

21st November 1940

**THE
LEGISLATIVE ASSEMBLY DEBATES**

Volume V, 1940

(19th November to 27th November, 1940)

**TWELFTH SESSION
OF THE
FIFTH LEGISLATIVE ASSEMBLY,
1940**



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Legislative Assembly.

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SIR H. P. MODY, K.B.E., M.L.A.

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LEGISLATIVE ASSEMBLY

Thursday, 21st November, 1940.

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.

RETENTION OF ALMOST ENTIRE MINISTERIAL STAFF OF LABOUR DEPARTMENT IN NEW DELHI DURING THE LAST SUMMER.

198. *Sardar Sant Singh: (a) Will the Honourable the Labour Member please state how the experiment of leaving the entire ministerial staff of his Department, except two or three men, in New Delhi during the last summer has worked?

(b) If this experiment has been successful, is he prepared to consider the question of detaining all the officers of his Department also at Delhi during summer in future? If not, why not?

(c) Is he also prepared to recommend this arrangement to the other Departments of the Government of India?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: (a) The experiment has worked satisfactorily.

(b) No. One Department cannot take individual action in this matter which is one for Government as a whole to decide.

(c) Does not, therefore, arise.

RECRUITMENT OF OFFICERS IN THE SUPPLY DEPARTMENT THROUGH THE NATIONAL SERVICE COMMITTEE.

199. *Dr. Sir Ziauddin Ahmad: (a) Will the Honourable the Law Member please state whether it is a fact that the Supply Department recruit their officers through the National Service Committee and not through the Public Service Commission?

(b) Was National Service Committee established for the purpose of recruitment?

(c) Why has this power been transferred to the Committee?

(d) Did this Committee ever recommend any Indian for appointment in the Supply Department?

The Honourable Sir Muhammad Zafrullah Khan: (a), (b) and (d). No.

(c) Does not arise.

Dr. Sir Ziauddin Ahmad: May I take it that the recruitment is not made through the National Service Committee?

The Honourable Sir Muhammad Zafrullah Khan: It is not made through the National Service Committee.

Dr. Sir Ziauddin Ahmad: Is it made through the Public Service Commission?

The Honourable Sir Muhammad Zafrullah Khan: Which recruitment?

Dr. Sir Ziauddin Ahmad: Recruitment to the Supply Department?

The Honourable Sir Muhammad Zafrullah Khan: No, Sir.

Dr. Sir Ziauddin Ahmad: Is it made by the Departmental Committee?

The Honourable Sir Muhammad Zafrullah Khan: It is made in various ways. There are selection boards, and, with regard to the borrowing of officers, there is consideration by the Department, and so on.

Dr. Sir Ziauddin Ahmad: Are these posts advertised? When Government want to create a post and recruit a person, is it advertised?

The Honourable Sir Muhammad Zafrullah Khan: I believe some of them have been advertised.

Mr. N. M. Joshi: May I ask what this National Service Committee is, if any such committee exists?

The Honourable Sir Muhammad Zafrullah Khan: Honourable Members will remember that under the National Service European British Subjects Act of 1940, competent authorities have been set up with regard to requisitioning, if I might so describe it, of European British subjects under that Act—those of them who are liable for military or civil service, and this committee advises the competent authority with regard to individuals when they are wanted either for military or civil employ.

STEPS TAKEN BY THE DELHI IMPROVEMENT TRUST FOR PLANTING TREES AND SHRUBBERY IN KAROL BAGH, DELHI.

200. ***Bhai Parma Nand:** Will the Education Secretary please state the steps taken by the Delhi Improvement Trust for planting trees and shrubbery alongside the roads and in the parks in Karol Bagh area, Delhi, since it came into existence and why no progress has so far been made?

Mr. J. D. Tyson: The planting of trees on the main road leading to the Imperial Institute of Agricultural Research is in hand. The planting of trees on the other roads is not contemplated at present. The grassing and planting of trees and shrubbery in the main park in Karol Bagh in front of the Tibbia College has been completed.

METALLING OF ROADS, ETC., IN KAROL BAGH, DELHI, BY THE DELHI IMPROVEMENT TRUST.

201. ***Bhai Parma Nand:** (a) Will the Education Secretary please state when the metalling of roads, lanes and streets was completed in Karol Bagh, Delhi, by the Delhi Improvement Trust?

- (b) Is he aware that most of the metalling in the lanes and streets, etc., has already worn out altogether and requires re-metalling?
- (c) How much money was spent on the metalling of these roads, etc.?
- (d) Is he satisfied that the metalling done was according to specifications?
- (e) What were the specifications and were these roads finished according to the specifications?

Mr. J. D. Tyson: With your permission, Sir, I shall answer questions Nos. 201 and 203 together. The information has been called for and a reply will be furnished to the House when it is received.

SHIFTING OF THE DUMPING GROUND FOR DEAD ANIMALS FROM KAROL BAGH, DELHI.

202. *Bhai Parma Nand: With reference to the reply to starred question No. 375 of the 13th March, 1940, will the Education Secretary please state if, the dumping ground for dead animals has by this time been removed from Karol Bagh, Delhi, to the Badli Refuse Disposal Ground? If not, why not?

Mr. J. D. Tyson: Effect has not yet been given to the change as the wagons at present used for the transport of refuse are not adapted to carry carcasses. Steps are being taken to convert three silt wagons into carcass-carriers and the use of the dumping ground near Karol Bagh will then be discontinued.

CASES OF INFRINGEMENT OF BUILDING BYE-LAWS OF THE DELHI IMPROVEMENT TRUST.

†203. *Bhai Parma Nand: (a) Will the Education Secretary please state how many cases of infringement of building bye-laws have been sent to the court ever since the Delhi Improvement Trust came into existence and how many of them have been decided in favour of the Trust?

(b) What is the amount of the fine or compromise money realized by the Trust through the Court or otherwise so far?

(c) Is it not a fact that the trying magistrate invariably decided in favour of the Trust?

(d) How many building plans were received since the formation of the Trust and how many were sanctioned?

ALLEGED UTILISATION OF THE SERVICES OF *KHALASIS* BY THE OFFICERS OF THE DELHI IMPROVEMENT TRUST FOR PRIVATE WORK.

204. *Bhai Parma Nand: (a) Will the Education Secretary please state how many *Khalasis* are employed in the Delhi Improvement Trust and what are their duties?

(b) Is it a fact that the services of these *Khalasis* are generally utilized by the officers under whom they work for private work?

(c) Are Government aware that there is a general complaint among these *Khalasis* that the overseers and Building Inspector under whom they

†For answer to this question, see answer to question No. 201.

have to work tyrannise them for refusing to work in their houses and threaten them with dismissal?

(d) What steps does he propose to take in the matter?

Mr. J. D. Tyson: (a) There are ten *Khalasis* employed under the Trust, Their duties are substantially the same as those of the *Khalasis* in the Public Works Department; that is, to assist the overseers in demarcation of the land and in other duties performed by them.

(b) and (c). No.

(d) Does not arise.

SUBORDINATES AND CLERKS WHO WORKED UNDER THE BUILDING INSPECTOR OF THE DELHI IMPROVEMENT TRUST AND RESIGNED.

205. *Mr. Muhammad Azhar Ali: With reference to the reply to part (b) of starred question No. 605 of the 1st April, 1940, will the Education Secretary please state the number respectively of the subordinates and clerks who have worked directly under the Building Inspector of the Delhi Improvement Trust since April last and how many of them have resigned and why?

Mr. J. D. Tyson: Five overseers, four clerks, two draftsmen, one ferro-printer, three peons and ten *khalasis*. One overseer resigned for domestic reasons.

ALLEGED UTILISATION OF THE SERVICES OF *KHALASIS* BY THE OFFICERS OF THE DELHI IMPROVEMENT TRUST FOR PRIVATE WORK.

206. *Mr. Muhammad Azhar Ali: (a) Is the Education Secretary aware that for refusing to do private work in his house, the Building Inspector of Delhi Improvement Trust has victimised two *Khalasis* and these have been dismissed from service quite recently?

(b) Are Government aware that the whole staff working under or with the Building Inspector is dissatisfied with him?

(c) Is it a fact that the public at large have made several complaints, both verbal and written, against the misbehaviour of the Building Inspector?

(d) Is it a fact that many overseers have been made to resign?

(e) What action does he propose to take to stop such a state of affairs in the Delhi Improvement Trust?

Mr. J. D. Tyson: (a), (b), (c) and (d). No.

(e) Does not arise.

LIEN ON HIS POST ALLOWED TO A CERTAIN EMPLOYEE OF THE DELHI IMPROVEMENT TRUST.

207. *Mr. Muhammad Azhar Ali: Will the Education Secretary please state whether it is a fact that the Delhi Improvement Trust is a temporary office, and are Government aware that one of the relatives of one of the officers has been allowed lien on his appointment, while many others were refused such a concession?

Mr. J. D. Tyson: The reply to the first part of the question is in the affirmative. As regards the second part, a clerk who had been offered a temporary war appointment was given a year's leave without pay to enable him to take up that appointment. No employee of the Trust has been refused similar treatment in similar circumstances.

INCORPORATION OF THE DELHI ELECTRICITY AUTHORITY.

208. *Mr. Muhammad Azhar Ali: Will the Honourable Member for Labour please state:

- (a) the date of the incorporation of the Delhi electricity authority;
- (b) the date of the commencement of the work by that authority;
- (c) the area controlled by that authority;
- (d) the reasons for not controlling the supply of electricity to Delhi-Shahdara from the date of the commencement of the work by that authority; and
- (e) whether Government propose to refund the amount charged for energy consumed by residents of Delhi-Shahdara over and above that prevalent in Delhi since the commencement of work by that authority; if not why not?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudallar: (a) 14th April, 1938.

(b) 1st April, 1939.

(c) The Authority does not "control" any area. The licence granted to the Authority authorises it to supply electricity anywhere in the Delhi Province, but does not confer any monopolistic right.

(d) Electric energy is supplied in Delhi-Shahdara by Messrs. Martin and Company who hold a licence for the purpose. For the first five years the Company was bound to obtain their current from the United Provinces grid. It is now open to the licensee, with the approval of the local administration, to go to any other bulk supplier, and it is understood that the Company intend to take current from the Authority in Delhi as soon as that Authority is in a position to meet the demand. At present, for want of certain gear ordered from Europe, the Authority is not in a position to undertake this extra order.

(e) Does not arise.

CENTRAL TUBERCULOSIS CLINIC, DELHI.

†209. *Maulvi Muhammad Abdul Ghani: (a) Will the Education Secretary please state when the Central Tuberculosis Clinic was opened in Delhi?

(b) Do Government give financial assistance to this institution? If so, how much?

(c) Has the officer in charge of the said Clinic ever practised as Tuberculosis doctor?

(d) Is it not a fact that his entire experience is limited to six months training in a sanatorium in Madras?

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

Mr. J. D. Tyson: (a) The Clinic was opened yesterday..

(b) Government propose to give a recurring grant-in-aid the exact amount of which has not yet been decided. They have also provided the site for the Clinic free of cost.

(c) Government are not responsible in any way for the appointment of the officer in charge. They have ascertained, however, that the officer has had special experience of the treatment of tuberculosis for a number of years.

(d) No.

NON-TRANSFER OF CERTAIN MEMBERS OF REGULAR ELECTRICAL ESTABLISHMENT ON DUTY IN NEW DELHI.

†210. ***Maulvi Muhammad Abdul Ghani:** With reference to the reply to question No. 481 by Raizada Hans Raj, given on the 22nd February, 1938, will the Honourable the Labour Member be pleased to state:

(a) the number of the members of regular Electrical Establishment who are employed on duty in New Delhi, for more than five years, ten years and fifteen years, separately;

(b) whether the members of the Establishment are meant for employment at New Delhi and are not liable for transfer to any other place outside Delhi within the jurisdiction of the Department; and

(c) whether the retention for more than five years at Delhi is in the interest of the public and, if so, why?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: (a) Eight, nil and eight, respectively.

(b) They are liable for service wherever there is a Central Public Works Department organisation.

(c) The retention in, or transfers to, particular places, of individual persons, is regulated by the requirements of the public service.

NON-TRANSFER OF CERTAIN OFFICERS OF THE CENTRAL PUBLIC WORKS DEPARTMENT.

†211. ***Maulvi Muhammad Abdul Ghani:** (a) Will the Honourable the Labour Member please state the number of the officers (overseers and above them) working under the Central Public Works Department who have been working at New Delhi for more than five years or who are still continuing with little interruption?

(b) Are they not liable for transfer to any other place outside Delhi, when the Department has got jurisdiction all over India?

(c) What does he propose to do in the matter and when?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: (a) Sixty-six.

(b) Yes.

(c) Transfers and postings are made in the interests of the public service and no action on the part of Government is required.

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

RESERVATION OF GOVERNMENT BUNGALOWS AND QUARTERS FOR PARTICULAR OFFICERS OR STAFF IN NEW DELHI OR OLD DELHI.

†212. *Maulvi Muhammad Abdul Ghani: Will the Honourable the Labour Member please state if any Government bungalows and quarters are specifically reserved for particular officers or staff other than those drawing less than Rs. 1,500? If so, will Government state separately how many of each class in New and Old Delhi have been so reserved and for whom and on what grounds are these so reserved?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: Yes. A statement giving the required information in respect of houses in New Delhi is laid on the table of the House. No house has been reserved in Old Delhi for any officer drawing Rs. 1,500 per mensem or more.

Statement.

Serial No.	Houses.	Officers for whom reserved.	Reasons for reservation.
		<i>Class A (Rs. 3,000 and over.)</i>	
1	19, Akbar Road .	Chief Justice of India.	It is considered necessary that accommodation should be secured for these officers.
2	23, Akbar Road .	Air Officer Commanding, Air Forces in India.	
3	24, Akbar Road .	Secretary, Home Department .	
4	10, Albuquerque Road.	Judge, Federal Court .	
5	4, Hastings Road .	Master General of Ordnance in India.	
6	5, Hastings Road .	Secretary, Communications Department.	
7	6, Hastings Road .	Secretary, Defence Department .	
8	8, Hastings Road .	Secretary, Legislative Department	
9	2, King George's Avenue.	Secretary, Education, Health and Lands Department.	
10	4, King George's Avenue.	Q. M. G. in India .	
11	8, King George's Avenue.	Secretary, Labour Department .	
12	9, Queensway .	Chief of the General Staff . .	
13	10, Queensway .	Political Adviser . .	
14	11, Queensway .	Director Intelligence Bureau .	Administrative convenience.
15	1, Race Course Road	Advocate General of India . .	An Advocate General has to keep a large Library.

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

Serial No.	Houses.	Officers for whom reserved.	Reasons for reservation.
16	5, Sonehri Bagh Road.	Secretary, External Affairs Department.	It is considered necessary that accommodation should be secured for these officers.
17	2, York Road.	Chief Commissioner Railways	
18	8, York Road.	Judge, Federal Court	
19	9, York Road.	Secretary, Commerce Department	
20	1, York Place.	Secretary, Finance Department	
21	2, York Place.	Political Secretary	
22	3, York Place.	Adjutant General in India	
23	5, York Place.	Auditor General of India	
24	6, York Place.	Secretary to the Governor General (Public).	
	<i>Class B (Rs. 1,750 and over but less than Rs. 3,000.)</i>		
25	3, King Edward Road.	Civil Surgeon, New Delhi	It is in the interests of everybody concerned that the Civil Surgeon should have a house permanently.
26	5, York Road.	Deputy Private Secretary to His Excellency the Viceroy.	The terms of appointment of this officer include a rent free house in Delhi and Simla.

CASES OF DEVIATIONS IN THE CONSTRUCTION OF BUILDINGS REPORTED BY THE BUILDING INSPECTOR, DELHI IMPROVEMENT TRUST.

