

6th December 1938

THE LEGISLATIVE ASSEMBLY DEBATES

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(5th December to 12th December, 1938)

EIGHTH SESSION OF THE FIFTH LEGISLATIVE ASSEMBLY, 1938



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9-10

Legislative Assembly.

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THE HONOURABLE SIR ABDUR RAHIM, K.C.S.I.

Deputy President :

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Committee on Petitions :

MR. AKHIL CHANDRA DATTA, M.L.A., *Chairman.*

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

MR. M. S. ANEY, M.L.A.

SYED GHULAM BHIK NAIRANG, M.L.A.

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

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LEGISLATIVE ASSEMBLY.

Tuesday, 6th December, 1938.

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

STARRED QUESTIONS AND ANSWERS.

(a) ORAL ANSWERS.

CONTRIBUTIONS TO THE UNITED PROVINCES GOVERNMENT BEFORE PROVINCIAL AUTONOMY.

1805. *Mr. Badri Dutt Pande: Will the Honourable the Finance Member be pleased to lay on the table a statement showing the amount and nature of all payments and contributions made to the United Provinces Government by the Central Government just before provincial autonomy and after, viz., in 1936-37 and 1937-38?

The Honourable Sir James Grigg: A statement is laid on the table.

*Payments and Contribution to the Government of the United Provinces.**

Nature of Payments.	Amount paid in	
	1936-37.	1937-38.
(1) Payments from Sugar Excise Duty	4,17,300	58,700
(2) Grant from Rural Development Fund	55,149	37,800
(3) Grant from Road Development Fund	9,50,317	7,71,290
(4) Share in the Salt import duty	850	900
(5) Share in the net proceeds from taxes on income . . . . .	..	18,75,000
(6) Contribution to the Provincial Government . . . . .	..	25,00,000

NEW APPOINTMENTS SANCTIONED IN THE GOVERNMENT OF INDIA DEPARTMENTS.

1806. *Mr. T. S. Avinashilingam Chettiar: Will the Honourable the Finance Member state:

- how many new appointments he has sanctioned for the departments of the Government of India after the beginning of this financial year;
- for which departments these new appointments have been sanctioned;
- why these new appointments have been sanctioned; and
- what is the financial effect of these new appointments?

*Excludes payments for services rendered.

The Honourable Sir James Grigg: I lay on the table of the House a statement giving the required information.

Statement showing the new appointments, etc., sanctioned by the Finance Department in the Departments of the Government of India.

Department.	Appointments sanctioned.	Why sanctioned.	Expenditure involved.
Home Department	1 Deputy Secretary	To deal with extra work of a constitutional and emergent nature. The post has been sanctioned for two years with effect from the 26th April 1938, but is likely to be terminated earlier.	Rs. 20,432.
	1 Assistant (temporary).	To assist the Officer on Special Duty in the revision and consolidation of the law on Arbitration. The post has been sanctioned temporarily on Rs. 200 per mensem from 6th August 1938, to the 1st December 1938.	Rs. 800.
	1 Assistant (temporary) for 15 days.	To cope with pressure of work	Rs. 100.
	3 Stenographers (temporary) for periods varying from 1 to 4 months.	In replacement of stenographers on leave and to cope with pressure of work.	Rs. 2,000.
Legislative Department.	1 Additional Deputy Secretary (temporary) from 22nd August 1938 to 28th February 1939.	Created in lieu of the temporary post of Joint Secretary which has been abolished.	Rs. 1,825 per mensem against a saving of Rs. 3,178 per mensem.
Department of Education, Health and Lands.	1 Officer on Special Duty (temporary) for two months.	To permit the Educational Commissioner designate to establish contacts with educational authorities in the Provinces before assuming charge of his duties.	Rs. 7,318.
	1 Additional Under Secretary (temporary).	Partly as a training post and partly to cope with additional work in consequence of the conversion of the Department of Imperial Council of Agricultural Research into an Attached Office. A post of Assistant Secretary will, when the present incumbent shortly proceeds on leave preparatory to retirement, be replaced by a post of Under Secretary to which this officer will be appointed.	Rs. 5,713.
	1 Peon (temporary)	To provide an orderly for the Officer on Special Duty.	Rs. 24.

Department.	Appointments sanctioned.	Why sanctioned.	Expenditure involved.
Department of Commerce.	1 Superintendent of Insurance.	The post has been created under the New Insurance Act.	Rs. 2,000 p. m.
	1 Stenographer	For Superintendent of Insurance.	Rs. 275. p. m.
	1 Attaché	For training	Rs. 850 p. m.
	1 Additional Joint Secretary (temporary for 6 days only).	For work in connection with the Indo-British Trade Negotiations.	Rs. 580.
Department of Labour.	1 Under Secretary (at present Attaché).	Created in lieu of 1 post of Assistant Secretary abolished with effect from 1st September 1938.	Rs. 1,250 p. m. against a saving of Rs. 1,000 p. m.
Department of Communications.	1 Additional Under Secretary.	The post has been created as the number of officers in the Department was inadequate to deal with the amount of work for which it is responsible.	Officer not yet selected.
Defence Department.	1 Stenographer	Increase of work in the Department.	Rs. 3,300 per annum.
	1 Additional Secretary (temporary).	For special duties in connection with Defence preparation.	Rs. 44,400 per annum.
	1 Additional Secretary (temporary).	Ditto	} Rs. 19,684.
	1 Under Secretary (temporary).	Ditto	
	2 Assistants (temporary).	Ditto	
	1 Third Division Clerk (temporary).	Ditto	
	1 Stenographer (temporary).	Ditto	
	1 Daftry	Ditto	
	1 Jernadar, 2nd Class.	Ditto	
	3 Peons	Ditto	
Finance Department (Ordinary Branch).	1 Joint Secretary (temporary).	The officer is to report on the feasibility of the imposition of death duties.	Rs. 3,750 per mensem.
	1 Deputy Secretary (temporary).	In lieu of post of Joint Secretary in abeyance from 19th April 1938 up to 30th October 1938 and thereafter due to increased work in the Department, the temporary post of Additional Secretary having been abolished with effect from 18th October 1938.	Rs. 22,245 against a saving of Rs. 38,230.
	4 Officers on Special Duty (temporary for a few months).	For training officers for eventual employment in the Finance and Commerce 'Pool'.	Rs. 31,512 (approximately).
	1 Superintendent (temporary).	Due to increase of work in the Department.	Rs. 600 per mensem.

Department.	Appointments sanctioned.	Why sanctioned.	Expenditure involved.
Finance Department (Ordinary Branch).	1 Assistant, (temporary).	For technical work connected with the examination of the forms of accounting and budgets of the major ports.	Rs. 1,740.
	3 Clerks, III Division, on Rs. 60 p. m. each.	One for special confidential work and two to cope with rush of work.	Rs. 1,560.
	1 from 1st April 1938 to 30th November 1938.		
	1 from 20th May 1938 to 19th November 1938.		
	1 from 1st July 1938 to 30th June 1939.		
	2 Clerks, III Division (permanent).	To form a leave reserve for the III Division. The previous practice was to engage substitutes as each leave vacancy occurred.	The result is a saving.
Finance Department (Military Finance Branch).	3 Assistant Financial Advisers.	To cope with the increase in work and also as measure of re-organisation of the constitution of the Branch with a view to exercising a more effective control over Defence expenditure.	Rs. 36,540 per annum.

Mr. T. S. Avinashilingam Chettiar: May I know, Sir, the number of new appointments sanctioned?

The Honourable Sir James Grigg: I have just handed in a statement; I cannot say.

Mr. T. S. Avinashilingam Chettiar: It must be easy to mention the number of appointments made?

The Honourable Sir James Grigg: They are given separately under each Department. I have not added them up.

Mr. T. S. Avinashilingam Chettiar: May I know, Sir, in how many Departments these new appointments have been made?

The Honourable Sir James Grigg: It gives a comprehensive list of what has happened in all the Departments. I think the Honourable Member had better study the statement first.

Mr. T. S. Avinashilingam Chettiar: What is the total financial effect of all these new appointments?

The Honourable Sir James Grigg: The Honourable Member should first read the statement.

Mr. T. S. Avinashilingam Chettiar: I think, Sir, these answers are really intended to avoid supplementaries.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member has given a list, and he should first go through it.

Mr. T. S. Avinashilingam Chettiar: Will you kindly allow us to put supplementaries to this question tomorrow?

Mr. President (The Honourable Sir Abdur Rahim): The Chair cannot do that. If it is allowed in this case, the Chair will have to do it in all cases.

Mr. S. Satyamurti: Does the statement give the reasons for all these new appointments?

Mr. President (The Honourable Sir Abdur Rahim): That is what the Chair understands.

Mr. S. Satyamurti: May I point out to you, Sir, that this question is raised, not for the purpose of getting a list in which case I quite agree it may be placed on the table, but the point of the question is in clauses (c) and (d). We are now told a great deal about retrenchment, about a 10 per cent. cut in salaries and contingencies and other things. We want to pursue the points raised in clauses (c) and (d), and I should like you, Sir, to direct the Finance Member to give replies; unless we put this question again in about two months, which will be too late, we shall not be able to raise this question.

Mr. President (The Honourable Sir Abdur Rahim): Replies have been given to the questions.

Mr. S. Satyamurti: With regard to (a) and (b), I quite agree.

Mr. President (The Honourable Sir Abdur Rahim): With regard to (c) also, whatever the reasons are for the appointments made, the proper time will be when the demands are put forward.

Mr. S. Satyamurti: The demands may not be put forward. They may re-appropriate.

Mr President (The Honourable Sir Abdur Rahim): There would be plenty of opportunities during the Budget Session.

Mr. S. Satyamurti: You mean in the Budget, but, Sir, these new appointments have been made for this year. I quite agree, if I may say so respectfully, that, so far as the new appointments provided for in the Budget are concerned, we get ample opportunities for dealing with them, but the trick is, if I may use that term, not to bring these in the Budget, but to make them in the course of the year and try to find money by re-appropriation, and by excess grants and bring these things before us long after the appointments have been made. We therefore want to pursue this matter at this time, and see how the Finance Member can reconcile his financial conscience in sanctioning all these new appointments. I, therefore, submit, Sir, that you may direct the Finance Member to answer parts (c) and (d) on the floor of the House so that we can pursue this matter further.

The Honourable Sir James Grigg: I shall have to read out the whole statement and that seems to me wasting the time of the House. I honestly do not think that the Honourable Member is making a really good case. The executive is entitled to make all these appointments.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member had better go through the statement first.

Mr. S. Satyamurti: May I ask the Honourable the Finance Member to say honestly, to use his own word, whether he has applied his financial mind to this matter, before sanctioning all these appointments?

Mr. President (The Honourable Sir Abdur Rahim): Honestly is not the proper word.

The Honourable Sir James Grigg: I don't object to it.

Mr. S. Satyamurti: My Honourable friend understands humour, and I ask him whether he will honestly say that he has sanctioned all these new appointments with a keen eye to the financial position of the Government of India and its future prospect with regard to customs receipts, railway receipts, and so on, and if he has satisfied himself that all these new appointments are absolutely necessary for carrying on the administration?

The Honourable Sir James Grigg: Either I or my Department have satisfied themselves honestly.

Mr. T. S. Avinashlingam Chettiar: May I know, Sir, what are the Departments in which these new appointments have been made, they cannot be more than two or three?

The Honourable Sir James Grigg: The Honourable Member had better first go through the list.

Mr. T. S. Avinashlingam Chettiar: I do not want the figures or the list, because there are only eight or nine Departments in the Government of India. . . .

The Honourable Sir James Grigg: In point of fact, I have dealt with all the Departments: even when quite minor staff has been added, the explanation has been given, and I think the Honourable Member had better first study the list as a whole.

NON-FORMATION OF A CANTONMENT BOARD IN AMBALA.

1807. ***Mr. Sham Lal:** (a) Will the Defence Secretary please state whether it is a fact that even after his reply in August last the Board has not been formed in Ambala Cantonment as yet?

(b) If so, what are the reasons for this long delay and when is the Board expected to start functioning?

(c) Is it a fact that it is the only big Cantonment in the Northern Command where the administration is being run by a corporation sole? If so, are there any reasons for this special treatment being meted out to the people of Ambala Cantonment?

Mr. C. M. G. Ogilvie: (a) and (b). Yes. The reason for the delay in constituting the Board in Ambala was that there being no provision in the Cantonments Act to provide for the filling of seats in the first election when an insufficient number of candidates was elected, it was necessary to make a rule to provide for the purpose. This was finally published in the Gazette of the 12th November and it is hoped that the names of the members of the Board will be published in the next issue of the Gazette.

(c) The answer to the first part of the question is in the affirmative. The second part does not arise.

Mr. Abdul Qayyum: With reference to part (b) of the question, will Government bring in the necessary legislation to get over the difficulty?

Mr. C. M. G. Ogilvie: Not at present.

REFUSAL TO MAKE THE TRANSFER ENTRIES IN THE TAX REGISTER IN AMBALA CANTONMENT.

1808. *Mr. Sham Lal: (a) Will the Defence Secretary please state if it is a fact that the Military Estates Officer, Ambala, and the Cantonment Authority demand from the residents registered admission in favour of the Government in the land occupied by the building before transfer entries are made in the Tax Registers?

(b) Is it a fact that the authorities mentioned above refuse to make the transfer entries in the registers if the admissions are not forthcoming?

(c) Is it a fact that the Authorities mentioned above besides the refusal to make the transfer entries in the Tax Registers threaten the residents with prosecution and resumption of their buildings if they do not furnish the registered admissions?

(d) Are the Military Estates Officers in other Cantonments and the Cantonment Authorities there following the same procedure?

(e) If so, is it all being done under some general instructions of the Government of India?

(f) If so, are the instructions warranted by any provision of the Cantonment Act?

(g) If the answer to part (e) be in the negative, what is the basis of this procedure?

(h) What steps have Government undertaken or propose to take to stop this procedure?

Mr. C. M. G. Ogilvie: (a) and (b). Notices of transfer of property submitted under section 78 of the Cantonments Act, 1924, are not received by the Military Estates Officer but by the Executive Officer. Government understand that, through a misapprehension, the latter has, since 1936, been demanding a recognition of Government's rights before such transfers are registered but the attention of the local authorities has been drawn to the fact that this practice is irregular.

(c) No.

(d) Government have no reason to believe that the correct procedure is not being followed in other cantonments.

(e), (f), (g) and (h). Do not arise.

NOMINATIONS TO THE ELECTED SEATS TO THE CANTONMENT BOARDS.

1809. ***Mr. Sham Lal:** Will the Defence Secretary please state:

- (a) whether it is a fact that the Central Government have published a rule under section 31(G) of the Cantonment Act for making nominations to the elected seats even at the time of the first election, if sufficient number of members is not elected; and
- (b) whether it is a fact that section 31 is meant to frame rules for holding elections and not for making nominations to elected seats?

. **Mr. C. M. G. Ogilvie:** (a) Yes.

(b) No. Section 31 provides *inter alia* for the making of rules to regulate any matter relating to elections in respect of which the Act makes no provision or makes insufficient provision and provision is in the opinion of the Central Government necessary.

NON-LEVY OF OCTROI DUTY ON LIQUOR AND WINES IN THE LAHORE CANTONMENT.

1810. ***Mr. Sham Lal:** Will the Defence Secretary be pleased to state:

- (a) whether it is a fact that under the Octroi Schedule, now in force in the Cantonment of Lahore no octroi duty is leviable on the import of liquor and wines of all sorts;
- (b) whether it is a fact that the Lahore Cantonment Board sometimes ~~has~~ unanimously decided to include these in their Octroi Schedule and forwarded their proposals to the Government of India through the Northern Command for approval and publication in the Gazette of India; and
- (c) at what stage is the matter now and what is the delay in the approval and notification of these proposals?

Mr. C. M. G. Ogilvie: (a) Yes.

(b) Yes.

(c) The proposals were received only on the 31st October, 1938, and are under consideration.

Mr. Abdul Qayyum: With regard to part (d) of the question, may I know, Sir, why Government have turned down the suggestion of the Lahore Cantonment Board in this matter?

Mr. C. M. G. Ogilvie: If the Honourable Member has heard my answer to clause (c), he will realise they have not done so.

Mr. Sham Lal: May I know, Sir, when the final orders will be passed?

Mr. C. M. G. Ogilvie: I am not quite clear as to when the final orders will be passed,—I imagine fairly soon. The difficulty is that double octroi is likely to be paid as all these goods come from the municipality, where they pay octroi, to the cantonment, where they are expected to pay again.

Mr. Abdul Qayyum: May I know, Sir, when Government expect to come to a decision?

Mr. O. M. G. Ogilvie: I said that proposals were received on 31st October 1938, and are under consideration.

RACIAL DISCRIMINATION IN THE MECHANICAL TRANSPORT DEPARTMENT.

1811. *Mr. Sham Lal: With reference to the answer to my question No. 600, asked in this House on the 30th August, 1938, will the Defence Secretary be pleased to state:

- (a) whether it is a fact that after the reply to my question, additional kit approximately of the value of Rs. 200 has been supplied to the Anglo-Indian Apprentices of the Mechanical Transport Department while the Indian apprentice has been supplied with a kit of the value of Rs. 48; and
- (b) whether he is aware that the warm coat supplied to the Indian affords no protection against cold?

Mr. O. M. G. Ogilvie: (a) and (b). No.

ADMISSIONS TO THE INDIAN MILITARY ACADEMY AND APPOINTMENTS TO THE AUXILIARY FORCE UNITS.

†1812. *Mr. M. Ananthasayanam Ayyangar: Will the Defence Secretary please state:

- (a) the number of Anglo-Indians and domiciled Europeans who have been admitted to the Indian Military Academy since its inception;
- (b) the total number of admissions to the said Academy from its inception;
- (c) how many of these Anglo-Indians and domiciled Europeans were admitted by competition, and how many by nomination;
- (d) whether Indians are not eligible for appointments to the units of the Auxiliary Force in India;
- (e) if not, why Anglo-Indians and domiciled Europeans from these units are sent to officer Indianised units;
- (f) whether such Anglo-Indian and domiciled European officers posted to Indianised units receive preferential treatment over the Indians; and
- (g) whether Government are prepared to take speedy steps to remove these grievances?

Mr. O. M. G. Ogilvie: (a) 22.

(b) 516.

(c) By competition—8.

By selection—14.

(d) Yes.

†Answer to this question laid on the table, the questioner being absent.

- (e) Because they are statutory natives of India.
- (f) No.
- (g) Does not arise.

AMOUNT ALLOTTED TO SECRET SERVICE FUND.

1813. *Mr. T. S. Avinashilingam Chettiar: Will the Honourable the Finance Member state:

- (a) whether any amounts are allotted to the Secretary of State for secret service work; if so, what was the amount allotted in the last financial year;
- (b) what is the purpose of this secret service work; and
- (c) whether this amount is paid from Indian Revenues and whether according to the Government of India Act the India Office should be maintained by His Majesty's Government's finances?

The Honourable Mr. R. M. Maxwell: (a) No.

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

Mr. T. S. Avinashilingam Chettiar: Sir, in the Public Accounts Committee there is mention of a lakh of rupees and odd for secret service work for the Secretary of State. I have seen it there.

The Honourable Mr. R. M. Maxwell: No, Sir, no amount is allotted to the Secretary of State for activities conducted by the India Office as the question suggests.

Mr. T. S. Avinashilingam Chettiar: May I know, apart from the India Office, whether any amount for secret service work is allotted to the Secretary of State?

The Honourable Mr. R. M. Maxwell: It is not in the public interest to say whether and by whom any secret service work is carried on, but whatever secret service work is carried on at the instance of the Government of India is for the Government of India and for nobody else.

Mr. S. Satyamurti: May I know what my Honourable friend means by saying 'No' in answer to clause (a) of the question? As a member of the Public Accounts Committee I have had opportunities of asking questions on this, year after year, of the witnesses who come before us. May I know whether Government's answer is to be interpreted as meaning that no amount is spent by the Secretary of State or under his orders out of Indian revenues for secret service work outside India?

The Honourable Mr. R. M. Maxwell: I said no amount is allotted. The question is, "whether any amounts are allotted to the Secretary of State for secret service work". The Government of India do not make any allotment to the Secretary of State.

Mr. S. Satyamurti: May I know under what head is the secret service expenditure incurred by the Secretary of State, because I know that this secret service expenditure is incurred and finds a place in the accounts submitted to the Public Accounts Committee year after year as part of the Secretary of State's accounts?

The Honourable Mr. R. M. Maxwell: The Secretary of State, if he spends any such money on behalf of the Government of India—he acts simply as our agent. It is not allotted to him for secret service work as the question suggests.

Mr. S. Satyamurti: May I take it that the bills are paid by the Government of India on the certificate of the Secretary of State, or a particular sum is allotted to him for this expenditure, and the manner of the expenditure is decided by the Secretary of State without reference to the Government of India?

The Honourable Mr. R. M. Maxwell: No, I know of no particular sum being allotted to him. If any money is spent at home, he does it as the agent of the Government of India.

Mr. N. M. Joshi: May I ask whether the Government of India have considered the question of allotting this work to the High Commissioner instead of the India Office?

The Honourable Mr. R. M. Maxwell: No. That has not been considered.

Mr. N. M. Joshi: May I know whether the Government of India will consider this question?

The Honourable Mr. R. M. Maxwell: No.

Mr. S. Satyamurti: May I know whether the attention of the Government has been drawn to the recommendation of the Public Accounts Committee—I know that for three years we have considered it and made a recommendation, but the Government of India may not have looked into it—may I know whether the Government of India's attention has been drawn to the recommendation of the Public Accounts Committee that all agency functions which are still performed by the Secretary of State should be transferred to the High Commissioner and that representation should be made to His Majesty's Government that all expenditure incurred on account of the Secretary of State should be borne on the British Exchequer?

The Honourable Sir James Grigg: If the House will allow me to reply, it does not arise directly out of the original question. But the Honourable Member knows that Sir Ernest Burdon looked into the question while on leave. He has submitted a report but I have myself not studied the report. When I have, I shall be able to communicate the information to the House.

Mr. T. S. Avinashilingam Chettiar: The Honourable Member said that he may spend as the agent of the Government of India. May I know whether such amounts have been spent as an agent of the Government of India outside India by the Secretary of State in the last financial year?

The Honourable Mr. E. M. Maxwell: I did not quite follow the Honourable Member's question. A good deal of expenditure of the Government of India takes place outside India.

Mr. T. S. Avinashilingam Chettiar: In answer to clause (a) of the question, my Honourable friend said that no amount is allotted for secret service work to the Secretary of State, and he said that if any secret service expenditure is incurred by the Secretary of State he incurs it as the agent of the Government of India. I want to know what amount has been spent by the Secretary of State on this sort of work as the agent of the Government of India outside India in the course of the last financial year.

The Honourable Mr. E. M. Maxwell: I cannot give the exact figure.

Mr. T. S. Avinashilingam Chettiar: May I know whether any amounts have been spent in the last year?

The Honourable Mr. E. M. Maxwell: Certainly. As I said just now, the Secretary of State makes expenditure on behalf of the Government of India on various matters.

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

LICENSING OF BANKS IN INDIA.

1814. *Mr. Manu Subedar: (a) Will the Honourable the Finance Member please state how many banks have their offices in India? How many of them are registered in this country, and, of the Indian banks, how many have their registration in Indian States?

(b) Is it a fact that owing to the weakness and failure of some non-Indian banks in the last twenty years Indian depositors have lost money?

(c) How many banks have gone into liquidation since 1918 under the three classes indicated in part (a)?

(d) Is it a fact that the Central Banking Committee's reports, both majority and minority, suggested a system of licensing for all banks?

(e) Is it a fact also that they suggested certain safeguards as part of the licensing system for Indian depositors?

(f) Is it true that, in replies by Sir George Schuster, an assurance was given that all this would be done when the matter of the Banking Act would be taken up?

(g) Are Government considering the question of such licensing?

The Honourable Sir James Grigg: (a) to (c). Information is being collected and will be laid on the table of the House.

(d) The majority Report recommended the licensing of all banks; the Minority Report of the non-Indian banks only.

(e) Yes.

(f) I have not been able to trace any such assurance.

(g) No.

Mr. Manu Subedar: May I enquire whether the sections in the Indian Companies Act applying to banks are applied to banks registered in Indian States and whether Government are taking any steps to see that they are governed by these sections?

The Honourable Sir James Grigg: To the best of my belief, there is one section, which is section 10A of the Companies Act, which deals with companies registered in Indian States. I have not refreshed my memory about it recently, but, beyond that, I do not think that there is any legislation dealing with companies registered in Indian States.

Mr. Manu Subedar: May I ask whether the Honourable Member will go a little further into this question? I am not wanting an answer now, but I am asking whether he will see whether all provisions which are made in the Indian Companies Act for the safeguarding and proper running of banks—whether he will see that these provisions are insisted upon in the case of a bank registered in Indian States before it opens a branch in British India?

The Honourable Sir James Grigg: I am not sure that that is within my power, but I will look into the question to see if there is anything like that that we can do.

Mr. Manu Subedar: May I know further whether any steps have been taken by Government to invest the Reserve Bank with the power of sanctioning or withholding sanction to the opening of additional branches by banks which are not registered in British India?

The Honourable Sir James Grigg: I think that is a question of principle which requires a great deal of consideration.

Mr. S. Satyamurti: Apart from the answer of my Honourable friend to clause (f) of the question, in which he has expressed inability to trace the assurance of Sir George Schuster, may I know if Government are considering the question of a comprehensive banking legislation?

The Honourable Sir James Grigg: The Honourable Member has asked me this question about eight times in this and preceding Sessions, and I have referred to the fact that a good deal of legislation was undertaken in the Companies Act. I explained that the Reserve Bank were considering in conjunction with the scheduled banks the reasons for a rather spectacular failure recently, and until that consideration is finished, I cannot make any statement.

Mr. S. Satyamurti: May I know if the attention of my Honourable friend has been drawn to a statement by the Honourable the Law Member in charge of the Indian Companies Act, that the question of undertaking a comprehensive banking legislation will be considered by Government later and only a few sections were put in the Companies Act in view of that statement?

The Honourable Sir James Grigg: I should be glad to have my attention specifically directed to that.

Mr. S. Satyamurti: May I know whether the impending departure of the Honourable the Finance Member and of the Honourable the Law Member does not introduce a hiatus in the consideration of this question?

The Honourable Sir James Grigg: I am speaking for myself and not for the Honourable the Law Member. I am bound to say that only to a limited number of questions can I devote my attention in my remaining time here.

MOVE OF THE ARMY HEADQUARTERS.

†1815. ***Sardar Sant Singh:** With reference to the answer given to Mr. Satyamurti's starred question No. 1192 of the 13th March, 1936, will the Defence Secretary please state:

- (a) the headquarters station or stations of the Defence Headquarters which is composed of the following units:
 - (i) Defence Secretariat,
 - (ii) Army Headquarters,
 - (iii) Royal Air Force Headquarters,
 - (iv) Navy Headquarters,
 - (v) Military Finance Branch,
 - (vi) Military Accountant General's Office, and
 - (vii) Directorate of Army Audit;
- (b) what action, if any has been taken to date to provide the amount of accommodation required at Delhi to move from Simla the whole of Army Headquarters offices during the winter to bring them on a par with the other departments of the Central Government;
- (c) the circumstances under which the full quota of accommodation required for Army Headquarters was not provided when such accommodation as was necessary for the 100 per cent. requirements of the Military Accountant General, the Financial Adviser, Military Finance and the Secretary, Defence Department was catered for; and
- (d) whether it is a fact that in the matter of move to Delhi from Simla, the following offices receive preference, because of importance attached to their work by His Excellency the Commander-in-Chief and Army Member, over the departments connected with the production of armaments and other military stores:

†Answer to this question laid on the table, the questioner being absent.

