

19th September 1939

THE

LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

Volume V, 1939

(30th August to 22nd September, 1939)

TENTH SESSION

OF THE

FIFTH LEGISLATIVE ASSEMBLY,
1939



NEW DELHI
GOVERNMENT OF INDIA PRESS
1940.

Legislative Assembly.

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

Deputy President:

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

Panel of Chairmen:

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

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MIAN MUHAMMAD RAFI, BAR.-AT-LAW.

Assistants of the Secretary:

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KHAN SAHIB S. G. HASNAIN.

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CAPTAIN HAJI SARDAR NUB AHMAD KHAN, M.C., I.O.M., I.A.

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

RAJA SIR VASUDEVA RAJAH, C.I.E., M.L.A.

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LEGISLATIVE ASSEMBLY.

Tuesday, 19th September, 1939.

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

MEMBER SWORN.

Mr. Charles MacIvor Grant Ogilvie, C.B.E., M.L.A. (Defence Secretary).

STARRED QUESTIONS AND ANSWERS.

(a) ORAL ANSWERS.

INVOICE TYPISTS ON THE NORTH WESTERN RAILWAY.

207. *Mr. Lalchand Navalrai : With reference to the answer to my starred question No. 947, given in this House on the 9th March, 1939, will the Honourable Member for Railways be pleased to state :

- (a) whether it is a fact that there was no question of financial stringency in November last, while replying to part (c) of my starred question No. 1336 asked in this House on the 21st November, 1938 ;
- (b) whether it is a fact that Invoice Typists in the Karachi Division of the North Western Railway have no grade II posts at all to aspire to for promotion ;
- (c) whether the Honourable Member proposed to refer to his speech on 21st February, 1938, printed on page 906 of the Assembly Debates, Volume I, No. 15, in reply to the debate on Mr. N. M. Joshi's cut motion to draw attention to the railwaymen's grievances where the Honourable Member said that there were sufficient vacancies in the upper grades to allow a reasonable flow for promotion from the lower to the upper ; and if these remarks also applied to the Invoice Typists in the Karachi Division, which has not a single grade II post ; and
- (d) whether Government propose to ensure that in accordance with their statement referred to in part (c) above, six posts of grade II for Invoice Typists were created in the Karachi Division to have some flow of promotion ; if not, why not ?

The Honourable Sir Andrew Clow : (a) There was no reference to financial stringency either in that question or in the answer given.

(b) Yes.

(c) Sir Thomas Stewart was discussing the block in promotion of men in categories for which there was already more than one grade. His remarks were not, as I read them, intended to apply to the category of "Invocie Typists".

(d) Does not arise, but I will forward a copy of the Honourable Member's question to the General Manager for such action as he may consider necessary.

Mr. Lalchand Navalrai : Are these invoice typists to stagnate in their place for all time, or is there any way out for them ?

The Honourable Sir Andrew Olow : At present I understand there are no posts above that in which they can be suitably employed.

Mr. Lalchand Navalrai : Will the Honourable Member see, when they are employed, that they get some prospects of rising to higher jobs in the railway service ? How is the Honourable Member going to help them ?

The Honourable Sir Andrew Olow : The creation of posts must depend on the need. We cannot guarantee that everybody will rise.

Mr. Lalchand Navalrai : Will the Honourable Member assure the House that, when they are employed, they will not stagnate all the time on Rs. 15 or 20 ? Will the Honourable Member make it a rule ?

The Honourable Sir Andrew Olow : I have taken note of the Honourable Member's opinion.

Mr. Lalchand Navalrai : You should give some help and not simply take note.

PROMOTION OF TRAIN CONTROLLERS TO STATION MASTERS' GRADE ON THE NORTH WESTERN RAILWAY.

208. *Mr. Lalchand Navalrai : Will the Honourable Member for Railways be pleased to state :

- (a) whether it is a fact that in the year 1927, the Agent, North Western Railway, had issued a circular stating that when sufficient number of Train Controllers were available, other things being equal, preference would be given to Train Controllers when filling vacancies of Station Masters ;
- (b) whether it is a fact that with a view to bring Train Controllers and Assistant Station Masters on the combined seniority list, ten confirmed Assistant Controllers were made to undergo senior Assistant Station Masters' course at the Walton Training School in 1935 ;
- (c) whether it is a fact that this was in accordance with the Railway Board's orders who had desired the administrations to maintain a certain standard of efficiency ;
- (d) what was the cost of the training referred to in part (b) above ;
- (e) whether it is a fact that the combined seniority list of Assistant Station Masters and Assistant Controllers was actually issued in 1937 ;

- (f) whether it is a fact that in 1937 and after, certain confirmed Assistant Controllers were actually sent out on the North Western Railway to work as Senior Assistant Station Masters ;
- (g) how many Assistant Controllers have since been provided for as Senior Assistant Station Masters or grade VI Station Masters and over ; if not, why not ; and
- (h) whether the promotion to the Station Masters' posts in grades V and over in the normal channel of promotion, is available for Assistant Train Controllers as per rules issued for the training and recruitment of subordinate staff by the Railway Board and rule 10 at page 376 of the State Railway Establishment Code ; if so, why the Railway Board's orders are not being carried out on the North Western Railway ?

The Honourable Sir Andrew Clow : (a) Yes, except that preference was to be given to men with control experience and not to Train Controllers as such.

(b) Yes.

(c) I have not been able to trace any orders of the Railway Board on this point.

(d) The cost of the Training School cannot be allocated to separate Courses, but on the basis of the estimated average cost per student per day, during the period when the ten men attended the Course, the cost would be approximately Rs. 2,500.

(e) No. The combined seniority list was drawn up in 1935.

(f) Yes.

(g) and (h). I have called for certain particulars and will give the House the information asked for when they are received.

Mr. Lalchand Navalrai : I did not hear the answer to part (a).

The Honourable Sir Andrew Clow : I said " Yes, except that preference was to be given to men with control experience and not to Train Controllers as such."

Mr. Lalchand Navalrai : Is that being done ?

The Honourable Sir Andrew Clow : So far as I know ?

PAY OF DAILY-RATED STAFF OFFICIATING IN HIGHER GRADES ON RAILWAYS.

209. *Mr. Lalchand Navalrai : Will the Honourable Member for Railways be pleased to state :

- (a) what pay the members of the daily-rated staff are paid, when they are put to officiate in a higher grade ;
- (b) whether they are paid the minimum of the next higher grade in accordance with the provisions of Fundamental Rule 30 or there exist separate rules for them ; if so, whether Government propose to quote the specific rules ;

- (c) whether the officiating period, so put in, in the higher grade counts towards increment ;
- (d) if the reply to part (c) above be in the negative, whether Government propose to quote the relevant rules on the subject which deprive the daily-rated staff of the privileges of officiating service towards increment ; and
- (e) if the reply to part (c) above be in the affirmative, how is the officiating period calculated ; whether it is based on number of actual days for which the employee receives his pay or the wage period is taken as one month ?

The Honourable Sir Andrew Clow : (a) and (b). On the Eastern Bengal Railway, daily-rated staff are not appointed to officiate in higher grade posts. I am laying on the table a statement giving the particulars required as regards the other three State-managed Railways.

(c) It counts on the East Indian Railway and Great Indian Peninsula Railway but not on the North Western Railway.

(d) Rule 143 (2) of the State Railway Establishment Code.

(e) Officiating service counting for increment in a post on a monthly rate of pay is calculated on the basis of the actual officiating service.

Statement.

East Indian Railway.—The pay of an employee appointed to officiate in another post is fixed in terms of Fundamental Rule 30 or the corresponding East Indian Railway Company rule, depending on the rules by which the staff are governed.

Great Indian Peninsula Railway.—No officiating allowance is paid to daily-rated workshop employees when officiating in posts below the grade of chargemen. When they officiate in the grade of chargemen, they are given either the minimum of that grade or a stage in that grade next above their substantive pay, whichever is greater. In the Stores Department, daily rated staff officiating in higher grade are allowed the minimum of such grade.

North Western Railway.—Daily rated staff officiating in a higher grade or post to which daily rates of pay apply are granted the minimum of the scale attached to the higher grade or post.

When a daily-rated employee officiates in a monthly-rated post, he is given the minimum of the scale of pay applicable to that post or more than the minimum if circumstances justify this being done.

Mr. Lalchand Navalrai : May I know why this is not being done on the North Western Railway ?

The Honourable Sir Andrew Clow : Because, under the rules discretion is vested in the General Managers who exercise it.

EXAMINATION OF ILLITERATE DRIVERS AND SHUNTERS SENT FOR TRAINING TO THE WALTON TRAINING SCHOOL.

210. *Mr. Lalchand Navalrai : Will the Honourable the Railway Member be pleased to state :

- (a) whether illiterate drivers and shunters can go through their examinations when they are sent for training to the Walton Training School ;

- (b) if not, whether they can be regarded competent without passing such examinations ;
- (c) whether those men who fail in their examinations are booked for duty ; if so, whether Government are aware that public safety is endangered thereby ; and
- (d) whether it is a fact that under the Boiler Act, 1923, an illiterate man cannot be put in charge of a boiler whose heating surface exceeds 500 square feet ?

The Honourable Sir Andrew Clow : (a) Illiterate drivers are not sent to the Training School. Illiterate shunters are examined orally.

(b) Does not arise.

(c) No employee is booked for duty in a post for which he is not qualified.

(d) Yes : but Railways have been exempted from the provisions of the Act under section 4 thereof.

Mr. Lalchand Navalrai : May I know why these illiterate drivers who are as competent and efficient as the trained drivers are not being given lift ?

The Honourable Sir Andrew Clow : I must ask for notice.

PROMOTIONS OF CLEANERS, FIREMEN AND SHUNTERS ON THE NORTH WESTERN RAILWAY.

211. *Mr. Lalchand Navalrai : With reference to the reply to question No. 1587, part (b), dated the 29th November, 1938, asked by Mr. Sham Lal, M.L.A., in this House, is the Honourable the Railway Member prepared to make it more explicit to the North Western Railway authority concerned that the said orders are applicable only to cleaners and not to firemen and shunters ?

The Honourable Sir Andrew Clow : I understand that the necessary orders have been issued by the Administration.

RUNNING OF PASSENGER TRAINS BY GRADE II DRIVERS ON THE NORTH WESTERN RAILWAY.

+212. *Mr. Lalchand Navalrai : With reference to his reply to question No. 1586, part (d), dated the 29th November, 1938, asked by Mr. Sham Lal, M.L.A., in this House, does the Honourable the Railway Member propose to invite the attention of the North Western Railway authority concerned that all the passenger trains should be run by grade II drivers only ?

The Honourable Sir Andrew Clow : I can see no justification for taking the action suggested.

FILLING UP OF CERTAIN VACANCIES ON THE EASTERN BENGAL RAILWAY.

213. *Mr. Muhammad Nauman : Will the Honourable Member for Railways be pleased to state :

- (a) whether the Railway Board's letter No. E.-135-U.T.-19 (L.), dated the 22nd April, 1936, to the General Managers and Agents of all Railways still holds good ;
- (b) if the reply to part (a) above be in the affirmative, how against Muslim quota of 45 per cent., six vacancies in the clerical grades in the Personnel Branch of the Eastern Bengal Railway have been filled by three Hindus, one Anglo-Indian and two Muslims ;
- (c) what is the present number of temporary appointments in the Personnel Branch of the Eastern Bengal Railway ; how many Muslims and how many Hindus are there ;
- (d) how the two permanent posts in the Establishment Section of the District Locomotive Superintendent, Eastern Bengal Railway, have been filled by Hindus only ; and
- (e) how the permanent vacancies in the Establishment Section of the Works Manager's Office, Eastern Bengal Railway, Saidpur, have been filled by Hindus and without advertisement ?

The Honourable Sir Andrew Olow : (a) Yes.

(b) Six temporary employees have been confirmed since 1st April, 1939. The quota is not applicable to this office by itself ; but I understand that this is only a partial recruitment for this year, and the shortage of a fraction of a man is likely to be made up in the course of the year.

(c) 13.—4 Hindus, 4 Muslims and 5 Anglo-Indians.

(d) The absence of particulars regarding the District and the period to which the Honourable Member's question relates precluded my obtaining the information required.

(e) I understand that the only permanent vacancy this year was in the post of Head Clerk which was filled by promotion. The resultant vacancy in the lowest grade was filled by a Hindu on the approved list, as the vacancy was unreserved.

Mr. Muhammad Nauman : May I know from the Honourable Member in what departments of the Eastern Bengal Railway distinct improvements have been made, so far as the quota of Muslims is concerned ?

The Honourable Sir Andrew Olow : I certainly do not keep a list of them here.

Mr. Muhammad Nauman : The Honourable Member said that four Muslims and four Hindus and five Anglo-Indians were appointed. Is that a reflection of the proper quota ?

The Honourable Sir Andrew Olow : I have explained to the Honourable Member that the quotas do not apply to each individual grade. They apply to the railway as a whole.

RECRUITMENT OF MUSLIMS AND NON-MUSLIMS IN THE OFFICE OF THE JUNIOR CO-OPERATIVE CREDIT SOCIETY AND STAFF BENEFIT FUND, EASTERN BENGAL RAILWAY.

214. *Mr. Muhammad Nauman : Will the Honourable Member for Railways be pleased to state :

- (a) how many vacancies from 1st April, 1938 to 1st August, 1939, in the office of the Junior Co-operative Credit Society and Staff Benefit Fund, Eastern Bengal Railway, have occurred which are directly under the control of the Deputy General Manager, Personnel, or the Welfare Officer of the Eastern Bengal Railway, and how they have been filled ;
- (b) whether the Muslim quota was adhered to in filling up these vacancies ; and
- (c) what is the number of Muslims and non-Muslims recruited during 1934-38 ?

The Honourable Sir Andrew Olow : (a), (b) and (c). The staff of the Junior Co-operative Society Limited and of the Staff Benefit Fund Committee are not railway servants, so that I am unable to accept responsibility for their appointments.

Mr. Muhammad Nauman : May I know to whom they are responsible, if they are not responsible to the Railway Administration ?

The Honourable Sir Andrew Olow : To the societies they serve.