†213. *Maulvi Muhammad Abdul Ghani: With reference to the reply to starred question No. 163 of the 24th February, 1940, that one of the duties of the Building Inspector and overseers of the Delhi Improvement Trust is to watch buildings during construction and report any deviations, will the Education Secretary please state:

- (a) whether any action was ever taken by the Building Inspector during the actual construction of a building in the calendar year 1939; if so, in how many cases and with what results; and
- (b) the number of cases sent up for trial to the Court during the period and out of these how many were reported after the completion of the buildings?

Mr. J. D. Tyson: The information has been called for and a reply will be furnished to the House when it is received.

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

MISSION OF THE ROGER COMMISSION IN INDIA.

214. *Sardar Sant Singh: Will the Honourable the Law Member please make a statement regarding the exact purpose and the full implications of the visit of Roger Commission to India?

The Honourable Sir Muhammad Zafrullah Khan: The attention of the Honourable Member is invited to the Press Note dated the 26th August, 1940, a copy of which has been placed in the Library of the House.

Sardar Sant Singh: Is the Honourable Member aware that, in the speech of the President of the Federated Chambers of Commerce, it was given out that Indians have not been taken into confidence as to the exact scope and the implications of the visit of the Roger Mission?

The Honourable Sir Muhammad Zafrullah Khan: I do not know whether that is so, but, as I have said, the Press Note issued on the 26th August, 1940, clearly stated the object of the visit of the Roger Mission.

Sardar Sant Singh: Is the Honourable Member aware that persons belonging to industries in the Chambers of Commerce are not satisfied with the communique?

The Honourable Sir Muhammad Zafrullah Khan: I am not so aware.

Sardar Sant Singh: Will the Honourable Member make inquiries on this point?

The Honourable Sir Muhammad Zafrullah Khan: From whom?

Sardar Sant Singh: From the Federated Chambers of Commerce?

The Honourable Sir Muhammad Zafrullah Khan: I do not see any reason why I should

RECRUITMENT OF SIKHS AS INFERIOR SERVANTS IN THE OFFICE OF THE MILITARY SECRETARY AND THE PRIVATE SECRETARY TO HIS EXCELLENCY THE VICEROY.

215. *Sardar Sant Singh: With reference to the reply to starred question No. 601 of the 1st April, 1940, will the Honourable the Leader of the House please state the number of permanent and temporary vacancies of jamadars, duffries and peons that occurred since 1st April, 1940, in each of the offices of the Private Secretary to His Excellency the Viceroy and the Military Secretary to His Excellency the Viceroy and the number of Sikhs appointed? If none, why not?

The Honourable Sir Muhammad Zafrullah Khan: Since 1st April, 1940, one post of temporary peon has been filled in the Office of the Private Secretary to His Excellency the Viceroy. A Sikh was not appointed to it as no suitable Sikh candidate offered himself for recruitment. No appointment has been made in the inferior establishment of the Office of the Military Secretary to His Excellency the Viceroy since the 1st April, 1940.

PERSONS TRIED, CONVICTED OR DETAINED WITHOUT TRIAL UNDER THE DEFENCE OF INDIA ACT.

216. *Sardar Sant Singh: (a) Will the Honourable the Leader of the House please state the number of persons, communitywise, against whom action was taken under the Defence of India Act in each Province, as well as in the centrally administered areas? How many of them were tried and convicted, and how many are detained without trial?

(b) What steps have been taken by the Government of India to see that the Defence of India Act is being administered for the purpose of successful prosecution of war and not for other purposes? Have any directions been issued to Provincial Governments on the subject? If so, what are those directions?

(c) Do the Provincial Governments submit any periodical returns about the Act?

The Honourable Sir Muhammad Zafrullah Khan: (a) The number of persons convicted under the Defence of India Act and Rules who were undergoing imprisonment on the 1st October, 1940, the latest date up to which Government of India have readily available information, was as follows in each Province:

Madras	144
Bombay	60
Bengal	205
United Provinces	211
Punjab	92
Bihar	115
Central Provinces and Berar	29
Assam	5
North-West Frontier Province	5
Sind	9
Orissa	2
Centrally Administered Areas	nil

The number of persons detained under rule 26 of the Defence of India Rules by order of the various Provincial Governments on the same date was:

Madras	20
Bombay	38
Bengal	20
United Provinces	68
Punjab	81
Bihar	22
North-West Frontier Province	7

The number of persons detained in the Provinces and the Centrally Administered Areas by order of the Central Government on the same date was 25.

Government are unable to give these figures communitywise.

(b) and (c). The Government of India receive information of important orders made by Provincial Administrations, and they also receive

certain reports bearing *inter alia* on the use made of the Act. They have indicated in correspondence on various matters their views of the uses to which the Act can properly be put; they have not, however, thought it necessary to issue any general directions on the point, since sections 2 and 15 of the Act itself, and many of the Rules themselves, give a sufficiently clear indication of the scope of the powers conferred thereunder.

Mr. Lalchand Navalrai: May I know from the Honourable Member that Provincial Governments exercise the powers after getting the approval from the Central Government in each instance?

The Honourable Sir Muhammad Zafrullah Khan: No, Sir.

Mr. Lalchand Navalrai: Under what circumstances do they ask for sanction or approval?

The Honourable Sir Muhammad Zafrullah Khan: I have answered the question.

Sardar Sant Singh: Do I understand that the Honourable Member is unable to give the information communitywise, and, if so, why?

The Honourable Sir Muhammad Zafrullah Khan: It will take too long to compile it.

Sardar Sant Singh: Why? My complaint is that I put this question, because I believe that the Provincial Governments are using these powers to put down their political opponents. I want information for the purpose of ascertaining whether the Defence of India Act is being used in accordance with the assurances given by the Honourable Member.

The Honourable Sir Muhammad Zafrullah Khan: I am perfectly satisfied that the Defence of India Act is being used in accordance with the assurance I gave to the Honourable Member on the occasion to which he has often made a reference, but, I think it will take too long to compile the statistics communitywise. The numbers sent up to the Government of India are easily available and have been compiled. It will require very detailed inquiries to compile the statistics communitywise.

Sardar Sant Singh: May I know if the Honourable Member is aware that it is the House and the country which have got to be satisfied that the Defence of India Act is being worked properly?

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

Sardar Sant Singh: That is not argument, I submit, Sir. On a point of order, Sir,—when we want information for a certain purpose, it is not for Government to say that they are satisfied

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member asked a question whether that was in accordance with the assurance given by the Honourable the Leader of the House. That is what the Chair understood his question to be.

Sardar Sant Singh: Will he take the trouble to inquire into the number of persons communitywise who are detained under the Defence of India Act?

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member put a question whether the Local Governments were acting in accordance with the assurances given by the Leader of the House. Is not that so?

The Honourable Sir Muhammad Zafrullah Khan: Yes, Sir.

Mr. President (The Honourable Sir Abdur Rahim): In that connection he said, "Yes".

Sardar Sant Singh: My submission is why Government should not give us the figures communitywise?

Mr. President (The Honourable Sir Abdur Rahim): That is another question. The Honourable Member said, "It is for the House to be satisfied and not for the Honourable Member". Well, the Honourable Member gave his answer in response to a different question.

Sardar Sant Singh: My question is a supplementary question on the reply to part (1) of this question. Will the Honourable Member make inquiries from the Provincial Governments so that the information asked for communitywise may be given to the House?

The Honourable Sir Muhammad Zafrullah Khan: Sir, the compilation of that information would involve an amount of labour which would not be commensurate with the results that might be achieved.

Mr. N. M. Joshi: May I ask the Honourable Member to read out the reply to part (c) of the question again, as I did not hear it?

The Honourable Sir Muhammad Zafrullah Khan: I will read it out again:

"(b) and (c). The Government of India receive information of important orders made by Provincial Administrations, and they also receive certain reports bearing *inter alia* on the use made of the Act. They have indicated in correspondence on various matters their views of the uses to which the Act can properly be put; they have not, however, thought it necessary to issue any general directions on the point, since sections 2 and 15 of the Act itself, and many of the Rules themselves, give a sufficiently clear indication of the scope of the powers conferred thereunder."

Mr. N. M. Joshi: May I ask whether the Government of India will publish the figures of the persons against whom the Defence of India Act has been used, periodically—whether the figures of persons against whom such orders have been issued will be published periodically?

The Honourable Sir Muhammad Zafrullah Khan: I cannot give that undertaking, but in response to the desire of the Honourable Member in

whose name the question was put, I have obtained the figures and shall get them and give them again if on any subsequent occasion any such desire is expressed.

MOTION FOR ADJOURNMENT.

CLOSING OF THE CHANDPUR-SIAU-BIJNOR SECTION OF THE GAJRAULA MUAZZAMPUR NARAIN BRANCH OF THE EAST INDIAN RAILWAY.

Mr. President (The Honourable Sir Abdur Rahim): Order, order. I have received notice of a motion for adjournment from Sir Syed Raza Ali. He wishes "to discuss a specific matter of immediate public importance, namely, the announcement by the General Manager of the East Indian Railway of the Government's intention to close the Chandpur-Siau-Bijnor section of the Gajraula Muazzampur Narain branch of the aforesaid Railway with effect from the 1st December, 1940 (which intention, if carried out, will cause great inconvenience to the public and loss of revenue to the Government), and to censure the Government for the action it proposes to take". It is, of course, the intention of every motion to censure the Government, but I want to know this. When was this announcement made?

Sir Syed Raza Ali (Cities of the United Provinces: Muhammadan Urban): The announcement was made in the *Hindustan Times* this morning, and I took a cutting and I have passed it on to my friend, the Honourable Member in charge.

Mr. President (The Honourable Sir Abdur Rahim): Is there any objection?

The Honourable Sir Andrew Olow (Member for Railways and Communications): Sir, this notice was handed to me just half a minute before I entered the House. I find some difficulty in deciding whether any objection should be taken to the matter and I would suggest, if that would meet my Honourable friend's convenience, that we might take up the discussion of the point whether the motion is in order tomorrow morning when I shall not take any objection on the score of urgency.

Mr. President (The Honourable Sir Abdur Rahim): Will that suit the Honourable Member?

Sir Syed Raza Ali: I have no objection to the motion being taken up tomorrow, but the question is whether it is in order or not; if the Government of India object to it, then the point must be decided today.

The Honourable Sir Andrew Olow: It could not be in the Honourable Member's interest if I objected now to the motion being out of order, and if it was defeated. I would much prefer to discuss it with him and if the matter were brought up tomorrow morning.

Mr. President (The Honourable Sir Abdur Rahim): It will be taken up tomorrow morning.

**ELECTION OF A MEMBER ON THE GOVERNING BODY OF THE
INDIAN RESEARCH FUND ASSOCIATION.**

Mr. J. D. Tyson (Secretary, Department of Education, Health and Lands): Sir, I move:

"That the Members of this Assembly do proceed to elect, in such manner as may be approved by the Honourable the President, one person from among their numbers to sit on the Governing Body of the Indian Research Fund Association *vice* Dr. Sir Ziauddin Ahmad resigned."

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

"That the Members of this Assembly do proceed to elect, in such manner as may be approved by the Honourable the President, one person from among their numbers to sit on the Governing Body of the Indian Research Fund Association *vice* Dr. Sir Ziauddin Ahmad resigned."

The motion was adopted.

ELECTION OF THREE MEMBERS FOR THE STANDING COMMITTEE ATTACHED TO THE DEPARTMENT OF SUPPLY.

The Honourable Sir Muhammad Zafrullah Khan (Law Member): Sir, I move:

"That this Assembly do proceed to elect, in such manner as may be approved by the Honourable the President, three Members to serve for the remainder of the current financial year on a Standing Committee to be attached to the Department of Supply."

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

"That this Assembly do proceed to elect, in such manner as may be approved by the Honourable the President, three Members to serve for the remainder of the current financial year on a Standing Committee to be attached to the Department of Supply."

Dr. Sir Ziauddin Ahmad (United Provinces Southern Divisions: Muhammadan Rural): Sir, I thank the Honourable Member for appointing this Committee, but the number of members which is allotted for the Assembly is rather small—three. It may be pleaded that this number is fixed on the analogy of the Members attached to other Departments that the number is restricted to three. May I just remind the Honourable Member that in the case of the Roads Committee the number is not restricted to three and the same is also the case with regard to the various other Committees. The number of three is rather small and the Committee will not be of a representative character. Then, there will be two Members from the Council of State because it is going to be a Committee of five members and the decision will be taken by the majority of votes. Therefore, I do beseech the Honourable Member to increase the number of the representatives of the Assembly from three to five and have a Committee of seven members instead of five. If, however, it is impossible for him to do that on account of technical difficulties, which I do not believe that they exist, then the second alternative which I would suggest is that this Committee should be elected by the elected Members of the Legislature, so that it may be of a representative character. Otherwise,

the whole object of the Committee will be frustrated. The Government commands the majority of votes in the House as now constituted, and the majority will be reflected in the Committee.

Mr. President (The Honourable Sir Abdur Rahim): There is a difficulty as regards that. No Member of this House, whether he is elected or nominated, can be excluded. Everybody has a right to be represented if he so chooses.

Sir Syed Raza Ali (Cities of the United Provinces: Muhammadan Urban): I do not think, Sir, that there is any question of any Member being excluded.

Mr. President (The Honourable Sir Abdur Rahim): No section of the House can be excluded from voting. That is what I meant.

Sir Syed Raza Ali: I do not think that is what my friend, Dr. Sir Ziauddin Ahmad, meant. What he means, I take it, is that the Government Members and official Members should voluntarily abstain from voting, for which there are, I believe, a number of precedents.

Mr. President (The Honourable Sir Abdur Rahim): That is another matter; nobody is compelled to vote.

Dr. Sir Ziauddin Ahmad: We have got several Committees for which only elected Members are eligible to stand, for example, the Public Accounts Committee. Then, we have got the example of certain other Committees for which only the Muslim Members are asked to vote.

Mr. N. M. Joshi (Nominated Non-Official): Sir, I would like to say a word or two about this motion. The first point on which I would like to have some information is the subjects on which the Committee will be consulted by the Government of India. The Government of India can give us some indication as to the nature of the questions which will be placed before this Committee. Then, I would like the Government of India to tell us rather frankly whether this Committee is going to work as the other Standing Committees attached to the various Departments. This question is of some importance, because, if my information is correct, some of the Committees attached to the various Departments do not meet at all during a year. I would like the Government of India and the Leader of the House to give us the information whether the Government of India is making any use of the Committees which are attached to the various Departments and whether those Committees have met even half a dozen times in a year. If we are to judge the Government of India by its past record, then my fear is that this Committee will not meet at all. My Honourable friend, Dr. Sir Ziauddin Ahmad, will have the satisfaction of having received a promise by the Government of India that a Committee will be appointed, but if a Committee is appointed and it does not meet, I do not think the House should take the trouble of going through the process of election at all. I am not, therefore, willing to vote for this motion unless the Government of India tell us frankly

[Mr. N. M. Joshi.]

whether they propose to depart from their usual practice in this matter and call meetings of the Standing Committee attached to this Department. The Honourable Member can give us some idea whether this Committee will meet, say once a week.

Dr. P. N. Banerjee (Calcutta Suburbs: Non-Muhammadan Urban): At least once a month.

Mr. N. M. Joshi: That is my suggestion, because I feel that the Supply Department is doing very important work. If the Committee is to be of much use, I think it must meet at least once a week. Large amounts of money are being spent by the Supply Department and they take important steps. Suppose a demand is made that a particular article should be secured urgently for the Defence Department and it is quite possible that the Government of India may have to decide that a new industry should be started in India. You cannot ask the Supply Department to wait till the Standing Committee meets to decide such an important and urgent question. It will be rather a sitting Committee. I would like, therefore, the Government of India to tell us whether they propose to depart from their usual practice of not calling the meetings of the Standing Committees, at least in this matter. I would like to know how many meetings the Honourable Member proposes to call.