- (i) Routine Sections, such as Soldiers' Board, Defence Department,
- (ii) Directorate of Military Lands and Cantonments,
- (iii) Directorate of Pay and Pensions,
- (iv) Deputy Financial Adviser (Pay and Pensions),
- (v) Military Accountant General,
- (vi) Ceremonial Section, Adjutant General's Branch, and
- (vii) Railway Section, Quartermaster General's Branch?

Mr. O. M. G. Ogilvie: (a) Headquarters stations are as follows :

Delhi—

Defence Department Secretariat (including Military Lands and Cantonments and the Indian Soldiers' Board).

Military Finance Branch.

Military Accountant General.

Director of Audit, Defence Services.

Simla—

Army and Air Force Headquarters.

Bombay—

Royal Indian Navy.

(b) None.

(c) and (d). I refer the Honourable Member to my reply to Seth Govind Das's starred question No. 1260 on the 15th November, 1938.

NON-APPOINTMENT OF INDIAN CLERKS AND SUPERINTENDENTS TO CERTAIN POSTS IN THE ARMY HEADQUARTERS AND THE DEFENCE DEPARTMENT.

†1816. *Sardar Sant Singh: Will the Defence Secretary be pleased to state:

- (a) whether it is a fact that Indian clerks and Superintendents of Army and Royal Air Force Headquarters are not considered eligible for appointment to the following posts in Defence Headquarters:
 - (i) Stenographer to His Excellency the Commander-in-Chief (styled as Officer Supervisor and Personal Assistant to His Excellency the Commander-in-Chief),
 - (ii) Assistant Secretary, Defence Department,
 - (iii) Officer Supervisor and Superintendent, General Staff Branch, and
 - (iv) Personal Assistant to Defence Secretary;

†Answer to this question laid on the table, the questioner being absent.

- (b) whether it is a fact that when a Superintendent's and an Assistant Secretary's posts fell vacant in the Defence Department a few years ago, both the posts were filled by selection of European clerks from Army Headquarters without offering either to Indians; if so, why;
- (c) the number of British Other Ranks clerks at present employed in Army Headquarters and the total emoluments drawn by each of the married British Other Ranks clerks, including the cash value of all the concessions, *e.g.*, with amount of allowance under each head:
 - (i) free quarters at Simla/Delhi or compensation in lieu,
 - (ii) furniture allowance,
 - (iii) coal allowance,
 - (iv) light allowance,
 - (v) shaving allowance,
 - (vi) clothing allowance,
 - (vii) education allowance for children,
 - (viii) milk allowance,
 - (ix) marriage allowance,
 - (x) free conveyance to and from office, and
 - (xi) miscellaneous allowances not mentioned in the above list;
- (d) whether it is a fact that the employment of Indian clerks in lieu of British Other Ranks clerks in Army Headquarters is far more economical; and
- (e) whether it is a fact that high educational qualifications are demanded of Indians in connection with the Public Service Commission examination for employment in Army Headquarters starting at Rs. 55 per mensem whereas British Other Ranks clerks who start on Rs. 300 per mensem, are exempted from any obligation to appear at a Public Service Commission examination? If so, what are the reasons for this racial discrimination?

Mr. O. M. G. Ogilvie: (a) No.

(b) The most suitable candidates were selected irrespective of nationality.

(c) 89, of which 29 are single and 60 married. Two of the latter are on leave. A statement is laid on the table showing the total emoluments drawn by the remaining 58.

(d) I refer the Honourable Member to the reply given by my predecessor on the 30th January, 1934, to Mr. S. O. Mitra's starred question No. 56 and supplementary questions arising therefrom.

(e) I refer the Honourable Member to the reply given by me on the 15th November, 1938, to part (b) of Seth Govind Das's starred question No. 1261.

Statement showing the total emoluments drawn by each of the Married British other ranks employed in Army Headquarters including the cash value of all the concessions under each head.

Serial No.	No. of married British other ranks.	Pay.	Compensation in lieu of quarters.	Furniture allowance.	Coal allowance (See footnote (c)).	Light allowance.	Shaving, hair cutting, etc.	Clothing allowance.	Education allowance for children.	Milk allowance.	Marriage allowance.	Grse conveyance to and from office.	Miscellaneous allowances.				Total emoluments.	Remarks.
													Special compen- satory allow- ance.	Meeting allowan- ce.	Ration allowance.	Conveyance al- lowance.		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
Rs. as.	Rs. as.	Rs. as.	Rs. as.	Rs. as.	Rs.	Rs. as.	Rs. as.	Rs. as.	Rs. as.	Rs.	Rs. as.	Rs.	Rs. as.	Rs. as.	Rs. as.	Rs. as.	Rs. as.	
1	One	360 0	49 8	15 0	...	3 8	3 0	3 12	30 0	...	60 0	...	50 0	11 12	22 8	12 0	621 0	
2	One	270 0	49 8	15 0	...	3 8	3 0	3 12	(a) 30 0	...	40 0	...	50 0	11 12	22 8	12 0	481 0	
3	One	247 8	20 0	15 0	...	3 0	3 0	4 0	(a) 11 0	...	40 0	...	50 0	11 12	22 8	12 0	439 12	
4	One	290 0	49 8	15 0	...	3 8	3 0	4 2	...	...	60 0	...	...	11 12	22 8	12 0	461 6	
5	One	280 0	49 8	15 0	...	3 8	3 0	4 2	...	...	40 0	...	...	11 12	22 8	12 0	441 6	
6	One	250 0	49 8	15 0	...	3 8	3 0	4 2	...	...	40 0	...	...	11 12	22 8	12 0	411 6	
7	One	250 0	49 8	15 0	...	3 8	3 0	4 2	...	...	30 0	...	...	11 12	22 8	12 0	401 6	
8	One	280 0	49 8	15 0	...	3 8	3 0	4 2	...	...	30 0	...	...	11 12	22 8	12 0	431 6	
9	One	250 0	49 8	15 0	...	3 8	3 0	4 2	...	...	30 0	...	...	11 12	22 8	12 0	401 6	
10	One	250 0	49 8	15 0	...	3 8	3 0	4 2	...	...	30 0	...	...	11 12	22 8	12 0	401 6	
11	One	250 0	49 8	15 0	...	3 8	3 0	4 2	...	...	30 0	...	...	11 12	22 8	12 0	401 6	
12	One	220 0	49 8	15 0	...	3 8	3 0	4 2	...	...	30 0	...	...	11 12	22 8	12 0	371 6	
13	One	210 0	49 8	15 0	...	3 8	3 0	4 1	...	...	30 0	...	...	11 12	22 8	12 0	361 5	
14	One	151 14	20 0	15 0	...	3 0	3 0	4 0	...	...	30 0	...	50 0	11 12	22 8	12 0	323 2	
15	One	280 0	49 8	15 0	...	3 8	3 0	4 1	...	...	40 0	...	...	11 12	22 8	12 0	441 5	
16	One	250 0	49 8	15 0	...	3 8	3 0	4 1	...	...	30 0	...	...	11 12	22 8	12 0	411 5	
17	One	250 0	49 8	15 0	...	3 8	3 0	4 1	...	...	40 0	...	...	11 12	22 8	12 0	411 5	

Statements showing the total emoluments drawn by each of the Married British other ranks employed in Army Headquarters including the cash value of all the concessions under each head—contd.

Serial No.	No. of married, British other ranks.	Pay.	Compensation in lieu of quarters.	Furniture allowance.	Coal allowance (See footnote (c)).	Light allowance.	Shaving, hair cutting, etc.	Clothing allowance.	Education allowance for children.	Milk allowance.	Marriage allowance.	Free conveyance to and from office.	Miscellaneous allowances.				Total emoluments.	Remarks.
													Special compen- sation allow- ance.	Measur- ing allow- ance.	Ration allowance.	Conveyance al- lowance.		
1		Rs. as.	Rs. as.	Rs. as.	Rs. as.	Rs. as.	Rs. as.	Rs. as.	Rs. as.	Rs. as.	Rs. as.	Rs. as.	Rs. as.	Rs. as.	Rs. as.	Rs. as.	Rs. as.	
18	One	320 0	49 8	15 0	...	3 8	3 0	4 1	...	...	30 0	...	...	11 12	23 8	12 0	371 5	
19	One	210 0	49 8	15 0	...	3 8	3 0	4 1	...	...	30 0	...	...	11 12	23 8	12 0	361 5	
20	One	210 0	49 8	15 0	...	3 8	3 0	4 1	(a) (b)	...	30 0	...	...	11 12	23 8	12 0	361 5	
21	One	360 0	49 8	15 0	...	3 8	3 0	4 0	15 0	...	50 0	...	...	12 0	23 0	12 0	567 0	
22	One	38 0	49 8	15 0	...	3 8	3 0	4 0	...	...	30 0	...	...	13 0	23 0	13 0	532 0	
23	One	290 0	49 8	15 0	...	3 8	3 0	4 0	...	...	40 0	...	...	12 0	23 0	12 0	442 0	
24	One	430 0	49 8	15 0	...	3 8	3 0	4 0	...	...	40 0	...	50 0	12 0	23 0	12 0	632 0	
25	One	380 0	49 8	15 0	...	3 8	3 0	4 0	(a)	...	60 0	...	...	12 0	23 0	12 0	562 0	
26	One	420 0	49 8	15 0	...	3 8	3 0	4 0	10 0	...	50 0	5 0	...	12 0	23 0	12 0	607 0	
27	One	380 0	49 8	15 0	...	3 8	3 0	4 0	...	...	30 0	8 0	...	12 0	23 0	12 0	535 0	
28	One	380 0	49 8	15 0	...	3 8	3 0	4 0	...	...	30 0	...	...	12 0	23 0	12 0	532 0	
29	One	380 0	49 8	15 0	...	3 8	3 0	4 0	(b)	...	60 0	8 0	...	12 0	23 0	12 0	565 0	
30	One	430 0	49 8	15 0	...	3 8	3 0	4 0	20 0	...	40 0	5 0	...	12 0	23 0	12 0	567 0	
31	One	290 0	49 8	15 0	...	3 8	3 0	4 0	...	...	40 0	5 0	...	12 0	23 0	12 0	475 0	
32	One	210 0	49 8	15 0	...	3 8	3 0	4 0	...	...	40 0	3 0	...	12 0	23 0	12 0	362 0	
33	One	260 0	49 8	15 0	...	3 8	3 0	4 0	...	...	30 0	...	...	12 0	23 0	12 0	408 0	
34	One	420 0	49 8	15 0	...	3 8	3 0	4 0	...	...	30 0	...	...	12 0	23 0	12 0	572 3	
35	One	420 0	49 8	15 0	...	3 8	3 0	4 15	...	...	30 0	...	...	11 12	22 8	12 0	572 3	
											30 0	5 0	...	11 12	23 8	12 0	577 3	

36	One	330 0	49 8	15 0	...	3 8	3 0	4 15	...	40 0 5 0	...	11 12	22 8	12 0	547 8
37	One	330 0	49 8	15 0	...	3 8	3 0	4 14	11 0	40 0	50 0	11 12	22 8	12 0	503 2
38	One	330 0	49 8	15 0	...	3 8	3 0	4 15	14 0	50 0	...	11 12	22 8	12 0	566 3
39	One	330 0	49 8	15 0	...	3 8	3 0	4 13	(a) 13 0	50 0	...	11 12	22 8	12 0	565 1
40	One	330 0	49 8	15 0	...	3 8	3 0	4 15	(a) 8 0	65 0	...	11 12	22 8	12 0	575 3
41	One	330 0	49 8	15 0	...	3 8	3 0	4 15	(a) 9 0	50 0	...	11 12	22 8	12 0	561 3
42	One	330 0	49 8	15 0	...	3 8	3 0	4 15	(a) 18 0	30 0	...	11 12	22 8	12 0	532 3
43	One	330 0	49 8	15 0	...	3 8	3 0	4 15	(a) 18 0	40 0	...	11 12	22 8	12 0	560 3
44	One	330 0	49 8	15 0	...	3 8	3 0	4 13	(a) 8 0	40 0	...	11 12	22 8	12 0	550 1
45	One	330 0	49 8	15 0	...	3 8	3 0	4 15	(a) 9 0	50 0	...	11 12	22 8	12 0	561 3
46	One	330 0	49 8	15 0	...	3 8	3 0	4 15	(a) 9 0	50 0	...	11 12	22 8	12 0	561 3
47	One	250 0	49 8	15 0	...	3 8	3 0	4 11	...	40 0	...	11 12	22 8	12 0	441 15
48	One	250 0	49 8	15 0	...	3 8	3 0	4 11	...	30 0	...	11 12	22 8	12 0	432 2
49	One	250 0	49 8	15 0	...	3 8	3 0	4 9	...	30 0	...	11 12	22 8	12 0	401 13
50	One	250 0	49 8	15 0	...	3 8	3 0	4 9	...	40 0	...	11 12	22 8	12 0	441 13
51	One	250 0	49 8	15 0	...	3 8	3 0	4 9	...	40 0	...	11 12	22 8	12 0	411 13
52	One	250 0	49 8	15 0	...	3 8	3 0	4 1	...	30 0	...	11 12	22 8	12 0	401 5
53	One	250 0	49 8	15 0	...	3 8	3 0	9 1	...	30 0	...	11 12	22 8	12 0	436 5
54	One	250 0	49 8	15 0	...	3 8	3 0	4 1	...	40 0	...	11 12	22 8	12 0	411 5
55	One	250 0	49 8	15 0	...	3 8	3 0	4 1	...	40 0	...	11 12	22 8	12 0	411 5
56	One	360 0	49 8	15 0	...	3 8	3 0	4 1	...	40 0 5 0	50 0	11 12	22 8	12 0	576 5
57	One	250 0	49 8	15 0	...	3 8	3 0	4 1	(a) 10 0	40 0	...	11 12	22 8	12 0	411 5
58	One	330 0	49 8	15 0	...	3 8	3 0	4 2	10 0	50 0 20 0	...	11 12	22 8	12 0	590 6

(a) Education allowance for children, i.e., tuition fee and cost of text books are paid under Pay and Allowance Regulations, Volume II, paragraph 389. The amount, therefore, varies in accordance with the station (Simla and Delhi) at which the children are educated and the number of text books they purchase and is given for school term only.

(b) Including Rs. 5 per mensem on account of conveyance to and from school.

(c) Fuel allowance for warming and drying purposes is accordance with periods indicated by the Station Staff Officer averages at Rs. 10 per mensem for a British or other ranks living in Simla throughout the year and at Rs. 2 per mensem for a British other ranks moving to Delhi with the Camp Office.

CONFIDENTIAL REPORTS OF CLERKS IN THE ARMY HEADQUARTERS.

†1817. ***Sardar Sant Singh**: Will the Defence Secretary be pleased to state whether any confidential reports regarding the clerks in the Army Headquarters offices, particularly in the Master General of Ordnance Branch, are made? If so, is it a fact that such confidential reports on clerks are not considered as necessary in the other Secretariat Departments of the Central Government? If so, what is the reason for this discrimination between these two departments?

Mr. O. M. G. Ogilvie: Confidential reports for the whole of the clerical establishment of all Branches of Army Headquarters are compiled yearly. This practice, I understand, also obtains in other Secretariat Departments of the Central Government.

EMBLEMS OF BRITISH, INDIAN AND PROVINCIAL GOVERNMENTS.

1818. ***Mr. Sri Prakasa**: Will the Honourable the Home Member state:

- (a) if there are separate emblems of the British Government, the Indian Government and the Provincial Governments of India;
- (b) what the emblems are and when and by whom they were prescribed and adopted;
- (c) the names of Provinces, if any, which have not yet got them, and if it is proposed to give them their own separate emblems;
- (d) the names of public documents, if any, on which they are invariably or ordinarily used;
- (e) the law regarding the using of these emblems by private individuals;
- (f) if there is any copyright in the use of the same; and
- (g) if there is any rule preventing an Indian national using on his private paper, or in any publication of his, the emblems of the British Government, the Indian Government or his own Province?

The Honourable Mr. R. M. Maxwell: The question should have been addressed to the Honourable the Leader of the House.

RELEASE OF CHANDRA SINGH.

1819. ***Mr. Abdul Qayyum**: Will the Defence Secretary please state:

- (a) when the case of Chandra Singh, ex-Havildar Major of the Second Battalion, 1st Royal Garhwal Rifles, was last reviewed and with what result; and
- (b) whether Government propose to order his immediate release, and if not, the reasons therefor?

Mr. O. M. G. Ogilvie: (a) October, 1938. The sentence was not reduced.

(b) No, as in this case His Excellency the Commander-in-Chief has seen no reason to justify the exercise of clemency.

*† Answer to this question laid on the table, the questioner being absent.

Mr. Abdul Qaiyum: May I know when this havildar major was convicted, and, if so, what was the duration of the sentence?

Mr. C. M. G. Ogilvie: He was convicted, as far as I remember, in 1930 and sentenced to transportation for life.

Mr. Abdul Qaiyum: May I know if any other persons were convicted along with him, and whether they have all been released since then?

Mr. C. M. G. Ogilvie: That does not, I submit, arise from this question.

Mr. Abdul Qaiyum: It does arise. The question of the release of this person is under consideration.

Mr. President (The Honourable Sir Abdur Rahim): It does not follow, therefore, that the release of other persons becomes relevant. Next question. No. 1820.

The Honourable Sir James Grigg: (a) No. In any case

An Honourable Member: On a point of order. Is the Honourable Member in order in reading the answer when the previous question has not been finished.

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

Mr. Abdul Qaiyum: I feel that I am simply stifled.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member must not use such expression.

Mr. Abdul Qaiyum: If you will permit me, I beg to state that there have been other questions on which 20 to 30 supplementary questions have been permitted. I had put only one or two supplementary questions when the Chair called out the next question.

Mr. President (The Honourable Sir Abdur Rahim): It is not a question of any one Member putting a certain number of supplementaries. When the Chair finds that a particular question has been sufficiently elucidated, it is the duty of the Chair and the Chair is entitled to call on the next question.

Mr. Abdul Qaiyum: This power should not be exercised

Mr. President (The Honourable Sir Abdur Rahim): The Chair is not going to listen to any lecture from the Honourable Member. Next question.

CERTAIN INCOMES EXEMPTED FROM INCOME-TAX AND SUPER-TAX.

1820. *Mr. Manu Subedar: (a) Will the Honourable the Finance Member please state whether Government have estimated the income which is exempted from taxation under the Indian Income-tax Act in respect of

income-tax and super-tax, by virtue of sections 178, 315(4) and 272 of the Government of India Act, 1935?

(b) What are the principal heads under these sections and what is the total amount of payment made by the Government of India, the Provincial Governments and the major ports, which escapes taxation?

(c) What is the total amount of tax receivable under the Indian Income-tax Act affected by these sections?

(d) What was the position before the Government of India Act, 1935, was passed?

(e) Have Government received any representation asking for modification or repeal of these sections?

(f) Have Government made any representation to His Majesty's Government on this subject?

(g) Does this matter constitute one of the topics with regard to the financial adjustments between India and the United Kingdom, on which negotiations are now going on?

The Honourable Sir James Grigg: (a) No. In any case sections 178 and 315 (4) of the Government of India Act, 1935, do not confer any exemption from taxation; they only deal with deduction at source.

(b) and (c). The principal heads under these sections are:

(i) Sterling securities and guarantees.

(ii) Sterling loans.

(iii) Certain pensions paid outside India.

It is impossible to give any estimate of the amounts under these heads which are taxed and untaxed respectively.

(d) The same as it is now.

(e) Yes.

(f) I would refer the Honourable Member to questions No. 4 and 354 asked in the House on the 23rd August and 7th September, 1937, respectively, and my replies given to them and to the supplementaries asked in connection with them.

(g) If the Honourable Member is referring to the Chatfield Committee the answer is in the negative.

Mr. Manu Subedar: I was not referring to the Chatfield Committee. I was referring to the general negotiations between England and India which are going on, of a financial character. The Honourable Member mentioned this morning, for example, of Sir Ernest Burdon participating in it.

The Honourable Sir James Grigg: It is not a question of financial adjustment. It is a question of payment for agency functions. I understood the Honourable Member to mean comprehensive financial negotiations on outstanding questions and the only one of any magnitude that I could think of was the Chatfield Committee.

Mr. Manu Subedar: We were told by Sir Aubrey Metcalfe that the question of the Persian Gulf and similar questions were being considered. May I ask whether any major negotiation is now going on. If not will

Government start a major negotiation with His Majesty's Government for the equitable assignment of burdens between the English treasury and the Indian revenues?

The Honourable Sir James Grigg: No, Sir.

Mr. Manu Subedar: In reply to (a) the Honourable Member said 'No'. Does the Honourable Member accept the estimate which has been mentioned by several Honourable Members in this House that the amount of income which is escaping income-tax under these three sections is from 18 to 20 crores?

The Honourable Sir James Grigg: I think it is rubbish.

Mr. Manu Subedar: Will the Honourable Member give an approximate amount—whether it is 2 crores or 5 crores or 10 crores?

Mr. President: (The Honourable Sir Abdur Rahim): What is the use of putting a question like that? He has said that he cannot estimate.

Mr. Manu Subedar: He is the Finance Member. He should know at least approximately.

The Honourable Sir James Grigg: I can give the answer. There is not the slightest doubt that, if the Government of India removed the exemption referred to, they would have to pay a higher rate of interest. If the Honourable Member will tell me how to assess the amount of higher interest they would have to pay and set it off against any possible taxation that would have been obtained on the other side, then I will do the calculation for him.

Mr. Manu Subedar: I am quite willing to give the Honourable Member what he wants. All I say is that there are plenty of complex questions involved. Will he start a major negotiation with the United Kingdom treasury for the settlement of these problems?

The Honourable Sir James Grigg: No, Sir. I am afraid on any questions, of that sort, a major negotiation cannot arise. I am quite sure that the balance of accounts on topics of the kind mentioned will be in any case very small and it would not be at all certain on which side it is.

Mr. Manu Subedar: What is the *quid pro quo* which the country is receiving in respect of income which is escaping taxation under these three sections of the Government of India Act.

The Honourable Sir James Grigg: Favourable rates of interest in the freest and the biggest financial market in the world, namely, the London market.

MAKING KARACHI A NAVAL BASE.

1821. ***Mian Ghulam Kadir Muhammad Shahban:** Will the Defence Secretary be pleased to state:

- (a) if it is a fact that the Port of Karachi, by reason of its peculiar geographical position, is of great importance for naval purposes;

- (b) if it is a fact that Government are proposing to make Karachi a naval base;
- (c) if it is a fact that Government are contemplating the starting of a Naval College at Karachi for that purpose;
- (d) if so, when that College may be expected to be established;
- (e) how many boys are taking practical training in the Royal Indian Navy;
- (f) from which parts of India they have been recruited so far; and
- (g) whether Government propose to consider the desirability of allotting to each Province a minimum share in such recruitment?

Mr. O. M. G. Ogilvie: (a) It is a major port, but is not at present of special importance for naval purposes.

(b) No.

(c) Approval has been given for the construction of a training establishment at Karachi for seamen and stoker boys of the Royal Indian Navy.

(d) It is hoped to open the training establishment towards the end of 1939.

(e) The annual recruitment is approximately 125 boys, with a total under training of 250.

(f) The main recruiting grounds are the Punjab, Konkan Coast and Bombay Deccan, but the more highly educated boys for the technical branches are recruited from all over India.

(g) No.

VESSELS OF THE ROYAL INDIAN NAVY.

1822. *Mian Ghulam Kadir Muhammad Shahban: Will the Defence Secretary be pleased to state:

- (a) if it is a fact that the Royal Indian Navy vessels are not regular men-of-war, and cannot, therefore, be used as such in times of emergency;
- (b) if so, whether Government propose to consider the desirability of replacing these vessels by regular men-of-war; and
- (c) if so, whether Government are prepared to consider the desirability of taking from the military budget a provision sufficient for making the navy as efficient as possible for the defence of this country?

Mr. O. M. G. Ogilvie: (a) No.

(b) Does not arise.

(c) The allocation of the Defence budget is so arranged as to provide for the maximum efficiency of the Defence Services as a whole.

INSTITUTION OF THE STANDING FINANCE COMMITTEE.

1823. *Mr. Manu Subedar: (a) Will the Honourable the Finance Member please state since which year the Standing Finance Committee of the Assembly has been instituted and elected year after year?

(b) Has it been always elected on the proposal of the Finance Member?

(c) Is it true that the Honourable the Finance Member failed to make such proposal during 1987-88 and also during 1988-89?

The Honourable Sir James Grigg: I would refer the Honourable Member to the reply given by me to Mr. T. S. Avinashilingam Chettiar's starred question No. 224 on the 16th of August, 1988, in which I stated that I had circulated a memorandum on the subject to the Leaders of Parties in this House. I am still awaiting their observations.

Mr. Manu Subedar: I want some historical information as regards part (b). May I know whether a motion of this kind has always been initiated by the Finance Member and by no other Member of this House?

The Honourable Sir James Grigg: I believe so. If the Honourable Member will refer to the question I have indicated, he will find that in two or three recent Sessions I put down a motion for the election of the Standing Finance Committee, but it was not acceptable to the House without some alteration of its status and functions.

ELIGIBILITY OF INDIANS FOR APPOINTMENT TO CERTAIN GRADES AND POSTS IN THE HOME DEPARTMENT.

1824. *Mr. Manu Subedar: (a) Will the Honourable the Home Member please state whether there is any inequality in initial pay or allowances between Indians and (i) Europeans and (ii) Anglo-Indians in the Department?

(b) Are there any grades for which (i) Europeans or (ii) Anglo-Indians are eligible, but Indians are not eligible?

(c) Are there any posts which are specifically reserved for (i) Europeans and (ii) Anglo-Indians and to which, in practice, Indians are never allowed to reach?

The Honourable Mr. R. M. Maxwell: (a) to (c). The reply is in the negative.

ELIGIBILITY OF INDIANS FOR APPOINTMENT TO CERTAIN GRADES AND POSTS IN THE DEFENCE DEPARTMENT.

1825. *Mr. Manu Subedar: (a) Will the Defence Secretary please state whether there is any inequality in initial pay or allowances between Indians and (i) Europeans and (ii) Anglo-Indians in the Department?

(b) Are there any grades for which (i) Europeans or (ii) Anglo-Indians are eligible, but Indians are not eligible?

(c) Are there any posts which are specifically reserved for (i) Europeans and (ii) Anglo-Indians and to which, in practice, Indians are never allowed to reach?

Mr. C. M. G. Ogilvie: (a), (b) and (c). No.

Mr. Manu Subedar: Do I understand that there is no inequality in the matter of pay and allowances of Indians, Europeans and Anglo-Indians for the same kind of work?

