

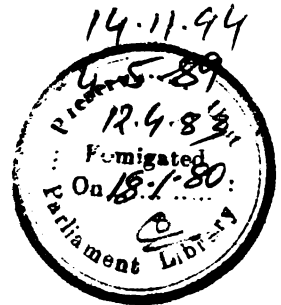
8th November 1940

THE
LEGISLATIVE ASSEMBLY DEBATES
(Official Report)

Volume IV, 1940

(5th November to 18th November, 1940)

TWELFTH SESSION
OF THE
FIFTH LEGISLATIVE ASSEMBLY,
1940



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CONTENTS.

VOLUME IV.—5th November to 18th November 1940.

	PAGES.		PAGES.
TUESDAY, 5TH NOVEMBER, 1940,—		TUESDAY, 5TH NOVEMBER, 1940,—<i>contd.</i>	
Members Sworn	1—2	Certain Papers <i>re</i> Motor Vehicles Rules laid on the Table	88
Starred Questions and Answers	2—8	Motion <i>re</i> Election of a Member on the Council of the Indian Institute of Science, Bangalore	88—89
Unstarred Questions and Answers	8—19	The Repealing and Amending Bill—Introduced	89
Statements laid on the Table	19—69	The Indian Registration (Amendment) Bill—Introduced	89
Deaths of Raja Sir Vasudeva Rajah and Mr. Surryya Kumar Som	70—71	The Code of Civil Procedure (Amendment) Bill—Introduced	89—90
Motion for Adjournment <i>re</i> —		The Code of Criminal Procedure (Amendment) Bill—introduced	90
Failure of the Government of India to evoke whole-hearted enthusiasm in themation to fight the Totalitarian States—		The Indian Works of Defence (Amendment) Bill—Introduced	90
Leave refused	71—72	The Indian Navy (Discipline) Amendment Bill—Introduced	90
Dacca Mail disaster—		The Indian Navy (Discipline) Second Amendment Bill—Introduced	90—91
Negatived	73, 77—78 105—26	The Indian Merchandise Marks (Amendment) Bill—Introduced	91
Expansion of H. E. the Viceroy's Executive Council and the Constitution of War Advisory Committee—Leave refused	73—75	The Indian Companies (Amendment) Bill—Introduced	91
Non-Association of Non-Official Representative Indians with the Eastern Group Conference—Disallowed	75—76	The War Donations and Investments (Companies) Bill—Introduced	91
Refusal of permission to Mr. Bhulabhai Desai and to Mr. Asaf Ali to visit Waziristan—Leave refused	76—77	The Cantonments (Amendment) Bill—Introduced	92
H. E. the Governor General's assent to Bills	78	The Reserve Bank of India (Third Amendment) Bill—Introduced	92
Certain Home Department Documents laid on the Table	79—81	The Motor Spirit (Duties) Amendment Bill—Introduced	92
Statement <i>re</i> Net Earnings of New Railway Lines	81—82		
Certain Papers <i>re</i> the Agricultural Produce Cess Act laid on the Table	83—88		

	PAGES.
TUESDAY, 5TH NOVEMBER,	
1940,— <i>concl'd.</i>	
The Indian Income-tax (Amendment) Bill—Introduced	92—93
Finance Member's statement on the financial position	93—101, 102-03
The Indian Finance (No. 2) Bill—Introduced	101—02
Relinquishment of Simla for sittings of the Legislative Assembly	103—05
WEDNESDAY, 6TH NOVEMBER,	
1940,—	
Starred Questions and Answers	127—40
Unstarred Questions and Answers	140—44
Motion for Adjournment <i>re</i> —	
Failure to call a Session of the Legislative Assembly between the period April 9 to October 1940—Ruled out of order	145—48
Failure of Government to enable Mr. Subhas Chandra Bose to attend the Session of the Legislative Assembly—Ruled out of order	148—49
Lawlessness in Sind—Disallowed	149—50
Placing of large orders of purchases with a few individuals—Ruled out of order	150—52
Financial arrangements with His Majesty's Government <i>re</i> payment for the purchase of Materials from India—Ruled out of order	152—53
Opinions of the Honourable Member for Railways and Communications on the D'Souza Report—Disallowed	153—54
Delay in holding the Session of the Legislative Assembly—Leave refused	155

	PAGES.
WEDNESDAY, 6TH NOVEMBER,	
1940,— <i>cont'd.</i>	
Motion for Adjournment <i>re</i> — <i>cont'd.</i>	
Huge expenditure without sanction of the Legislature—Disallowed	155—56
Non-holding of the Session of the Legislative Assembly for a long time—Disallowed by the Governor General	156—57, 183
Resolution <i>re</i> —	
Fiscal Policy of the Government of India—Negatived	157—83
Appointment of a Permanent Muslim Pilgrim Officer in the Secretariat of the Government of India—Discussion not concluded	183—96
THURSDAY, 7TH NOVEMBER,	
1940,—	
Member Sworn	197
Starred Questions and Answers	197—209
Unstarred Question and Answer	209
Motion for Adjournment <i>re</i> disallowance of a motion for Adjournment by the Governor General after it was allowed by the Chair—Disallowed	210
Statement of Business	211
Nomination of the Panel of Chairmen	211
The Indian Merchant Shipping (Amendment) Bill—Referred to Select Committee	211—21
The Code of Criminal Procedure (Amendment) Bill (Amendment of section 4)—Introduced	221
The Code of Criminal Procedure (Amendment) Bill (Amendment of section 250)—Introduced	221

	PAGES.		PAGES.
THURSDAY, 7TH NOVEMBER, 1940,— <i>contd.</i>		FRIDAY, 8TH NOVEMBER, 1940,— <i>contd.</i>	
The Indian Evidence (Amendment) Bill—Introduced	221	The Reserve Bank of India (Third Amendment) Bill—Passed	263—63
The Indian Railways (Second Amendment) Bill—Introduced	222	The Motor Spirit (Duties) Amendment Bill—Passed	268—69
FRIDAY, 8TH NOVEMBER, 1940,—		The Indian Merchandise Marks (Amendment) Bill Referred to Select Committee	270—71
Starred Questions and Answers	223—31	MONDAY, 11TH NOVEMBER, 1940,—	
Unstarred Questions and Answers	231—33	Starred Questions and Answers	273—83
Statements laid on the Table	233—34	Transferred Starred Questions and Answers	283—97
Election of a Member of the Standing Finance Committee	234	Election of a Member to the Standing Finance Committee	297
The Berar Laws Bill—Introduced	234—35	The Indian Finance (No. 2) Bill—Discussion on the motions to consider and to circulate not concluded	298—347
The Indian Railway (Amendment) Bill—Introduced	235	TUESDAY, 12TH NOVEMBER, 1940,—	
The Excess Profits Tax (Amendment) Bill—Introduced	235	Starred Questions and Answers	349—63
The New Delhi Mosque Bill—Introduced	235	Unstarred Questions and Answers	363—66
The Indian Works of Defence (Amendment) Bill—Passed	236—37	Statements laid on the Table	367
The Indian Navy (Discipline) Amendment Bill—Passed	237—42	Election of a Member to the Council of the Institute of Science, Bangalore	367
The Indian Navy (Discipline) Second Amendment Bill—Passed	242	The Indian Finance (No. 2) Bill—Discussion on the motions to consider and to circulate not concluded	367—422
The Cantonments (Amendment) Bill—Passed	243—47	WEDNESDAY, 13TH NOVEMBER, 1940,—	
The Repealing and Amending Bill—Passed	248—54	Starred Questions and Answers	423—36
The Indian Registration (Amendment) Bill—Passed	254—56	Motion for Adjournment re prohibition of visitors from entering the Khyber Pass—Leave to move refused	436—38
The Code of Civil Procedure (Amendment) Bill—Passed	256—57	Committee on Petitions	439
The Code of Criminal Procedure (Amendment) Bill—Passed	257—58	The Indian Sale of Goods (Amendment) Bill—Introduced	439
The Indian Companies (Amendment) Bill—Passed	258—59		
The War Donations and Investments (Companies) Bill—Passed as amended	259—63		

	PAGES.		PAGES.
WEDNESDAY, 13TH NOVEMBER, 1940,—contd.		SATURDAY, 16TH NOVEMBER, 1940,—	
The Indian Finance (No. 2) Bill—Discussion on the motions to consider and to circulate not concluded .	439—92	Starred Questions and Answers	561—56
FRIDAY, 15TH NOVEMBER, 1940,—		Unstarred Questions and Answers	587—601
Starred Questions and Answers	493—506	Motion for Adjournment <i>re</i> fall in prices of Ground-nuts—Disallowed	608—69
Resolution <i>re</i> —		Presentation of the Report of the Public Accounts Committee	609—101
Appointment of a Permanent Muslim Pilgrim Officer in the Secretariat of the Government of India—Withdrawn .	506—14	The Indian Finance (No. 2) Bill—Discussion on the motions to consider and to circulate not concluded .	610—53
Scrapping of the London Coffee Market Expansion Board by the Indian Coffee Cess Committee—Withdrawn .	514—31	MONDAY, 18TH NOVEMBER, 1940,—	
Appointment of a Committee of the Central Legislature regarding economy in war expenditure—Withdrawn .	531—50	Starred Questions and Answers	655—98
Appointment of a Committee to examine the conditions of detenus under the Defence of India Act—Discussion not concluded	550—60	Unstarred Questions and Answers	698—700
		Statement laid on the Table	708
		Motion for Adjournment <i>re</i> alleged occupation of Muslim <i>Idgah</i> at Burhanpur by the Military—Allowed to stand over	708
		The Indian Finance (No. 2) Bill—Discussion on the motions to consider and to circulate not concluded .	709—63
		Statement of Business	763

LEGISLATIVE ASSEMBLY

Friday, 8th 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.

REPORT OF THE OFFICER ON SPECIAL DUTY APPOINTED TO INVESTIGATE INTO CERTAIN MATTERS AFFECTING COMMUNAL REPRESENTATION IN RAILWAY SERVICES.

†24. ***Manulvi Abdur Rasheed Ohandhury:** (a) Will the Honourable the Railway Member please state whether the officer on special duty, referred to by him on the 15th February, 1940, in reply to Sir Abdoola Haroon's question No. 85, has finished his duties?

(b) What aspects of communal representation in Railway services was he appointed to look into?

(c) Has he submitted his report, and, if so, with what recommendations?

(d) Which of his recommendations, if any, have been accepted by Government and which have been given effect to?

(e) Will the Honourable Member place a copy of his report on the table?

The Honourable Sir Andrew Clow: (a) Yes.

(b) I would refer the Honourable Member to the terms of reference published in the Government of India Press Communiqué dated the 5th December, 1939, appointing an Officer on Special Duty to review the working of the rules and orders relating to the representation of minority communities in the services of the State-managed Railways.

(c) The answer to the first part is in the affirmative. As regards the second part, I would refer the Honourable Member to the Report, of which a copy was supplied to him.

(d) None. Government have reached no conclusions on the report.

(e) No. Copies have been placed in the Library of the House and also supplied to Honourable Members.

PAUCITY OF SINDHIS IN THE NORTH WESTERN RAILWAY SUBORDINATE SERVICE.

25. ***Mr. Lalchand Navalrai:** (a) Will the Honourable Member for Railways be pleased to state whether the Railway Board have received any representation from Sind Government in regard to paucity of Sindhi recruitment to the North Western Railway subordinate service? If so, how was the same disposed of?

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

(b) Is it a fact that it has been brought to the notice of the railway authorities that the method of recruitment by double selection and the final one being held outside the Divisional Headquarters are responsible for exclusion of Sindhis?

(c) Is it a fact that the North Western Railway administration does not allot the number of candidates to be selected by the Divisional Boards, on the number of vacancies existing in the particular division, but on the number of applications received? If so, what is the justification for allotment on this basis?

(d) Will the Honourable Member please refer to any other State-managed Railway where such practice as referred to in part (c) above, exists? If not, why is it confined to the North Western Railway only?

(e) Is it a fact that the control of posts in the lower subordinate service is vested in the Divisional Superintendents who know best about the suitability of the candidates to be recruited? If so, do Government propose to remove the present complaint and adopt the method of recruitment now prevailing in the Posts and Telegraphs Department by restricting recruitment to the inhabitants of the area in which vacancies are to be filled?

The Honourable Sir Andrew Clow: (a) The answer to the first part is in the affirmative. As regards the latter part, the request was not acceded to.

(b) Some complaints of this nature have been received by Government.

(c) As regards the first part, the number of candidates to be selected by each division to appear before the Central Selection Board at the Headquarters Office is based on the communal quotas which are divided amongst the divisions in the proportion of the total number of accepted applications received by each division from each community in answer to the advertisement. As regards the latter part, the present method of allotting vacancies in accordance with the numbers of applications received has, I understand, proved convenient in practice and appears to be equitable.

(d) I have no complete particulars but the practice on railways differs in this respect. The question of revising methods of recruitment will come up for examination in connection with the consideration of Mr. D'Souza's report.

(e) It is a fact that the control of these posts is vested in Divisional Superintendents, but not necessarily a fact that they are best suited to recruit candidates with regard to the interests of the Railway as a whole. Government do not consider that it is desirable to regulate recruitment to railway services on a territorial basis.

Mr. Lalchand Navalrai: May I know if it is equitable that if more applications come from one Division, more people should be taken from that Division?

The Honourable Sir Andrew Clow: That is largely a matter of opinion. If the reports show that there is a large number of qualified candidates in one place and a small number in another, I should have thought it equitable to select a larger number from the first place than from the second.

Mr. Lalchand Navalrai: But there are people in the other Divisions also for selection?

The Honourable Sir Andrew Clow: People who have not applied?

Mr. Lalchand Navalrai: Yes; they have applied for selection, but they are not taken as the number of applications is not so large.

The Honourable Sir Andrew Clow: That surely is a matter of opinion as I have said; but if the number of applications from qualified applicants is large in one Division and small in the other, it is surely equitable to allot a larger number or invite a larger number of applicants from one place than from the other.

Mr. Lalchand Navalrai: Does the Honourable Member know that recently the General Manager on the North Western Railway has reviewed the powers which he had delegated to the Divisions, and may I request the Honourable Member to ask the General Manager to consider this question and remove the complaint of the Sind Circle which is pending since a very long time?

The Honourable Sir Andrew Clow: I am not satisfied that there is any reasonable complaint, because I am not satisfied that there are more candidates from Sind proportionately than from other places.