The third point I would like to state is that this Committee is going to be appointed on a Resolution passed by this Legislature, because the Legislature felt that important things were being done by the Supply Department in which the House was interested. It will be a sort of a watch-dog of this House. I would like to ask the Honourable Member whether this Standing Committee will make a report of its work to the Legislature. If these Committees are appointed and they do not meet and do not make any report, then I think, constitutionally speaking, it is wrong for the House to appoint such Committees. Such a Committee must represent this Legislature. The Legislature must, therefore, know whether the Committee is working, and if it is working, how it is working and what work it has done, I, therefore, feel that the House should not agree to the appointment of the Committee unless that Committee is going to be responsible to this House. I, therefore, feel that, constitutionally speaking, we shall be doing a wrong thing if we approve of this Standing Committee. This procedure of the appointment of Standing Committees is an old one and many times I had felt that, instead of strengthening the powers of the Legislature and the control of the Legislature over the Executive Government, the appointment of these Standing Committees weakens the control of the Legislature over the Executive Government. What happens is this. When we discuss certain matters, the Government of India tell us that the matter was placed before the Standing Committee. It creates the impression that the Standing Committee must have agreed to the proposals placed before that Committee. But we do not know at all whether the Standing Committee had agreed or not. I have heard the Members of the Standing Committees several times saying that the proceedings were confidential and they could not say whether they had agreed or not to the proposals of the Government of India. In such cases, the voting is not given and we do not know how the Members had voted. It is a matter of procedure.

Mr. M. S. Anay (Berar: Non-Muhammadan): So far as the Railway Standing Finance Committee is concerned, a Member is entitled to have his opinion recorded if he wants to do so. He can insist on that being done.

Mr. N. M. Joshi: I do not know about the work of the Members of the Railway Standing Finance Committee. Sometimes we are not even allowed to refer to the proceedings of a Select Committee. In the case of the British Parliament the proceedings of the Select Committees are published.

Mr. President (The Honourable Sir Abdur Rahim): That is the rule of the House, and not of the Government.

Mr. N. M. Joshi: I am not speaking on that constitutional question. I am speaking on the question whether the control of the Legislature over the Department will be strengthened by the appointment of committees which are not responsible to the House. If the committee is going to be responsible to the House, and make a report to the House of the work done by that committee, that committee might strengthen the control of the Legislature over the Executive Government. If the committee does not report to the House, it weakens the control of the Legislature over the Executive Government. I will explain how it weakens. Members of the Legislature who want to criticise are told that the Standing Committee has been consulted without the Members knowing how the members voted and in what way the Standing Committee Members were consulted and what their opinion was. I am, therefore, not in favour of this Resolution unless I get a satisfactory reply to the questions which I have raised.

Sir Muhammad Yamin Khan (Agra Division: Muhammadan Rural): Sir, I understand that the Honourable Member who has brought forward this motion before the House had two reasons for doing so. First of all, on the Finance Bill there was a lot of criticism against the Supply Department. Members after Members pointed out that they were not satisfied with the conditions as they are prevailing, especially as regards the expenditure of money in the Supply Department. The Honourable Member chose this occasion to bring this motion and satisfy the House. That is the first reason. The second reason is that on account of the Resolution which was moved by my Honourable friend, Mr. Muhammad Nauman, in this House, the Government promised they would appoint a Committee and that promise induced Mr. Muhammad Nauman to withdraw his Resolution. After all these assurances were given, the Committee which is intended to be appointed must be of the nature which may satisfy this House. If the Committee that is going to be appointed does not satisfy this House, then, I think, not only will it not be useful, but this House should reject it at once. It might also create a bad impression in the minds of the public that after the criticism which was levelled against the Government for six days, the Government promised to do a particular thing, when they were in difficulties, and as soon as those difficulties were over, the Government went back on their promise and did nothing. This was really the reason which was at the back of the mind of many Honourable Members who voted yesterday against

[Sir Muhammad Yamin Khan.]

the Government, because they did not think they would get all those things for which hopes were raised in their hearts. The Government by their present attitude are doing a great mistake. They are injuring their own cause. They propose to create a committee which will not satisfy this House, it will be a useless committee. What we want is full control over expenditure, so that we may see how the money is spent, what kind of officers are recruited, whether so many officers are needed at all, whether we could get better class of officers for the salary we are offering, whether the contracts are given to proper persons, or whether the contracts are given only to such persons who will help the Finance Member by paying excess profits tax. We want to see whether the taxpayer's money is properly utilised, and whether there is no waste, and so on. By merely having three Members on this Committee, Honourable Members must realise that it is not always that all the three Members can be present at meetings. There is such a small number that people coming from long distances can never be present at all times. They cannot come at a moment's notice. A bigger Committee is required and the material is to be laid before them and their considered verdict obtained. Sometimes there may be one or two absentees who, on account of many reasons, may not be able to attend at the time which suits the Honourable Member to call the Committee for the meeting. Therefore, Sir, if this is going to be a Committee only of three Members of this House, then I think it is a useless Committee and we cannot support the motion.

The Honourable Sir Muhammad Zafrullah Khan: Sir, instead of Honourable Members having a grievance that I am trying to do this morning something contrary to that which I had promised, I have a grievance that Honourable Members have not correctly represented what I had undertaken to do. I was perfectly clear when I made the announcement to the House and so was the Honourable the Finance Member that I had under consideration the question of attaching to the Supply Department a Standing Committee like the Standing Committees attached to other Departments.

Mr. N. M. Joshi: And working in the same way.

The Honourable Sir Muhammad Zafrullah Khan: I do not know why the Honourable Member should be so impatient. There is all the time in the world to explain matters. That matter is not a matter of my discretion. It is a matter regulated by a Notification of which Honourable Members are aware, and if they are not aware, they ought to be aware. It is not for me to say that three Members are too little. The announcement that was made was that a Standing Committee would be set up like the Standing Committees and on the same lines as the Standing Committees that are attached to other Departments. So far as the question of composition of these Committees is concerned, and the functions of these Committees are concerned, that is not a matter of my discretion or of anybody else's discretion. That is already regulated by a Notification. The position was there laid down of which Honourable Members are already aware and were aware at the time when the announcement was made that the composition will be three Members from this House and two from the other House. In that matter I have no choice.

The next question raised was that having regard to the attendance in the House, the Government should place a voluntary restriction upon itself that nominated Members should not take part in the election. Now, Sir, that I think would be, even if it is voluntarily done, an unwarranted interference with the right of nominated Members who are as much Members of this House as other Honourable Members are. But to this extent, and without creating a precedent and without in any way reflecting upon nominated Members, I can meet the wishes of those Honourable Members who have raised this point that so far as the Government Whip for electing these Members is concerned, I am prepared to see that the support of such Members who receive the Government Whip goes only to elected Members who put themselves forward for election. That, I am prepared to do and if the House attaches so much importance to the question of elected Members, our Whip will support only elected Members. But I must make it perfectly clear that this will be done only in view of the special circumstances in which this Committee is being set up and I am quite sure that Honourable Members will not now seek to make a distinction between different categories of elected Members.

I have already answered the first part of Mr. Joshi's question. With regard to the second part, I am not prepared to admit with regard to my Honourable Colleagues who are Chairmen of other Committees that they are open to the criticism which Mr. Joshi has made. My Honourable Colleague, the Member in charge of Communications, has just assured me that so far as his Department is concerned, the Standing Committee meets every Session. But I will say this that the functions and activities of the Supply Department are very important. And I myself have the intention, so long as I am Member for Supply and Chairman of the Standing Committee, to call the Committee much more frequently than Standing Committees have been called in the past and to consult them on a much wider range of subjects than they have been consulted on in the past. I hope that assurance will satisfy Honourable Members.

Dr. P. N. Banerjee: Will there be monthly meetings?

The Honourable Sir Muhammad Zafrullah Khan: It would be difficult to give an assurance of that nature. It is possible that there might be two meetings in a month or there may not be a single meeting in two months. But, as I have said, I intend to call the Committee more frequently than other committees, as frequently as there are questions to be placed before this Committee on which their advice has to be sought.

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

"That this Assembly do proceed to elect, in such manner as may be approved by the Honourable the President, three Members to serve for the remainder of the current financial year on a Standing Committee to be attached to the Department of Supply."

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): I may inform Honourable Members that for the purpose of election of a member for the Governing Body of the Indian Research Fund Association and of

[Mr. President.]

three members for the Standing Committee for the Department of Supply, the Notice Office will be open to receive nominations up to 12 Noon on Friday, the 22nd November, 1940, and that the elections, if necessary, will be held in the Assistant Secretary's room in the Council House, New Delhi, between the hours of 10-30 A.M. and 1 P.M. on Monday, the 25th November, 1940. The elections will be conducted in accordance with the principle of proportional representation by means of the single transferable vote.

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

Mr. President (The Honourable Sir Abdur Rahim): The House will now resume consideration of the motion* moved by the Honourable Sir Andrew Clow and the amendment† moved thereon by Maulvi Muhammad Abdul Ghani, yesterday.

Dr. Sir Ziauddin Ahmad (United Provinces Southern Divisions: Muhammadan Rural): Sir, yesterday evening I was comparing the provisions of the old and the new Bills. By clause 2 of the new Bill they have added the words "or remain in" in section 68 of the Act. This to my mind is useless because if a man enters a railway carriage with the object of travelling he must remain in it. However this is a very minor point. By clause 3 the onus of proof on the passenger, as existed in the old Bill, has been taken away but the punishment has been extended from two months to one year. Then, under the old Bill a *bona fide* passenger failing to purchase a ticket for valid reasons could take a certificate and he would be exempted from any penalty; under the new Bill failure to purchase a ticket for any reason involves a penalty even though he may have given information about it. He is absolved from a portion of the penalty but the penalty will be there:

"Provided that where the passenger has immediately after incurring the charge and before being detected by a railway servant notified to the railway servant on duty with the train the fact of the charge having been incurred, the excess charge shall be one-sixth of the excess charge otherwise payable calculated to the nearest anna, or two annas, whichever is greater."

So the provision which differentiates between a *bona fide* traveller from a person who wilfully travels without paying money is taken away in this particular Bill.

The next point is about the power of arrest. Under the new Bill a person who travels in a higher class with a lower class ticket may be arrested, but there was no such provision in the old Bill. So there is great difference between these two Bills in this respect and they are not identical. The new Bill clearly shows malice behind it which we did not find in the old Bill.

*"That the Bill further to amend the Indian Railways Act, 1890, be referred to a Select Committee consisting of Dr. Sir Ziauddin Ahmad, Maulana Zafar Ali Khan, Mr. G. V. Deshmukh, Khan Bahadur Mian Ghulam Kadir Muhammad Shahban, Mr. J. Ramsay Scott, Mr. B. M. Staig, and the Mover, with instructions to report on the opening day of the next Session of the Assembly, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be four."

†"That the Bill be circulated for the purpose of eliciting opinion thereon by the 21st January, 1941."

These are the points of difference between the two Bills. If, unfortunately, this Bill becomes law we, on this side, will have no option but to insist that better facilities for booking should be provided. At every station there should be at least two persons, one for selling tickets and the other to receive them when the train arrives. At present even at junction stations there is often only one man who acts both as booking clerk and as ticket collector. A train may stop at a junction sometimes for half an hour and you cannot expect people to come half an hour in advance to buy their tickets. Therefore, the question of adequate staff must be seriously considered. Also the booking offices should open at least half an hour before the arrival of the train and should remain open while the train is at the station and should not be closed till the train has left. What actually happens now is that booking is closed as soon as there is a signal from the last station and certainly when the train has arrived at the distant signal. So a person who arrives at the station after the train has passed the distant signal cannot buy a ticket and has no alternative but to go without a ticket and to incur the penalty of imprisonment which is proposed in this Bill. I agree that people should follow the law but the fault lies more on the Railway Administration than on the public. In every country there are facilities for the travelling public which, unfortunately, do not exist in India. The fundamental difference between the Honourable Member on that side and ourselves is that we believe in the certainty of detection as having a greater deterrent effect than severity of punishment. We believe that certainty of detection will stop the crime but he thinks severity of punishment will do it. I am glad the Honourable the Home Member does not follow the principle of the Railway Member. In the old days, we know, a man had his hands cut off for committing a theft, and in some countries this punishment still prevails. And we know that in those days there were more thefts than there are now. Under British rule the number of thefts has diminished because of better administration and because of greater chance of thefts being found out.

Dr. P. N. Banerjea (Calcutta Suburbs: Non-Muhammadan Urban): In England people used to be hanged for stealing.

Dr. Sir Ziauddin Ahmad: I did not remember that

Maulana Zafar Ali Khan (East Central Punjab: Muhammadan): May I remind my Honourable friend that in Arabia where hands are cut off for the offence of theft, there are few cases of theft as compared with India where no hands are cut off?

Dr. Sir Ziauddin Ahmad: I am glad that my friend, Dr. Banerjea, reminded me that ticketless travellers are not sought to be hanged in this particular Bill. The deterrent punishment has not fortunately gone so far. The defect lies in their having a bad system of checking tickets. Had there been a certainty of catching such travellers, probably these defects would have disappeared. I shall give some examples of how defective their system is. In this connection I may say that sometime ago one Mr. Scott, in whose memory they have got the Railway Clearing Accounts Office, suggested a novel method of checking tickets by the crew system, *i.e.*, having an army of these ticket checkers travelling by each train. This proved to be defective and we said at that time they ought to have had corridor trains as in Europe. Had there been corridor trains, tickets

[Dr. Sir Ziauddin Ahmad.]

could have been checked very easily by a few persons in the train and no person could have escaped detection; and no one can imagine that he could travel without a ticket if we had corridor trains. My friend may say that this would be very expensive; but may I remind him as late as 1901 Mr. Robertson's committee pressed this very question on the Railway Board. He said that the breadth of the railway carriages in India is too small for its gauge and it was uneconomical and the wastage is 22½ per cent.: so you can easily provide on your existing gauge corridor trains. And had this been done when it was brought to your notice, this could have been got over. I will just read from the Robertson Report:

"In England the width of a vehicle for the 4' 8½" gauge is 8' 6"; in America it is 10 feet and on the continent of Europe it is 10' 6". In India the width of the carriages for 5 ft. 6" gauge is only 9' 6". It ought to have been 12 ft. 3", or 2 ft. 9 in. shorter. The Railways are losing 22½ per cent."

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member must deal with this Bill: he cannot go into all sorts of suggestions for reforms to be made on the railways. The Chair cannot allow that.

Dr. Sir Ziauddin Ahmad: I want to prove that by providing corridor trains, they can prevent this ticketless travel

Mr. President (The Honourable Sir Abdur Rahim): There may be many other ways of doing it, but the Honourable Member has got to deal with the method proposed in the Bill.

Dr. Sir Ziauddin Ahmad: and the method which I am going to press is that they should have a better system of checking tickets so that their object will be served that way and not by means of imprisonment. That is the point I want to make.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member can oppose this Bill and say it is ineffective: he cannot go on discussing all other methods of achieving the object.

Dr. P. N. Banerjee: He is suggesting alternative methods.

Mr. President (The Honourable Sir Abdur Rahim): Alternative methods are not included in this Bill.

Dr. Sir Ziauddin Ahmad: I have got every right to press that my suggestion for checking tickets should be followed and that the present system is responsible for the enormous amount of ticketless travelling . . .

Mr. President (The Honourable Sir Abdur Rahim): That the Honourable Member is entitled to, but he cannot go on suggesting all other possible methods

Mr. M. S. Aney (Berar: Non-Muhammadan): How can a system be regarded as faulty unless he is in a position to show you that there are better systems of checking?

Mr. President (The Honourable Sir Abdur Rahim): But he cannot wander all over the world.

Mr. M. S. Aney: That is another matter.

Mr. N. M. Joshi (Nominated Non-Official): Which is that book which you are reading from?