Mr. Muhammad Nauman : Is it not the Railway Board's duty to see how the society is working, because they have got to deal with these employees all the same ?

The Honourable Sir Andrew Olow : The society can be trusted to see that this matter is kept in view.

RECRUITMENT OF MUSLIMS ON THE EASTERN BENGAL RAILWAY.

215. *Mr. Muhammad Nauman : Will the Honourable Member for Railways be pleased to state :

- (a) whether Government are aware of the fact that about 60 per cent. Muslims are recruited as Tally Clerks on Rs. 20—1—28 on the Eastern Bengal Railway to make up the deficiencies in the quota of other subordinate posts carrying higher salaries, especially in the Engineering and the Establishment Offices ; and
- (b) whether the communal quota is maintained for recruitments separately in all grades ?

The Honourable Sir Andrew Olow : (a) The facts are not as stated by the Honourable Member. I understand that from the 1st January, 1935, to the 30th June, 1938, the period for which I have figures available, the excess recruitment of Muslim Tally Clerks was only five per cent.

(b) No. The quota applies to the railway as a whole.

Mr. Muhammad Nauman : With reference to (a), has the quota been satisfactorily applied in 1935-38 ?

The Honourable Sir Andrew Olow : I said that the quota does not apply to each grade as a whole. This happens to be one of the grades regarding which the Honourable Member asked me in a supplementary question to give a grade in which Muslims had been employed above the quota.

NON-RECRUITMENT OF MUSLIMS IN THE CADRES OF LABOURERS AND INFERIOR STAFF ON THE EASTERN BENGAL RAILWAY.

216. Mr. Muhammad Nauman : Will the Honourable Member for Railways be pleased to state :

- (a) how many Muslims, Hindus, Anglo-Indians and members of other minority communities are in the cadres of labourers Grade I and II and other inferior staff on the Eastern Bengal Railway ;
- (b) whether it is a fact that the vacancies in the above-mentioned cadres caused by the wastage of Muslims have been filled by Hindus ; and
- (c) if the reply to part (b) above be in the negative, whether Government are prepared to state how the following vacancies caused by the wastage of Muslims have been filled :
 - (i) one Tool Keeper's post under the Works Manager, Eastern Bengal Railway, Saidpur, during the months of September and October, 1938 ;
 - (ii) two literate Duffries posts under the Executive Engineer, Eastern Bengal Railway, Lalmonirhat, during the period September to November, 1938 ;
 - (iii) posts of Peons under the Executive Engineer, Eastern Bengal Railway, Paksey, during the period January to March, 1939 ; and
 - (iv) posts of Cleaners under the District Locomotive Superintendent, Eastern Bengal Railway, Calcutta District, during the period September to December, 1938 ?

The Honourable Sir Andrew Olow : (a) I lay on the table a statement giving particulars of the position in respect of non-gazetted staff other than subordinates as it was on the 31st March, 1938, the latest date for which information is readily available.

(b) I have no record of the filling of vacancies, but the orders issued to the Railway Administration in 1935 were that the percentage of each minority community as then existing should be maintained in the inferior services of the railway.

(c) This does not arise but I would observe that the orders did not direct that every individual vacancy should be filled by a member of the community to which its previous occupant belonged.

Communal composition on 31st March, 1933, of non-gazetted staff, other than sub-ordinates, on the Eastern Bengal Railway.

Hindus other than depressed classes	18,558
Depressed Classes	9,166
Muslims	14,499
Anglo-Indians and Domiciled Europeans	58
Sikhs	186
Indian Christians	203
Pargis	2
Other communities

Mr. Muhammad Nauman : The Honourable Member has just stated that the orders direct that each minority community's position should be maintained. Is the Honourable Member satisfied that it is being maintained in that way ?

The Honourable Sir Andrew Clow : I have no reason to suppose otherwise.

Mr. Muhammad Nauman : In this particular question I have pointed out that this is not being maintained. That is why I have drawn the attention of the Honourable Member to that fact.

The Honourable Sir Andrew Clow : The Honourable Member's information relates to a particular grade and, as I have pointed out, it is not the order that every time a Muslim or Hindu or Christian disappears, his particular post should be filled by a member of the same community.

RECRUITMENT OF MUSLIMS AND NON-MUSLIMS IN CERTAIN POSTS ON THE EAST INDIAN AND EASTERN BENGAL RAILWAYS.

217. *Mr. Muhammad Nauman : Will the Honourable Member for Railways be pleased to state :

- (a) whether the following posts are classified as subordinate posts for the purpose of recruitment and whether they are subject to communal quotas on the East Indian Railway and the Eastern Bengal Railway :
- (i) Time Keeper Scale Rs. 30—3—45—5—60
 - (ii) Material Checking Clerks Scale Rs. 30—3—45—5—60
 - (iii) Store Munshi Scale Rs. 21—3—45
 - (iv) Coal Checker Scale Rs. 35—3—50
 - (v) Coal Munshi Scale Rs. 21—3—45
 - (vi) Works Sircar Scale Rs. 30—3—45—5—60
 - (vii) Store Tindal Scale Rs. 24—2—34
 - (viii) Tally Clerk Scale Rs. 20—1—28
 - (ix) Punching Clerk Scale Rs. 30—3—45—5—60
 - (x) Head Mate Scale Rs. 37—3—52
 - (xi) Store Munshi in Signal Engineering Department Scale Rs. 45—3—50 ;

- (b) if the reply to part (a) above be in the affirmative, whether Government are prepared to state how many vacancies have occurred during the period from 1st April, 1935 to 1st April, 1939 and how many Muslims and how many non-Muslims have been taken in each post ;
- (c) if the reply to part (a) above be in the negative, whether Government are prepared to state from which date these have been treated as inferior posts ;
- (d) whether it is a fact that the Eastern Bengal Railway is treating the post of Time Keepers as Labourer Staff and the recruitment is not being done according to the communal quota ;
- (e) whether it is a fact that the post of Tally Clerks is treated as subordinate post, whereas the post of Time Keepers is treated as " Labourers " ; and
- (f) whether it is a fact that the post of Time Keeper is purely clerical and is like the post of a Tally Clerk ?

The Honourable Sir Andrew Olow : (a), (c), (d) and (f). I have called for the information required and will communicate it to the House when it is received.

(b) This does not strictly arise but in any case I regret I cannot undertake the research necessary to secure the details of vacancies.

MUSLIMS IN CERTAIN POSTS IN THE HOWRAH DIVISION OF THE EAST INDIAN RAILWAY.

†218. *Maulvi Sikandar Ali Oboudhury : Will the Honourable the Railway Member be pleased to state :

- (a) whether Government are prepared to lay on the table of the House a statement showing how many Muslims are there in the following posts in the Howrah Division, East Indian Railway, and how many Muslims have been promoted and recruited in the said posts on all the Divisions of the East Indian Railway from the period between January, 1934, to June, 1939 :
- (1) Permanent Way Inspectors and their Assistants.
 - (2) Inspectors of Works and their Assistants.
 - (3) Station Masters in the scale of :
 - (a) Rs. 530.
 - (b) Rs. 400.
 - (c) Rs. 350.
 - (d) Rs. 280.
 - (e) Rs. 170.
 - (f) Rs. 120.
 - (g) Rs. 95.
 - (h) Rs. 85.
 - (i) Rs. 80.

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

- (4) Chief Controller.
 - (5) Section Controller, Grades " A " and " B ".
 - (6) Deputy Controllers.
 - (7) Yard Masters.
 - (8) Assistant Yard Masters.
 - (9) Yard Foreman Grade Rs. 300.
 - (10) Transportation Inspectors.
 - (11) Commercial Inspectors.
 - (12) Claim Inspectors.
 - (13) Luggage and Parcel Supervisors.
 - (14) Head Parcel Clerk and Assistants.
 - (15) Chief Accountant and Booking Clerks.
 - (16) Supervisors, City Booking Offices.
 - (17) Head Booking Clerks.
 - (18) Head Goods Clerks.
 - (19) Goods Supervisors, Howrah Goods, Howrah.
 - (20) Head Goods Clerks, Indoor and Outdoor, Howrah Goods.
 - (21) Goods Shed Foreman, Howrah Goods.
 - (22) Weigh Clerks, Grade I and II.
 - (23) Head Establishment Clerk.
 - (24) Assistant Head Establishment Clerks.
 - (25) Group In charges, Establishment Office.
 - (26) Office Superintendent ; and
- (b) whether Government have taken steps to see to the demands of Muslims in the above mentioned posts in all the Divisions of the East Indian Railway generally and on the Howrah Division particularly ?

The Honourable Sir Andrew Clow : (a) This information is not available to Government and I regret that Government are unable to undertake the researches necessary to secure it.

(b) The appointments mentioned by the Honourable Member are filled by promotion of suitably qualified staff. Communal considerations do not apply in such cases.

MUSLIMS IN THE PAY DEPARTMENT OF THE EAST INDIAN RAILWAY.

†219. ***Maulvi Sikandar Ali Choudhury :** Will the Honourable the Railway Member be pleased to state whether there is a single Muslim in the Pay Department of the East Indian Railway ; if not, why not ?

The Honourable Sir Andrew Clow : There are two Muslim clerks in the Cash and Pay Department.

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

IGNORING OF THE CLAIMS OF MUSLIMS FOR PROMOTIONS IN THE HOWRAH DIVISION OF THE EAST INDIAN RAILWAY.

†220. ***Maulvi Sikandar Ali Oboudhury** : Will the Honourable the Railway Member please state :

- (a) whether Government are aware of the fact that on the Howrah Division, East Indian Railway, the claims of senior Muslims are not being considered for promotions whereas junior Hindus are even given accelerated promotions from one grade to another ;
- (b) whether it is a fact that a certain junior man has been given accelerated promotion that is, Rs. 85—5—120 to 210 as a Relieving Guard and then promoted to the post of a Yard Foreman, Coaching Yard, Howrah, on Rs. 800 within one year ;
- (c) if the reply to part (b) above be in the negative, whether Government are prepared to state the names of the employees promoted to Yard Foreman in the Coaching Yard, Howrah, under the Assistant Transportation Superintendent, and the Station Superintendent, Howrah, within one year, i.e., June, 1938, to June, 1939 ; and
- (d) whether those promoted were confirmed in their previous posts on those grades or whether they had reached the maximum of their grades in different capacities that they worked in ?

The Honourable Sir Andrew Clow : (a) No.

(b) and (d). Government receive no particulars of promotions to or confirmations in subordinate posts of this character.

(c) Does not arise.

IGNORING OF THE CLAIMS OF MUSLIMS IN THE TICKET CHECKING BRANCH IN THE HOWRAH DIVISION OF THE EAST INDIAN RAILWAY.

†221. ***Maulvi Sikandar Ali Oboudhury** : Will the Honourable the Railway Member be pleased to state :

- (a) whether it is a fact that the claims of senior Muslims in the Ticket Checking Branch of the Howrah Division, East Indian Railway, are being ignored in matters of promotions from amongst the staff of the Ticket Checking Branch to the posts in other departments ;
- (b) if the reply to part (a) above be in the negative, whether it is a fact that the present incumbent of the post of a Junior Assistant Head Parcel Clerk, Howrah, East Indian Railway, has been promoted from the post of a Travelling Ticket Examiner on the Howrah Division in the year 1932-1933, and whether it is a fact that one Sikh and four Anglo-Indians absorbed as Gunner Guards from the Ticket Checking Branch, have now got the posts of "A" Class Guards ;

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

- (c) whether it is a fact that out of them one Anglo-Indian was declared unsuitable for the post of a Guard by the Selection Board ;
- (d) if the reply to part (c) above be in the negative, whether Government are prepared to place on the Table of the House the approved list of the candidates (outsiders or from the different departments) examined by the Selection Board for the posts of Gunner Guards " A ", Guards Grade " B " and Relieving Guards on the Howrah Division of the East Indian Railway from 1935 to 1939 ;
- (e) whether it is a fact that those approved lists are changed from time to time ; and
- (f) if the reply to part (e) above be in the negative, whether it is a fact that Muslims borne on those lists have been informed that those lists have been cancelled ?

The Honourable Sir Andrew Clow : (a) I have no reason to believe that any legitimate claims are ignored.

(b) Does not arise.

(c) I have no information in regard to this.

(d) Does not arise.

(e) Such lists are normally amended as and when the necessity for doing so arises.

(f) Does not arise.

INDIAN STALLS AND EUROPEAN REFRESHMENT ROOMS ON THE ASSAM BENGAL RAILWAY.

222. *Shaikh Rafiuddin Ahmad Siddiquee : Will the Honourable the Railway Member be pleased to state :

- (a) the income of the Assam Bengal Railway from the Indian stalls and European refreshment rooms, respectively in the last three financial years ;
- (b) what was the expenditure incurred by the Assam Bengal Railway for the Indian stalls and European refreshment rooms, respectively, during the same period ;
- (c) what was the value of the advantages enjoyed by the European refreshment rooms of the Assam Bengal Railway by way of exemptions from various charges and taxes, free supply of electric current, free provision passes, etc. ;
- (d) whether the advantages referred to in part (c) above are also enjoyed by the Indian stalls intended for 3rd class passengers in the Assam Bengal Railway ;
- (e) if the answer to part (d) above be in the negative, whether Government are prepared to state the reason therefor ; and

- (f) whether it is a fact that the Board of Directors of the Assam Bengal Railway have full information of the facilities given to European refreshment rooms and also of the distinction made in this respect between them and the Indian stalls ?

The Honourable Sir Andrew Olow : (a) to (e). The information has been called for and a reply will be laid on the table when received.

(f) I am unable to give particulars of the information in possession of the Board of Directors.

Mr. Muhammad Nauman : With regard to the reply to part (f) of the question, will the Honourable Member be in a position to let us know what is the distinction that the Board has made—in future, if not today ?

The Honourable Sir Andrew Olow : Part (f) relates to certain information in the possession of the Board of Directors. Obviously I cannot give particulars of that.

Mr. Muhammad Nauman : The Honourable Member can call for those particulars ?

The Honourable Sir Andrew Olow : I am not entitled to ask the Agent what information he supplies to the Board of Directors ; that is a matter for him.

