only after we, the Congress Party, came into the Assembly, and there has been disallowance galore of adjournment motions.

Mr. President (The Honourable Sir Abdur Rahim) : When notice of a motion has been given, you say it is not competent for the Governor General to disallow it.

Mr. S. Satyamurti : I know of at least one case after we came, when Sir Lancelot Graham was the Secretary of the Legislative Department, the Governor General's disallowance came sometime after leave was granted by the House to make the motion. My submission to you now is that you can regularise the practice. Until you create a ' motion ' like Brahma, there is no motion for the Governor General to disallow it. The Governor General does not come into the picture, until the stage when it is made a motion.

Mr. President (The Honourable Sir Abdur Rahim) : I think the practice is both ways. It has never been laid down that the Governor General cannot pass his order until leave has been granted.

Mr. S. Satyamurti : That is why I am raising a point of order now.

Mr. President (The Honourable Sir Abdur Rahim) : The practice has been that the Governor General disallows a motion sometimes before leave is granted and sometimes after leave has been granted.

Mr. S. Satyamurti : The disallowance can be done only after leave has been granted and after the matter becomes a "motion". You will notice that the words used are "matter", "statement", and so on, and not "motion". I would like you to give a considered ruling.

Mr. Bhulabhai J. Desai (Bombay Northern Division : Non-Muhammadan Rural) : I submit this is a matter of some importance, and it is for this reason that if the intervention of the Governor General is asked for at too early a stage and if the rules do not allow, it should not be so permitted. That is the reason why I say that the matter is of some importance. I do not want to repeat what my Honourable friend, Mr. Satyamurti, said but it is necessary to bear in mind the order of events as set out in the *Manual of Legislative Business*. The provisions as they appear in order are rules 11, 12, 22 (2). I shall read out in order the relevant rules. Rule 12 says :

"The right to move an adjournment for the purpose of discussing a definite matter of urgent public importance shall be subject to the following restrictions....."

I need not read out those restrictions. Then comes Article 45 (Standing Order 21) which says :

"Leave to make a motion for an adjournment of the business of the Assembly for the purpose of discussing a definite matter of urgent public importance must be asked for after questions and before the list of business for the day is entered upon."

You will notice, Sir, in this connection that supposing a Member chooses not to ask for leave, then there is no motion before the House at all. It will be seen that under Standing Order 21 the notice given does not get to the stage of a motion at all if the Member does not choose to ask for leave. Then you come to the next Article 46 (Standing Order 22) which says :

"The Member asking for leave must, before the commencement of the sitting of the day, leave with the Secretary a written statement of the matter proposed to be discussed."

You will mark the word "matter".

Then comes Article 47 (Standing Order 23) :

"If the President is of opinion that the matter proposed to be discussed is in order, he shall read the statement to the Assembly and ask whether the member has the leave of the Assembly to move the adjournment. If objection is taken, the President shall request those members who are in favour of leave being granted to rise in their places and if not less than 25 members rise accordingly the President shall intimate that leave is granted and that the motion will be taken at 4 P.M....."

That stage, I submit, is the proper stage where intimation is made that the motion will be taken up at 4 P.M. It is only when leave has been granted, it empowers it to be made into a motion. The Article goes on :

" Or if the President with the consent of the Member of the Government concerned so directs, at any earlier hour at which the business of the day may terminate. If less than 25 members rise, the President shall inform the Member that he has not the leave of the Assembly."

In other words, all the stages have got to be passed before you come to the stage when it can emerge into a motion at all. This is an important matter of substance, for this reason, that you should not ask for the intervention of any extraneous power until the proper stage is reached. It is only after the matter has become a motion for the purpose of discussing a definite matter of urgent public importance, you come to Rule 22 (2) which gives the power to the Governor General to disallow the motion. It says :

" Notwithstanding anything in this Chapter, the Governor General may disallow any motion for adjournment for the purpose of discussing a definite matter of urgent public importance on the ground that it cannot be moved without detriment to the public interest or on the ground that it relates to a matter which is not primarily the concern of the Governor General in Council, and if he does so, the motion for adjournment shall not be permitted by the President and no further discussion of the motion shall take place."

I submit that the Rule is clearly self-contained and is a complete answer to the question that is being put to you. What is the effect of the disallowance : that the motion for adjournment shall not be permitted by the President and no further discussion of the motion shall take place. In other words, you get as far as this, that the matter may become abortive at several earlier stages before the intervention of the Governor General can take place, and if it can become so abortive, if one were to argue from the point of view of Government, you are putting undue pressure on the business of the Governor General, because his intervention may never become necessary. Therefore, you should ask for his intervention only when it has matured into a motion and then, " no further discussion shall take place ". In fact, having regard to the order which you now read out, without prejudice to its incorrectness, there was no reason at all why the matter under Article 45 or the matters under Article 47 could have been gone into at all. Either Article 49 applies so that it is a still-born thing and cannot be brought before this House or these processes through which we have now gone were proper and valid. If they were proper and valid, then alone comes the time when it is open, during that short interval, to put the matter before the Governor General and ask him to disallow it on the ground that it cannot be moved without detriment to the public interest.

Mr. President (The Honourable Sir Abdur Rahim) : Do you suggest that the Governor General cannot take action until leave is granted ?

Mr. Bhulabhai J. Desai : No, he cannot take action.

Mr. President (The Honourable Sir Abdur Rahim) : Why cannot Government inform the Governor General beforehand ?

Mr. Bhulabhai J. Desai : They may prepare his mind for it, but that has nothing to do with the issue. The question is not what they may do with a view to making preliminary preparations so as to meet this sort of contingency which they look upon as an unnecessary disaster. But that

[Mr. Bhulabhai J. Desai.]

is entirely their look-out. The point only is this. I say they ought not to do it. But I cannot say that they can be prevented from doing so because the application to the Governor General can only arise and must only arise after the earlier steps have been taken which has resulted in the maturing of the statement or the matter or the notice into a motion proper. So that without that intervention at 4 o'clock it automatically comes up. You see the stages through which it passes. Either intervention takes place when no further discussion will take place, or the intervention does not take place, and so the statement made at 12 o'clock that it shall be taken at 4 P.M. or at an earlier hour shall be in force. In fact it is, if I may say so, to arrest the enforcement of the order made by you as to the admission of the motion that the intervention is allowed and at no earlier stage at all. Therefore it is not a mere matter of form. It may be said that the Governor General has plenty of time. Their view is right and therefore he may be troubled on many matters which are unnecessary; but after all we must have regard to public time and public business and I must therefore assume that the Governor General's time must not be encroached upon as sometimes people may unnecessarily or prematurely do. In fact you are entitled to take that into account purely as a matter of construction of the rule. Whether in fact he resents it or welcomes it has nothing to do with us. The point really is that the order made by you can only be arrested by reason of the intervening order which may be made under Article 49. Until then I submit the matter cannot go up to him in the formal sense of asking for an order disallowing it.

Mr. President (The Honourable Sir Abdur Rahim) : You mean he cannot pass the order ?

Mr. Bhulabhai J. Desai : No, he cannot. And I submit that a request to be made a good legal and constitutional request must be made to him only after the matter has matured into a motion. However much you may prepare his mind,—I will not use any stronger words,—there is no right to formally apply to him until then.

The Honourable Sir Nripendra Sircar (Leader of the House) : Sir, I submit there is no substance in the contention which has been raised. I draw your attention to the language of Article 49, page 18 :

“ Notwithstanding anything in this Chapter.”

I will pause there for one second. In Article 43 it is said that a motion for adjournment of the business of the Assembly may be made with the consent of the President. That as well as what has been called the subsequent stages described in paragraphs 44, 45, etc.—they are all in this Chapter and Article 49 says :

“ Notwithstanding anything in this Chapter.”

Mr. President (The Honourable Sir Abdur Rahim) : Then your argument comes to this that it ought never to be mentioned at all in this House.

The Honourable Sir Nripendra Sircar : It has got to be mentioned in the House whether it is going to be moved.

Mr. President (The Honourable Sir Abdur Rahim) : Your argument is that whatever is there in this Chapter has no application ?

The Honourable Sir Nripendra Sircar : I do not say it has no application. I say that notwithstanding any of the limitations or restrictions imposed in this Chapter the Governor General may disallow a motion for adjournment. The main point is that he can do it at any time. Supposing a discussion has started and the discussion is going on he can disallow it and no further discussion shall take place. The other thing is that notwithstanding the restrictions in any of the paragraphs 43—47, he has got the power to disallow a motion for the purpose of discussing a definite matter and that is certainly the whole scheme of this rule.

Mr. President (The Honourable Sir Abdur Rahim) : The rule says :

“ Notwithstanding anything in this Chapter, the Governor General may disallow any motion for adjournment ”, etc.

The Honourable Sir Nripendra Sircar : I will withdraw those words “ Notwithstanding ”, etc.

If you turn to page 88 of the Manual, you will find rule 22 (1) which says :

“ The Governor General may, within the period of notice, disallow any Resolution..... ”

Mr. Bhulabhai J. Desai : May I call attention to one point. The rule makes it even still more clear. The rule stands in thus. I will read rule 22. I think it is badly paraphrased or stated in Article 49.

“ The Governor General may, within the period of notice, disallow any resolution or any part of a resolution ”, etc.

Then, we go on to rule 22 (2).

“ The Governor General may disallow on grounds as aforesaid any motion for adjournment under rule 11, notwithstanding the consent of the President ”, etc.

The words are not, “ notwithstanding anything contained in these rules ”. It then emphasises the fact that only after your consent has been given and it has matured, as I submitted before, into a motion that it can be disallowed. It is not “ Notwithstanding anything in this Chapter ” ; it would still have to be read, “ Notwithstanding anything to the contrary relevant to it in this Chapter ”.

The Honourable Sir Nripendra Sircar : At page 88 two rules are to be found, one about resolutions and another about adjournment motions :

“ The Governor General may disallow on grounds as aforesaid any motion for adjournment under rule 11, notwithstanding the consent of the President ”, etc.

I submit that all that it means is this. Governor General has power whether you have consented or not. It cannot be said that as the President has allowed this motion it cannot be disallowed by the Governor General. It makes it perfectly clear that irrespective of your consent the Governor General has got that power. It is not referring to any particular point of time whatsoever. The object is, as I said, to make the rule comprehensive, that is to say, not to limit the power of the Governor General only to the situation in which you have given your consent. I ask you, Sir, also to refer to rule 22 (1), although it does not refer to motions for adjournment..... “ The Governor General may, within the period of notice..... ” I stop there one second. What is the scheme ? My friend says there is no resolution until it is moved and how are you going to disallow something which is not existing ?.....

Mr. President (The Honourable Sir Abdur Rahim) : It says " within the period of notice ".

The Honourable Sir Nripendra Sircar :and, therefore, before it has been moved in the House. That is my argument. The Governor General has the power to disallow it within the period of notice. I quite admit that it is a matter of analogy.

Mr. President (The Honourable Sir Abdur Rahim) : No leave is given for a Resolution.

The Honourable Sir Nripendra Sircar : That is not the point, but the question is whether the rules make any distinction between notice of resolution and resolution, or notice of a motion and a motion. I submit that in rule 22 (2) there is no limitation as to the point of time when the Governor General can exercise his power—absolutely none. My friends cannot rely on the word " notwithstanding ", the object of which is to make it perfectly clear that he retains the power, irrespective of your consent or not.

Then there are certain other arguments of Mr. Satyamurti, which are really meant for entertainment—there is not much in them. For instance, he said that it was only since he has come here that the Governor General has refused to allow these motions. That is a lion painted by himself ; he thinks the world trembles at his nod.....

Mr. S. Satyamurti : This is argument, I suppose—not entertainment !

The Honourable Sir Nripendra Sircar : Just as yours was argument. The real position being that before my Honourable friend came here, others were careful not to raise provincial subjects in this House ; but now that has become the fashion, and there is a necessity for the application of this rule. I will not go into the argument about the Chair being Brahma and all that. If you are Brahma, Sir, I say Shiva has destroyed this before it was born. Excuse the Irishism.

Mr. S. Satyamurti : Even Shiva cannot destroy what is not created !

The Honourable Sir Nripendra Sircar : I do not think I need take up your time further, Sir.

Mr. President (The Honourable Sir Abdur Rahim) : There is one thing that passes in my mind : I want to know what the substance of the argument is. It can be argued that supposing a very large number of Members have risen and want leave to be given, that might influence the judgment of the Governor General.

The Honourable Sir Nripendra Sircar : No, Sir, because it has been ruled out on the ground that it is not primarily the concern of the Governor General in Council.

Mr. President (The Honourable Sir Abdur Rahim) : No. I do not say that he is not competent to do it ; but the fact that a large number of Members want this matter to be discussed might influence his decision to a certain extent. That may be a point of substance.

The Honourable Sir Nripendra Sircar : I am prepared to meet that. Whether it is primarily a concern of the Governor General in Council or not certainly does not depend upon the number of Members who might wish to discuss it.....

Mr. S. Satyamurti : " May " disallow—not " shall ".

The Honourable Sir Nripendra Sircar : Whether it is primarily a concern of the Governor General in Council or not is a question not to be answered by counting heads.....

Mr. President (The Honourable Sir Abdur Rahim) : Both are there—one case at any rate.

The Honourable Sir Nripendra Sircar : As a matter of fact, this motion was disallowed on the ground I mentioned. I quite follow your point—and I shall take up the other branch, namely, detriment to public interests.

Mr. President (The Honourable Sir Abdur Rahim) : We are not concerned with the Governor General here : it is not strictly a legal question : it depends on many factors.

The Honourable Sir Nripendra Sircar : But not on the factor as to whether a particular motion is detrimental to the public interest or not : that does not depend on whether this is a matter which is wanted to be discussed by 2 or 25 men. The Governor General has got to make up his mind as to whether it is or is not detrimental to public interest. Equally he has to make up his mind as to whether this is primarily the concern of the Governor General in Council or not. I submit the counting of heads has nothing to do with it. The sole responsibility for that decision is on the Governor General—not on the Governor General in Council or the Government of India.

Mr. President (The Honourable Sir Abdur Rahim) : That is on the question of substance ?

The Honourable Sir Nripendra Sircar : Yes. As regards practice, my friends may say that the practice was wrong, but the practice is as I have said...

Mr. S. Satyamurti : No question has ever been raised before on this.

The Honourable Sir Nripendra Sircar : I do not know. It may have been raised. My friend's researches may have been more deep and elaborate than mine. I submit nothing has been said to justify a charge of the ruling which you gave after consideration.

Mr. President (The Honourable Sir Abdur Rahim) : Very well. I will consider the matter ; and in dealing with it, the delay caused in giving my order will be taken into account when considering the question of urgency of the motion.

The next one on the order paper is that of Mr. Chettiar : that depends also on the same question—it is with regard to Khan Abdul Ghafoor Khan. I understand that also has been disallowed by the Governor General.