Dr. Sir Ziauddin Ahmad: Robertson's Report of 1901. However, I will leave that report alone. But the first method which I suggest is that they ought to provide corridor trains and if they do that one man can check the tickets throughout the train while it is in motion; and there will then be very few persons who will travel without tickets. They have space of 2 ft. 9 in. and corridors can be provided without loss of accommodation. I wish I could develop this point. My second point is that their system is defective because they have been trying all kinds of experiments and every experiment is worse than the one before. They had a very good system of checking tickets on the East Indian Railway when it was under Company-management. They used to check tickets at junctions by their transportation staff, and also a system of checking while the train was in motion by ticket inspectors under Accounts Department who knew their work, who were respected men of good education and social position. But they checked the tickets of railway servants just as well as those of the public, and the railway people did not like that they should be checked by officers of the accounts department; and they adopted a new system. The Moody and Ward Committee recommended an entirely new system doing away with the old system altogether. They made no recommendations about transition period. The Railway Administrations gave effect to those recommendations by an entirely novel method. They said the entire staff of T. T. I's, and T. T. E.'s, should be dismissed and fresh men were taken at a lower salary. The old men were to be reemployed on lower salaries ranging from 90 to 96 rupees. Before that, these people were drawing 200 to 300 or 500 rupees: they were all dismissed and re-engaged on smaller salaries; with the result that the ticket checking staff was thoroughly dissatisfied and they did not like to do their duties in the way they ought to have done. This led to a series of questions in the Assembly. My friends, Sardar Sant Singh, Mr. Lalchand Navalrai and Bhai Parma Nand and myself put a series of questions in the Assembly and I had several interviews with Sir P. R. Rau and Mr. Tylden-Pattensen about the injustice; some grievances were redressed, but other grievances are still there and I would have very much liked to state on the floor of the House what those grievances are, but I am afraid of you, Sir, and I do not know whether I will be entitled

Mr. President (The Honourable Sir Abdur Rahim): If the Honourable Member knows that, then he had better not attempt it.

Dr. Sir Ziauddin Ahmad: All right, Sir: those grievances are there and I have repeatedly drawn the attention of the Railway Board and of the Honourable Member to them, but nothing has been done and no action has been taken: some of the orders are interpreted in one way by the North Western Railway and in a different way by the East Indian Railway; and I ask why should not there be uniformity in considering these questions? The result is that the dissatisfaction is there that they have not been justly treated; and I say if you want to get good work from your staff, it is your duty to keep them satisfied

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member is dealing with a question which he knows is out of order.

Dr. Sir Ziauddin Ahmad: All right, Sir. I will leave that alone. What they did was that instead of employing one or two good men on good salary, they have employed a host of these ticket checkers on 30 or 35 or 25 rupees. Can you expect any honesty from a class of persons who have passed only the matriculation and who do not come from good families and whose salary is so low that it is difficult for them to make both ends meet? But you put them in these responsible posts—they are the persons who will arrest people at wayside stations—a man who draws 30 rupees a month and who passed the matriculation yesterday and probably not brought up in good traditions, he will be asked to arrest people at wayside stations, he represents the railway administration at these places. I say it is your duty to employ ticket examiners of the type that the administration, when it was under Company-management, used to employ and not the type of staff you have at present. This reminds me of a story. I mean about the manner in which tickets are checked

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member has been nearly an hour; he had better leave stories alone.
12 Noon.

Dr. Sir Ziauddin Ahmad: Very well, Sir, but I say this to show that the method devised by the railways for checking tickets is like the method which a person employed when he engaged four servants one after the other to fetch milk, and the result was there was no milk at all. I leave the other part of the story alone. Therefore, I suggest that if we go back to the old system of checking tickets, then some of the present difficulties can be minimised.

Before I sit down, Sir, I should like to read one or two important opinions sent to us. I am sorry that the Honourable Member paid no attention to these opinions while drafting the present Bill. The Bill was circulated with the object of collecting public opinion. Here is one opinion from Bihar

Mr. N. M. Joshi: When was this Bill circulated?

Dr. Sir Ziauddin Ahmad: This Bill was never circulated. This is our motion. The former Bill was circulated, and the present Bill should have been drafted keeping in view the opinions expressed on the previous Bill. This is what is stated here:

“Any railway servant or police officer or any other person who may be to his aid, who vexatiously and unnecessarily—

(a) enters or searches or causes to be searched any railway carriage shall be punished with imprisonment which may extend to three months or with fine or which may extend to five hundred rupees.”

I suggest that a section of this kind should have been included for the one which you have inserted in this measure. Then you come to the opinion from Madras, Calicut, which says:-

“The Committee is of the opinion that the provision for imprisonment is uncalled for and will only defeat its own object. There is considerable apprehension in the minds of the public that the power of arrest will be abused by the railway servants, for under the new rules even a porter can arrest without a warrant.”

The Honourable Sir Andrew Clow (Member for Railways and Communications): Sir, is this relevant? There is no power of arrest in the present Bill.

Mr. President (The Honourable Sir Abdur Rahim): The Chair does not think the Honourable Member cares very much whether it is in order or not. There is no power of arrest in this Bill that the Honourable Member is dealing with.

Dr. Sir Ziauddin Ahmad: I will just read one or two more opinions and then finish. There is an opinion from Chittagong which says that the power of arrest without a warrant is really a dangerous weapon

Mr. President (The Honourable Sir Abdur Rahim): There is no power of arrest in this Bill at all.

Dr. Sir Ziauddin Ahmad: The only alternative, it says,—and this is from Ajmer-Merwara:

“If ticketless travel is to be checked, you should increase the number of railway servants so as to prevent people without tickets from entering the train and make ingress on the platform of important stations in their vicinity much more difficult than at present.”

Now, Sir, if you read all these opinions carefully you will find that all these concentrate on one fundamental point, that is, we should not give these powers as contemplated in the Bill to ordinary people, and there should be no power of imprisonment. There are sufficient powers for the collection of fines in the penal code, and, therefore, there is no reason why special measures should be provided in this Bill for the collection of fines. The District Magistrate of a place has enough powers to collect fines, then why should you have fresh powers to send a man to jail not merely to simple imprisonment but to imprisonment of either character

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member has said all that yesterday.

Dr. Sir Ziauddin Ahmad: I was only summing up my speech, Sir. I said that the fundamental difference between the Government Benches and ourselves is that they believe in the harshness of the measures while we believe that the administration should be such that travelling without tickets may be impossible and detection is made certain, and if we place our own house in order, there will be no need for this particular Bill. With these words I support the motion for circulation.

Pandit Nilakantha Das (Orissa Division: Non-Muhammadan): Sir, this measure has been practically in contemplation for the past 15 years or more, and one hardly thought a few weeks ago that a gentleman like

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member had better speak up.

Mr. M. S. Aney: He is weak. Can he come to the front?

Mr. President (The Honourable Sir Abdur Rahim): Yes, if the Honourable Member cannot speak up from that place.

(At this stage, Pandit Nilakantha Das came and addressed from the Bench occupied by Members of the European Group.)

Pandit Nilakantha Das: I was saying that a gentleman so sweet and so reasonable like my friend, Sir Andrew Clow, would bring forward a measure of this kind into this House. But it has been an inconvenient legacy, so to say, for my Honourable friend. For the past 15 years it has moreover been practically a kind of propaganda, and we know the effect of propaganda in these days. In 1925 or just about that time when the railway convention was established by a resolution in this House, there was some uproar that ticketless travel should be checked. Then various measures were adopted, various conferences were held, and at last a Bill was proposed in 1936. That Bill was allowed to lapse, as there was uproar all over the country, and there was complete opposition to it. This year in March and April the question again came up before the Central Advisory Council for Railways, and it was said that some decision should be taken, otherwise ticketless travel would increase, and this ticketless travel was, as it were responsible for all the difficulties in the railway administration.

But by that time both the departments, the Posts and Telegraphs Department as well as this Railway Department had been combined into one and they are in charge of one Member who is now called Member for Communications. I have previously urged on various occasions that some lesson should be taken from the Postal Department so that things like the ticketless travel may be minimised in the railway administration too. Railways are now handling many parcels and things like that. Formerly post office was handling all those articles. But the difference was that it practically took the public into its confidence. The public knew that any complaint against a postal official or against the Department, any complaint about corruption would be properly considered and dealt with. They could then send any complaint free of cost. This went on for several years. Now this privilege has been withdrawn, but the people have full confidence in the postal and Telegraph Departments. On the other hand, the people have practically no confidence in the Railway Administration which is, I may say, generally full of corruption. Of course, there may be some difference in handling business and articles and materials between the Postal Department and the Railway Administration. But making all allowance for that, are the Railway Department able to check the corruption in their officials and underlings? According to the report, the highest amount realised was about Rs. 26 lakhs in 1929 from ticketless travellers detected including penalties, and the expenditure in checking was Rs. 27 lakhs. These are the latest figures we have got and I think my Honourable friend has given no other new figures. This is only a loss of rupees one lakh in the entire railway administration. One may say it is practically nothing and, as a matter of loss, it should not be considered at all. But though the consideration is always said to be purely and entirely economic here, ticketless travel may also be considered to be a social, and even a moral evil. But the Railway administration itself is full of such moral evils as I have said. They should first be dealt with. My Honourable friend should take note of that fact that parcels sent by a railway, say, parcels of grain, vegetables, oil, even coal tar,—parcels sent at the owner's risk—how many of them are deliberately damaged and from how many parcels articles are stolen on the way. If complaints are made, sometimes where it cannot be avoided compensation is given. What is the amount of that compensation? Has there been any investigation or effective step taken to check this payment of compensation for this theft by the Railway employees. This kind of corruption is at times rather encouraged,

unknowingly though it may be. Let me give an instance in this ticket checking. T. T. I.'s were appointed in large numbers probably as a measure for eliminating this plague, if I may call it so, of this ticketless travel. There was a confidential circular to these ticket Inspectors, at least in one railway with which I am directly concerned, and which I know, that they must each realise and give to the Railway company every month twice the amount of their pay. If that be so and if there be an increase in the number of ticketless travellers, who is to blame for this? There may be such other circulars. Of course, it may be with all good intentions of the authorities, but it was a mistake and in effect we find the number of ticketless travellers, which was about four in 1928 in a thousand passengers went up to six in 1933. Then, of course, there was going to be a regular fall. Nevertheless, this increase may be due to catching hold of all sorts of mendicants that go to Puri on various *Jatras* and festivals. Very often I have pointed out to the station masters and even T. T. I.'s to drive them out from the train. Today we are going to make a law to drive out those persons from the train, but I have asked them, have requested them several times to drive them out from the train but they did not do it. Probably they simply put them in the list of detection. They sometimes drive them out in one station and they come by the backdoor even with their connivance, probably to be listed again. I have seen this very often. But the number of ticketless travellers must increase, for, though the T. T. I.'s may not realise money, at least they ought to show that on account of their employment the detection has been more and more. It may be due to this that the number went up in these years up to six in a thousand. Then it gradually came down as it ought to. Up to 1938 it was practically six, but it was less than 1936. In 1936 it was 6.2 and in 1938 it was 6.1. I mean per thousand. When this was the position, just at that time a Bill came to be introduced in this House to penalise ticketless travelling. Where is the cause? Why should such a measure be contemplated at all,—six in a thousand? It is a business concerned, and if this ticketless travelling is not something like a plague which affects the entire administration, six persons in a thousand may even be let off as a matter of charity.

Punitive measures like this should not be thought off because they can be easily put into the Statute-book, Railways being a state business. That is a temptation, and this our commercial department should not fall a victim to this temptation. Today particularly the Department can get such punitive measures only for the asking. Then look at the provision here. The railway servant will simply go and tell the magistrate, so many rupees will be paid by this man. The magistrate will at once consider the amount as a fine without enquiry. I am not a practising lawyer. I do not, know where lies the burden of proof here, whether the passenger is entitled to say to the magistrate that the Railway man had brought him to the Court out of malice. I do not know. The Bill says that the amount will be put down at once as a fine, and in default of payment the man will go to prison. But this is now but the remnant of the various other penal measures which were being contemplated. Things seem to be done step by step. The next step will probably be that the public will be held responsible for ticketless travelling. The Communication Member will come to this House and say: 'Well, my friends, you gave me one measure. It could not stop ticketless travel. Now, I propose a punitive tax on all persons who travel in the carriage with ticketless travellers'. Now, there

[Pandit Nilakantha Das.]

are corridors. You may well say that it is the business of the public, i.e., all passengers concerned to stop this ticketless travelling and to see that the person who travels without ticket pays the penalty or gets out of the train. And if he does not do that, very naturally a punitive tax may be proposed on all those people who are supposed to connive. Is my Honourable friend going to propose it next time? What is the necessity of trying to penalise ticketless travelling like this?

The railway is a business concern and the law has provided enough for running this business all right. Moreover, the statistics that they have given us do not show this ticketless travelling to be such a plague that a punitive and emergent legislation should be proposed at a time like this when practically the major portion of the House is absent. The War is going on. Perhaps it is at our very door and at such a time we are going to think of penal measures like this. For nothing, you want to alienate people and exasperate travellers. You will drive people to go to motor buses and motor cars. Will you prove by statistics that the case is so urgent that a penal measure like this is necessary in order to run your administration which is otherwise going to ruin? Last March probably, a memorandum was given to the Central Advisory Council and practically this much information which I have already quoted was given there. Other informations were rather scrappy and useless.

For proper estimate of the evil, however, I will tell you my experience of the Bengal Nagpur Railway by way of illustration. I belong to that part of the country, and the Bengal Nagpur Railway is the only railway which goes through my constituency. What happens there. Do you know that railway officials go from Kharagpur for duck shooting to Chilka perhaps once a week.

Lieut.-Colonel Sir Henry Gidney (Nominated Non-Official): That is not true. I know the Bengal Nagpur Railway much better than you do.

Pandit Nilakantha Das: Don't they go from Kharagpur to Calcutta to attend football matches, even to the inconvenience of ordinary passengers?

Lieut.-Colonel Sir Henry Gidney: No, certainly not.

Pandit Nilakantha Das: The point may be that the third class passengers are actually not much inconvenienced thereby, but the train becomes full of ticketless travellers.

Lieut.-Colonel Sir Henry Gidney: I deny it.

Pandit Nilakantha Das: Then you should be put in charge of this ticketless travelling, to check it.

Lieut.-Colonel Sir Henry Gidney: You ought to be one of the ticketless travellers?

Mr. President (The Honourable Sir Abdur Ruhim): The Honourable Member had better go on with his speech.

Pandit Nilakantha Das: So, this very Bengal Nagpur Railway wanted to influence the Railway Board to have a measure like this and it is probably in 1923 or 1924. Bengal Nagpur Railway figures have been given here..

In 1921, ticketless travellers were 69 thousand and in 1981 they were 178,000. The income was Rs. 100,000 and 256,000 respectively. If you calculate it, the income is proportionately less than the number of travellers, and after all this, there is a loss of only 10,000. In other railways there has been still a profit, and in the Bombay, Baroda and Central India, the station staff have collected about a lakh. Still we are not told whether in all these years the evil has been successfully checked, and if not, how far, it has been checked. The statistics given is scrappy, yet you propose this punitive measure and say you cannot do without it. There is practically no case made out for such a punitive measure.

Now, coming to the Bill, of course an Act like this should not be on the Statute book. That is the first thing. If the motion of my Honourable friend, Maulvi Muhammad Abdul Ghani, for circulation is pressed, then it may be voted for, but there is no use. When the old Bill was circulated we have got the opinions of non-officials, which are generally against measures like this. Now, that the House is half empty, I have grave apprehensions that in spite of us this Bill will come to the Statute-book. Therefore, I will suggest one thing. The Bill here provides:

"any railway servant appointed by the railway administration in this behalf may apply to Magistrate for the recovery of the sum payable as if it were a fine, and the Magistrate shall order it to be so recovered, and may order that the person liable for the payment shall in default of payment suffer imprisonment of either description for a term which may extend to one month. . ."

Sir, this is rather a vindictive measure. How many mendicants will you send to jail? Have you ascertained the number of mendicants which practically increase your number of ticketless travellers for whom you employ so many travelling ticket inspectors? So, this measure at least should go, or if it remains, the man, the so-called accused, before the magistrate at least will be allowed to say his say, and then if he likes, contradict the railway official, whoever he may be, and he may be a common peon, who knows. He will be heard and the magistrate will give his judgment. With these words, Sir, I oppose the principle of the Bill.