REPORT OF THE OFFICER ON SPECIAL DUTY APPOINTED TO INVESTIGATE INTO CERTAIN MATTERS AFFECTING COMMUNAL REPRESENTATION IN RAILWAY SERVICES.

26. *Mr. Lalchand Navalrai: (a) Will the Honourable Member for Railways be pleased to state whether Mr. Frank DeSouza, former Member of the Railway Board, has since submitted his report on the "review of rules and orders relating to the representation of minorities in railway services"? If so, when will the copies of the report be made available to the Members of the House?

(b) Does the Honourable Member propose to afford a chance to the House to discuss Mr. DeSouza's report? If not, why not?

The Honourable Sir Andrew Clow: (a) The report has been submitted and copies have been supplied to Members of the House.

(b) Government do not think that a discussion in the present Session would be advantageous, but would welcome any views that Honourable Members desire to put forward during the next Session. The railway budget debates will then afford an opportunity; if any appreciable number of Honourable Members consider that insufficient and table Resolutions on the subject, Government will consider the allotment of time on an official day in the event of these Resolutions falling to find a place in the ballot.

Dr. Sir Ziauddin Ahmad: May I understand that Government will allow a discussion on this matter during the next Session, not this Session?

The Honourable Sir Andrew Clow: I do not think it will be advantageous to discuss it during this Session.

Dr. Sir Ziauddin Ahmad: Is it the intention of the Government that they would like to discuss this matter in the next Session?

The Honourable Sir Andrew Clow: I can only repeat the answer I have given. I have pointed out that the budget debates will afford an opportunity, and that, if Honourable Members consider that insufficient, they have means at their disposal of obtaining further time.

Dr. Sir Ziauddin Ahmad: We do not want to waste our time, which is very valuable, during the budget discussion on this very question. Will you please give us some other time for this purpose at least during the next Session but before any action is taken in the matter?

The Honourable Sir Andrew Clow: I am sorry that the Honourable Member should regard a discussion on this as a waste of time: but what I said was that if any appreciable number of Members consider that the budget debates are insufficient, and if they table Resolutions on the subject, Government will consider the allotment of time on an official day in the event of those Resolutions failing to find a place in the ballot.

Syed Ghulam Bhik Nairang: That too in the Budget Session?

The Honourable Sir Andrew Clow: That would not come in the budget.

Mr. Lalchand Navalrai: May I know if this report was called for in order to satisfy the Members of the Assembly that things are done equitably or not?

The Honourable Sir Andrew Clow: That was one object in appointing the inquiry.

Mr. Lalchand Navalrai: Why is it then that the Honourable Member does not want to put that report for discussion from the Government point of view for the satisfaction of Members, but leave it to the Members to ask for it?

The Honourable Sir Andrew Clow: I have said already that I have given a copy of the report to every Member of the House and that I would welcome the views of Honourable Members on it: it is not a question of not wanting their views.

ADVISABILITY OF HOLDING COMPETITIVE EXAMINATIONS FOR RECRUITMENT TO THE SUBORDINATE SERVICE ON THE NORTH WESTERN RAILWAY.

27. *Mr. Lalchand Navalrai: (a) Will the Honourable Member for Railways be pleased to state whether it is a fact that the appointment to the subordinate service on the North Western Railway is made through Selection Boards?

(b) Is it a fact that there is no provision for competitive examinations in making these appointments through selection boards, excepting for the North Western Railway Accounts staff? If so, why?

(c) Is it a fact that the appointments in the subordinate service, even clerical, in the Central Government Secretariat, are made through competitive examinations by the Public Service Commission?

(d) Is it a fact that in the Posts and Telegraphs Department, appointments to subordinate service are also filled by competitive examination conducted by the educational department of the province in which vacancies are to be filled?

(e) Is it a fact that, under the present arrangement for recruitment to subordinate service in the North Western Railway, the complaint is that the best candidates do not get chances for appointment in the absence of provision of recruitment through competitive examination?

(f) Do Government propose to substitute the present methods of recruitment to subordinate railway services on the North Western Railway by recruitment through competitive examinations conducted by the local educational authorities in each Divisional headquarters? If not, why not?

The Honourable Sir Andrew Clow: (a) Yes.

(b) No; the Honourable Member will find a provision in Rule 5 in Appendix II of the State Railway Establishment Code, Volume I, copies of which are in the Library of the House. The second part does not arise.

(c) Yes.

(d) The competitive examinations held by the Posts and Telegraphs Department for recruitment are not conducted by the Educational Department of the province concerned.

(e) Government have not received any such complaint.

(f) I cannot give any such undertaking; but the methods of recruitment will be reviewed in connection with the consideration of Mr. D'Souza's report.

Mr. Lalchand Navalrai: May I know if the selection boards are not holding examinations for these people by competition, what is the method by which they actually select these people? Is it by looking at their faces or measuring their size, or what?

The Honourable Sir Andrew Clow: Exercising their judgment on them, generally after an interview, I think.

Mr. Lalchand Navalrai: Exercising a judgment on what principles?

The Honourable Sir Andrew Clow: The principle of the candidates' qualifications and experience and their appearance at the interview.

RAILWAY ADVISORY COMMITTEES.

28. *Mr. Lalchand Navalrai: (a) Will the Honourable Member for Railways be pleased to state the authority that framed the constitution of the various Railway Advisory Committees in India?

(b) Have there been any changes in the constitution of these committees since their inception? If so, have these changes conceded anything to the committees by way of increased functions and powers?

(c) Is it a fact that at one time resolutions passed by the majority of the members in the committee were binding on the administration unless over-ruled by the Railway Board? Do Government propose to enact such a rule now? If not, why not?

(d) Have Government laid down any time-limit after which the working of the Railway Advisory Committees should be reviewed and its functions and powers increased? If not, do they propose to do so now?

(e) Do Government propose to direct the transfer of their control over vendors at the stations to the Railway Advisory Committees? If not, why not?

The Honourable Sir Andrew Clow: (a) The Government of India framed the constitution of the Local Advisory Committees for State-worked Railways. A copy of the Government of India's orders to the State-worked Railways was sent to Company Railways with the suggestion that they initiate similar action subject to the agreement of their Home Boards.

(b) Yes. The reply to the second part of the question is in the negative.

(c) No. Government consider that the function of these Committees must continue to be advisory.

(d) The answer to both parts of the question is in the negative.

(e) No. As stated in reply to part (c) above, the functions of these Committees must continue to be advisory.

Dr. Sir Ziauddin Ahmad: May I ask whether the rules mentioned in part (a) are public or confidential, and can the Members have a copy?

The Honourable Sir Andrew Clow: I think they are public, but I am not certain.

Mr. Lalchand Navalrai: May I know what difficulty there is to bring under review their original Resolution that these will be only advisory committees?

The Honourable Sir Andrew Clow: I do not consider that the control of railways by committees would be in the public interest.

SUBJECTING PERSONS SELECTED BY THE DIVISIONAL SELECTION BOARD AT KARACHI FOR TRAINING AND PROMOTION AS GUARDS, GRADE II, ON THE NORTH WESTERN RAILWAY TO FURTHER TESTS.

29. *Mr. Lalchand Navalrai: (a) Will the Honourable Member for Railways be pleased to state whether it is a fact that on the North Western Railway a selection for guards, grade II, was recently made from among train clerks, ticket collectors, station clerks, etc.?

(b) Is it a fact that some such persons were selected by the Divisional Selection Board at Karachi for training and promotion as guards, grade II?

(c) Is it a fact that eight persons from Karachi appeared at the second Selection Board at the Headquarters Office of the North Western Railway and passed the test?

(d) Is it a fact that, as a result of two selections, they were sent to Walton Training School at Lahore Cantonment for training in guards duties and had successfully passed out the examination?

(e) Is it a fact that still further selection and examination was held at Karachi Divisional office, *vide* Divisional Personnel Officer, North Western Railway, Karachi, No. 940-E./31, dated the 3rd September, 1940, to find out the fitness or otherwise of these qualified men for temporary promotion to guards' posts in grade II? If so, why?

The Honourable Sir Andrew Clow: (a) No. I understand that the last Selection Board met in November, 1938.

(b) Yes, for training as Guards, grade II.

(c) and (d). Out of the eleven men sent by the Divisional Superintendent, Karachi, nine were selected by the Headquarters Selection Board, of whom one subsequently died. The remaining eight were sent for training to the Walton Training School and passed the examination.

(e) The reply to the first part is in the affirmative. As regards the latter part, the matter is receiving the attention of the administration.

Mr. Lalchand Navalrai: With regard to clause (e), may I know whether the third selection was at all feasible, and it should continue. I could not follow the reply of the Honourable Member.

The Honourable Sir Andrew Clow: My answer to the latter part was that the matter was receiving the attention of the administration.

INADEQUATE INDIAN REPRESENTATION IN THE CALCUTTA PORT TRUST.

†30. ***Haji Chaudhury Muhammad Ismail Khan:** (a) Will the Honourable Member for Communications please state whether it is a fact that out of the 19 Commissioners of the Calcutta Port Trust, only five are Indians? Is it also a fact that amongst these five, two are the representatives of the Bengal National Chamber of Commerce, one of the Indian Chamber of Commerce, one of the Muslim Chamber of Commerce, and one of the Calcutta Corporation?

(b) Is it a fact that in the Calcutta Port Trust there are seven Commissioners representing the Bengal Chamber of Commerce?

(c) If the answer to part (b) be in the affirmative, will the Honourable Member please state the reason for there being so many members from the Bengal Chamber of Commerce, and only four representing the three Chambers of Commerce managed by Indian commercial people in the Port of Calcutta?

The Honourable Sir Andrew Clow: (a) As I stated in reply to Mr. Lalchand Navalrai's starred question No. 1 on the 5th instant, there are at present six Indian Commissioners. They are the five mentioned by the Honourable Member and the General Manager, Eastern Bengal Railway.

(b) and (c). There are seven representatives of European commercial interests in the Port Trust but they are not all elected by the Bengal Chamber of Commerce. The representation was designed to reflect fairly their interest in the volume of trade handled by the Port.

NON-EMPLOYMENT OF INDIAN BROKERS BY THE CALCUTTA PORT TRUST FOR PURCHASING TELEGRAPHIC TRANSFERS OF THE LOCAL EXCHANGE BANKS TO THE UNITED KINGDOM.

†31. ***Haji Chaudhury Muhammad Ismail Khan:** (a) Is the Honourable the Communications Member aware of the fact that a large amount of money is remitted annually by the Calcutta Port Trust to the United Kingdom in purchasing telegraphic transfers of the local Exchange-Banks?

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

(b) Is the Honourable Member aware of the fact that all these purchases are made through European brokers, though there are so many Indian brokers?

(c) Will the Honourable Member please state why Indian brokers are not entertained by the authorities of the Calcutta Port Trust?

The Honourable Sir Andrew Clow: (a) Yes.

(b) No. I am informed that both Indian and European brokers are employed.

(c) Does not arise.

NON-EMPLOYMENT OF INDIAN BANKS AND INDIAN BROKERS FOR SHORT DEPOSIT BUSINESSES OF THE CALCUTTA PORT TRUST.

†32. ***Haji Chaudhury Muhammad Ismail Khan:** (a) Is the Honourable Member for Communications aware of the fact that the Calcutta Port Trust always keep a large amount of liquid money in hand, particularly the money which they recently raised as the New Howrah Bridge Loan, and which is kept in the local banks for short deposit according to the requirements of the Port Trust authorities?

(b) Is it a fact that most of the money is kept in the Exchange-Banks and foreign banks even at a lower rate of interest, though higher rates are offered by first class Indian banks?

(c) Is it a fact that all these short deposit businesses are transacted through European brokers, though there are very large numbers of Indian brokers who regularly call in the Port Trust's office and whom the authorities never entertain?

(d) If the answers to the above questions be in the affirmative, will the Honourable Member please state the reason for this sort of discrimination?

(e) Will the Honourable Member please state why Indian brokers who are children of the soil are neglected?

The Honourable Sir Andrew Clow: Government have no information regarding money held by the New Howrah Bridge Commissioners, who are under the statutory control of the Provincial Government. So far as Port Trust money is concerned, the answers to parts (a), (b) and (c) are in the negative and the remaining parts do not arise.

Mr. President (The Honourable Sir Abdur Rahim): With regard to the next question, the reply may be laid on the table.

SCHEME FOR PREVENTING RAIDS INTO SIND FROM BALUCHISTAN AND KALAT.

†33. ***Mr. Lalchand Navalrai:** (a) Is the Foreign Secretary aware that raids on the Sind borders from Kalat territory have continued since long and have occurred even recently in the Larkana and Dadu Districts?

(b) Is it a fact that a scheme was prepared by the Sind Government to prevent inroads into Sind from Baluchistan and Kalat, and the Government of India contemplated that the British Baluchistan Government in

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

‡Answer to this question laid on the table, the questioner having exhausted his quota.

conjunction with the Kalat and Sind authorities, should take measures to prevent such raids being made?

(c) What has been done up to now to implement the proposed scheme and to take necessary measures as stated in part (b)?

Mr. O. K. Caroe: (a) Yes.

(b) and (c). The Honourable Member's attention is drawn to the information laid on the table on the 7th February, 1939, in reply to his question No. 2058 asked on the 12th December, 1938, and to the answer given in reply to his question No. 164 asked on the 7th February, 1939. It is understood that the scheme for the establishment of permanent police posts to guard this border referred to in part (c) of the answer to the latter question is now being brought into operation.

UNSTARRED QUESTIONS AND ANSWERS.

VAGARIES IN THE EXERCISE OF POWER OF ALLOWING ALTERATIONS OF BIRTH DATES BY EMPLOYEES ON THE NORTH WESTERN RAILWAY.

35. Mr. Lalchand Navalrai: (a) Will the Honourable Member for Railways be pleased to state whether powers to alter birth dates of employees on the State-managed Railways, have been delegated to the General Managers, by the Railway Board? If so, under which notification?

(b) Is it a fact that on the North Western Railway, in altering birth dates, some fanciful objections are raised in the following cases:

(i) the name of an Assistant Station Master, Karachi Division, appearing in the school certificate as 'Dharmo' while his name in the railway records was shown as 'Dharamdas';

(ii) the name of a Booking Clerk on Karachi Division in the school certificate as 'Shival' while in the railway records as 'Shivaldas', and

(iii) Station Master, North Western Railway, Nuttal's case?