IMPROVEMENTS IN THE CONDITION OF THIRD CLASS TRAVEL ON THE ASSAM BENGAL RAILWAY.

223. *Shaikh Rafiuddin Ahmad Siddiquee : Will the Honourable the Railway Member be pleased to state whether Government have taken any steps during the previous and the current years to improve the conditions under which the third class passengers travel on the Assam Bengal Railway ; if not, why not ?

The Honourable Sir Andrew Olow : As regards the previous year, I would refer the Honourable Member to the details relating to the Assam Bengal Railway given on pages 105 onwards of Chapter VIII in the Railway Board's Annual Report, Vol. I, for 1937-38. I lay on the table a list of the more important facilities provided by the railway administration during the year 1938-39 to improve conditions for third class passengers.

List of the more important facilities provided for third class travellers by the Assam Bengal Railway during the year 1938-39.

- (1) Seven additional third class carriages of new type were put into service.
- (2) The lighting of all third class carriage latrines has been completed, with the exception of 17 composite carriages.
- (3) Frosted glass windows for better day lighting have been fitted in latrines.
- (4) Side doors of a large number of third class compartments have been fitted with glass panels illuminated by inside lighting, showing class of carriages.

- (5) Improved flushing arrangements in third class latrines have been provided.
- (6) More third class carriages have been provided with inter-communication windows on partitions between male and female compartments.
- (7) The fitting of two additional alarm pulls in each lower class women's compartment in easily accessible positions to afford additional security was completed.
- (8) 14 third class carriages have been provided with an improved type of seat.
- (9) Double foot-boards have been fitted to 19 inter and third class carriages to facilitate entrance and exit.
- (10) Two Hindu and Muslim refreshment rooms were provided during the year and improvements were made to the Indian refreshment rooms at Laksam and to the Hindu stall at Chaparmukh.
- (11) Stalls for Hindus and Muslims were opened at Sholashahar Junction.
- (12) Two Out-Agencies were opened during the year for passengers and goods.

RECRUITMENT OF MUSLIMS ON THE ASSAM BENGAL RAILWAY.

224. *Shaikh Rafiuddin Ahmad Siddique : Will the Honourable the Railway Member be pleased to state :

- (a) the total strength of clerks and subordinate staff respectively employed by the Assam Bengal Railway in the scale of rupees 50/- upwards and rupees 100/- upwards, respectively, and the total number of Muslims in each grade on the 30th June, 1939 ;
- (b) whether it is a fact that in the matter of recruitment, quotas of Muslims are not being adhered to on the Assam Bengal Railway ; and
- (c) whether it is a fact that no advertisements in the press are given and appointments are made from the same approved list on the Assam Bengal Railway ?

The Honourable Sir Andrew Clow : (a) I have not got the particulars required by the Honourable Member. Such statistics as are compiled show the position on the 31st March each year and are published in Appendix F of Vol. I and Appendix C of Vol. II of the Report by the Railway Board on Indian Railways.

(b) The percentages have varied from year to year, but over the last four years the percentage of permanent vacancies going to Muslims is 36.2 and the percentage of temporary vacancies is 33.7 against a quota percentage of 35.

(c) I am not aware of the procedure that is adopted, but will send a copy of the Honourable Member's question to the Agent and General Manager, for such action as he may consider necessary.

Mr. Muhammad Nauman : May I know what is the quota given to the Assam Bengal Railway by the Railway Board ?

The Honourable Sir Andrew Clow : Thirty-five is the percentage I have quoted in answer to part (b) of the question.

STATE CONTROL OF THE ASSAM-BENGAL RAILWAY.

225. *Shaikh Rafiuddin Ahmad Siddiquee : Will the Honourable the Railway Member be pleased to state :

- (a) whether Government at all contemplate to take over the management of the Assam Bengal Railway from the present company ; and
- (b) if the answer to part (a) above be in the affirmative, whether Government are prepared to state the year in which the management will probably be taken over ?

The Honourable Sir Andrew Clow : Under the existing contract with the Company, Government have the option to take over the management of the Assam Bengal Railway on the 31st December, 1941, or at the end of any succeeding tenth year. The question of exercising the option at the end of 1941 has not yet been considered.

MUSLIM CLERKS IN CERTAIN BRANCHES OF THE ESTABLISHMENT OFFICE OF THE DIVISIONAL SUPERINTENDENT, HOWRAH.

226. *Dr. Habibur Rahman : Will the Honourable Member for Railways please state :

- (a) whether Government are prepared to give the following information about the Muslim clerks referred to in their reply to starred question No. 679 asked in this House on the 24th February, 1939, by Mr. Muhammad Nauman :
 - (i) Designation (Dealing clerk or Group-in-charge).
 - (ii) Date of appointment.
 - (iii) Rate of pay.
 - (iv) Grade.
 - (v) Work allotted, and duties regarding staff matters ;
- (b) whether it is a fact that the only Muslim clerk who was a Dealing Clerk in the Rolling Stock Staff Branch in the Establishment Office, has been taken off this work, and a Hindu clerk from the Commercial Section has been put on the work ;
- (c) whether it is a fact that this new Hindu clerk from the Commercial Branch has no knowledge about the establishment work ;
- (d) whether it is a fact that the Hindu clerk has been brought to the Establishment Branch so that the next vacancy in the higher grade may be given to him ;
- (e) whether Government are prepared to state how the Muslim clerk has been removed from the position which he held ;
- (f) whether it is a fact that the Howrah Division of the East Indian Railway is predominantly Hindu and is constituted of Hindu Divisional Superintendent, Hindu Staff Superintendent, Hindu Commercial Superintendent, Hindu Assistant

Superintendent Staff, Hindu Superintendent Power, Hindu Office Superintendent, Hindu Head Establishment Clerk, Hindu Assistant Establishment Clerk, Hindu Group-in-charges Establishment Office and Hindu Dealing Clerks of Establishment Office ; and

- (g) if the reply to part (f) above be in the negative, whether Government are prepared to state what attempts have ever been made to check the preponderance of the majority community in the Establishment Office of the Howrah Division, East Indian Railway ?

The Honourable Sir Andrew Clow : (a) to (d). I regret that I have no further particulars than those given in the reply to Mr. Muhammad Nauman's question No. 679.

(e) As Sir Thomas Stewart indicated in reply to question No. 679, he left the branch owing to his being suspended.

(f) The composition varies from time to time. Out of 13 officers in the Division on the 31st December, 1938, eight were non-Hindus and the majority at present, so far as I am aware, is also non-Hindu. In the subordinate ranks I would expect to find a majority of Hindus.

(g) Does not arise.

Mr. Muhammad Nauman : With reference to the answer to part (a) of the question, is the Honourable Member aware that the figure of nine Muslims, as stated in reply to my question, was rather a mis-statement of fact, because the number of Muslims is only four, not nine ? There were only two Muslims who have since been removed, and I should think there should be about two more only ? Is the Honourable Member aware of that position ?

The Honourable Sir Andrew Clow : No, Sir, I am not.

Mr. Muhammad Nauman : Does the Honourable Member propose to make an enquiry ?

The Honourable Sir Andrew Clow : No, Sir. The Honourable Member can supply the information to Dr. Habibur Rahman if he is satisfied that it is correct.

Mr. Muhammad Nauman : I am stating that the information given to the House was rather a wrong compilation ?

The Honourable Sir Andrew Clow : I have no reason for supposing that, Sir.

PROMOTION OF MUSLIMS IN THE OFFICE OF THE DIVISIONAL SUPERINTENDENT, HOWRAH.

227. *Dr. Habibur Rahman : Will the Honourable Member for Railways be pleased to state :

- (a) whether the cases of Muslims have been considered for the vacancies in the higher grades in the Divisional Superintendent's office, Howrah, for the period from 1934 to 1939 and what is the criterion followed at the time of giving promotion ;

(b) whether Hindu and Muslim employees are judged according to the same standard of efficiency ; and

(c) whether it is a fact that Muslims have not been given opportunity for selections by promotion ?

The Honourable Sir Andrew Clow : (a) I have no reason to believe that the claim of any qualified person was not given full consideration. The criteria are fitness, approved service and seniority.

(b) Yes.

(c) I am not quite clear as to the meaning of this part of the question, but have no doubt that every available qualified person is considered when selections are made.

NON-APPOINTMENT OF MUSLIMS TO SUPERIOR POSTS ON RAILWAYS.

†228. ***Maulvi Muhammad Abdul Ghani :** Will the Honourable the Railway Member please refer to the statement on page 165 of the Railway Board's Report, Volume I, 1937-38, and state :

(a) whether it is a fact that during the year 1936-37, 26 vacancies in the superior services were filled on State-managed Railways and out of these only two went to Muslims ;

(b) why only two Muslims were appointed ; what was the number of Muslim candidates ;

(c) whether it is a fact that in 1937-38, the Bombay, Baroda and Central India Railway filled eight vacancies of officers and not one of them was given to a Muslim ; and

(d) whether any steps are being taken to rectify the deficiency and to prevent the recurrence of such cases in future ?

The Honourable Sir Andrew Clow : (a) Yes ; but the shortage in the Transportation (Traffic) and Commercial Department and Signal Engineering Department was subsequently made good by the appointment of two other Muslims.

(b) The reasons are explained in paragraph 77 of Volume I of the Report by the Railway Board on Indian Railways for 1936-37. There were no Muslim candidates among the special class apprentices originally recruited in 1930. I have not particulars of the numbers of candidates in other departments.

(c) Yes, but six vacancies were filled by promotion and two by direct recruitment.

(d) A deficiency in the recruitment of minority communities in a particular year is normally carried forward to the next year ; and as I mentioned in reply to part (a) the deficiency in two Departments was made good subsequently.

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

RECRUITMENT OF MUSLIMS IN THE OFFICE OF THE CHIEF MINING ENGINEER, RAILWAY BOARD.

†229. *Maulvi Muhammad Abdul Ghani : Will the Honourable the Railway Member please state :

- (a) whether the office of the Chief Mining Engineer, Railway Board, is situated at Calcutta ;
- (b) whether the quota fixed for that office for recruitment of Muslim is fixed in accordance with the population proportion of Muslims in Bengal ;
- (c) if the answer to part (b) above be in the negative, whether Government are prepared to state what is the quota fixed for recruitment of Muslims in this office ;
- (d) whether it is a fact that in the year 1937-38, nine permanent posts of subordinates were filled in that office and only one out of these nine posts was given to a Muslim ;
- (e) why the quota was not observed in making these appointments ;
- (f) what steps Government propose to take against the persons responsible for not observing the orders of the Government of India regarding the fixation of the quotas ; and
- (g) what steps Government propose to take to make good the deficiency of Muslims in this office ?

The Honourable Sir Andrew Clow : (a) Yes.

(b) No.

(c) 25 per cent.

(d) Yes.

(e) The strict observance of the quota is not always practicable, but in accordance with the instructions issued any deficiency in the recruitment of minority communities in a particular year is carried forward to the next year. The deficiency of one Muslim in 1937-38 could not be made good in 1938-39 as there was no recruitment that year.

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

MUSLIM OFFICERS IN THE AGENCY DEPARTMENT OF CERTAIN RAILWAYS.

†230. *Maulvi Muhammad Abdul Ghani : Will the Honourable the Railway Member be pleased to state :

- (a) whether it is a fact that in 1937 and 1938 there was not a single Muslim officer in the Agency Department of the following railways :
 - (i) Bengal Nagpur Railway,
 - (ii) Bengal and North Western Railway,
 - (iii) Bombay, Baroda and Central India Railway,

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

- (iv) Eastern Bengal Railway,
- (v) East Indian Railway,
- (vi) Great Indian Peninsula Railway,
- (vii) Madras and Southern Mahratta Railway,
- (viii) Rohilkund and Kumaon Railway,
- (ix) South Indian Railway ;
- (b) whether it is a fact that on all railways taken together there were in 1938 only two Muslim Officers in the Agency Department out of a total of 76 and five Muslim subordinate officers out of a total of 88 in the same year ;
- (c) whether any Muslim officer has been appointed to the Agency Departments of these railways since 1938 ;
- (d) whether Government propose to consider the question of improving the proportion of Muslim Officers and subordinate officers in the Agency Department ;
- (e) whether it is a fact that in 1937 there were ten Muslim Officers out of a total of 124 in the Accounts Departments of all Railways ;
- (f) whether it is a fact that in 1938 their number was reduced from ten to eight ;
- (g) whether Government are prepared to state the reason for this reduction ;
- (h) whether Government have taken or propose to take any steps to give adequate seats to Muslims ;
- (i) what are the other Departments the figures of which are given on page 158 of the Railway Board's Report on Indian Railways, Volume I for 1937-38, Appendix F, Statement I ; and
- (j) why the number of Muslim officers in these departments is reduced from seven in 1937 to six in 1938 ; what was the position of Muslims on 31st March, 1939 ?

The Honourable Sir Andrew GLOW : (a) Yes.

(b) The figures quoted by the Honourable Member relate to Class I Railways (excluding H. E. H. the Nizam's State and Jodhpur Railways).

(c) I have no particulars of postings on Company-managed Railways. As regards State-managed Railways, postings to the Agency Department, now termed "General Manager's office", are made by transfers from other Departments, and these are not reported to Government unless the posts are of the administrative grades. I have no information, therefore, of postings to grades lower than administrative. No Muslim was appointed to an administrative grade.

(d) Muslim officers are considered when there are vacancies in the General Manager's office. An increase in the number of Muslims as subordinate officers is dependent on the number of Muslims available in lower categories.

(e) Yes, on all Class I Railways (excluding H. E. H. the Nizam's State and Jodhpur Railways).

(f) Yes.

(g) One was a casualty on a Company-managed Railway regarding which Government have no information, and one died.

(h) I would refer the Honourable Member to paragraphs 90.1 and 90.2 on page 98, Volume I of the Report by the Railway Board on Indian Railways for 1937-38, which indicate that the steps taken by Government have operated to increase the percentage of Muslim employees.

(i) Medical, Watch and Ward, Printing, Marine, Electrical, Schools and Collieries, where they exist as separate Departments.

(j) The services of one officer were transferred to the Bengal Government. As regards the latter part of the question, the figures for the 31st March, 1939, are not yet available.