Mr. M. S. Aney: Sir, the motion before the House is to refer the Bill to a Select Committee and assuming that all the objections that have been raised by so many of my friends are good, I think the Select Committee members can go through them and see if suitable modifications can be made in the Bill or not; so these objections ought not to come in the way of this House voting for a reference of this Bill to a Select Committee. That is my first point. Secondly, my own impression is this, that both Hindus and Muhammadans in India have got a soft and tender corner for a number of persons who go about as *sadhus* and *faqirs* in this country and want to take advantage of any communication facilities and they want to know, I think, how it affects them.

Mr. N. M. Joshi: Everybody knows that they travel, all the railway servants know them and they allow them to do so.

Mr. M. S. Aney: This is exactly what I am saying. That has encouraged this tendency to travel without a ticket to a very great extent. The point is this, whether a concern like the Railways should allow this tendency to grow like that more and more,—at considerable cost to the railway revenues which ought to go back towards the general revenues. I really think, Sir, that this is a tendency to be charitable at the cost of

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others. These persons who feel for these men who go in for pilgrimages think that they are likely to be most inconvenienced and, therefore, they feel that no steps should be taken to make such travelling not only difficult but impossible by introducing some deterrent punishment in the Bill. Now, such men are really in my opinion carried away by a false sense of charity and nothing else, and that false sense of charity I personally do not like; I personally detest that kind of tendency. Secondly after all, what does this Bill do? There are three important provisions in the Bill. The first is the provision which deals with those who travel with a view to defraud. For them there is a special provision. If that intent to defraud is proved, I believe the punishment given there ought not to be considered as very serious at all, because if a man intends to cheat or defraud the Railway, and if he wants to travel like that over a public carrier like railway, he ought to be dealt with with sufficient severity but not with cruelty.

Now there is one point to which I wish to make a reference. I do not like any substantive punishment of imprisonment to be provided for an offence like ticketless travelling. You may impose a punishment of fine and in default of that you may provide an alternative punishment, but to provide for a substantive punishment of imprisonment is, in my opinion, introducing a very harsh penalty unnecessarily, because those who have not the means to pay a fine will have to undergo imprisonment on account of default, but if you provide a punishment of imprisonment as a substantive thing, the people in a position to pay a fine will also have to go to jail. There is no reason why a substantive punishment of imprisonment should be provided for any one of the three purposes mentioned here. In other cases of course there is ample room for improvement. Some of the cases to which my Honourable friend, Dr. Sir Ziauddin Ahmad, has referred on some of the Railways will have to be looked into very carefully. It is very possible that the words "he should incur the charge immediately" are objectionable. This word "immediately" is likely to be misconstrued by many persons who are not sufficiently intelligent. These are matters which can be dealt with and discussed across the table of the Select Committee and I, personally, think that though the discussion has been very useful, it has not been of such a nature that we will be justified in resisting the reference of this Bill to a Select Committee. I, therefore,—notwithstanding the fact that two of my friends sitting behind me have opposed this motion—personally shall record my vote for taking the Bill to a Select Committee.

Some Honourable Members: I move:

"That the question be now put."

Lieut.-Colonel Sir Henry Gidney: Sir, if I take part in this debate, it is not with a view to entering into a controversy over the principles underlying the Bill. There can be no two opinions, Sir, that no legislature can, with equanimity, give its consent to the perpetration of fraud whether that fraud be intentional or be due to mere inability to pay one's expenses when travelling, *i.e.*, mendicants. This abuse of the railway system by those who are poor, particularly mendicants, has been one of long standing. The Railways have suffered lakhs and lakhs of rupees every

year on account of this. The Railways have tried to remedy it year in and year out by improvements in their administration. As to whether they have really been able to do this effectively is not a matter for my consideration. It may be that the only remedy lies in increasing your checking staff, but I suppose the Railways, who today are suffering from an epidemic of economy, are not prepared to do that, or may be, the Railways think they can get everything for nothing and so offer a starvation salary to these employees in the expectation of honest service. But whatever it be, the abuse continues and the Railways are suffering and the Railways are now desirous of checking this evil. This House has disclosed, if I may say so, a feeling of sympathy for these persons dishonestly travelling without tickets and some feel the Railways are wrong in imposing any punishment upon these ticketless travellers. Sir, I do not think anyone can support an attitude like that. Some have gone so far as to say that no such Bill should be on the Statute-book. The Railways now want to refer this new legislation to a Select Committee. Well, Select Committees have sat on this matter before but practically the Bill passed is a dead letter. Sir, I always look upon a Select Committee in this way. A little boy, asked his mother where has daddy had gone, and she says, "sonnie, he has gone to a Committee meeting", the boy then asked, "what is a committee, mummie?", to which the mother replied, "a committee is a place where a lot of men sit around a table, keep minutes but waste hours." In my opinion most committees are like that. Although past efforts have been almost infructuous, I do not think the proposal of taking this Bill to a Select Committee will meet the demand. My friend, who hails from the Province of Bengal

Pandit Nilakantha Das: No, from Orissa.

Lieut.-Colonel Sir Henry Gidney: or who hails from the area served by the Bengal-Nagpur Railway has stated in this House that he knows that the Bengal Nagpur Railway officials squander their time in going duck-shooting every week. He forgets that ducks are not had every month, and with one officer going out a week and a duck a week is not much to eat. But I do believe that my friend was carried away with his enthusiasm. I know the Bengal Nagpur Railway very well, having been a member of its Advisory Committee. I have been in the closest touch with that Railway and if there is one Railway in India which deals with its passengers and employees with sympathy and justice and where the human touch is exercised to the extreme degree, it is the Bengal Nagpur Railway under its present agent, Mr. A. Duncan. I stand here to repudiate anything that is said against that Railway and its officials of the nature we have heard from Pandit Das.

Sir, this Bill is one that is more than necessary. Even if it does not prove beneficial, it is necessary only to show that the Railway Board is alive to the interests of its returns. I therefore, support this Bill to be sent to the Select Committee.

Mr. President (The Honourable Sir Abdur Rahim): Sir Andrew Clow.

Dr. Sir Ziauddin Ahmad: Sir, as the closure has not been moved, the Honourable Member should not be asked to reply. If a closure is formally moved, we would like to divide the House.

The Honourable Sir Andrew Clow: As no other Member rose, I was asked to reply.

Mr. President (The Honourable Sir Abdur Rahim): No other Member rose when I called upon Sir Andrew Clow to reply. Sir Andrew Clow.

The Honourable Sir Andrew Clow: Sir, we have had a very long discussion and a lot of it dealt with a Bill which was introduced in 1936 and died in the following year. I recognise that in respect of the two important clauses of this Bill, the one imposing the possibility of imprisonment for fraud and the other relating to an ejection, as these principles were in the old Bill, the opinions received on it may be studied with advantage. But I do not propose to follow Honourable Members in discussing provisions which were included in the old Bill but which find no place here. I would merely repeat that the two features of the old Bill on which criticism concentrated were, firstly, the changing of the burden of proof and, secondly, the right of arrest. Both these proposals have, in deference to public opinion as expressed in this House, been omitted from the present Bill. And as there seems to be some misapprehension on the subject, I would like to add that this Bill creates no new offence. I would, therefore, suggest that we might let the Old Bill rest in peace.

As regards the principle of the Bill, my friend, Sir Ziauddin Ahmad, who has fallen rather into the habit of attributing to me opinions I do not hold, said that the fundamental difference between himself and me was that he believed that the important thing was certainty of detection and I believed that the important thing was severity of punishment. I can assure him that he is quite mistaken and that I am in entire agreement with him in the belief that the certainty of detection is a far more deterrent thing than the severity of punishment.

Sir Cowasji Jehangir (Bombay City: Non-Muhammadian Urban): Have you both worked it out mathematically?

The Honourable Sir Andrew Clow: Neither of us has applied mathematics to it. It is a matter of conviction. But I do not think that is a good reason for not insuring that the punishment can, on occasion, fit the crime.

As regards the main principle of the Bill, which is that we should do what we can to check ticketless travel, I do not think there is much difference of opinion, although I notice that Pandit Nilakantha Das, whom we are glad to welcome back to the House, after referring to ticketless travel as a plague, seemed to be urging on me that we should carry ticketless travellers as a matter of charity. He has confessed that he is a ticketless traveller himself and I can understand his point of view, but I am afraid I cannot agree with him. Sir Ziauddin Ahmad asked me a question and I wondered whether, as an old and practised examiner, he was not following the practice that these examiners have of putting in an examination paper one little question which trips the

unwary candidate, who, although he has studied his subject, is not particularly intelligent. He put me the question: Can you give us the statistics to show that the number of ticketless travellers has gone up or down? It reminded me of an examination paper which I had seen. It contained one question in which candidates were asked to correct a passage in English. The passage contained the following sentence:

"The number of persons who are actually murdered but whom everyone believes died from natural causes is increasing at an alarming rate."

Obviously, I cannot provide any statistics of the number of ticketless travellers. I can only provide statistics of the number that we detect travelling without tickets. And these were the statistics which Pandit Nilakantha Das was quoting. I was not clear what conclusion he drew from them. You cannot judge the efficacy of measures taken against ticketless travellers by comparing the amount of penalty you realise with the cost of your checking staff, because the object of having a checking staff is not merely to recover penalties from those you detect but to deter other people from taking the risk.

Pandit Nilakantha Das: I also said that no proper statistics are given of all the items.

The Honourable Sir Andrew Clow: I have just explained that I cannot give the statistics of the persons who actually travel on our trains without tickets.

Now, let us look at the three simple provisions of the Bill. The first one is designed to deal with the cheat, the person who travels with definite intent to defraud. Now, with great respect to Mr. Aney, for whose support I am grateful, I suggest that a fine of Rs. 100 is not an adequate penalty for such a case even if you can put a man in prison in default. Mr. Lalchand Navalrai spoke as if the penalty of one year's imprisonment was going to be imposed on all the rogues we found. But he is too good a lawyer not to know that you put in the maximum penalty only so that you can deal with the gravest possible cases and that it is very seldom imposed in practice.

Sardar Sant Singh (West Punjab: Sikh): In this connection, may I ask the Honourable Member what were the reasons which induced him to increase the penalty of imprisonment from two months, as in the old Bill, to one year?

The Honourable Sir Andrew Clow: I gave him one reason yesterday and I can give the Honourable Member another now. If we kept the penalty as it was in the old Bill, it would actually reduce the period which could be imposed as imprisonment in default. Mr. Lalchand Navalrai warned me that I might become very unpopular because, he said, people have been travelling without ticket for a long time and it would be a terrible thing

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): I said they had been travelling without imprisonment and punishment.

The Honourable Sir Andrew Clow: Yes, without being punished for quite a long time. I am afraid I am bound to be unpopular with gentlemen of that kind. But I suggest that if people who have been travelling

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without ticket for a long time are brought to book when this Bill passes into law, they do not deserve much sympathy from the House.

The second provision makes very moderate changes in the penalties in other cases. The only new point in this clause on which there has been any criticism, I think, is the provision that persons should be liable to imprisonment in default. That, as I have explained, I regard as really clarifying the position because it was held in the old days that that was already possible under the Act. My Honourable friend, Sir Ziauddin Ahmad, asked me why we did not content ourselves with the provisions in the Criminal Procedure Code and why we wanted to introduce further provisions here. The point is that in regard to fine in the ordinary way, the Criminal Procedure Code applies, but here it has been ruled by more than one High Court that although the money is recoverable as if it were a fine, you cannot treat as if it were a fine when it comes to imposing imprisonment in default.

Then the third and the last provision is that relating to ejection, and I confess I was surprised at the criticisms on this point. For, if I recollect rightly, in the debates of the proceedings of the old Bill, this received very little criticism indeed. My Honourable friend, Mr. Lalchand Navalrai, seemed particularly pained by it. He complained, and I admit there is justice in the complaint, that we let a lot of people get into the trains and he said that we should take much severer steps to keep them out of our stations and our trains. I wish we could do that. I recognise that it is much too easy to get into the trains without a ticket. Sir Ziauddin Ahmad asked why we did not do as the roads traffic do. I am sure he will realise on reflection that the two cases are in no way similar. The roads are in the fortunate position of being like Artemus Ward, who when someone asked him if he could get into his circus free, replied, "No: you can't go in without paying, but you can pay without going in." It is impossible to put up enormous walls or barbed wire fences round every station and so long as we admit persons to our platform on payment of one anna and do not exclude them from our premises altogether, unless they have actually tickets to travel, we cannot, I am afraid achieve the ideal that Mr. Lalchand Navalrai holds before us. But I confess that I found his proposition extraordinarily illogical because he seemed to be saying to me, "Use every means possible to keep men off from trains, but if you find them in the train, do not for goodness sake take them out". In other words, once he manages to get into the train safely, we must let him go on journeying indefinitely and must not check him and eject him from the train.

As regards the motion of my Honourable friend, Maulvi Muhammad Abdul Ghani, for circulation, I am afraid I must oppose that for several reasons. In the first place, although I recognise that he has done his best to accommodate me by fixing an early date, the time would not be sufficient to secure the opinions. In the second place, the whole subject, as the speeches of Honourable Members have shown was canvassed very extensively a few years ago and those opinions are still available. But I would endeavour to meet him as far as I can and assure him that Government will not ask for the Committee to be convened until a few days before

the beginning of the next Session. That will, I hope, give Honourable Members time to study the question and also to consult their constituents.

In conclusions, Sir, I would only say that I am surprised to hear the suggestion that in framing the Bill, I had taken advantage of the absence of certain Honourable Members of this House.

Mr. Lalchand Navarai: That is a fact.

The Honourable Sir Andrew Olow: I may assure my Honourable friend that that is not a fact. When the Bill was framed, the intentions of those Honourable Members were as obscure to me as they probably were to themselves; for they had not received any orders on the subject. Obviously, if I had been prepared to flout public opinion in that way, I should have brought in a very different Bill. There would be no reason why I should not repeat the provisions of the old Bill which, from the point of Railways alone, was a better Bill and a much severer one. We have done our very best to meet all those points, by eliminating those to which this House raised serious objection. There are some who are of opinion that we have gone further than is reasonable, but if, as I hope, Honourable Members come back from their holiday prepared to give their agreement to the Bill now presented before them, I shall feel that that course has been justified

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

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st January, 1941."

The motion was negatived.

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

"That the Bill further to amend the Indian Railways Act, 1880, be referred to a Select Committee consisting of Dr. Sir Ziauddin Ahmad, Maulana Zafar Ali Khan, Mr. G. V. Deshmukh, Khan Bahadur Mian Ghulam Kadir Muhammad Shahban, Mr. J. Ramsay Scott, Mr. B. M. Staig and the Mover, with instructions to report on the opening day of the next Session of the Assembly, and that the number of Members whose presence shall be necessary to constitute a meeting of the Committee shall be four."

The motion was adopted.

THE BERAR LAWS BILL.

The Honourable Sir Muhammad Zafrullah Khan (Law Member): Sir, I beg to move:

"That the Bill to extend certain Acts to Berar be taken into consideration."

Sir, there are two motions on the agenda paper asking for circulation of the Bill and in the alternative for reference to a Select Committee. I shall endeavour to show to Honourable Members that neither of those courses is necessary in respect of this Bill. From the Statement of Objects and Reasons, it may appear that this is a somewhat complicated and intricate measure. That actually is not so. The Statement of Objects and Reasons is detailed no doubt, but it is detailed for the purpose of clarifying the actual position. If Honourable Members will look at sections 46 and 47 of the Government of India Act, 1935, they will find that

[Sir Muhammad Zafrullah Khan.]

under section 46, Governors' Provinces include the Central Provinces and Berar. Then section 47 makes special provisions as to Berar. Section 47 says:

"Whereas certain territory (in this Act referred to as 'Berar') is under the sovereignty of His Exalted Highness the Nizam of Hyderabad, but is at the date of the passing of this Act, by virtue of certain agreements subsisting between His Majesty and His Exalted Highness, administered together with the Central Provinces :

And whereas it is in contemplation that an agreement shall be concluded between His Majesty and His Exalted Highness whereby notwithstanding the continuance of the sovereignty of His Exalted Highness over Berar, the Central Provinces and Berar may be governed together as one Governor's Province under this Act by the name of the Central Provinces and Berar"

Maulana Zafar Ali Khan (East Central Punjab: Muhammadan): May I ask the Honourable Member whether the consent of His Exalted Highness has been obtained before introducing this Bill?