(c) Are Government aware that Indian children are called without the suffix of Mal, Das, Ram, etc., and their names are so entered in school registers?

(d) What are the orders or instructions on the points referred to in part (c) above? If no such instructions are issued, is it proposed to do so now?

(e) Is it a fact that in case of one Evaristo Manual Desouza, Railway Guard, Karachi Division, his name in the baptismal certificate and insurance policies, was shown as "Natalio Jeronimo Gaspar Manuel Everisoto Desouza", and yet the alteration was allowed?

(f) Does the Honourable Member propose to review the cases referred to in part (b) to give them equal justice? If not, why not?

The Honourable Sir Andrew Glow: (a) General Manager is empowered to alter the dates only if in his opinion it has been falsely stated by the railway servant to obtain an advantage otherwise inadmissible or if, in the case of illiterate staff, he is satisfied that there has been a clerical error. The orders were not notified but communicated to the Railway Administration concerned by a circular letter in 1939.

(b) and (e). I have no particulars of these cases but would observe that as they relate to literate staff the General Manager has now no powers in the matter unless there has been falsification by the employee.

(c) No.

(d) There are none and none would appear to be required.

(f) No. Government consider that an employee should not subsequently be able to secure the admission of a different age than the age declared when he secured employment, and they are not prepared to review cases of this character.

COMPLAINTS OF DETERIORATION OF EYE-SIGHT FROM GOODS TRAIN GUARDS FOR WANT OF ELECTRIC LIGHTS IN BRAKE-VANS.

36. Mr. Lalchand Navalrai: (a) Will the Honourable Member for Railways be pleased to state whether it is a fact that a high standard of vision tests and re-examination in vision and colour perception after certain intervals is prescribed for guards?

(b) Is it a fact that a large number of guards run on goods trains, where there are no electric lights in the brake-vans and they have to do writing work in the dim light of the hand signal lamp? Have Government received complaints to the effect that this affects their eye-sight? If so, is it proposed to provide electric lights in goods brake-vans? If not, why not?

(c) If the reply to the last portion of part (b) be in the negative, is it proposed to give relief to goods guards by introducing for guards lenient vision examination rules like those for Permanent Way Inspectors? If not, why not?

(d) What compensation does the administration give to such guards whose eye-sight deteriorates in service under conditions referred to in part (b) above, and is such a case an occupational disease under the Workmen's Compensation Act?

The Honourable Sir Andrew Clow: (a) Guards are required to possess a standard of vision considered necessary in the interest of public safety. The answer to the second part is in the affirmative.

(b) Goods Guards form the majority of such staff and the small amount of writing they have to do has ordinarily to be done in the light of hand-signal lamps. Government are not aware of the existence of any general complaint of the nature referred to. It is not proposed to provide electric lights in Goods Brake-vans as it is unnecessary and the expenditure cannot be justified.

(c) No; the duties are not the same as those of Permanent Way Inspectors.

(d) None; but if they are medically disqualified to hold their posts every endeavour is made to find them other employment to avoid having to discharge them. As regards the latter part, the answer is in the negative.

DISCRIMINATION IN THE MATTER OF SCALE OF FURNITURE AND UTENSILS IN EUROPEAN AND INDIAN GUARDS RUNNING ROOMS ON THE NORTH WESTERN RAILWAY.

37. Mr. Lalchand Navalrai: (a) Will the Honourable Member for Railways be pleased to state whether the scale of furniture and utensils

in the European and Indian Guards Running Rooms differs on the North Western Railway? If so, why?

(b) Do Government propose to stop this racial discrimination? If not, why not?

The Honourable Sir Andrew Clow: (a) Yes. The differences that exist between the equipment of European and Indian Running Rooms is due partly to difference in the mode of living of these communities and partly to the fact that the European Running Rooms were intended mainly for guards of higher grades.

(b) This is not a case of racial discrimination as there is no restriction against a higher grade Indian guard using the European running rooms.

NON-RECOGNITION OF INDIAN HILL STATION SCHOOLS FOR PURPOSES OF EDUCATIONAL GRANTS BY THE NORTH WESTERN RAILWAY.

38. Mr. Lalchand Navalrai: (a) Will the Honourable Member for Railways be pleased to state whether any Indian school situated at a hill station is recognized for the purpose of the grant of educational assistance to the children of railway employees under the Agent, North Western Railway's Circular No. 3 of 1921? If not, why not?

(b) Is the Honourable Member aware that there are Gurukuls at some of the hill stations to which children of railway employees are sent? If so, why is no assistance given to their children like that given to Anglo-Indians?

(c) Do Government propose to issue instructions to do away with racial discrimination in the matter of recognition of Indian hill station schools for the purpose of grant of education assistance? If not, why not?

The Honourable Sir Andrew Clow: (a) and (c). No Indian hill schools are recognized under the circular referred to and it is not proposed to extend recognition to any as these rules have been superseded and apply only to staff who were governed by them prior to the issue of the new rules, and exercised the option of remaining under them. The new rules involved no discrimination.

(b) I have no particulars of such cases, but would observe that under the new rules assistance is limited to cases where an employee is compelled to send his children to a boarding-school away from his station because of the absence of a suitable school there.

STATEMENTS LAID ON THE TABLE.

The Honourable Sir Jeremy Raisman (Finance Member): Sir, I lay on the table a copy* of:

(1) Commercial Appendix to the Appropriation Accounts of the Defence Services for the year 1938-39 and the Audit Report thereon.

(2) Appropriation Accounts of Railways in India for 1938-39—Parts I and II.

*Not printed in these debates, but copies distributed to Members of the Assembly—*Ed. of D.*

- (3) Railway Audit Report, 1940.
- (4) Capital Statements, Balance Sheets and Profit and Loss Accounts of State Railways in India including the Balance Sheet and the Profit and Loss Accounts of Tatanagar Workshops—1938-39.
- (5) Balance Sheet of Railway Collieries and Statements of all-in-cost of coal for 1938-39.

Dr. Sir Ziauddin Ahmad (United Provinces Southern Divisions: Muhammadan Rural): May I know, Sir, whether these statements are printed or they are in manuscript only?

The Honourable Sir Jeremy Raisman: They are printed.

Dr. Sir Ziauddin Ahmad: Will they be circulated to Members?

The Honourable Sir Jeremy Raisman: Yes, copies will be distributed to the Members of the Assembly.

Dr. Sir Ziauddin Ahmad: Thanks.

ELECTION OF A MEMBER OF THE STANDING FINANCE COMMITTEE.

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

“That this Assembly do proceed to elect a member of the Standing Finance Committee to fill the vacancy caused by the resignation of his seat on the Assembly by Mr. T. Chapman-Mortimer.”

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

“That this Assembly do, proceed to elect a member of the Standing Finance Committee to fill the vacancy caused by the resignation of his seat on the Assembly by Mr. T. Chapman-Mortimer.”

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 to the Standing Finance Committee, the Notice Office will be open to receive nominations up to 12 Noon on Saturday the 9th November, 1940 and that the election, 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 11th November, 1940. The election will be conducted in accordance with the principle of proportional representation by means of the single transferable vote.

THE BERAR LAWS BILL.

The Honourable Sir Muhammad Zafrullah Khan (Law Member): Sir, I move for leave to introduce a Bill to extend certain Acts to Berar.

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

"That leave be granted to introduce a Bill to extend certain Acts to Berar."

The motion was adopted.

The Honourable Sir Muhammad Zafrullah Khan: Sir, I introduce the Bill.

THE INDIAN RAILWAYS (AMENDMENT) BILL.

The Honourable Sir Andrew Olow (Member for Railways and Communications): Sir, I move for leave to introduce a Bill further to amend the Indian Railways Act, 1890.

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

"That leave be granted to introduce a Bill further to amend the Indian Railways Act, 1890."

The motion was adopted.

The Honourable Sir Andrew Olow: Sir, I introduce the Bill.

THE EXCESS PROFITS TAX (AMENDMENT) BILL.

The Honourable Sir Jeremy Raisman (Finance Member): Sir, I move for leave to introduce a Bill to amend the Excess Profits Tax Act, 1940.

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

"That leave be granted to introduce a Bill to amend the Excess Profits Tax Act, 1940."

The motion was adopted.

The Honourable Sir Jeremy Raisman: Sir, I introduce the Bill.

THE NEW DELHI MOSQUE BILL.

Mr. J. D. Tyson (Secretary, Department of Education, Health and Lands): Sir, I move for leave to introduce a Bill to provide for the expenditure of certain sums of money deposited in the Court of the District Judge, Delhi, on buildings for and in connection with a mosque in New Delhi.

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

"That leave be granted to introduce a Bill to provide for the expenditure of certain sums of money deposited in the Court of the District Judge, Delhi, on buildings for and in connection with a mosque in New Delhi."

The motion was adopted.

Mr. J. D. Tyson: Sir, I introduce the Bill.

THE INDIAN WORKS OF DEFENCE (AMENDMENT) BILL.

Mr. C. M. G. Ogilvie (Defence Secretary): Sir, I move:

"That the Bill further to amend the Indian Works of Defence Act, 1903, be taken into consideration."

Perhaps, it will be as well to add a few words of explanation to the purpose of the Bill which has been set forth in the Statement of Objects and Reasons. Zones of defence are subjected under section 7 of the Indian Works of Defence Act to certain restrictions. Those restrictions vary in certain cases, and the main purpose, in fact the only purpose of this amendment is to reduce the present drastic nature of the law. Zone A, which may extend to 2,000 yards from the outer wall of defence, is not subject to serious restrictions; but Zone B and Zone C, which may extend to 1,000 and 500 yards, respectively, from the outer wall of defences, are. As regards Zone B, only temporary structures are allowed to remain. All permanent structures must be demolished. As regards Zone C, permanent as well as temporary structures must be demolished. In practice it often happens that it is not really necessary to demolish such permanent structures as they are not really objectionable from the point of view of defence, but under the law as it stands they must be demolished, and not only are the owners, therefore, subjected to inconvenience and possibly distress, but Government is mulcted unnecessarily in sums of compensation. What this amendment is aimed at is to allow existing structures to remain at the discretion of the District Commander. Sir, I move.

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

"That the Bill further to amend the Indian Works of Defence Act, 1903, be taken into consideration."

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Sir, I should like to know only one thing from the Honourable Member. I don't like to make a speech. I simply want to put one question, and that is, have any instances occurred where structures or buildings have actually been removed because of the compulsory nature of the legislation that is in force now or it is only apprehended that such a thing might be necessary.

Mr. C. M. G. Ogilvie: Actual cases have, I believe, occurred in the past, but what has happened is that, where it has been obviously desirable to apply the more stringent parts of section 7, this has in practice often not been done owing to the great inconvenience to private owners and the cost to Government which would thereby be imposed.

Mr. Lalchand Navalrai: May I know, Sir, if the people whose structures have been demolished have been given adequate compensation?

Mr. C. M. G. Ogilvie: Any structure of any kind which is demolished on a Zone of Defence is subject to full compensation to the party concerned.

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

"That the Bill further to amend the Indian Works of Defence Act, 1903, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

Mr. C. M. G. Ogilvie: Sir, I move:

"That the Bill be passed."

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

"That the Bill be passed."

The motion was adopted.

THE INDIAN NAVY (DISCIPLINE) AMENDMENT BILL.

Mr. C. M. G. Ogilvie (Defence Secretary): Sir, I beg to move:

"That the Bill further to amend the Indian Navy (Discipline) Act, 1934, for certain purposes, be taken into consideration."

The purpose of the Bill has been explained in the Statement of Objects and Reasons. As matters stand at present, it is impossible to punish any person belonging to the Royal Indian Navy who is guilty of certain offences, other than by the punishments laid down in the Indian Penal Code. What we have expressly in view are the various types of theft which, under the Indian Penal Code, are punishable with imprisonment or fine. Theft in a ship of the Navy may in many cases not be so heinous a moral crime as it is in ordinary civil life. The theft may be, and often is, of a more or less technical character and of a kind not particularly severely reprobated, such as removal of small articles from the kit of a mess mate. A man, for example, has lost his whistle or something of that kind, and he forages in his neighbour's kit for one in order to avoid punishment for not having his own. He has technically committed theft, but it is absurd that such a crime should be punished with imprisonment. Fine is not in accordance with the traditions of the Navy. The imposition of a fine is regarded by naval officers with dislike. For petty offences of this kind there are punishments according to the custom of the Navy, such as disrating a man, depriving him of his good conduct badge or some other minor penalty of that kind, and what this amendment seeks to bring about is permission to inflict such minor punishments where it appears desirable, instead of the heavier punishments prescribed by the Indian Penal Code. Sir, I move.

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

"That the Bill further to amend the Indian Navy (Discipline) Act, 1934, for certain purposes, be taken into consideration."

Sir Muhammad Yamin Khan (Agra Division: Muhammadan Rural): Are the sections, namely, 302 and 377, mentioned in clause 2 (a) of the Bill—are they sections of the Indian Penal Code?

Mr. C. M. G. Ogilvie: Yes, and they are excluded from the purview of this amendment.

Sir Muhammad Yamin Khan: That ought to have been so stated.

Lieut.-Colonel Sir Henry Gidney (Nominated Non-Official): I desire information on section 55 referred in sub-clause (b) of clause 2. The Honourable Member has just now said that corporal punishment takes the place of imprisonment.

Mr. C. M. G. Ogilvie: No.

Lieut.-Colonel Sir Henry Gidney: I mean that corporal punishment should be the equivalent of imprisonment. According to the practice in the Navy, I know they do resort to the stick a great deal, and I want to know if for any offence committed that will ordinarily be punishable with six months imprisonment,—whether corporal punishment is now to be an equivalent punishment, or is there any limit to this substitution?

Mr. C. M. G. Ogilvie: It is very hard to say to what extent that a minor punishment of that kind can be exactly equated with a term of imprisonment. I do not think I can be more specific than by saying that what we wish to do is to follow the United Kingdom practice whereby these minor punishments can, at the discretion of the commanding officers, be employed rather than the severer ones of the Code.