ELECTION OF THE PROVINCIAL LEGISLATURE IN BIHAR.

Mr. President (The Honourable Sir Abdur Rahim) : Then comes Mr. Sheodass Daga's motion. Then there is Mr. Satya Narayan Sinha's somewhat similar motion—about the conduct of His Excellency the Governor of Bihar for taking active part in organizing parties to fight

[Mr. President.]

the Congress in the forthcoming elections of the local Assemblies and Councils, specially in view of the statement made by Lord Linlithgow, the present Viceroy, on his first arrival in Delhi in last April, that his Government would remain strictly neutral in the matter of election of the Legislatures. Does the Honourable Member wish to move his motion?

Mr. Satya Narayan Sinha (Darbhanga-cum-Saran : Non-Muhamadan) : Yes.

Mr. President (The Honourable Sir Abdur Rahim) : Has the Honourable Member leave of the House to move it?

The Honourable Sir Nripendra Sircar : Sir, I take objection. This is not a motion which ought to be moved. It ought to be disallowed. If you will kindly turn to page 20 of the Manual, it says—Standing Order 29—“a Member while speaking shall not reflect upon the conduct of His Majesty the King or the Governor General or any Governor or any Court of law in the exercise of its judicial functions”. Therefore, no speech is permissible, and the notice itself is a criticism of and a reflection on his conduct as being partial and so on. The position is that you cannot make a speech on this subject : I submit it ought not to be allowed.

Mr. President (The Honourable Sir Abdur Rahim) : Does Mr. Sheodass Daga wish to say anything?

Mr. Satya Narayan Sinha : I feel that the objection taken cannot be maintained.....

Mr. President (The Honourable Sir Abdur Rahim) : Is that so? The whole object of the motion is to criticise the conduct of the Governor and it cannot be done without going against that rule.

Mr. Bhulabhai J. Desai : With your permission, Sir, I shall reply to this objection. I submit, Sir, we do not get to clause 57 at all. We must begin with the objections which can be raised, and they are to be found in Rule 12. When the motion is made, any objection may be taken, but that has nothing to do with the present question. The only question now is whether the motion is in order. Assuming that the motion is made and a speech is made.....

Mr. President (The Honourable Sir Abdur Rahim) : Is not that part of a speech?

Mr. Bhulabhai J. Desai : I am coming to it shortly, Sir. The point is this. Under rule 12, no objection has been raised, and if no objection has been raised under rule 12, there is no objection.

Mr. President (The Honourable Sir Abdur Rahim) : I am bound by other rules also.

Mr. Bhulabhai J. Desai : But that is not an objection to the motion.

Mr. President (The Honourable Sir Abdur Rahim) : I think a similar question arose.

The Honourable Sir Nripendra Sircar : There is a ruling by you.

Mr. President (The Honourable Sir Abdur Rahim) : By me or by Mr. Patel, I don't remember.

The Honourable Sir Nripendra Sircar : By you, Sir.

Mr. Bhulabhai J. Desai : Sir, if I may so, not only before this House, but even in a Court of law I feel that a matter is better discussed by looking at the statutory form of the rules. Now, if you turn to clause 44,—this is a matter of great importance,—you will see what it says. Of course, whether they can get it disallowed after it is admitted by the Governor General it is another matter, but I suppose that is the next step they will take. Let me just deal with rule 12, which says :—“The right to move an adjournment of either Chamber for the purpose of discussing a definite matter of urgent public importance shall be subject to the following restrictions.”—Here the summary is correct. The right to move an adjournment is an inherent right of a Member, subject only to certain conditions laid down there.

Mr. President (The Honourable Sir Abdur Rahim) : Is the Resolution moved ?

Mr. Bhulabhai J. Desai : Objection has not been made on any of the grounds set forth in rule 12, but when made I shall reply to it. I am not supposed to imagine objections. Let us first say that the right can only be deprived of by reason of the fulfilment of any of the conditions in rule 12, and I say that not more than one matter can revive a discussion. The motion must not be such on which a Resolution could not be moved.

Now, as regards the Resolution, no objection has been taken that any of the conditions barring this right has been infringed in this case

Mr. President (The Honourable Sir Abdur Rahim) : I have got to see that it is in order.

Mr. Bhulabhai J. Desai : Notwithstanding, Sir, the Honourable the Law Member and the Honourable the Leader of the House, I thought you would decide on the discussions as best as you can.

Mr. President (The Honourable Sir Abdur Rahim) : It is my responsibility.

Mr. Bhulabhai J. Desai : Then let us look at page 38, rule 23, which says :

“Every Resolution shall be in the form of a specific recommendation addressed to the Governor General in Council, and no Resolution shall be moved in regard to any of the following subjects, namely :

- (i) Any matter affecting the relations of His Majesty's Government or of the Governor General, or of the Governor General in Council, with any foreign State.”

That does not come in :

- “(ii) Any matter affecting the relations of any of the foregoing authorities with any Prince or Chief under the suzerainty of His Majesty, etc.”

That does not come in :

- “(iii) Any matter which is under adjudication by a Court of Law having jurisdiction in any part of His Majesty's dominions.”

That also does not come in.

I submit, with very great respect, Sir, that a Resolution could be sent in these terms.

“This Assembly recommends to the Governor General in Council that no public servant may interfere in the next elections.”

[Mr. Bhulabhai J. Desai.]

There is nothing wrong in that.

Let us then look at 23. I say that none of the conditions affects this matter. Therefore, let us go back to rule 12, but under rule 12 none of the conditions arise. It is very much better, Sir, to refresh one's memory to see whether any of the conditions has got anything to do with it. I submit with great respect that none of the conditions has got anything to do with it, at all events none has been pointed out, and I ask leave to reply to it if any arise.

Then, Sir, let us take Standing Order 29, at page 108, on which my Honourable friend relies. That Standing Order says :

"The matter of every speech shall be strictly relevant to the matter before the Assembly."

This Standing Order 29 comes in during the course of the motion. Now, what I submit is this, and I wish to make it as clear as possible,—that unless any of the conditions under rule 12 and 23 are infringed, it is the right of a Member of this House to make a motion for adjournment. I say 23, because it is imported as the result of the last of the objections, namely, that a matter cannot be the subject of an adjournment motion which cannot be the subject of a Resolution.

Mr. President (The Honourable Sir Abdur Rahim) : I simply wanted to know.....

Mr. Bhulabhai J. Desai : I import that merely in that way, not by itself. Therefore, if we come to Standing Order 29, I submit that you are not entitled to take into account that objection at this stage. Either you deal with the rule as it arises, or to simply say that because of something I am going to say tomorrow therefore I should not be allowed to do something today—that position is entirely wrong. It is a pure matter of construction. Your assistance cannot be invoked under Standing Order 29 unless a speech is commenced in the House.

The Honourable Sir Nripendra Sircar : May I say a word ? My point is, if you read this notice of motion, it is certainly a speech reflecting on the conduct of the Governor, and your general powers are not limited by paragraph 12.

Mr. Bhulabhai J. Desai : Let us look into the General Rules of Procedure before the House to see whether it is so. The first one says the Members shall sit in such order as the President may appoint. The next one is :

"A member desiring to make any observations on any matter before the Assembly shall speak from his place, shall rise when he speaks, and shall address the President."

Again :

"The matter of every speech shall be strictly relevant to the matter before the Assembly."

So that, with very great respect to this second thought ingenuity, speech here is distinct from mentioning the matter before the Assembly. The matter before the Assembly is a particular resolution, not a subject. What possible dictionary can help this distinction is more than I can say.

The Honourable Sir Nripendra Sircar : The Oxford Concise Dictionary. (Laughter.)

Mr. Bhulabhai J. Desai : All I say is it is too concise. (Laughter.) The expression, "The matter of every speech" is a common one and it is well known to you that a legislature or even a testator may provide his own dictionary. I hope my learned friend knows that as well as I do, though he has ceased to practise for some time. So that I submit, mentioning the matter before the Assembly is not a speech. Let me read the notice of motion. This motion is about "the conduct of His Excellency the Governor of Bihar". The speech according to my Honourable friend is the mention of the words, "conduct of His Excellency the Governor of Bihar in taking an active part in organising parties".

The Honourable Sir Nripendra Sircar : Read clause (iv).

Mr. Bhulabhai J. Desai : It says :

"reflect upon the conduct of His Majesty the King or the Governor General or any Governor (as distinct from the Governments of which they are respectively the heads) or any Court of Law.....".

Mr. President (The Honourable Sir Abdur Rahim) : The wording of the motion is, "conduct of His Excellency the Governor of Bihar", and not as head of the Government.

Mr. Bhulabhai J. Desai : The point I am trying to make is I am only trying to point out how we shall meet the objection as and when that stage is reached. The point at present is only this, is the motion in order under rule 11 and there is no other point unless you are prepared to rule that the reading of the motion is a speech and therefore it cannot be read at all under Standing Order 29. That is an absurd length to which you should be asked to go, and the absurdity is more accentuated by the fact that the speech must relate to a matter and the matter must therefore be mentioned before considering whether any speech in respect of it is right or wrong. How can you decide that the speech is relevant unless the matter is before the Assembly? So, the matter must be before the Assembly before the speech commences. Therefore, this particular reading is not certainly barred by Standing Order 29 because a resolution is not barred by rule 12.

Mr. President (The Honourable Sir Abdur Rahim) : What the Secretary was drawing my attention to was a ruling by President Patel at page 45 of the Decisions from the Chair. It says :

"Honourable Members will find that the Standing Order 11 gives wide discretionary power to the President to admit or disallow a motion for adjournment. A matter may be urgent, it may be definite, it may be of public importance, and yet the President may in a proper case disallow such a motion."

Supposing the President is of opinion that there can really be no proper debate on the motion without reflecting on the conduct of the Governor of Bihar, according to that ruling, I should be justified in disallowing the motion under rule 11.

Mr. Bhulabhai J. Desai : I will read rule 11 :

"A motion for an adjournment of the business of either Chamber for the purpose of discussing a definite matter of urgent public importance may be made with the consent of the President."

Here the word used, is "may". Then look at rule 12

Mr. President (The Honourable Sir Abdur Rahim) : I think there are other rulings about it.

The Honourable Sir Nripendra Sircar : There is one by you, Sir.

Mr. Bhulabhai J. Desai : If they were all binding there was nothing more to be said, but inasmuch as they are not binding, the discretion that you have there is a judicial discretion controlled by rule 12, in which you have no right to take away a right under what is called a discretion. Supposing the wording was, "A motion for an adjournment of the business shall be made with the consent of the President", how will you read? What is said to be the ruling is that notwithstanding that the right otherwise exists there is some other power by which the President may disallow it.

The Honourable Sir Henry Craik : That is President Patel's ruling.

Mr. Bhulabhai J. Desai : I do not deny that it is President Patel's ruling, but because it is President Patel's ruling, it has no more value than any other body's. The point is consistently with rule 12 when a right is conferred upon a Member the limitations ought to have been under rule 12. The first is merely a formal rule. Deprivation of the right is laid down in rule 12, and it would be a strong construction for anybody to say that the right is not lost but the President may deprive you of that right. The right is perfectly there which is conferred upon you, and yet the President may say, "No, thank you. In my discretion—(it would be a capricious exercise of such discretion if any existed)—I deprive you of a right which I admit you possess". I know there are many ambitious judges on the other side who would summarily want to say such things, but I hope and trust that no discretion can deprive a man of his right at all. Therefore, my submission is there is no right in you, under the guise of the discretion under paragraph 43, to deprive a man of the right which is conferred upon him if none of the conditions of paragraph 44 are fulfilled. And I submit so far as Standing Order 29 is concerned, it would be wrong to disallow the motion. Supposing the thing is, as my Honourable friend said yesterday in reference to another subject, the thing speaks for itself.—supposing we get up and say, "The Governor ought not to have done that which he did", do we come under Standing Order 29? I am not speaking anything; I am not speaking on the motion. What I am speaking now is whether or not—otherwise the *reductio ad absurdum* is that I cannot even be heard on a point of order because it is a speech concerning a matter which can be objected to under Standing Order 29. I think there could not have been a worse *reductio ad absurdum*. Therefore, the real position which we have reached is this. If the motion is in order, it is the right of the Member simply to move it and sit down and not make a speech. If my friends wish to speak, we won't object. I may intimate to my friends that we will not make a speech. We will simply read the motion and sit down, because we think it is atrocious in itself. (*An Honourable Member on the Official Benches :* "All of you.") Yes. I have only stretched a point to its logical argument. Objection may be made at the time of speech and I therefore declare that we shall not make a speech. My friends may speak if they so wish. Then the House will know how to vote.

Mr. M. Ananthasayanam Ayyangar (Madras ceded Districts and Chittoor : Non-Muhammadan Rural) : There is another point I wish to raise.....

Mr. President (The Honourable Sir Abdur Rahim) : I have heard the argument fully.

Mr. M. Ananthasayanam Ayyangar : The Standing Order is *ultra vires*.....

Mr. President (The Honourable Sir Abdur Rahim) : I do not want 1 P.M. any more speech.

I have no hesitation in holding that so far as this motion of Mr. Satya Narain Sinha is concerned, it is not in order on the substantive ground that no motion like that can be moved without speeches reflecting on the conduct of the Governor of Bihar and it is not permitted under Standing Order 29. Vote has to be taken when a motion of this character is debated and there can be no debate without speeches reflecting on the conduct of the Governor of Bihar and on that ground alone this motion must be disallowed. As regards the technical point raised by Mr. Bhulabhai Desai I do not think I can take such a narrow view as to hold that the objection must be confined to the chapter relating to motions for adjournment. Under rule 11, the power given to the President is wide enough to give him discretion in proper cases to disallow a motion, though it may be urgent, though it may be definite and of public importance and I cannot conceive of a more substantial ground than that no speech can be made in support of it without infringing the conditions laid down in Standing Order 29.

The next motion is by Sardar Mangal Singh. That has also been disallowed.

GOVERNMENT'S BREACH OF PROMISE.

Mr. President (The Honourable Sir Abdur Rahim) : The next motion is by Maulana Shaukat Ali in the following terms :

"I propose moving an adjournment motion for discussing a definite matter of urgent public importance regarding the breach of the promise set forth hereunder :

The promises of the Government of India and of the United Kingdom made to the Muslims of India during the Great War that their holy places would remain immune and the *status quo* will be maintained :

That Arabia including Palestine would become united under a Muslim ruler :

That the Mandatory powers would make all the Arabian States independent at an early date."

I wish to know whether any Honourable Member takes objection to this motion.