Mr. C. M. G. Ogilvie: I have answered that question.

Mr. Manu Subedar: The Honourable Member said the other day, that both in respect of dress, living accommodation and salaries, the British soldiers get more than the Indian soldiers.

Mr. C. M. G. Ogilvie: I understood the Honourable Member's question to refer to the Defence Department staff.

Mr. Manu Subedar: In regard to the clerks, did not the Honourable Member say the other day that British other ranks clerks get higher allowances than the Indian clerks and did he not justify this allowance the other day?

Mr. C. M. G. Ogilvie: There are no British other rank clerks in the Defence Department of the Government of India.

EFFECT OF THE ENHANCEMENT OF THE EXCISE DUTY ON SUGAR.

1926. *Mr. T. S. Avinashilingam Chettiar: Will the Honourable the Finance Member state:

- (a) whether he has referred the matter of the effect of the enhancement of the excise duty on sugar on the sugar industry to the Economic Adviser;
- (b) if not, whether Government have considered it in any other manner; and
- (c) what has been its effect on the industry?

The Honourable Sir James Grigg: (a). Yes.

(b) Does not arise.

(c) I would refer the Honourable Member to the reply given to parts (a) and (b) of his starred question No. 333 on the 22nd August, 1988.

Mr. T. S. Avinashilingam Chettiar: May I know if Government have received the opinions of the Economic Adviser?

The Honourable Sir James Grigg: Yes.

Mr. T. S. Avinashilingam Chettiar: If they have received those opinions, what is the meaning of "no" to clause (b)?

The Honourable Sir James Grigg: Clause (b) starts "if not". The answer to clause (a) was "yes". I assume that the governing words "if not" therefore destroy his question.

Mr. T. S. Avinashilingam Chettiar: May I know whether Government have considered the report of the Economic Adviser?

The Honourable Sir James Grigg: Yes, Sir.

Mr. T. S. Avinashilingam Chettiar: May I know what the result is of their consideration?

The Honourable Sir James Grigg: Government do not consider that any useful purpose would be served at present by a special inquiry into the specific effects of the enhanced excise duty on sugar.

Prof. N. G. Ranga: Have Government considered the effects of this enhanced excise duty on sugar-cane growers?

The Honourable Sir James Grigg: I think the Honourable Member might address his question to the United Provinces Government which is proposing to impose a tax which is almost exactly similar in nature to excise.

Mr. T. S. Avinashilingam Chettiar: When do Government expect to finish their comprehensive inquiry into these duties on sugar?

The Honourable Sir James Grigg: That is a matter for the Honourable the Commerce Member.

Prof. N. G. Ranga: What steps are the Government of India taking to see that the incidence of this enhanced sugar excise duty does not fall entirely on sugar-cane growers?

The Honourable Sir James Grigg: I should think that is extremely unlikely; in present circumstances I am pretty certain the whole of the excise duty falls on the consumer.

PROPOSAL TO INCREASE THE EMOLUMENTS OF BRITISH SOLDIERS AND OFFICERS IN THE INDIAN ARMY.

1827. *Mr. S. Sanyal: Will the Defence Secretary please state:

- (a) whether the proposals of the British Secretary of State for War for increasing the emoluments of British soldiers and officers in the Indian Army have been given effect to;
- (b) if so, to what extent, and what their present cost is;
- (c) whether any discrimination, as a consequence of these changes, has been made in respect of Indian troops and officers; if so, what it is, and why;
- (d) whether the increased payments from the British Exchequer to the Government of India will be made only from the next financial year; and
- (e) if so, how the cost of the increased charges will be met this year.

Mr. C. M. G. Ogilvie: (a) Yes.

(b) During the current financial year the extra expenditure on account of British soldiers is estimated to be Rs. 120 lakhs. The question of the rate of pay for officers is still under consideration.

(c) No. The concessions authorised for British troops and officers serving on the Indian establishment were introduced owing to the fact that similar concessions have been introduced in the United Kingdom. This argument does not affect Indian troops and officers.

(d) Yes.

(e) The Honourable Member must, I think, await the Honourable the Finance Member's budget statement.

Mr. S. Satyamurti: With reference to the answer to clause (d) of the question, may I know whether at the time when the Government of India agreed to these extra charges, they were made aware of the fact that increased payments from the British exchequer would be made available only from the next financial year?

Mr. C. M. G. Ogilvie: I am not quite clear as to what the Honourable Member wishes me to tell him.

Mr. S. Satyamurti: May I know whether, at the time the Government of India agreed, or had to agree, to these extra charges on account of British officers serving in this country, they were made aware of the fact that increased payments from the British exchequer would be made available only from the next financial year?

Mr. C. M. G. Ogilvie: That was understood,—yes.

Mr. S. Satyamurti: May I know whether, before agreeing to these increased payments, Government considered the financial implications thereof and decided one way or the other with regard to the means of finding extra money this year?

Mr. C. M. G. Ogilvie: Well, it is in consequence of these extra charges that we got the extra payments at all.

Mr. S. Satyamurti: I am asking whether, with regard to the actual provision for these extra payments this year for which the British exchequer is not going to make any payments this year, Government had examined the financial implications thereof and came to any conclusion as to how to finance these extra payments?

Mr. C. M. G. Ogilvie: I think the Honourable Member will have to wait for the Budget.

Mr. S. Satyamurti: Sir, the Budget can refer only to next financial year. I am asking the question about the present financial year for which the Budget has been passed by this House. I want to know what are the proposals of the Government of India with regard to financing the extra expenditure for this financial year.

Mr. C. M. G. Ogilvie: Again I think the Honourable Member had better refer to the Honourable the Finance Member.

Mr. S. Satyamurti: Well, the Finance Member is here and he is always alert to answer questions: may I know whether Government could inform the House of any proposal that they have considered or are considering as to how to finance the expenditure for this year which amounts to Rs. 129 lakhs if I heard the Honourable Member aright, apart from officers' pay which is a matter for negotiation?

The Honourable Sir James Grigg: The Honourable Member must be aware that three or four (I have forgotten the exact figure) British battalions

have been taken off the Indian establishment, that there has been a general committee to overhaul expenditure from the point of view of effecting economies, and that although there has been countervailing expenditure in the defence forces, in them also a review of expenditure, to see if it is possible to produce a part of the extra expenditure, has been undertaken.

Mr. S. Satyamurti: May I take it that the Honourable the Finance Member is now convinced that there is no likelihood of a supplementary demand on account of these charges?

The Honourable Sir James Grigg: Well, taking the Waziristan operations also, I have not the slightest doubt that a supplementary demand will be required.

Mr. K. Santhanam: Are we to understand that British officers serving in Indian regiments do not get the increases mentioned?

Mr. C. M. G. Ogilvie: They do not, apart from certain adjustments.

Mr. S. Satyamurti: With reference to the answers to parts (a) and (b) of the question, I want a little elucidation. Apart from the Rs. 129 lakhs, may I know if in the matter of officers' salaries—I think my Honourable friend said that that forms part of the negotiations now going on—whether, in respect of them also, he expects extra financial burden for this financial year?

Mr. C. M. G. Ogilvie: Certainly.

Mr. S. Satyamurti: What is the rough estimate of these extra financial burdens?

Mr. C. M. G. Ogilvie: Possibly somewhere in the vicinity of five lakhs; I cannot be more accurate.

AUDIT OF INCOME-TAX RETURNS.

1828. ***Mr. S. Satyamurti:** Will the Honourable the Finance Member please state whether it is intended to have an audit of income-tax returns also? If so, on what basis and in what manner, and when, and whether the results of the audit will be placed before the House?

The Honourable Sir James Grigg: An experimental audit of income-tax receipts has been arranged, the results of which will be reported to the Public Accounts Committee in due course.

Mr. S. Satyamurti: May I know, for the information of the public through this House, what is the basis and the intention with regard to the maintaining of this audit of income-tax returns?

The Honourable Sir James Grigg: The intention at present is that audit will not concern itself with checking the correctness of the demand on the basis of the return submitted by assesses; its scope will be restricted mainly to seeing that the demand is enforced and tracing the collections into the accounts.

Mr. S. Satyamurti: May I take it, therefore, that so far as the making of the demands is concerned, this audit will have nothing to do with it and that the income-tax officers would be entirely responsible?

The Honourable Sir James Grigg: Subject to inspection and test-checks by inspecting officers, who are members of the income-tax staff themselves.

Mr. S. Satyamurti: May I know if outside audit will work in co-operation with the inside of the Department, in so far as demands are concerned also?

The Honourable Sir James Grigg: I think—I would not like to answer categorically off-hand—but I think so, Sir.

AUDIT OF CUSTOMS RECEIPTS.

1829. ***Mr. S. Satyamurti:** Will the Honourable the Finance Member please state:

- (a) the arrangement now in force for the audit of customs receipts;
- (b) the results of their working; and
- (c) whether it is proposed to expand the scope of this audit; if so, in which directions?

The Honourable Sir James Grigg: (a) The present arrangement provides for a decentralised concurrent financial test-audit at all the ports under the supervision of the maritime Accountants General. For further details, I would refer the Honourable Member to the Memorandum by the Auditor General in India printed as Appendix IX to the Report of the Public Accounts Committee on the Accounts for the year 1930-31, a copy of which is available in the Library.

(b) Government consider that the system is working satisfactorily and that it represents a considerable improvement on the previous arrangements.

(c) The question is being examined by Government in connection with a somewhat similar recommendation made by the Public Accounts Committee on the Accounts of 1936-37.

Mr. S. Satyamurti: With reference to the answer to clause (b) of the question, may I know if Government have tried to assess the results of working and can they give any indication to this House of the resultant savings to the Department?

The Honourable Sir James Grigg: I think certain figures have been given in some of the Public Accounts Committee's reports and they show a comparatively small figure of direct alteration made. I think the effect of audit must be not so much in the direction of the mistakes it finds out as in that of preventing their happening.

ACTION ON THE RESOLUTION RE IMPLEMENTING THE RECOMMENDATIONS OF THE INDIAN SANDHURST COMMITTEE.

1830. ***Mr. S. Satyamurti:** Will the Defence Secretary please state:

- (a) when the committee recommended by this Assembly to examine the expansion of the Indian Sandhurst at Dehra Dun, will be constituted;

- (b) whether, in setting up that committee, Government propose to accept the recommendation of this House for a majority of elected members on that committee; and
- (c) whether in appointing these elected members of the House, the leaders of parties will be consulted?

Mr. O. M. G. Ogilvie: (a), (b) and (c). I refer the Honourable Member to the reply I gave on the 15th instant to starred question No. 1244, asked by Sardar Mangal Singh on the same subject, and to the supplementary questions arising therefrom.

Mr. S. Satyamurti: May I know if Government have any intention of concluding their consideration of this question before the end of this Session and of consulting the Leaders of parties while they are here, instead of waiting to correspond with them later on?

Mr. O. M. G. Ogilvie: Government hope to reach a conclusion before the end of this Session—yes.

POSITION REGARDING DISTURBANCES AND RIOTS IN DELHI.

1831. ***Mr. S. Satyamurti:** Will the Honourable the Home Member please state:

- (a) the latest position in Delhi with regard to the disturbances and riots;
- (b) whether attempts are being made by officers to compose those differences; if so, what those steps are; and
- (c) whether Government are taking all steps in their power, in consultation with relevant public opinion, to produce a permanent peaceful settlement among all the communities concerned?

The Honourable Mr. E. M. Maxwell: (a) to (c). I would refer the Honourable Member to the answer given by me on the 1st December, 1938, to parts (b) and (c) of Mr. T. S. Avinashilingam Chettiar's question No. 1859.

Mr. S. Satyamurti: With reference to clauses (b) and (c) of my question, apart from the parties fighting out their rights in civil courts, will Government, as the supreme authority responsible for the maintenance of law and order in this province, take all steps in their power in consultation with the leaders of the two communities to bring about a peaceful and honourable settlement among all the parties concerned?

The Honourable Mr. E. M. Maxwell: Government could, no doubt, find a solution satisfactory to one of the communities, but the difficulty is in finding one suitable for all the communities.

Mr. S. Satyamurti: After all, Government must have faith in human reason; and are they taking any steps to appeal to the better judgment of all the communities concerned and use their undoubted prestige and influence to bring about an honourable understanding, because whatever understanding may be arrived at as a result of litigation is not likely to be as permanent as an agreement to which all the communities are parties?

The Honourable Mr. R. M. Maxwell: When a dispute exists and is before the civil court, the ordinary procedure is to await the decision of the civil court and then to enforce whatever decision the civil court may come to.

Mr. S. Satyamurti: Have Government come to the conclusion, therefore, that there is no room for peace, good-will and honourable understanding in this matter, and they must only enforce the civil rights when the case has been decided by the civil court?

The Honourable Mr. R. M. Maxwell: So far as I am able to understand, there is no possibility of solving this question except by recourse to the civil court.

Mr. Abdul Qayum: May I ask whether Government have taken any steps to round up all those agitators who are inflaming communal feelings?

The Honourable Mr. R. M. Maxwell: I must ask for notice of that question. I am not aware whether any particular agitators have been rounded up.

Mr. N. V. Gadgil: Is it the Government's policy not to interfere with the court's decision in any case and under any circumstances?

The Honourable Mr. R. M. Maxwell: It is a very general question not arising out of this particular answer.

REVISION OF THE NEW PENSION RULES.

1832. ***Mr. Badri Dutt Pande:** With reference to notification No. F. 6(55) R.-II-38, dated the 1st October, 1938, will the Honourable the Finance Member be pleased to state if the new Pension Rules have been revised? If so, will a copy of the rules be laid on the table?

The Honourable Sir James Grigg: The question is still under consideration.

MOVEMENT OF TROOPS, ETC., IN INDIA DURING CRISIS IN CZECHOSLOVAKIA.

1833. ***Mr. Abdul Qayum:** Will the Defence Secretary please state:

- (a) whether any movement of troops and materials took place in India during the Czechoslovakian crisis, i.e., before the Munich settlement;
- (b) the nature of such movements;
- (c) whether any ships were chartered by the Government of India for the transport of troops; and
- (d) if so, what was the total cost of such movements?

Mr. O. M. G. Ogilvie: (a), (b), (c) and (d). It is not in the public interest to reply to this question.

Mr. Abdul Qayum: With reference to part (d) of the question, may I know whether the disclosure of information about the financial effect of such movements is also not considered to be in the public interest?

Mr. O. M. G. Ogilvie: The Honourable Member's assumption is correct.

Mr. Abdul Qaiyum: May I know the reasons why Government will not disclose the amount of extra expenditure which they incurred in connection with these movements?

Mr. C. M. G. Ogilvie: Because it would not be in the public interest to do so.

Mr. Abdul Qaiyum: May I know whether any movements did take place?

Mr. C. M. G. Ogilvie: I cannot add to the answer I have already given.

RECRUITMENT OF DEPRESSED CLASSES IN THE INDIAN CIVIL SERVICE.

1934. *Mr. Mohan Lal Saksena: (a) Will the Honourable the Home Member be pleased to state whether candidates to the Indian Civil Service are recruited on a communal basis? If so, are Harijans (depressed classes) also given any special consideration?

(b) How many Harijans, if any, have been recruited since the principle of communal representation was introduced in the Indian Civil Service? If none, what is the reason?

(c) Is it a fact that the Public Service Commission wrote to one of the applicants in August last that the Governor General in Council had asked the Federal Public Service Commission to recommend only candidates belonging to Muslim and other minority communities and so it could not recommend the candidates belonging to the depressed classes for nomination?

(d) If so, will Government state the reasons therefor, and do they propose to consider the feasibility of making special provisions for the recruitment of depressed classes in the same manner as other minorities?

The Honourable Mr. R. M. Maxwell: (a) A certain number of vacancies are reserved every year for the nomination of candidates belonging to communities which do not get proper representation in open competition.

(b) None. No candidate has succeeded in the examination nor has any one been found suitable for nomination.

(c) The candidate was informed that as the Commission had been asked by the Governor General in Council to recommend for nomination to the Indian Civil Service members of the Muslim community only, they were precluded from making any recommendation in favour of candidates belonging to other communities.

(d) Vacancies were reserved only for Muslim candidates on that occasion as a sufficient proportion of candidates belonging to minority communities had been successful in the competition. The feasibility of obtaining qualified candidates from the depressed classes will be further examined.

Mr. Mohan Lal Saksena: Am I to understand that the depressed classes are also included in the minority communities?

The Honourable Mr. R. M. Maxwell: Depressed classes are not included among the minority communities for purposes of the Resolution of July, 1934.

Maulana Zafar Ali Khan: May I ask whether depressed classes or *Achuts* or Harijans, as they are generally called, are a part and parcel of the Hindu community?

The Honourable Mr. R. M. Maxwell: That is a matter of opinion.

Prof. N. G. Ranga: Are we to understand that the Government of India do not give any special preference to the candidates belonging to the Harijan community when they appear for these examinations or for these nominations?

The Honourable Mr. R. M. Maxwell: Naturally, when they appear for the examination, they take their ordinary place in the open examination.

Prof. N. G. Ranga: And what about their nomination?

The Honourable Mr. R. M. Maxwell: I have already said that it has not been possible to find out qualified candidates so far from the depressed classes for nomination, and the possibility of doing so will be further examined.

PERSONS DETAINED WITHOUT TRIAL IN THE CENTRALLY ADMINISTERED AREAS.

1835. *Mr. Mohan Lal Saksena: (a) Will the Honourable the Home Member be pleased to state how many persons are being detained without trial in the centrally administered areas?

(b) What are their respective names, and since when have they been under detention?

(c) Is it a fact that Government have offered to release them on their complying with certain conditions? If so, what are those conditions?

The Honourable Mr. R. M. Maxwell: (a) to (c). There are three persons who are detained under the provisions of Bengal Regulation III of 1818 in centrally administered areas. They are all confined in the District Jail at Delhi. Government were recently prepared to release all of them subject to certain undertakings which they were asked to give. I lay a statement on the table giving their names, the dates from which they have been detained and the undertakings respectively required of them.

Statement.

<i>Name</i>	<i>Date from which detained.</i>
1. Bhawani Sahai.	25th April, 1932.
2. Vishwanath Rao Gangadhar Vaishampayan.	16th August, 1933.
3. Jwala Parshad Sharma, alias Bhagwan Das.	23rd September, 1935.

The Government of India recently decided to release them on condition that each of them gave an undertaking in writing to the following effect:

- (a) that he will not directly or indirectly associate himself with any violent method in politics or with any organization which has violence as its object, and
- (b) in the case of Bhawani Sahai—that he will not enter the Punjab or Delhi Province; in the case of Vaishampayan—that he will not enter the Punjab, Bombay Presidency or the Delhi Province; in the case of Jwala Parshad—that he will not enter the Delhi Province; except in each case with the permission of the Provincial Government or of the Chief Commissioner concerned.

Prof. N. G. Ranga: Are Government aware of the fact that the Delhi District Congress Committee as well as the Provincial Congress Committee have protested vehemently against this invidious condition being imposed by the Government of India as a condition precedent for the release of these people?

The Honourable Mr. R. M. Maxwell: No, Sir, I have not received any protest from the Delhi Congress Committee.

Prof. N. G. Ranga: Why is it that the Government of India think it necessary to impose conditions when in various provinces not hundreds but thousands of political prisoners have been released without any conditions whatsoever?

The Honourable Mr. R. M. Maxwell: Where the responsibility rests on the Government of India, they are not bound to follow the precedent of any province.

Mr. Mohan Lal Saksena: Is it a fact that the undertaking to be given by the political prisoners is that they will not associate directly or indirectly with any revolutionary movement in India in future?

The Honourable Mr. R. M. Maxwell: Yes, that is one of the conditions, but I do not know whether those are the exact words.

Mr. Mohan Lal Saksena: What are the conditions imposed?

The Honourable Mr. R. M. Maxwell: They are mentioned in the statement which I have laid on the table. They vary in the case of different prisoners.

Mr. Mohan Lal Saksena: And the other condition is that they will not enter into any other province?

Mr. President (The Honourable Sir Abdur Rahim): If the Honourable Member knows all the conditions that are imposed, what is the use of asking for information?

Mr. Mohan Lal Saksena: Were these conditions imposed at the instance of the Government of India or at the instance of the Provincial Governments?

The Honourable Mr. R. M. Maxwell: I am not able to give the contents of any confidential communications that passed between the Government of India and the Provincial Governments.

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

Mr. Mohan Lal Saksena: Sir, this is an important question relating to the liberties of the people and they are the only political prisoners in India.

Mr. President (The Honourable Sir Abdur Rahim): All these questions appear to be important. Next question.

REFUSAL TO ALLOW THE MOVING OF A RESOLUTION IN THE CANTONMENT BOARD, JHANSI.

1834. ***Mr. Mohan Lal Saksena:** (a) Will the Defence Secretary be pleased to state whether it is a fact that the Vice-President of the Cantonment Board of Jhansi sent in a resolution for amendment of a certain form for building applications?

(b) Is it a fact that the Executive Officer has informed the Vice-President *vide* his letter No. 3201, dated the 20th October, 1938, that the proposed amendment cannot be considered by the Board unless the Command has given a ruling on the subject?

(c) Is it a fact that neither the President nor the Executive Officer can prevent any resolution from discussion in the Cantonment Board?

(d) Is it also a fact that Command is not the authority to be consulted before the motions are considered by the Board, and that they can only veto or re-refer a resolution after it has been considered by the Board?

(e) What steps do Government propose to take in the matter to put an end to such interference by the authorities?

Mr. C. M. G. Ogilvie: (a) Yes.

(b) The proposed amendments were not submitted by the Vice-President in accordance with the Regulations of the Board under section 44, Cantonments Act, and as they were received too late for inclusion in the agenda for the meeting to be held in October, and it would be of assistance to the Board in considering them to have the advice of the Government pleader or the General Officer Commanding-in-Chief, the Command, the Vice-President agreed that this should be obtained. Owing to the absence of the Government pleader, the advice of the General Officer Commanding-in-Chief was obtained and the proposals were to be considered at the meeting of the Board on the 29th November.

(c), (d) and (e). Do not arise.

DISCHARGE OF PERSONS FROM ACCOUNTS AND AUDIT OFFICES.

1837. ***Mr. M. Thirumala Rao:** (a) Will the Honourable the Finance Member please state whether it is a fact that as a measure of retrenchment a large number of young men in the lower cadre of the Accounts and Audit Service are being discharged?

(b) Are there young men who served for two or three years also among those so discharged?

(c) Are Government prepared to consider the desirability of retiring those who had already put in more than twenty-five years of service instead of sending away younger men?

The Honourable Sir James Grigg: (a) Yes; in the lower ranks of the clerical service in Audit and Accounts offices. The men discharged were all on the temporary establishment.

(b) Yes.

(c) Men with more than twenty-five years service are unlikely to be found on the temporary establishment.

EXCLUSION OF INDIANS FROM THE CHATFIELD COMMITTEE.

1838. *Mr. M. Thirumala Rao: (a) Will the Defence Secretary please state whether the Government of India were consulted with regard to the personnel and terms of reference of the Chatfield Committee?

(b) If so, what are the reasons for their agreeing to the exclusion of Indian altogether from the membership of the Committee?

(c) Is it a fact that one of the purposes of enquiry is to see how best India could be strengthened as a base of defence of Britain's Imperial interests in the Far East?

Mr. C. M. G. Ogilvie: (a) and (b). I refer the Honourable Member to my replies to part (a) of starred question No. 1265 asked by Mr. Satyamurti on the 15th November and to part (c) of starred question No. 1404 asked by Mr. Abdul Qaiyum on the 23rd November, 1938.

(c) I refer the Honourable Member to the terms of reference of the Committee.

Prof. N. G. Ranga: Are Government aware of the fact that Indian public opinion is definitely opposed to any scheme as a result of which India will be made one of the bases for the defence of British imperial interests?

Mr. C. M. G. Ogilvie: I cannot see how that arises out of this question.

Prof. N. G. Ranga: It arises out of part (c) of the question?

Mr. C. M. G. Ogilvie: I have answered part (c) by referring the Honourable Member to the terms of reference of the Committee, which contains nothing which is relevant to this question.

Mr. S. Satyamurti: As the terms of reference are ambiguous, may I ask whether in leading evidence before this Committee, the Government of India are leading evidence for the purpose, *inter alia* of strengthening the defence forces of India for British imperial purposes in the Far East?

Mr. C. M. G. Ogilvie: I have already answered questions in this Session stating that the proceedings before this Committee are confidential.

Mr. S. Satyamurti: About the evidence led by the Government of India, may I know whether they do so on the basis of strengthening the Indian defence forces with a view to protect British imperial interests?

Mr. C. M. G. Ogilvie: The evidence led by the Government of India is part of the proceedings and is confidential.

STATEMENT OF A JAPANESE STATESMAN *re* EXTENSION OF JAPAN'S WESTERN BORDERS.

1839. *Mr. M. Thirumala Rao: (a) Will the Defence Secretary please state whether Government have seen the press report of the statement of a prominent Japanese statesman that Japan's western borders will be extended up to Tibet?

(b) Do Government propose to inform the Chatfield Committee that apart from Imperial interests the very existence of India as a nation should form the concern of Indians first?

Mr. C. M. G. Ogilvie: (a) and (b). No.

ASSESSMENT TO INCOME-TAX OF RENTS FROM FISHERIES.

1840. ***Mr. Brojendra Narayan Chaudhury:** Will the Honourable the Finance Member please state:

- (a) whether rents from fisheries are assessed to Central income-tax; if so, under what head of income;
- (b) whether any allowance is made for land revenue and local rates paid by the landlord for the fisheries; if so, under what provisions of the law;
- (c) whether allowance of land revenue and local rates is given as expenditure necessary to earn the income, *e.g.*, *rents* from fisheries;
- (d) the maximum allowance that can be made for collection expenses of fishery rents; and
- (e) whether he is aware that collection of fishery rents is very expensive and that the collection charges often exceed ten per cent. of the annual value?

The Honourable Sir James Grigg: (a) to (e). The information is being collected and will be laid on the table of the House.

Mr. Brojendra Narayan Chaudhury: May I enquire if any information is required to be collected to say under what section of the Act fisheries are assessed to central income-tax. You have simply to say whether it is collected under sections 10, or 9 or 12. For this no collection of information is required?

The Honourable Sir James Grigg: I am very sorry I did not hear what the Honourable Member said, but in any case if I heard him refer to certain sections of the Act, I shall have to ask for notice.

EVACUATION OF CERTAIN VILLAGES IN AGRA DISTRICT FOR MILITARY MANŒUVRES.

1841. ***Pandit Sri Krishna Dutta Paliwal:** Will the Defence Secretary be pleased to state:

- (a) whether it is a fact that the residents of Malupura, Sarai Dairupa, Ujarai and other villages in *pargana* Etmadpur Police Station Khandauli Agra district, were made to evacuate their villages on 6th and 7th May and 25th and 26th October, 1938, in connection with the firing practice by the military;

- (b) whether the provisions of the Manœuvres, Field Firing and Artillery Practice Act (No. V of 1938) were complied with; if not, why not; and
- (c) the law or laws under which the villagers were asked to evacuate their villages?

Mr. C. M. G. Ogilvie: With your permission, Sir, I will reply to questions Nos. 1841 and 1842 together.