Sardar Sant Singh (West Punjab: Sikh): The Bill does not make one point clear, and that is that the offences probably mentioned in section 45 are the offences defined in the Indian Penal Code. The punishments are defined in the Indian Penal Code and the various kinds of punishment are given therein. When the Honourable Member states that this Bill intends to provide for punishments which are customary in the naval units, we fail to understand what is that customary punishment. Will it fall in the Chapter wherein various punishments are defined, or will the punishments be of an entirely different nature which are not to be found in the Indian penal laws? We do not know how the Indian penal laws will be affected by the introduction of new kinds of punishments in the Indian Navy. The Bill does not give us any indication as to what sort of punishment is intended. In the Statement of Objects and Reasons, it is stated:

“The U. K. Naval Discipline Act provides for the imposition of purely naval punishments, such as the deprivation of good conduct badges, cell punishment, etc., for various offences for which imprisonment or fine may not be altogether suitable.”

I can quite understand that some punishments may not be suitable as explained by the Honourable Member, but we fail to see what sort of sanction is demanded from us to impose those punishments which are not defined in the Act, nor in this amending Bill. I would, therefore, like the Honourable Member to explain the meaning more clearly or to bring forward definite punishments in the Bill itself so that we may be able to understand and appreciate his point of view.

Sir Cowasji Jehangir (Bombay City: Non-Muhammadan Urban): Not being a lawyer, the Honourable the Defence Secretary will excuse me if I betray a certain amount of ignorance. I cannot understand how

he carries out the objects which he has, by the amendments which he has put down. In the Statement of Objects and Reasons he says that his object is to enable certain punishments to be inflicted of a minor character instead of the more severe punishments which are prescribed under the law as it is at present. That is his object in short. How does he carry out that object? Take sub-clause 2(a) to start with. He wants to add the following words:

"or, except in the case of an offence punishable under the said section 302 or 377, with such other punishment as is hereinafter mentioned;"

Nothing is mentioned there.

Mr. C. M. G. Ogilvie: Section 52 of the Act as it stands.

Sir Cowasji Jehangir: This is an addition to the section, but you do not say anything there. Is there anything in section 52 which explains the phrase 'hereinafter mentioned'?

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

Sir Cowasji Jehangir: Then we come to sub-clause 2(b) where he wants to substitute the following words:

"transportation shall be deemed equal in degree to penal servitude, and corporal punishment shall be deemed equal in degree to imprisonment and;"

What is the meaning of this? I do not understand it. Does it carry out his intention?

Mr. C. M. G. Ogilvie: It is purely a formal amendment.

Sir Cowasji Jehangir: If he will kindly explain that, I shall be much obliged.

Mr. Lalchand Navalrai (Sind: Non-Muhammadian Rural): Sir, I do appreciate that where there are offences, and especially when it is said that this Bill will apply to trivial offences and to the punishment thereof, there ought to be a law which suits the Navy and which can be exercised according to the laws in England. But with regard to this Bill, I find that its object is to make the punishments lighter than the punishments that are provided in the Indian Penal Code. Now, Sir, as my learned friend, Sardar Sant Singh, has said, we should, in the first place, be enlightened whether there is any Code in which these customary powers or the disciplinary powers based on custom have been laid down, so that we may be in a position to say whether these punishments will be lighter or heavier. That is one point that I would like to be explained.

Then, with regard to sub-clause (b) of clause 2, I find that it is intended that instead of imprisonment for these offences there should be corporal punishment. In my humble opinion, corporal punishment is heavier than the punishment of imprisonment. If that is the intention, corporal punishment would also include whipping. Apart from that, I would also like to know how would that corporal punishment be met with the degree of imprisonment that is to be given? That has got to be laid down. One officer might give one stripe, and the other might give two. We are allowing these officers to pass punishment as they like without prescribing the

[Mr. Lalchand Navalrai.]

maximum or the minimum. In every law, there is the maximum and the minimum. Therefore, I submit that this is a very vague Bill, and the points that I have raised should be made clear.

Mr. C. M. G. Ogilvie: Sir, the punishments 'hereinafter mentioned' here, alluded to by Sir Cowasji Jehangir, are stated in section 52. The 'hereinafter' there gives a list of punishments which may be inflicted in His Majesty's Navy and which ranges from No. (1) death down to No. (11) "such punishments as are now inflicted according to the custom of the Navy or may from time to time be allowed by the Central Government". These punishments are in order of severity. Section 52 says:

"Each of the above punishments shall be deemed to be inferior in degree to every punishment preceding it in the above scale."

These minor punishments which we now wish to be able to inflict on certain classes of thefts and so on are the most mild punishments which already exist in the Navy. This Bill does not seek to introduce any new form of punishment at all but merely to make applicable the list to certain classes of offences which now can only be punished by very serious punishments indeed.

Now, to show how minor these punishments are, I will refer the Honourable Members to section 52:

"(4A) Detention :

(5) Dismissal from His Majesty's service :

(6) Forfeiture of seniority as an officer for a specified time, or otherwise :

(7) Dismissal from the ship to which the offender belongs :

(8) Severe reprimand, or reprimand :

(9) Disrating a subordinate or petty officer :

(10) Forfeiture of pay, head money, bounty and so on :

(11) Such minor punishments as are now inflicted according to the custom of the Navy."

These can be held only to mean the forfeiture of good conduct badge or some particular kind of hard work or fatigue which is not approved of by the person who is asked to do it.

Mr. Lalchand Navalrai: It does not include whipping?

Mr. C. M. G. Ogilvie: No, minor punishments do not include whipping. Whipping is regarded as a very severe punishment and equal to imprisonment.

Mr. M. S. Aney (Berar: Non-Muhammadan): May I ask if the Honourable Member is reading from the Indian Navy Act or from the United Kingdom Navy Act?

Mr. C. M. G. Ogilvie: I am reading from the Indian Navy (Discipline) Act, 1934.

Now, with regard to sub-clause (2). There has been a misconception about it. It is a purely formal amendment. Section 55 to which it refers lays down the scale of punishments. That is to say, you could not award a punishment of whipping instead of a punishment which was less in this descending scale than imprisonment that already exists in the Act. Corporal punishment shall be deemed equal in degree to imprisonment. What this amendment does is to state also that the transportation shall be deemed

equal in degree to penal servitude. It is merely filling up a small gap. In case anyone thought that there was some difference between transportation and penal servitude, this declares them to be the same.

Mr. M. S. Aney: May I ask a question from the Honourable Member? You have read out from section 52 a number of minor punishments which are mentioned there. At the end of that, there is again one little clause which says 'and other minor punishments'. Is that not so?

Mr. C. M. G. Ogilvie: No.

Mr. M. S. Aney: Does not that clause 'other minor punishments' give scope for the inclusion of minor punishments thought of by the officer who punishes them or are those minor punishments scheduled somewhere but not in that section?

Mr. C. M. G. Ogilvie: No. These minor punishments are nowhere scheduled; they are those according to the customs of the Navy and they may always from time to time be approved by the Central Government.

Mr. M. S. Aney: The section leaves scope to the inventive genius of the punishing officer?

Mr. C. M. G. Ogilvie: No.

Mr. M. S. Aney: The words are "according to the customs of the Navy".

Mr. C. M. G. Ogilvie: Which must not be violated.

Mr. M. S. Aney: If there is a custom of the Navy, it means that that custom is noted somewhere, recorded somewhere, it must be scheduled somewhat, but you say "scheduled nowhere"; then how is it possible for the punishing officer to know that that particular punishment is according to custom or not?

Mr. C. M. G. Ogilvie: He knows perfectly well; no new punishment can be devised. If the Honourable Member will look at sub-section (11) of section 52, he will see the words "such minor punishments as are now inflicted according to the custom of the Navy",—that is to say, nobody may invent a new one—"or may from time to time be allowed by the Central Government".

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

"That the Bill further to amend the Indian Navy (Discipline) Act, 1934, for certain purposes, be taken into consideration."

The motion was adopted.

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

"That clause 2 stand part of the Bill."

Sardar Sant Singh Sir, may I point out a drafting mistake in part (a), where occur the words "section 302 or 377" but the words "of the Indian Penal Code" are not mentioned. Are they deliberately omitted? I think the words "of the Indian Penal Code" should be there?

Mr. C. M. G. Ogilvie: If the Honourable Member will refer to the section itself, he will see the words "Indian Penal Code" are mentioned.

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

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

Mr. C. M. G. Ogilvie: Sir, I move:

"That the Bill be passed."

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

"That the Bill be passed."

The motion was adopted.

THE INDIAN NAVY (DISCIPLINE) SECOND AMENDMENT BILL.

Mr. C. M. G. Ogilvie (Defence Secretary): Sir, I move:

"That the Bill further to amend the Indian Navy (Discipline) Act, 1934, (Second Amendment), be taken into consideration."

This is a purely formal amendment and is due to the fact that since the Indian Navy (Discipline) Act was passed, Burma has ceased to be a part of India and has more recently acquired naval forces of her own. Section 30 (c) set forth in the First Schedule to the Indian Navy (Discipline) Act provides for the discipline of persons in the Royal Indian Navy serving in His Majesty's Navy or in the navies of self-governing dominions, and it is sought to add the words "or Burma" to that list. Sir, I move.

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

"That the Bill further to amend the Indian Navy (Discipline) Act, 1934, (Second Amendment), be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

Mr. C. M. G. Ogilvie: Sir, I move:

"That the Bill be passed."

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

"That the Bill be passed."

The motion was adopted.

THE CANTONMENTS (AMENDMENT) BILL.

Mr. C. M. G. Ogilvie (Defence Secretary): Sir, I move:

"That the Bill further to amend the Cantonments Act, 1924, be taken into consideration."

The amendments concerned are miscellaneous and range over various provisions of the Act. They are all matters in which practical difficulty has been experienced and the purport of each of them has been fully set out in the Notes on Clauses which have been appended to the Statement of Objects and Reasons. I think, therefore, that at this stage I need not take up the time of the House further. Sir, I move.

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

"That the Bill further to amend the Cantonments Act, 1924, be taken into consideration."

Sardar Sant Singh (West Punjab; Sikh): Sir, in this Bill again there are certain provisions which are vague and which invest the recommending authorities and the Central Government with very large powers. I refer to section 4, sub-section (2A), in which it is laid down that the Central Government may, on receipt of any report from the Officer Commanding the Station,

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member is speaking to the Bill before the House?

Sardar Sant Singh: Yes, Sir, to the Cantonments Bill.

Mr. President (The Honourable Sir Abdur Rahim): To the amending Bill?

Sardar Sant Singh: Yes, Sir. In that it is laid down that:

"The Central Government may, on receipt of a report from the Officer Commanding the station, through the Officer Commanding-in-Chief, the Command, remove from a Board any military officer nominated a member of the Board who is, in the opinion of the Officer Commanding the station, unable to discharge his duties as member of the Board and has failed to resign his office."

Now, the expression "unable to discharge his duty" is a phrase of very wide interpretation. In the Notes to Clauses, it is laid down that the intention of the framers of the Bill is "to remove those nominated officials who have ceased to serve in the Cantonment Board and have left the cantonment without resigning or tendering their resignation". Now, if it were confined to that alone, it would be quite a definite matter capable of a definite interpretation, but the phrase is "unable to discharge his duty". Now a member may be unable to discharge his duty when he happened to disagree with the officer who nominated him originally. That would be vesting the Government with too large powers and thus vesting the Commanding Officer with powers to command the vote of the member for reasons other than those for which this Bill is intended. I would, therefore, suggest to the Mover of the Bill to make this phrase more definite, so that the powers exercised under this sub-clause should be confined to the purposes for which it is really intended

Mr. President (The Honourable Sir Abdur Rahim): Are there no amendments to this effect?

Sardar Sant Singh: No, this being so vague, Sir, we would be justified in rejecting this Bill if it is capable of an interpretation which is not intended by the Legislature.

The second point to which I would refer is the Honourable Member's substitution of the word "structure" for "building". Now, "building" has been defined in the municipal laws, and it is capable of an interpretation, but "structure" is again a very wide word with a much larger meaning than it connotes

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member is now dealing with the clauses.

Sardar Sant Singh: I am just suggesting for general consideration that the word is again not definite and not defined anywhere, and it will be better if the definition of this should be incorporated in the Bill itself.

Mr. President (The Honourable Sir Abdur Rahim): The question is: "That the Bill further to amend the Cantonments Act, 1924, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

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

"That clause 4 stand part of the Bill."

Mr. M. S. Aney (Berar: Non-Muhammadan): Sir, my Honourable friend, Sardar Sant Singh, has just brought to the notice of the House the ambiguity of certain expressions in clause 4 and how the expression as it stands is likely to be understood in a sense different from the one which the Mover of the Bill had obviously in view. In view of that, I would like to know what is the explanation which the Honourable Member has to give and whether he is prepared to make suitable changes in the wording before the clause is put to the vote of the House. Otherwise we shall be voting upon an ambiguous expression. That is the difficulty.

Sir Muhammad Yamin Khan (Agra Division: Muhammadan Rural): In this clause 2A, it is sought that the removal will be only in the case of a military officer nominated as a member of the Board. If the reason had been that a military officer, who had been nominated a member, had to go away to the war in a hurry and he forgot to put in his resignation, he would still remain a member though he is unable to discharge the duties of a member; then, it is quite correct to give power to the Commanding Officer to remove him from the membership and nominate another person who can do the work. But what I find in the Statement of Objects and Reasons is this:

"This section admits of the removal from the Board of a member who, subsequent to election or nomination, becomes subject to a disqualification applicable to election and nomination alike but fails to provide for the removal of an elected member who accepts service under the Crown and then becomes subject to a disqualification for election."

This is a different thing.

Mr. C. M. G. Ogilvie: The second sentence explains it:

Sir Muhammad Yamin Khan: The second sentence says:

"It is proposed to insert provision to admit of removal in this class of case and also take the opportunity of dealing with a frequent source of embarrassment by providing power to remove a nominated official member who has ceased to serve in the cantonment and has left without tendering his resignation for an inaccessible destination."

If that was the object, that was all right, but in this clause we do not see the removal of any other person except the removal of military officer. We have not got the Cantonments Act before us, and the position ought to have been explained by the Honourable Member that there is some other clause by which it is intended that they shall be removed. That is quite a sufficient reason. If any non-official accepts a post under the Crown, then he cannot remain as a nominated non-official. He becomes an official, and he must vacate his place and make room for some other person who is a non-official.

The Honourable Sir Muhammad Zafrullah Khan (Law Member): This clause enables the authorities to bring that result about.