Sir Aubrey Metcalfe (Foreign Secretary) : I wish to take objection to this motion on the following grounds. It has disclosed so far as I can discover no specific matter of recent occurrence and no definite matter of urgent public importance. The notice was, I understand, given on the afternoon of the 31st August (*An Honourable Member* : "Forenoon") and after the commencement of the Session. (*An Honourable Member* : "Before the commencement.") The Honourable Member's motion discloses no specific matter of urgent public importance and at any rate it has been given at a time long after any breach of the promise which may have been given must have occurred.

Mr. President (The Honourable Sir Abdur Rahim) : What is the breach of promise here contemplated ?

Sir Aubrey Metcalfe : I do not exactly know what the promise was. I have not been able to obtain any record.....

Maulana Shaukat Ali (Cities of the United Provinces : Muhammadan Urban) : May I give him the information ?

Sir Aubrey Metcalfe : I would certainly state that there has been no breach which has occurred so recently as to necessitate a motion of this kind.

Mr. President (The Honourable Sir Abdur Rahim) : You do not know what the breach is. I am not prepared to accept that as a point of order on which objection can be taken.

Sir Aubrey Metcalfe : I would also point out that the Government of India and the Governor General in Council are in no way concerned with the mandate held by the British Government over Palestine or anywhere else.

Mr. President (The Honourable Sir Abdur Rahim) : That is a point I cannot deal with. It is only the Governor General who can deal with it.

Sir Aubrey Metcalfe : In any case, the motion does not disclose any definite matter or anything about the actual promise.....

Mr. President (The Honourable Sir Abdur Rahim) : What about public importance ?

Sir Aubrey Metcalfe : I maintain that it is not. (*Cries of "Oh !"*) At any rate, I would ask you to disallow the motion on the ground that it is out of order as no definite matter of urgent or specific importance has been disclosed which could be discussed on the floor of the House.

Mr. President (The Honourable Sir Abdur Rahim) : When did this breach occur ?

Maulana Shaukat Ali : Sir, breaches have been occurring from the day the pledge was given to this day, and the whole Muslim world is agitated over this.....

Mr. President (The Honourable Sir Abdur Rahim) : Since when ?

Maulana Shaukat Ali : From the very beginning that they gave us the promise, these breaches are being continued today.

Mr. President (The Honourable Sir Abdur Rahim) : What date ?

Maulana Shaukat Ali : After the Assembly was adjourned, these unfortunate episodes have been occurring in Palestine and they have disturbed the whole Muslim world, and I gave notice on the very first day before the Assembly assembled. I am therefore, I submit, perfectly in order that it is a definite matter, and it is a very serious matter, i.e., the massacre of Arabs in Palestine, and I think my Honourable friend, the Foreign Secretary, ought to have welcomed my adjournment motion as it would have given him and his Government a chance to pacify the feelings of the Muslims, and I think he would have done a great service by accepting and helping me in bringing forward this motion so that he could have said what he had to say after the promises that were made to us. Sir, long, long ago the then Viceroy Lord Hardinge made in the Imperial Legislative Council a definite promise to Muslims in India on this question, and I think my

friend ought to have welcomed this occasion. May I read the promise ? The substance of the first promise was the official recognition of this policy by the Government of India in November 1914 and I would like the House to remember this date November 1914,—after the declaration of war with Turkey, and this was officially circulated in every town and village of India. Here is the promise :

“ The Mussalmans of India should rest assured.....”.

Mr. President (The Honourable Sir Abdur Rahim) : I do not want the Honourable Member to speak on the merits of the motion now, but only on the point of order. When was this promise made ?

Maulana Shaukat Ali : In 1914 and later also.

Mr. President (The Honourable Sir Abdur Rahim) : The promise then was made, I understand, in 1914. Then, when did the breach occur ? Then, as regards the Holy Places, which are the Holy Places ?

Maulana Shaukat Ali : Palestine, Iraq, Jazirat-ul-Arab, and the breach of the promise was made recently after the adjournment of the House. The breach is occurring every day now. The Arabs are being massacred to-day.

Mr. President (The Honourable Sir Abdur Rahim) : The motion that has been given notice of by Maulana Shaukat Ali may be of great public importance, in fact I believe it is, so far at any rate as a very large section of the public of India is concerned.

Mr. S. Satyamurti : All of us, Sir, the whole of India.

Mr. President (The Honourable Sir Abdur Rahim) : The question still remains whether it could be made the subject of a debate on a motion for adjournment under the rules of this House. It must be a definite matter, and it must be one of urgency, something in the nature of an emergency. Well, I must say that the motion, as worded, is extremely vague and it does not give any date when the breach occurred of the promise as regards the Holy Places remaining immune and the *status quo* being maintained. If the Honourable Member refers to Palestine and the settlement of Jews there, that undoubtedly occurred very long ago, several years ago, and cannot be a matter of urgent importance within the meaning of the rule ; and I doubt whether the motion as worded can be said to relate to a really definite matter. I, therefore, disallow this motion.

The next motion is in the name of Sayid Murtuza Sahib Bahadur. This has been disallowed by His Excellency the Governor General.

MR. SUBHASH CHANDRA BOSE.

Mr. President (The Honourable Sir Abdur Rahim) : The last motion is by Mr. Giri regarding the progressive deterioration in the condition of health of Mr. Subhash Chandra Bose and the unsatisfactory nature of the answers given by the Government in this connection. Mr. Giri.

The Honourable Sir Nripendra Sircar : Sir, I have an objection, but it may not be necessary to press it. I want to make a statement, and if my Honourable friend will press this motion in spite of my statement, then I shall put forward my objections, but not before. Notice, I believe, was given on Tuesday and the same day at five o'clock I took it upon myself

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to send a telegram to Mr. Bose inquiring whether he had required examination by a Calcutta doctor, and, in any case, irrespective of whether he had done that or not, he wanted examination by a Calcutta doctor now. I also sent a telegram to the Government of Bengal, but I committed an error of judgment in telling them that this motion would not come up before Monday; I thought some of the other motions would come on, and I did not know that the other motions would be withdrawn. That explains why no reply has come from them. Sir, I have got a reply from Mr. Bose from which I gather that although he does not complain about the refusal of examination by a Calcutta doctor, he says in the end that he would prefer to be examined by one of the two doctors he named,—Dr. Sir Nilratan Sircar and another. Upon that, I sent a telegram, with the approval and concurrence of my Honourable colleague to my right, pressing upon the Government of Bengal to arrange for the examination of Mr. Bose by one of the doctors named by him. I have not got a reply, probably due, as I explained, to the fact that this matter was not expected to come up before Monday, but I have not the slightest doubt that he will be examined by Dr. Sir Nilratan Sircar or the other doctor. That being the position I do not want to press my technical objection, unless my Honourable friend wants to move. If he does move, then I shall press my objection.

Mr. V. V. Giri (Ganjam *cum* Vizagapatam : Non-Muhammadan Rural) : May I know if the report of the medical examination will be placed upon the table of this House?

The Honourable Sir Nripendra Sircar : I may have no objection to placing it on the table of the House, but in that case it has got to be printed as parliamentary proceedings and that about the health of a person, I don't know if we could publish it like that, and further the doctor or the patient may object.

Pandit Govind Ballabh Pant (Rohilkund and Kumaon Divisions : Non-Muhammadan Rural) : Our future course of action might depend on the report.

The Honourable Sir Nripendra Sircar : I wish to guard against two things, one against making any definite promise, and, secondly, I do not know whether medical etiquette would permit of such a thing being published; but I may have no objection to giving the purport to my friend, if they have no objection.

Dr. G. V. Deshmukh (Bombay City : Non-Muhammadan Urban) : There is no objection from the medical point of view.

The Honourable Sir Nripendra Sircar : Doctors differ. (Laughter.)

Dr. N. B. Khare (Nagpur Division : Non-Muhammadan) : And patients suffer. (Laughter.)

Mr. V. V. Giri : Sir, in view of the statement made by the Honourable the Law Member, I do not press my motion.

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

The Assembly re-assembled after Lunch at Twenty-Five Minutes to Three of the Clock, Mr. Deputy President (Mr. Akhil Chandra Datta) in the Chair.

THE INDIAN RAILWAYS (AMENDMENT) BILL—*concl'd.*

The Honourable Sir Muhammad Zafrullah Khan (Member for Commerce and Railways) : Sir, when the discussion of the adjournment motion was taken up yesterday, I was dealing with the courses that were open to a *bona fide* traveller to adopt before any question of criminal liability would arise. I had explained that it was open to him in case he failed to obtain a ticket before the commencement of his journey to obtain a certificate from some officer authorised to grant the same. Failing even that, it was open to him to notify before detection some officer or servant of the railway travelling with the train, in which case he would be liable only to a very small excess charge. Now, suppose that for some reason or other even that could not be done. The next stage would be that he would be asked to pay the single fare *plus* the excess charge which he might be liable to pay under section 113 of the Railways Act. Surely if he is a *bona fide* traveller and an honest traveller he would recognise that, being found on the railway without a ticket, it is at that stage, at any rate, a civil liability of his to pay up the charges which he has become liable to pay under section 113 of the Railways Act. If he pays up, then the question arises whether there is still a possibility of his being harassed further by a prosecution.

Now, Sir, it has been pointed out that under the present law it is possible that in spite of his paying up, he might be prosecuted, that even under the proposed amendment his prosecution is still possible. Attention was drawn particularly to that feature of the law by Mr. Muhammad Ahmad Kazmi. But that is another matter to which I shall come later. Stopping here for a moment, it will not be contended that if in cases of payment there was no question of any prosecution, there would be no harshness in the law whatsoever. Let us for a moment leave aside the *bona fide* traveller who has paid up on detection and consider the case of a traveller who contends that he is an honest *bona fide* traveller but is found without a ticket, has not obtained a certificate, has not notified before detection that he is travelling without a ticket and does not pay up on detection. Is it seriously contended that it is a hardship in his case, supposing all this is established, to call upon him to satisfy the Court that, in spite of all these features, his intentions were honest? Again, the presumption against him is not sought to be made conclusive though to any ordinary man it would appear to be conclusive. He still has the chance of escaping punishment on a criminal charge by satisfying the Court that he did not intend to defraud the railway. That is the situation which would arise with regard to this class of travellers.

Now, Sir, it has been said "You are reversing all canons of criminal jurisprudence by attempting, under these circumstances, to place the burden of proof upon a passenger who is found travelling without a proper pass or ticket." In this connection, I am afraid there has been a good deal of misapprehension with regard to the position which the Honourable the Law Member tried to clear up. Subsequent speakers have tried to show that the amendment does seek to make a difference in the present law and that therefore in some manner or other the Honourable the Law

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Member's submission was not tenable. As I have said, I am afraid there has been some misapprehension on this point. The Honourable the Law Member did not contend that the amendment did not seek to make a change in the law in that respect. It is true that under the present law the prosecution have to prove (1) that the entry was in contravention of section 68 of the Railways Act, that is to say, the accused was travelling without a proper pass or ticket or proper authority, and (2) that his intention was to defraud the railway. The second element in the offence might be established either by the circumstances which may be such from which an inference might be legitimately drawn that his intention was dishonest, or some positive act or omission might have to be proved. But that is a question of the quantum of proof or the method of proof. It is correct that under the law as it stands at present (section 112 of the Railways Act), the burden of proof is on the prosecution and it is further correct that it is sought that the burden of proof with regard to the second element should in future be laid upon the accused. This change is sought to be made and nobody has on this side contended that that would not be the effect of the amendment. What the Honourable the Law Member put to one of the Honourable Members opposite was that once you had arrived at the stage which I have indicated, it was not a reversal of the ordinary canons of jurisprudence to lay down that in those circumstances the burden ought legitimately to be upon the accused to satisfy the Court that, in spite of all that had been proved, his intentions were honest. There is a change, but all that was contended was that the change was not so abnormal as it had been sought to be made out by Honourable Members who spoke from the Opposite benches.

Now, let us take one or two illustrations in this behalf. You, Sir, I believe, when you were speaking on this motion yesterday, made the point that no man can be hanged until it is proved positively that he is guilty of murder. Let me take that extreme illustration itself and carry the matter a little further. The prosecution in a case of murder must prove that the accused caused the death of the person in respect of whose death he is being tried with a certain intention. Now it is not only possible but it often happens that a man is perfectly justified in killing another. Again there are a large number of cases in which if a man is not entirely justified in killing, the killing does not amount to murder. Such cases are within everybody's knowledge. In the first class of cases, that is the case of excusable or justifiable homicide, the accused has acted perfectly honestly in the exercise of his rights and perfectly legally. Therefore, he is a *bona fide*, honest killer. Yet once it is established that he has brought about the death of the person in respect of whose death he is being tried, it is for him to establish by positive proof the circumstances which would enable the Court to hold, for instance, that he was acting in the exercise of the right of private defence. Once certain facts are established, the burden would be shifted. It is not for the prosecution to prove, for instance, that he was not acting in the exercise of the right of private defence or in a case where it is contended on behalf of the accused that his act does not amount to murder, it is not for the prosecution to prove that there was no provocation, that there was no sudden fight or quarrel. If any of these things are pleaded it is for the accused to prove positively and satisfy the Court that he acted in the exercise of the right of private defence or that he was acting under grave and sudden provocation.

or that death was caused in a sudden quarrel and so on, so that it is perfectly true, as the Honourable the Law Member contended, that though the ordinary principle is—and that principle would still continue to hold good in the class of case with which we are dealing even under the amended law—that the initial onus is on the prosecution, in a very large number of cases, once certain elements have been established, an exception or circumstances which would exonerate the accused from criminal liability would have to be proved by the accused. Let us take a clearer instance than that. The first illustration to section 114 of the Evidence Act says that if a person is found in possession of stolen property shortly after it has been stolen, it is for him to establish that he came by the property honestly. It has been said that it is possible in a very large number of cases on the railways that when you find a man without a ticket his intentions need not necessarily have been dishonest, similarly if you find a man in possession of stolen property, shortly after it has been stolen, he need not necessarily have come by it dishonestly. He may have come by it quite honestly without knowing or without having reason to believe that the property is stolen property.

Mr. M. Ananthasayanam Ayyangar (Madras ceded Districts and Chittoor : Non-Muhammadian Rural) : May presume, and not shall.

The Honourable Sir Muhammad Zafrullah Khan : The charge against him would be under section 411 of the Indian Penal Code, that is to say, being in possession of stolen property knowing it to have been stolen. The charge is that he knew that it was stolen and all that you have to prove in order to enable the Magistrate to raise the presumption that there is a *prima facie* case, is that he was found in possession of stolen property shortly after the theft took place. Knowledge of the property being stolen will then be presumed and unless the man satisfies the Court that he came by the property honestly his conviction would be perfectly justified. That is my submission with regard to the burden of proof : that the failure of a passenger to take any of these steps, to obtain a certificate, to notify before detection, to pay up on detection should raise a presumption that his intention was dishonest. He must make immediate payment or show circumstances from which an inference could legitimately be drawn that his intentions were honest. That is all the change that the amendment seeks to effect in this respect. Here I may deal with two matters that I said that I would deal with subsequently.