REDUCTION OF DISTANCE RESTRICTIONS IMPOSED ON THIRD CLASS PASSENGERS
IN THE EAST INDIAN RAILWAY MAELS.

†231. *Maulvi Muhammad Abdul Ghani : Will the Honourable Member for Railways be pleased to state :

- (a) whether any action has been taken by the East Indian Railway on the suggestion made in the meeting of the Advisory Committee of the East Indian Railway held on the 26th August, 1938, at Calcutta for reducing the distance restriction imposed on the third class passengers by 1 Up and 2 Down from 500 miles to 350 miles with effect from the 1st October, 1938 ; whether the suggestion has been accepted, if so, since when ;
- (b) whether the distances on the foreign railways are calculated for the said restriction ;
- (c) whether any through train runs between Savan and Paleza Ghat over the Bengal and North Western Railway ; if not, whether any composite carriage with second, intermediate and third class compartments is attached to any through train at Savan Railway Station for passengers booked for Mahendra Ghat or Digha Ghat ; if not, why not ;
- (d) the number of first, second, intermediate and third class passengers booked for Mahendra Ghat or Digha Ghat Railway Station over the Bengal and North Western Railway between Savan and Chapra Kutchery Railway Stations during the last three years ;
- (e) whether the attention of the Bengal and North Western Railway authority has been drawn to the subject in part (c) above, if so, the action taken thereon ;

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

- (f) whether there is any arrangement in running trains of the Bengal and North Western Railway for the supply of cool drinking water ; if so, in what trains and during what period of the year ;
- (g) the number of railway stations and the number of water men and Bhistis from Gorakhpur to Katihar over the Bengal and North Western Railway ; and
- (h) whether a through carriage runs between Cawnpore Central and Savan Railway Stations via Captainganj over the Bengal and North Western Railway by 67 and 3 Ups and 68 and 4 Downs as agreed to by the Traffic Manager, the Bengal and North Western Railway, vide proceedings of the Local Advisory Committee for the quarter ending 30th September, 1938 ; if so, since when ?

The Honourable Sir Andrew Clow : (a) Yes : from the 1st October, 1938.

(b) Yes.

(c) I understand that no through train or through composite carriage is run between the places mentioned, presumably because the passenger traffic offering does not warrant it. These parts of this question will be brought to the notice of the Railway Administration.

(d) The information is not available and I regret that I would not feel justified in asking the Company to undertake the research involved in an attempt to secure the figures.

(e) I do not know ; but I am prepared to bring part (c) of the question to the notice of the administration.

(f) This Railway does not employ travelling watermen. Arrangements for the supply of water to passengers are detailed in Chapter VIII, page 114 of the Railway Board's Annual Report, Volume I, for 1937-38.

(g) The number of stations is 58. I have no information as to the number of watermen or *bhistis* on this section.

(h) At the Local Advisory Committee meeting held on the 5th November, 1938, the Administration agreed to take a further census of passengers booked on the Captainganj-Savan-Gorakhpur loop to Lucknow and Cawnpore for the months of December and January. The Committee was informed at its meeting on the 29th April, 1939, that this census of passengers did not justify the running of the through carriage in question.

OCCUPATION OF SECOND CLASS LADIES WAITING ROOM BY MALES AT KALKA.

232. *Haji Chaudhury Muhammad Ismail Khan : Will the Honourable Member for Railways be pleased to state :

- (a) whether it is a fact that second class Ladies Waiting Room was being occupied by some male members of the railway staff at Kalka on the 21st May, 1939, after the arrival of 1-41 Up train ;

- (b) whether it is a fact that some complaints were lodged by lady passengers with the gate keeper ;
- (c) if the reply to part (b) above be in the affirmative, what was the result of the enquiry ;
- (d) whether enquiries have been directed to the Station Master, Kalka, in this connection ; and
- (e) if the reply to part (d) above be in the affirmative, what action Government have taken or propose to take in the matter ; if not, why not ?

The Honourable Sir Andrew Clow : (a) and (b). No.

(c) Does not arise.

(d) Yes.

(e) Suitable action is being taken against the official making an allegation against the Station Master, which on enquiry was not substantiated.

Mr. Muhammad Nauman : Is the Honourable Member aware that this report was furnished by the lady passenger herself ?

The Honourable Sir Andrew Clow : My information is that the allegation was from an assistant station master.

POSITION OF MUSLIM PERSONNEL OFFICERS ON THE NORTH WESTERN RAILWAY.

233. *Mr. H. M. Abdullah : Will the Honourable Member for Railways please state :

- (a) whether it is a fact that the position of Muslim staff (Personnel) Officers on the North Western Railway on the Divisions has been considerably reduced as compared with 1932 in spite of the undertaking given by Sir George Rainy in 1931 to a deputation of Muslim Members of this House that " a review would be made of the posting of officers to duties connected with the recruitment, training, promotion of staff with a view to securing the adequate number of Muslim Officers in such posts ", *vide* note referred to in paragraph 1 (ii) of Railway Board's letter No. 3966-E., dated the 2nd November, 1931 ;
- (b) what is the actual position in this regard as compared with 1932 ;
- (c) whether Government consider that the number of Muslim Officers at present employed on staff duties on the North Western Railway is adequate ; and
- (d) whether Government are prepared to consider the desirability of again asking the various Railway Administrations to bear in mind this undertaking of Government when posting officers to staff duties ?

The Honourable Sir Andrew Clow : (a) Yes.

(b) I would refer the Honourable Member to the reply printed in the debates of the 30th August, 1939 in connection with his starred question No. 1567 asked on the 5th April, 1939.

(c) What is adequate must be a matter of opinion, but I should like to see an increase as soon as circumstances permit.

(d) No ; but a copy of this question and answer will be sent to the General Manager, North Western Railway.

PROVISION OF SPECIAL TRAINING FACILITIES FOR MUSLIMS TO FIT THEM FOR HIGHER POSTS ON RAILWAYS.

234. *Mr. H. M. Abdullah : Will the Honourable Member for Railways please state :

- (a) whether Mr. Hassan, while an Officer on Special Duty, recommended " the attention of all the Railway Departments should again be drawn to the fact that it is the intention of the Railway Board to provide special training facilities for Muslims which will, in the course of time, fit them for higher posts and they should be asked to inform the Railway Board at the end of each year what definite action has been taken by them in the matter. Muslims with the requisite qualifications should be selected from among those already in service and given special facilities for the higher posts " ;
- (b) whether it is a fact that in connection with this recommendation the Railway Board decided that " particular care should be taken to see that communities that are inadequately represented in the higher posts are given careful consideration and adequate training to fit them for higher posts " ;
- (c) whether Government have taken or propose to take any steps to implement this decision of the Railway Board ; and
- (d) whether Government are prepared to state how many Muslims on the North Western Railway have since been given training to fit them for higher posts ?

The Honourable Sir Andrew Clow : (a) Yes.

(b) This sentence occurs in the orders issued by the Board, but it is apt, in isolation from its context, to give a misleading impression of what was intended ; so I propose to read the whole decision. It runs as follows :

" The Railway Board are averse to adopting any arrangement which may savour of communal discrimination in respect of existing employees. They consider it of importance that no man's claim to promotion should be overlooked because he belongs to a particular community and special consideration should be given to the provision of training facilities for higher posts for all communities. Particular care should be taken to see that communities that are inadequately represented in the higher posts are given careful consideration and adequate training to fit them for higher posts."

(c) It is not the duty of Government but of the railway administration to carry out the Board's orders.

(d) I have no particulars and I doubt if these could be collected ; but I propose to ask what special consideration was given to the whole question.

Mr. Muhammad Nauman : With reference to part (a) of the question, may I ask whether any facilities were given to Muslims for training in the foreign countries and is the Honourable Member aware that on the Eastern Bengal Railway certain Muslim employees applied to go abroad, but their request was not granted ?

The Honourable Sir Andrew Clow : So far as I know both Hindu and Muslim apprentices have been sent abroad in the past, but I have not the figures here.

PROMOTION OF SUBORDINATE STAFF TO HIGHER GRADES ON THE NORTH WESTERN RAILWAY.

235. *Mr. H. M. Abdullah : Will the Honourable Member for Railways please state :

- (a) whether it is a fact that Mr. Hassan, while Officer on Special Duty with the Railway Board recommended "in cases in which promotion is given by branches, necessary adjustment should be made to see that the subordinate staff in each branch have fair chances of promotion to the higher grades" ;
- (b) whether it is a fact that in connection with this recommendation the Railway Board decided in 1933 "that the subordinate staff in each branch of an office (North Western Railway only) where promotion is given by branches, irrespective of the community to which they may belong should have reasonable chances for promotion to the higher grades. Cases in which promotion is given by branches of an office the distribution of the staff should be made in such a manner that each member of the staff may have a reasonable chance of promotion to rise to the higher grade" ; and
- (c) what action, if any, Government have taken or propose to take to implement this decision so far as the Headquarters Office is concerned ?

The Honourable Sir Andrew Clow : (a) and (b). Yes.

(c) None.

PREPONDERANCE OF NON-MUSLIMS IN THE ELECTRICAL BRANCH OF THE NORTH WESTERN RAILWAY.

236. *Mr. H. M. Abdullah : With reference to his reply to my starred question No. 1564 asked in this House on the 5th April, 1939, will the Honourable Member for Railways please state :

- (a) whether or not opportunity for recruitment to the officer grade in the Electrical Branch offered itself when the vacancy of a Divisional Assistant Electrical Engineer on the Rawalpindi Division occurred in April, 1939 ;

- (b) whether this post was advertised in the press and applications invited through the Federal Public Service Commission ; if not, why not ;
- (c) whether the post was filled by promotion ; if so, whether a Selection Board was held ; if not, why not ;
- (d) what were the criteria on which the selection was based ; and
- (e) whether the claims of Muslims eligible for appointment were considered as promised by the Honourable Member in reply to my starred question No. 1564 of the 5th April 1939 ?

The Honourable Sir Andrew Clow : (a) No : there was only a leave vacancy in the Lower Gazetted Service.

(b) Does not arise.

(c) The answer to the first part is in the affirmative. Such promotions are not referred to a Selection Board.

(d) Fitness, approved service and seniority.

(e) Yes.

Mr. Muhammad Nauman : With reference to part (c) of the question, the Honourable Member did not say why they are not referred to the Selection Board ?

The Honourable Sir Andrew Clow : I am sorry : apparently I did not. I presume it is because it is not regarded as necessary.

PREPONDERANCE OF NON-MUSLIMS IN THE ELECTRICAL BRANCH OF THE NORTH WESTERN RAILWAY.

237. *Mr. H. M. Abdullah : With reference to his reply to part (c) of my starred question No. 1565, asked in this House on the 5th April, 1939, on the subject of senior foremen, foremen, etc., of Electrical Branch, will the Honourable the Railway Member please state whether the information, if any, since received by him discloses any irregularity in recruitment ?

The Honourable Sir Andrew Clow : No.

POSTING OF HEAD CLERKS AND THEIR SUB-HEADS ON RAILWAYS.

†238. *Mr. H. M. Abdullah : Will the Honourable the Communications Member please state :

- (a) whether it is a fact that there is a practice in the Postal Department and some other Departments of the Government of India that wherever the head clerk happens to be a Hindu their sub-head is a Muslim and *vice versa* ; and
- (b) whether Government propose to consider the advisability of issuing similar instructions so far as the Railway Departments are concerned ?

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

The Honourable Sir Andrew Olow : (a) There is no such practice in the Postal or other Departments under my charge. If the Honourable Member desires particulars of other Departments, the inquiries should be addressed to the Members of Government concerned.

(b) No.

ABSENCE OF MUSLIM PERSONNEL OFFICERS ON THE NORTH WESTERN RAILWAY.

†239. ***Mr. H. M. Abdullah :** With reference to his reply to part (e) of my question No. 1652 asked in this House on the 12th April, 1939, on the subject of absence of Muslim officers on the North-Western Railway, will the Honourable the Railway Member please state in what respects the inference drawn by the questioner is incorrect and specify the correct inference which may be drawn from the reply given to my starred question No. 1001, asked in this House on the 13th March, 1939 ?

The Honourable Sir Andrew Olow : The inference which the Honourable Member has apparently drawn is that the policy is to ensure an equal distribution of posts between Muslims and non-Muslims in the establishment sections of railway offices. This inference is not correct. The instructions issued to Railway Administrations are to the effect that they should endeavour to ensure that particular communities are not handicapped by the preponderance of any one community in the establishment sections.

ABSENCE OF MUSLIM SIGNAL ENGINEERS ON STATE RAILWAYS.

†240. ***Maulana Zafar Ali Khan :** Will the Honourable Member for Railways please state :

- (a) whether his attention has been drawn to the communication under the heading "Signal Engineering Branches of State Railways" appearing in the *Eastern Times*, dated the 14th July, 1939 ;
- (b) whether it is a fact that there is not a single Muslim officer working as Deputy Chief Engineer, Signals, or District Signal Engineer on any of the State Railways in India ;
- (c) whether it is a fact that out of 32 posts of Signal Engineers on the State Railways, there is only one permanent Muslim Assistant Signal Engineer on the Eastern Bengal Railway and that the percentage of Muslims in this service is 3.12 only ; and
- (d) whether it is a fact that recruitment to this service is shortly going to take place ; if so, whether Government are prepared to consider the desirability of improving the Muslim representation in this service ?

The Honourable Sir Andrew Olow : (a) I have seen the communication referred to.

(b) and (c). Yes.

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

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

(d) Yes. The Federal Public Service Commission has been asked to recruit two Assistant Signal Engineers : one of the vacancies being reserved for a Muslim.

SELECTIONS OF CANDIDATES FOR APPOINTMENT IN THE NORTH WESTERN RAILWAY OFFICES.