Sir Muhammad Yamin Khan: That was not made clear. If it only refers to a military officer who has to leave the station in great hurry, then I have no objection. I can quite understand that.

Mr. C. M. G. Ogilvie: Sir, the first part of this amendment 4 (a) deals, 12 Noon. as my Honourable friend, Sir Muhammad Yamin Khan, pointed out, with the case of an elected or nominated member who subsequent to election or nomination accepts a post under the Crown and, therefore, becomes an official and he also becomes subject to disqualification for election or nomination, but with the Act as it stands he cannot be removed. This enables such a person to be removed if he accepted an office of profit under the Crown.

Then the next part of the section 2A arises directly out of the conditions of the war. In the past, before the war, an officer was transferred normally to some place near by and even if he forgot to fill up his form of resignation and hand it in to the Secretary, he could be found very quickly. Today officers are apt to be transferred overseas at extremely short notice and letters may take months to get to them and if a letter of resignation cannot be obtained the officer has to be treated as though he was an ordinary member nominated or elected and the Cantonment authorities have to give him three months grace and opportunity to show cause why he should not be removed. As regards what my Honourable friends, Mr. Aney and Sardar Sant Singh, said, I think it is surely clear that if the officer were there present and was able to hold a pen, he would, if the General Officer Commanding saw fit, be made to resign at once. It is only when he is not present in the flesh and cannot, therefore, sign his resignation that it is sought to remove him.

Mr. President (The Honourable Sir Abdur Rahim): The question is: "That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Clause 5 was added to the Bill.

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

"That clause 6 stand part of the Bill."

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Sir, clause 6 seeks to amend certain words in clause (b) of section 186 of the Cantonments Act and it says:

"for the words 'in any specified area or areas' the words 'in the cantonment or any part thereof' shall be substituted."

This is not quite intelligible unless it is properly explained to us. At present the Statement of Objects and Reasons does not make it clear; on the other hand, it makes it ambiguous. I will read out what the Statement of Objects and Reasons says:

"The object is to bring the wording of clause (b) of this section into line with that of clause (d) with a view to removing the doubt arising as to the adequacy of the language used in clause (b) to cover a prescription applicable to the cantonment as a whole."

One cannot possibly understand what is meant by "prescription". Does it mean that he will have the right of prescription? Unless this is made clear, I submit we cannot agree to this amendment.

Mr. C. M. G. Ogilvie: My Honourable friend, Mr. Lalchand Navalrai, seems to have difficulty about the word "prescription". Section 186 of the Cantonments Act begins as follows:

"The Board may make by-laws prescribing certain things."

They may prescribe the minimum cubic capacity of a room for example and things of that kind. The only point of this amendment is to make it quite clear that the language of clause (b) of the Act would cover the prescription or order of the Board under clause (d) and to bring clause (d) and clause (b) into line as regards language. It has been held that "in any specified area or areas" might be held not to cover the whole Cantonment and on the other hand the Board may pass orders on plans and specifications of the types of buildings which may be erected in the Cantonment or any part thereof. It is to remove any misapprehension that "specified area or areas" cannot cover the whole Cantonment that this amendment is brought.

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

"That clause 6 stand part of the Bill."

The motion was adopted.

Clause 6 was added to the Bill.

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

"That clause 7 stand part of the Bill."

Mr. Lalchand Navalrai: Sir, before this clause is put to the House, I wish to refer to one point which was also hinted at by my Honourable friend, Sardar Sant Singh. Here also there is a difficulty of interpretation,

unless it is already made clear in the original Act itself. If it is not clear in the Act itself, it is necessary to make it clear now. What do we find here in clause 7 of this Bill:

"In section 188 of the said Act, for the word 'building' the word 'structure' shall be substituted."

Now, Sir, I should like to know if the word 'structure' has been defined in the Cantonment Act itself. Either the definition of "structure" is in the Act itself, or if it is not there, it should be made clear what 'structure' is: that it is of such and such nature. A 'structure' may include everything, small or large. It may be part of a building, it may be made only of straws, it may be anything kept over a drain. Therefore, if you leave this ambiguity as it is, then the power that is vested in the Board would be tyrannically exercised and it will only lead to the harassment of the people. Therefore, I submit this should be made clear.

Mr. C. M. G. Ogilvie: The word "structure" has been chosen for the precise reason that the Honourable Member has described, that is, because it is a wide term. If the Honourable Member would look at section 188, he would see that it deals with drains, water-pipes and essential articles of public service and conveniences of that type. Therefore, any form of structure built over which might hamper the free flow is highly objectionable and 'building' unfortunately is a word the meaning of which is restricted by its definition in section 2 (4) of the Act. Now, Sir, 'structure' means any article or thing which has been constructed or built. It would apply, therefore, to a culvert. A person who built a culvert over a drain or blocked up the free flow or access to what supply could not be ordered to remove it under the Act as it stands at present. Under section 186, he can be ordered to remove it if it is part of a house, if it is a projection from an existing building but not otherwise. So far from desiring to limit the word 'structure' in any way, if we had a word with a wider application we would use it.

Mr. President (The Honourable Sir Abdur Rahim): I should like to point out to the House that if there is anything in the language of a Bill which is not clear to Honourable Members or which may mean something which they do not approve of, the only proper course is to put in appropriate amendments.

The question is:

"That clause 7 stand part of the Bill."

The motion was adopted.

Clause 7 was added to the Bill.

Clause 8 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

Mr. C. M. G. Ogilvie (Defence Secretary): Sir, I move:

"That the Bill be passed."

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

"That the Bill be passed."

The motion was adopted.

THE REPEALING AND AMENDING BILL.

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

"That the Bill to repeal certain enactments and to amend certain other enactments be taken into consideration."

Sir, this is the usual measure designed to weed out dead matter from the Statute-book. I assure the House that there is nothing hidden in it which has any other purpose. Sir. I move.

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

"That the Bill to repeal certain enactments and to amend certain other enactments be taken into consideration."

Mr. Lalchand Navarai (Sind: Non-Muhammadan Rural): Sir, I do not blame the Honourable Member or say that anything has been hidden, but an explanation, where necessary, should be given. Very often we do not get these Acts to understand the position for ourselves. Here we find in the Schedule that two Sind Regulations of 1936 are sought to be repealed in whole, and in Sind we have recently found that some of the old Regulations have been of very great help to the Administration. I should like to know what these Regulations are, so that I can judge whether they are obsolete or unnecessary or whether they are being repealed for a certain purpose. I should like to have some information on this point.

Sir Muhammad Yamin Khan (Agra Division: Muhammadan Rural): Sir, this is a big list of Acts sought to be repealed, and I do not know whether the Honourable Member really thinks it fair that we should be asked to study these Acts in two days. It is necessary for us not only to go through all the Acts mentioned here, but also the Bills introduced in this House two days ago, so that we might, if necessary, put in the proper amendments. The Honourable Member was very brief in moving his motion and did not say anything as to why he wants these Acts to be repealed, and whether they are obsolete or unnecessary. The House expected that of the Honourable Member in order to give an intelligent vote. If, however, Government feel that they have got a majority of votes and can carry on as they like, they can do so. But we want to know what the Acts are, and why they are sought to be repealed, and also why they were retained so long and not repealed earlier. We expect to be enlightened on all these points instead of being treated in the way we have been by the Honourable Member.

Mr. Muhammad Azhar Ali (Lucknow and Fyzabad Divisions: Muhammadan Rural): Sir, my grievance is that it is not piecemeal repeal of certain sections that is sought to be done, but we find that whole Acts are being repealed. We have not been given these Acts, and it was not possible for us to go through them, when they go back even as far as 1834. If this kind of procedure is to be followed here, it only means that we are considered to be blind followers of the blind or that Government are blind themselves. It is hoodwinking and insulting the House to ask them to repeal

these enactments wholesale in two days. When we go to our constituencies, they will say that, in spite of our being lawyers and advocates and barristers, we are only sitting here as mummies and dummies. It is an insult to the House, and I protest against it very seriously.

Dr. Sir Ziauddin Ahmad (United Provinces Southern Divisions: Muhammadan Rural): Sir, I also find it very difficult either to support or to oppose this motion. We are asked to repeal a long number of Acts and the Honourable Member has not told us anything as to why it is necessary to repeal them. The Honourable Member may say that we should study them ourselves and surely we are, at least I can say about myself, quite prepared to sit up the whole night and study them, but we must be provided with copies of these Acts. We have not got them and it is only fair to supply us with copies of the Acts which we are asked to repeal. There may be some lawyer Members who may have copies of these Acts in their libraries but I am told that even they do not carry their libraries with them to Delhi. But non-lawyers do not have these Acts even in their libraries at home and it is desirable that they should be given copies of these Acts in order to be able to vote intelligently. The Honourable Member has not been fair to this House; and this is not the first occasion. He has been deliberately unfair to the opposition throughout the Session. In this case he has surpassed himself and he wants us to repeal Acts which he deliberately wants us not to understand. We must be able to read these Acts to understand whether they should be repealed or not. But now he has all the votes and he is suffering from the intoxication of having a majority of votes on his side. But the time is coming when he will have to care for the Opposition and I request him not to press this to a division.

Sir Cowasji Jehangir (Bombay City: Non-Muhammadan Urban): Sir, I am not a lawyer and I can assure my Honourable friend, the Leader of the House, that even if he had supplied us with every one of these Acts I should not have read them. I am, of course, speaking only for myself. Still, I can quite understand, for instance, that the Nawab Nazim's Debts Act of 1873 is to be repealed. It is very probably that the good Nawab is no longer in the land of the living: we trust he paid his debts before he departed—perhaps the Honourable the Leader of the House will inform us as to whether he has done so or not. Then we come to the Ex-King Thebaw's Act. I should think that that Act requires repealing—everybody knows that King Thebaw is dead.

But I would like to say a few words on the general principle that has been adopted of introducing Bills this Session and bringing them up now, which are in agreement with the sentiments expressed by some of my Honourable friends here. We first came to this House this Session on Tuesday last. Today it is Friday. A good many Bills introduced on Tuesday are down for discussion today. I do not know whether my Honourable friends sitting on the Government Benches believe that that is sufficient time for us to consider these Bills and discuss them in detail and allow them to be passed straight off. If they believe so, I respectfully beg to disagree. There are some very important Bills that were introduced on Tuesday which are down on the agenda for discussion today. Honourable Members on the Government Benches believe or appear to believe that we represent merely ourselves in this House. We do not...

We have been elected by very large constituencies; and if we are to do our duty to those constituencies, it is our duty to see that those constituencies also have sufficient time to study those Bills. There are many Bills of the greatest importance on this agenda which are shoved on to us and we are asked to consider them, speak on them, vote on them and at a notice of two or three days. Some of us live two days and three days' distance by rail from our constituencies and we would not be doing our duty by our constituencies if we did not protest at this, I will say, rather hurried manner in which legislation is proposed to be enacted. I am not in favour of delay. I would be the last to advocate delay in legislation or wasting the time of this Honourable House. But I do hope that Honourable Members in charge of these Bills will realise that we are not only responsible to ourselves but to others, and that those others must get an opportunity, throughout India, of knowing the contents of many of these important money Bills: I am not referring to this particular Bill. I can understand and I am prepared to take my Honourable friend's assurance that there is nothing in these Acts that he wishes to repeal that will be of any importance to us and I think that assurance ought to be enough for us

Mr. President (The Honourable Sir Abdur Rahim): If the Honourable Member has no objection to this Bill being considered today, I think he had better wait till some Bill comes later on to which his arguments may apply.

Sir Cowasji Jehangir: Since the general subject has been raised by my Honourable friends, I desire to point out that there is some substance in the complaint, although in my humble opinion it may not apply to this Bill in particular and the assurance ought to be accepted that most of these Acts do require repealing

Mr. President (The Honourable Sir Abdur Rahim): Standing Order 38 has been complied with.

Sir Cowasji Jehangir: Yes, but I say it is not in the spirit of the Act.

Mr. President (The Honourable Sir Abdur Rahim): Does the Honourable Member object to these Bills being taken up at short notice?

Sir Cowasji Jehangir: I do not. For the last eleven years I have been trying to point out to this Honourable House that under the constitution under which we work it is the spirit of the constitution that should be followed and not merely the letter of the law. If the House of Commons tried to follow the letter of the law, half the work they do could not have been done. It is the spirit of the Act, it is the undertakings given when the Acts of 1919 and 1935 were passed that should be followed and not merely the letter of the law. The Governor General may have independent powers, but it is the spirit in which those powers are worked that should be considered. The King's name occurs in the British constitution constantly, but does it mean the King? No. Those assurances were given in 1935 to my personal knowledge that the interpretation of the sections will be liberal and it will be the spirit of the Act that will be followed and not the letter of the law. Therefore, I am

not complaining in any way that the law has been infringed or that the rules are being infringed; I am pointing out our difficulties on this side of the House in having to tackle legislation of an important character without due notice. I do hope my Honourable friends will realise our difficulties. They are not invented; they are very real. Give us sufficient time if only for important Bills. I do not object to Bills like the ones which Mr. Ogilvie moved: they are short and to the point, very necessary and most probably do not require more consideration than they received; but there are other Bills about which we have to consult our constituencies: they may be quite formal: they may be quite straightforward to read: but Government is not infallible: we are not infallible: we are all of us liable to make mistakes and, therefore, I trust that we shall get ample time to consider the important Bills which have been put down for today.

Mr. President (The Honourable Sir Abdur Rahim): I think if the Honourable Member had mentioned it before, Government might have considered it.