Mr. M. Asaf Ali (Delhi : General) : I want some elucidation of a point. I believe the Honourable Member says in his Statement of Objects and Reasons that the burden of proving dishonest intention is not always easy to discharge if it is placed on the prosecution. How does the Honourable Member think it will be easier for the accused to discharge it ?

The Honourable Sir Muhammad Zafrullah Khan : I submit I have detailed several factors by establishing any one of which the presumption can be rebutted. I have taken an extreme case, where I think there can be no possible answer to the charge, that is to say where a man does not buy a ticket, does not obtain a certificate, does not notify before detection that he has not got a ticket, does not pay up when he is detected. I would say in that case he would find it extremely difficult to prove his honest intention. After all if the man is honest, he would certainly do one of these things. Nevertheless it may be possible in very rare cases that he

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may yet be honest and surely he alone would know the circumstances which indicate his honesty and he alone will be in a position to prove them. I suppose the Honourable Member's contention is that even in such cases where a man is found out and on detection refuses to pay or fails to pay, you should still hold that he is innocent until the prosecution proves further facts to show that he is guilty. That is a matter over which I join issue with the Honourable Member. The irresistible presumption in such a case should be that the accused is guilty.

I was saying, Sir, that I had reserved two points in this respect on which I said I would make further submissions. One, that the honest traveller ought to obtain a certificate. In this connection one Honourable Member pointed out that recently some of the railways had withdrawn from railway servants—I think the instance given was that of guards—the power to grant such certificates. All that I need submit is that it is a necessary part of these amendments, in case this matter of the burden of proof is accepted as it is put forward in the amendments, that provision must be made that on each train there should be somebody who should have the authority to grant certificates. That goes without saying. You cannot say that a man has failed to obtain a certificate when no provision has been made for a certificate being granted. That is a matter which can be considered in Select Committee, as to who should have the power of granting certificates.

Another matter which I left over was the question whether a person who on detection or without detection pays up the fare and the excess charge that may be due from him can still be prosecuted. A fear has been expressed that in spite of his paying up, he might still be harassed and as a matter of fact a reference was made to the opinion of the Burma Government by Mr. Satyamurti yesterday that a man who is in the middle of a long journey and who may be willing to pay the fare and the extra charge due from him might be unduly harassed and might be arrested in the middle of his journey and produced before a Magistrate with all sorts of unpleasant consequences following.

Mr. Ghansham Singh Gupta (Central Provinces Hindi Divisions : Non-Muhammadan) : Fare from which station to which station ?

The Honourable Sir Muhammad Zafrullah Khan : The fare according to the rules. If it can be shown from which station he started, then he will pay the fare from that station up to the station to which he desires to continue the journey. If not, then from the last checking station. I should like to know what objection can there possibly be to this.

Mr. Ghansham Singh Gupta : How will he prove that he started from any particular station ?

The Honourable Sir Muhammad Zafrullah Khan : If a man has got on to a railway carriage without obtaining a ticket, should the position be that unless the railway can show he started from a particular station they should not be able to recover anything from him ?

Pandit Lakshmi Kanta Maitra (Presidency Division : Non-Muhammadan Rural) : Sir, may I interrupt the Honourable Member for a moment ?

The Honourable Sir Muhammad Zafrullah Khan : You may, though I do not like it.

Pandit Lakshmi Kanta Maitra : I understood the Honourable Member to say yesterday and also today that there will be some person in every running train who will have the authority to grant certificates. I also understood the Honourable Member to say that if any *bonâ fide* passenger who could not buy a ticket can intimate to him before detection that he was travelling without a ticket, he would be exempt from the penalties. Am I correct ?

The Honourable Sir Muhammad Zafrullah Khan : No, the Honourable Member is not correct. I said that in such a case as has been cited by the Honourable Member he would subject himself only to the lesser excess charge prescribed by section 113 of the Railways Act, which in the case of a third class passenger is as small as two annas.

Pandit Lakshmi Kanta Maitra : But my difficulty is that in most of the important railways there are local trains and they stop at small stations which are situated a mile or a mile and a half apart.

The Honourable Sir Muhammad Zafrullah Khan : I think objection was taken when Sir Abdul Halim Ghuznavi said that there were stations one mile apart, and it was said there were no such stations.

Pandit Lakshmi Kanta Maitra : Assuming there are such stations, I hope the Honourable Member knows that there is such a thing as stop-start in local trains. These trains stop for a very short time leaving very little time for passengers to shift about. Is it possible in such a case to walk up to the man and inform him that he is travelling without a ticket and he is anxious to pay ? In the meantime he will have passed another 10 or 12 stations. That is one aspect of the matter. The other aspect is that there are long distance trains which stop at intervals of 50 or 60 miles. In such a case how is it possible to inform before detection ?

The Honourable Sir Muhammad Zafrullah Khan : All that the Honourable Member is trying to make out is that in certain cases it may not be possible to notify before detection. Well, it may not be possible ; I am not saying it is possible in every case. But it is an expedient that may be resorted to in a very large number of cases. I am afraid all the time the attitude of some Honourable Members is to throw the burden on the railways whereas a person who travels without a ticket places himself in a position where he becomes liable to the excess charge. And all that I am trying to explain is that facilities are provided, which it may not be possible to take advantage of in every possible case, but there are reasonable facilities provided by the adoption of which he can at least reduce the amount of the excess charge. It appears to be the attitude of some Honourable Members that by travelling without a ticket a man is laying the railway system under a huge obligation, and that being the case, unless they provide certain facilities,—and the burden of showing that in each case the facilities were available should be on the railways,—the railways should be penalised. I have admitted that if the Honourable Member means that in certain cases it would not be possible to notify before detection, that is quite true. There may be cases in which, under section 113, a person becomes liable to pay the higher penalty. There is no question and no suggestion here that section 113 should be amended so as to take away this higher penalty. It would still be possible for him, however, if

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he afterwards convinces the railway that he was for some reason or other not liable to the penalty, to get a refund ; and an instance was cited from his own personal experience by one of the Honourable Members on that side on the first day that this question was under discussion that he did obtain a refund.

Sir, I was about to deal with the case of a traveller, whether he was

3 P.M.

an honest traveller to begin with or not, who on detection pays up the amount which he has become liable to pay.

I said the fear was expressed that he might nevertheless be prosecuted. My submission with regard to that is,—and I hope Honourable Members will make a careful note of that because, I think, this would meet a very large number of objections that have been raised,—that this fear was expressed also when the matter was being considered in the Central Advisory Council of Railways, and I gave an assurance then which I repeat, that I am prepared to have the amended section 112 so expressed that in every case,—it does not matter whether of a *bona fide* traveller or a *mala fide* traveller,—where the charge due is paid up there shall neither be interruption of his journey nor arrest nor prosecution. That would meet, I venture to think, 99 per cent. of the objections that have been raised that you will drag a man unnecessarily to the Courts, you will seek to do this and to do that to him, that for a civil liability you want to substitute criminal liability, and so on. Where this civil liability has arisen and it is discharged, then irrespective of the fact whether the circumstances indicate that the man was travelling *bona fide* or whether they indicate that his intention was fraudulent, there shall be no prosecution. And this is not a question of merely giving an assurance that this shall not be done. It is a matter of embodying it in the section itself, so that there shall be no power to prosecute once a payment is made. As I have said, I venture to think that a good many of the objections would in that way be met. I think after that there need be no apprehension of persecution of people unnecessarily or maliciously by low-paid railway subordinates.

Mr. M. Ananthasayanam Ayyangar : Pay the charge with or without excess ?

The Honourable Sir Muhammad Zafrullah Khan : The charge which under the Statute he has become liable to pay and he is bound to pay.

Mr. M. Ananthasayanam Ayyangar : That is, with the excess ?

The Honourable Sir Muhammad Zafrullah Khan : Yes, with the full excess charge in some cases and with the lower excess charge in other cases. That he cannot escape. After all in order to get this amendment I cannot go to the extent of saying that the railways will be generous enough to forego a claim which has been established by Statute under section 113.

Then, the second main matter which was criticised was the raising of the punishment, that is to say, that under the present provisions of the law a traveller who is found travelling without a ticket with intent to defraud the railways is liable to a fine which may extend to one hundred rupees ; and by the amendment it is sought to be enacted that such a person,—and now we have arrived at a stage where such a person means a person who is travelling without ticket with intent to defraud and

on detection fails to pay or refuses to pay,—that such a person should be liable to a term of rigorous imprisonment which might extend to two months or to a fine as the case may be. Remember after all that the punishment would be inflicted only in the case of a person who is proved to be a dishonest traveller. That being so, I understood that there is no anxiety with regard to the stringency of the punishment itself. The criticism was what purpose will it serve? The taxpayer will have to maintain this class of person in jail, as they will certainly not be able to pay; and therefore what is the use of subjecting them to a term of rigorous imprisonment instead of a fine? With regard to that my submission is that even under the present law such a person who is prosecuted and convicted does go to jail, if he has no means of paying, in default of payment of fine, and he can be sent to jail for as long a period as four months. Local Governments have complained that in such cases simple imprisonment in default of payment of fine is no punishment to the man; there is no deterrent effect upon him; he is quite willing to undergo a course of simple imprisonment. The whole object behind making the punishment more stringent is to make it more deterrent in the case of this class of person; that is to say, the person who at present goes to jail for a term of simple imprisonment in default of payment of fine which, as I have said, may extend to four months under the law but who might be deterred from taking this risk if he knew that the imprisonment would be rigorous and not merely simple. It was said the taxpayer would have to pay, but the taxpayer does pay at present. As I have said representations have been made by Local Governments that the taxpayer is under the present law carrying this entirely unnecessary burden and the proposed amendment is an attempt to reduce that charge—at any rate, the maximum period of imprisonment which a person like that may have to suffer under the amendment would be two months and not four as at present, to which he may be sentenced in default of payment of fine and the rigorous character of the imprisonment might be a deterrent. As regards the question of the taxpayer having to shoulder this burden or charge, there are two aspects of it. One is the aspect that I have already submitted, that in any case the taxpayer is bearing this charge even now; and that as the result of the proposed amendment there might be a smaller charge to bear. The other is that the loss to the railways also, if Honourable Members would only realise it, is a burden on the taxpayer. It is not as if in case there were no penalty, there would be no loss to the taxpayer. This minimum loss of 50 lakhs, which has been estimated on behalf of the railways, is also a loss to the taxpayer. He has to make it up, as the larger portion of the railways belongs to the State—it has often been described as the biggest national asset: and any leakage in the income which can be stopped and is not stopped is a direct loss to the taxpayer and an additional burden upon him. But if one presses this doctrine to the extreme, that in all societies there is an irreducible minimum of people whom, no kind of legislation could make honest, and that therefore there should be no penal legislation against this class of person—if this doctrine were pressed to the extreme, I am afraid the worst elements in society would have to go unpunished for all sorts of misconduct.

The third matter to which objection has been taken is the power of arrest. It has been pointed out that under section 132 of the Railways Act, as it stands at present, there is the power of arrest under certain

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circumstances : for instance, if there is reason to believe that a person who has been found travelling without a ticket is giving a wrong address, he might be arrested. It was pointed out that we have that power already, and it is only our fault if we do not use it when we find that people have given wrong or false addresses. I am still unable to appreciate by what manner of means it is possible for a ticket examiner to decide that the address and name which is being supplied to him is wrong. Unless there are special circumstances in any particular case showing that a wrong address has been given, he would have to accept, as he does now accept, the name and address given to him. With regard to this, I might submit to the House that one Magistrate who has had sixteen years' experience of these cases has reported that in not one single case where only the name and address of the delinquent had been taken, did he subsequently turn up to answer the charge ; and every year there are a very large number of cases of people who are allowed to go away on giving their names and addresses and who fail to appear subsequently to answer the charge. If any presumption can be drawn from past experience, the presumption is that in 99 per cent. of the cases where a man is allowed to go away on giving his name and address, the name and address given are wrong. But here again I may point out that just as in the case of the burden of proof which only arises in the case of prosecution or in the case of punishment which can only result upon conviction, I am prepared to implement the assurance that I have already given that the law itself, the words of the Statute, shall make clear that in case the charge leviable is paid there shall be no question of arrest—neither arrest, nor detention, nor interruption of journey, nor prosecution. I am further prepared to consider the question, in case it pleases the House to send this matter to a Select Committee, whether the power of arrest should be conferred upon all grades of railway servants or whether, as has been suggested, it should be confined to certain grades of railway servants. I am prepared to go further than that and to consider the question as to whether it is not possible—I have not taken legal advice on the matter and therefore I cannot at present indicate any definite view—but I am prepared to explore the question whether it would not be possible to make some provision in case the power of arrest is restricted to certain grades of railway servants, that there should also be power to accept bail then and there, so that a man need not be kept in confinement even for the period which would have to elapse before he can be produced before a magistrate. I must emphasise that even this kind of precaution would only arise in the case of a person who, as I have said, would be subject in the mind of every reasonable man to an almost irresistible presumption that he was travelling without a ticket dishonestly.....

Mr. M. Asaf Ali : What about the power to compound ?

The Honourable Sir Muhammad Zafrullah Khan : The question of composition would not arise : if the man would pay up he would not be arrested. But that again is a matter that I am perfectly willing to consider ; unless I find that there is a flaw in it somewhere which would make all these provisions nugatory, I am prepared to consider it favourably.

These are my submissions on these three main questions to which objection has been taken, and I would again repeat that with the assur-

ance that I have given that I am prepared to insert certain safeguards in the Statute itself, I do not imagine that any reasonable kind of apprehension could still be left in the minds of Honourable Members that these amendments might be used for the purpose of persecution or subjecting to harassment or harsh treatment certain classes of passengers.

Before I conclude there is one other matter to which I desire to make a reference, and it is this. It was said in the course of the debate that the amendment that we are seeking to make in the present law is something extraordinary, that there is nothing like it in other countries, at any rate so far as the power of arrest is concerned, that it is a pure civil liability and people would be unnecessarily harassed and persecuted if they were arrested because they happened to be travelling without a ticket. I have here a summary of the laws of some other countries in this respect, which has been obtained by correspondence with the railway authorities in those countries; and I shall give a brief resume of the law in those countries. The countries are Ceylon, Kenya, Federated Malay States, Siam and South Africa.....

An Honourable Member : All backward countries, all uncivilised countries.

The Honourable Sir Muhammad Zafrullah Khan : I do not know how the people of those countries, Ceylon, Kenya, Siam or South Africa, would regard this stricture which is passed on them. I do not know that it is contended, for instance, that the dominion of South Africa is more backward than India. In all these countries a refusal to pay the fare renders a passenger liable to arrest and imprisonment. In Ceylon travelling without a ticket is *ipso facto* an offence; travelling without a ticket with intent to defraud is met with a higher penalty than the simple offence of travelling without a ticket.....