†241. *Maulana Zafar Ali Khan : Will the Honourable Member for Railways please state :

- (a) whether the attention of Government has been drawn to a communication appearing in the *Eastern Times*, dated the 25th August, 1939, under the caption "Selections for North Western Railway Offices" ;
- (b) whether it is a fact that no criterion has been laid down for preliminary selection of candidates and various anomalies of the nature suggested in the article are evident in the selections made inasmuch as graduate candidates are sometimes not called for an interview while matriculates are ;
- (c) whether it is a fact that the candidates called for an interview are subjected to the various disabilities mentioned in that article and outstation candidates are made to wait unnecessarily for several days ;
- (d) whether it is a fact that some of the selected candidates at the last selection for the post of clerks held in the Headquarters Office were actually related either to the Selecting Authorities themselves or to other non-Muslim Officers of the Headquarters Office as stated in this communication ; and
- (e) whether Government propose to take the necessary action to lay down definite criteria for the preliminary selection of candidates ?

The Honourable Sir Andrew Olow : (a) I have seen the anonymous letter referred to.

(b) I understand that criteria for the selection of candidates have been prescribed by the Administration. Graduates may not be called to appear before a Selection Board where the educational qualification prescribed for the posts for which candidates are to be selected may be the passing of the matriculation examination.

(c) and (d). I have no particulars on these points, but will ask the General Manager to look into them and take such action as he considers necessary.

(e) No. This is a matter which can best be done by the Railway Administration.

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

ABSENCE OF MUSLIM DIVISIONAL SUPERINTENDENTS ON THE NORTH WESTERN RAILWAY.

†242. *Maulana Zafar Ali Khan : Will the Honourable Member for Railways please state :

- (a) whether the attention of Government has been drawn to a letter appearing in the *Eastern Times*, dated the 25th August, 1939, under the heading "Divisional Superintendents, North Western Railway" ;
- (b) whether it is a fact that out of eight Divisional Superintendents on the North Western Railway, not a single one is a Muslim ;
- (c) whether it is a fact that Hindu Divisional Superintendents have been and are at present employed on the North Western Railway and the East Indian Railway ;
- (d) whether it is a fact that Muslims with the requisite qualifications to fill such posts are available on the North Western Railway or other State Railways ; and
- (e) whether Government are prepared to consider the desirability of appointing a Muslim as Divisional Superintendent in the expected vacancy on the North Western Railway which traverses a part of the country which is predominantly Muslim in population ?

The Honourable Sir Andrew Clow : (a) I have seen the letter referred to.

(b) Yes, except that the number of posts of Divisional Superintendents is seven.

(c) Yes.

(d) I do not think it is desirable in the interests of either the service or officers to discuss in this House the qualifications of individual officers.

(e) Selections to posts of Divisional Superintendents are not made on communal considerations.

PROMOTIONS ON THE NORTH WESTERN RAILWAY.

†243. *Maulana Zafar Ali Khan : Will the Honourable Member for Railways please state :

- (a) whether the attention of Government has been drawn to the communication appearing in the *Eastern Times*, dated the 11th August, 1939, under the heading "North Western Railway Promotions" ;
- (b) whether it is a fact that during the period 1928 to 1938 the representation of Muslim officers in the North Western Railway services has increased by six only, i.e., by .6 per year ;

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

- (c) what is the number of posts in this cadre that fall vacant during the last ten years and how many of these were filled with Muslims ;
- (d) whether it is a fact that the representation of Muslim senior subordinates in the North Western Railway services increased by seventy in the ten years, 1928—38, i.e., by 7 per year ;
- (e) what is the total number of vacancies that occurred in this service during these ten years and how many of them went to Muslims ;
- (f) whether Government are prepared to consider the question of fixing a definite percentage for Muslims for filling of vacancies by means of promotion as is fixed in the filling of vacancies by direct recruitment ; and
- (g) if not, whether Government are prepared to consider the desirability of filling up of a large number of vacancies in the senior subordinate and lower gazetted services by direct recruitment instead of by promotion ?

The Honourable Sir Andrew Clow : (a) and (b). Yes.

(c) The number of vacancies to be filled by direct recruitment in India for the superior services on the State-managed Railways was 166 and the number of Muslims appointed was 29.

(d) Yes, in the case of subordinates on pay of, or on scales of pay rising to, Rs. 250 and over.

(e) These particulars are not readily available ; practically all posts of senior subordinates are filled by promotion, and not by direct recruitment.

(f) and (g). No. The nature of the duties of these posts makes it essential in the interests of efficiency that the incumbents should have experience which can only be acquired by service in lower categories.

INADEQUATE APPOINTMENTS GIVEN TO MUSLIMS IN THE RAWALPINDI DIVISION OF THE NORTH WESTERN RAILWAY.

†244. *Maulana Zafar Ali Khan : Will the Honourable Member for Railways please state :

- (a) whether the attention of Government has been drawn to a communication appearing in the *Eastern Times*, dated the 28th July, 1939, under the heading " Communalism per excelsis " ;
- (b) whether it is a fact that from September, 1935 to April, 1939 direct recruitment of the ten persons mentioned in this communication was made on the Rawalpindi Division of the North Western Railway ;
- (c) whether it is a fact that the General Manager, North Western Railway, has laid down that 84·4 per cent. of all appointments filled by direct recruitment in the inferior category should go to Muslims ; whether it is also a fact that not one of the appointments made in this category of staff was given to a Muslim ;

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

- (d) whether Government are prepared to issue necessary instructions to the General Manager of the North Western Railway so that all appointments irregularly made may be rendered null and void, the present incumbents discharged, and Muslims appointed in their places ; and
- (e) whether Government are prepared to direct the General Manager to obtain the explanation of the persons responsible for defying his instructions and take necessary action against them to prevent a recurrence of such incidents in future ?

The Honourable Sir Andrew Clow : (a) I have seen the anonymous letter referred to.

(b) No. Four out of the ten named were taken from other departments and six were directly recruited. Three of the latter were substitutes who have since been discharged.

(c) I am not clear whether this part of the question relates to inferior staff on the Rawalpindi Division generally or to the inferior electrical staff on that Division ; but in either case the statements made are incorrect. The percentage for inferior staff generally in the Division is 80.4 and during each of the three years ending the 31st March, 1939, the percentage of Muslims recruited was over 90. The percentage for electrical staff is 40.7 and in the three years the percentages were 69.5, 45.4 and 68.8.

(d) There has been no irregular appointment.

(e) Does not arise.

UNDER-RECRUITMENT OF MUSLIMS ON THE NORTH WESTERN RAILWAY.

245. *Khan Bahadur Shaikh Fazl-i-Haq Piracha : Will the Honourable the Railway Member please state :

- (a) whether it is a fact that according to the resolution of the Government of India of July, 1934, at least 60 per cent. of vacancies filled by direct recruitment by the North Western Railway are reserved for Muslims ;
- (b) whether it is a fact that the annual reports for 1935-36, 1936-37 and 1937-38, published by the North Western Railway, show that Muslims have never been recruited to the full extent of 60 per cent. ;
- (c) whether it is a fact that this has led to the under-recruitment of Muslims and over-recruitment of other communities ;
- (d) whether it is a fact that this under-recruitment of Muslims is in spite of the fact that Muslims have in many cases secured unreserved posts by merit ;
- (e) whether it is a fact that, under orders of the Railway Board, posts reserved for Muslims cannot be offered to members of other communities without obtaining the prior sanction of the Railway Board ;

- (f) whether it is a fact that according to paragraph 10 of the supplementary instructions issued by the Home Department of the Government of India and circulated with the Railway Board's letter No. E-85-C.M.-130, dated the 9th August, 1935, all appointments made contrary to the percentages laid down for direct recruitment have to be declared null and void as soon as the matter is brought to the notice of the heads of the departments concerned through the annual returns or otherwise ;
- (g) whether it is a fact that this under-recruitment of Muslims was brought to the notice of the North Western Railway Administration, the Railway Board and the Home Department of the Government of India through the annual returns or otherwise ;
- (h) if so, whether any action was taken by Government in accordance with paragraph 10 of the supplementary instructions referred to in part (f) above ; if not, why not ; and
- (i) whether Government are prepared to take necessary action and issue strict orders to avoid recurrence of such cases of disregard of instructions issued ?

The Honourable Sir Andrew Clow : (a) The quota is fixed at 60 per cent. in the case of the subordinate services.

(b) During the three years referred to, for permanent posts a total of 471 Muslims were recruited against a quota of 476, and for temporary posts 1,099 Muslims were recruited against a quota of 1,138 : the figure of 60 per cent. was exceeded for permanent posts in 1935-36.

(c) I have no figures to show whether or not the small deficiency in the number of Muslims recruited was made up by the recruitment of other communities.

(d) Muslims have obtained posts on their merits in many cases, but posts so obtained count against the quota of reserved posts.

(e) No. The orders to which the Honourable Member refers were subsequently modified to provide for deficiencies in recruitment in one year to be carried forward to the subsequent year, without reference to the Railway Board.

(f) No. Only such appointments are to be regarded as null and void as are made contrary to the orders contained in the Resolution to which the Honourable Member has referred in part (a) of his question.

(g) Yes.

(h) and (i). Do not arise, in view of the reply I have given to parts (e) and (f).

Mr. Muhammad Nawman : I do not follow the method of calculation which the Railway Administration of the North Western Railway has got. In 1934, they were asked to take 60 per cent. Muslims, and even if the number of Muslims in that year was nil, there ought to have been over 20 per cent. Muslims on that Railway by now.

The Honourable Sir Andrew Clow : I am afraid I cannot follow the Honourable Member's calculation. Recruitment at the rate of 60 per cent. for three years would not make the total number of Muslims on the North Western Railway 30 per cent.

Mr. Muhammad Nauman : I said that I could not follow the calculation of the Railway Administration in the sense that in 1934, they were compelled to take 60 per cent., the result of which ought to have been after five years' working an increase of 30 per cent. of Muslims, but actually we have less than 30 per cent. even now.

The Honourable Sir Andrew Clow : There must be some fallacy in the Honourable Member's mathematics. Obviously, the percentage of increase in the number of Muslims on a railway must depend on the rate at which recruitment is made. If you are recruiting a very small number of persons against the average number of casualties, as has happened in some years, then you will not get the same percentage of increase as if you were recruiting on a very large scale.

Mr. Muhammad Nauman : Are we to suggest, because in 25 years or 30 years everybody will go up.....

Mr. President (the Honourable Sir Abdur Rahim) : The Honourable Member is now arguing. Next question.

REPRESENTATION OF MUSLIMS IN THE PERSONNEL BRANCH OF THE NORTH WESTERN RAILWAY HEADQUARTERS OFFICE.

246. *Khan Bahadur Shaikh Fazl-i-Haq Piracha : With reference to his reply to parts (d) and (h) of my starred question No. 1698, asked in this House on the 12th April, 1939, stating that the posting of officers to Branches in an office is not regulated by communal considerations, will the Honourable the Railway Member please state :

- (a) whether Government gave an undertaking to Muslim members of the Central Legislature that " a review would be made of the posting of officers to duties connected with the recruitment, training and promotion of staff with a view to securing an adequate number of Muslim officers for such posts " ;
- (b) whether in pursuance of this undertaking, Government instructed the Agents of State-managed Railways in their letter No. 917-E.G., dated the 6th August, 1931, " to consider the posting of Muslim officers as Staff, Establishment or Employment Officers when making appointments to such posts with a view to securing the employment of an adequate number of Muslim officers in that capacity " ;
- (c) whether the North Western Railway Administration have carried out these instructions ; and
- (d) what steps, if any, Government propose to take to implement their undertakings ?

The Honourable Sir Andrew Clow : (a) and (b). Yes.

(c) and (d). I would refer the Honourable Member to the answer given today to Mr. H. M. Abdulla's question No. 233.

DIRECT RECRUITMENT OF CLERKS, ETC., ON THE NORTH WESTERN RAILWAY.

247. *Khan Bahadur Shaikh Fazl-i-Haq Piracha : Will the Honourable Member for Railways please state :

- (a) whether it had been laid down in paragraph 1 (b) of the North Western Railway Agent's circular No. I of 1927, part 'A', that "in the case of office clerks, out of every three vacancies in grade II and above one shall be filled by direct recruitment of a suitable graduate in grade II. Efforts may also be made to fill a certain proportion of vacancies in higher grades of guards, ticket-collectors and correspondence clerks and a certain number of vacancies among parcel and luggage inspectors by direct recruitment of suitable graduates" ;
- (b) whether it is a fact that these instructions have since been superseded and recruitment to the intermediate categories has been restricted to a few categories only and to the extent of only 20 per cent. instead of 33½ per cent. of the vacancies ;
- (c) whether it is a fact that these revised instructions have been issued after the Government of India, Home Department Resolution of July, 1934, reserving for Muslims 60 per cent. of vacancies filled by direct recruitment ; and
- (d) whether Government are prepared to consider the advisability of at least restoring *status quo* this matter ?

The Honourable Sir Andrew Clow : (a) Yes, in para. 1 (f).

(b) and (c). The instructions referred to have not been followed in any office on the North Western Railway since 1930, as it was found possible to recruit graduates in the lower grades. Orders were issued by the Railway Board in 1937, permitting 20 per cent. recruitment to categories other than the lowest.

(d) No.

REPRESENTATION OF MUSLIMS IN THE SUPERIOR SERVICES ON RAILWAYS.

248. *Khan Bahadur Shaikh Fazl-i-Haq Piracha : Will the Honourable Member for Communications please state :

- (a) whether it is a fact that the representation of Muslims in the superior services was 6.54 per cent. in 1928 ;
- (b) whether it is a fact that the representation of Muslims in 1938 was 9.85 per cent. ;
- (c) whether at this rate it will take over a century and a half before Muslim representation in these services on the North Western Railway reaches the level of 60 per cent. ; and
- (d) whether Government propose to take any steps to accelerate this rate of progress ; if so, what ; if not, why not ?

The Honourable Sir Andrew Clow : On the assumption that the Honourable Member's question refers to the North Western Railway, the reply is :

- (a) No ; the percentage on the 1st April, 1928, was 6.4.

(b) Yes, on the 31st March, 1938.

(c) No ; the calculation involves a serious fallacy. If the rate of recruitment is maintained at 25 per cent. and if casualties are assumed to affect all communities equally, 25 per cent. of the Indian officers must be Muslims when the present officers are replaced, if not before that date.

(d) Does not arise.

Mr. Lalchand Navalrai : May I ask if it is a fact that on the North Western Railway they have a ratio of 67 per cent. already and they still want more ?