Sardar Sant Singh (West Punjab: Sikh): Sir, there is one thing common between the Honourable Member who has introduced this Bill and myself, that both of us are members of the profession of law. So we need not hear from some friends that they are not lawyers. I would welcome a measure which reduced the number of Statutes which are to be found in India. and, therefore, so far as this Repealing of Acts is concerned, I welcome it when the Acts have really become obsolete. I have studied the whole of the list and the Statement of Objects and Reasons and the Explanations of clauses, and I do not find any of these measures are required in the present day: but the one question which troubled me most when I was going through this list was, why for so many years, sometimes exceeding half a century, these Acts were allowed to remain on the Statute-book, and why the necessity has been felt to repeal them wholesale today. We have been accustomed to such Repealing and Amending Bills in every Session, but I think it is due to us that the Honourable the Leader of the House in his capacity as Law Member will explain to us what Government aim at when they bring forward these Bills from time to time. Why are they not brought all together, particularly so when they have become obsolete for several years. Take, for instance, Ex-King Thebaw's Act of 1895. I doubt very much whether, under the new Constitution, this Legislature has got power to repeal Acts of the Governor General in Council. However, he will explain it. This Act has been on the Statute-book since 1895. Then, there are some which have been there since 1838, the Bombay Sureties Act and the Bengal Ameen's Act. An explanation is due to us why these Acts have been allowed to remain on the Statute-book for such a long time, and why it has become necessary to put them in the present Repealing Bill and not in previous ones which were introduced during the previous Sessions. In the Second Schedule, there are certain Acts recently passed by this Legislature, and in the case of those Acts the Bills were placed before the Select Committee and the Select Committee's Report was duly presented and considered by this House. With regard to the Hindu Women's Right to Property Act and Arya Marriage Validation Act, both these were placed before the Select Committee which presented its Report:

to this House and it was duly considered by the House. In both those Bills certain considerations of policy were adopted. Here you are excluding those portions now from the operation of the Bill. Certainly, an explanation is due as to why British Baluchistan and Sonthal Pargannas are being excluded in the case of those Bills. I hope the Honourable Member in charge will enlighten us, or, if I may venture to put forward a suggestion for his consideration, will it not be better if the Bill is referred to a Committee to consider it and make a Report, say, in a week's time, and thus avoid the whole difficulty that has arisen in the discussion of this measure.

Sir H. P. Mody (Bombay Millowners' Association: Indian Commerce): Mr. President, I have no doubt that my Honourable friend's object is to bury the dead but considering the number of things he is burying, his funeral oration was remarkably brief. I have no objection, to ancient Statutes being given a decent burial, but I find there are as many as 21 which are only four years old, and I would like to know why we should have been called upon to legislate on these measures if after four years they were to be snuffed out of existence. On the other hand, there is a Regulation which is 122 years old, and it still seems to be alive and kicking. It would be quite interesting, Sir, if a census was taken of the various Government Members who were responsible for all these misbegotten children. I am afraid the Government have got into the habit of conceiving rather recklessly.

The Honourable Sir Muhammad Zafrullah Khan: Sir, on the general question of the time available to Honourable Members for the study not only of this particular measure but several other Bills which are down for consideration today, and some of which have already been passed, the House will not have forgotten that yesterday when I proposed a re-arrangement of the Agenda, there were during the course of my very brief statement three outbursts of applause. That is to say, the House agreed that having regard to a certain contingency it would be desirable to postpone the consideration of the Finance Bill till Monday and to start with the rest of the Agenda

Sardar Sant Singh: But the applause was about the first, and not about the second proposal.

The Honourable Sir Muhammad Zafrullah Khan: This morning in the press I noticed the applause equally distributed over the whole statement.

Sir Cowasji Jehangir: May I point out to the Honourable Member that I did mention the Income-tax Bill. I asked him a deliberate question whether the Income-tax Bill was coming on, and why so soon, and he said it would be put right at the end of the agenda.

The Honourable Sir Muhammad Zafrullah Khan: Oh, yes, but there was no protest against the general arrangement. It was accepted that it was more desirable not to start with the Finance Bill first and that these Bills should be taken up earlier. That is the reason why these Bills are down for consideration this morning, otherwise, what Government had originally proposed was that the Finance Bill should be taken up first which would

have occupied two or three days and Honourable Members would have had a little more time to study these measures. That is the first observation I have to make on that aspect of the question.

The second observation is that, as Sir Cowasji Jehangir himself pointed out, so far he has not felt this objection with regard to what has come before the House. I think when we come to the other measures he will also find that they too are specific and "pointed", as he said, and there is no difficulty in following their object.

I now come to the objections raised by certain Honourable Members with regard to this particular measure. They said here is a long list of enactments which it is proposed to repeal wholesale and we are very apprehensive that something might be done the significance of which we have not been able to realise,—we have been given no time to discover what exactly is intended. Two Honourable Members have used the expression that Government expect them to pass this Bill blindly. Well, Sir, my grievance is the other way about. The notes on clauses give adequate explanations with regard to every repeal and amendment proposed, and if Honourable Members will not open their eyes, they cannot complain that they are unable to see.

I will now take some specific matters that have been mentioned. Mr. Lalchand Navalrai is rather perturbed by the feeling that by the repeal of a certain regulation which has proved itself very useful in his province things in that part of the country might even be worse than they are to-day. I would draw his attention to the Note with reference to the particular Regulation that he mentioned. The Note is the last Note on clauses before the second schedule is mentioned, and it says:

"These Regulations are of a purely amending nature, and by virtue of section 6A of the General Clauses Act, 1897, they can now be removed from the Statute-book."

If Mr. Navalrai had any apprehension, all that was necessary for him to do was to look up section 6A which provides that if an amending measure is itself repealed, then unless a contrary intention appears, the amendment which has been carried into effect shall not be affected by the repeal. That is to say, once an amending measure has become law, its object has been achieved and it can safely be repealed . . .

Mr. Lalchand Navalrai: That should have been made clear.

The Honourable Sir Muhammad Zafrullah Khan: It was made clear. The same applies to the 21 or so measures, to which attention has been drawn by Sir Homi Mody, more perhaps for the purpose of drawing attention to the fact that he has arrived this morning in the Assembly than to any particular objection to these repeals.

Then one point was raised by Sardar Sant Singh, and it was this. He said why is a certain amendment effected in the Hindu Women's Right to Property Act, 1937, and the Arya Marriage Validation Act, 1937, the Explanation is at page 2 of the Notes—the words omitted became inept when certain sections of the Government of India Act came into operation on the first day of April, 1937. The original Act had provided that the Act should apply to British Baluchistan and Sonthal Parganas, and should not

apply to Burma. Well, now, if the Burma part is repealed, it does not become applicable to Burma because we cannot now legislate for Burma. With regard to British Baluchistan and Sonthal Parganas, this Act has already under the new constitution been applied by appropriate action to those areas so that these words have become unnecessary in this Act. If Honourable Members had only taken the trouble to go through the Notes on Clauses, and, if possible, where any doubts were raised, to refer not to the original Acts so much as to the particular measures referred to as the result of which the continuance of the original Acts on the Statute-book had become unnecessary or some amendments had become necessary, they would have received complete satisfaction and that task would not have entailed more than half an hour or an hour's study.

Mr. Lalchand Navalrai: Where was the time?

The Honourable Sir Muhammad Zafrullah Khan: The House rose yesterday at 12-25 P.M.

Sir Muhammad Yamin Khan: Was not the Honourable Member expected to enlighten us in his speech?

The Honourable Sir Muhammad Zafrullah Khan: I had enlightened Honourable Members in the Notes on clauses.

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

"That the Bill to repeal certain enactments and to amend certain other enactments be taken into consideration."

The motion was adopted.

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

The First Schedule and Second Schedule 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 Muhammad Zafrullah Khan: Sir, I move:

"That the Bill be passed."

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

"That the Bill be passed."

The motion was adopted.

THE INDIAN REGISTRATION (AMENDMENT) BILL.

The Honourable Sir Reginald Maxwell (Home Member): Sir, I beg to move:

"That the Bill further to amend the Indian Registration Act, 1908, for certain purposes, be taken into consideration."

Mr. President (The Honourable Sir Abdur Rahim): The Chair is sorry to interrupt the Honourable Member, but today being Friday, it will perhaps be better to adjourn now.

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

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

The Honourable Sir Reginald Maxwell: Sir, when the House rose this morning, I had moved:

"That the Bill further to amend the Indian Registration Act, 1908, for certain purposes, be taken into consideration."

In view of the remarks which fell from certain Honourable Members in regard to the last item of the agenda, I will not leave the House without some explanation of the contents of the Bill. Section 17 (1) of the Indian Registration Act deals with documents of which the registration is compulsory. Four classes of documents were originally specified in this sub-section, that is to say, those referred to in clauses (a), (b), (c) and (d) of that sub-section. Section 28 dealing with the place for registering documents relating to land covers the documents mentioned in these four clauses and provides that they shall be presented for registration in the office of the Sub-Registrar within whose sub-district the whole or some portion of the property is situate. If the property is not situated wholly within one sub-district, the Sub-Registrar is required by section 64 of the Act to send a memorandum of the document to every Sub-Registrar within whose jurisdiction any part of the property is situate and that Sub-Registrar is also required to file the memorandum in his book No. 1. But an additional clause (e), specifying a fresh class of documents relating to immovable property, of which the registration was compulsory, was added to section 17 (1) by section 10 of the Transfer of Property (Amendment) Supplementary Act, 1929. When that was done, a corresponding addition should have been made to section 28 so that the same procedure should apply but by oversight this was omitted and the result is that documents referred to in clause (e) of section 17 (1) are now governed by section 29 of the Act and are allowed to be registered at the office of a Sub-Registrar within whose jurisdiction no portion of the property is situated. If this happens, the Sub-Registrar to whom the document is presented will neither index the property in his own office nor will he be bound under section 64 or 65 of the Act to send a copy of the memorandum or the document to other Sub-Registrars or Registrars within whose local jurisdiction the property is situate. Consequently there will be no index of the immovable property assigned by such instruments in any registration office and the opportunities intended to be afforded by the Act to investigate the title to any property will be wanting. It is therefore proposed by means of clause 3 (a) of the Bill to make the requisite amendment in section 28 so as to treat documents falling under clause (e) of section 17 (1) in the same way as the other classes of documents specified in that sub-section.

The other section affected by the Bill is section 18 of the Registration Act. This is referred to in clause 2 of the Bill, and it deals with documents:

[Sir Reginald Maxwell.]

the registration of which is optional. The documents mentioned in clauses (a), (b) and (c) of this section correspond to those mentioned in clauses (b), (c) and (d) of section 17 (1), and these also are mentioned in section 28 of the Act so that the same provisions regarding place of registration and indexing will apply. In order that documents of the class referred to in clause (e) of section 17 (1), when the value is less than Rs. 100, should be subject to similar treatment as regards registration and indexing it is advisable that a corresponding clause should be added to section 18 and completed by a corresponding addition in section 28 of the Act. This is done by clause 2 and sub-clause (b) of clause 3 of the Bill. Sir, I move.

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

"That the Bill further to amend the Indian Registration Act, 1908, for certain purposes, be taken into consideration."

The motion was adopted.

Clauses 2 and 3 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 Reginald Maxwell: Sir, I move:

"That the Bill be passed."

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

"That the Bill be passed."

The motion was adopted.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

The Honourable Sir Reginald Maxwell (Home Member): Sir, I move:

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

As the House is aware, when the present Government of India Act was introduced, the existing legislation was subjected to a process called adaptation in order that the provisions might be in accordance with the constitutional position resulting from the Act. This lengthy and complicated process has been performed with very few errors but this Bill relates to one of them. Section 29 of the Civil Procedure Code, which Honourable Members will find reproduced in the Statement of Objects and Reasons, relates to the service in British India of summonses issued by foreign courts and the words 'such courts' occurring at the end of the proviso—the last words of the proviso—refer to the foreign courts issuing the summonses in question. The object of the adaptation was, of course, to preserve the same meaning while altering the authority but by mistake, which is translated into legal phraseology by the words per incuriam, these words have been replaced in adaptation by the words 'the courts of the province', that is, not the foreign courts but the courts in the province in which the summonses are to be served, and, thus, the adaptation has altered the meaning and effect of the proviso in a manner which was not intended.

This mistake is to be rectified by clause 2 (1) (b) (ii) and (iii) of the Bill. Those are the important clauses of the Bill. The other provisions of clause 2 are inserted merely to make it clear that section 29 of the Civil Procedure Code applies to processes other than summonses, for instance, judgments of a foreign court which was the actual instance in regard to which the question arose. Clause 3 of the Bill is merely a routine amendment to correct an obsolete reference. I think that explanation will be sufficient for the House to understand this simple measure. Sir, I move.

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

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

The motion was adopted.

Clauses 2 and 3 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 Reginald Maxwell: Sir, I move:

"That the Bill be passed."

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

"That the Bill be passed."

The motion was adopted.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

The Honourable Sir Reginald Maxwell (Home Member): Sir, I move:

"That the Bill further to amend the Code of Criminal Procedure, 1898, be taken into consideration."

Chapter XL of the Criminal Procedure Code relates to commissions for the examination of witnesses in criminal cases whose presence cannot easily be secured before the trying court and Honourable Members are familiar with its provisions. Before the separation of Burma, this section naturally applied to commissions issued by British courts to courts in Burma and *vice versa* but the separation of Burma has left us in a position in which the possibility of using this convenient procedure is removed, and in view of the considerable interchange of population between India and Burma, the necessity may arise at any time to make use of this procedure. It would, therefore, be desirable to establish a similar legal procedure on a reciprocal basis between British India and Burma and the Government of Burma have agreed that if we pass legislation on these lines, they will undertake reciprocal legislation. The Bill, therefore, amends the Criminal Procedure Code so as to make the relevant provisions in Chapter XL applicable as between British India and Burma; and in clause 1, sub-clause (x) of the Bill it is provided that the legislation will come into force on such date as the Central Government may notify, in order that the date may be notified when Burma has actually put through the necessary reciprocal legislation. Sir, I move.

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

"The the Bill further to amend the Code of Criminal Procedure, 1898, be taken into consideration."

The motion was adopted.

Clauses 2 and 3 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 Reginald Maxwell: Sir, I move:

"That the Bill be passed."

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

"That the Bill be passed."

The motion was adopted.

THE INDIAN COMPANIES (AMENDMENT) BILL.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar (Member for Commerce and Labour): Sir, I move:

"That the Bill further to amend the Indian Companies Act, 1913, be taken into consideration."

This Bill seeks to provide for the custody of dividends declared by the official liquidator of companies in liquidation which lie unclaimed and for the subsequent procedure to be followed if such claims to such monies are made in future. There is an old Act called the "Unclaimed Deposits Act" of 1866, but recent legal opinion has brought out that that Act is not applicable to such unclaimed dividends because no suit may lie with reference to them and the Unclaimed Dividends Act refers to suits in courts. There is also a provision in the Presidency Towns Insolvency Act but that is not applicable to proceedings under Part V of the Indian Companies Act. In these circumstances, this Bill has been drafted to provide for the custody of these unclaimed dividends. They will be paid into the Reserve Bank and will be held to the account of the Government, and if after a certain period there is no claim made, they will be appropriated by the Government. If claims are made within that period, the applicant will have to go to court and to make his claim and then the amount will be paid out of the funds in the Reserve Bank to that particular account.