Mr. M. Asaf Ali : Is there any instance of a white country?

The Honourable Sir Muhammad Zafrullah Khan : Is South Africa not a white country?

Mr. M. Asaf Ali : Is it?

The Honourable Sir Muhammad Zafrullah Khan : In South Africa the whole of the population, whether English, Dutch, German, Indian or Hottentot would be subject to this law.....

Pandit Govind Ballabh Pant (Rohilkund and Kumaon Divisions : Non-Muhammadan Rural) : They are barbarous people obsessed by racial ideas.

Mr. M. Asaf Ali : Not in a white country.

The Honourable Sir Muhammad Zafrullah Khan : The South African law does not make any distinction between race or caste or colour. Nor does the Ceylonese law, nor the Kenya law. Again, in Kenya any person wilfully refusing to pay the fare and excess charge is liable to imprisonment for one month or a fine of £5.....

Sir Muhammad Yakub (Rohilkund and Kumaon Divisions : Muhammadan Rural) : Give us the same status as the South Africans have in their country, then we will accept these laws.

The Honourable Sir Muhammad Zafrullah Khan : Surely, Sir, if the argument, though entirely irrelevant, is that the person to whom such a law is sought to be applied should have the same political status as the person to whom these laws, to which I have referred, are applicable, even then it will not be contended that my friend, Sir Muhammad Yakub, has not in this country a higher status than any Muhammad Yakub would have in the Dominion of South Africa. I certainly think he has got a very much better status here than a Muhammad Yakub would have if he were in South Africa.

Sir Muhammad Yakub : Muhammad Yakub wants the same status in India as the South Africans have in South Africa.

The Honourable Sir Muhammad Zafrullah Khan : Sir Muhammad Yakub has a very much higher status in this country than his countrymen have in South Africa where they have been domiciled for so many years. There is really no question of political status. The question was whether in other countries people could be arrested if they travelled without a ticket, and I have given instances of several neighbouring countries and of one across the ocean where people can be arrested for offences of this and a similar kind. It does not mean that they cannot be arrested in other countries. These are the only countries from which we have been able to obtain information in regard to this matter, and it cannot be contended, as was contended by some Honourable Members, that this is an extraordinary provision, that if a man travels on the railways without a ticket he should be liable to arrest.

Then, Sir, the last point to which I desire to refer is one with which we are not directly concerned, but inasmuch as some time was spent by one Honourable Member in making reference to it, I might say a word or two on it before I sit down, and that is a matter which was alluded to by my Honourable friend, Pandit Lakshmi Kanta Maitra. He said this case happened some time last year

Pandit Lakshmi Kanta Maitra : I can give the date and a copy of the judgment also. It is dated 13th August, 1935.

The Honourable Sir Muhammad Zafrullah Khan : The day after he mentioned this case, I directed that the judgment in that case as well as other relevant papers should be sent up. I shall certainly go into the matter. It is very often found that when a matter is stated by one party, only one aspect of it is stressed, but if, on going through all the papers, I find that anybody on the side of the Railways was guilty of high-handedness or oppressive conduct, such person will be duly dealt with.

Pandit Lakshmi Kanta Maitra : Thank you, Sir ; but don't sack the magistrate, that is my fear.

The Honourable Sir Muhammad Zafrullah Khan : It is not within my power either to appoint magistrates or to dismiss them.

Pandit Lakshmi Kanta Maitra : I can give you a copy of the judgment.

The Honourable Sir Muhammad Zafrullah Khan : I have already sent for it, as also for the relevant papers. But may I assure the Honourable Member that where a judicial or a non-judicial authority on evidence submitted to it has given a considered finding, there can be

no question of penalising that authority in any way for the finding it has given, however high and securely placed the persons may be whom such finding may adversely affect.

Mr. Deputy President (Mr. Akhil Chandra Datta) : The Chair will now put the amendment of Dr. Ziauddin Ahmad :

“ That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st December, 1936.”

The Assembly divided :

AYES—65.

Abdul Matin Chaudhury, Mr.
Abdullah, Mr. H. M.
Aney, Mr. M. S.
Asaf Ali, Mr. M.
Ayyangar, Mr. M. Ananthasayanam.
Azhar Ali, Mr. Muhammad.
Badrul Hasan, Maulvi.
Bajoria, Babu Baijnath.
Bhagavan Das, Dr.
Bhagchand Soni, Rai Bahadur Seth.
Chaliha, Mr. Kuladhar.
Chattopadhyaya, Mr. Amarendra Nath.
Chettiar, Mr. T. S. Avinashilingam.
Das, Mr. B.
Das, Pandit Nilakantha.
Datta, Mr. Akhil Chandra.
Desai, Mr. Bhulabhai J.
Deshmukh, Dr. G. V.
DeSouza, Dr. F. X.
Essak Sait, Mr. H. A. Sathar H.
Gadgil, Mr. N. V.
Giri, Mr. V. V.
Govind Das, Seth.
Gupta, Mr. Ghansham Singh.
Hans Raj, Raizada.
Hidayatallah, Sir Ghulam Hussain.
Hosmani, Mr. S. K.
Jedhe, Mr. K. M.
Jogendra Singh, Sirdar.
Joshi, Mr. N. M.
Kailash Behari Lal, Babu.
Khan Sahib, Dr.
Khare, Dr. N. B.

Labiri Chaudhury, Mr. D. K.
Lalchand Navabai, Mr.
Maitra, Pandit Lakshmi Kanta.
Mangal Singh, Sardar.
Mudaliar, Mr. O. N. Muthuranga.
Muhammad Ahmad Kazmi, Qazi.
Murtuza Sahib Bahadur, Maulvi Syed.
Paliwal, Pandit Sri Krishna Dutta.
Pant, Pandit Govind Ballabh.
Parma Nand, Bhai.
Raghubir Narayan Singh, Choudhri.
Rajah, Rao Bahadur M. C.
Raju, Mr. P. S. Kumaraswami.
Ranga, Prof. N. G.
Saksena, Mr. Mohan Lal.
Sant Singh, Sardar.
Satyamurti, Mr. S.
Sham Lal, Mr.
Shaukat Ali, Maulana.
Sheodass Daga, Seth.
Siddique Ali Khan, Khan Sahib Nawab.
Singh, Mr. Ram Narayan.
Sinha, Mr. Anugrah Narayan.
Sinha, Mr. Satya Narayan.
Sinha, Mr. Shri Krishna.
Som, Mr. Surya Kumar.
Sri Prakasa, Mr.
Umar Aly Shah, Mr.
Varma, Mr. B. B.
Yakub, Sir Muhammad.
Yamin Khan, Sir Muhammad.
Ziauddin Ahmad, Dr.

NOES—47.

Abdul Hamid, Khan Bahadur Sir.
Acott, Mr. A. S. V.
Ahmad Nawaz Khan, Major Nawab Sir.
Ayyar, Diwan Bahadur R. V. Krishna.
Bajpai, Sir Girja Shankar.
Bhat, Mr. M. D.
Buss, Mr. L. C.
Chapman-Mortimer, Mr. T.
Craik, The Honourable Sir Henry.
Dalal, Dr. B. D.
Das-Gupta, Mr. S. K.
Dey, Mr. B. N.
Fazli-Haq Piracha, Khan Bahadur
Shaikh.
Ghiasuddin, Mr. M.
Ghuznavi, Sir Abdul Halim.

Graft, Mr. C. F.
Griffiths, Mr. P. J.
Grigg, The Honourable Sir James.
Hossack, Mr. W. B.
Hudson, Sir Leslie.
James, Mr. F. E.
Jawahar Singh, Sardar Bahadur Sardar
Sir.
Khurshaid Muhammad, Khan Bahadur
Shaikh.
Lloyd, Mr. A. H.
Mehr Shah, Nawab Sahibzada Sir
Sayad Muhammad.
Metcalf, Sir Aubrey.
Milligan, Mr. J. A.
Morgan, Mr. G.

NOES—*contd.*

Mudie, Mr. R. F.
 Mukherjee, Rai Bahadur Sir Satya Charan.
 Murid Hossain Qureshi, Khan Bahadur Nawab Mahdum.
 Naydu, Diwan Bahadur B. V. Sri Hari Rao.
 Noyce, The Honourable Sir Frank.
 Rau, Mr. P. S.
 Robertson, Mr. G. E. J.
 Roy, Mr. S. N.
 Sarma, Sir Srinivasa.

Scott, Mr. J. Ramsay.
 Sen, Mr. Susil Chandra.
 Sharma, Mr. D.
 Singh, Rai Bahadur Shyam Narayan.
 Sircar, The Honourable Sir Nripendra.
 Spence, Mr. G. H.
 Thorne, Mr. J. A.
 Tottenham, Mr. G. R. F.
 Witherington, Mr. C. H.
 Zafrullah Khan, The Honourable Sir Muhammad.

[During the progress of the Division, Mr. President (The Honourable Sir Abdur Rahim) resumed the Chair.]

The motion was adopted.

THE INDIAN MOTOR VEHICLES (AMENDMENT) BILL.

The Honourable Sir Frank Noyce (Member for Industries and Labour) : Sir, I introduce the Bill further to amend the Indian Motor Vehicles Act, 1914, for certain purposes (Amendment of sections 2, etc.).

Sir, I move :

"That the Bill further to amend the Indian Motor Vehicles Act, 1914, for certain purposes (Amendment of sections 2, etc.), be referred to a Select Committee, consisting of Mr. Sham Lal, Raizada Hans Raj, Prof. N. G. Ranga, Dr. N. B. Khare, Maulvi Badrul Hasan, Sardar Sant Singh, Mr. F. E. James, Sir Muhammad Yamin Khan, Sir Abdul Halim Ghuznavi, the Honourable Sir Muhammad Zafrullah Khan, Mr. S. N. Roy, Mr. R. N. Dey and the Mover, with instructions to report on or before the 18th September, 1936, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

I should mention, Sir, that the date has been altered from 11th to 18th owing to the fact that my Honourable friend the Commerce Member's Bill has taken more time than was anticipated.

I trust, Sir, that in discussing this Bill, the House will traverse somewhat smoother roads than it has done during the last few days. (Laughter.)

Mr. S. Satyamurti (Madras City : Non-Muhammadan Urban) : Motor roads are less smooth than railroads. (Laughter.)

The Honourable Sir Frank Noyce : At any rate, I may be allowed to express that hope even though it may not materialise.

In the Statement of Objects and Reasons, I have briefly indicated the genesis of the proposals which have been made in this Bill. As stated therein, the existing Act governing motor transport was passed as long ago as 1914 when the conditions of that transport were very different from those which exist today. Much dust has been thrown up by the wheels of motor vehicles since then and I am sure there is no Member of this House who, whatever his views of the merits of the measure now before it, will deny that the development of motor transport, especially in recent years, has been such as to make an extensive revision of the Act of 1914 absolutely necessary. I would remind the House that the Road-Rail Conference of 1933 which included representatives not only of railways and the Central and Provincial Governments but also of the Indian Roads and Transport Development Association, the Indian Steamer Companies and both Houses of the Central Legislature passed resolutions to the effect

that greater control should be established over public service and goods motor transport in the interests of public safety and convenience and that the number of vehicles licensed to ply for hire should be restricted in cases in which it is necessary in the public interest to do so. Since then we have had two sessions of the Transport Advisory Council at which similar resolutions have been passed. The inadequacy of the provisions of the existing Act in regard to the proper control of motor transport is thus generally admitted and it has, as Honourable Members know very well, been ventilated in the press from time to time.

In these circumstances, the House may well ask why this amending legislation has been so long delayed. The main difficulty in the way of undertaking it has been that under the division of subjects laid down in the Devolution Rules the control of vehicles including motor vehicles is a provincial subject. Much discussion and consultation with Local Governments has therefore been necessary and this has taken time, as it always does. The scope of the Bill has been designedly limited to those points on which a substantial measure of agreement has been reached and if it does not go as far as some sections of the House may wish, that is because we thought it desirable to carry with us, as far as possible, Local Governments to whom we have to look to enforce its provisions. We fully recognise the necessity for a more comprehensive measure and we shall continue our efforts to frame it but meanwhile difficulties which are increasing daily render urgent the enactment of legislation which will at least meet the immediate needs of the situation. That is my justification for bringing this measure before the House and for my hope that it will be passed into law this Session. As regards its urgency, I shall have an opportunity of saying more when the amendments which are on the paper are under discussion. There is one point to which I might perhaps refer now in support of my plea that the House should allow this Bill to proceed at once to a Select Committee. Honourable Members have, I think, seen the concise statement of policy which was issued after the meeting of the Transport Advisory Council a few weeks back and they will have noticed from that that in the Road Resolution, which will be placed before the House in the course of this Session and which I hope will meet with its approval, it is proposed to include a condition that for future participation in the Road Development Account all Local Governments should adopt and enforce adequate rules for the control of motor traffic. It is in order to enable Local Governments to fulfil their part of the bargain that we are seeking in this Bill to give them powers which will enable them to do so at once.

I would now refer briefly to the more important provisions of the Bill. I think it will be convenient if I group these under two heads. Under the first head come those which relate to the better regulation of motor transport in the interests of public safety and convenience. Under the second head come those which relate to the constitution and functions of the machinery for closer control. In the first category are the rule making powers which it is sought to confer on Local Governments in clause 4 of the Bill. Under this clause they will have power to limit the number of passengers carried in transport motor vehicles, to fix the maximum weight of such vehicles and to provide for their inspection. There will, I think, be general agreement that these are powers which ought long ago to have been conferred on Provincial Governments in the

[Sir Frank Noyce.]

interests of public safety and I do not think I need dilate upon them. Local Governments will also have the power to establish authorised stopping places, a provision which has been asked for by at least one Motor Owners' Association as well as by the Local Governments themselves, and to regulate the conduct of passengers, drivers and conductors, provisions which have also been asked for by Local Governments, and which have their counterpart in the English Road Traffic Act of 1930. Other powers conferred upon them are to limit the hours of work of drivers, a provision which I am sure will appeal to my Honourable friend, Mr. Joshi, and to require compulsory insurance including passenger and third party risks. The last of these points requires some amplification. Several important public bodies including the Indian Roads and Transport Development Association, Automobile Associations and the Safety First Association have advocated compulsory insurance and there has been some measure of support for it from the press, usually provoked by accounts of some accident or other in which there has been loss of life. On the other hand, there is one Local Government which feels that motor transport has not yet developed sufficiently to justify the enforcement of a provision of this character. But, as Honourable Members can see for themselves by a study of the daily papers, the toll of accidents is steadily rising. Thank Heaven, we have not yet to suffer the murderous slaughter of the innocent and the guilty alike that goes on on the English roads. I devoutly hope we never shall but hardly a week passes in this country in which there is not a report of an accident which has involved a heavy toll of human life. Compulsory insurance may do something to reduce this toll; it certainly should do something to benefit those who suffer through no fault of their own. We realise that there are practical difficulties in initiating a compulsory insurance scheme and, in particular, in regulating the relations between the insurer, the insured and the third party. It is our intention therefore to appoint in the ensuing cold weather a small committee of experts to examine and report on the whole question. It will be noticed that the Bill empowers Local Governments to specify the companies with which policies may be effected and lest there be any suspicion that this may lead to undesirable discrimination between insurance companies I should like to explain why this provision has been included. Under the British Act, insurance companies which cater for this class of business have to pay a deposit and once the insurer has delivered a certificate of insurance his liability under the policy is absolute unless the policy has in fact been effectively cancelled. We have no similar provisions in the Indian Law and it seems necessary, therefore, to safeguard the position of the insured by limiting insurance only to firms whose financial position is a sufficient security for prompt satisfaction of demands. This is a point which will, of course, be considered by our proposed Committee and I have no doubt that they will carefully specify the criteria which have to be satisfied and that their recommendations will leave no room for any unfair or undesirable discrimination.