The Honourable Sir Andrew Clow : I do not think the present ratio is 67 per cent.

Mr. Lalchand Navalrai : Even if it is 60 per cent, why should they ask for more ?

The Honourable Sir Andrew Clow : 60 per cent. is the quota for recruitment, and not the percentage of the Muslims on the Railway.

Mr. Lalchand Navalrai : By distribution on the North Western Railway, 60 per cent. posts have to be given to the Mussalmans, and still they want more ?

The Honourable Sir Andrew Clow : 60 per cent. is the quota for recruitment. It is not the present representation of Muslims.

REPRESENTATION OF MUSLIMS IN THE SENIOR SUBORDINATE SERVICES ON RAILWAYS.

249. *Khan Bahadur Shaikh Fazl-i-Haq Piracha : Will the Honourable Member for Railways please state :

- (a) whether it is a fact that the representation of Muslims in the senior subordinate services was 12 per cent. in 1928 ;
- (b) whether it is a fact that this figure stood at 17.38 per cent. in 1938 ;
- (c) whether at this rate it will take over 80 years before the Muslim representation in this service on the North Western Railway reaches the level of 60 per cent. ; and
- (d) whether Government propose to take any steps to accelerate this rate of progress ; if so, what ; if not, why not ?

The Honourable Sir Andrew Clow : On the assumption that the Honourable Member's question refers to the North Western Railway, the reply is :

- (a) The percentage on the 1st April, 1928, was 11.9.
- (b) The percentage on the 31st March, 1938, was 17.3.
- (c) No : the Honourable Member appears to have fallen into the same error as was involved in part (c) of his previous question.
- (d) Does not arise.

RULING RE MOTION FOR AN EXCESS GRANT NEGATIVED AT A PREVIOUS SESSION.

Mr. President (The Honourable Sir Abdur Rahim) : The House will remember that the Chair promised to give a ruling on the question whether the motion for an excess grant relating to Ajmer-Merwara, which is down on the agenda paper for today, was in order. As the Chair was not aware of any case in which a motion for an excess grant, having been once negatived, an identical motion was entertained at a later Session, the Chair wanted to consider what is the proper procedure to be followed in such circumstances. Standing Order 31 prohibits a motion which raises a question substantially identical with the one on which the Assembly has given a decision in the same Session and, therefore, impliedly permits such a motion if made in a subsequent Session. The general practice with reference to motions relating to Bills and other matters has always thus been based on the principle that the House is free to entertain any motion which has not been expressly prohibited by any Rule or Standing Order. It is true that special provision has been made in Standing Order 73 for restoring in a certain class of cases grants which have been refused by the Assembly, but assuming that Standing Order 73 applies to an excess grant—as it probably does—it does not follow that the Assembly itself cannot revise its own previous decision in the matter if the motion in that respect does not infringe the limitation laid down in Standing Order 31. The motion is in order.

STATEMENT LAID ON THE TABLE.

ACCEPTANCE OF TENDERS BY THE HIGH COMMISSIONER FOR INDIA.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar (Member for Commerce and Labour) : Sir, I lay on the table a statement furnished by the High Commissioner for India showing that there have been no cases in which tenders other than the lowest have been accepted by him in purchasing stores for the Government of India, during the half year ended the 30th June, 1939.

Statement for half-year ending 30th June, 1939.

No cases in which tenders for stores demanded by the Central Government, other than the lowest complying with the technical description of the goods demanded, were accepted on the grounds of superior quality, superior trustworthiness of the firm tendering, greater facility of inspection, quicker delivery, etc.

THE INDIAN AIR FORCE VOLUNTEER RESERVE (DISCIPLINE) BILL.

Mr. C. M. G. Ogilvie (Defence Secretary) : Sir, I beg to move for leave to introduce a Bill to provide for the discipline of members of the Indian Air Force Volunteer Reserve raised in British India on behalf of His Majesty.

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

“ That leave be granted to introduce a Bill to provide for the discipline of members of the Indian Air Force Volunteer Reserve raised in British India on behalf of His Majesty.”

The motion was adopted.

Mr. C. M. G. Ogilvie : Sir, I introduce the Bill.

THE REGISTRATION OF TRADE MARKS BILL.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar (Member for Commerce and Labour) : Sir, I beg to move for leave to introduce a Bill to provide for the registration and the more effective protection of Trade Marks.

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

“ That leave be granted to introduce a Bill to provide for the registration and the more effective protection of Trade Marks.”

The motion was adopted.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar : Sir, I introduce the Bill.

THE MOTOR VEHICLES (AMENDMENT) BILL.

The Honourable Sir Andrew Clow (Member for Railways and Communications) : Sir, I beg to move for leave to introduce a Bill to amend the Motor Vehicles Act, 1939, for certain purposes.

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

“ That leave be granted to introduce a Bill to amend the Motor Vehicles Act, 1939, for certain purposes.”

The motion was adopted.

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

THE INSURANCE (SECOND AMENDMENT) BILL.

Sir George Spence (Secretary, Legislative Department) : Sir, I beg to move for leave to introduce a Bill further to amend the Insurance Act, 1938, for a certain purpose.

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

“ That leave be granted to introduce a Bill further to amend the Insurance Act, 1938, for a certain purpose.”

The motion was adopted.

Sir George Spence : Sir, I introduce the Bill.

THE DEFENCE OF INDIA BILL—*contd.*

Mr. President (The Honourable Sir Abdur Rahim) : The House will now resume consideration of the Bill to provide for special measures to ensure the public safety and interest and the defence of British India and for the trial of certain offences, as reported by the Select Committee.

The Honourable Sir Muhammad Zafrullah Khan (Law Member) : Sir, the amendment which was moved the other day was :

“ That part (and) of sub-clause (f) of clause 2 of the Bill be omitted.”

Sir, this part and the rule issued under the corresponding part of the Ordinance were considered in the Select Committee and the suggestion was accepted that the rule, that is to say rule 56 should be modified in a certain way. The first part of the Rule ran as follows :

“ The Provincial Government may by general or special order prohibit, restrict or impose conditions upon the holding of or taking part in public processions meetings or assemblies for such period as may be specified in the order ”.

The suggested amendment was that after the words “ Provincial Government may ”, the following should be added, namely, “ for the purpose of securing the defence of British India and public safety, the maintenance of public order or the efficient progress of war ”. That is to say, the suggestion was that the clause should remain as it was but that the rule issued under the corresponding clause of the Ordinance which would become the rule under the Bill as soon as it becomes law should be restricted in the manner that I have explained. That restriction has been carried into effect and it has already been gazetted. I would, therefore, submit that that understanding having been arrived at, the House should accept that modification and this amendment should not be insisted upon. In any case, I oppose the amendment as the rule has already been modified as suggested by the Select Committee.

Pandit Lakshmi Kanta Maitra (Presidency Division : Non-Muhammadan Rural) : Sir, I rise to support this amendment.

Mr. President (The Honourable Sir Abdur Rahim) : I see that the Honourable Member is not addressing the House from the seat allotted to him.

Pandit Lakshmi Kanta Maitra : I have all along been sitting here. But if my seat is somewhere else, I shall go there.

(The Honourable Member then moved to the seat allotted to him.)

Sir, the Honourable the Leader of the House said in effect that certain rules had already been framed on the basis of this part and that they have already been in operation, and that, therefore, it is not open to them now to go back on them. That is what I understood the Honourable Member to say.

The Honourable Sir Muhammad Zafrullah Khan : The Honourable Member has understood me absolutely and entirely wrongly.

Pandit Lakshmi Kanta Maitra : This shifting of seat is partly responsible. In the first place, the Honourable Member spoke in an undertone. In the second place, he spoke in a non-stop way, and for Members sitting in this part of the House it was extremely difficult to follow him.

The Honourable Sir Muhammad Zafrullah Khan : If the Honourable Member had brought this to my notice while I was speaking, I would have raised my voice.

Pandit Lakshmi Kanta Maitra : Sir, the usual practice in this House has been that the Honourable Member in charge of a Bill usually moves his seat to the middle of the Treasury Benches so that all parts of the House can hear him properly. This has been so in the case of the Insurance Bill and the Motor Vehicles Bill. But this has not been followed in the present case.

Mr. President (The Honourable Sir Abdur Rahim) : That is not the usual practice.

Pandit Lakshmi Kanta Maitra : I have not been able to follow what the Honourable the Leader of the House said. Sir, we do not believe that in these matters, we should be guided by the principle of *fait accompli*. This provision seeks to arm the executive with very drastic and enormous powers. In the first place we must admit that in this country we have only a modicum of civil liberty and even that is hedged round and circumscribed by a vast body of legislative measures which have already been in existence on the Statute book and which have already been in operation to the detriment of people in the exercise of their elementary rights of citizenship. Sir, there is for instance the all comprehensive section 144 of the Criminal Procedure Code which may and which, as a matter of fact, has been employed effectively to regulate, check and even prohibit the holding of public meetings. We have had very bitter experience of the operation of that provision. There is also the Criminal Law Amendment Act which has also been freely used for the purpose. There are other measures also, *e.g.*, the Police Act, under the provisions of which processions, fairs, meetings, etc., can be regulated or even prohibited. Now, what is the necessity of further arming the executive with these powers under the cloak of a war measure unless the idea is to effectively check and completely wipe out the slightest vestige of civil liberty that we have ? Sir, the war has now been on for about three weeks or so, and we are told that we are technically involved in the war. But in the actual belligerent countries, *e.g.*, in London, we find that the normal activities are not interfered with. The cricket match has started, the cinemas are open, and all that we hear about the actual warfare is not of air raids, but leaflet raids and of making contacts. What has happened in India at the present moment that the executive here, removed

[Pandit Lakshmi Kanta Maitra.]

six or seven thousand miles from the actual scene of hostilities, should further subject this country to these measures curtailing all its normal and legitimate activities, when there are adequate provisions already in the Statute-book? I do not see any justification for it unless it is wanted for the deliberate purpose of crushing all life in this country. Sir, I think the House will realise the gravity and the enormity of this measure, and what it will mean to the people if it is enacted into law. Even before this Bill has been passed, we already find that, on the strength of the Ordinances and the rules framed thereunder, Government have been working havoc in this country. I know and the House knows by this time that the provisions of the Ordinance have been freely used to check the legitimate activities of political leaders, trade unionists and labour leaders. In Digboi, all processions and meetings have been stopped, and, to crown all, the Labour Union leader there has been arrested, taken right up to Gauhati and asked to leave Assam forthwith. Encouraged by these Ordinances and the rules framed, the Government of Bengal have already issued a communique prohibiting all manner of meetings, processions, etc. Therefore, we see that before this Bill has actually been passed into law, Provincial Governments have been rigorously applying its provisions to curtail the civil liberties of the people.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member should not discuss these cases. The Provincial Governments are not represented here.

Pandit Lakshmi Kanta Maitra : I am, showing how these provisions lend themselves easily to abuse at the hands of irresponsible executive and how, as a matter of fact, they are being abused now even before this Bill has become law.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member need not refer to what is done by the Bengal Government.

Pandit Lakshmi Kanta Maitra : I have no particular animus against the Bengal Government ; the same thing has been happening in Madras, Assam, U. P. and elsewhere.

Mr. President (The Honourable Sir Abdur Rahim) : The actions of the Provincial Governments need not be brought into this debate.

Pandit Lakshmi Kanta Maitra : Though we belong to the Central Legislature, we cannot completely ignore what is happening in the provinces, because they give us the materials by which we can judge how the provisions are being applied.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member had better accept the ruling of the Chair.

Pandit Lakshmi Kanta Maitra : So, in view of this gross abuse of powers already in evidence in the provinces, I submit that we shall not be justified in arming the executive with further powers. I know that we cannot carry this amendment in this House, because of the empty opposition benches, but we have this moral conviction that we shall be failing in our duty to the country if we be a consenting party to this absurd piece of legislation. Sir, I support this amendment.

Mr. Akhil Chandra Datta (Chittagong and Rajshahi Divisions : Non-Muhammadan Rural) ; Sir, the Honourable the Leader of the House has drawn our attention to rule 56 under the Ordinance as amended now in accordance with the suggestion of the Select Committee. I will invite the attention of the House to another part of the same rule, namely, sub-rule (3) of rule 56 which lays down this :

“ Any police officer may take such steps and use such force as may be reasonably necessary for securing compliance with any order made under this rule.”

Let us analyse this rule, “ Compliance with any order made under this rule”. Any order may be passed under clause 2, sub-clause (2) by an officer or person empowered by the Central Government. So, in the first place, the order, compliance with which is sought to be secured by this rule, need not be an order passed by the Central Government but may be passed by any other authority or any other person. In the second place who is to secure the compliance with the order ? Any police officer can do it and I have sought in vain for a definition of “ police officer ” in these rules. Therefore, the phrase “ any police officer ”,—I stress the word “ any ”,—may include any one, from the Inspector-General down to the meanest constable or chaukidar. Then, in carrying out the order he is given the enormous power of taking such steps and using such force as may reasonably be necessary. Who is to consider whether that force is necessary or not ? Certainly the police constable, if he is the man in question. Therefore, the implications of this rule are far-reaching. If you want to inaugurate a police raj in this country for three or four years during the continuance of the war, you are welcome to have this, but not otherwise.

Then, Sir, another point that I want to make is this. As my Honourable friend, Pandit Maitra, has pointed out, the arm of the law as already exists in this country is long enough to reach anybody and to prohibit and regulate any meetings. We know how those sections of the Criminal Procedure Code which are intended for quite a different purpose, *e.g.*, sections 144, 107, 108, 109, etc., have been used or abused during all these years ever since 1906 when the Swadeshi movement started in Bengal. In fact it may be said without any exaggeration that the application of those sections is a scandal and one of the blackest spots in the British administration of India during the last so many years. It was not there in the Act of 1915 : and although that Act of 1915 was amended later on as occasion was found necessary, we find that this particular provision was not put in any of those later amending Acts. It is said that the purpose has been mentioned. So far so good. But one of those purposes is the maintenance of public order. Is it seriously suggested that there was no law in this country for the maintenance of public order ? It was for that obvious reason that this provision is not to be found in the corresponding Act of 1915. Under the cloak of public order any meeting can be roped in and prohibited. This is really calculated to break the back-bone of our people for some time. The war is being fought for democracy. But these powers are sought for throttling democracy. I would point out another thing. This is bound, as it has done in the past, to create panic and alarm in the country. That is not my apprehension alone. That was the apprehension of His Excellency the Viceroy when the Bill was introduced in

[Mr. Akhil Chandra Datta.]