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

"That the Bill further to amend the Indian Companies Act, 1913, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: Sir, I move:

"That the Bill be passed."

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

"That the Bill be passed."

The motion was adopted.

THE WAR DONATIONS AND INVESTMENTS (COMPANIES) BILL.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: (Member for Commerce and Labour): Sir, I move:

"That the Bill to enable companies in British India to make donations to public funds formed, and to make investments in Government loans floated, for the purpose of assisting the prosecution of the present war, be taken into consideration."

Sir, this Bill arises out of a definite request that has come from some of the companies which have found themselves handicapped by their memoranda of association to make the donation or to invest in war loans as the vast majority of their members would like to do. The Article of Association do not provide for it and therefore no extraordinary meeting or special meeting of the shareholders would help them or the directors to make the investment or to make the donation. Legal opinion was taken and it was ascertained that by a legal provision duly enacted only could this power be conferred. The Bill provides that this power will be exercised only at a special meeting of the shareholders. The directors are authorised either to make the donation or to invest the fund for these particular purposes. This concerns only those Associations or Companies or Clubs which wish to make these donations and Government felt that if there was a demand from these Associations or Clubs that the general shareholders should have the power, Government should facilitate their request by requesting this House to pass this measure. Sir, I move.

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

"That the Bill to enable companies in British India to make donations to public funds formed, and to make investments in Government loans floated, for the purpose of assisting the prosecution of the present war, be taken into consideration."

Sardar Sant Singh (West Punjab: Sikh): Sir, I have given notice for the circulation of this Bill. If you dispense with the rules of the time-limit, in that case I am prepared to move the motion for circulation.

Mr. Deputy President (Mr. Akhil Chandra Datta): The amendment was received only today at 1-25 P.M. and it has not been circulated. Except with the consent of the House, this amendment cannot be entertained. Does the Chair take it that there is an objection to the amendment being moved?

(Objection was taken.)

Mr. M. S. Aney (Berar: Non-Muhammadan): It only requires the suspension of the Standing Rules.

Mr. Deputy President (Mr. Akhil Chandra Datta): As objection is taken, the Chair thinks it cannot be entertained.

Sir Cowasji Jehangir (Bombay City: Non-Muhammadan Urban): Mr. Deputy President, I am quite in agreement with the principle of the Bill, but I am a little doubtful whether the Honourable Member will carry out the object he has in view. May I ask one or two questions? One is of a legal character. Suppose there is a company whose Articles allow the Board of Directors to give such donations or to subscribe to such loans and, particularly, to the interest-free loan, then by clause 3 of the Bill you would be depriving those Directors of those powers. Clause 3 gives those powers to the shareholders and if the Articles already prescribe such powers to the Board of Directors subject to the approval of the shareholders, will you not be depriving those Boards of Directors of the powers they have already obtained under their Articles of Memoranda? I am not quite certain about it. This clause overrules and overrides all Articles of Memoranda that may be in existence. Therefore, as I have said, I am not in a position to offer a legal opinion but I would like that Government should make sure that this will not have the effect I have just stated whereby the remedy will be worse than the disease.

In the second place, when companies give such powers, it is generally to the Board of Directors subject to the sanction or the approval of shareholders. Here, if a company has not got such powers, every time a donation is to be made—the amount may be Rs. 5 or Rs. 5,000 or Rs. 5,00,000—the shareholders' approval and sanction will have to be obtained. That is not an easy process. I would ask my Honourable friend, the Mover of this Bill, to consider that point. Would it not be wiser to give the power to the Board of Directors subject to the final approval of the shareholders when they meet in a general meeting, say, six months or nine months after the donation has been made. That is the usual method that companies adopt when they desire to give such powers for donations. Of course, in most companies the directors have power to invest money in loans, but the difficulty comes in when it is the interest-free loan. No Articles provide that a company shall subscribe to a loan which is interest-free. No such loan was ever heard of. Therefore, the difficulty has arisen that no company can invest in interest-free loans, not even with the sanction of the shareholders, unless their Memoranda is changed, which is a very tedious process. Now, you propose to give this power not to the Board of Directors but direct to the shareholders which will necessitate the calling of a special general meeting and in the case of big companies with a large number of shareholders, the cost of calling the meeting may very easily be equivalent to the donation. I know of companies in whose case it will cost a good penny to call a general meeting. It may cost thousands of rupees and the cost may very well run into more than the donation that the company desires to give.

Babu Baijnath Bajoria (Marwari Association: Indian Commerce): That will also be a donation to the Post Office!

Sir Cowasji Jehangir: We are not asked to give a donation just now to the Post Office which you will be asked to give later on and I hope you will give it. At present we are not asked to do that.

Sir, those are the difficulties that strike me and I am not prepared to move any amendment in the matter. It is a matter for the Government to decide. I have brought two points to the notice of the Honourable Member and if the Government is satisfied that in the first case it will not upset the Articles of Association which already give power to their Directors to do what they want and, secondly, if they think that giving this power to the shareholders is an effective method of fulfilling their object, I have nothing further to say. I may point out that Clubs stand on a very different footing to shareholders. A Club may be a limited company. It may be quite easy for the members to meet and pass a Resolution. In that case, it would be just as easy to change their Memoranda for all purposes. It is a small affair. But with companies and especially big companies it is a very different affair. I would suggest that the Honourable Member should consider the points I have placed before him. If a legislation is to be passed, let it be effective and let it be something that will really do some good from our point of view and will facilitate companies subscribing to interest-free loans and giving such donations as they may desire.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: Sir, two issues have been raised by my Honourable friend, Sir Cowasji Jehangir. The first issue is whether in the case of a company whose Articles of Association authorise the directors to make such donations or to invest in such loans, there is anything in the proposed Bill which will militate against that position. I can give the categorical assurance that according to the legal advice that I have received, it is not so. Clause 3 of the Bill says:

“Notwithstanding that the memorandum of association or the articles of association of the company do not enable it so to do,”

Therefore, where the Articles of Association or Memorandum of Association do authorise, that is not covered by this Bill at all.

Sir Cowasji Jehangir: Authorise shareholders.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: Authorise directors under the Articles of Association without the necessity for a special meeting of the shareholders: that position is not touched by this Bill at all.

The second question is more difficult and it raises a question of policy. What the Honourable Member suggests is that as companies are very large and the task of convening a special meeting of the shareholders of the company will be financially very heavy, legislation may be promoted which would authorise Directors directly to make such donations. Honourable Members will easily realise, that that is a matter of policy which ought to be left to the shareholders to decide. If Directors, by themselves, 3 or 5 or 7 of them take it into their head to make a donation for whatever laudable purpose it may be and for purposes then approved by the Government, still it will not be fair to the shareholders that donations either of a particular amount or of an amount which the shareholders disapprove of should be made by the directors direct. The Honourable Members suggested that it might be ratified afterwards. I can understand that in case of investments, the shareholders may meet and ask the Directors to cancel investments already made or to reinvest that money

[Diwan Bahadur Sir A. Ramaswami Mudaliar.]

in some other form, but where donations have been made unless you put in a provision, that the Directors will be mulcted and will be asked to repay the amount of donation already made, if shareholders do not approve of it, the shareholders have no remedy. Honourable Members will easily realise that that is not a position which Government can ask the shareholders to take up by legislation. It is on these grounds that this Bill has been drafted in this particular form.

Mr. M. S. Aney: May I ask one question? Why is it that under the existing Companies' Act, there is no arrangement for the companies to get their Articles of Association or Memorandum of Association altered at any time?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: That would require a very cumbersome procedure.

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

"That the Bill to enable companies in British India to make donations to public funds formed, and to make investments in Government loans floated, for the purpose of assisting the prosecution of the present war, be taken into consideration."

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

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

"That clause 4 stand part of the Bill."

Sir George Spence (Secretary, Legislative Department): With your permission, I move an amendment to correct a misprint which has occurred in the last line of clause 4. There is a reference in the last line to section 2 which should be section 3. I move:

"That in the last line of clause 4, for the word and figure 'section 2', the word and figure 'section 3' be substituted."

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

"That in the last line of clause 4, for the word and figure 'section 2', the word and figure 'section 3' be substituted."

The motion was adopted.

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

"That clause 4, as amended, stand part of the Bill."

The motion was adopted.

Clause 4, as amended, was added to the Bill.

Clause 5 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: Sir, I move:

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

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

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

The motion was adopted.

THE RESERVE BANK OF INDIA (THIRD AMENDMENT) BILL.

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

"That the Bill further to amend the Reserve Bank of India, Act, 1934, be taken into consideration."

Under sub-section (1) of section 42 of the Reserve Bank Act, all scheduled banks are required to maintain with the Reserve Bank a daily minimum balance equal to five per cent. of their demand liabilities and two per cent. of their time liabilities. Sub-section (3) of that section provides a penalty for defaults in the maintenance of the prescribed minimum balance. That penalty is that the Reserve Bank can charge the defaulting banks penal interest on the amount in default and for the time the default continues. Now, Sir, the charging of this penal interest is the only sanction which the Reserve Bank is able to enforce. There is nothing in the Act to prevent a scheduled bank from withdrawing these deposits even to the full amount so long as it is prepared to pay the penal interest. Thus, a scheduled bank finding itself in an illiquid position and unable to provide cash to meet its liabilities in any other manner is able to withdraw funds which should properly be maintained intact with the Reserve Bank. This is obviously a highly unsatisfactory position, and entirely contrary to the intention of this House when making that provision in the Reserve Bank Act. The position has been prominently brought to notice by the failure of certain banks. As a preliminary step towards dealing with this matter, the Government published last year a letter from the Reserve Bank explaining the legal position under section 42. The Bank felt that the public would be misled by section 42 into thinking that a scheduled bank was virtually unable to withdraw the minimum cash balance and so the Reserve Bank made it clear in this letter which we published that in the last resort the only thing which the Reserve Bank could do was to charge this penal interest and that so long as the bank went on paying this penal interest, it could go on defaulting even to the whole extent of its minimum cash balance.

Mr. F. E. James (Madras: European): What was the amount of the penal interest?

The Honourable Sir Jeremy Raisman: I will read sub-section (3) of section 42:

"If at the close of business on any day before the day fixed for the next return, the balance held at the Bank by any scheduled bank is below the minimum prescribed in sub-section (1) such scheduled Bank shall be liable to pay to the bank in respect of each such day penal interest at a rate of three per cent. above the bank rate on the amount by which the balance with the Bank falls short of the prescribed minimum, and if on the day fixed for the next return such balance is still below the prescribed minimum as disclosed by this return, the rates of penal interest shall be increased to a rate five per cent. above the bank rate in respect of that day and each subsequent day on which the balance held at the Bank at the close of business on that day is below the prescribed minimum."

Mr. F. E. James: That is nothing for people who want to defraud!

The Honourable Sir Jeremy Raisman: That was the first step taken to remove misapprehensions in the minds of the public and the depositors with regard to the very limited scope of this section. The Reserve Bank have been watching the position carefully and have recently reported that there has been no improvement in the direction of a decrease of defaults by scheduled banks in the maintenance of their statutory deposits. On the contrary the position has further deteriorated. What is more, in a number of cases the default is persistent and serious. These recurring and persistent defaults obviously threaten to render completely nugatory the provision of section 42 requiring scheduled banks to maintain deposits with the Reserve Bank. The central board of the bank reviewed the whole position at meetings which they held recently and they came to the conclusion that in the interests of sound banking early steps should be taken to tighten up the effectiveness of section 42 in this respect; otherwise there was the danger that persistence in unsound methods of which these defaults were symptomatic might end in the liquidation of several banks. Accordingly the central board have recommended immediate legislation to amend section 42, and the model which they have taken is a provision of the Indian Companies Act which already applies to banking companies which are not scheduled banks. And the curious thing which I want specially to bring to the notice of the House is this that the legislation which this House has passed in recent years has had the effect actually of being more stringent in the case of non-scheduled banks than in the case of scheduled banks who by the very fact of their status as scheduled banks naturally command *prima facie* a greater confidence in the depositing public. The provision of the Indian Companies Act I shall explain in a moment. But in the case of non-scheduled banks they do not of course have to maintain their cash deposit with the Reserve Bank but they have to maintain a cash deposit and a return of the amount so held on the Friday of each week of the preceding month has to be filed with the Registrar. Sub-section (4) of section 277 (11) of the Indian Companies Act provides as follows:

"If default is made in complying with the requirements of * * * this section as to the maintenance of a cash reserve, every director or other officer of the bank who is knowingly and wilfully a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues; and if default is made in complying with the requirements of this section as to the filing of the statement, etc." (which I have just mentioned), "to a fine not exceeding one hundred rupees for every day during which the default continues."

The Central Board of the Reserve Bank are strongly of opinion that at least this sanction should be applicable to scheduled banks as it is already applicable to non-scheduled banks. They have recommended that after a certain period of grace, namely, up to the date fixed for the third return under section 42 (2),—these are weekly returns relating to the state of affairs on Friday of each week,—the directors and officers of the defaulting bank who are knowingly and wilfully parties to the default should become liable to a fine not exceeding five hundred rupees for every day during which the default continues,—that is, the same penalty as in the case of non-scheduled banks. But the central board of the bank further desire that provision should be made to the effect that after the period of grace referred to above the Reserve Bank should be empowered to serve notice at their discretion on the defaulting bank prohibiting it from accepting any fresh deposits until the minimum balance

with the Reserve Bank has been restored, and that persons knowingly and wilfully parties to any transgression after notice should be liable to a fine not exceeding five hundred rupees for every day during which fresh deposits are accepted and retained by the defaulting bank.

These provisions are admittedly severe but in our opinion they are not too severe for the state of affairs which they are intended to remedy. The effect will be to force the defaulting bank either to comply with the provisions of section 42 or, if its condition is already so serious that it cannot provide the minimum cash deposit, then instead of hiding up this state of affairs and continuing to trade and to mislead its depositors and the public it will be forced into liquidation. That is a desirable development, in my opinion, in order to prevent a scandalous position which is liable to arise under the existing law. Let me remind the House what the position actually is. The position is that you have banks which are already in such a desperate condition that they cannot maintain with a Reserve Bank a minimum cash deposit of five per cent. of their demand liabilities or two per cent. of their time liabilities. The Reserve Bank, the function of which in the Central banking system of this country I need not explain, is, therefore, aware of the condition of these banks. Nevertheless, apart from merely charging this penal interest it is absolutely helpless and is quite unable to save the depositors or the trading public from the effects of the continuance of this state of affairs. That is a situation to which I think the epithet "scandalous" may well be applied and I think it is fair to say that, when this House made these provisions for minimum safeguards, in the liquid assets of these banks, it never contemplated that they could be evaded in this manner

Mr. M. S. Aney (Berar: Non-Muhammadan): What is the approximate number of such banks according to the information of the Reserve Bank? I do not want the names, only the number.