In the second category, come provisions relating to the constitution and functions of the machinery for closer control. In these provisions falls clause 3 which seeks to give Local Governments power to constitute transport authorities and where such authorities are constituted, to make it illegal for motor transport vehicles to ply without first obtaining road

service permits. This clause also defines the powers of transport authorities and makes it possible to limit the number of vehicles generally, or of any special class, in any specified area or route; to issue road service permits to particular vehicles or service of vehicles, to modify those permits and to attach to them conditions as regards charges for the carriage of passengers and goods, the running of services to time table and the like. Clause 5 empowers Local Governments to make rules regulating the powers, functions and procedure of transport authorities, appeals from their orders and other cognate matters. The object of these provisions is to secure the convenience of the public by providing a better and more efficient road-service under proper control. It is common knowledge—one has only to see the string of motor buses outside the Delhi Railway Station labelled "Delhi to Meerut" to realize the extent of the evil—that popular road routes are at present over served with buses, so much so that a considerable number of them run only occasionally. In many areas inefficient services spring up and die like mushrooms, but during the time they actually ply, they succeed in doing considerable damage to better-run services by compelling them to under-cut fares and so rendering their service uneconomic with most undesirable results on their inefficiency. I am sure Honourable Members will agree that whatever the virtues of competition, this kind of unrestricted competition, which sooner or later, sooner rather than later, depresses efficiency and endangers public safety should not be allowed to continue. It is not—and this is a point on which I wish to lay the strongest emphasis—it is not the intention that the number of buses even on a competitive route should be reduced below the legitimate public demand. There is no question whatever of throwing thousands of people out of employment, as has been alleged in some of the telegrams with which I and, I imagine, also other Members of this Honourable House have been flooded. What is expected of transport authorities is that they should grant road-service permits on each route only to the number of buses that the route can economically support—surely this is reasonable enough—and also that they should, where necessary, fix fares at a level which admits of a fair return to the owners and is likely to ensure a safe and efficient service. A local transport authority must be in the best position to know the public need in the matter of routes and the number of buses required on each.

These provisions have a second object—the elimination of wasteful competition between road and rail, and in regard to goods vehicles, the transport authorities will have an important part to play. Some Honourable Members of this House may think that that is their sole object—and that they have the Machiavellian intention of destroying competition which the railways have increasing reason to fear. That is very far from being the case. If the measure before the House is carefully examined, I submit that the inevitable conclusion of those who approach the subject with an unbiassed mind—as I am sure this House will do—must be that the greater part of the provisions of the Bill would be required even if there were not a single railway in this country. I am prepared to admit that this is not so true of the provisions regarding the carriage of goods as it is in regard to those relating to the carriage of passengers. No one has greater reason than I have to know that the road-rail problem is an unpopular subject, and that many aspects of it arouse acute controversy and feeling. But there are some essential facts which cannot be overlooked or ignored and I should like very briefly now

[**Sir Frank Noyce.**]

to refer to these. They have been pointed out time and again in this House but I must reiterate today that the State has invested large sums in railways which are fully capable of giving an efficient service as carriers of goods. The great importance of Railway finance both to the Centre and to the provinces and its significance in relation to the distribution of income-tax to the provinces have recently been emphasized in the report of Sir Otto Niemeyer. May I remind the House of what he said on the subject :

"The power of the Central Government to surrender a share of its revenues will in fact depend largely on the extent to which its main expansive revenue head, *viz.*, income-tax, progresses, and on the extent to which the Railways move towards attaining a surplus, as contemplated by the Railway Administration at the time of the Percy Committee. It is in my view very desirable to give both the Central Government and the Provinces an interest in securing these results and a share in their advantages if and as soon as they are achieved."

And, again :

"The position of the Railways is frankly disquieting. It is not enough to contemplate that in five years' time the Railways may merely cease to be in deficit. Such a result would also tend to prejudice or delay the relief which the Provinces are entitled to expect. I believe that both the early establishment of effective co-ordination between the various modes of transport and the thorough-going overhaul of Railway expenditure in itself are vital elements in the whole provincial problem."

The House will not expect me to deal with the question of the overhaul of Railway finance.

Mr. S. Satyamurti : Of course not ; you do not know anything : nothing is being done !

The Honourable Sir Frank Noyce : I said the House would not expect me to deal with this aspect. My concern is with the effective co-ordination between the various means of transport which, as between road and rail, the provisions of this Bill are designed to promote. If unrestricted competition in goods traffic by road transport vehicles, which, after all, bring increased profits to a few individual traders, is permitted, it must jeopardise the entire structure of railway rate-making and dislocate the whole commercial structure, involving not only the State in loss of railway earnings but also the agriculturist in serious difficulties in marketing his produce. In short, it must seriously dislocate the whole economic structure of this country. The theme is a well-worn one and I do not think that I need enlarge upon it, for there is substantial unanimity that some sort of control to ensure the co-ordination of the two methods of transport is essential. Whatever irritation may be caused at times by the method by which it is sought to make control effective, I would ask Honourable Members not to lose sight of the important principles to which my Honourable friend, Mr. Satyamurti, has drawn pointed attention in questions which he has put to me from time to time and which I feel sure the majority in this House accept and to which we are seeking to give legislative effect. I trust, Sir, that I have succeeded in satisfying the House that there is nothing objectionable in the principles of the Bill which is before it. To those who object to the Bill because it does not go far enough, I would point out that we realise the need for a more comprehensive measure and we hope in time to introduce one with, if not the full

support of, at any rate with a large measure of agreement from, all interested in the matter. Finally, to advocates of delay, I would point out that we are not embarking on entirely uncharted seas, for similar legislation has been passed in the United Provinces, an account of which will I hope be given by representatives from those provinces in the course of this debate, and has been in satisfactory operation for some time past. If defects are found in practical working, if any interests are badly hit, it will be possible to provide remedies when we bring forward the fuller measure to which I have referred. But I would appeal to the House, and appeal earnestly, to avail itself of the present opportunity of carrying the very difficult task, with which all advanced countries in the world are faced today, of finding some solution of the very difficult problems presented by the control of motor transport and its reactions on the position of the railways, one stage further.

One more point, Sir, and I have done. All Honourable Members who have read the concise statement of policy which was adopted at the second meeting of the Transport Advisory Council will have observed that the conclusions in regard to the control of traffic received practically unanimous support from the Council. That, Sir, is a most important point. I know that the Council is regarded in some quarters with suspicion as a purely official body. ("Hear, hear" from members of the European Group.) I wish that those Honourable Members who have made that interjection could have been present at the meeting of the Council and then they would have seen that there is, to put it mildly, reason to believe that the Railway Department could wish that it held more "official" views than it has. I would point out to the House that the Provincial Governments are usually represented by their Ministers and whether those Ministers are officials or non-officials is a matter which I do not propose to argue. But if the view of an important body about whose non-official character there can be no question carries weight with this House, as I have no doubt it will, I will give that of the Indian Roads and Transport Development Association which certainly cannot be regarded as showing any undue tenderness to railway interests or, indeed, to official interests generally. The Association has, I am glad to say, expressed its general agreement with the proposals in this Bill which it considers both advantageous and necessary. That I submit is a very strong argument in their favour. They have met with the approval of a body which has been constituted to promote roads and transport development and in which motor interests are very strongly represented.

Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim) : Motion moved :

"That the Bill further to amend the Indian Motor Vehicles Act, 1914, for certain purposes (Amendment of sections 2, etc.), be referred to a Select Committee, consisting of Mr. Sham Lal, Ramnada Hans Raj, Prof. N. G. Banga, Dr. N. B. Khars, Muzivi Badrut Hasan, Sardar Sant Singh, Mr. F. E. James, Sir Muhammad Yamin Khan, Sir Abdul Halim Ghuznavi, the Honourable Sir Muhammad Zafrullah Khan, Mr. S. N. Roy, Mr. H. N. Dey and the Mover, with instructions to report on or before the 18th September, 1936, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

[Mr. President.]

There are certain motions for the circulation of the Bill to elicit public opinion. All these motions are of the same character except that the dates mentioned for the receipt of opinions are different. Those Honourable Members who want to move their motions can do so now formally and then there will be debate on the original motion and these motions for circulation.

4 P.M.

Mr. T. S. Avinashilingam Chettiar (Salem and Coimbatore *cum* North Arcot : Non-Muhammadan Rural) : Sir, I move :

"That the Bill be circulated for the purpose of eliciting opinion thereon by 1st March, 1937."

Mr. President (The Honourable Sir Abdur Rahim) : Motion moved :

"That the Bill be circulated for the purpose of eliciting opinion thereon by 1st March, 1937."

Mr. Sham Lal (Ambala Division : Non-Muhammadan) : Sir, I move :

"That the Bill be circulated for the purpose of eliciting opinion thereon by 31st December, 1936."

Mr. President (The Honourable Sir Abdur Rahim) : Motion moved :

"That the Bill be circulated for the purpose of eliciting opinion thereon by 31st December, 1936."

Mr. N. V. Gadgil (Bombay Central Division : Non-Muhammadan Rural) : Sir, I beg to move :

"That the Bill be circulated for the purpose of eliciting opinion thereon by 1st February, 1937."

Mr. President (The Honourable Sir Abdur Rahim) : Motion moved :

"That the Bill be circulated for the purpose of eliciting opinion thereon by 1st February, 1937."

Mr. Ghanashiam Singh Gupta (Central Provinces Hindi Divisions : Non-Muhammadan) : Sir, I beg to move :

"That the Bill be circulated for the purpose of eliciting opinion thereon by 15th April, 1937."

Mr. President (The Honourable Sir Abdur Rahim) : Motion moved :

"That the Bill be circulated for the purpose of eliciting opinion thereon by 15th April, 1937."

Mr. Sham Lal : Sir, there is no doubt that changes of a far-reaching character are going to be introduced in the Motor Vehicles Act. I admit that the development of the motor transport has been quite unexpected and there is not a town, even a small town, where motor buses are not plying for hire. In fact, as the unemployment is increasing, people are taking to bus driving and the amendment of the Act would affect a large portion of the population of India. I would say that the amendment would rather create a stir in the whole country. Now, if the amending Bill is going to affect all the Motor Unions and a large portion of the population, does it stand to reason

that the Bill should be referred to a Select Committee which should make its report before the 18th September? If you just examine the Bill, you will find that it is a dangerous Bill. I have received representations from Motor Unions and I also agree with them that it is a question of monopolising this industry in the interests of Government or in the interests of those who are in the habit of supporting the Government. It may not be the intention of the Honourable Member for Labour and Industries against whom I do not mean anything personal, and he should take it from me that I do not mean anything personal against him, but the result is bound to be that this industry would be monopolised by the Government for its own exploitation or in the interests of those who are Knights and Rai Bahadurs and who are in the habit of making friendly gestures to the British people.

Now, the question is what are the important provisions of the Bill against which I object? The most important provision of the Bill is that a transport authority is going to be constituted, and what would be the function of this transport authority? It would be open to that transport authority to restrict the number of buses for a particular route. Supposing there is a route from Kalka to Simla, it would be open to that transport authority to restrict the number of buses to, say, 20. It may make a rule for only 20 or 25 buses to run on that route. It would be open to that transport authority to restrict the carriage of goods in a particular area. It would be open to that transport authority to give the monopoly of these motor buses to an organised service. It is given in the Bill and it is just possible that in order to make a friendly gesture, the monopoly may be given to a British Company because here in this country we are to remain unemployed, we are to starve, we only live here in order to make a friendly gesture to the British people. I may submit that now that a transport authority is going to be constituted, which is to regulate the number of buses which are to ply for hire on a particular route, the carriage of goods is to be restricted and we, sitting here in the Select Committee, should only decide what the transport authority would be and need not consult the Motor Unions. I say there are certain provisions in the Bill which I do welcome and against which I have got no objection. But the question is that you are going to introduce such important changes in the Motor Vehicles Act and yet you do not want to consult the Motor Unions. What would you lose if you circulate the Bill for their opinion? It is very difficult for us to have correct idea of the difficulties that these motor drivers experience. What we hear generally is that the only crying grievance with regard to the motor vehicles is against the Police. Every police Inspector, every head-constable, every Sub-Inspector gets a free drive and gets ice and fruits from these motor drivers. We have had experience of travelling in these motor buses which the Honourable Members for Government have not. If we start, say, from Delhi to Sirsa, at every police station the bus stops and we ask the motor driver, how is it that you stop everywhere. He says: "I have to take a head constable, he would occupy the front seat. If I take the head constable in the front seat, I can carry any number of passengers, and I can violate any rules on the point. You must sit behind the head constable and he will sit in front." This is what the bus driver says. That is the whole trouble.

[Mr. Sham Lal.]