I refer the Honourable Member to the reply I gave on the 15th November, 1938, to Mr. T. S. Avinashilingam Chettiar's starred question No. 1278, on the same subject. The information has not yet been received.

Mr. Sri Prakasa: May I know if Government have prepared model rules as required by this Act about military manœuvres and whether they have communicated them to the provinces and asked them to frame their rules along those lines?

Mr. C. M. G. Ogilvie: I want notice. I think that was done long ago.

Maulana Zafar Ali Khan: May I ask whether in the event of the villages being evacuated for manœuvres, any loss sustained by the villagers is compensated for by Government?

Mr. C. M. G. Ogilvie: Certainly yes.

Mr. Sri Prakasa: Will the Honourable Member communicate to the United Provinces Government the contents of this question and the answers given here, and then lay the information, when received, on the table of the House?

Mr. C. M. G. Ogilvie: Certainly.

EVACUATION OF CERTAIN VILLAGES IN AGRA DISTRICT FOR MILITARY MANŒUVRES.

†1842. ***Pandit Sri Krishna Dutta Paliwal:** Will the Defence Secretary please state:

- (a) if the residents of the villages referred to in the preceding question were awarded any compensation for the damages suffered and expenses incurred by them;
- (b) the amount of compensation awarded on each occasion;
- (c) the method by which that amount was arrived at and determined;
- (d) if Government intend to award compensation to the people according to the provisions of section 6 of the Manœuvres, Field Firing and Artillery Practice Act; and
- (e) if it is a fact that no notification was issued under section 9 of the Manœuvres, Field Firing and Artillery Practice Act (No. V of 1938)? If so, why not?

†For answer to this question, see answer to question No. 1841.

PRECAUTIONS TAKEN TO DEFEND THE NORTH-EAST FRONTIERS OF INDIA.

1843. *Mr. K. S. Gupta: (a) Is the Defence Secretary aware that the Japanese are occupying portion after portion of southern and eastern China?

(b) Does it affect the safety of the Indian frontiers of the East? If so, what are the precautions taken to defend the Indian frontiers of North-East India?

(c) Does he see the necessity and desirability of keeping the harbour of Vizagapatam well equipped with the necessary armaments to be a feeder to the Singapore base in times of emergency?

Mr. C. M. G. Ogilvie: (a) Yes.

(b) No.

(c) I refer the Honourable Member to the reply I gave on the 23rd November, 1938, to Seth Govind Das' starred question No. 1411.

Maulana Zafar Ali Khan: May I know whether, in respect of the foreign policy which the Prime Minister of England is going to pursue, it will be one of appeasement with regard to Japan?

Mr. C. M. G. Ogilvie: The foreign policy of England is not the concern of the Governor General in Council.

OPENING OF FACTORIES TO PREPARE AEROPLANES AND MACHINES-GUNS, ETC.

1844. *Mr. K. S. Gupta: In view of the present state of ferment in Central Europe and in view of the menace of Japan in the East, will the Defence Secretary state whether there are any attempts on the part of the Government of India to open factories to prepare aeroplanes, machine-guns, shells and bombs, which are absolutely necessary to fight an enemy in case of aggression? If so, what are the schemes and when are they to come into operation?

Mr. C. M. G. Ogilvie: It is not in the public interest to answer this question.

Mr. Manu Subedar: May I enquire whether the Honourable Member can give an assurance to this House that all the available resources and the technical skill of this country are being pressed more and more in the service of manufacturing the requirements for the Defence Department?

Mr. C. M. G. Ogilvie: I can refer the Honourable Member to a great number of questions which I have answered on that subject, most of them put by the Honourable Member himself.

SANCTION OF A UNIVERSITY TRAINING CORPS FOR THE ANNAMALAI UNIVERSITY

1845. *Mr. C. N. Muthuranga Mudaliar: Will the Defence Secretary be pleased to state:

- (a) whether the authorities of the Annamalai University applied to the Government of India as early as February 1938 to sanction a University Training Corps;

- (b) what action the Government of India have taken, or propose to take, on the same;
- (c) whether it is not a fact that this is the second time the University made this application, the first having been turned down; and
- (d) whether this application is proposed to be favourably considered?

Mr. C. M. G. Ogilvie: (a) and (c). Yes.

(b) and (d). The question is still under consideration.

Mr. C. N. Muthuranga Mudaliar: For how long will this question be under consideration?

Mr. C. M. G. Ogilvie: I can only say that the matter has been and is being considered sympathetically, but that the answer depends upon the provision of funds.

Mr. C. N. Mutharanga Mudaliar: Is the Honourable Member aware that in answer to a similar question in the last Delhi Session, the Honourable the Finance Member said that there was yet an unspent balance in the amount allotted for this purpose?

Mr. C. M. G. Ogilvie: No, Sir, there is no unspent balance.

Mr. Abdul Qaiyum: When did this sympathetic consideration begin?

Mr. C. M. G. Ogilvie: I think in February 1929.

Prof. N. G. Ranga: Is it not a fact that the sympathetic consideration has been going on not only with regard to this University but also with regard to several other Universities—for instance the Andhra University—long before the Honourable Member had taken his seat in this House?

Mr. C. M. G. Ogilvie: Yes.

Mr. S. Satyamurti: What are the difficulties in the way of Government granting these requests, whether it is the financial condition only, or whether Government do not want to encourage the University Training Corps?

Mr. C. M. G. Ogilvie: Certainly not, the whole difficulty is the difficulty in finding funds for the purpose.

DATE-SHEET FOR THE INDIAN CIVIL SERVICE EXAMINATION.

1846. ***Mr. Lalchand Navalrai:** (a) Will the Honourable the Home Member be pleased to state whether the attention of Government has been drawn to an editorial note in the *Tribune* of the 27th October, 1938, explaining the grievance of the candidates with regard to the unfairness and inequity in the date-sheet fixed for the Indian Civil Service Competitive Examination?

(b) Are Government aware that the Federal Public Service Commission in arranging the date-sheet for the Indian Civil Service Examinations have

set down the taking of certain subjects on some days consecutively and the taking of other subjects after an interval of more than a week, which gives time for preparation during the course of the examination, to those candidates only who have taken the latter subjects?

(c) Is the Honourable Member prepared to see that the candidates taking different subjects are not given facilities for preparation to get advantage over the candidates taking certain other subjects?

The Honourable Mr. R. M. Maxwell: (a) and (b). Yes.

(c) It is not possible to arrange for equal intervals of time between all pairs of papers. I can assure the Honourable Member that the Federal Public Service Commission frame the time table with great care and due regard to the convenience of the candidates as a whole. I must add that I am not prepared to admit that lack of facilities for preparation during the examination constitutes a legitimate grievance.

Mr. Lalchand Navalrai: May I know what are the reasons for drawing up the time table in such a manner as to give more time to some students to prepare and to others less time?

The Honourable Mr. R. M. Maxwell: The Public Service Commission have to arrange the time table programme with two objects in view; firstly, to get out their results as soon as possible: that means that the most popular subjects have to be taken early in the examination; and secondly, to make it possible for any candidate to offer any group of subjects and for that reason they have to make such combinations of subjects as will provide for the selection of all candidates. With something like 400 or 500 candidates and with something like 80 question papers, it is not easy to arrange the time table so that it suits every individual candidate.

Mr. Lalchand Navalrai: Is it not the duty of the Public Service Commission also to arrange it in such a way that every one is shown fairness and equity?

The Honourable Mr. R. M. Maxwell: I do not admit that there is any unfairness in the arrangement of the programme.

Mr. S. Satyamurti: With reference to part (c), may I know whether the Government have come to the conclusion that lack of facilities for preparation during examination is not a legitimate grievance? May I know whether they are aware of the conditions under which students in this country work and whether they have considered or will consider the question of either giving the same time to all the students during the examination to prepare for later examinations, or not give any time to any one and keep that as an important consideration in their minds—I speak from my own knowledge although I am a very old student, but we do prepare during examinations very very hard?

The Honourable Mr. R. M. Maxwell: These students are supposed to have been preparing from four to six years for this examination and it cannot make very much difference to their chances of getting through to have a day or two for preparation in the middle. I think that the question relates mainly to History papers. I find that only eight History papers were set in 12 days and I think if a student cannot take eight papers in 12 days he must be a very poor specimen.

RECRUITMENTS IN THE NORTHERN INDIA SALT REVENUE DEPARTMENT.

1847. *Maulvi Muhammad Abdul Ghani: Will the Honourable the Finance Member please state:

- the rule for the direct recruitment of services in the North India Salt Revenue Department till 31st December, 1937, and what the representations of each community therein were;
- since how long the said rule was in force;
- whether the Province of Bengal has been included in the Department; if so, when;
- whether recruitment in the Department has recently been made in the cadre of Superintendent, Deputy Superintendent, Inspectors, Clerks and Supervisors; if so, the number recruited in every cadre with grades, and the number of Muslims recruited in every cadre;
- the qualifications of the Superintendent, Deputy Superintendent and Inspectors recently recruited directly;
- the number of graduate clerks serving in the Department; and
- whether the posts recently filled by direct recruitment include graduate clerks?

The Honourable Sir James Grigg: (a), (b) and (d). I would refer the Honourable Member to notifications Nos. 12-Salt and 25-Salt and published in the Government of India Gazettes of 30th March and 8th July, 1935, respectively, copies of which are in the Library of the House. These rules prescribe direct recruitment to the Superintendent's cadre only; they are still in force. I lay on the table a statement showing the communal representation among Superintendents on the 31st December, 1937, and among the Superintendents, Deputy Superintendents, Inspectors, clerks and supervisors recently recruited.

(c) Yes; from the 1st April, 1938, when Central excise work was taken over by the Department.

(e) They are graduates or holders of the Senior Cambridge Certificate.

(f) Sixteen.

(g) Yes.

Communal representation among Superintendents on 31st December, 1937.

Hindus.	Muslims.	Sikh.	Anglo-Indians.
9	5	1	5

Communal representation among Superintendents, Deputy Superintendents, Inspectors, Clerks and Supervisors recently recruited.

	Hindus.	Muslims.	Other minorities.
Superintendents	5	1	1
Inspectors	44	26	7
Upper Scale clerks	4	2	1
Lower Scale clerks	17	10	3
Supervisors	25	15	4
Total	95	54	16

Maulvi Muhammad Abdul Ghani: May I know whether there is any change in the communal composition of the services after January, 1938?

The Honourable Sir James Grigg: I think the Honourable Member had better study the statement which I have laid on the table.

REDUCTION IN THE RATE OF INTEREST IN THE POST OFFICE SAVINGS BANK.

1848. *Pandit Krishna Kant Malaviya: Will the Honourable the Finance Member please state:

- (a) whether the Post Office Savings Bank is primarily meant to teach the poorer classes to be thrifty;
- (b) whether most of the money deposited is from these poor and the middle classes;
- (c) whether the post office is a public utility concern;
- (d) whether he is aware that reduction in the rate of interest in the Savings Bank from three per cent. to $1\frac{1}{2}$ per cent. per annum is a great blow to these people;
- (e) whether he is aware that these people have no other sources of investment;
- (f) whether these people are already crushed by the indiscriminate changes in postal charges; and
- (g) whether he is prepared to raise the rate of interest once again?

The Honourable Sir James Grigg: The question should have been addressed to the Honourable the Communications Member.

APPOINTMENTS OF COMMISSIONERS OF INCOME-TAX.

1849. *Maulvi Abdul Wajid: (a) Will the Honourable the Finance Member be pleased to state whether it is a fact that up till recently the practice in the Income-tax Department for the appointment of the Commissioners was that they were drawn from the grade of Assistant Commissioners?

(b) If the answer to part (a) be in the negative, what was the number of Commissioners appointed directly and taken from the grade of Assistant Commissioners of Income-tax during the last ten years?

(c) Has there been any change in the policy of Government recently, and the new Commissioners of Income-tax are to be drawn from the cadre of Indian Civil Service?

(d) Have there been any new appointments of Commissioners during the last eight months? If so, how many of them were taken from amongst the Assistant Commissioners, and how many from the Indian Civil Service cadre?

(e) In the case of appointment made from the Indian Civil Service cadre, what was the period of training undergone by such officers before their appointment?

(f) If the answer to part (e) be in the affirmative, what is the reason for this change of policy?

The Honourable Sir James Grigg: (a) I would refer the Honourable
 12 Noon. Member to the reply given to part (h) of Seth Govind Das' starred question No. 770 on 17th March, 1938.

(b) The question is not clear. Appointments of Commissioners during the last decade were as follows:

four I. C. S. Officers were appointed direct;

four were promoted from the I. C. S. Assistant Commissioners, and

six from the departmental Assistant Commissioners.

(c) and (f). I must ask the Honourable Member to await the publication of the Resolution on the special pool of officers for the Finance and Commerce Departments.

(d) Two. Both were filled by I.C.S. Officers.

(e) The periods of training were in both cases short but this was due to the fact that no entirely suitable candidates were available from the existing income-tax service.

Mr. S. Satyamurti: With reference to clauses (c) and (f) where my Honourable friend referred the House to some Resolution to be issued hereafter, may I ask for an answer now to this question whether there has been any change in the policy, and, if so, what the reasons are for that change of policy?

The Honourable Sir James Grigg: This particular question is absorbed in the much larger question of recruitment and training of a special pool of officers for posts in the Finance and Commerce Departments; and the extent of that change of policy and the scope of it will be shown by that Resolution. Honourable Members have been given some general indication of it already.

Mr. S. Satyamurti: If the Resolution intends to train members of the I.C.S. for employment in these departments, may I know how members of the I.C.S. are posted to these appointments, without any previous training whatever, in supersession of officers in the department itself?

The Honourable Sir James Grigg: The only answer that I could give to the Honourable Member is that I myself while in England was appointed to the Chairmanship of the Board of Inland Revenue without ever having been in the department.

Mr. S. Satyamurti: I know my Honourable friend is an exception, but I want to know why the Government of India have made up their minds to fill up a number of these income-tax appointments, specially Commissioners, with members of the I.C.S. without any previous experience. Does it mean that the prize appointments for the I.C.S. ought to be increased in view of losses on other sides of Government service?

The Honourable Sir James Grigg: No, Sir; but it so happens that there is at the present moment a shortage of fully qualified persons in the department and as the obverse side of the medal which the Honourable Member has described, the members of the Income-tax service will in future be eligible for the pool and be given posts outside their own service. But there must be a certain amount of give and take.

(b) WRITTEN ANSWERS.

ASSESSMENT OF INCOME-TAX FROM HOLDERS OF POSTAL CASH CERTIFICATES AND DEPOSITORS IN POSTAL SAVINGS BANK.

1850. *Mr. Brojendra Narayan Chaudhury: Will the Honourable the Finance Member please state :

- (a) whether it is intended to discontinue the exemptions in articles (10) and (11) of paragraph 17 of the Income-tax Manual;
- (b) whether Government are aware that most holders of postal cash certificates and most depositors in postal savings bank are below the level of assessable income;
- (c) whether Government are prepared to consider the question of not taxing the yields on the above at the source but arranging for getting information as to who amongst the holders have assessable income and for taxing those at the time of assessment of their total income;
- (d) whether the difficulties of getting refunds by the holders of Government paper with no assessable income have been brought to the notice of Government through the Central Legislature for the last thirty years; whether any remedy has been suggested against ignorance of the rustic about procedure and smallness of amounts which do not cover the cost of the lengthy correspondence required; and
- (e) whether the Honourable Member can give his rough estimate of 'probably due refunds' from income-tax collected at source on Government paper but not claimed and recovered?

The Honourable Sir James Grigg: (a) No.

(b) to (e). Do not arise.

"WINE OR BAND FUND" MENTIONED IN THE INCOME-TAX MANUAL.

1851. *Mr. Brojendra Narayan Chaudhury: Will the Honourable the Finance Member please state what is the 'Wine or band fund' mentioned in article (6) of paragraph 17 of the Income-tax Manual (list of exemptions from tax) and what is its purpose?

Mr. C. M. G. Ogilvie: A Band Fund is maintained by British Service and Indian Army units whose establishments include a band. Its purpose is to defray the incidental costs of maintenance of a band. I am making enquiries regarding the wine fund and will give the Honourable Member the information he requires in due course.

HOLDING UP OF VEHICULAR TRAFFIC ON THE RIVER BANK ROAD IN DELHI PROVINCE.

1852. *Mr. Brojendra Narayan Chaudhury: Will the Honourable the Home Member please state :

- (a) whether his attention has particularly been drawn to the complaint by Mr. R. Ratan Gupta in the *Hindustan Times*, dated the 24th November, 1938, regarding holding up of all vehicular traffic on the River Bank Road (Delhi Province) by the police on the occasion of the hunting expedition of His Excellency the Viceroy on Sunday, the 30th October last; and

- (b) whether the complaint is substantially correct, and whether he proposes to consider if the convenience of His Excellency and public convenience cannot be better accommodated, leaving no room for public complaint?

The Honourable Mr. R. M. Maxwell: The information has been called for from the Chief Commissioner, Delhi, and will be laid on the table of the House in due course.

CRITERION FOR SELECTION OF PERSONNEL FOR POSTS ABOLISHED IN THE OFFICE OF THE DEPUTY ACCOUNTANT GENERAL, POSTS AND TELEGRAPHS, MADRAS.

1853. *Mr. M. Ananthasayanam Ayyangar: Will the Honourable the Finance Member be pleased to state:

- (a) whether it is a fact that in selecting posts for abolition in the office of the Deputy Accountant General, Posts and Telegraphs, Madras, consequent on the separation of Burma from India, a new principle, viz., the requirements of the new office to be formed at Rangoon, was made the chief criterion?
- (b) whether it is a fact that owing to such a departure, Government have to pay a larger amount of compensation pension to certain officials at Madras than what they would have to pay if the rules that the selection of posts for abolition should be so made that there will be the least cost for compensation pension to Government, and if so, what is the reason for such a departure;
- (c) whether it is a fact that while statutory provision has been made in the Government of India Act for the compulsory transfer to Burma of persons specifically recruited for service therefor, some persons who were informed at the time of their appointments at Madras that they were liable for service in Burma have been retained at the Madras office in preference to others who were not so recruited, and if so, whether Government are prepared to transfer such men now to Burma and repatriate an equal number of persons who were made to take up appointments in Rangoon, or reappoint those who have been granted compensation pension;
- (d) whether it is a fact that while the services of all gazetted officers and some non-gazetted officers belonging to the Posts and Telegraphs Department have been lent to the Burma Government for a period of three to five years on foreign service conditions and leave up to 28 months granted to officers of the Posts and Telegraphs Department who chose to retire prematurely, the former concession was not at all extended to the staff of the Postal Audit Office and the latter concession was restricted to 12 months, and if so, whether the differentiation is now proposed to be rectified by the issue of fresh orders; and

- (e) whether it is a fact that although a number of vacancies arose subsequently in the Postal Audit Office, Madras, none of the officials retired on compensation pension has been taken back, in spite of repeated requests by the officials concerned, and if so, what is the reason for such a refusal?

The Honourable Sir James Grigg: The information is being obtained and will be laid on the table of the House in due course.

INTERPELLATION IN THE HOUSE OF COMMONS re CONTROL OF POLICY OF CONGRESS GOVERNMENTS BY THE WORKING COMMITTEE.

1854. *Mr. K. S. Gupta: Has the attention of the Honourable the Home Member been drawn to the recent interpellation in the House of Commons, in which it was suggested that the control of policy of Congress Governments by the Working Committee is a Government parallel to the Government of India?

The Honourable Mr. E. M. Maxwell: I have seen the interpellation to which the Honourable Member probably refers, but it does not contain a suggestion in the terms of the Honourable Member's question.

CENSORSHIP OF CORRESPONDENCE OF AGENCIES AND NEWSPAPERS OF BRITISH INDIA IN THE UNITED KINGDOM.

1855. *Mr. K. S. Gupta: Will the Honourable the Home Member please state whether it is a fact that the correspondence of reputable agencies and newspapers of British India is not allowed uncensored into the United Kingdom? If so, why?

The Honourable Mr. R. M. Maxwell: I am not aware of any such censorship.

DACOITIES COMMITTED IN CERTAIN VILLAGES OF DADU DISTRICT IN SIND.

1855A. *Mr. Lalchand Navalrai: (a) Will the Honourable the Home Member be pleased to make a full statement on the recent dacoities committed in the village of Kathia in Dadu district in Sind and at Rohal-Ji-Kund on the evening of the 10th and the morning of the 11th November, 1938, showing the loss of life and property, respectively, and state how dacoits passed through the ghats of the hill connecting the Kalat territory with Sind?

(b) Was there any permanent or temporary police guard posted on these borders by the Baluchistan, Kalat or Sind Government? If so, when and for how long? If not, what is the arrangement for safety and security on these borders?

(c) Is it a fact that since the past few years dacoities and murders have occurred on the border sides in Sind and even in the interior by persons residing in the hills and the Kalat territory? If so, have the dacoits in any of these atrocities been secured and brought to book? If not, why not?

(d) Will the Honourable Member be pleased to refer to my demi-official letter to the Secretary to the Government of India, Home Department, on the subject of dacoities in Sind, dated the 10th November, 1932, and the correspondence which ensued in consequence between the Government of India and the Government of Sind and Baluchistan, and state what steps were taken to eradicate the recurring evil of dacoities in Sind by the Brohis and other Baluchistan tribes?

(e) Is it a fact that the Baluchistan authorities then agreed to work in co-operation with the Kalat State authorities and Sind Government, to watch and ward off these nefarious happenings? If so, what steps were taken, and did they continue till the recent dacoities referred to in part (a) occurred, in which an officer, Mr. Majumdar, and some Hindus and Muhammadans were killed and some injured?

(f) What steps do Government propose to take now to stop a recurrence of such heinous offences?

The Honourable Mr. R. M. Maxwell: This question should have been addressed to the Secretary for External Affairs.

LEVY OF TAX ON PERSONS CROSSING THE INNER LINE OF THE EXCLUDED AREAS IN ASSAM.

1855B. *Mr. Brojendra Narayan Chaudhury: Will the Honourable the Finance Member please state under what authority or law the tax of eight annas per person crossing the inner line of the excluded areas in Assam is levied?

The Honourable Sir James Grigg: The fee for issue of a pass is levied under section 4 of the Bengal Eastern Frontier Regulation, 1873.

THE INDIAN INCOME-TAX (AMENDMENT) BILL—*contd.*

Mr. President (The Honourable Sir Abdur Rahim): The House will now resume consideration of the Bill further to amend the Indian Income-tax Act, 1922, as reported by the Select Committee.

The Honourable Sir James Grigg (Finance Member): Sir, may I make a report of progress to the House. I think I am in a position to state that so far as the Congress Party, the Muslim League Party and Government are concerned, a basis for an agreed compromise in regard to questions raised by clause 4 has been reached. Certain amendments have been drafted and have been submitted by telegram for the Governor General's sanction. If the Governor General's sanction is received, I propose to hand those amendments in today, and so, with the permission of the House, I suggest that they might be taken up tomorrow.

Sir Cowasji Jehangir (Bombay City: Non-Muhammadan Urban): Sir, may I ask what opportunity will be given to Members to move amendments to the amendments that are to be moved on behalf of Government?

The Honourable Sir James Grigg: That is a matter within the discretion of the House. I said that if the House approves, they will be taken up tomorrow. But if the House objects, I understand the position is that it will not then be possible to take them up tomorrow. In that case, if Honourable Members want to move amendments, I imagine that the Chair, just as it dispenses with the normal period of notice on an agreed compromise, will be prepared to dispense with the period of notice for Members' amendments.

Mr. President (The Honourable Sir Abdur Rahim): If the Chair finds that the House will not be able to proceed with the amendments at once, the Chair may give further time.

The amendment now before the House was moved by Mr. Chetty yesterday and the Honourable the Finance Member gave a certain assurance which the Chair thinks the Honourable the Leader of the Opposition wanted time to consider.

Mr. Bhulabhai J. Desai (Bombay Northern Division: Non-Muhamadan Rural): We are not pressing it.

Mr. President (The Honourable Sir Abdur Rahim): As the Honourable the Mover is not here to withdraw it, the Chair will have to put it to the vote. The question is:

"That to sub-clause (d) of clause 23 of the Bill, the following be added at the end:

'the following further provisos shall be added, namely:

'Provided further that in respect of the account books and other records pertaining to foreign business the officer shall not call for such account books and records if a certificate of income of the income-tax authority in the country of business is produced or in regard to countries where there is no income-tax, or where such certificates cannot be produced without delay, audited statements of accounts are produced:

Provided further that for the purposes of section 23 (2) such certificates or audited statements of accounts shall be taken to be conclusive evidence."

The motion was negatived.

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

"That clause 23, as amended, stand part of the Bill."

The motion was adopted.

Clause 23, as amended, was added to the Bill.

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

"That clause 24 stand part of the Bill."

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Sir, I beg to move:

"That before sub-clause (a) of clause 24 of the Bill the following be inserted:

'(a) in sub-section (2) after the word 'officer' in the first line, the words 'for reasons in writing' shall be inserted'."

Sub-section (2) reads thus:

If the Income-tax officer has reason to believe that a return made under section 22 is incorrect or is incomplete he shall serve on the person who made the return a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce or to cause to be there produced any evidence on which any person may rely in support of the return."

I only want that when the Income-tax Officer gives that notice after finding that the return is incorrect or incomplete, he should give some reasons for his view that the return is incorrect or incomplete, so that the person notified may know what he is required to do before the Income-tax Officer. If he is simply called upon to appear before the Income-tax Officer he will not know what things the officer wants. So, it is necessary to say, in that notice, what things he has to explain. If they keep something on the record and give a copy of it to the assessee that would be something, but they have not been doing that. It is the duty of the Income-tax Officer to specify in what respects the return is incorrect or incomplete and so nothing will be lost by the officer putting down the reasons or the grounds upon which that notice is issued, and I think that will be a great convenience to the people, and justice also requires that he should come to know what he is required to do. Therefore, I think this amendment should be accepted by the House.

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

"That before sub-clause (a) of clause 24 of the Bill the following be inserted :

'(a) in sub-section (2) after the word 'officer' in the first line, the words 'for reasons in writing' shall be inserted'."

Mr. S. P. Chambers (Government of India: Nominated Official): Sir, I oppose this amendment. The section gives power to the Income-tax Officer to call for accounts and other information in connection with the return. It is not possible in most cases for the Income-tax Officer to know anything about the amount of profits or even to know whether the figure is right or wrong before he has obtained information from the assessee. All that he has, in front of him, is a return with a figure in it showing the amount of profits. He may think that that figure is too small, but he cannot say why it is too small before he has called for the evidence upon which the return is based. For that reason it would be quite impracticable to ask the Income-tax Officer, when he is asking for accounts, to state precisely the reasons which led him to think that the figure was wrong. To add the words "for reasons in writing", if the reasons have to be specified, would, therefore, prevent an Income-tax Officer taking action in almost every case of business profits. The returns that have been published by the Central Board of Revenue show that business profits have been under-returned by assesseees by at least 30 per cent., and that 30 per cent. has been discovered by the Income-tax Officers on examination of accounts and other evidence. If we were to put this condition in and prevent them from examining accounts unless they knew, in advance, that the return was wrong, a good deal of that extra 30 per cent. would not, in fact, be collected. I understand, however, there is another point which has not been raised by the Honourable Member in connection with the same amendment and that is this: it is suggested that the words "if the Income-tax Officer has reason to believe that a return made under section 22 is incorrect or incomplete" imply that in every case in which he asks for accounts or for further information the Income-tax Officer is virtually accusing the assessee of making a false return. That is not the intention, and I quite agree that if these words are read in that way there is some objectionable implication. As far as Government are concerned we would have no objection to the elimination of the implication in these words if it

[Mr. S. P. Chambers.]

can be done. Unfortunately, the amendment before the House and other amendments on the same point do not do that. What they do is to tie the Income-tax Officer down in what, I think, is quite an impossible manner

Mr. Lalchand Navarai: Does the Honourable Member know that invariably the Income-tax Officer issue a notice and not in certain cases only?