The Honourable Sir Jeremy Raisman: I have not got before me at this moment that information; but the Central Board are of the opinion that the position is sufficiently disquieting to require immediate remedy.

There is only one other point on which I might touch and that is this: it is well-known that the question of a comprehensive piece of banking legislation has been under the consideration of Government and of the Reserve Bank for some time and opinions on the subject have been in process of collection. It will take some time before a comprehensive measure of that kind can be framed in all its details and laid before this House and it is the definite view, both of Government and of the Reserve Bank, that this particular matter ought to be taken up in advance of that general legislation. Sir, I move.

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

"That the Bill further to amend the Reserve Bank of India Act, 1934, be taken into consideration."

Dr. Sir Ziauddin Ahmad (United Provinces Southern Divisions: Muhammadan Rural): Sir, there are two points to which I would like to draw attention. One is that in these days when everything is upset on account of war conditions, it is not desirable to place scheduled banks in a

[Dr. Sir Ziauddin Ahmad.]

more embarrassing condition. Mr. Aney inquired what would be the number of banks which would be placed in this position. I would like to know too what would be the effect of this measure which is now before us. It will certainly be more embarrassing to the banks which are already suffering on account of war conditions. There may be some banks with whom the fortunate merchants deal and who may be in a prosperous condition; but there may be other banks which have business connections with persons who are at present not in very fortunate positions: they will probably suffer and therefore it is very desirable that we should visualise in our mind what would be the effect of this measure. The Finance Member has not given any picture or description of that effect. I am sure that those banks which have got connections in Europe will be in a very good position, but some of the minor banks who have got no such connection and who are now included in the scheduled banks may suffer a good deal by virtue of this amendment now before us. The Honourable the Finance Member has not told us very clearly what would be the position of these banks.

The second point, which I think is somewhat relevant to the particular issue, is this: taking section 42 (2) of the Reserve Bank Act, it says the banks have to show their accounts under five different heads—currency notes and also coins. Under what head will one-rupee note come in? Will it be shown under Rupees or under paper currency? We ought to know this clearly

The Honourable Sir Muhammad Zafrullah Khan (Law Member): There are no one-rupee notes: there are paper rupees but there are no rupee notes.

Dr. Sir Ziauddin Ahmad: The Honourable Member tries to make me believe that paper rupee is silver rupee

The Honourable Sir Muhammad Zafrullah Khan: It is a paper rupee: I am not saying it is a silver rupee. If somebody took a hundred-rupee note to the Reserve Bank and they gave him a hundred paper rupees, they would have discharged their obligation.

Dr. Sir Ziauddin Ahmad: My friend may read the Reserve Bank Act: it says "The amounts held in India in rupee coin." Can he call this paper a rupee coin?

The Honourable Sir Jeremy Raisman: The Honourable Member has a question down on this subject, I think, in a few days' time, in the answer to which I shall explain the position to him. I suggest that this is entirely irrelevant to the purpose of the present Bill.

Dr. Sir Ziauddin Ahmad: It does concern us here because in calculating these amounts they will have to show coin separately and notes separately. The banks ought clearly to be told

The Honourable Sir Jeremy Raisman: The term cash includes notes as well as coins, so that for the purpose of a minimum cash deposit it does not matter whether they are silver rupees or one-rupee notes or hundred-rupees notes or what they are.

Dr. Sir Ziauddin Ahmad: I am reading from the Reserve Bank Act:

"Every scheduled bank shall send to the Governor General in Council and to the Bank a return signed by two responsible officers of such bank showing:

- (a) the amounts of its demand and time liabilities, respectively, in India,
 - (b) the total amount held in India in currency notes of the Government of India and bank notes,
 - (c) the amounts held in India in rupee coin and subsidiary coin, respectively;
-"

The Honourable Sir Jeremy Raisman: To make the point clear, by the Ordinance by which one-rupee notes were introduced, those notes were made, for the purposes of the Reserve Bank Act, equivalent to rupee coin, so that if a bank holds one-rupee notes, they are returned as rupee coin.

Dr. Sir Ziauddin Ahmad: By the Ordinance issued by the Government of India we should take for granted that this one-rupee note is really equivalent to silver coin,—a silver note. I thought that Parliament alone can do everything except making a man a woman or a woman a man: but I find that the Government of India by means of Ordinances can make silver into paper and paper into silver. I know that the Ordinance making power can be used for many things but I never thought that it could be used in this sense, and to make us believe that a paper rupee is really a silver rupee.

Coming to the point, I think it is very desirable that the Finance Member now or at some later stage should tell us very definitely what would be the effect of this change on some of these scheduled banks, especially those which have no connections in Europe. With these words I resume my seat.

The Honourable Sir Jeremy Raisman: Sir, I am afraid that I am not in a position to tell the Honourable Member exactly what would be the effect at the present time of this amendment. I can tell him this, that very large numbers of non-scheduled Banks up and down the country have all along been subject to this penalty if they did not comply with the requirements of maintaining a minimum cash deposit, and that every sound Scheduled Bank should certainly maintain this minimum cash deposit, that it always was the intention, and it is obviously a very elementary requirement of sound banking that a cash deposit not less than this should be maintained by the Bank. I have already pointed out that if a Bank is in such a bad position that it is quite unable to provide this minimum cash deposit, then to allow it to go on trading and accepting further deposits is a much more serious danger than that of forcing it to come out in the open and be liquidated. That is the point which I would like the Honourable Member and this House to direct their attention upon, that if a Bank is quite unable to maintain this minimum cash deposit, then things are already so seriously wrong with it that it should not be allowed to continue because it accepts further deposits from trust funds and ignorant members of the public

Dr. Sir Ziauddin Ahmad: What about the panic which is now prevalent?

The Honourable Sir Jeremy Raisman: Well, Sir, the position is that of a patient who is already in a very dangerous condition—nothing that you can do can make him worse; and on the other hand, if you allow his condition to remain a secret while you yourself are aware of it, you may endanger

[Sir Jeremy Raisman.]

the lives of other healthy people. Is it or is it not your duty to see that the state of affairs is promptly terminated or brought to light and dealt with? That is all I have to say, Sir.

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

"That the Bill further to amend the Reserve Bank of India Act, 1934, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Sir Jeremy Raisman: Sir, I move:

"That the Bill be passed."

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

"That the Bill be passed."

The motion was adopted.

THE MOTOR SPIRIT (DUTIES) AMENDMENT BILL.

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

"That the Bill further to amend the Motor Spirit (Duties) Act, 1917, be taken into consideration."

This Bill, although it appears to embody a somewhat formidable definition, is really of a very simple character. As Honourable Members are aware, power alcohol is now being manufactured in India, and it is used in admixture with ordinary petrol to form motor spirit. Legislation has already been passed in at least one province giving the Local Government power to make the admixture of power alcohol with petrol compulsory. Now, the position from the point of view of the motor spirit duty is this. As soon as the power alcohol is mixed with petrol, then the whole of that becomes motor spirit within the existing definition, and duty is payable already on the whole of that mixture; but the technical position is that until the power alcohol is mixed with the motor spirit, it is not liable to the motor spirit duty. That is an inconvenient position, because it would mean that the usual supervision that is exercised in order to prevent evasion of duty would have to be exercised in a large number of places where the mixing of the power alcohol with the petrol takes place. The object of this Bill is to remove that inconvenience by making the power alcohol liable to the motor spirit duty, immediately it is produced. That object is achieved by amending the definition of motor spirit so as to include power alcohol as well as the forms of motor spirit which were formerly more familiarly. . . .

Sir H. P. Mody (Bombay Millowners' Association: Indian Commerce): Is power alcohol used for any other purpose?

The Honourable Sir Jeremy Raisman: No. Alcohol of a purity which is suitable for this purpose has to be denatured in order to comply with the provincial excise requirements, otherwise it would be alcohol which

could be drunk. If it is denatured in a manner which renders it unfit to be mixed with petrol, that would defeat the purpose; and so the main denaturant is petrol itself. A certain amount of petrol is put into power alcohol, and, as a matter of fact, when that is done, the power alcohol already immediately becomes liable to the duty, but in case any other denaturant were used, it would be possible to argue that the power alcohol was not liable to the Motor Spirit Duty at that stage. . .

Mr. F. E. James (Madras: European): What is a person liable to if he drinks power alcohol?

The Honourable Sir Jeremy Raisman: The object is to tighten the provisions with a view to that contingency. Sir, I move.

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

"That the Bill further to amend the Motor Spirit (Duties) Act, 1917, be taken into consideration."

Dr. P. N. Banerjee (Calcutta Suburbs: Non-Muhammadan): On a point of information, I wish to ask—whether Provincial Governments are entitled at the present moment to tax power alcohol?

The Honourable Sir Jeremy Raisman: As Dr. Banerjee is no doubt aware, as a result of the case which came before the Federal Court last year, a Sales Tax on motor spirit can be levied by a Provincial Government. The excise on motor spirit and on power alcohol will still, under the constitution, belong to the Centre.

Mr. F. E. James: What is the difference between an excise and a sales tax?

The Honourable Sir Jeremy Raisman: I would refer the Honourable Member to the judgment of the Federal Court.

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

"That the Bill further to amend the Motor Spirit (Duties) Act, 1917, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Sir Jeremy Raisman: Sir, I move:

"That the Bill be passed."

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

"That the Bill be passed."

The motion was adopted.

Mr. Deputy President (Mr. Akhil Chandra Datta): Sir Jeremy Raisman.

The Honourable Sir Jeremy Raisman: In regard to the next motion* which is down in my name (No. 33), I find that there are several Members in this House who feel that the Bill requires some further study on their part and that they have not been able in the short time that it has been before them, to obtain full information on its effect and on its significance.

[At this stage, Mr. President (The Honourable Sir Abdur Rahim) resumed the Chair.]

In these circumstances, Sir, I do not wish to make the motion at this stage.

THE INDIAN MERCHANDISE MARKS (AMENDMENT) BILL.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar (Member for Commerce and Labour): I beg to move:

"That the Bill further to amend the law relating to fraudulent marks on merchandise be referred to a Select Committee consisting of Sir Muhammad Yamin Khan, Syed Ghulam Bhik Nairang, Mr. J. D. Boyle, Dr. P. N. Banerjee, Rao Sahib N. Sivaraj, Sir Homy Mody, Mr. T. S. S. Pillay and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Sir, the House will recall that during the last Budget Session it passed a Bill relating to trade marks which has since become law. This Bill is, in essence, a corollary to that measure, a corollary in more senses than one. In the first place, the same procedure which was adopted with reference to the eliciting of public opinion in regard to the Trade Marks Bill has also been adopted with reference to this measure. A special officer was appointed to make a report. That report was first circulated to Provincial Governments and commercial associations. A draft Bill was thereon framed. The draft Bill was similarly circulated to all commercial organisations, and with the mass of information before us and with the help of the views of Local Governments and commercial bodies, this Bill has been finally framed. A controversy also which was raging for over thirty years over the question whether the Merchandise Marks Act should be amended in particular directions is also proposed to be settled by this Bill which I have the honour of moving.

The last Merchandise Marks Act was passed in the year 1889, fifty years ago, and it closely corresponded to similar legislation which existed at the time in the United Kingdom. It provided for the protection of the consumer against misrepresentations in respect of goods purchased by him, for the safeguarding of the interests of the trading community by preventing goods manufactured by a particular person being passed off as goods manufactured by another person, and, lastly, for special protection to British and Indian traders by requiring foreign goods bearing their name or trade mark to be marked with a special counter indication of the country of origin. During these fifty years our trade has increased

*"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."

enormously in both directions. Our imports have grown not merely in volume but in variety. Our industries have developed and we are producing many more goods than we did in 1889. The commercial community, therefore, wants much greater protection to be afforded that has been possible under the Act of 1889, and the provisions embodied in the various clauses of this Bill seek in some measure to meet the wishes of the commercial community. In the first place, the definition of trade mark which was then based, as I said, on the United Kingdom Merchandise Marks Act, did give room to certain anomalies. Foreign trade marks were, in certain respects, placed in a more favourable position than Indian trade marks, because, if a foreign trade mark was merely registered but was not used in India, it still had the protection given to it under the Indian Penal Code. By the definition that we have adopted now by an amendment, through one of the clauses of this Bill, whereby the definition of a trade mark in the Indian Penal Code will be the same as the definition of a trade mark in the recently enacted Trade Marks Registration Act, that anomaly is sought to be removed. Secondly, with reference to the United Kingdom goods there is no need for an indication of the country of origin at all, and it has been a common complaint among the Indian traders that by the use of Indian names without a counter indication of the country of origin, the consuming public and the trading public were often misled into believing that the product was of an Indian origin. That anomaly also is sought to be removed. Thirdly, under clause 11 (a), a clear indication of the country of origin in cases where goods bore the name of a place similar to the one in the United Kingdom or British India is required and is extended to cover names in the Indian States also. Under these provisions the Government hope that the position of the commercial community will be placed on a much sounder footing and that there will be no room either with reference to the consuming public or the trading public, for that conscious or unconscious passing off which was still possible under the Indian Merchandise Marks Act of 1889. Sir, I move.

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

"That the Bill further to amend the law relating to fraudulent marks on merchandise be referred to a Select Committee consisting of Sir Muhammad Yamin Khan, Syed Ghulam Bhik Nairang, Mr. J. D. Boyle, Dr. P. N. Banerjee, Rao Sahib N. Sivaraj, Sir Homy Mody, Mr. T. S. S. Pillay 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. President (The Honourable Sir Abdur Rahim): The Chair understands that it is not necessary to meet tomorrow, and the Chair is asked to announce that the meeting for tomorrow is cancelled. We meet next Monday. The Assembly is adjourned till 11 o'clock on Monday.

The Assembly then adjourned till Eleven of the Clock on Monday, the 11th November, 1940.