No attention has been paid to the grievances of the motor drivers. No rule has been made prohibiting the police from travelling in the buses. The police are never taken to task or punished for their misdeeds. Therefore, I submit, these motor unions ought to be consulted and their grievances ought to be taken note of and suitable provisions made in the Bill to remedy those grievances. This is not an ordinary measure. If you introduce a measure of this kind, it is just possible that the transport authority may be constituted in such a manner that all these motor drivers who have purchased these buses by selling their lands or selling their houses and who have taken to this business will be ruined if any restriction is placed on the plying of motors. These bus drivers will be obliged to sell their motors at cheap rates and they might be thrown out of employment. The Government are only considering the question of railway finances. What would happen if all these bus drivers are thrown out of employment? Have you made any provision for their employment? Therefore, I submit that the Bill is of a very important nature and in no case should the Bill be referred to the Select Committee without its being circulated. I had an opportunity to discuss this with the Honourable the Member for Industries and Labour; of course he will say that this Bill is only of a permissive nature, that in this Bill the only thing given is that the Local Government may appoint a Transport authority, that it is not obligatory, that next year provincial autonomy is going to be introduced and that it would be open to the non-official members of those provincial legislatures to appoint whomsoever they like as the Transport authority. He will say "You are the future Governors, you are the future Local Governments, you may appoint Transport authority of any kind". Well, Sir, we know what sort of provincial autonomy is going to be given. We know what is the permissive nature of the Bill. In many Bills it is always pleaded that they are of a permissive nature. As soon as a certain power is conferred, it is immediately exercised and it is often argued that such exercise is lawful. Yesterday this House had an opportunity to hear this with regard to the Tariff Bill. There was a provision in the Tariff Act that the Governor General may reduce the duty in the case of textiles and it was of course a power conferred by the legislature. At that time assurances were given by several Commerce Members that this reduction would not take place without consulting this House. That was the specific assurance. Then the argument was advanced that whatever may be the assurances, so far as the statute is concerned, the Governor General had the power to reduce the duty and he has done it and therefore the Legislature could not call it unlawful. Of course, at the time when the Tariff Bill was under consideration, an amendment was moved by Sir Abdur Rah'm, our present President, that reduction should not be given effect to if it was not passed by the Legislature. That was a reasonable amendment. You cannot say it was illegal. I, therefore, submit that we cannot attach any value to the assurance given on the floor of the House. We all along thought that the assurances given on the floor of the House would hold good for ever and would bind Governments. But our faith was rudely shaken. Hereafter all assurances are to be regarded as mere scraps of paper and I may say that Germany was not more guilty in violating its promises as this British

Government has been in regard to its pledges towards India. (Hear, hear.)

Now, Sir, if an assurance is given by the Honourable Sir Frank Noyce, he might be able to keep up those assurances. What would Sir Joseph Bhoze and Sir George Schuster think when they find that their successors have torn asunder all assurances and promises given by them to the Legislature and when they find that the duty on textiles has been reduced without consulting the Legislature. Looked at from that point of view, I hope the Honourable Sir Frank Noyce will realise that the Bill is not at all of a permissive nature. You need only give the power to the Local Government and you will find that that power is exercised the very next day and a Transport authority is constituted. What do we find at present in the provinces? We have many Advisory Councils constituted, in the Punjab and several other Provinces. The Railway Advisory Committee, the Canal Advisory Committee and so on? What do we find? The Government gets further opportunity of obliging the title holders—the Knights and the Rai Bahadurs—who do not serve the interests of the public. You will find in this Transport authority several Knights and Rai Bahadurs being put on and they would commandeer all the buses during their elections. These title holders would say to the bus drivers: “Here we are, we have the sole authority to regulate the plying of buses, we will not allow a particular person to have a bus, we command all the buses, you motor drivers have simply to drive the buses at our bidding.” In every election we find the Government officers are interfering (Hear, hear), they take part in bringing agreement between the contending candidates. Of course there is a good deal of dissension even among these title holders also, but the Government say: “look here, you, title holders, all combine against the Congress and if there is necessity you may even condemn the Government in order to win some votes. We are wise people, we can bear this condemnation, provided you all combine against the Congress.” Well, Sir, this Transport authority is going to be constituted very soon and these title holders who are in the habit of making friendly gestures to the British people would find themselves as members of this Transport authority. The Government are always in the habit of loading the Committees with their own nominees. The Government will always get a number of obliging friends to serve on these committees. What happened with the Quetta Committee? Perhaps it might be said that this Transport authority would look after the convenience of the motor bus passengers. No, certainly not. It would only give the Government an opportunity to oblige their own friends and would give the motor buses new masters. I have had an opportunity of watching the working of a Transport authority in Rohtak district. The Deputy Commissioner there was the Transport authority, and he used to issue road permits. He was only the nominal authority to issue these permits, the man behind the scene was the Superintendent of the Office of the Deputy Commissioner. That was the practice in Rohtak district. These road permits were sold to the highest bidder, they were sold like negotiable instruments each permit fetching as much as Rs. 800 or even a thousand rupees. Several road permits were issued by the Superintendent of the Deputy Commissioner's office in the name of his own wife, in the name of his own servant and in the name of his own relatives. This fact was discovered in connection with a case in Court, but nothing was done against the Superintendent.

[Mr. Sham Lal.]

He was not punished. That is my grievance against the Transport authority. If such an authority is constituted, after all some petty clerk would exercise all the authority and he would suck the blood out of these motor bus drivers. Why not have a transport authority constituted solely comprising of the Members of Motor Unions. It is a well known fact that this development of motor transport has taken place without any help from the Government. Within the last 20 years, the motor industry has developed without any aid from the Government. Have the Government opened any college for the training of motor drivers? Government have done absolutely nothing to set up a factory for the manufacture of motor cars or materials for repair of these motors. Now that the industry is flourishing purely owing to private initiative and enterprise, the Government cannot tolerate it. The Government want to control this industry. A day might come when perhaps the Government might control our cooking. We find that cart drivers, bullock cart drivers, tonga drivers all having been thrown out of employment, have taken to bus driving, thereby somehow making both ends meet. If a Transport authority is constituted what would happen. A monopoly for plying the buses might be given to some organized service, like the Gwalior Motor Transport Company or some such company might be established by a Rai Bahadur or a Knight or some hanger-on of the Government and what is now giving employment for the many poor would become a monopoly of the rich few. These monopolists would employ these drivers for four annas or six annas a day. Therefore, my submission is, I do not say that there should be no control over motor buses, but I am against this authority vesting in the Local Government, so that the Local Government may appoint any transport authority, may decide as to its composition. If you want any transport authority to be constituted,—and I certainly agree that there should be a transport authority in every district,—the majority of the members of that authority should be selected from the motor unions. It should be the concern of the poor people and should not be monopolised by any company or by Government. Government should not have any control over it. It is said that a wasteful competition has been going on. Certainly; I admit that the wasteful competition has been going on, but where has not this wasteful competition been going on? Wasteful competition has been going on in the legal profession, it has been going on in the textile industry and it has been going on everywhere.

An Honourable Member : Also in title-hunting. (Laughter.)

Mr. Sham Lal : There it is not wasteful; they are after all rewarded in one way or the other. But my submission is that it has been going on for the last 22 years. Why were you asleep? Why did you not take up this question earlier? This wasteful competition is not of today. The thing is that the revenues of the railway have gone down and a crisis has been reached, and now in the name of conveniences for passengers this Bill is being trotted out and is introduced here. What is the immediate cause? You may have some provisions in the interests of the passengers, but what is the immediate cause for this Bill? The immediate cause is the recommendation of the Transport Advisory Council which was appointed in order to see how the competition between roads and railways can be removed. A spoilt child of Government, this railway administration having failed in open competition with these motor drivers now

wants to have nomination. It is a sort of nomination, as to who shall drive the buses ; that these grass-cutters, these drivers, these poor people shall not drive motor buses. It is the servants and employees of these Knights who will drive the motor buses. It is in this way that the control is going to be exercised. What I submit is that it is purely in order to help the railways that this Bill has been introduced, and of course it is said that the people are wasting their energy over wasteful competition. That is not the thing. Now with regard to motor buses what do we find ? It has practically become the conveyance of poor people, poor people not desiring to be insulted by these railway officials, not desiring to bribe these goods clerks in order that their goods may be carried, not desiring to stand under the sun and under the rain in the open platform. These are people who want to travel in these motor buses and do not want to use the railways. But the railway administration says, " I am the darling of this Government, I am a Government concern, I may not be able to compete with you in open competition, you may beat me there ; but I have got the power ; I will go to my obliging father and say I must have this law so that these buses may be restricted and goods may not be carried over a particular area and let this business of the country also go ". The starving people, the unemployed people, are rushing in different directions and you want to restrict their liberty also. You may try open competition. I had occasion to travel from Lahore to Amritsar and I found that the railway there has provided that after every one hour a train should go to Amritsar. This was done in order to compete with buses and as a result the trains are overcrowded. The fare also has been reduced. That is the best way to compete. You may compete in that way, but not as the darling son of Government having the laws in its control,—now a law against ticketless travel and now a law against overcrowded buses, allowing your railways to be overcrowded. Everything you want to do with the help of the law. Therefore, just as the sons of rich men who have got no enterprising spirit go to the dogs and ruin themselves, this railway administration though it may be a national concern is going to be ruined. Engineers getting Rs. 3,000 a month, playing bridge in their saloons and enjoying life in the railway colonies. I have seen that they do not work for half an hour, and then you talk of the loss of revenues on the railways. Go to Bhatinda and Lahore, and you will find these engineers getting Rs. 3,000 a month, doing nothing the whole day except playing bridge and drinking heavily. The ticketless traveller is to be sent to jail but the engineer who commits a theft with regard to railway money, getting Rs. 3,000 a month and doing nothing is an innocent man. If you get this patronage and if you drive out the motor buses I think the railway would not improve. If you have this Bill you will not only throw out these motor drivers out of employment but you would demoralise this railway administration. It would never make any progress just as a spoilt child makes no progress. It is not Jawaharlal who is a spoilt child, it is the railway administration which is the spoilt child of Government ; and every Honourable Member of the House getting more than Rs. 1,000 is a spoilt child. (Laughter.) And these people want to keep all the power under their control. Tomorrow you will find a Bill that all the cooking in India should be done by some organised body and all the agriculture should be done by some organised body. Therefore, my submission is that it is a great inroad upon the rights of the poor motor drivers ; and, therefore, if you want to have any control these motor unions themselves should

[Mr. Sham Lal.]

have that control and you should not agree to any restrictions being placed on these motor drivers without hearing them. Where is the hurry ? Now it is said that the United Provinces Government have introduced a measure of this kind and I was told that it is a success. This being so, why should the Central Government introduce this measure ? If, as you say, there is going to be provincial autonomy, let those Local Governments introduce measures like this and let the members there fight out these points. Why this haste on the part of the Central Government to introduce this measure ? I say this is an indecent haste, to have a measure affecting the major portion of the population passed or referred to Select Committee and a report called for before the 18th September. I say there is no Bill before this Assembly which is more important from the poor man's point of view than this Motor Vehicles Bill and this is a measure about which the poor people and the motor drivers should be consulted.

Then it is said that there will be another comprehensive measure. It is stated in the Statement of Objects and Reasons that this is only an amendment of some provisions but we are going to have a more comprehensive Bill. Then let us wait for the comprehensive Bill. Why an amendment with regard to certain provisions only ? The Honourable Member for Industries and Labour said that there is perhaps an impression that the sole object of this Bill is to avoid competition between road and rail and to suppress the motor traffic in the interest of the railways. But we have eyes to see and we can ourselves judge matters. We find that a crisis has been reached in the history of the railway administration. We find that a Transport Advisory Council was appointed for the purpose ; and it is on account of the recommendation of that authority that this Bill is being introduced. How can we ignore this fact ? I have read the recommendation of that Council. It is specially given there that it would be open to the transport authority to restrict the carriage of goods in a particular area. Now you will find goods are being carried from place to place by these motor buses. We do not want the railways to suffer ; but we do want that the railway should not be clothed with any power not possessed by any other private concern ; no larger powers should be given to them and they should not be allowed to suppress any other transport company or business. Let there be free competition ; let the railways improve their own methods and let them make their officers honest ; let them be courteous : let them be inviting to passengers ; let them put down corruption. What the Government want is that, if there is anything flourishing, they should get hold of it and exploit it. I may quote an instance. In the case of the Cantonment Bill, what did the Honourable Mr. Tottenham do ? He invited members of the Cantonment Association ; he invited us ; we discussed with them everything and you will not find that there is any opposition on our part. It is an agreed measure, because we discussed it with them : we did not know all these technicalities. Similarly, we do not know all the grievances of the motor unions or drivers : how can we have any idea of these grievances ? So, let us proceed in that way, just as the Honourable Mr. Tottenham proceeded ; let us have the representatives of the motor unions ; let us have their opinions and the opinions of motor drivers throughout the country and then let there be a Select Committee so that we may be able to satisfy these motor drivers, so that we may be able to see that there is no hardship involved.

Where is the hurry ? For over 20 years, there has been no amendment. This wasteful competition has been going on for so long and we find it in other directions as well : where is the hurry ? The only hurry is that you now find this industry highly developed and you want now to suppress it, you want to control it, you want to give it to some organised services. Just imagine what would happen if throughout India these motor drivers are compelled to sell their buses because they cannot use the roads. Just imagine what would happen. It would create a commotion in the whole country. This is not a Bill of an ordinary kind. If you take the opinions of those concerned and they agree with regard to certain matters—of course there are drivers who are breaking all rules and injuring themselves, I do not deny that there should be no control : but the control should not be imposed in the manner in which it is being imposed by this Bill. I, therefore, strongly oppose the reference of this Bill to the Select Committee, and I move that the Bill should be circulated for eliciting public opinion.

Sir Ghulam Hussain Hidayatallah (Sind Jagirdars and Zamindars : Landholders) : Sir, I would like to make a few observations on this Bill. I will place a few considerations before this Honourable House in support of the motion.....

An Honourable Member : What motion ?

Sir Ghulam Hussain Hidayatallah :to elicit public opinion.

Sir, this Bill is to amend an old Act of 1914. But we all know that much water has flown under the bridges since then. Under the present Government of India Act, roads are a transferred subject and under the new Government of India Act also they are a transferred subject. Railways and waterways are a central subject or, under the new constitution, a federal subject. My first point is, is this amending Bill not an encroachment on the rights of the provinces which the present and the new Acts have given them ? What are the ministers for in the provinces and the Legislatures, specially now that we are on the threshold of the reforms ? It is hardly fair to the provinces that the Central Government should legislate for them. This is an attempt to deprive the Provincial Legislatures of their right to legislate in regard to transferred subjects.....

Mr. N. M. Joshi : There must be co-ordination between all provinces.

Sir Ghulam Hussain Hidayatallah : Co-ordination or no co-ordination, nobody is going to subordinate the rights of the provinces to the Central Government when we are on the threshold of becoming autonomous provinces. What will be the position of Ministers in the provinces ? They will have to carry out the behests of the Central Government. They will come there, responsible in name to the Legislature, but they will have to carry out the orders of the Central Government. Therefore, my first objection to this legislation is that this is an encroachment on the rights of the provinces.