1915. He felt that there would inevitably be alarm in the country, but he sought to allay the alarm in this particular way : he said or rather the then Home Member of the Government of India said :

" That the Government consider that the present measure has now become necessary need cause no alarm to the country at large. Apart from the military interests involved it indicates nothing more than that there are in some parts of the country sporadic manifestations of disorder which require to be nipped in the bud lest they should grow and spread."....

The Honourable Sir Muhammad Zafrullah Khan : May I respectfully ask you, Sir, if all this is relevant to the particular amendment before the House ? To the general principle of the Bill, yes : but it seems to me it is hardly relevant to the amendment we are discussing.

Mr. President (The Honourable Sir Abdur Rahim) : The Chair thinks the Honourable Member is....

Mr. Akhil Chandra Datta : My point is this, Sir. This is a provision which is bound to cause panic and alarm in the country, an alarm which was apprehended actually by the Government of India themselves when introducing this measure in 1915.

The Honourable Sir Muhammad Zafrullah Khan : The Honourable the Deputy President has just pointed out that this provision did not find place in the old Act of 1915 and he still harks back to that Act and says it is a cause for alarm.

Mr. Akhil Chandra Datta : My friend does not understand that what he has just pointed out goes in my favour, and not in his favour....

The Honourable Sir Muhammad Zafrullah Khan : The argument....

Mr. Akhil Chandra Datta : I do not give way.

The Honourable Sir Muhammad Zafrullah Khan : I am taking a point of order. The point of order is that the Honourable the Deputy President's argument is not relevant to the amendment under discussion.

Mr. Akhil Chandra Datta : It is no point of order : it is too vague.

Mr. President (The Honourable Sir Abdur Rahim) : The question raised is whether the argument advanced by Mr. Akhil Chandra Datta as regards the general effects which a clause of this nature is likely to produce in the country is relevant to the amendment before the House. The Chair is not prepared to go so far as to hold that the Honourable Member's argument on the amendment is not relevant, but the Chair thinks his speech ought to be confined more strictly to the terms of the amendment before the House, and it ought not to be a general disquisition on the evils the Bill, as a whole, is likely to produce.

Mr. Akhil Chandra Datta : My point is this. The amendment seeks to omit this clause altogether, about prohibiting or regulating meetings. My submission is that although this particular provision was not in the old Act still the Government of India apprehended that panic and alarm might be created : and they sought to allay that panic by saying that these provisions would be restricted to particular parts of the country ; whereas this particular provision now before us under discussion goes beyond that....

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

Mr. Akhil Chandra Datta : That was all that I was saying, to which the Honourable the Leader of the House thought fit to object. I support this amendment.

Sardar Sant Singh (West Punjab : Sikh) : Sir, the Honourable the

12 Noon.

Leader of the House has agreed with the Select Committee, when he so promptly published the modified rule in the Gazette of India. So far it can safely be said that the modified rule is an improvement on the rule as it stood before. But again certain questions arise which are of very great importance, particularly in these days when the Provincial Governments are not, in my opinion—others may or may not agree with me,—so responsible to those legal maxims which are the very essence of a democratic Government. The position is this : that in this rule power is given to a police officer to disperse meetings which are of the nature described in the modified rule. May I ask who is to decide this issue at the time when the meeting is going on ? My friend cannot ignore the fact that the person on the spot may be a foot constable and may have to make a decision of the utmost importance to the liberties of the people. He has not modified this rule giving this power to some higher official, say to a person of not lesser rank than the Superintendent of Police. In the absence of such safeguard, we, as representing the electorate of our provinces, cannot permit this general rule to find place on the Statute-book. We are agreed that these are very drastic provisions. At the same time my Honourable friend should be aware of this fact that so far in India there is no trouble, there is no internal disorder, absolutely nothing. But yet we find the Provincial Governments of certain provinces taking steps against those who do not belong to the party which is in power. This is true of the Punjab, this is true of Bengal, and probably this is true of other provinces as well. Under the circumstances, without casting any reflection upon any particular Government, I must have the safeguard in the rule itself. As no safeguard is forthcoming, there is no alternative left but to move for the deletion of this clause. At the same time I may inquire from the Honourable the Leader of the House one important fact. He, at my suggestion, at the time of the consideration of this Bill, re-read the speech of Mr. Churchill and gave certain assurances which were given in the House of Commons. But may I ask him whether, since then, the Government of India have issued any instructions to the Provincial Governments as to how they are to be guided as to the interpretation of these rules, what is the meaning of public safety, what will be included under maintenance of law and order, and what will be the scope of 'the successful prosecution of the war'. Sir, these are phrases too vague and liable to very wide interpretation. These have been left entirely to the discretion of very low officials who are expected to carry out the policy of the Government of India. Under the circumstances, Sir, it is absolutely essential that some directions should be issued to the Provincial Governments telling them when this Act should be put into force, at what stage these drastic provisions should be put into action. In the absence of such instructions, it is due to the public that we should voice their feelings in this House, and not be a party to too drastic a measure as

[Sardar Sant Singh.]

this. I need not inform my friend, which I shall do at some later stage, about the dangers of such vast powers being vested in such petty officials. I trust, in the light of what we have stated here, the Honourable Member in charge will issue the necessary instructions to Provincial Governments or re-frame this rule by giving the power of dispersal of meetings or processions and such like things to officers not less in rank than that of Superintendents of Police. Unless this is done, I am afraid I cannot give my support to this drastic rule. Sir, I support this amendment.

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

“ That part (xxx) of sub-clause (f) of clause 2 of the Bill be omitted.”

The Assembly divided :

AYES—9.

Aney, Mr. M. S.
Banerjee, Dr. P. N.
Datta, Mr. Akhil Chandra.
Lalchand Navalrai, Mr.

Maitra, Pandit Lakshmi Kanta.
Malaviya, Pandit Krishna Kant.
Parma Nand, Bhai.
Sant Singh, Sardar.
Som, Mr. Suryya Kumar.

NOES—45.

Abdul Hamid, Khan Bahadur Sir.
Ahmad Nawas Khan, Major Nawab Sir.
Aikman, Mr. A.
Aiyar, Mr. T. S. Sankara.
Bewoor, Sir Gurnath.
Bhandarkar, Mr. K. Y.
Boyle, Mr. J. D.
Bosman, Mr. G. S.
Buss, Mr. L. C.
Campbell, Mr. D. O.
Caroe, Mr. O. K.
Clow, The Honourable Sir Andrew.
Crofton, Mr. D. H.
Dakal, Dr. R. D.
Dalpat Singh, Sardar Bahadur Captain.
Gorwala, Mr. A. D.
Greer, Mr. B. R. T.
Hodson, Mr. D. C.
James, Mr. F. E.
Jawahar Singh, Sardar Bahadur Sardar Sir.
Kamaluddin Ahmed, Shams-ul-Ulema.
Khaleeli, Mr. A.
Khan, Mr. N. M.
Khursaid Muhammad, Khan Bahadur Shakh.

Kushalpal Singh, Raja Bahadur.
MacKown, Mr. J. A.
Miller, Mr. C. C.
Mody, Sir H. P.
Mudaliar, The Honourable Diwan Bahadur Sir A. Ramaswami.
Mukerji, Mr. Basanta Kumar.
Nehru, Mr. B. K.
Ogilvie, Mr. C. M. G.
Rahman, Lieut Colonel M. A.
Raisman, The Honourable Sir Jeremy.
Roughton, Mr. N. J.
Scott, Mr. J. Ramsay.
Sheehy, Mr. J. F.
Sher Muhammad Khan, Captain Sardar Sir.
Sivaram, Rao Sahib N.
Spence, Sir George.
Sukthankar, Mr. Y. N.
Talukdar, Mr. J. N.
Thorne, The Honourable Mr. J. A.
Wakely, Mr. L. J. D.
Zafarullah Khan, The Honourable Sir Muhammad.

The motion was negatived.

Pandit Lakshmi Kanta Maitra : Sir, I beg to move :

“ That in part (xxxi) of sub-clause (2) of clause 2 of the Bill, after the word ‘ insignia ’ the words ‘ of His Majesty’s forces ’ be inserted.”

Sir, in the Bill as reported by the Select Committee, we find the following addition to the original provision :

“ . . . any use, calculated to prejudice the public safety, the maintenance of public order, the defence of British India or the prosecution of war.”

But even then the House will realise that it is very difficult to understand what is exactly meant by this provision. This part deals with the use of uniforms, flags and insignia. What uniforms, what flags, and what kind of insignia are meant ? We in this country have not got much of insignia, neither have we got anything in the nature of uniforms unless a particular form of dress which certain class of people, or people holding certain political views wear—unless that is construed to be a uniform, there is nothing like a uniform or insignia used by the people of this country. There are no doubt flags. I want to know from the Honourable the Leader of the House whether by “ flags ” is meant to include the tri-colour flag of the Congress, or the flag of the Hindu Mahasabha, or the Muslim League, or the flag or insignia of the labour unions in this country, and if so, what is sought to be gained by the Government by prohibiting their use. I can understand if any private institution or any body of persons use any flag or uniform or insignia which is similar to that used by His Majesty’s forces—then it may create some confusion and Government would be perfectly justified in stopping its use. But I fail to understand why should Government take the power to prohibit by a general order the use of a certain class of flag, or even the use of certain forms of dress such as a Gandhi cap, khaddar coat or shirt or khaddar cloth—which may be construed as a uniform ? Why should it be prohibited, why should it be regulated, and what purpose is such power going to serve in the effective prosecution of the war ? I do not understand. Sir, I move.

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

“ That in part (xxxi) of sub-clause (2) of clause 2 of the Bill, after the word ‘ insignia ’ the words ‘ of His Majesty’s forces ’ be inserted.”

The Honourable Sir Muhammad Zafrullah Khan : As the Honourable the Mover has himself pointed out, the clause was restricted in a certain manner in Select Committee to set at rest certain apprehensions. Government are unable to further restrict the clause in the manner suggested by the Honourable Member.

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

“ That in part (xxxi) of sub-clause (2) of clause 2 of the Bill, after the word ‘ insignia ’ the words ‘ of His Majesty’s forces ’ be inserted.”

(A division being challenged, Mr. President asked Members to rise in their places for and against, and declared that the motion was negatived.)

Pandit Lakshmi Kanta Maitra : Sir, I beg to move :

" That for part (xxv) of sub-clause (g) of clause 2 of the Bill the following be substituted :

' empowering any civil or military authority to enter and search any place if such authority has reason to believe that such place is being used for any purpose prejudicial to the public safety or to the defence of British India and to seize anything found there which he has reason to believe is being used for any such purpose '."

Sir, this is a verbatim reproduction from the old Defence of India Act. I hope that no objection will be taken to it.

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

" That for part (xxv) of sub-clause (g) of clause 2 of the Bill the following be substituted :

' empowering any civil or military authority to enter and search any place if such authority has reason to believe that such place is being used for any purpose prejudicial to the public safety or to the defence of British India and to seize anything found there which he has reason to believe is being used for any such purpose '."

Mr. Akhil Chandra Datta : As the Honourable the Mover has said, this is a verbatim reproduction from the old Defence of India Act of 1915. May I bring out the difference between the present provision and the old provision ? The old provision sought to empower any civil or military authority to enter and search any place. There is no such specification here. In other words, anybody empowered by the Executive could enter, or any person, to quote the word which is to be found in the various parts of this Bill—that is point No. 1. The next point is, if such authority has reason to believe, etc. In the present Bill all that is said is, " reasonably suspected of being used for any purpose....." Suspected by whom ? By any responsible authority ? In the third place, the power of seizure under the old Act was to seize " anything found there which he has reason to believe...." ; that is the civil or military authority and not a man in the street. In addition to all these, as regards the purpose, we have, " prejudicial to the public safety or interest, to the defence of British India...."—up to this point it is identical with the old provision, but then there is an addition made here, namely, " or to the efficient prosecution of war ". These short but pregnant words have been added to the old provision. On this point I made a submission on a similar provision the other day. I find that the Honourable the Law Member said in one of his speeches with regard to this point, namely, the efficient prosecution of war :

" I suppose the Honourable the Deputy President's idea is that India should be defended by doing whatever may be necessary to secure it against direct aggression, but we should permit activities to be undertaken in India which might cause direct injury to Great Britain,"

I can assure the House that I have never said or suggested anything of that sort.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member should not take this opportunity to explain. He should have given an explanation then.

Mr. Akhil Chandra Datta : I shall certainly obey your ruling, but may I point out that it is the usual course.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member had an opportunity at the time to explain, but he missed it, and he cannot do it now.

Mr. Akhil Chandra Datta : But apart from the observations of the Honourable the Law Member, may I point out that there is a lot of difference between a sin of omission and a sin of commission because if those words were here, namely, efficient prosecution of the war—my point is this. Part (xxiv) of sub-clause (2) of clause 2 says :

“ the requisitioning of any property, movable or immovable, including the taking possession thereof.”

Under this rule, if I understand English, it is quite competent for the Central Government to make rules for asking people to part with their cash. If it is necessary for the defence of India, I am prepared to make any sacrifice whatsoever. I am prepared to give my life and property and everything for that purpose, but I do not know if Indians can be reasonably asked to give away all they have for the efficient prosecution of war, remembering the definition of war, namely, any war in which for the time being His Majesty may be engaged. My point is this. We are not prepared to give power to the Central Government to enact a rule like that. You can search any house if you suspect that the man is concealing something prejudicial to defence of India but my submission is that you should not have that drastic power for the efficient prosecution of the war. We protest against a rule like this and that is the reason why we seek to reproduce the old rule. Sir, I support the amendment.

The Honourable Sir Muhammad Zafrullah Khan : May I assure the House that there is no intention to empower, as Mr. Datta has stated, the man in the street to enter and conduct searches. As a matter of fact, the expression ‘ civil or military authority ’ in itself is pretty wide. In the Select Committee, certain Honourable Members pointed out that they found it difficult to understand the meaning of ‘ authority ’. I am glad that they have now sponsored an amendment when the meaning of ‘ authority ’ has become clear to them.