Mr. S. P. Chambers: I am well aware of the fact that in the case of all business assessments the Income-tax Officer does invariably issue notice and for that reason he does not assume that everybody will be dishonest. He does not issue notices in all other cases such as property income which remains unchanged and salary income. He does not issue notices in those cases because the figure is known to be correct or because he has had authentic verification from another source—from the employer or from municipal records; so that, although the Honourable Member's statement is correct as far as business assessments are concerned it is not correct for other assessments. I make this offer to the Honourable the Mover of this amendment, that if we can devise a form of words at a later stage so as to get rid of this objectionable implication and if that is put right in the Council of State, he might, if we give an undertaking to do that, see fit to withdraw his amendment at this stage. Sir, I oppose the amendment.

Mr. Lalchand Navarai: Sir, I beg leave of the House to withdraw the amendment.

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

Pandit Krishna Kant Malaviya (Benares and Gorakhpur Divisions: Non-Muhammadan Rural): Sir, I move:

"That before sub-clause (a) of clause 24 of the Bill, the following new sub-clauses be inserted, and the existing sub-clauses be re-lettered accordingly:

'(a) sub-section (1) shall be omitted;

(b) in sub-section (2) the words 'has reason to believe that a return made under section 22 is incorrect and incomplete, he' shall be omitted;'

I do not propose to make a speech about it. The amendment is so reasonable. I commend it to the House.

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

"That before sub-clause (a) of clause 24 of the Bill, the following new sub-clauses be inserted, and the existing sub-clauses be re-lettered accordingly:

'(a) sub-section (1) shall be omitted;

(b) in sub-section (2) the words 'has reason to believe that a return made under section 22 is incorrect and incomplete, he' shall be omitted;'

Mr. S. P. Chambers: Sir, I oppose this amendment. (a) of the amendment seems to me, with respect, to make nonsense: it suggests that we should omit the whole of sub-section (1) of section 23, which reads as follows:

"If the Income-tax Officer is satisfied that a return made under section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return."

I take it that it is not the wish of Honourable Members that the income-tax officer should, unnecessarily, harass assesses if, in the case of a salaried assessee, he is quite certain that the return is correct: he does not want to issue notice; he merely wants to make an assessment on the basis of the return. I suggest, therefore, that that part of the amendment would make nonsense of the whole clause. I have already dealt with (b) under a similar amendment in No. 374, and I have nothing to add to what I said under that amendment. Sir, I oppose.

Mr. Huseinbhai Abdullahbhai Laljee (Bombay Central Division: Muhammadan Rural): Sir, I rise to support the amendment. From the speech of Mr. Chambers it is clear that Government have got an unwritten law so far as business and other avocations are concerned that they do want the books of accounts to be examined. In fact he admitted that without going to the books he could not make out whether the return is true or otherwise; and, although he tried his level best to give the impression that they have very great regard for everybody's honesty, still the way in which he could find out the honesty or correctness of the return was by asking for the accounts. I do not know by what law that could be found out without looking into the account or without trusting the return . . .

The Honourable Sir James Grigg: The law of experience: the best of all laws.

Mr. Huseinbhai Abdullahbhai Laljee: Quite right. I hope my friend will stay more in India and gain more experience.

The question is this. I think the Government ought to make it quite clear as to what their intentions are. It is no use saying they give this or that undertaking. The fact is, that the income-tax officers want to examine the account books of all businessmen and others. Therefore, why should you not make it quite clear? Let all people know it. Don't say that because it will reflect upon you, you don't like to put it; you should clearly say that you do want to examine all the returns except those returned by salaried officers. I don't know why we should be satisfied with the mere undertaking given by the Honourable Member. I, for my part, think that some indication must be given saying that you want to verify the returns with the account books.

Mr. Sri Prakasa (Allahabad and Jhansi Divisions: Non-Muhammadan Rural): Sir, I think the purpose of this amendment clearly is to avoid discrimination. As matters stand at present, the income-tax officer has a great deal of discrimination, and, if you will permit me to say so, the discrimination, so far as I know, is exercised entirely in favour of his brother officers of the Government. . . .

The Honourable Sir James Grigg: I do not think the Honourable Member ought to make that assertion without producing specific instances in support of what he says. It is a very serious accusation.

Mr. Sri Prakasa: I am very sorry if I hurt my Honourable friend's feelings.

The Honourable Sir James Grigg: Not my feelings. You have accused the officers of the Department of giving special treatment to brother officers. It is a very serious accusation indeed, and the Honourable Member ought not to make it publicly from his place of privilege without producing or undertaking to produce instances of it.

Mr. Sri Prakasa: If my friend has any doubts on the subject, I shall walk out of this place with him and go out of the privileged circle and make the statement again if that will satisfy him, because I am not one of those, and I think the Honourable Member knows it, who take advantage of their privileged position here. I happen to be here, and that is the only place where I can put this matter before the public, and that is why I do so. . .

Mr. President (The Honourable Sir Abdur Rahim): Yes, what the Honourable the Finance Member says is that it is an unseemly remark, as it is a reflection on all income-tax officers.

Mr. Sri Prakasa: No, Sir, I am not casting any reflection at all on any body. I am only expressing my suspicion, and I will quote a specific instance in support of what I say. In fact, on one occasion I actually tabled a question. . . .

Mr. President (The Honourable Sir Abdur Rahim): What the Chair suggested was that, so far as the Honourable Member's experience goes, that must be confined only to certain cases, but it cannot apply to all income-tax officers. .

Mr. Sri Prakasa: It would be a simple test if the Honourable Member himself can find out whether all Government officers are served with notices of this sort. If it is so, is the Honourable Member himself served with a notice and has he to produce his books; are the Honourable Members behind him or by his side served with notices and have they to produce books? If that is so, I shall have nothing to say. . . .

The Honourable Sir James Grigg: I certainly get notice.

Mr. Sri Prakasa: Sir, I have a specific instance within my knowledge where a gentleman, who was a Deputy Magistrate and who later became a District Magistrate, in my province, who had not been served with any notice whatsoever. That may have been due to carelessness or to something else, but when this gentleman retired from service, it was suddenly discovered that he had not paid and was fined. . . .

Mr. President (The Honourable Sir Abdur Rahim): All that the Chair wants to point out to the Honourable Member is, there may be cases like that, but it does not justify a general sweeping remark with reference to all income-tax officers.

Mr. Sri Prakasa: Sir, I do not know what I am to say and what I am not to say on this subject, but if you will permit me, I will say what I know as facts, and I am willing to substantiate them from such knowledge as I possess. The fact is, that discrimination is exercised, and the law gives that discrimination to income-tax officers. What my friend, Pandit Krishna Kant Malaviya, seeks to do is to try to eliminate this element of discrimination and see that these income-tax officers do not exercise any discrimination whatsoever. They should send notices to everybody and say to any objector that the law requires that notices should be sent to everybody and, therefore, they have no choice but to send them. My friend wants to strengthen the hands of the Income-tax officers. I was greatly relieved by what Mr. Chambers has said, because he said he would see to it that the language of the section is so improved as to remove the

sting from it. As my Honourable friend himself admitted, the language of the section as it is, is such that people may suspect that all persons on whom such notices are served have been prejudged by the Income-tax officers as dishonest, and so my friend rightly wants to eliminate those words and substitute some others. There is a suggestion of some words in the next amendment, but the words may not be very happy. I am very glad that my friend will make the necessary changes, and when that change is made, then the other section now sought to be deleted, may also remain as it is, because the element of discrimination will disappear. Therefore, Sir, in view of the assurance given by my friend, Mr. Chambers, I should myself request Pandit Krishna Kant Malaviya, because he and I are alike responsible for the two amendments now under discussion, to withdraw them at this stage and to depend upon Government making suitable changes later.

Pandit Krishna Kant Malaviya: Sir, I beg leave of the House to withdraw the amendment.

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

Babu Baijnath Bajoria (Marwari Association: Indian Commerce): Sir, I beg to move:

"That for part (ii) of sub-clause (a) of clause 24 of the Bill, the following be substituted:

(ii) after the word 'judgment', the words 'after making necessary inquiries and give in his order of assessment the detailed basis thereof and determine the sum payable by the assessee on the basis of such assessment' shall be inserted."

Sir, I should like to read a few lines from the section so that the House may understand the object of my amendment. This refers to section 23 (4), and it runs thus:

"If any person fails to make a return. . . or a revised return. . . or fails to comply with all the terms of a notice issued under sub-section (4) of section 22 or having made a return. . . the Income-tax officer shall make the assessment to the best of his judgment and determine the sum payable by the assessee", etc.

What I want is, in arriving at his judgment, the Income-tax officer shall do so after making the necessary inquiries and shall also in his order of assessment give the basis of such assessment in detail, and then he shall determine the sum payable by the assessee. Sir, the administration of this sub-section (4) of section 23 has been very distressing from the point of view of assesseees, and numerous complaints have been made on this score. I am supported in this not only by the Chambers of Commerce but also by my friends, the Honourable Mr. Chambers and the Honourable the Finance Member himself. This is what the Income-tax Inquiry Committee Report, of which Mr. Chambers was a member as an expert, says, at pages 74 and 75 in Chapter 14, section 5C. I do not want to read the whole of this section to the House but it is very clear that they recognised that in the working of this section by the department there is large room for improvement and we have got a definite and real source of grievance against the department. To verify my statement that I am also supported by the Honourable the Finance Member, I will try to read a few lines from Circular No. 3 of 1937, dated 26th April, 1937. . . .

The Honourable Sir James Grigg: I was on leave then.

Babu Baijnath Bajoria: These are the instructions which have been given by the Central Board of Revenue to the Income-tax Department about some of the irregularities or the improper way in which the department was conducting its affairs, as brought to light by the Inquiry Committee. In paragraph 2 the Circular says:

"Estimation of profits in the absence of reliable evidence—Chapter XIV, section 5 (c) of the Report.

The Report finds that the assessee's sense of grievance in this matter is acute. It appears that many officers make estimates of profits which are based on little or no evidence or are against the weight of the evidence. The remedy is careful survey and enquiry work in order to obtain as much evidence as possible. When obtained the evidence should be acted upon. In particular the attention of assessing officers is drawn to two points:

- (a) The principle of progressive enhancement should be applied *only* where there is reason to believe that the assessee has made default in the hope of obtaining an assessment lower than his real income.
- (b) The report finds that in some cases excessive assessments are made under section 23 (4) where there is only a technical default. This practice is indefensible. An assessment under section 23 (4) must be made fairly and honestly to the best of the officer's judgment."

I only want to put on the Statute-book the instructions which they have given in this Circular. The assessment under section 23 (4) is always an arbitrary assessment and also a penal assessment, because invariably the assessment under this sub-section is always—if I say twice, it is very low. It is always, say, about three times or four times the previous year's assessment. There are other penalties which are provided when assessment under section 23 (4) is made. First what they do is that they cancel the registration of the firm. I have got an amendment in regard to that. I will speak about it at the proper time. First, they make this arbitrary and penal assessment; the assessment is too high and then they cancel the registration, and there are also the penalties which are to be imposed by section 28. These things are sufficient to ruin any firm. So, I would like that these words should be inserted as proposed in my amendment. Sir, I move.

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

"That for part (ii) of sub-clause (a) of clause 24 of the Bill, the following be substituted:

- (ii) after the word 'judgment', the words 'after making necessary inquiries and give in his order of assessment the detailed basis thereof and determine the sum payable by the assessee on the basis of such assessment' shall be inserted."

The Honourable Sir James Grigg: The Honourable Member addressed to the House an impassioned appeal against the tyranny of the Income-tax Department. But let us just look at the class of persons in whose favour he is addressing his appeal. The class of persons who absolutely refuse to furnish any information in regard to their income, whatever, and leave the income-tax officer no alternative but to make an assessment. . . .

Mr. Sri Prakasa: On a point of order, Sir? My Honourable friend makes a general accusation of this sort when it refers to non-officials but strongly objects when it refers to officials.

The Honourable Sir James Grigg: I am making no such accusation.

Mr. Sri Prakasa: Is it not a general accusation to say that the whole class generally returns false returns?

Mr. President (The Honourable Sir Abdur Rahim): He specified the class who refuse to make any returns.

Mr. Sri Prakasa: No, Sir. He said that the class to which the Honourable Member refers. . . .

Mr. President (The Honourable Sir Abdur Rahim): There is no point of order.

Mr. Sri Prakasa: I am not very sensitive about my or any other class, and I thought the Honourable Member opposite need not be very sensitive either when his class is referred to.

The Honourable Sir James Grigg: The Honourable Member, as usual, has quite misunderstood what was said. This question only deals with the class of assessee who do not make returns, who refuse to make returns and give the income-tax officer no material on which he can make the assessment. The circular to which Mr. Bajoria referred, although I was not responsible for it, but with every word of which I agree, tells the income-tax officer that it is his business to make enquiries and try and get any information he can and make the assessment to the best of his ability, and that he is not to use it as a means of effecting a penal assessment. But, surely, there will always remain cases in which he cannot get information in spite of his best efforts, and in those cases he has no alternative but to make a guess and in that sort of case he cannot possibly give any basis of justification for his assessment. The Honourable Member must know that there are classes of cases where people do not make any returns, do not give information and take the chance of the income-tax officer making an assessment which is too small. If it is too small, they are quite happy, but if it is too large, then they produce figures and ask for revision. Incidentally, when the Bill was originally introduced, Government proposed to give an appeal under this sub-section. The Select Committee cut out that appeal because it preferred one of the existing provisions of the Act. But if the House decides or wishes to reverse the recommendation of the Select Committee, Government have no objection whatever, and if there is, in fact, restored the provision for appeal under section 23(4), the whole of my Honourable friend's case falls to the ground completely. Sir, I oppose.

Mr. M. S. Aney: (Berar: Non-Muhammadian): I at once confess that I have no sympathy with those who refuse to comply with the notices duly issued by the income-tax officer and drive the income-tax officer to use his discretion in making an assessment on them. But what this amendment requires is of a limited nature and the relief which the amendment seeks to get is of a circumscribed nature. It is no doubt true that the income-tax officer, unfortunately, gets no assistance from the assessee in this case and, therefore, his position in making the assessment is somewhat difficult. Still, after all, he has to assess him one way or the other and when he comes down to the figure of assessment, he must come to a conclusion by way of certain reasoning. What that process of reasoning of that man is must be stated in the judgment by which he assesses that man.

The Honourable Sir James Grigg: You give him a chance of continuing to obstruct.

Mr. M. S. Aney: What I say is that it should not be a judgment based on no reasoning at all. The income-tax officer will probably be guided by the income in the preceding years in arriving at his conclusion and, I say, it should be made incumbent upon him to give the data on which he has come to his conclusion. He should not write an arbitrary order unaccompanied by no reasons at all. My friend, the Leader of the Opposition, is a lawyer of great reputation and legal acumen and he knows very well that if a judgment in a civil court was based on no reasons at all it would not at all be a judgment in law. Whether it is under the Criminal Procedure Code or the Civil Procedure Code, the judgment must be based on some grounds. If no grounds are given, the right of appeal will be meaningless. What will he appeal against? What are the grounds on which he will base an appeal?

The Honourable Sir James Grigg: He will appeal against the judgment.

Mr. M. S. Aney: I am putting it in a legal way. How will the matter be argued in court? Sir, I am sure that this matter does not require to be explained further. My friend in this amendment does not say that the income-tax officer should not use his discretion at all. He is right in using his discretion but he must be guided by some judicial principles of reasoning. Law does not recognise discretion as arbitrary proceedings in the sense in which it is understood by executive officials. I believe that in asking for this change in the section my friend is supported by the procedure which is generally observed by the courts in arriving at a judgment and this should also hold good in the case of a judgment of an income-tax officer in a case like this. I, therefore, support the amendment.

Mr. Bhulabhai J. Desai: As the matter of appeal has been mentioned, I ask for leave to say one word about it. It was pointed out by my Honourable friend that the Select Committee did drop the appeal from an order under clause 4. I confess that it is an error. What was intended was that we only looked at the first part of it, and if I may read the section, my Honourable friend, Mr. Bajoria, will recognise that there is a great deal of hot air in what he was talking. The section says:

"If the principal officer of any company or any other person fails to make a return, etc."

Suppose a man produces no books and produces no information. Then, you are going to put a premium on such acts by saying—make no assessment. This is the most extraordinary thing I have ever heard. Mr. Aney knows very well that, under the Civil Procedure Code, if an affidavit or a document is not made, the defence is struck off. Decree follows without any defence. Suppose a return is incomplete. This is where the error came in inadvertently. It may be that he is able to argue on that that the assessee ought not to have been assessed in the manner and to the extent to which he has been assessed. Therefore, I hope that when we come to the appeal section, the appeal will be restored.

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

"That for part (ii) of sub-clause (a) of clause 24 of the Bill, the following be substituted:

'(ii) after the word 'judgment', the words 'after making necessary inquiries and give in his order of assessment the detailed basis thereof and determine the sum payable by the assessee on the basis of such assessment' shall be inserted'."

The motion was negatived.

Mr. President (The Honourable Sir Abdur Rahim): Amendment No. 28 on List No. 3*.

The Honourable Sir James Grigg: We have just now disposed of a similar amendment.

Maulvi Abdur Rasheed Ochaudhury (Assam: Muhammadan): This is a different amendment from that of Mr. Bajoria.

Mr. President (The Honourable Sir Abdur Rahim): It is worded differently and the Chair is not sure whether he is not technically entitled to move it. He can move it.

Maulvi Abdur Rasheed Ochaudhury: Sir, I move:

"That in part (ii) of sub-clause (a) of clause 24 of the Bill, after the word 'judgment' the words 'after putting down his reasons in writing' be inserted."

In this Act we are providing for the appointment of a number of Appellate Assistant Commissioners. In addition, we are also providing for a tribunal. If the aggrieved assessee is not allowed to complain against the order of the income-tax officer, it is futile.

The Honourable Sir James Grigg: May I submit that there is no question of appeal here? It arises on the appeal section.

Mr. President (The Honourable Sir Abdur Rahim): I take it that it is only an argument.

Maulvi Abdur Rasheed Ochaudhury: My amendment is very innocent. In arriving at his judgment, he must put down the reasons. He cannot dream of the income of a person; he will have to find out some sort of data from which he will arrive at the conclusion that this man has got so much income. He may even say that "I have seen that man, and from his appearance it appears that he has an income of two thousand rupees", and then he will have to write that. Without any data, he cannot come to a conclusion that this man has got so much income. So my amendment wants that whatever may be the reason for his coming to the decision, he should put that in writing, so that the assessee, if he feels aggrieved, may file an appeal to the appellate authority. It is a very innocent amendment, and I hope the House will accept it.

*"That in part (ii) of sub-clause (a) of clause 24 of the Bill, after the word 'judgment' the words 'after putting down his reasons in writing' be inserted."

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

"That in part (ii) of sub-clause (a) of clause 24 of the Bill, after the word 'judgment' the words 'after putting down his reasons in writing' be inserted."

The Honourable Sir James Grigg: I have nothing to say.

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

"That in part (ii) of sub-clause (a) of clause 24 of the Bill, after the word 'judgment' the words 'after putting down his reasons in writing' be inserted."

The motion was negatived.

Babu Baijnath Bajoria: Sir, I move:

"That for part (iii) of sub-clause (a) of clause 24 of the Bill, the following be substituted:

'(iii) the words 'in the case of a registered firm, may cancel its registration' shall be omitted;'

I do not understand why, under this section, the registration of firms may be cancelled. Assessment proceedings and registration proceedings are quite different. We have already provided here for more than sufficient punishment for persons who do not submit returns or who do not produce their books when called upon to do so. Why then should there be this cancellation of registration of a firm? The firm exists, and it is only arbitrary to say that it does not exist. I would request the House that they will kindly give due consideration to this. I do not want to make a long speech, because I know I would not be able to convince the Leader of the Opposition, and as he is nodding his head, I see I have got no chance.

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

"That for part (iii) of sub-clause (a) of clause 24 of the Bill, the following be substituted:

'(iii) the words 'in the case of a registered firm, may cancel its registration' shall be omitted;'

The Honourable Sir James Grigg: Sir, I oppose the amendment.

Mr. M. S. Aney: May I ask for one explanation? Suppose there is a firm registered under the Act of 1932 and it is also required to be registered under the Indian Income-tax Act. If this registration is cancelled and that registration remains, what would be its effect?

Mr. Bhulabhai J. Desai: I am prepared to answer it. With great deference to my Honourable friend, registration under the Indian Partnership Act is for purposes entirely different from the purposes of registration under this Act. A registration under the Partnership Act confers certain privileges which without registration they are unable to secure, and there are certain other consequences. Those consequences do not follow from the cancellation of registration here. The only advantage of registration under this Act is that instead of the whole of the firm being taxed as an entity, that is to say, at a higher rate it will be otherwise; they cannot escape income-tax; they will pay at a higher rate.

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

"That for part (iii) of sub-clause (a) of clause 24 of the Bill, the following be substituted:

'(iii) the words 'in the case of a registered firm, may cancel its registration' shall be omitted;'

The motion was negatived.

Mr. Lalchand Navalrai: Sir, I move:

"That after sub-clause (a) of clause 24 of the Bill, the following be inserted:

'(aa) to sub-section (4) the following proviso shall be added, namely:

'Provided that no assessment shall be made under this sub-section before the expiry of fifteen clear days after the notice intimating him that his application for extension of time, if any, has been refused.'

Sir, I think this is a very reasonable amendment, if a man applies for extension of time for the purpose of sending in his return. Now if he is not informed of its rejection and no time or respite is given between the time when the assessment is actually made and the time within which he may send in his return thereafter, my only submission is that is not fair. When an assessment has to be made, if it is made forthwith, then the assessee has no time to send in a return. If he has already made an assessment what remains? Sir, this amendment is a reasonable one.

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

"That after sub-clause (a) of clause 24 of the Bill, the following be inserted:

'(aa) to sub-section (4) the following proviso shall be added, namely:

'Provided that no assessment shall be made under this sub-section before the expiry of fifteen clear days after the notice intimating him that his application for extension of time, if any, has been refused.'

The Honourable Sir James Grigg: This is another attempt on the part of the Honourable Member to make things easier for the tax-dodger, and I oppose the amendment.

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

"That after sub-clause (a) of clause 24 of the Bill, the following be inserted:

'(aa) to sub-section (4) the following proviso shall be added, namely:

'Provided that no assessment shall be made under this sub-section before the expiry of fifteen clear days after the notice intimating him that his application for extension of time, if any, has been refused.'

The motion was negatived.

Babu Baijnath Bajoria: Sir, I move:

"That in sub-clause (b) of clause 24 of the Bill, clause (b) of the proposed sub-section (5) be omitted."

Sir, this sub-section gives the power to the income-tax officer to tax an unregistered firm either as an unregistered firm or as a registered firm at his option. This option he can vary also every year. If this year he chooses to assess that firm as an unregistered firm, he may, in the next

[Babu Baijnath Bajoria.]

year, assess that firm as a registered firm, by which I mean that he can assess the partners of that firm as such and not the firm as a whole. What I want by this amendment is that there should be a uniform policy. Either the firm should be assessed as an unregistered firm or the partners of that firm should be assessed. It should not be open to the income-tax officer to change his views and assess the firm in one year as an unregistered firm and again in the next year as a registered firm by taxing the unregistered partners. I think this will also cause some difficulty in assessment and also will give trouble to the assesseees.

There is one point more which I wish to mention. If this amendment of mine be deemed to be too wide and is not accepted, I P. M. then I have another amendment by which I propose that where it seems to the Income-tax officer that the firm is not registered merely for the sake of escaping the liability or being taxed at a less rate, then he should assess it as an unregistered firm. With these few words I commend my amendment to the House.

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

"That in sub-clause (b) of clause 24 of the Bill, clause (b) of the proposed subsection (5) be omitted."

The Honourable Sir James Grigg: Sir, I understood the Honourable Member to have moved both of his amendments or to have spoken on both of his amendments. What he seeks to do is in the interests of the very large cases of very large tax-dodgers to make it easier to dodge the tax, and the penal provisions of this section, according to the Honourable Member, are not to be invoked unless the taxing authority can prove the motive of tax-dodging on the part of the tax-payer. As legal Members of this House know, it is the most difficult thing in the world to prove motive. In fact, I understand it is almost impossible to do it. The whole object of this amendment is to make it easier for the kind of man who turns himself into five or six unregistered firms and thereby dodges the super-tax. Sir, I oppose the amendment.

Mr. Huseinbhai Abdullabhai Laljee: Sir, I rise to support the amendment and I do so because I do feel that there must be some uniformity of action. If a firm is going to be put as an unregistered firm, then let it be treated as an unregistered firm. There are several reasons for a firm for not being able to register itself and then to be registered afterwards. It is not due always to tax-dodging. If the principle as is now being adopted here generally that everything should be done to realise as much tax as possible without caring for 2,40,000 tax-payers for the large population of India say 22,00,00,000 (22 crores) then I have very little to say.

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

"That in sub-clause (b) of clause 24 of the Bill, clause (b) of the proposed subsection (5) be omitted."

The motion was negatived.

Babu Baijnath Bajoria: Sir, I move:

"That in sub-clause (b) of clause 24 of the Bill, to clause (b) of the proposed sub-section (5) the following be added at the end:

'and it appears to escape greater liability the partners are deliberately withholding from claiming registration for their firm'."

Sir, it is said that all these amendments are moved only to make the task of tax-dodgers easy. That is far from my intention. My intention is to save the assesses from arbitrary assessment at the hands of the Income-tax officer. This amendment specifically says that he will tax as provided in sub-section (b) if it appears to him that the partners are deliberately withholding registration of the firm to escape assessment, otherwise not. I think this is a very modest demand and I hope the Finance Member will see his way to accept it.

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

"That in sub-clause (b) of clause 24 of the Bill, to clause (b) of the proposed sub-section (5) the following be added at the end:

'and it appears to escape greater liability the partners are deliberately withholding from claiming registration for their firm'."

The motion was negatived.

Mr. M. Ananthasayanam Ayyangar (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, I beg to move:

"That in sub-clause (b) of clause 24 of the Bill, to clause (b) of the proposed sub-section (5), the following proviso be added:

'Provided that when in any year an unregistered firm has been assessed in the manner laid down in clause (a) as applicable to registered firms, it shall thereafter continue to be assessed in the same manner'."