My second consideration for supporting this motion for circulation is this. In India, before the railways came, there were roads ; we had village roads, and other roads, what we now call the provincial roads, and roads of all-India importance, what we call the inter-provincial or

[Sir Ghulam Hussain Hidayatallah.]

all-India roads. The railways, when they came into existence, built all the railways parallel to those existing roads, specially the provincial and all India roads. Who is responsible for killing the road transport ? It is the railways. And today when a new form of transport has come, it does not lie in the mouth of the railway authorities to say " Oh, they are competing with us ". They originally killed the transport by road. After all, what do we all want ? We want the cheapest service and the best service. It is for the railway authorities to put their house in order and make their concern pay, not to the disadvantage of the motor service. After the motors have come, small men with small capital have purchased motor buses. They are either driving themselves or they have employed other drivers. Now, if some of the measures proposed by this Bill are enacted, what will be the position of those men ? They will either have to sell their motors and go out of employment or do nothing. Now, I refer to page 2 of the Statement of Objects and Reasons of the Bill. The first Transport Advisory Council which met in January, 1935 recommended that provision should be made for insurance against passenger and third party risk, and the importance of having such a provision has been brought to notice in connection with several road accidents in recent months. What will be the result ? The poor people have no money or security to provide for this. The result will be that the capitalists will monopolise this trade.

The third consideration that I will place before this Honourable House is this : after the petrol tax we had the road fund. What was the policy of the Central Government as regards the central fund ? The Government of India's mandate to the provinces was to use this money, for the construction and improvement of inter-provincial roads, roads of all-India importance. Who encouraged in the beginning the motor transport ? It is the Central Government. But I am happy to find that they are reconsidering that decision of theirs, and as every one of us today is thinking of the poor agriculturist in the rural areas, so the Government are now considering the question of allowing money out of this fund also to be used for the rural roads. Then, Sir, if the Government have really the interests of agriculturists at heart, they ought to allow the cheapest form of transport, because the agriculturists have to market their produce. Let there be competition, let there be a large number of motors running on these roads so that the agriculturists and others may get the service at the cheapest rate.

Now, Sir, one of the arguments advanced by the Mover of this Bill is stated in the Statement of Objects and Reasons. This is what is stated there : " Thereafter, in January, 1935, the Transport Advisory Council, at its first meeting, made definite recommendations to the same effect. Amendments to the Act were drafted to give effect to the recommendations as far as possible and Local Governments were consulted. The latter were, on the whole, in favour of legislation, but there were differences in points of detail ". These were some of the recommendations, but I shall deal with them when the Honourable the Mover moves his Resolution. Even this makes out a strong case for circulation of the Bill. Their admission in the Statement of Objects and Reasons shows that there was not complete unanimity amongst the provinces even, and from most of the Resolutions of the Advisory Council I see that even the Ministers have

differed. I need not waste the time of the House by reading their opinions at length. This is what is stated here in the Statement of Objects and Reasons—"It is generally recognised that it will be necessary, before long, to undertake a general revision of the Act, but the Government of India consider that it is essential in the meantime to give powers to Local Governments to regulate transport motor vehicles, as well as trailers and other attachments.....". So, Sir, this Bill, as I characterise it, is a thin end of the wedge to deprive the provinces of their powers which are given to them under the present constitution and which they are going to have under the new constitution, and if you read the recommendations of the Transport Advisory Council, I do not think any man who has the good of the provinces at heart would agree with those recommendations. These are further encroachments on the rights and privileges of provincial Legislatures and the provinces. With these few words, Sir, I support the motion that the Bill be circulated for the purpose of eliciting opinion thereon.

Mr. N. V. Gadgil : Sir, I agree with the Mover of the Bill that unrestricted competition is an impossible remedy to remove the transport difficulties. At the same time, I wish to say that it is not very fair to rush this Bill through in such a short time, because it is strongly felt that sufficient notice or publicity has not been given to this measure. I might state here that apart from those who are interested in the business, there are other sections of the public equally interested in this measure. I might invite the attention of the Honourable Member in charge of the Bill to the fact that Mr. Gadgil and Mr. Gogate, two members of the Gokhale Institute of Politics and Economics, have made a detailed survey of Motor-Bus transportation in six districts of Maharashtra, namely, Poona, Satara, Nagar, Sholapur, Kolaba and Ratnagiri.....

The Honourable Sir Frank Noyce : As the Honourable Member has mentioned that publication, I hope he will be good enough to give the extracts from it which support my case.

Mr. N. V. Gadgil : As this Book was not available in the Library, I had to get your own copy. Mr. Gogate told me that he had sent two copies of this publication to the Library, but as I could not get a copy in the Library, I had to get one from your office.

The Honourable Sir Frank Noyce : I have a copy, which the authors were good enough to send me.

Mr. N. V. Gadgil : Very well. I may point out, Sir, how a very thorough survey of Motor-Bus transportation in these 6 districts has led to certain conclusions which run contrary to certain assumptions which I find in the Statement of Objects and Reasons attached to the Bill. It is not contended in this Report that there should be no regulation of motor transportation ; it does suggest regulations, but they must be according to certain accepted standards, and I will read with your permission the standard that has been accepted in this Report :

"What are the primary qualities that a regulatory regime should possess ? If it is to be in accord with the general competitive system and to serve well the conditions of a progressive industry, it is obvious that a rigid type of regulation runs the serious danger of stereotyping the present set of conditions. This is certainly not desirable. Even when Railways are national property, it is not desirable that the development of motor transport be arrested and stabilised at a particular point for

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all times. Looking to the vast resources sunk in railway enterprise it may be reasonable to contend that the new competitive agency should not operate in such a manner as to upset the balance of the railway system immediately and that time be afforded for programme adjustments. But we start from the basic assumption that when new developments involved the changing of methods or narrowing of spheres of activity of old agencies, then adjustments must, however slowly, come about.

The system of regulation we contemplate must, therefore, be elastic and progressive. It cannot work by way of absolute prohibition. Neither can it, or should it work by way of monopolies. The granting of a monopoly, whether to the railway or to a particular bus company, of any traffic along the route would be disastrous to public interests."

That is the standard. I shall proceed further and point out to the satisfaction of the House, at any rate to one section of it at least, that it is not merely the public including the agriculturist that would be affected if this Bill were to be enacted, but even those who are in the business,—and their number is very large,—will be very considerably affected. If we take the figures of the cars including the buses licensed for hire in these 6 districts, they work out to 2,210, that is for the year 1935, and the figures are taken from the Annual Police Report of the Government of Bombay. It will, I think, be admitted that at least 3 people are employed when one car or bus is allowed to ply, that is to say, a cleaner, a driver and an additional servant. If we multiply it, it roughly comes to 6,000, in one district, and there are nearly 350 districts in India, and the House can imagine to what extent the public will be affected by this Bill if it becomes law. What is sought in this Bill is that in the interests of safety and convenience, permit should be given only to such vehicles or services or fleet as would conform to certain standards. Over and above this, there are other categories of persons who are involved. Take for example, the agents in Poona district alone. There are nearly 60 motor stands, and I have been able to collect figures of licensed agents of about 13 stands in which 252 persons are permitted by the District Superintendent of Police to be agents for these buses. Now, add those persons to this number who do this sort of work without any license, and if you take the whole district, it will not be far wrong to state that nearly one thousand persons are working as agents, either licensed or unlicensed. Now, you can multiply this by 350, and you will arrive at a figure which will show to what extent this Bill will affect a large class of people. I do agree that this motor business is not carried on, on very economical lines. It is not very well organized, in fact there has been wasteful competition. But I may state that there are economic forces which themselves will make the business avoid wasteful methods. In these six districts, I may point out to the House certain associations of motor drivers and owners have grown up. Taking these six districts I may point out that there are 51 associations with a membership extending to 407 persons owning nearly 1,740 motor cars, buses and other things. I might incidentally state that somehow or other I was the first man to take a lead in bringing together most of the motor drivers in the Poona district, Poona taking the lead in 1929. I do agree that it was not so much for the purpose of running the business on economic lines, but to meet a specific case of police tyranny by way of additional regulation that the union was started; but from that time onwards the business is gradually organising itself and today there are certain roads on which there is no competition because the associations have established certain

regulations among themselves. Even the fare is scheduled, the time table is fairly observed, and, in fact, wasteful competition is being avoided as far as possible. Of course, there is always the difficulty that new comers may come in and upset all calculations. I am not making out a case that there should be no regulation altogether. I am making out a case that there should be regulation but not in the manner suggested in the Bill and not without eliciting public opinion all the same. What will happen if the Bill becomes an Act? Naturally in order to secure the so-called efficiency in the service, those who own more than one bus will be given the necessary permit. I propose to give the House some figures with respect to this; out of 1,309 buses that run in these six districts, 621 are owned by 621 owners, one each and only 12 persons own more than six each. That is the state of business at present. This is the case not only in India, but I have been able to find out some statistics about the state of this particular industry in the United States. There are, 3,996 Bus Companies, out of which 3,476 are operated with a service of five or less, and only 18 companies own more than 100 cars. Unless you eliminate individuals altogether and create a sort of monopoly, you must allow the present state of things to continue for some time and give those who are in the business some opportunity to move towards the elimination of wasteful competition.

Other sections of the public also are interested by way of cheap transport. The railways have prescribed certain rates. They range from four pies a mile to six pies a mile maximum. In our presidency the police rules and the District Magistrates also have laid down that nine pies per mile should be the official rate, but what do we find in actual practice? It ranges from 2.5 pies per mile to 6.2 pies per mile for long distances. If you take Poona to Kolhapur rate it works out to 2.5 pies per mile, but if you take shorter distances, say, from Poona to Islampur, it works out to 6.2 pies. Your basic idea is that there should be no competition with the railways.

The Honourable Sir Frank Noyce : No wasteful competition.

Mr. N. V. Gadgil : Yes, wasteful competition. If there had been no motor transportation at all, what would have happened is this that the interests of third class passengers would have been neglected more and more :

"In fact it has been urged that the static condition of railway practice has during many decades been a result of the lack of competition and that under stress of motor competition it has been proving itself capable of progress and fresh adjustment."

If there were no motor competition, I am sure the railway authorities would have been or would have continued to be as indifferent to the comforts and amenities of third class passengers as they were five years ago. Undoubtedly, this motor transportation has resulted in causing loss to the railways. I will only give two instances. So far as the Madras and Southern Mahratta Railway is concerned, I think that it has been very hardly hit,—Poona, Miraj and Kolhapur section—and so far as the Great Indian Peninsula Railway is concerned, very few people travel by railway from Poona to Ahmednagar or even to Dhond. They usually prefer to go by bus. Motor lorries are not allowed to cross Ghats after sunset. If that restriction were removed, I am sure, there

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would be greater loss to both the Madras and Southern Mahratta Railway and Great Indian Peninsula Railway. My point is this. If you were to regulate the thing saying that it must not come in competition with railway, the public will have to suffer. Travel for passengers has become cheaper, even in the matter of transport of goods, I can point out that the agriculturists have benefited as a matter of fact on account of the motor transport. The increase in the transport of perishable goods from Poona to Bombay is due to cheapness and the agriculturists prefer to send their vegetables and fruits by motor buses rather than by parcel trains from Poona to Bombay. Naturally there is a greater margin of profit which does not always go into the pockets of agents and *dalals* as they are called in Poona, but part of it goes to the agriculturist himself. But if you were to restrict that, the result will be, you may ruin the *dawal*, you may ruin some of the motor owners, but you will be incidentally ruining the agriculturist also. I therefore submit from every point of view this Bill, as it stands, is not to the benefit of the public at large, apart from the fact that it will throw at least according to my calculation two millions of people out of employment. In any case why should there be any haste to rush the Bill through? I have received a number of telegrams and letters from various motor drivers' associations and motor owners' associations, and I think various Chambers of Commerce also have protested against any reference to Select Committee at this stage. Taking into consideration all these facts, I hope the Honourable Member in charge will see the reasonableness of my amendment at any rate because I have put down 1st February, 1937. If opinions are received by that time he will be in a position to pilot this Bill further before the Delhi Session is over. With these words, I move my amendment.

Mr. S. K. Das-Gupta (Bengal : Nominated Official) : Sir, I rise to oppose this motion for circulation of the Bill to amend the Indian Motor Vehicles Act, 1914. The purpose behind this proposal to send the Bill for circulation is, I presume, to allow the public sufficient time to consider the provisions of the Bill. But it must be well-known to Members of this House that the subject matter dealt with is not new and that it has been before the Government and the public for at least three years and ample time has elapsed since the matter was first mooted. The provisions which this Bill seeks to introduce into the existing law came up for prolonged and careful discussion before the Rail-Road Conference of 1933, and subsequently two meetings of the Transport Advisory Council considered the matter. Moreover, the proceedings of the Rail-Road Conference came in for comment in newspapers from time to time, and, as a matter of fact, the Bill does not go beyond incorporating some of the suggestions accepted by the Conference and there is really nothing very drastic or severe about the changes proposed and I think no useful purpose will be served by the circulation of the Bill and it will only mean unnecessary delay. The Honourable the Mover of the Bill, in his Statement of Objects and Reasons, has made it abundantly clear that a very early amendment of the present Act is necessary in the interest of public safety and convenience. Accidents connected with the use of motor vehicles keep alive the fear that the motor car or the bus is a dangerous vehicle, the movements of which should be restricted by stringent

legislation. As a matter of fact the Mover of the first amendment expressed his appreciation of some of the provisions of the Bill. It has been said that it is more or less the concern of the Local Government to enact laws and rules controlling the movements of motor vehicles and legislation, if any, should be undertaken by Local Governments but the motor vehicles refuse to recognise the boundaries of provinces and it is only in the fitness of things that legislation should be undertaken by the Central Legislature especially as the original Act itself is an enactment of the Central Legislature. The provisions of the Bill contained in clause 4 relate chiefly to public safety and although the question of co-ordination forms part of our consideration the provisions relating to public safety are really independent of any consideration of co-ordination. Sir, in recent years there has been a rapid growth of motor transport facilities and of course none will deny the convenience, the elasticity and the advantage of motor transport and of its immense popularity but that is the very reason why all possible measures should be taken to secure the safety of the public when they use this mode of transport. As a matter of fact, the powers which the present Bill seeks to confer on Local Governments are primarily intended in the interest of public safety and convenience. The provisions contained in clauses 3 and 5 relate to the constitution and functions of the machinery for the closer control of public transport. In Bengal such powers as it is intended to confer on the transport authorities are practically vested in the District Magistrates and in Bihar and Orissa, Rule 50 and in the Punjab, Rule 11 have also conferred similar powers on District Magistrates. Of course the United Provinces Act of 1935 has actually ushered in such a machinery and no complaint from the business community or any bus owner has been received by the Transport Advisory Council. I believe every Member will agree that it is more desirable to vest these powers in a committee than to rely upon the discretion of one individual officer. Of course it is quite possible to have differences of opinion as to how such committees should be formed, how they should function and so on but these are matters of detail which can easily be left to the Select Committee to decide. I do not pretend to deny that one of the objects of the closer control is the elimination of wasteful competition between roads and railways. At present, railways have to compete on very unequal terms with motor vehicles.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member had better continue his speech tomorrow.

5 P.M.

The Assembly then adjourned till Eleven of the Clock on Friday, the 4th September, 1936.