The Honourable Sir Muhammad Zafrullah Khan: Under the agreement it is not necessary. That is exactly what I am trying to explain. The consent has already been obtained by virtue of that agreement to which I am referring. The section further says:

"Now, therefore,—

(1) While any such agreement is in force—

- (a) Berar and the Central Provinces shall, notwithstanding the continuance of the sovereignty of His Exalted Highness, be deemed to be one Governor's Province by the name of the Central Provinces and Berar;
- (b) any reference in this Act or in any other Act to British India shall be construed as a reference to British India and Berar, and any reference in this Act to subjects of His Majesty shall, except for the purposes of any oath of allegiance be deemed to include a reference to Berari subjects of His Exalted Highness;"

Now the position, therefore, is this. By virtue of this section and also of the adaptation of the definition of "British India" in the General Clauses Act, after the 1st April, 1937, all Acts passed which are expressed as being applicable either to British India or to the Central Provinces and Berar are by their own force applicable to Berar and apply to Berar. So that, since that date all legislation of that character has been in operation in Berar by its own force. Acts passed before that date were applied to Berar by notifications under the Foreign Jurisdiction Order in Council. Every one of these Acts which is in the Schedule of the present Bill except Acts covered by para. 4 of the Statement of Objects and Reasons is actually in force in Berar today, but it is in force by virtue of an order under the Foreign Jurisdiction Order in Council. All Acts passed after the 1st April, 1937, which are expressed to be applicable to the whole of British India or are expressed to be applicable to the Central Provinces and Berar are in force in Berar by virtue of section 47 of the Government of India Act and the definition of "British India" under the General Clauses Act.

Maulana Zafar Ali Khan: By virtue of British bayonets.

The Honourable Sir Muhammad Zafrullah Khan: By virtue of the agreement entered into by His Exalted Highness the Nizam, referred to in section 47. And all that this Bill seeks to do is to make those Acts which

are at present operative in Berar to be operative by legislation rather than by notification under the Foreign Jurisdiction Order in Council and to extend certain other Acts to Berar. The inconvenience which it seeks to remedy is this. These Acts are already in force, as I have said, but whenever any notification has to be made under these Acts or rules have to be issued under these Acts or an order has to be promulgated under these Acts, you have to issue those rules or those notifications or those orders in a double set, one set applying to the whole of India or applying to the Central Provinces and another set applying to Berar, because the Berar law is distinct from the original Act. And it is to do away with this anomaly, that is to say, that action has to be taken twice over in respect of all these notifications and orders and rules that this Bill has been introduced. Except for a few minor Acts this Bill does not enforce in Berar anything that is not today in force there. All that it does is that it changes the authority under which these laws are in force. Today these Acts are in force under the Foreign Jurisdiction Order in Council and if this Bill becomes law they will continue to be in force under this Bill. And thus uniformity of procedure in the matter of the issue of notifications and orders will have been secured. Sir, I move.

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

"That the Bill to extend certain Acts to Berar be taken into consideration."

There are two amendments in the name of Maulvi Muhammad Abdul Ghani, one for circulation and the other for Select Committee.

Dr. Sir Ziauddin Ahmad (United Provinces Southern Divisions: Muhammadan Rural): Sir, is he to move both these amendments now or will he move the Select Committee motion if the first one is defeated?

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member knows the practice quite well. He can move both, and they will both be open to debate along with the original motion.

Maulvi Muhammad Abdul Ghani (Tirhut Division: Muhammadan): Sir, I move:

"That the Bill be circulated for the purpose of eliciting public opinion thereon by the 31st January, 1941."

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

"That the Bill be circulated for the purpose of eliciting public opinion thereon by the 31st January, 1940."

With regard to his other amendment The Chair is told that the names of the members of the proposed Select Committee have not yet been submitted.

The Honourable Sir Muhammad Zafrullah Khan: And we have not been asked for any names.

Mr. President (The Honourable Sir Abdur Rahim): Then the debate will proceed now on the original motion and the circulation motion.

Maulvi Muhammad Abdul Ghani: Sir, the object of my moving this motion is that I do not like to stand in the way of Government in the matter of the extension of these various Acts as mentioned in the Schedules.

[Maulvi Muhammad Abdul Ghani.]

But I find that some of these Acts date back even to the year 1850. I do not know why it was not thought fit to extend these Acts during all these years and why there should be any hurry to extend them to Berar just now. It has been pointed out by the Leader of the House that they are in operation there in actual practice. So the purpose is being served and there is no hurry about it. Therefore, the Bill may be circulated for eliciting public opinion. There are very many intricate things in it. For instance, there has been some agreement between His Majesty's Government and the Nizam's Government, and in view of this agreement regarding Berar it is necessary that we also should have an opportunity to study the position so far as these Acts mentioned in the Schedule are concerned. I hope the Leader of the House will accept my modest amendment and the House will also support me.

Mr. M. S. Aney (Berar: Non-Muhammadan): Sir, as the representative of Berar in this House I think I am more interested in this measure than my Honourable friend who has just spoken. This measure does nothing more than remove a certain kind of anomalous position that exists with regard to the application of certain Acts to Berar. Since the date of its cession in the year 1853, Berar has been treated as H. E. H. the Nizam's territory with his sovereignty admitted but administered by the British Government. In order to retain that, the procedure for enacting laws for Berar was that laws made by the Government of India were extended to Berar, not ordinarily as they are extended to other British provinces, but by notifications issued through foreign jurisdiction. In the year 1902, Foreign Jurisdiction Order was enacted and under that Order, all the laws that are passed for British India and which are thought to be necessary to be applied to Berar were applied to Berar through Foreign Department under foreign jurisdiction order. That is the position for laws which have been enacted till the year 1937. Laws which have been mentioned here in Schedule I are those laws—they are laws at present in operation in Berar. They are administered there and everything is done in accordance with those laws; but it is perfectly true, as the Honourable the Leader of the House has told us that, on account of their being applied to Berar through foreign jurisdiction order, they are not so to say British laws but Berar laws. That is the position which at present those laws occupy. The Indian Penal Code as applied to Berar by this law is something separate theoretically from the Indian Penal Code as existing in British India. The law is administered by the same magistrate and by the same High Court; but when the question is of dealing with the law for the people of Berar, then that law is treated as the law as applied to Berar and not as the law which exists in British India. This position was all right till this Government of India Act of 1935 was passed. The sections to which the Honourable the Leader of the House has made reference have clearly laid down that for the purpose of the administration of this Act, Beraris will not hereafter be considered as foreign subjects, except for the purpose of the oath of allegiance. Many of my friends may not probably understand what this little trouble is. Up to this time the procedure is this: before the Act of 1935 was passed, even if I were elected by the people as a representative of the people of Berar for this Legislature, that was not sufficient for me to come and take my seat in this House. H. E. the Governor General had to

issue a notification saying that I am nominated by him to be a Member of this Assembly. Therefore, my name, as Honourable Members might have seen in the List of Members published till last year, used to be shown somewhere between the nominated Members and the elected Members—I was between the two; and I was the sole Member of that kind, who did not share with any other Member, nominated or elected. That was with a view to recognise theoretically the position which the treaties have created with regard to Berar subjects.

Now, on account of this agreement that was passed, to which reference was made in section 46 and section 47 of the Government of India Act, the Act has now recognised this. For the purposes of this Act, the Beraris are to be considered as British subjects and not as foreign subjects. But for the purpose of the oath of allegiance they are to be regarded as foreign subjects. If there is a general election ordered and if I have to stand for the election, and even if I am returned, it will be no longer necessary for H. E. the Governor General to nominate me. I shall come and take my seat here. But unlike other Members who will be taking the oath that they owe allegiance to His Majesty the King Emperor and his successors, I shall have to take another oath besides, an oath of allegiance to H. E. H. the Nizam. I have to take two oaths. That is prescribed in the rules, and that is the reason why everyone from Berar has got two masters to serve. I am not mentioning it as a matter of grievance. I am only stating the fact as it is under the law at present. He has to recognise as his *de facto* sovereign today His Majesty the King Emperor, and as his *de jure* sovereign, so to say, H. E. H. the Nizam; and in both these capacities he occupies his seat. The reason is this: whenever any law is passed, which is passed not by this legislature but by the Provincial Legislature, it becomes applicable to Berar—(because the Federal Legislature has yet to come into existence)—but under one condition. The Governor is supposed to add his signature to that, both as Governor of the Central Provinces and as one representing H. E. H. the Nizam in view of certain conditions in the treaty of agreement between H. E. H. the Nizam and His Majesty's Government. Thus this Governor of the Central Provinces occupies a double capacity. He acts both on behalf of His Majesty and as Governor of Berar to whom powers are delegated under the treaty, in virtue of the terms of the agreement with H. E. H. the Nizam. In that double capacity he remains there.....

Sir Syed Raza Ali: (Cities of the United Provinces: Muhammadan Urban): He too has two masters.

Mr. M. S. Aney: He also is supposed to serve two masters; that is a matter for him to see, not for you or me to say. I think they are pulling on well and there is no trouble for the present. The net result of all this has been that for the purposes of the administration of Berar the distinction which existed before has disappeared and it has become part and parcel of British India. And if that is the position, the question is this: all laws which are now in operation and in force in Berar till the year 1937 are laws operating there as being applied to Berar through foreign jurisdiction. After this Act has come into force, foreign jurisdiction has no jurisdiction there today. The question is, is it right that a jurisdiction which has ceased to exist should be still recognised as being in force for the purpose of getting these particular laws in operation in Berar? That

[Mr. M. S. Aney.]

is an anomalous position, and this Act does nothing more than to say it has ceased to be a fact now and it recognises the fact that Berar is a part of British India and all laws of British India will, hereafter, by virtue of an enactment of this Legislature which is a Legislature in British India have force there. That is the first thing which this law does.

The second thing is this: there have been certain laws in force in Berar and those laws have been repealed in British India; but the notification with regard to the application of that repealing Act has not been issued. Therefore, technically, those laws which are extended to Berar by virtue of the notification are still supposed to be in force, while they are not in existence at all in British India. The thing that is supposed to be the law in Berar does not exist at all in British India, because the repealing Act was passed by this legislature; but owing to some mistake or other or through inadvertence or oversight, no notifications of the repealing Act have been issued under the Foreign Jurisdiction Order, and those laws are still supposed to be in force there. One of the objects of this measure is to do away with this anomaly, and also a Schedule has been added in which all such laws are put together. I do not think it is a complete thing.

Then another thing is this. There are certain laws in the Central Provinces and Berar,—I shall not take more than two or three minutes, Sir, there are a few laws which are well applied to Berar, and they have been modified on account of the existence of certain special laws there. Now, when those laws are to be applied to Berar now as laws in British India, those modifications which exist there have to be recognised, and a scheme of appropriate amendments to those laws has been added in Part III. These things have been done with a view to remove what may be considered a kind of legal anomaly that has existed up to now. There is nothing to be afraid of by this measure, there is nothing on which any useful opinion can be called for by sending out this Bill for opinion. If it is the desire of the House that this Bill should be sent out for circulation, I, personally, have no objection, because nobody will lose anything by keeping this matter in abeyance, but no useful purpose will be served by postponing this piece of legislation. It really removes an anomaly which ought to have been removed much earlier. For these reasons, Sir, I extend my whole-hearted support to the measure which the Honourable the Leader of the House has brought forward.

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. M. S. Aney, one of the Panel of Chairmen), in the Chair.

Maulana Zafar Ali Khan: The problem of Berar has been exercising the minds of the people of India for a very, very long time. Everybody knows that Berar was part of the Hyderabad Dominions under the sovereignty of the Nizam. Everybody knows that for a very, very long time attempts have been made by the Government of Hyderabad to induce the British Government to restore Berar to the possession of its legitimate owner. The father of the present sovereign of Hyderabad, Mir Mehabub

Ali Khan of blessed memory, through his illustrious Prime Minister Sir Salar Jung tried to persuade the British Government in the name of justice, in the name of equity, in the name of political morality, to give up Berar. Then came the time when the late Sir Ali Imam made every effort to induce the Britishers to give up Berar, but they would not. You know what the position of Hyderabad is.....

Mr. Chairman (Mr. M. S. Aney): The Honourable Member is not in order in discussing matters which are matters of treaty relations between His Exalted Highness the Nizam and the Government of India.

Maulana Zafar Ali Khan: Permit me respectfully to point out that they relate to this because.....

Mr. Chairman (Mr. M. S. Aney): I have ruled that the Honourable Member is not in order in discussing matters which are the subject matter of treaty relations between His Exalted Highness the Nizam and the British Government.

Maulana Zafar Ali Khan: All right, Sir. My Honourable friend, Mr. Aney, when speaking on this motion, was pointing out to the Honourable the Law Member that in the Berar a very anomalous position has been created because the people there think that they are serving under two masters, one is His Exalted Highness the Nizam and the other master is the King of England. Therefore, this anomaly ought to be removed, but this anomaly will not be removed as long as the flag of His Exalted Highness the Nizam flows over Nagpur and as long as there is a representative of the Nizam's Government in Nagpur. A Hindu gentleman of the status of a High Court Judge drawing a princely salary of Rs. 6,000 a month is there. The Honourable the Law Member should see to it that the Government have the decency to consult the Nizam on this question. What have you left to him? Nothing left but a flag and there is the Prince of Berar. You admit all that, but still you do not have the decency before introducing a Bill of this sort to consult Hyderabad. You do not do even that. His Exalted Highness the Nizam must have something to say to it. The Government of India have treated H. E. H. the Nizam very shabbily, treated his Government with scant courtesy. The Government of India do not even thank H. E. H. the Nizam for what he has done for the British Government. They thank the ruler of Nepal, but they do not thank H. E. H. the Nizam. He has spent millions in the cause of England, he has shed the blood of thousand of his soldiers in the aid of England.

Mr. Govind V. Deshmukh (Nagpur Division: Non-Muhammadan): Is it the contention of my Honourable friend that this House has no jurisdiction to pass a law like this?

Maulana Zafar Ali Khan: I will recommend to H. E. H. the Nizam's Government that they should make you Vice-chairman.....(Interruption). I am afraid this sort of thing is done to show that a section of my countrymen does not like it. But if there is justice, if there is equity, if there is political morality, then I think something should be done in the way of meeting the ends of justice so far as Hyderabad is concerned. I have been pointing out to you that H. E. H. the Nizam's Government ought to be consulted in this matter. It is the duty of the Government

[Maulana Zafar Ali Khan.]

to consult them as long as the emblem of sovereignty in the Berar is there in the shape of H. E. H. the Nizam's flag, as long as there is the Crown Prince of Berar, as long as there is a representative of H. E. H. the Nizam at the Court of Berar if that Court is H. E. H. the Nizam's Court or the British Sovereign's Court. I have nothing to add. I may have added many things, but perhaps the Chairman may not allow me to do it. I might say that the whole history of Hyderabad is a regular continuous tragedy. Broken pledges, prevarications and base ingratitude. If there is anything of gratitude what should we be doing here? When the Indian Finance Bill comes we say we leave this Assembly because there is no justice here and we want complete independence. So, why should not H. E. H. the Nizam want complete independence? So far as the ten crores of Mussalmans are concerned and a very large section of the Hindus are concerned, they want the Berar to be restored to H. E. H. the Nizam.

Mr. Chairman (Mr. M. S. Aney): Order, Order. The Honourable Member's speech refers to points which are perfectly irrelevant to the question before the House.