Sir, by this proviso the rigours of treating an unregistered firm in any particular year, at the pleasure of the Income-tax officer, as a registered firm to a large extent will disappear. I am not referring, at this stage, to the previous clause which says that an Income-tax officer can treat, in any particular year, an unregistered firm as a registered firm. In that case, the partners should be individually assessed. If there be a loss under section 24 of a particular partner of a registered firm, then the loss that he has sustained can be carried forward to subsequent years and set off against the profits that he makes in those subsequent years. But no specific provision is made with respect to the case where an unregistered firm is treated as a registered firm in a particular year. The losses that the individual partners might sustain that year are not allowed to be carried forward to subsequent years' losses because the next year the unregistered firm may be treated once again as an unregistered firm. If this year a firm is treated as registered firm and the partners are assessed, there is nothing to prevent the same Income-tax officer reverting to the old position and treating it as an unregistered firm, in which case how can the losses sustained by the individual partners without the partnership or sustained as a registered firm can be carried forward? Therefore, when amendments relating to section 16 were being tabled, my friend, Mr. Santhanam, made a reference to this lacuna and the Honourable the Finance Member and his Assistant Mr. Chambers gave an assurance that they will introduce a suitable amendment.

Mr. S. P. Chambers: On a point of explanation, Sir. All that I said was that the matter would be looked into, not that any suitable amendment would be introduced, unless it was considered that such an amendment was necessary.

Mr. M. Ananthasayanam Ayyangar: As it is, two days have elapsed and there is no visible indication of this matter being taken up at all. And that is the reason why I am moving this amendment.

I have also given notice of another amendment which appears as amendment No. 2, in Supplementary List No. 11, and which runs thus:

"That in sub-clause (b) of clause 26 of the Bill, after the first proviso to the proposed sub-section (2) the following further proviso be inserted:

'Provided further that where an unregistered firm is assessed as a registered firm under section 23 sub-section (5) clause (b) during any year; its losses shall also be carried forward and set off under this section as if it were a registered firm'."

Now, it is open to the Government to accept either the one or the other.

Mr. S. P. Chambers: Not the amendment which the Honourable Member has just moved.

Mr. M. Ananthasayanam Ayyangar: If the Government are willing to accept the other amendment which might come later on, I do not want to pursue the present amendment. If necessary, I shall withdraw it.

Mr. President (The Honourable Sir Abdur Rahim): The Chair takes it that the Honourable Member does not want the amendment to be put to the House.

Mr. M. Ananthasayanam Ayyangar: Sir, I do not want it to be put.

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

"That clause 24, stand part of the Bill."

The motion was adopted.

Clause 24 was added to the Bill.

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

"That clause 25 stand part of the Bill."

Mr. H. S. Town (Nominated: Non-Official): Sir, I beg to move:

"That in part (i) of sub-clause (b) of clause 25 of the Bill in the proposed sub-section (1) after the word 'period' in the third line the words and figures 'being a previous year not earlier than the previous year for the assessment for the year 1939-40' be inserted."

Sir, wherever it has been felt necessary to make sure that a clause shall not have retrospective effect, words similar to these have been inserted. I do not think it is the intention of the Government that the new section 23 (a) shall have a retrospective effect and if it is not their intention I think these words should be inserted to make the matter clear. I would be quite prepared if it is not their intention to receive an assurance that that is

SO.

Mr. S. P. Chambers: On a point of explanation I can inform the Honourable Member that the section cannot be retrospective unless it is specifically made retrospective. The assurance that he requires can be given at once, so that he may withdraw his amendment.

Mr. President (The Honourable Sir Abdur Rahim): I take it that the Honourable Member does not want the amendment to be put to the House.

Mr. H. S. Town: The amendment need not be put to the House.

Sir, I beg to move:

"That in part (i) of sub-clause (b) of clause 25 of the Bill, in the proposed subsection (1), after the word 'dividend', in the fifteenth line, the words 'or a larger dividend than that declared' be inserted."

Sir, as I read the proposed new section it would seem that a company must either declare no dividend whatever or be deemed to declare a dividend, of at least 60 per cent. That is to say if a company does declare any dividend, perhaps only five per cent. of its assessable profits, it will automatically be deemed to have declared 60 per cent. There may be cases in which a company might quite rightly and fairly distribute 80 per cent. of its assessable profits but be running into danger if it attempted to distribute any more. I think it is advisable to put into this section words that will make the section read thus:

"having regard to the losses incurred by the company in previous years or to the smallness of the profit made, the payment of a dividend or a larger dividend than that declared would be unreasonable, make with the previous approval," etc.

I submit, this amendment appears to be very necessary to the clause, and I commend it to the House.

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

"That in part (i) of sub-clause (b) of clause 25 of the Bill, in the proposed subsection (1), after the word 'dividend', in the fifteenth line, the words 'or a larger dividend than that declared' be inserted."

The Honourable Sir James Grigg: This remedy is an obvious drafting mistake in the clause, and, therefore, the Government accept the amendment.

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

"That in part (i) of sub-clause (b) of clause 25 of the Bill, in the proposed subsection (1), after the word 'dividend', in the fifteenth line, the words 'or a larger dividend than that declared' be inserted."

The motion was adopted.

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

The Assembly re-assembled after Lunch at Half Past Two of the Clock.
Mr. Deputy President (Mr. Akhil Chandra Datta) in the Chair.

Mr. K. Santhanam (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural): Sir, I beg to move:

"That in part (i) of sub-clause (b) of clause 25 of the Bill, in the proposed subsection (1), before the words 'the undistributed portion' the words 'the whole or any part of' be inserted."

[Mr. K. Santhanam.]

As the clause stands the Income-tax Officer has no option but to order the redistribution of the entire undistributed part. By this amendment I am giving an option to Income-tax Officers to order a redistribution of the whole or a part of the undistributed portion. I think the reasonableness of this is so evident that it does not require any speech. Sir, I move.

Mr. Deputy President (Mr. Akhil Chandra Datta): Amendment moved:

"That in part (i) of sub-clause (b) of clause 25 of the Bill, in the proposed sub-section (2), before the words 'the undistributed portion' the words 'the whole or any part of' be inserted."

The Honourable Sir James Grigg: Sir, I am sorry that I must oppose this amendment, because it gives the Income-tax Officer a discretion which Government would rather he did not have. The object of the clause is to find an automatic test in order to make the profits taxable, and one of its essential features is to get away from the indefinite criteria which were applied before you got the automatic rule. In this case the Honourable Member proposes to give the Income-tax Officer power to determine what would be the proper distribution, and I think if you do that you will get back to all the difficulties which you had in regard to the previous clause, and I do not think it is a discretion which the Income-tax Officer is qualified to exercise. Sir, I must oppose the amendment.

Mr. M. Ananthasayanam Ayyangar: Sir, some discretion is given in the latter part of the proviso itself, in the case where not more than fifty-five per cent. are distributed. There the Income-tax Officer can, if so advised, give an opportunity to the company to raise it to sixty. Here if the company itself distributes 60 per cent. of its profits this clause does not come into operation. If the distribution should fall short by even two or three per cent. it is obligatory on the Income-tax Officer to treat the entire profits as assessable profits. It is left to the income-tax Officer to increase it.

The Honourable Sir James Grigg: The Honourable Member is wrong. In no circumstances can the Income-tax Officer free any profits distributed from taxation.

Mr. M. Ananthasayanam Ayyangar: I am only saying that so far as the assessable profit is concerned you give an opportunity to that person to ask him why it ought not to be increased.

The Honourable Sir James Grigg: That is a very small percentage.

Mr. M. Ananthasayanam Ayyangar: Even that small discretion between 55 and 60 is not given to the other man. There can always be a difference of opinion in that matter. The person who is in charge of the company and the shareholders and the general body and the directors who are in charge of the administration,—all of them put their heads together and come to the conclusion that in a particular year 60 per cent. cannot be distributed; the Income-tax Officer comes to a different conclusion. Then is it to be left to the Income-tax Officer to treat the entire profits as divisible profits, when having regard to the various circumstances the company itself, at a

shareholders' meeting, has decided that 55 per cent. ought to be distributed that year and the rest ought not to be distributed? Sir, it would be unfair if the autonomy of the administration of companies should be interfered with by the Income-tax Officer who has not got any hand in the day to day administration of the company and who cannot realise all the difficulties which the company may have to meet. Therefore, some discretion ought to be given. It is not such an important matter where the Income-tax Officer ought not to be trusted. There are various other provisions. Take for instance an unregistered company. My Honourable friend says the Income-tax Officers ought not to be allowed a discretion. But it has been allowed at an earlier stage. Has he not allowed the Income-tax Officer to treat an unregistered company as a registered company, if it suits his purpose? Instead of declaring all the profits divisible he will be declaring some portion of it divisible. Then my Honourable friend says that the Income-tax Officer is a fool and he ought not to be given any discretion in this matter. It is not as if by hook or by crook, irrespective of consequences, in the face of the considered opinion of many of the shareholders even in a *bona-fide* case no discretion ought to be allowed. Sir, it is a Draconian law and I oppose it.

Mr. S. P. Chambers: Sir, I think the Honourable Member who has just spoken has really failed to see the whole point of the section. The object of this section is to say that when a company fails to distribute profits we shall take a certain action. We should, in effect treat that company as if it were a firm and treat the shareholders as if they were partners and ask them to pay super-tax, or, rather, insist upon them paying super-tax, just as if all the profits had been distributed. What he suggests I think is that there should be some discretion left to the Income-tax Officer to determine whether it would have been reasonable to distribute 80 per cent. or 85 per cent. or 90 per cent. or something like that. That is not the intention of this section. The section says that we will fix some figure; if the amount distributed is less than that then we are going to go the whole way and then treat the whole of the profits as if they had been divided. We do not intend

Mr. M. Ananthasayanam Ayyangar: My point is this: If the company itself had distributed 60 per cent. the Income-tax Officer would not exercise any jurisdiction here. If the company had distributed only 55 per cent. the jurisdiction of the Income-tax Officer comes into play. What I submit is that the Income-tax Officer can do what the company ought to have done. I do not say that the Income-tax Officer ought to have decided 60 per cent. or otherwise. Whatever is over 60 per cent. is a penalty.

Mr. S. P. Chambers: I think I have understood the Honourable Member's point but I think he has not understood my point. What I suggest is that we do not want the Income-tax Officer to say to the company, "You ought to have done this or you ought to have done that". That type of power was given in the old section which worked so badly. We want to say now just this: If the profits that have been distributed are 60 per cent. or more then this section does not come into operation. If they are less than 60 per cent. then, subject to the second proviso which gives a certain time limit where it is over 55 per cent. subject to that, we say that we do not want to give the Income-tax Officer any discretion:

[Mr. S. P. Chambers.]

he must automatically treat the company as though it were a firm and assess the shareholders as though they were partners in the firm. And I suggest that to give any discretion to an Income-tax Officer in a matter like this is very undesirable. Sir, I oppose the amendment.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That in part (i) of sub-clause (b) of clause 25 of the Bill, in the proposed sub-section (I), before the words 'the undistributed portion' the words 'the whole or any part of' be inserted."

The motion was negatived.

Mr. M. Ananthasayanam Ayyangar: Sir, I move:

"That in part (i) of sub-clause (b) of clause 25 of the Bill, in the proposed sub-section (I), for the words 'profits and gains', occurring in the nineteenth and twentieth lines, the words 'assessable income' be substituted."

Profits and gains are much larger than assessable income. What is really intended, I think, is so much of the profits and gains as is assessable income. It is a mistake in drafting and I want to correct it.

Mr. Deputy President (Mr. Akhil Chandra Datta): Amendment moved:

"That in part (i) of sub-clause (b) of clause 25 of the Bill, in the proposed sub-section (I), for the words 'profits and gains', occurring in the nineteenth and twentieth lines, the words 'assessable income' be substituted."

The Honourable Sir James Grigg: Sir, I think this amendment is a definite improvement on the Bill and I am grateful to the Honourable Member for putting it forward. Government are agreeable to this amendment and to No. 394 which is a consequential amendment to it.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That in part (i) of sub-clause (b) of clause 25 of the Bill, in the proposed sub-section (I), for the words 'profits and gains', occurring in the nineteenth and twentieth lines, the words 'assessable income' be substituted."

The motion was adopted.

Mr. B. Das (Orissa Division: Non-Muhammadan): Sir, I move:

"That in part (i) of sub-clause (b) of clause 25 of the Bill, in the first proviso to the proposed sub-section (I), the words 'which is the property of the shareholders' be omitted."

The object of the amendment is to remove the restriction under the proviso to loan capital from the shareholders only. It is fair that in the case of a business having to borrow loans, either from its shareholders or from outsiders on credit of fixed or floating assets, before arriving at the percentage of reserves for the purposes of this section, the total borrowings of the company should be taken into account and not the borrowings from the shareholders only.

If the clause were to stand without any amendment, it will greatly handicap the maintenance and development of the business, as borrowings would be necessary for the purpose of successfully carrying on the business in the case of companies which are started with a small share capital and whose subsequent business needs warrant an increase of capital. I hope this is a fair amendment and that the Government will accept it.

Mr. Deputy President (Mr. Akhil Chandra Datta): Amendment moved:

"That in part (i) of sub-clause (b) of clause 25 of the Bill, in the first proviso to the proposed sub-section (1), the words 'which is the property of the shareholders' be omitted."

Mr. S. P. Chambers: Sir, I oppose this amendment. I think the Honourable the Mover has not really appreciated the intention behind this proviso. The object of this proviso is, put in popular words, just this: that where the undistributed profits belonging to the shareholders is equal to the capital of the shareholders or more then this rule shall apply. The existence of any loan capital belonging to outside persons has nothing to do with the matter. If the company consists of several shareholders who also have put up money in the form of loan, then in effect the whole of the profits belong to them as shareholders and as loan holders; but when they borrow money from outside persons and pay outside persons interest, then we are not in any way concerned with the interest or anything that goes to those outside persons. We only want to make a comparison between the capital which belongs to the shareholders who are entitled to the profits and the amount of undistributed profits. Therefore, these words: "which is the property of the shareholders" are absolutely necessary and I oppose the amendment.

Mr. K. Santhanam: Sir, if it is the intention of the Government to exclude capital which has been borrowed from outside persons, I venture to suggest that this is not at all a proper expression because even if the company borrows from an outsider, it is the property of the shareholders and it cannot be said to be the property of the outsiders. Suppose I have borrowed money and built a house. Can we say the property is not my property?

Mr. S. P. Chambers: On a point of explanation, I would like to explain that the property in the money which he borrowed will belong to the person who receives the loan, but the loan itself constitutes the property of the person who lends it.

Mr. K. Santhanam: Therefore, I can understand loan capital borrowed outside; but loan capital is the property of the whole company which with all its assets and liabilities is the property of the shareholders so far as I can understand. I am afraid this phrase is going to be the matter of much litigation. I do not think it will convey the meaning suggested by the Honourable Member.

Sir Cowasji Jehangir: Is that the interpretation of Government?

The Honourable Sir James Grigg: The interpretation is quite clear, that if loans have been taken from outside and translated into assets, it is covered by another expression in the clause.

Mr. M. S. Aney: What is that expression?

The Honourable Sir James Grigg: "Together with any loan capital which is the property of the shareholders or the value of the fixed assets whichever is greater."

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That in part (i) of sub-clause (b) of clause 25 of the Bill, in the first proviso to the proposed sub-section (I), the words 'which is the property of the shareholders' be omitted."

The motion was negatived.

Mr. H. S. Town: Sir, I move:

"That in part (i) of sub-clause (b) of clause 25 of the Bill, in the first proviso to the proposed sub-section (I), for the word 'value' the words 'actual cost' be substituted."

The expression "value of the fixed assets" is too vague altogether. It does not give us any idea as to who is to value the assets. A thing may have cost quite a large sum of money and yet be valueless. The intention here I think is to use the word 'cost' and, therefore, I think that if in place of the word 'value' we use the words 'actual cost' we get at the real value of the assets. I suggest the amendment should be accepted.

Mr. Deputy President (Mr. Akhil Chandra Datta): Amendment moved:

"That in part (i) of sub-clause (b) of clause 25 of the Bill, in the first proviso to the proposed sub-section (I), for the word 'value' the words 'actual cost' be substituted."

The Honourable Sir James Grigg: Sir, I have no objection to this amendment.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That in part (i) of sub-clause (b) of clause 25 of the Bill, in the first proviso to the proposed sub-section (I), for the word 'value' the words 'actual cost' be substituted."

The motion was adopted.

Mr. K. Santhanam: Sir, I move:

"That in part (i) of sub-clause (b) of clause 25 of the Bill, in the second proviso to the proposed sub-section (I), for the words 'profits and gains', where they occur for the last time, the words 'assessable income' be substituted."

Mr. Deputy President (Mr. Akhil Chandra Datta): Amendment moved:

"That in part (i) of sub-clause (b) of clause 25 of the Bill, in the second proviso to the proposed sub-section (I), for the words 'profits and gains', where they occur for the last time, the words 'assessable income' be substituted."

Mr. S. P. Chambers: We have no objection to offer to it, Sir.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That in part (i) of sub-clause (b) of clause 25 of the Bill, in the second proviso to the proposed sub-section (I), for the words 'profits and gains', where they occur for the last time, the words 'assessable income' be substituted."

The motion was adopted.

Mr. H. S. Town: Sir, I move:

"That for part (ii) of sub-clause (b) of clause 25 of the Bill, the following be substituted:

(ii) for the proviso the following shall be substituted, namely:

'Provided further that this sub-section shall not apply to any company in which the public are substantially interested or to a subsidiary company of such a company if the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof.'

Sir, if the whole of the share capital of the subsidiary company is held by a company which is exempt from the provisions of this clause, there would appear to be no reason why that subsidiary company should itself come within the mischief of the clause, for the simple reason that it is merely, as it were, a department of the main company which is itself exempted, and were it being run as a department of the main company it would be exempted, and as it has merely been turned into a subsidiary, there would appear to be no reason why it should be brought within this clause. Sir, I move.

Mr. Deputy President (Mr. Akhil Chandra Datta): Amendment moved:

"That for part (ii) of sub-clause (b) of clause 25 of the Bill, the following be substituted:

(ii) for the proviso the following shall be substituted, namely:

'Provided further that this sub-section shall not apply to any company in which the public are substantially interested or to a subsidiary company of such a company if the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof.'

The Honourable Sir James Grigg: Sir, this, I understand, merely seeks to provide that a company which is a hundred per cent. subsidiary of a parent company, which is a public company, shall be regarded as a public company. If that is the intention, Sir, Government accept the amendment.

Mr. S. Satyamurti (Madras City: Non-Muhammadan Urban): Sir, I should like this point to be examined further by the Government. So far as the original clause is concerned, it was there. It was omitted by the Select Committee

The Honourable Sir James Grigg: I said 100 per cent subsidiary.

Mr. S. Satyamurti: I want to know the difference. If it is 100 per cent subsidiary, does it mean that the public are or are not interested . . . ?

The Honourable Sir James Grigg: The complete share-holding of the subsidiary is held by the parent company which is itself a public company. That is the position; that is, the complete shareholding of the subsidiary company which is owned by a public company.

Mr. S. Satyamurti: The proviso, as it is in the recommendation of the Select Committee on the Bill, is that this safeguard shall not apply to any company in which the public are substantially interested. I submit

[Mr. S. Satyamurti.]

that a company which is called subsidiary will not be taken out of the provisions of this proviso, because the 100 per cent. shares are held by the shareholders of the parent company. I want to know if there is any catch in it

The Honourable Sir James Grigg: There is no catch in it.

Mr. S. Satyamurti: Well there may be no catch in it, but considering the source from which it is coming, I want to see whether there is or there is not a catch in it. I should be obliged if some light were thrown on this simple point. I want to take the proviso as it is recommended by the Select Committee. It says it shall not apply to a company in which the public are substantially interested. Why is it argued that a subsidiary company owned cent per cent. by a company in which the public are substantially interested is not a company in which the public are substantially interested also? If, really, according to the legal interpretation, such subsidiary companies are not companies in which the public are substantially interested, they ought not to have the benefit of this proviso. If, on the other hand, such subsidiary companies are companies in which the public are substantially interested, this amendment is unnecessary,—either it is unnecessary or it is mischievous. So I want to know whether some light can be thrown on this simple point, I am taking. I have no objection to the clause as it stands, but I want the proviso to the clause to be confined to companies in which the public are substantially interested. If it is there, then why do you want the exception?

Mr. S. P. Chambers: Sir, I think I can answer the Honourable Member's point by referring him to sub-clause (b) in the original 23-A. There a company in which the public are substantially interested is defined and the shares have actually to be allotted to the public and dealt with on the Stock Exchanges. If you have a company which is a subsidiary company of a public company, the shares in that subsidiary company are not directly owned by the public and they are owned by this company, and therefore technically that may count as a private company, because the shareholders may be only three or even less and nominees of the public company. It is purely a technical point, and I can assure the Honourable Member it has no effect whatever beyond bringing it into the exception of all true public companies. There is no catch whatever in it, but if we left it as it was originally, that would have been wider, because a subsidiary company was originally defined in much wider terms before. We have now the definition of a subsidiary company to meet this objection.

Sir Cowasji Jehangir: Sir, a subsidiary company is a separate entity from the parent company. If the parent company is a public company in the proper sense of the word, that is to say, if more than 25 per cent. of the shares are in the hands of the public, and they are negotiable on the Stock exchange, then if such a company holds every share in the subsidiary company, should you force the subsidiary company to give certain amount of dividends? It is all one capital; the owners of the shares are all one, the company is one, but legally it is a separate company. Therefore, you cannot penalise a separate company which is a part and parcel of a public company simply because it has a separate entity.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That for part (ii) of sub-clause (b) of clause 25 of the Bill, the following be substituted:

(ii) for the proviso the following shall be substituted, namely:

'Provided further that this sub-section shall not apply to any company in which the public are substantially interested or to a subsidiary company of such a company if the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof.'

The Motion was adopted.

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

"That sub-clause (c) of clause 25 of the Bill be omitted."

Sir, it will be seen from the Bill that sub-clause (c) seeks to omit the present sub-section (3) of 23A. The Select Committee has introduced the words 'with the previous approval of the inspecting Assistant Commissioner' in the main section. That is, the discretion given to the income-tax officer to order the distribution of profits is qualified by the consent that he has to get from the Inspecting Assistant Commissioner. That having been introduced there, they cannot move here for the deletion of sub-section (3), and sub-section (3) says that an opportunity will be given to the firm, association, company or concern of being heard whether this distribution can really be made, and we think that that opportunity of being heard should be given to the assessee before any order is made under 23A. Sir, I move.

Mr. Deputy President (Mr. Akhil Chandra Datta): Amendment moved:

"That sub-clause (c) of clause 25 of the Bill be omitted."

The Honourable Sir James Grigg: I was under the impression that the

3 P. M. Honourable Member's point would be met by the amendment No. 399, which is the same as No. 12 on Supplementary List No. 9, *plus* No. 13 on Supplementary List No. 9. Government were prepared to accept those two amendments and I am at a little loss to know why the Honourable Member wants to move this one No. 398.

Mr. T. S. Avinashilingam Chettiar: By mere accident. Even if this is moved, those others also could be moved. Because this amendment came before, I moved it. These are not contradictory.

The Honourable Sir James Grigg: The Honourable Member will withdraw his amendment and satisfy himself with amendment No. 399 or take his own amendments Nos. 12 and 13 on Supplementary List No. 9.

Mr. T. S. Avinashilingam Chettiar: Very well. I beg leave of the House to withdraw my amendment.

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

Mr. T. S. Avinashilingam Chettiar: Sir, I move:

"That for sub-clause (c) of clause 25 of the Bill, the following be substituted:

'(c) Sub-section (3) shall be re-numbered as sub-section (2), and, in the sub-section, as so re-numbered, before the words 'Assistant Commissioner' the word 'inspecting' shall be inserted.'"

In addition to the reason that I gave for the previous amendment, there is one more. The sub-section provides for the Assistant Commissioner. In the Bill as framed now there are either Inspecting or Appellate Assistant Commissioners. The main section refers to the Inspecting Assistant Commissioner, so I have sought to introduce the word "Inspecting".
Sir, I move:

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That for sub-clause (c) of clause 25 of the Bill, the following be substituted:

'(c) Sub-section (3) shall be re-numbered as sub-section (2), and, in the sub-section, as so re-numbered, before the words 'Assistant Commissioner' the word 'inspecting' shall be inserted.'"

The Motion was adopted.

Mr. T. S. Avinashilingam Chettiar: Sir, I move:

"That in sub-clause (d) of clause 25 of the Bill, for the words 'sub-sections (4) and (5) shall be re-numbered, respectively, sub-sections (2) and (3), and in sub-section (2), as so re-numbered' the words 'sub-sections (4) and (5) shall be re-numbered, respectively, sub-sections (3) and (4) and in sub-section (3) as so re-numbered,' be substituted."

This is merely consequential.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That in sub-clause (d) of clause 25 of the Bill, for the words 'sub-sections (4) and (5) shall be re-numbered, respectively, sub-sections (2) and (3), and in sub-section (2), as so re-numbered' the words 'sub-sections (4) and (5) shall be re-numbered, respectively, sub-sections (3) and (4) and in sub-section (3) as so re-numbered,' be substituted."

The Motion was adopted.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That clause 25, as amended, stand part of the Bill."

The Motion was adopted.

Clause 25, as amended, was added to the Bill.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That clause 26 stand part of the Bill."

Babu Baijnath Bajoria: Sir, I move:

"That in clause 26 (a), after the proposed proviso to sub-section (1), the following further proviso be added:

'Provided further that where an assessee proves to the satisfaction of the Income-tax Officer that any income which has been assessed to income-tax with reference to the amount becoming due and payable under the Act in that year but which income subsequently becomes bad and irrecoverable the assessee shall be allowed to claim such unpaid income as a loss of income, profits and gains in his assessment in such subsequent year.'"

There are so many supplementary lists that it is impossible for us to follow. What I suggest is that there should be one consolidated list including all the supplementary lists, so that it would help Members.

Mr. Deputy President (Mr. Akhil Chandra Datta): The amendments are coming every day. The Chair understands that the amendments have been consolidated twice.

Babu Baijnath Bajoria: This is merely an accounting matter. When in one year the income on a particular item has been assessed and if, afterwards, it has been found that that income has become bad or irrecoverable the assessee should be allowed to claim such unpaid income.

Mr. Deputy President (Mr. Akhil Chandra Datta): Amendment moved:

"That in clause 26 (a), after the proposed proviso to sub-section (1), the following further proviso be added:

'Provided further that where an assessee proves to the satisfaction of the Income-tax Officer that any income which has been assessed to income-tax with reference to the amount becoming due and payable under the Act in that year but which income subsequently becomes bad and irrecoverable the assessee shall be allowed to claim such unpaid income as a loss of income, profits and gains in his assessment in such subsequent year'."

Mr. S. P. Chambers: I oppose this amendment. In so far as the amendment relates to debts which are bad in a business, they are allowable in the year in which they are bad and to that extent this amendment is unnecessary. There are, however, two other possible cases which it meets. One is where income, not being business income, proves subsequently to be bad. The type of case I can give as an example is salary. Salary is, under the section as amended by the Bill, assessable when it is due, whether it has been paid or not, and this would seek to allow against subsequent income that part of the salary which was due in the earlier year but subsequently proved to be bad. To that the reply is that if the income was never paid at all, if it became bad, then it is not assessable when it is due. That point I think I made clear some days ago in another connection; that is to say, income which was never received does not come in and, therefore, is no longer income. There again, to that extent, it is unnecessary. There is, however, the third type of case which it meets, the case where bad debts are incurred in the business, where the business is finally discontinued. That is to say, the debt is incurred during the currency of the business, the business ceases and in some later year the debt proves to be bad. This amendment would cover that case and would allow the assessee to set off against subsequent income this debt which was originally incurred in a business no longer existing. In that case we would regard the debt becoming bad in this later year as loss of capital and losses of capital we do not allow against income.

Babu Baijnath Bajoria: Why do you call it loss of capital. It is the third item which I had in mind when I moved this amendment.

Mr. S. P. Chambers: When the business is continuing the outgoings are revenue expenditure and the incomings are revenue income. When the business is no longer existing, any loss is loss of capital. For that reason, I oppose the amendment.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That in clause 26 (a), after the proposed proviso to sub-section (1), the following further proviso be added:

'Provided further that where an assessee proves to the satisfaction of the Income-tax Officer that any income which has been assessed to income-tax with reference to the amount becoming due and payable under the Act in that year but which income subsequently becomes bad and irrecoverable the assessee shall be allowed to claim such unpaid income as a loss of income, profits and gains in his assessment in such subsequent year.'

The motion was negatived.

Mr. Sami Vencatachellam Ohetty (Madras: Indian Commerce): Sir, I move:

"That in clause 26 (b) of the Bill, in the proposed sub-section (2), the words 'from the same business, profession or vocation' be omitted."

The carry forward of losses is one of the few sugar coated pills which have been put into this Bill in order to oblige the assessee to make great sacrifices in respect of other matters. We appreciate, however, this benefit of what is called the carrying forward of losses for a period of six years but I am afraid when the intention was put into actual wording of the clause, much of the benefit that was expected of that clause was whittled down by various restrictions imposed on such carrying forward. One of the means is that the loss may be set off only against the profits of the same business, profession or vocation. That is to say, if a person loses in a particular business and he changes the business in a succeeding year but makes a profit in another line of business, the loss which he has sustained in the previous year is not taken into account while the profit of the new business will be taxed to its fullest capacity. This, naturally, minimises the benefit which we expect from the provision of carry forward of losses to succeeding years. Either you tie down the person to one line of business and compel him to incur loss after loss, year after year, or you won't give the benefit of setting off this loss against income which may be derived from another line of business. Moreover, the wording of the clause leaves very little scope for the assessee to get the benefit of this provision even when he has sustained loss but had been carrying on other lines of business. An individual or a company may be carrying on a number of lines of business. In one line he might have sustained loss; in another he might have made profit. Though the fact is that the whole control and the management of various lines of business was resting in one hand, so far as the setting off of losses against the profits in other lines are concerned, they are treated as two separate avocations. One can understand with some amount of reservation that when a vocation is changed into business and *vice versa*, the loss under one source might not be set off against another source. Even then there are difficulties. Take for instance the profession of a doctor. A doctor might be running a dispensary and also be carrying on his profession. He might be losing in his dispensary; according to the strict interpretation of this provision his profits as a doctor will be charged without taking into account the loss he may have sustained in his dispensary. If that is the difficulty even with regard to professional people, greater is the difficulty in respect of businessmen. I know of persons in this position and Sir Homy Mody gave one instance. A merchant may be carrying on business in cotton and cotton seeds. Are they to be considered as two different lines of business.

You might be a general merchant carrying in a commission agency business and also business on his own account and responsibility. Are we to consider that the loss sustained as a commission agent cannot be set off against the profits of his own business? This will work as a great hardship. I am amazed at the illiberality of the gentlemen on the Treasury Benches when they come over to this country. A perusal of the report of the Codification Committee of Lord Macmillan will show how liberal they have been in interpreting this provision of setting off of losses of one concern against the profits of another. I will quote to the House a few instances:

"A carries on one business as an individual, and another business as a partner in the firm AB.

If A's individual business makes a loss, and the firm AB make a profit, A is allowed to set off his loss against the profit of AB up to the amount of A's share in that profit.

If the firm AB make a loss, and A's individual business makes a profit, A is allowed to set off his share of AB's loss against the profit of his individual business.

A carries on one business as a partner in the firm AB and another business as a partner in the firm AC.

If firm AB makes a loss, and firm AC makes a profit, A is allowed to set off his share of AB's loss against AC's profit up to the amount of his share in that profit.

This interpretation of the existing Rule has been followed in the clause."

Such are the liberal provisions in the United Kingdom law, and I am told also, Sir, that a similar provision exists even in Ceylon, nearer to India, and I ask if what has been extended to Ceylon should now be denied to the parent country, India. I hope that if the Government really intended that the benefit of this provision should accrue to the assessee, then it is desirable that the losses of one line of business should be allowed to be set off against the profits of another line of business. I do not think there would be much loss of Government's revenue if this is allowed. After all, if this is not allowed, the provision can only benefit the very big businesses and big businessmen who carry on only one line of business and get immense profit or immense loss as the case may be but in respect of the small businessman who has got to change his lines of business as circumstances require it is very desirable that the benefit should be extended to him so that he may really enjoy the benefits of this provision.

Mr. Deputy President (Mr. Akhil Chandra Datta): Amendment moved:

"That in clause 26 (b) of the Bill, in the proposed sub-section (2), the words 'from the same business, profession or vocation' be omitted."

Mr. M. S. Aney: Sir, I support the amendment and it is on a very simple ground which I hope will be quite intelligible to my Honourable friend, Mr. Chambers. Sir, I have more faith in his liberal interpretation of our speeches than in any other Member of this House. My position is this. Here in this Bill it is the total income of the individual that is being taxed. For the purpose of computing his total income, every item of income that the man makes in all his business is pooled together and the total income of the man is made up. If this is so, it does not stand to reason why the losses made by that man in one business or in any other business should not also be allowed to be pooled together and deducted from the total income so that the net income only can be found out and on which alone he should be taxed. If the bringing in of all of the man's income together for

[Mr. M. S. Aney.]

the purpose of income-tax is necessary, then the bringing in of all his losses together for the sake of finding out his net income is also, in my opinion, a perfectly logical and a mathematically correct proposition. But there is only one thing. Those who want to get more money in the name of a tax this way or that way will introduce rules and make distinctions which really have no meaning in reality. What does it matter to the Income-tax Department whether my loss is in business A or business B? That Department should be concerned only with the fact—what is the net income I have got with me which is available for taxation?

An Honourable Member: That is provided for.

Mr. M. S. Aney: Not in the year; when you want him to deduct the loss and confine him to the loss in the same business and not carry it over to be available for deduction out of the total income, it is not the same thing at all. There is a difference, in my opinion. If so, I think logically there is good reason on the side of the amendment which my friend, Mr. Vencatachalam Chetty, has moved. Of course, the only difficulty is that it is likely to give less money to the Income-tax Department at times. But whether that should be a dominant consideration or whether we should proceed on what is really equitable, that is the point. Sir, I support the amendment.

The Honourable Sir James Grigg: Sir, I would like to make an appeal to the House to let us hasten slowly in this matter of the carry-forward of losses. This has been a concession that has been demanded by business interests for a great many years.

Mr. M. S. Aney: We thank you for that.

The Honourable Sir James Grigg: . . . and you show your thanks by wanting more like Oliver Twist—and it has been impossible to give it for two reasons, the first being because it was impossible to incur the loss of revenue, and secondly, we are proceeding to an unknown country and nobody could tell how much any particular concession would cost; and the potential loss of revenue from the indiscriminate allowance of losses is so big that I make an appeal to the House to allow us to hasten slowly. What the Honourable Member proposes is to allow a business loss to be set off against all other income, even after they are carried forward. They are allowed in the year of assessment, as the Honourable Member knows, but in the clause as drafted they are not allowed to be carried forward. I am very frightened that to widen the scope of the clause might cause a greater loss of revenue than I can afford and it has only been possible to give the concession at all by providing revenue from other sources to meet the cost of it. If there were enough money for it, there is a great deal to be said for this, if one was certain there was money to pay for it, but I hope that the party opposite, after having ventilated this question, will not however press it to a division.

Mr. T. S. Avinashilingam Chettiar: Sir, I perfectly agree with many of the arguments which the Honourable the Finance Member has advanced but I want to bring to his notice one matter. When a business is continued there is a possibility of the loss in question being recouped in one, two, three, four or five years but there is the question of a business which may

be closed, because that may not have proved profitable, amongst so many other businesses. In those circumstances I do think it would be a denial of the concession sought to be given under this clause if the man is not allowed to adjust his losses in the other business. I suggest to my Honourable friend that there is an amendment No. 410 which provides that if a business is closed, then the man's losses may be adjusted to the income from the other business; and I think, Sir, in justice, he should be allowed to adjust it out of the profits in his other business. I hope my Honourable friend will see his way to accept that amendment.

The Honourable Sir James Grigg: Sir, it is exactly for fear of cases like those which the Honourable Member, Mr. Avinashilingam Chettiar, has put forward that I expressed the hope that the House would allow us to hasten slowly in this matter. Sir, it is precisely that kind of case which should not be allowed. When a business is being discontinued and the question is of carry-forward of the losses from the discontinued business and setting it off against other income, it is precisely to avoid the possibility of there being a business in dud companies with a carry-forward of losses that I am sceptical of this provision, and after hearing from the Honourable Member the method proposed, my scepticism has increased.

Mr. Brojendra Narayan Chaudhury (Surma Valley *cum* Shillong: Non-Muhammadian): Sir, this small amendment has raised a very big question of the exact principle of taxation. What are we going to tax? It is the year's income. The point which next arises is this: shall we take into consideration the capacity of the man in that year to pay? Suppose in the past year I had two businesses, one was known as A and the other as B. In business A I incurred in the previous year a loss of Rs. 30,000 which I could not write-off and in the current year I have made a profit only of Rs. 10,000 in business B and none in A. So, the losses of last year I have to pay for either out of my accumulated capital or by loan. As regards my capacity to pay this year, my income should be Rs. 10,000 *minus* the previous loss of Rs. 30,000 a debit account. So, if I am asked to pay any tax at all, I will have to pay it out of my capital or by loan. Are you going to levy on income or you do not mind if sometimes the income-tax is a capital levy as in the case I have cited? The Honourable the Finance Member may contend that if he is to go on considering the previous losses, then his income-tax yield may become very much less, because sometimes we do find that people take up very hazardous business, speculative business and do make a profit although they may have been incurring losses for previous few years. But he is going neither this way nor that way. Had he refused to set off the loss even against the same business, I could have understood it. How does he make a distinction between the income or loss of the same business and income derived from or loss incurred in another business? Is the latter marked coin and tainted like the police informer's coin with which culprits are decoyed. My income from this business and my income from the other business will fetch me the same interest if invested and will have the same purchasing power if I spend. So, either do away with this "carry-forward losses" business or allow it for all kinds of losses. There is no sense in saying carry-forward losses in the same business.

Babu Baijnath Bajoria: Sir, the Honourable the Finance Member has accepted the equity of the arguments advanced by my Honourable friend, Mr. Avinashilingam Chettiar, but he pleads that for financial reasons it is not possible for him to accept this amendment. This amendment is worded

[Babu Baijnath Bajoria.]

rather in a wide sense because it allows the carry-forward of a business loss not only to be set off against profit of any other business but also against the income which may be derived from other sources as, for instance, interest, property and other things. I think he should give his consideration and accept amendment No. 406 which says 'not from the same business but from any business'. That is, from the same source if the source of income is the same under the head 'business'. So, a business loss should be allowed to be set off against a business loss whether it is from the same business or from any other business. I hope the Finance Member will give due consideration to it.

Dr. Sir Ziauddin Ahmad (United Provinces Southern Divisions: Muhammadan Rural): Sir, I was not taken in by the arguments of my Honourable friend who moved the motion, because I know that the Members of the Treasury Benches are very much afraid of politicians.

Mr. Sami Vencatachelam Chetty: May I intervene, Sir, and ask your permission and the permission of the House to withdraw my amendment?

Dr. Sir Ziauddin Ahmad: On a point of order, can an Honourable gentleman withdraw his amendment when another Member is speaking?

Mr. M. S. Aney: It is an important point of order. When a Member is in possession of the House, is it open to any other Member to withdraw his amendment?

Mr. Deputy President (Mr. Akhil Chandra Datta): The ruling of the Chair is that when a certain Member is on his legs and is in possession of the House, the motion cannot be withdrawn.

Dr. Sir Ziauddin Ahmad: Then, I resume my seat.

The amendment was, by leave of the Assembly withdrawn.

Babu Baijnath Bajoria: Sir, I move:

"That in sub-clause (b) of clause 26 of the Bill, in the proposed sub-section (2), for the words 'the same' the word 'any' be substituted."

Sir, I do not want to make a speech on this and I would request the Honourable the Finance Member to accept it.

Mr. Deputy President (Mr. Akhil Chandra Datta): Amendment moved:

"That in sub-clause (b) of clause 26 of the Bill, in the proposed sub-section (2), for the words 'the same' the word 'any' be substituted."

The Honourable Sir James Grigg: Sir, I am not insensitive or insensible to the appeal of the Honourable Member, but, apart from the general financial question about which I spoke on the last amendment, there is the cat, if I may so call it, which Mr. Avinashilingam Chettiar has let out of the bag and it is covered by this amendment. That is, a company which is on its death-bed and has a large amount of losses is bought up by a man who is then able to carry forward the losses in order to reduce the rest of his income. I cannot possibly ask the House to accept an amendment which is going to start a new kind of industry intended to buy up dud businesses.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That in sub-clause (b) of clause 26 of the Bill, in the proposed sub-section (2), for the words 'the same' the word 'any' be substituted."

The motion was negatived.

Babu Baijnath Bajoria: Sir, I move:

"That in clause 26 (b) of the Bill, in the proposed sub-section (2), all the words beginning with the words 'and a loss arising in the previous years' and ending with the words 'five years, respectively' be omitted."

Sir, the object of this amendment is to delete the following words:

"but no loss shall be so carried forward for more than six years, and a loss arising in the previous years for the assessment for the years 1939-40, 1940-41, 1941-42, 1942-43 and 1943-44, respectively, shall be carried forward only for one, two, three, four and five years, respectively."

I do not know exactly why the provision has been made that the losses during these years will be carried forward only for so many years. I think this is also for financial considerations. In this connection, I would submit that I am prepared that the carrying forward of the losses should be restricted only to three years instead of six years as is proposed in this section, provided the period mentioned in section 34, which allows the re-opening of the assessment to four years and in certain cases eight years, is also reduced to three years. My Honourable friend, Mr. Aikman, need not be surprised at this statement. I may tell him that I am speaking not only for my Association in this matter but also for other Chambers of Commerce and there is a principle involved also in this suggestion, i.e., the general principle of limitation. They are definitely opposed to the re-opening of the case under section 34 for more than three years. When I was making my speech in the general discussion I was interrupted by the Honourable the Finance Member and he asked: "how do you claim your losses for more than three years". If the Honourable the Finance Member is prepared to agree that the losses should be carried forward for three years, the assessment under section 34 should also be made for three years. In that case I would be prepared to withdraw this amendment. I do not mean to say that if this amendment is not carried, I would agree to four years or eight years. As a matter of fact I will move that the section 34 should not be used for more than three years.

Mr. Deputy President (Mr. Akhil Chandra Datta): Amendment moved:

"That in clause 26 (b) of the Bill, in the proposed sub-section (2), all the words beginning with the words 'and a loss arising in the previous years' and ending with the words 'five years, respectively' be omitted."

The Honourable Sir James Grigg: The Honourable Member has made a series of more or less unattractive offers, none of which I regret to say are acceptable. At the beginning of my remarks on the amendment to this clause I said that we have got to proceed very cautiously in this matter of carry forward of losses. The Honourable Member wants to throw in losses of the whole six years at once and that will increase . . .

Babu Baijnath Bajoria: It will not have retrospective effect.

The Honourable Sir James Grigg: . . . and the losses for the past six years will become operative at once. That is what you want. I imagine that the effect of this will be certainly to double and probably treble or quadruple the cost in the early years of the concession made. I simply cannot afford it.

Babu Baijnath Bajoria: I beg leave of the House to withdraw the amendment.

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

Mr. K. Santhanam: Sir, I beg to move:

"That in sub-clause (b) of clause 26 of the Bill, after the first proviso to the proposed sub-section (2), the following further proviso be inserted:

'Provided further that where an unregistered firm is assessed as a registered firm under section 23, sub-section (5), clause (b), during any year, its losses shall also be carried forward and set off under this section as if it were a registered firm'."

The scope of the amendment has been explained more than once, and I content myself with moving it.

Mr. Deputy President (Mr. Akhil Chandra Datta): Amendment moved.

"That in sub-clause (b) of clause 26 of the Bill, after the first proviso to the proposed sub-section (2), the following further proviso be inserted:

'Provided further that where an unregistered firm is assessed as a registered firm under section 23, sub-section (5), clause (b), during any year, its losses shall also be carried forward and set off under this section as if it were a registered firm'."

The Honourable Sir James Grigg: The Government accept this amendment.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That in sub-clause (b) of clause 26 of the Bill, after the first proviso to the proposed sub-section (2), the following further proviso be inserted:

'Provided further that where an unregistered firm is assessed as a registered firm under section 23, sub-section (5), clause (b), during any year, its losses shall also be carried forward and set off under this section as if it were a registered firm'."

The motion was adopted.

Mr. M. Ananthasayanam Ayyangar: Sir, I beg to move:

"That in sub-clause (b) of clause 26 of the Bill, in the second proviso to the proposed sub-section (2), before the word 'firm', occurring in the second line, the word 'registered' be inserted."

The proviso reads:

"Provided further that where a change has occurred in the constitution of a firm. . . ."

I want to qualify the word 'firm' by 'registered'. This proviso says that if there should be a succession to the firm even if it be an unregistered firm, the losses ought not to be carried over to the succeeding firm. I would restrict by this amendment the proviso to registered firms in

which case the assessment falls on the partners and in the case of a change or addition to partners the losses have to be divided among the other partners who come into being next year. Therefore, in the case of a registered firm, there is a real change in the constitution of the firm. In the case of an unregistered firm, it is treated as an entity. We will take it, in its place there is a company and a shareholder may transfer his share to another and a new shareholder may come into being. So far as the directors are concerned, there may be a change of management in which case, though several parts of the company might be changed from time to time, the company is being treated as entity, and the losses are allowed to be carried forward. Why should there be a difference made in the case of an unregistered firm which is treated as a single entity as if it was a person? I want this proviso to be confined only to the case of registered firms where the partners are individually assessed and the losses or profits are allowed to be carried forward so far as the partners are concerned.

Mr. Deputy President (Mr. Akhil Chandra Datta): Amendment moved:

"That in sub-clause (b) of clause 26 of the Bill, in the second proviso to the proposed sub-section (2), before the word 'firm', occurring in the second line, the word 'registered' be inserted."

Mr. S. P. Chambers: Sir, I oppose the amendment. I appreciate the intentions behind the amendment. I will put forward the point of view of the Honourable Member so that I may get quite clear what he intends. If there is an unregistered firm consisting of three partners and a fourth partner is brought in and it remains an unregistered firm, then, technically it is not the same firm and, therefore, the losses made by the first three persons constituting an unregistered firm cannot be carried forward and set off against the losses by the four subsequent partners who constitute the firm at a subsequent date. I agree at once that as worded the Bill does not provide for the carry forward in that case. But I think if we allow that not only do we allow a dangerous precedent but we are also doing something which would encourage the non-registration of firms where the shares are known, where they are specifically determined and where, presumably, for some reason the partners are not registered. I cannot see that in a case of that kind we ought to say these partners although they have failed to register should have some benefit which the Bill only intends to give to persons who have made losses and who specifically stated their shares of losses. I suggest that it might be dangerous because you may get this kind of thing happening. A firm consists of three persons and makes a very heavy loss and practically becomes bankrupt. A fourth person comes in and, of course, he brings his business to this firm and he can then get the losses made by the other persons set against his profits. In the case of a registered firm we refused that and I think rightly. We say that A being a partner can set off the losses only against his own profits. Here, we should be conferring upon a firm which has failed to register a benefit which we do not give to a registered firm. For these reasons I oppose the amendment.

Mr. K. Santhanam: Sir, I want one explanation. Suppose the firm we have allowed as unregistered goes on many years and the loss of a

[Mr. K. Santhanam.]

lakh of rupees has been accumulated and simply because somebody comes in is the whole loss not to be carried forward in the next year?

Mr. S. P. Chambers: That would in fact be the position, and the illustration I have just given shows why we should have that position. The remedy is clear; the remedy is registration.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That in sub-clause (b) of clause 26 of the Bill, in the second proviso to the proposed sub-section (2), before the word 'firm', occurring in the second line, the word 'registered' be inserted."

The motion was negatived.

Mr. M. Ananthasayanam Ayyangar: Sir, I beg to move:

"That in sub-clause (b) of clause 26 of the Bill, in the second proviso to the proposed sub-section (2), after the words 'another person', occurring in the fifth line, the words 'otherwise than by inheritance' be inserted."

Whatever might be said with respect to the change of the constitution of a firm, whether it is registered or unregistered, so far as an individual is concerned, if the individual dies and is succeeded by his son, I do not want that the carrying forward of losses ought to die with the death of the individual. It ought to be carried over in the hands of the son and he must be entitled to set off the losses against the profits that may accrue. On the other hand if a man voluntarily transfers it to some other person for consideration then he will take the losses also and subject to that the other man will take it, except in the case where it is transferred by inheritance. The clause may be allowed to stand as it is because by purchase consideration is there to that extent. Therefore, so far as inheritance is concerned, I want this exception. Sir, I move.

Mr. Deputy President (Mr. Akhil Chandra Datta): Amendment moved:

"That in sub-clause (b) of clause 26 of the Bill, in the second proviso to the proposed sub-section (2), after the words 'another person', occurring in the fifth line, the words 'otherwise than by inheritance' be inserted."

Mr. S. P. Chambers: Sir, I oppose this amendment. The whole scheme of the Act is to charge tax upon the person who gets the income; and similarly we have provided that the carry forward of losses should be set off only against the profits of the same person. Here, we are asked to make an exception, and it is not an exception in the case of a poor person or a person in special difficulties.

Mr. M. Ananthasayanam Ayyangar: He may be poor or he may be rich.

Mr. S. P. Chambers: Yes, he may be poor or he may be rich. It is a case of inheritance. I have tried to imagine the circumstances which will make it more virtuous for a man to come into possession of a business because his father has died than because he has bought the business. For myself I cannot see that there is any reason why a man who has inherited a business should have somebody else's losses against his profits.

Sir Gowasji Jehangir: Who is the "somebody"?

Mr. S. P. Chambers: May be his father or his uncle or his grandfather or grandmother. I cannot see why there should be any special reason why such a person should get the losses set off when we refused it to everybody else. Sir, I oppose the amendment.

Mr. Bhulabhai J. Desai: Sir, it is not at all surprising that my Honourable friend does not know the law and does not know the Indian law particularly. The exception that is being made is a perfectly legitimate one and a right one. In one case, of course, if you give it or sell it to another, as my Honourable friend pointed out, you make over with the losses that you have suffered and a man who takes it over is an independent person and he is not liable for the debts of the person whose firm it was. I hope my Honourable friend, the Law Member, will assure my Honourable friend on the other side that, when a man inherits a business, he is liable to pay the debts of that business incurred by the father out of the assets which come to his hands. Whereas, on the other hand, if a man has bought a business, he is not liable for the debts incurred by his predecessor. For that reason I expected that in this particular case at all events this would be accepted.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is:

"That in sub-clause (b) of clause 26 of the Bill, in the second proviso to the proposed sub-section (2), after the words 'another person', occurring in the fifth line, the words 'otherwise than by inheritance' be inserted."

The motion was adopted.

Mr. T. S. Avinashlingam Othettiar: Sir, I beg to move:

"That in sub-clause (b) of clause 26 of the Bill, to the proposed sub-section (2), the following further proviso be added:

"Provided further that if a firm converts itself into a limited company, such that the identity of the firm and the shareholders is the same, the firm shall be allowed to carry forward losses to be set off against subsequent dividend income from the company'."

By this amendment I seek that when a firm is incorporated into a limited company and the partners of the firm are the same as the shareholders of the company, the losses incurred by the firm should be allowed to be carried forward to the company. The fact that they have changed in mere name should not affect the ability to carry forward losses, for the reason that the people who are the partners of the firm and the shareholders of the company are just the same.

In this matter I would like to point out the English law. The English law makes a broader provision than the present one in that they provide that where the shareholders are substantially the same as the partners of a company, even then the losses may be carried forward. The provision that I seek to incorporate is much stricter than the English law. I would like to point to section 29 of the English Finance Act of 1927—the relevant portion reads as follows:

"If where a business carried on by any individual or by any individuals in partnership has, whether before or after the passing of this Act, been transferred to a company in consideration solely or mainly of the allotment of shares of the company to that individual or to those individuals, the provisions of section 33 of the Finance Act of 1926 shall apply."

[Mr. T. S. Avinashilingam Chettiar.]

The provisions of section 33 of the Finance Act of 1926 read as follows:

"Where a person has in any trade, profession or vocation carried on by him either solely or partly, sustained a loss to be computed. . . .

he may claim that any portion of the loss for which relief has not been given shall be carried forward and as far as may be, deducted or. . . ."

By this provision of the English law they provide that when a private firm has been converted into a limited company, the shareholders of the company and the partners' firm being the same, the mere change of entity in a legal sense should not affect their right under section 24 to carry forward their losses. I think it is a very just provision which should be incorporated in our law also. I move.

Mr. Deputy President (Mr. Akhil Chandra Datta): Amendment moved:

"That in sub-clause (b) of clause 26 of the Bill, to the proposed sub-section (g), the following further proviso be added:

'Provided further that if a firm converts itself into a limited company, such that the identity of the firm and the shareholders is the same, the firm shall be allowed to carry forward losses to be set off against subsequent dividend income from the company'."

The Honourable Sir James Grigg: Sir, I do hope the Honourable Member will be satisfied with the breach in the clause already made. His Leader pleaded with some force, as I am bound to admit, that in the case of inheritance it might be held that there was no substantial change in the identity of the business.

[At this stage, Mr. President (The Honourable Sir Abdur Rahim) resumed the Chair.]

It was acquired by inheritance and the liability for debts continues. There is no doubt that the transmogrification of a firm into a company changes the legal entity and there you are embarking on a new principle and one which I think should be deprecated. The Honourable Member referred to the English legislation on the subject. I have some knowledge of the circumstances in which that legislation was passed and I remember the department of Inland Revenue were extremely uncomfortable about the breach in the principle of continuity of legal entity which had been made by that amendment and there is no doubt that they have been embarrassed by that breach in the case of claims to widen the breach. I think in this matter the House ought to be content with maintaining the principle that only the same legal entity can carry forward the losses and not try at this earlier stage in this experiment of carrying forward losses to make a breach in it from the start.

Mr. T. S. Avinashilingam Chettiar: Sir, I ask leave of the House to withdraw the amendment.

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

Mr. President (The Honourable Sir Abdur Rahim): The question is: "That clause 26, as amended, stand part of the Bill."

The motion was adopted.