Maulana Zafar Ali Khan: All right, Sir. Whatever legal quibbles there may be, whatever the forensic ability of Sir Muhammad Zafrullah Khan may be, whatever your law may say, the naked question remains,— what is law, what is justice? Justice in this world, and law in this world means that you can mould anything to your wishes if you like, if you have got the power. So, you talk of treaties—the treaty between H. E. H. the Nizam and the British Government, treaty between a pigmy and a giant, treaty between the strong and the weak, treaty between sane and insane, treaty between might and right. Could this treaty have any value in our eyes? And you want us to go through this Statement of Objects and Reasons, section so and so, regulation so and so, provision so and so—what is that worth? Restore Berar to H. E. H. the Nizam and that will satisfy us. With these words I sit down.

Dr. P. N. Banerjea (Calcutta Suburbs: Non-Muhammadan Urban): Sir, Berar is in a very anomalous position. If we look at the history of the province we will find that about the middle of the last century Berar was leased to the British Government in India as a security for the payment of certain sums which had to be paid by H. E. H. the Nizam on account of certain soldiers lent to that territory. Then in the time of Lord Curzon the administration of Berar was taken over by the Government of India and as a reward for allowing this administration to be taken over the then Nizam was decorated with the high-sounding title of G.C.B. Indian politicians used to say that those letters stood for "Gave Curzon Berar." However, about two decades later, an attempt was made on the part of H. E. H. the Nizam to get back Berar, but a sharp rebuke was administered to him by Lord Reading on that occasion. Under the Government of India Act, 1935, the position has been made somewhat different, and Berar continues to be in an anomalous position. Now, it is time that the position was made clear. It is no use passing laws which will still cause irritation and unwillingness on the part of some persons to observe these laws. The demand has been made that H. E. H. the Nizam should

be consulted in this matter. That is a very reasonable demand. Further, it is suggested that this Bill should be circulated for eliciting opinion thereon. I do not see any objection to this and I hope the Government will agree to accept this motion.

The Honourable Sir Muhammad Zafrullah Khan: Sir, I think an attempt has been made to import into the debate considerations which are entirely irrelevant to it. We are not concerned here with the merits of the agreement arrived at between His Exalted Highness the Nizam and His Majesty. I have not the slightest doubt that it is a fair and equitable adjustment of points affecting the new arrangement which has been put in force by the Act of 1935 but whatever may be the merits or demerits of that agreement, that is not a subject that we are entitled to debate here or which is relevant to the motion before the House. On one matter I must join issue with one of the Honourable Members who has spoken. During the course of this debate, he said that the help which is being most generously given by H. E. H. the Nizam and his Government towards the prosecution of the war had not been acknowledged and that His Exalted Highness had not been duly thanked. I think not only that it has been equally generously acknowledged but it has been acknowledged on many occasions, the latest being the speech of the Secretary of State in the House of Commons yesterday. But that is neither here nor there. The whole point is this. Divorced from all questions of sentiment, under the Government of India Act an arrangement has been arrived at whereby since the coming into force of the Third Part of that Act, that is to say, from the 1st April, 1937, this House and the Legislature of the Central Provinces have now jurisdiction to legislate for Berar and that has been done for more than three years and as I have said, the object of the Bill before the House is, except to the extent indicated in clause 4 of the Statement of Objects and Reasons, to continue in force in Berar the laws that are already in force there under the Foreign Jurisdiction Order in Council but to continue them now under an Act of this Legislature. That is the only object of this Bill. Nevertheless, if Honourable Members feel that they should like to thresh out this Bill in Select Committee, I have no objection to meet their wishes, though I must confess that I do not see what the Select Committee can thresh out in a measure like this. If Honourable Members entertain any apprehensions that something is being done, the significance of which they have not fully grasped, I am quite prepared that the Bill might be referred to Select Committee. I would, therefore, suggest, that the Honourable Member who has moved this motion for circulation should withdraw this motion and move his motion for Select Committee and then I hope that without any further speeches the House might be able to agree to send this measure, which is really a simple measure, to the Select Committee, in order to satisfy itself that there is nothing more in it than what I have described as the object of the measure.

Maulvi Muhammad Abdul Ghani: In view of the statement made by the Honourable the Leader of the House, I beg leave to withdraw my Amendment.

The amendment was by leave of the Assembly withdrawn.

Maulvi Muhammad Abdul Ghani: Sir, I move:

"That the Bill be referred to a Select Committee consisting of the Honourable Sir Muhammad Zafrullah Khan, Sir George Spence, Mr. Muhammad Azhar Ali, Maulana Zafar Ali Khan, Mr. M. S. Aney, Mr. F. E. James and the Mover, and that the number of Members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Mr. Chairman (Mr. M. S. Aney): Amendment moved:

"That the Bill be referred to a Select Committee consisting of the Honourable Sir Muhammad Zafrullah Khan, Sir George Spence, Mr. Muhammad Azhar Ali, Maulana Zafar Ali Khan, Mr. M. S. Aney, Mr. F. E. James and the Mover, and that the number of Members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The Honourable Sir Muhammad Zafrullah Khan: I accept the motion.

Dr. Sir Ziauddin Ahmad: I do not want to detain the House as the Honourable the Leader of the House has accepted this motion. I just want to say one or two words. Berar has got a very peculiar position. In Hyderabad the people of Berar enjoy all the privileges which the Hyderabad people enjoy. I know definitely that a number of people have applied for scholarships from Hyderabad on the ground that they were residents of Berar and they were given scholarships on this condition. Therefore, the people of Berar cannot have it both ways.

The second point is that courtesy demands that a thing like this ought to have been referred to the representative of Hyderabad in Nagpur or to the Nizam's Government just to see what they have got to say. In order to exercise my vote intelligently, I like to visualise, when the Report of the Select Committee comes in, in what way the general relations are affected, so that we may achieve our object in good spirit.

The Honourable Sir Muhammad Zafrullah Khan: As I have already said, I am willing to accept this motion on behalf of Government. I may point out that no question of courtesy or lack of courtesy whatsoever arises under the arrangement already arrived at. This is the third time that I am trying to explain to the House that by the arrangement already arrived at and embodied in section 47 of the Government of India Act, 1935, this Legislature has the power to pass laws in respect of Berar. I do not see how any question of courtesy arises. If on each occasion a reference had to be made either to the Government of His Exalted Highness the Nizam or his representative in the Central Provinces, it was not necessary to have embodied that arrangement in the Government of India Act. The Government of India Act, having already given statutory effect to the arrangement arrived at, it would be not only unnecessary but foolish to trouble His Exalted Highness the Nizam or his Government over and over again. They have no objection to the procedure that is being adopted and I do not see where the question either of courtesy or of failure to take any precautions, which ought to have been taken, arises.

Mr. Chairman (Mr. M. S. Aney): The question is:

"That the Bill be referred to a Select Committee consisting of the Honourable Sir Muhammad Zafrullah Khan, Sir George Spence, Mr. Muhammad Azhar Ali, Maulana Zafar Ali Khan, Mr. M. S. Aney, Mr. F. E. James and the Mover, and that the number of Members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The motion was adopted.

Mr. Chairman (Mr. M. S. Aney): Sir Ramaswami Mudaliar.

The Honourable Sir Muhammad Zafrullah Khan (Leader of the House): Sir, the next motion regarding the amendment of the Indian Sale of Goods Act, 1930, which stands in the name of the Honourable the Commerce Member will be made on Monday next.

Mr. Chairman (Mr. M. S. Aney): Mr. Tyson.

Mr. J. D. Tyson (Secretary, Department of Education, Health and Lands): Sir with your permission, I will not move the motion regarding the New Delhi Mosque Bill today, as some Honourable Members who are particularly interested in the Bill wish to have some further information.

THE INDIAN INCOME-TAX (AMENDMENT) BILL.

The Honourable Sir Jeremy Raisman (Finance Member): Sir, I move:

"That the Bill further to amend the Indian Income-tax Act, 1922, and to make certain transitory provisions with respect to the operation of that Act on the coming into force of Part II of the Indian Income-tax (Amendment) Act, 1939, be taken into consideration."

Sir, Honourable Members will remember that this motion was down on the agenda on an earlier date in this Session and that I did not move it. The reason for that was that although I am quite satisfied that this Bill is of a simple nature, nevertheless it had not been before Members of the House long enough for them to be able to study it and to satisfy themselves that there was nothing involved which required a reference to and study by a Select Committee. It is, unfortunately, impossible to deal with the subject of income-tax in language which the man in the street can understand and, therefore, the Bill was provided not only with a statement of objects and reasons but with very full notes on clauses. The scope of this Bill is, in the first place, a few clauses of a purely machinery character, of which perhaps the one that will most interest the House relates to the provisions regarding pending cases before the Commissioners of Income-tax on the date when the new tribunal will begin its duties. It is hoped that that tribunal, in connection with which certain appointments have already been made, will begin to function in a fairly short time now, but when it begins, there will be on the files of the Commissioners of Income-tax various applications,—appeals, applications for reference to High Courts, and so on and it is necessary to make a provision as to how those cases should be disposed of, and clause 14 of this

[Sir Jeremy Raisman.]

Bill is a machinery clause which provides for the manner of disposing of that purely temporary problem. The clauses which are of a substantive character, consist almost entirely of measures of relief which we have decided to grant in response to representations which have been made from time to time on behalf of the tax-payer; and it is because I was so confident that the Honourable Members concerned would realize the beneficent character of this Bill that I put it down for consideration at an early stage and hoped to dispose of it quite early in the Session; but I realize that Honourable Members are not in a position to satisfy themselves fully at such short notice.

However, I now understand that Honourable Members have had the time to study the Bill and to consult their constituents and that they recognize that the Bill consists in the main of measures designed to give certain kinds of relief for which we have been asked continually for some time. There is only one exception in the clauses of a substantive effect; there is one clause which is not of the nature of a relief to the taxpayer and that is clause 8 which gives the power to impose a penalty on a class of assessee which hitherto, owing to the anomalous operation of the existing provisions, has been entirely immune from penalties which are applicable to all other assessees in certain circumstances. The type of assessee which has hitherto been immune is the registered firm, and the immunity is due to the fact that, in effect, the final result of the assessment is that the tax is assessed not upon the firm but upon the partners and the wording of the existing provisions of the Act is such that it is in fact impossible to levy a penalty on the partners if the return made on behalf of the registered firm is deliberately inaccurate. That is an immunity, as I say, which applies to no other kind of assessee and clause 8 removes that anomaly. That, Sir, is all I think I need say in explanation of this Bill; but if there are any points on which Honourable Members would desire further enlightenment, we shall be glad to afford it. There is, I know, an amendment down on the paper and I do not think that that will cause any difficulty.. Sir, I move.

Mr. Chairman (Mr. M. S. Aney): Motion moved:

"That the Bill further to amend the Indian Income-tax Act, 1922, and to make certain transitory provisions with respect to the operation of that Act on the coming into force of Part II of the Indian Income-tax (Amendment) Act, 1939, be taken into consideration."

Sir Cowasji Jehangir (Bombay City: Non-Muhammadan Urban): Mr. Chairman, the Honourable the Finance Member has just stated that though he has not explained it in the statement of objects and reasons, clause 8 does make an effective change. I would like to point out to the Honourable House that there is another rather substantial change made in the Bill and that is the definition of "company" in clause 2 which does not fall within the category as explained in the statement of objects and reasons as measures to give relief to the taxpayer

The Honourable Sir Jeremy Raisman: We claim that it does.

Sir Cowasji Jehangir: . . . and I would just like to point out how it does not. You will perhaps remember that when the Excess Profits Bill was under consideration, I had occasion to point out that in that Bill it was sought to change the definition of "company" and the result would have been that the Income-tax Act would have one definition of company and the Excess Profits Tax Act would have another definition. Clause 2 of the Bill changes the definition of "company" in the Income-tax Act to make it in conformity with the definition now in the Excess Profits Tax Act. I had then occasion to point out that the change in the definition made a substantial difference to the taxpayer.

Mr. F. E. James (Madras: European): They did give notice that they 3 P.M. would do it on this.

Sir Cowasji Jehangir: I pointed out then that it made a substantial change to the tax-payer and I want to repeat it today.

The Honourable Sir Jeremy Raisman: We pointed out then, Sir, that this change was being made in the interests and for the relief of the majority of tax-payers affected by it.

Sir Cowasji Jehangir: If the Honourable Member would just listen to what I have to say, he will see that it does make a difference to a certain class of tax-payers.

Now, Sir, in my Minute of Dissent on the Excess Profits Tax Bill I actually stated the difference that the change in definition would make. Although I was unable to be present in the House when the Bill was considered, I did ask in my Minute of Dissent that this definition should not be changed. Sir, I find that when the report of the Select Committee was printed in the debates, the Minutes of Dissent were left out. Therefore, when Honourable Members want to look up the Minutes of Dissent, they cannot find them in the printed records of this House but they have to go to the Record Office, to get them. I would like to point out to the Finance Member and to other Members that, when the authorities print the Select Committee's report in the debates, they might as well print the dissenting minutes because the report of a Select Committee is not complete unless the dissenting minutes are also printed.

The Honourable Sir Jeremy Raisman: I understand that the official report does not contain the Select Committee's report either.

Sir Cowasji Jehangir: Why should it not be printed in the official report? It is laid on the table of the House. The dissenting minutes are also laid on the table of the House along with the Select Committee's report and are circulated to this Honourable House when the Bill is under consideration. It is on the general principle that I am talking. It struck me only when I wanted to look up my own Minute of Dissent and I could not find it and I had to go to the Records Office to get a copy of it. Ten years hence I might not be able to get it at all. I am pointing

[Sir Cowasji Jehangir.]

this out only by way of a suggestion. Perhaps Sir George Spence would take a note of it. But I do think that the report is not complete without the Minutes of Dissent and in future I trust they will be printed.

Now, I come to the point before the House. This is what I actually stated in my dissenting note and I would like the House to take note of it. This is exactly what I said:

"From the definition of a company as given in the Income-tax Act, it is clear that a company, which is incorporated in a native State and which does not carry on business in British India, is not a company within the meaning of that definition. If such a company capitalises a part of its accumulated profits and reduces its capital by return of capital, than the amount of such capital received by a shareholder, who is a resident in British India, is not subjected to income-tax."

Now, by this amendment, you will subject that income to income-tax and, therefore, you are making a substantial change with regard to a certain class of tax-payers. As I said, I pointed that out when we were discussing the Excess Profits Tax Bill. I then put it in my Minute of Dissent and I desire to point it out again that this definition has made a difference to a certain class of tax-payers. There is no amendment on the paper. And if the House wishes to do anything in this behalf, it should throw out clause 2. If clause 2 is negatived, then this change will not have the effect I have tried to explain. Therefore, it is not correct to say that only clause 8 of this Bill has an adverse effect upon tax-payers.

Then, Sir, I come to clause 7 of the Bill and for the concession given I would like to thank the Honourable the Finance Member. I always like to admit a concession given and to thank those who give it. I equally desire that when we want a little concession, my Honourable friend, the Finance Member, will give it.

The Honourable Sir Jeremy Raisman: You are asking the House to take the jam and reject everything else.

Sir Cowasji Jehangir: It is more rare than ever to get jam from the Finance Member. So far as my experience goes,—I do not know the experience of my Honourable friends round about me—, we have had very little jam from the Finance Member. I do not mean the present Finance Member in particular, but all the Finance Members in the past. The jam comes to the Finance Member from the tax-payers. That is where the jam comes from. But for little mercies which are just and fair and which the Finance Member gives without our asking in this House, we are grateful. But there is another point in section 23-A. of the Act to which I would like to make a reference. I particularly desire that Honourable Members should take note of it because it appears to me to be inconsistent with the spirit of the Income-tax Act. I refer to the words 'shall be deemed to have been distributed' in section 23A. Without reading the whole section, may I in a few words explain what these innocent little words mean. In the case of certain companies, which we used to call private companies under the old Act, the income-tax authorities can compel the company to distribute 60 per cent. of its distributable profits

Mr. J. F. Sheehy (Government of India: Nominated Official): They cannot compel the company to distribute, but they can treat the profits as distributed.

Sir Cowasji Jehangir: They can make them pay income-tax or super-tax on it.

Mr. J. F. Sheehy: It is only super-tax that this section deals with.

Sir Cowasji Jehangir: I am talking of the company now. The income-tax authorities can force it to distribute 60 per cent

Mr. J. F. Sheehy: On a point of explanation The Honourable Member is wrong. The company in the ordinary way pays income-tax and super-tax on the whole of its profits whether they are distributed or not.

Sir Cowasji Jehangir: I apologise to the Honourable Member. He is right and I stand corrected. When you make out your balance-sheet and say that you have a profit of Rs. 100 you have to pay income-tax and super-tax on it. But suppose Rs. 100 is a distributable profit, then only Rs. 60 out of that Rs. 100 has to be distributed to your share-holders. The shareholders then have to pay super-tax on that portion of the Rs. 60 that each one gets. Now, this Bill provides that you shall pay super-tax whether you have received that dividend or not.

The Honourable Sir Jeremy Raisman: That is the existing Act: not this Bill

Sir Cowasji Jehangir: It is the section that we are touching. It says: "shall be deemed to have been distributed". Therefore, a company may not choose to distribute its profits and may not choose to give any dividends because there may be other losses in the previous years that have to be made good. But whether it distributes them or not, it is taken for granted that the poor shareholder has received the amount in his pocket and is made to pay the super-tax. I think that is unfair. I pointed this out when the Income-tax Act was being amended and I am pointing it out again now that this section is being again amended. I can only express the hope that the Honourable the Finance Member will take this point into consideration when he will have to amend the Act again and I am sure he will have to amend the Act pretty often

The Honourable Sir Jeremy Raisman: It will demand a complete repeal of that clause.

Sir Cowasji Jehangir: No. I understand why it was put in. It was explained to me. I take it that there are hard cases and as regards such cases, you have no right to give relief under this Act. If a company has made a big loss in one year and in another year it choose not to pay any dividend in order to write off the loss, surely that is a hard case.

[Sir Cowasji Jehangir.]

If the shareholders have not got any dividend, it is unfair to make them still pay super-tax on that dividend. Why should you do so? I can understand a company not paying dividend deliberately not to write off loss but to increase its capital and then distribute that capital by way of bonus shares so as to escape super-tax in future. Such cases could be caught.

The Honourable Sir Jeremy Raisman: Cases of loss are covered by this section.

Mr. J. F. Sheehy: The section says that the Income-tax Officer shall apply it:

"Unless he is satisfied that having regard to losses incurred by the company in earlier years or to the smallness of the profit made, the payment of a dividend or a larger dividend than that declared would be unreasonable. . . ."

Sir Cowasji Jehangir: That is another point. That is a point where you compel him to adhere to the distribution of 60 per cent. You may see that there are reasons for him not to distribute 60 per cent., but only 20 or 30 per cent.

Mr. J. F. Sheehy: You must give us a specific case.

Sir Cowasji Jehangir: Suppose in that particular year the profits are such that you say that they should be distributed. But the company has a right to say that in this year no doubt I have had a bumper year, but two years ago or three years ago, I had two very bad years and I must make up that loss. That will not give relief to that case according to you.

Mr. J. F. Sheehy: It is covered by the section.

Sir Cowasji Jehangir: I do not think so, because your Income-tax officer will say, you have to pay that dividend, but if you choose not to pay that dividend, the State must not lose the super-tax on it and, therefore, it must be taken to have been distributed. Your case is a different one. That is where the Income-tax authorities themselves realise that to make the company distribute 60 per cent. of the profits would be unfair. That is another point. But having come to the conclusion that 60 per cent. of the profits should be distributed in that particular year regardless of profits in, or losses, in other years, then if the company does not pay that dividend you say it is taken as distributed and the shareholder is called upon to pay super-tax. This is not the first time that I point it out. I will again point it out and request you to look into it and consider it and if you come to the conclusion that there is something in what I say, it must be adopted.

The Honourable Sir Jeremy Raisman: I have no doubts about the position.

Sir Cowasji Jehangir: If my Honourable friend will take up that attitude

The Honourable Sir Jeremy Raisman: If the Honourable Member has a concrete case, which will bring out the hardship which he is trying to put forward, I shall be very glad to look into it, but in case as he is stating it in general terms he has entirely failed to show me any reason why the section should be changed.

Sir Cowasji Jehangir: I will explain it now. I do not want to waste the time of the House by repeating. But since that particular question has been raised, I shall reply briefly. A company makes a profit of say Rs. 100 in a year. It has made losses of Rs. 100 three or four times in previous years. In that particular year when it has made a profit of Rs. 100, no doubt it is a fair percentage of profit and the income-tax authorities say that the company should distribute 60 per cent. of that profit. The company pays its super-tax and income-tax but it does not distribute for that particular year any dividend because it wants to make good the loss incurred in previous years. For that particular year the Income-tax authorities will say that the dividend will be deemed to have been distributed. He will not look into the previous years when losses were incurred, but in that particular year when profit was made, he will insist on distribution of 60 per cent. of the profits.

Mr. J. F. Sheehy: If the Honourable Member gives me a specific case, I shall look into it.

Sir Cowasji Jehangir: I only wanted to draw the attention of the Government to this. If you find that my argument is reasonable I hope you will remedy this defect next time you bring forward an amending Bill. By no means do anything which will make you lose your revenue, but be fair. I shall be obliged and I shall say no more. With these remarks, Mr. Chairman, I have great pleasure in supporting this Bill and I do trust and hope that when all amendments to the Income-tax Act come in the future, they will be of the same character and that we shall always have occasion to thank the Government and the Finance Department for giving small concessions here and there.

The Honourable Sir Jeremy Raisman: Jam tomorrow.

Sir Cowasji Jehangir: Believe me, Mr. Chairman, when I say that on this very Bill itself, I have received from my constituents fairly long notes on what ought to be done still further but knowing that after all it is only fair to Government that we should only move amendments within the four corners of the amending Bill, I refrain from bringing those grievances to the notice of the Honourable the Finance Member on this particular occasion. But that does not mean that I may not be compelled to do it on another occasion. Even in this section many amendments were suggested to me which I have not even brought to the notice of the Finance Department because I do not think it was the right occasion to do so.

Mr. F. E. James: I am sure in view of that tribute you will get full consideration

[Sir Jeremy Raisman.]

Sir Cowasji Jehangir: I hope the Honourable the Finance Member has heard the remarks of my Honourable friend, Mr. James. With these remarks, Mr Chairman, I give my support to the Bill.

The Honourable Sir Jeremy Raisman: Sir, in regard to the last words that fell from my Honourable friend, I must congratulate him on the decision not to put forward at this stage amendments to carry out all the additional boons which his constituents considered might fairly have been handed out at this moment. The effect of a procedure of that kind would be to so terrify the Finance Department that they would be very nervous of proposing concessions in future. After all, Sir, we know that there are a large number of forms of relief or concessions which taxpayers agitate for and we do attempt to meet them so far as we think is reasonable and so far as we can afford to from time to time. If we were to find that whenever we came forward with measures of relief which we considered reasonable, each time we gave concessions, we found that on those occasions the scope of the Bill was always enormously enlarged, then I am afraid we should refrain from exercising the initiative to bring forward measures of that kind.

Now, Sir, I do not wish to enter into arguments on the point raised by my Honourable friend. I merely wish to inform the House that in regard to the first point, namely, clause 2 relating to companies it is still the case, although I admit that there is a type of case such as that mentioned by my Honourable friend in which the amendment has the effect of extending the scope of taxation, nevertheless it definitely remains the fact that the broad effect of this clause is to grant relief to a number of cases of considerable hardship. And in the cases in which it has the effect of extending the scope of our taxation I am satisfied and the Select Committee on the Excess Profits Tax Bill were satisfied that there was no good reason why tax should not be paid in British India in that type of case. As regards the other class of which my Honourable friend spoke, most of his remarks related to section 23-A as it exists. And I merely want to remind the House at this moment of what is the whole object of that section which has been in the Act now since 1930. It is the main provision, if not the sole provision, in our Act for dealing with that form of evasion which is known as the one-man company, whereby an individual by forming a company which in effect still consists merely of himself with perhaps an office-boy or two holding one share, obtains a privileged rate of taxation which applies to companies, in respect of super-tax particularly, and then proceeds so to manipulate the profits of various years that at no stage do they come into his hand in the form of income. He so arranges it that the profits are put into various kinds of reserves and funds and they never reach him except in a form which he is able to argue is capital and not income. This was a device which had been resorted to in the United Kingdom by many very wealthy persons over a period of time and it has happened also in this country; and the only way in which the Revenue was able to counter this evasion was to say, "We shall not recognise one-man companies", and the way they did it was to say that if the profits of any year were not distributed they would immediately, unless there was good reason such as is mentioned in the section,

treat a reasonable proportion of the profits as having been actually distributed. That cuts out all further evasion. It does not matter what your millionaire does with his funds after that; he has to pay tax that year if the profits accrue to his so-called company.

That, Sir, is the main object of the section, and unless you can say that a distribution is deemed to have been made and the dividends are deemed to have been distributed whether they have been distributed or not, the section loses its whole point and you are deprived of this weapon against one of the most objectionable forms of evasion, namely, evasion of tax by that class of taxpayer who is best able to bear it. That, Sir, is all I have to say on the point raised by my Honourable friend.

Mr. Chairman (Mr M. S. Aney): The question is:

"That the Bill further to amend the Indian Income-tax Act, 1922, and to make certain transitory provisions with respect to the operation of that Act on the coming into force of Part II of the Indian Income-tax (Amendment) Act, 1939, be taken into consideration."

The motion was adopted.

Clauses 2 to 9 were added to the Bill.

Mr. Chairman (Mr M. S. Aney): The question is:

"That clause 10 stand part of the Bill."

Mr. E. L. C. Gwilt (Bombay; European): Sir, I move:

"That in part (a) of sub-clause (1) of clause 10 of the Bill, in the proposed proviso, for the word 'five', occurring in the eighth line, the word 'ten' be substituted."

The clause at present appearing in the Bill provides for permission being accorded in certain circumstances to a fund maintained by an employer whose principal place of business is not in British India notwithstanding that a proportion, not exceeding five per cent., of the employees is employed outside India.

There are many firms and companies operating in India employing staffs in India of (say) 20 or 30 people, most of whom must, in the nature of things, be Indian employees but not a few of such firms or companies might have an office in Burma employing two or three persons.

If the limit of non-residents is only to be five per cent., any fund maintained by such a firm or company would not be accorded recognition as a provident fund for the purposes of the Indian Income-tax Act and we suggest that the proposed limit of five per cent. might very reasonably be increased to ten per cent. The employees in Burma may very well themselves be Indians and it is only reasonable that these employees, as well as the larger number of employees in India, should have the benefits of an established recognised provident fund. I hope Government will agree with me and that the House will accept it.

Mr. Chairman (Mr M. S. Aney): Amendment moved:

"That in part (a) of sub-clause (1) of clause 10 of the Bill, in the proposed proviso, for the word 'five', occurring in the eighth line, the word 'ten' be substituted."

The Honourable Sir Jeremy Raisman: Sir, I agree that the extension asked for is reasonable, and I am prepared to accept the amendment.

[Mr. E. L. C. Gffilt.]

Mr. Chairman (Mr M. S. Aney): The question is:

"That in part (a) of sub-clause (1) of clause 10 of the Bill, in the proposed proviso, for the word 'five', occurring in the eighth line, the word 'ten' be substituted."

The motion was adopted.

Mr. E. L. C. Gwilt: Sir, I move:

"That in part (b) of sub-clause (1) of clause 10 of the Bill, for the proposed proviso, the following be substituted:

'Provided that an employee who retains his employment while serving in His Majesty's Forces or when taken into or employed in the national service under the National Service (European British Subjects) Act, 1940, or the National Service (Technical Personnel) Ordinance, 1940, may, notwithstanding that he receives from the employer no salary or a salary less than he would have received had he not entered His Majesty's Forces or been so taken into or employed in the national service, contribute to the fund during his service in His Majesty's Forces or while so taken into or employed in the national service a sum not exceeding the amount he would have contributed had he continued to receive from the employer the same salary (including increments, if any) as he would have received had he not entered His Majesty's Forces or been taken into or employed in the national service.'

The proviso as it stands refers only to those employees of a company who may have joined His Majesty's forces but does not take account of such of them as have been taken into national service under the National Service (European British Subjects) Act, 1940, or the National Service (Technical Personnel) Ordinance of 1940. Neither does it recognise such contributions made to a provident fund which were less than the amount which an employee was paying into that fund at the time that he left his employer's service for the services now mentioned in the proposed amendment to the clause. But a man may well have enlisted in the ranks of His Majesty's forces as men that will be affected by this clause have already done, and as he may have no income other than that which may or may not be paid to him by his firm whilst he is in those services, he may not be in a position to contribute the same amount to the fund as he was contributing at the time he left his employer's service. He will naturally be anxious to pay to the fund what he can. So we ask for the inclusion of the words "a sum not exceeding the amount he would have contributed had he continued to receive from the employer the same salary". He may, too, be due for an increment in salary and as this, in the case of a married man, would be a matter of the greatest importance to him, we have asked that should a firm pay a man what would have been an increment in the ordinary way, had he remained in their service, this should be taken into account. With your permission, Sir, there is one question I would ask of the Honourable the Finance Member. As will be seen from sub-clause (2) of this clause, the recognition of employee's payments has been made retrospective to the 3rd September, 1939; and I must express gratitude on behalf of those who joined His Majesty's forces before the enactment of the National Service (European British Subjects) Act, 1940, and on and after the war broke out. The clause, however, applies only to the contributions of employees and I am anxious to know whether it is the intention of the Honourable the Finance Member that the payments of employers' contributions shall likewise be retrospective to the 3rd September, 1939. Sir, I move.

Mr. Chairman (Mr M. S. Aney): Amendment moved:

"That in part (b) of sub-clause (1) of clause 10 of the Bill, for the proposed proviso, the following be substituted:

'Provided that an employee who retains his employment while serving in His Majesty's Forces or when taken into or employed in the national service under the National Service (European British Subjects) Act, 1940, or the National Service (Technical Personnel) Ordinance, 1940, may, notwithstanding that he receives from the employer no salary or a salary less than he would have received had he not entered His Majesty's Forces or been so taken into or employed in the national service, contribute to the fund during his service in His Majesty's Forces or while so taken into or employed in the national service a sum not exceeding the amount he would have contributed had he continued to receive from the employer the same salary (including increments, if any) as he would have received had he not entered His Majesty's Forces or been taken into or employed in the national service.'

Mr. J. F. Sheehy: Sir, Government accept this amendment. As regards the assurance asked for by the Honourable Member, I can give it to him; but I should like to make it clear that the amendment is permissive, and it is not a question of making an employer contribute, but that he may contribute up to the amount contributed by the employee with retrospective effect from the 3rd September, 1939.

Mr. Chairman (Mr M. S. Aney): The question is:

"That in part (b) of sub-clause (1) of clause 10 of the Bill, for the proposed proviso, the following be substituted:

'Provided that an employee who retains his employment while serving in His Majesty's Forces or when taken into or employed in the national service under the National Service (European British Subjects) Act, 1940, or the National Service (Technical Personnel) Ordinance, 1940, may, notwithstanding that he receives from the employer no salary or a salary less than he would have received had he not entered His Majesty's Forces or been so taken into or employed in the national service, contribute to the fund during his service in His Majesty's Forces or while so taken into or employed in the national service a sum not exceeding the amount he would have contributed had he continued to receive from the employer the same salary (including increments, if any) as he would have received had he not entered His Majesty's Forces or been taken into or employed in the national service.'

The motion was adopted.

Mr. Chairman (Mr M. S. Aney): The question is:

"That clause 10, as amended, stand part of the Bill."

The motion was adopted.

Clause 10, as amended, was added to the Bill.

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

Clause 1 was added to the Bill

The Title and the Preamble were added to the Bill.

The Honourable Sir Jeremy Raisman: Sir, I move:

"That the Bill, as amended, be passed."

Mr. Chairman (Mr M. S. Aney): The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Friday, the 22nd November, 1940.