Clause 26, as amended, was added to the Bill.

Clause 27, was added to the Bill.

Mr. President (The Honourable Sir Abdur Rahim): The question is: "That clause 28 stand part of the Bill."

Mr. T. S. Avinashilingam Chettiar: Sir I move :

"That after sub-clause (b) of clause 28 of the Bill, the following new sub-clause be inserted :

(c) to sub-section (3) the following *Explanation* shall be added, namely :

'Explanation.—When the deceased is a person having limited interest in the estate and that interest terminates with his or her death the reversioner or the remainderman will be his or her legal representative and the estate in the hands of such reversioner or the remainderman will be deemed to be the estate of the deceased person, for the purpose of this section'."

I am sure, the Government will accept it, for it is to their advantage. They are prepared to grab at the money wherever they can find a little. Sub-section (3) of section 24B provides that the income-tax officer may, by the issue of appropriate notice, make an assessment of the total income of such person and determine the tax payable by him on the basis of such assessment and for this purpose may require from the executor, etc., any documents, etc., etc. I seek by this, where there is a limited estate and where the tax has not been paid, that the money may be recovered from the reversioner or the remainderman, Sir, I move.

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

"That after sub-clause (b) of clause 28 of the Bill, the following new sub-clause be inserted :

(c) to sub-section (3) the following *Explanation* shall be added, namely :

'Explanation.—When the deceased is a person having limited interest in the estate and that interest terminates with his or her death the reversioner or the remainderman will be his or her legal representative and the estate in the hands of such reversioner or the remainderman will be deemed to be the estate of the deceased person, for the purpose of this section'."

The Honourable Sir Nripendra Sircar (Law Member): Sir, I oppose this amendment. My Honourable friend, Mr. Chettiar, has held out the temptation that if this is accepted, it will mean more money to the Government. There is no more effective way of bribing the Government. But, I submit that if the House will just pause for a moment to consider the situation

Mr. Bhulabhai J. Desai: We will withdraw the amendment.

Mr. T. S. Avinashilingam Chettiar: I ask for leave of the House to withdraw the amendment.

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

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

"That clause 28 stand part of the Bill."

The motion was adopted.

Clause 28, was added to the Bill.

Clause 29, was added to the Bill.

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

"That clause 30 stand part of the Bill."

Babu Baijnath Bajoria: Sir, I move:

"That clause 30 of the Bill be re-numbered as 30. (b), and, before the clause, as so re-numbered, the following be inserted:

30. (a) In sub-section (1) of section 25A of the said Act, the words 'that a separation of the members of the family has taken place and' shall be omitted; and after the words 'Joint family property', the words 'or the income thereof' shall be inserted."

This is an important amendment, and I would like the House to give serious consideration to it, and not to laugh it out. This relates to the division of property of a Hindu Joint family. I will read the section as it will read after it is amended: 'And if he is satisfied that the joint family property or the income thereof has been partitioned among the various members in definite portions, he shall record an order to that effect'. It is the same as 419. Sir, assesses who live under the Hindu joint family system are already suffering from several handicaps so far as the income-tax Bill is concerned, and I have already stated it in some detail in my speech on the general discussion, and I will speak more about it when the amendment to section 3 comes to be discussed. Now, we have to prove to the satisfaction of the income-tax officer that the property has been partitioned by metes and bounds. Sir, in many cases it is absolutely impossible to comply with this demand. If there are four or five members in a family, and they have got only one property, it is not physically possible to partition it into small units or by metes and bounds.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Then sell it.

Babu Baijnath Bajoria: Please be quiet. Then, it is not possible to divide it into four or five parts. What is generally done is that in the deed of partition it is mentioned that each partner will get one-fourth or one-fifth share of the income of the property, and if the house is rented out to another person, then the rent which is derived from that property will be divided and credited to each partner according to his share. This is the best which can be done. What is wanted is you must divide the property into small units or parts. The Leader of the Opposition says it is not so, but, Sir, I have been not only informed, but I know from personal experience that Income-tax officers have insisted on this. They say that by division the partners must live separately, they must have separate hearths, separate places of worship and so on. It is only to avoid all this harassment that I have tabled this amendment. When the members of a Hindu joint family decide to divide their ancestral property, they just divide it among themselves by a deed of partition, and if they decide that the income should be divided, then

they should get the benefit of this legislation also. Sir, I would request the House with all the emphasis I can command to kindly consider this amendment seriously and accept it.

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

"That clause 30 of the Bill be re-numbered as 30. (b), and, before the clause, as so re-numbered, the following be inserted:

30. (a) In sub-section (1) of section 25A of the said Act, the words 'that a separation of the members of the family has taken place and' shall be omitted; and after the words 'Joint family property', the words 'or the income thereof' shall be inserted."

Mr. T. S. Avinashilingam Chettiar: Sir, In this connection I would like to point out to the House and the Finance Member that there is real harassment which some of the assessee suffer from at the hands of income-tax officers, and this is because some words are found in this section. It is said here that the Income-tax officer, before making an order, must satisfy himself; that is to say, he should satisfy himself that a separation of the members of the family has taken place and that a joint family property has been partitioned among the various members. Under the Hindu law and under the decisions of the Privy Council it is not necessary for a Hindu joint family, to be partitioned, that it should be partitioned by metes and bounds, but the words found here are constantly taken by the Income-tax officers to mean that the property must be partitioned by metes and bounds, and there must be separate worship, separate messing and so on, which is not warranted by the Hindu Law or by the decisions of the Judicial Committee of the Privy Council. So, Sir, there is a genuine case in which there is a lot of room for misunderstanding by the Income-tax officers, and the assessee are put to various troubles. If the Government are not able to accept the amendment of Mr. Bajoria, I would request them to at least give us the assurance that, hereafter, instructions will be issued to Income-tax officers to the effect that partition by metes and bounds is not necessary in order to prove that a genuine partition has been effected. I would like the Honourable Member to make this point clear.

Mr. M. S. Aney: Sir, before the Honourable Member makes the point clear and takes up the hint that has been thrown at him, I should like to say something for his consideration. Now all that the Income-tax officer has to know, in the case of a joint family, is this, whether the joint family is separate or joint, and if he is satisfied that the joint family is partitioned, then he ought to feel that his requirements for the purpose of Income-tax are satisfied and, nothing more is needed. Now, there are two things mentioned here, and that has created the difficulty. Before he is satisfied that a separation of the family members has taken place and that the joint family has been partitioned, he thinks that two conditions must be satisfied before he can apply this section to the particular case. He does not know that these two conditions in law virtually mean one and the same thing, and he, therefore, puts a different interpretation upon the two different clauses. He thinks by the term "the separation of family members has taken place" that an actual partition by metes and bounds has taken place, and persons who live in different quarters, etc., come under the first clause. As a matter of fact, the legal effect of separation comes into existence

[Mr. M. S. Aney.]

immediately the intention to separate is disclosed, that is, enough to determine the status of separation of the members of the Hindu family. Joint status of a family is altogether destroyed by the declaration. Therefore, in my opinion, those words 'separation of family members has taken place' are virtually redundant. If they are taken out, the Income-tax Department will certainly not suffer at all, because they will be able to know from other things whether a joint family has been partitioned or not. And if they are satisfied on that point, then they will be able to apply all that they want to do under this section. Therefore, I submit, without leaving this matter to instructions to be issued hereafter and so on, Government would do well in accepting the amendment which has been moved, that these words should be taken out. The other words, that he mentioned, namely, "joint family property" or "income thereof" are more intended to illustrate the matter and even if the words are not inserted, it would not matter much. But, so far as the first part of the amendment is concerned, the deletion of those words "that a separation of the members of the family has taken place" is necessary. The presence of those words has been a source of constant harassment to a number of persons to prove the case of partition between them. We are here to make a new law. We have, therefore, to take into consideration the various conditions under which the law has been enforced, the defects that have been noticed. If at this time we do not take those defects into consideration and make the necessary amendment in the law but leave the matter to be decided upon by mere instructions, we probably leave untouched the very source of the evil which has been the cause of torment and trouble to a number of assesseees. I submit that it would be better for the Government to accept the amendment moved by Mr. Bajoria and put an end to the trouble that a thing like this creates.

The Honourable Sir Nripendra Sircar: I submit that this amendment is wholly unacceptable having regard to the policy of the Bill and speakers who have preceded me have proceeded on a wrong assumption. The assumption which is being made is this. If according to Hindu law a certain set of facts amounts to partition, then for the purpose of income-tax the family will be regarded as a divided family. That is the fundamental fallacy. Under the law, as my Honourable friend, Mr. Aney, has very rightly stated, what is wanted is a mere declaration, provided it is unequivocal, of intention to divide, to remain separate, and that is enough. Instead of reading long extracts, I may read one line from Mulla's Hindu Law:

"A partition is an unequivocal indication of his intention by a member of the joint family. . . ."

Let us stop there for one moment. Is this present Income-tax Act going to be that—provided Mr. Bajoria writes a letter to his brother, "My dear brother, I declare that I want to be separate from you," whereas, in point of fact, their business is common and they have all the other, may I use the word, symptoms of a joint Hindu family. . . .

Babu Baijnath Bajoria: But there is the provision that the income-tax officer will make such enquiry as he may think fit, and if he is satisfied it is all right.

The Honourable Sir Nripendra Sircar: The idea, as I understand, is this. If a family is really divided, separate, their property has been divided, then that is a family which will escape the provisions relating to a joint Hindu family. We have no occasion here to enquire, what in law or under the Privy Council decisions, amounts to a partition of joint Hindu family. It is a question of policy and not a question of discussing the law. I do not suggest for a moment that the law which was enunciated by my Honourable friends here is in any way incorrect. Coming to the amendment here, what Mr. Bajoria wants is that if the income is being divided then the family becomes divided. This is pushing the doctrine to its extreme. That is to say, the members continue as members of a joint family, they have their common mess, their common worship and common estate. All the three incidents are still common. Yet, because they choose to divide the net income, they will have to be treated for the purpose of the Income-tax Act to be separate individuals and not members of a joint Hindu family. What this will really mean to the income-tax Department is a matter more for the Honourable the Finance Member than for me. I do not know what the effect of this will be, or what expenditure will be incurred, or what trouble has got to be taken if this law is enacted or what the loss of revenue will be. About that I cannot make any statement. That is really within the province of my Honourable colleague. But what I mean to point out is this. Even under the decisions if the persons remain joint in food, worship and estate but they simply choose to divide the income—whether that amounts to partition or not according to the authorities, I think the Leader of the Opposition will corroborate me, that it is always a question of fact as to whether a given set of circumstances amounts to a division or disruption of property. As my Honourable friend, Mr. Bajoria, may remember, there are so many cases where it has been held that a mere cessor of commensality is not conclusive on the question of partition. That is, although the joint kitchen may have been substituted by many and each member has his own kitchen, they are cooking their food separately, they have ceased to be joint in mess, yet, that is not enough on the question of partition, that is a question of fact. But from the point of view of the Income-tax Act the policy of the Act is, as I understand it, more limited. They have not in every case got to make these enquiries to find out what in law may amount to partition. If, in fact, their properties are divided, they have separated and the properties, *e.g.*, if the properties have been divided by metes and bounds, and not merely resting on a declaration of intention, and not merely resting on the division of the income, then this Act will apply. Perhaps my Honourable Colleague will be able to tell you what the consequences will be if, as a matter of fact, in every case where there is a declaration of intention the members of the joint family are taken to be individuals to be assessed and not as members of a joint Hindu family. Before I sit down, I would enquire from Mr. Bajoria, because we both come from Calcutta, whether he is not aware of documents being executed by some members of the community to which my Honourable friend has the honour to belong, solely for the purposes of income-tax. . . .

Babu Baijnath Bajoria: You have greater knowledge about it than myself.

The Honourable Sir Nripendra Sircar: . . . containing an unequivocal declaration of a desire to separate, a desire which never culminates in

[Sir Nripendra Sircar.]

practice. The properties are undivided, the members live together, they go on as before, but here is a registered document between A of the first part and B of the second part, 'we hereby unequivocally declare our desire to separate'.

Babu Baijnath Bajoria: Drafted by yourself!

The Honourable Sir Nripendra Sircar: Some of them.

Mr. Bhulabhai J. Desai: I rise to address the House for a very limited purpose, because I am not one of those who yet can speak about policies of Governments except in a very remote way. But the question of taxation is essentially a question of taxing income. I do not think that my Honourable friend suggests that it is a question of taxing the joint clothes and food of the women, and I do not know how he can distinguish this question in the manner in which he has done it. The fact remains, whether or not the joint family *qua* property—I do not deny that in Hindu law joint in food, worship and estate is an expression which has almost become so common that it took some time for the decisions in Courts to say, you may have separation in estate without any other separation. That is a correct legal position, not only legal position, but that is the correct position in reference to property. In other words, as soon as the members of the joint family *qua* the property have a partition, may be in some cases, according to my Honourable friend's information—I do not say that they are not possible—by documents which are not intended to be acted upon. I shall deal with that in a moment, but the point for the moment is this. I do not see why it should be demanded that there must be a separation of the members of the family. They must necessarily quarrel. They must wear different clothes. That is an extraordinary argument to be addressed to the House. They must not even meet together. If they are found talking together and driving in the same car, the income-tax officer will be able to say you are a joint family. I think you ought to be a little more serious even from the point of view of policy. After all, we must take a transaction and a document to be *bonâ fide* unless it is proved to be a fraud. I have no objection to any provision being made saying: unless the income-tax officer has reason to believe or it is proved that the document is a faked document. That is another matter. How can you prove the fact of partition except by a partition document? Here is a genuine document, and once it is conceded, then the legal consequences are well known. The shares become defined. You are partners in the eye of the law. The shares cannot be augmented or diminished by new births or deaths.

Now, we are told without any further proof that the members of the joint family must necessarily separate in food and worship and estate. I do not know what is meant by that. These words are not there. I do not know what, this extraordinary income-tax officer is going to say, is a separation. What is the kind of separation with which he is going to be satisfied? Notwithstanding the fact that I have been a lawyer for some years, I am not one of those who will take every transaction to be a *mala fide* transaction. That is entirely beginning at the wrong end. Therefore, what I am submitting to the House is this—that the words that the joint family property has been partitioned ought to be sufficient for any honest purpose of taxation. I do not deny that, in a particular

case, my Honourable friend may be able to prove that the letter which was written by Mr. Bajoria and which was well paid for was not intended to be acted upon. That is another matter. One of the very first elementary things that we learnt from Mr. Robertson, our Professor, was that young men should not mix up partition and division by means of metes and bounds. The two things are entirely different in the eye of the law.

The Honourable Sir Nripendra Sircar: Assuming for the sake of argument that all that my friend has said is correct, may I draw his attention to the words of the amendment? Apart from the omission of the words about which my friend is making a submission, the amendment says:

"after the words 'joint family property' the words 'or the income thereof' shall be inserted."

Mr. Bhulabhai J. Desai: While trying to be fair to myself, I wish to be fair to the other side also. All I am trying to point out is, once you have a proper document of partition, it does not matter whether you live in the same house or not. Why should you say that people who have partitioned must necessarily quarrel and abuse each other. It is an extraordinary argument. What does my friend want? Does he want physical separation? Should the husband go away from the wife. I do not know what they mean by the word "separation". Do they insist that the husband and the wife should not live together? Therefore, I submit that to insist that there should be separation in food and worship is wrong, and contrary to law, and contrary to commonsense, and contrary to the ordinary decency of families. Why should not partners in business have a common mess at which they can eat? They, of course, contribute in their own proportions. My Honourable friend knows that once a partition has taken place, no one can take more as compared with the others. Each contributes in his own proportion. In the non-partition stage, one man may have ten children, and another only one. Still the family bears all the expense. That is one of the conditions of the joint family. There are advantages and disabilities. I am not objecting to an inquiry as to whether the document in question is a faked one or a genuine one. No faked document will do, however highly paid for. I know it is sometimes done to evade tax. That is a different proposition. Courts of law have held that in such a case the partition document, not being a genuine one, was not intended to be acted upon. The principle that my Honourable friend propounded was that because there may be a few dishonest people, therefore you must also catch the honest people. Where is going to be the limit in any scheme of taxation?

The Honourable Sir Nripendra Nath Sircar: May I interrupt my friend for a minute? His idea is that a partition being valid if it rests solely on a declaration of the intention to separate; that case ought not to be hit by the provision?

Mr. Bhulabhai J. Desai: If it is genuine, yes.

The Honourable Sir Nripendra Nath Sircar: The Honourable Member is contending that although there may be no partition by metes and bounds, and nothing more has happened than mere declaration of intention to separate, still it will be a partition, within the sector.

Mr. Bhulabhai J. Desai: Yes.

The Honourable Sir Nripendra Sircar: Then, I have nothing more to say, as it is not a disputed question of law, but a question of policy. I was suggesting that we would be quite willing to take out the words about separation provided after the partition it is added "partition by metes and bounds" or it is made clear that cases resting on mere declaration of intention are kept out.

Mr. Bhulabhai J. Desai: My Honourable friends at least concede that there need not be separation in worship and food. Now, we come back to property. A partition is nonetheless a valid and genuine partition whether it is divided by metes and bounds or not. Does not my Honourable friend know of cases of two or three persons owning a house? Has it ever been required that it should be separated into so many tenements? My Honourable friends themselves carried an amendment that an association of persons who are owners of property shall be taxed on their own proportion of the share in the property. Now, a divided Hindu family is an association of persons holding property in definite shares. They have already done it here in this House, there is an amendment passed by which, in the case of an association of individuals holding property in definite shares, each one of them will be taxed on his own share; and in the net result of a genuine partition—you can question the authenticity, that is another matter—but I am assuming that it is perfectly genuine, that they have not broken the walls and so on. I would put it to my Honourable friend whether there is any distinction between an association of individuals holding property in definite shares and divided members of a Hindu family. Suppose we three of us buy a property, myself, Mr. Aikman and Mr. Aney, it is not required that we must necessarily have three partitioned walls before it is done. We may be letting out the property. The metes and bounds is a matter which makes it still worse, because it can easily happen that in a dwelling house you may divide it by metes and bounds, but, in the case of a property which is only intended to produce income, I do not see where the law comes in, that you must do it by metes and bounds. Why must you do it? What the law requires is that you must divide the property. Supposing there is a chawl, and thirty rooms belonging to each brother, and it is said: "You must be taxed on a hundred, all of you together unless there is a partition of thirty rooms each". My Honourable friend is mistaken. I can well understand your going to the primitive stage of an ordinary field, where perhaps the metes and bounds idea has some sense, but we are dealing with people belonging largely to urban areas who have varieties of kind of properties. That is an expression which is a purely physical one. Supposing we had a share of Sholapur mills. Does he want that the parapets should be divided into three parts? I am amazed at the idea of those wanting a provision which in law cannot possibly be given and nobody can insist upon that. They can inquire as much as they like whether the particular document in question is genuine. That I admit but if the document is genuine, I hope this House will not be inveigled into the belief that you want an actual division for the purpose of what otherwise any three other persons might hold as property. Sir, I support the amendment.

Babu Baijnath Bajoria: Sir, with the leave of the House I wish to withdraw the second part of my amendment, and I wish only to move the first portion of it, if there is no objection. (*Cries of "There is no objection."*)

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

"That clause 30 of the Bill be re-numbered as clause 30 (b), and, before the clause, as so re-numbered, the following be inserted:

'30 (a) In sub-section (1) of section 25A of the said Act, the words 'that a separation of the members of the family has taken place and' shall be omitted'."

The motion was adopted.

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

"That clause 30, as amended, stand part of the Bill."

The motion was adopted.

Clause 30, as amended, was added to the Bill.

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

"That clause 31 stand part of the Bill."

Mr. B. Das: Sir, I beg to move:

"That in sub-clause (b) of clause 31 of the Bill, in the proviso to the proposed sub-section (2), after the word 'assessment' the words 'for the previous year only' be inserted."

Sir, this amendment is very simple. I do not see any reason why the income-tax officer should saddle the successor to the purchaser of a company with the consequences of action of the previous company or any partner so as to tax his successor for any income-tax that ought to have been assessed on any partner of the preceding firm. Sir, if this amendment is not accepted, thereby the purchaser will be very much handicapped, and, therefore, the successors thereby will be loaded with a very heavy liability of the amount of tax to be recovered or due from the firm or any partner or the partner who has succeeded to the business for a period of more than one year in case proceedings for adjustment have not started under section 34 of the Act. That would mean for all outstanding assessments of the purchaser, and, there may be cases pending before the income-tax officer. I, therefore, ask the Government and the House to accept this amendment No. 422 and also the consequential amendment No. 423.

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

"That in sub-clause (b) of clause 31 of the Bill, in the proviso to the proposed sub-section (2), after the word 'assessment' the words 'for the previous year only' be inserted."

The Honourable Sir James Grigg: Sir, I understand the Honourable Member wishes to go back to only one year instead of going back indefinitely, and the same point is raised in the next amendment, a consequential one. I am bound to say that my generosity has not received much encouragement but, nevertheless, I shall persevere, and so Government will accept these two amendments.

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

"That in sub-clause (b) of clause 31 of the Bill, in the proviso to the proposed sub-section (2), after the word 'assessment' the words 'for the previous year only' be inserted."

The motion was adopted.

Mr. B. Das: Sir, I beg to move:

"That in sub-clause (b) of clause 31 of the Bill, in the proviso to the proposed sub-section (2), after the words 'recoverable from the person succeeding' the words 'in respect of the previous year only' be inserted."

Sir, this is only a consequential amendment.

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

"That in sub-clause (b) of clause 31 of the Bill, in the proviso to the proposed sub-section (2), after the words 'recoverable from the person succeeding' the words 'in respect of the previous year only' be inserted."

The motion was adopted.

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

"That clause 31, as amended, stand part of the Bill."

The motion was adopted.

Clause 31, as amended, was added to the Bill.

Babu Baijnath Bajoria: Sir, I gave notice of an amendment this morning for the deletion of section 27 which will be inserted after clause 31. It was only this morning that the Honourable the Finance Member agreed that if the House wants to delete section 27, he will have no objection.

Mr. President (The Honourable Sir Abdur Rahim): Has this amendment been circulated in any of the Lists?

Babu Baijnath Bajoria: No, Sir, because it was only this morning that I gave notice of this amendment.

Mr. President (The Honourable Sir Abdur Rahim): In that case, the Chair cannot allow that amendment to be moved.

Babu Baijnath Bajoria: But, Sir, it has been agreed by all Parties.

Mr. President (The Honourable Sir Abdur Rahim): It must be circulated to all the Honourable Members. The Chair cannot allow it.

The question is:

"That clause 32 stand part of the Bill."

Babu Baijnath Bajoria: Sir, I move:

"That in sub-clause (a) of clause 32 of the Bill, in clause (b) of the proposed sub-section (1), after the word 'has' the word 'deliberately' be inserted."

The Honourable Sir James Grigg: Am I to understand that the Honourable Member's amendment reads like this: "deliberately without reasonable cause"?

[The Honourable Member (Babu Baijnath Bajoria) then did not proceed with his amendment.]

Mr. President (The Honourable Sir Abdur Rahim): The Chair takes it, the Honourable Member does not want to proceed further with his amendment

Babu Baijnath Bajoria: Sir, I move:

"That in sub-clause (a) of clause 32 of the Bill, in the proposed sub-section (I), for all the words beginning with the words 'in the case referred to in clause (a)' and ending with the words 'accepted as the correct income' the following be substituted:

'in the cases referred to in clauses (a) and (b), in addition to the amount of the income-tax and super-tax, if any, payable by him, a sum not exceeding half the amount of tax payable or half the amount of tax, which would have been avoided if the income as returned by such person had been accepted as the correct income and in the case referred to in clause (c), not exceeding the amount of income-tax and super-tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income'."

The operative part of my amendment is that for the default of sub-clause (a) and sub-clause (b) the penalty should be 50 per cent. of the amount of tax which would have been lost to the Government and in case of sub-clause (c) it should be 100 per cent. of the loss which would have occurred to the Government, whereas in this Bill it has been proposed that for all these offences there will be a uniform fine of 200 per cent. Sub-clauses (a) and (b) have been inserted only in this Bill. There was no penalty imposed under the present Act and I think that 50 per cent. of the tax is a very deterrent penalty. As regards sub-clause (c), the penalty proposed is 100 per cent. which is the same as at the present moment. Besides these penalties, there will be other penalties which will be imposed indirectly on the assesses. Sir, the law should be made not to ruin the business or to ruin the person but to meet the ends of justice. He should be allowed to carry on his business at least so that he may pay up the penalty otherwise, if a man is caught, it will surely mean the end of his business. His registration will also be cancelled and he will be taxed in an arbitrary fashion. So, I hope that this amendment will be accepted by the House.

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

"That in sub-clause (a) of clause 32 of the Bill, in the proposed sub-section (I), for all the words beginning with the words 'in the case referred to in clause (a)' and ending with the words 'accepted as the correct income' the following be substituted:

'in the cases referred to in clauses (a) and (b), in addition to the amount of the income-tax and super-tax, if any, payable by him, a sum not exceeding half the amount of tax payable or half the amount of tax, which would have been avoided if the income as returned by such person had been accepted as the correct income and in the case referred to in clause (c), not exceeding the amount of income-tax and super-tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income'."

The Honourable Sir James Grigg: Sir, I have no doubt that on some of the other amendments of this clause a good deal will be said on the subject of penalties but I cannot really treat the present amendment as a serious contribution to this discussion.

Babu Baijnath Bajoria: Which of these amendments are you prepared to accept?

The Honourable Sir James Grigg: I do not, therefore, propose to unmask fully my batteries until more important amendments come along. I will mention one case to show that the Honourable Member's suggestion

[Sir James Grigg.]

is really not a just one. Supposing a man who comes within the categories of (a) and (b) has avoided income-tax for a period of ten years. Under section 84, you can charge him tax for four years *plus* two years: so, the penalty is only for six years. He makes a profit on his misdeeds and I do not think any system of penalties which enables the delinquent to make a profit by cheating is severe enough. Sir, I oppose the amendment.

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

"That in sub-clause (a) of clause 32 of the Bill, in the proposed sub-section (1), for all the words beginning with the words 'in the case referred to in clause (a)' and ending with the words 'accepted as the correct income' the following be substituted:

'in the cases referred to in clauses (a) and (b), in addition to the amount of the income-tax and super-tax, if any, payable by him, a sum not exceeding half the amount of tax payable or half the amount of tax, which would have been avoided if the income as returned by such person had been accepted as the correct income and in the case referred to in clause (c), not exceeding the amount of income-tax and super-tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income'."

The motion was negatived.

The Honourable Sir Nripendra Sircar (Leader of the House): Sir, I have

5 P. M. got to request you to order a sitting of the House on Saturday the 10th December. Honourable Members can well realise that if they sit on Saturday, there is—I cannot put it higher than that—the probability that this Bill will be finished and I hope no Party will object to sitting on Saturday.

Mr. M. S. Aney (Berar: Non-Muhammadan): I think it is right that the House should sit on Saturday. We shall probably be able to finish the Bill earlier.

Mr. Bhulabhai J. Desai (Bombay Northern Division: Non-Muhammadan Rural): I support the proposal.

Mr. President (The Honourable Sir Abdur Rahim): Then the House will sit on Saturday next.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 7th December, 1938.