Mr. M. S. Aney (Berar : Non-Muhammadan) : On a point of order. Discussions in the Select Committee are considered confidential and is it in order for the Honourable Member to refer to it ?

The Honourable Sir Muhammad Zafrullah Khan : I am to this extent in order in referring to it that when it was sought to empower an “ authority ” criticism was made that “ authority ” was too wide. I am merely seeking to draw from that support for my suggestion that ‘ civil and military authority ’ is almost as wide, if not quite as wide, as “ authority ” in the Bill.

Mr. M. S. Aney : I am not disputing the argument. I am raising a point of order whether a Member is right in referring to the discussion in the Select Committee.

Mr. President (The Honourable Sir Abdur Rahim) : The Chair takes it that all that the Honourable the Leader of the House means is that certain suggestions were made in the Select Committee and Government are not inclined to go any further than what was agreed upon there.

The Honourable Sir Muhammad Zafrullah Khan : So far as the interpretation that is sought to be put upon this clause by the last speaker is concerned, I am quite sure the House will agree that it is not capable of bearing the fantastic and, if I may be permitted the use of the word, absurd interpretation that this clause is likely to empower anybody to go and search for Rs. 50 that a man may have concealed in his House, because that Rs. 50 was required for the efficient prosecution of the war. We must look at these clauses in a reasonable manner and put upon them the interpretation which they are reasonably capable of bearing. The only real and substantial difference that I can discover between the amendment proposed and the clause as it stands is that the maintenance of public order and the efficient prosecution of the war have been added in this Bill in addition to the defence of British India and public safety which occurred in the old Act. That is a difference which was laboured to a very large extent when the Bill as a whole was under discussion and I really do not see that any purpose is served by reiterating the same thing over and over again. The House has accepted the principle that on the occasion of this emergency the maintenance of public order and the efficient prosecution of the war have been validly added to the sub-clause, as the objects for securing which these rules may be made. I am quite aware that to a certain section of the House this is unwelcome but it really adds nothing to the argument to point out the difference between the old Act and the present Bill at every step. Sir, I oppose the amendment.

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

"That for part (xxv) of sub-clause (5) of clause 2 of the Bill the following be substituted :

'empowering any civil or military authority to enter and search any place if such authority has reason to believe that such place is being used for any purpose prejudicial to the public safety or to the defence of British India and to seize anything found there which he has reason to believe is being used for any such purpose'."

The motion was negatived.

Pandit Lakshmi Kanta Maitra : Sir, I move :

"That in part (i) of sub-clause (3) of clause 2 of the Bill, the words 'or reasonably suspected of contravening' be omitted."

Part (i) of sub-clause (3) provides for the arrest and trial of persons contravening or reasonably suspected of contravening any of the rules. Government seek to bring within the ambit of this measure people against whom there may not be any legal proof but only reasonable suspicion. This, I submit, is a violent departure from the established canons of criminal jurisprudence. I do not think any lawyer can be a consenting party to this provision. It means that any person can be arrested, convicted and sentenced to any term of imprisonment on what may eventually turn out to be mere suspicion. The difference between the trial of civil and criminal cases in this country is that in civil cases the judge may well rest content with the balance of probabilities. In criminal cases, probability will not suffice, it must amount to moral certainty and I do not see any reason why Government should make a departure from that salutary principle. I understand, however, that Government are willing to accept my amendment. So I need not proceed further. Sir, I move.

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

“ That in part (i) of sub-clause (3) of clause 2 of the Bill, the words ‘ or reasonably suspected of contravening ’ be omitted.”

The Honourable Sir Muhammad Zafrullah Khan : Sir, I accept the amendment.

Pandit Lakshmi Kanta Maitra : Thank you, Sir,

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

“ That in part (i) of sub-clause (3) of clause 2 of the Bill, the words ‘ or reasonably suspected of contravening ’ be omitted.”

The motion was adopted.

Pandit Lakshmi Kanta Maitra : Sir, I move :

“ That in part (ii) of sub-clause (3) of clause 2 of the Bill, for the word ‘ seven ’ the word ‘ five ’ be substituted.”

Sir, the purpose of this amendment is simply to reduce the maximum sentence. I think that seven years is far too severe, and we believe that a five years' maximum would meet the ends of justice. Sir, I move.

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

“ That in part (ii) of sub-clause (3) of clause 2 of the Bill, for the word ‘ seven ’ the word ‘ five ’ be substituted.”

The Honourable Sir Muhammad Zafrullah Khan : Sir, there is no absolute criterion by which to judge whether a maximum sentence of seven years or of five years would be appropriate. In the first place, there is the safeguard that courts of justice in awarding sentence would have regard to the criminality of the act which has been proved, and next, the rules, as actually framed under the corresponding part of the Ordinance, do not in each case provide the maximum penalty of seven years ; in some cases it is only as light as six months, in some cases it is two years, in some cases three, in some cases five. The mere fact that a maximum sentence of seven years is here provided for does not necessarily mean that for the contravention of every rule the maximum penalty to be imposed will be seven years.

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

“ That in part (ii) of sub-clause (3) of clause 2 of the Bill, for the word ‘ seven ’ the word ‘ five ’ be substituted.”

The motion was negatived.

Pandit Lakshmi Kanta Maitra : Sir, I move :

“ That part (iii) of sub-clause (3) of clause 2 of the Bill be omitted.”

Sir, part (iii), the deletion of which I move, provides for the seizure, detention and forfeiture of any property, etc. Now, this is a very extraordinary power and we have already provided, in other parts of the Bill, the powers by which all that is sought to be achieved by this provision is provided. I do not think this additional provision is necessary. Sir, I move.

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

“ That part (iii) of sub-clause (3) of clause 2 of the Bill be omitted.”

The Honourable Sir Muhammad Zafrullah Khan : Sir, I am unable to accept the amendment.

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

“ That part (iii) of sub-clause (3) of clause 2 of the Bill be omitted.”

The motion was negatived.

Dr. P. N. Banerjee (Calcutta Suburbs : Non-Muhammadan Urban) : Sir, I want to move amendments Nos. 32 and 33 together, as they are connected.

Mr. President (The Honourable Sir Abdur Rahim) : No, the Honourable Member cannot do that. He can move only one amendment at a time.

Dr. P. N. Banerjee : Sir, I move :

“ That in part (iii) of sub-clause (3) of clause 2 of the Bill, after the word ‘ seizure,’ the word ‘ and ’ be inserted.”

Sir, this by itself is not sufficient. My object is that forfeiture should be excluded, and for that reason I wanted to move the two amendments together. However, for the present I move that after the word ‘ seizure ’ as above the word ‘ and ’ be inserted. Sir, I move.

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

“ That in part (iii) of sub-clause (3) of clause 2 of the Bill, after the word ‘ seizure,’ the word ‘ and ’ be inserted.”

The Honourable Sir Muhammad Zafrullah Khan : Sir, standing by itself—I know the real object of this amendment of course—it is absurd. I oppose the amendment.

Dr. P. N. Banerjee : That is the reason why I said I wanted to move the two amendments together.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member ought to have framed the amendment differently.

Dr. P. N. Banerjee : Sir, if I am allowed to move No. 33, then it will be really consequential. I ask for leave to withdraw amendment No. 32 and move No. 33.

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

Dr. P. N. Banerjee : Sir, I move :

“ That in part (iii) of sub-clause (3) of clause 2 of the Bill, the words ‘ and forfeiture ’ be omitted.”

Sir, this part provides for the seizure, detention and forfeiture of any property in respect of which any contravention, attempt or abetment referred to in the previous clause may be committed. For the prosecution of the war it may be necessary to seize any property temporarily but it will be very undesirable to forfeit property permanently, that is, for all time to come. That would be going too far. Therefore, I urge that although temporary occupation of property may be necessary, permanent forfeiture is not desirable as that would entail a very great hardship on many. Sir, I move.

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

"That in part (iii) of sub-clause (3) of clause 2 of the Bill, the words 'and forfeiture' be omitted."

The Honourable Sir Muhammad Zafrullah Khan : Sir, I am afraid the Honourable Member has completely misunderstood the purport of this part of the sub-clause. It does not provide for the seizure, detention and forfeiture of any property which may be necessary for the efficient prosecution of the war ; it provides for the seizure, detention and forfeiture of any property in respect of which an offence has been committed. What is the use of seizing and detaining it if you cannot pass an order with regard to its disposal ? If seizure and detention is to remain, I am afraid the power to forfeit in appropriate cases must also remain.

Pandit Lakshmi Kanta Maitra : There may be extenuating circumstances !

Sardar Sant Singh : Sir, I think the Honourable the Leader of the House has not fully appreciated the nature of the amendment that has been moved by my friend, Dr. Banerjee. The background of the whole Bill is the successful prosecution of the war, and all these drastic powers are being entrusted with a view to arming the Executive to carry on certain duties which are of an extraordinary nature during such a crisis. The position would be that, in the crisis, they may have powers to prevent certain offences which are admittedly very wide and of a drastic nature. It is not the purpose of these rules—and I do not think the Honourable the Leader of the House or the Government of India will ever claim—that the object of this rule is to penalize people for all time to come. These rules place extraordinary powers in the hands of the Executive and, as such, are destined to hold their ground during the time the crisis lasts and no longer. The object of this provision would be that a repetition of the crime should be prevented but the man will be penalized for all time to come. I may illustrate my point by referring to the use of the Defence of India Act of 1915 during the martial law days in the Punjab. Now, in the Penal Code itself there was a provision for the offence of waging war in which the forfeiture of property was an essential part of the offence. The result was that when men like Lala Harkishen Lal and others were tried, they were sentenced by a summary court to death and the whole of their property was forfeited. This House was called upon later on to amend the Penal Code and do away with forfeiture and to restore such property. I would ask the Honourable the Leader of the House to read that amendment which was carried in the House itself and the Penal Code has been amended since that day and forfeiture of property has been done away with.

Now, in the same way, if the forfeiture of property is insisted upon, the Executive in its over-zeal may carry the matter too far as they did in the Punjab during the last war.

The Honourable Sir Muhammad Zafrullah Khan : May I point out that this paragraph has nothing to do with the imposition of forfeiture of property as a substantive part of the sentence to which the Honourable Member is referring ? This refers only to property in respect of which an offence may have been committed.

Sardar Sant Singh : I am afraid my Honourable friend has not understood me again. I know that this forfeiture of property is connected with that property in respect of which such contravention, attempt, etc., is connected. I know that. But what is the object of this provision? What does he want this rule for? He wants this rule in order to carry out the successful prosecution of the war. Is it not limited in its scope? Therefore, why should he not limit the seizure and detention during the time the emergency lasts? Why should he go beyond that? The object is not to empower the Executive to carry out the forfeiture of property for all time to come. It may be a very good thing to prevent the repetition of the offence and it may be very good to seize and detain the article for the successful prosecution of the war. But the Executive cannot be allowed to do so when the war is over and no offence can be committed in respect of that property.

The Honourable Sir Muhammad Zafrullah Khan : Supposing it is an inflammatory book or an incendiary bomb, must that be necessarily returned?

Sardar Sant Singh : May I ask my Honourable friend if this power refers to the incendiary bombs or the gas bombs or some such bombs which are manufactured by a private individual? Has he not got that power under the Explosive Substances Act? Has he not got the power of forfeiture under the ordinary law of the land? He has got that power. The Government has been empowered in such cases by the Legislature to forfeit such things. But what I am referring to is some thing else. What about the case of the press? Supposing a false report is published in a printing press. Does he not want us to give him the power to forfeit the whole press under this provision? I would not permit him to forfeit the whole press for all time to come because one false report has been published by it. He can similarly seize other properties. He already possesses vast powers of seizure and detention under other rules. What I want to take away from him is the power to forfeit that property for all time to come. The object of the rule will be served and the object of the Executive will be served if we give them this power for the successful prosecution of the war and limit it to the duration of war. But if they ask for much more power than is necessary, then this House or any other elected House can hardly give. Therefore, I will ask him to reconsider the position and not to insist upon the pound of flesh if he wants the co-operation of this House in this important Bill.

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

"That in part (iii) of sub-clause (3) of clause 2 of the Bill, the words 'and forfeiture' be omitted."

(Division was claimed.)

Those Honourable Members who are in favour of the motion will rise in their places.....

Dr. P. N. Banerjee : Sir, we would like the names to be recorded.

Mr. President (The Honourable Sir Abdur Rahim) : That cannot be allowed.

The motion was negatived.

Pandit Lakshmi Kanta Maitra : Sir, I move :

“ That in part (v) of sub-clause (3) of clause 2 of the Bill, the words ‘ and other persons ’ be omitted.”

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

“ That in part (v) of sub-clause (3) of clause 2 of the Bill, the words ‘ and other persons ’ be omitted.”

The Honourable Sir Muhammad Zafrullah Khan : Sir, it would be noticed by the House that ‘ other persons ’ here does not occur in a clause in which any rulemaking authority is conferred upon any person. It occurs in a clause which says, ‘ may prescribe the duties and powers of public servants and other persons as regards preventing the contravention of, or securing the observance of the rules ’. This “ other persons ” does not stand on the same footing as the “ other person ” in sub-clause (2) where authority was sought to be given to ‘ any other person ’ to secure certain matters by making rules. This is a different matter. Sir, I oppose the amendment.

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

“ That in part (v) of sub-clause (3) of clause 2 of the Bill, the words ‘ and other persons ’ be omitted.”

The motion was negatived.

Dr. P. N. Banerjee : Sir, I beg to move :

“ That to part (vii) of sub-clause (3) of clause 2 of the Bill the following proviso be added :

‘ provided that the prohibition shall not apply to persons who stand in near relationship to each other ’.”

Sir, it is a recognised principle of criminal law that near relations are not bound to turn persons out of their houses who may live with them even if they committed any offence. I, therefore, hope that this amendment will be accepted by the House.

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

“ That to part (vii) of sub-clause (3) of clause 2 of the Bill the following proviso be added :

‘ provided that the prohibition shall not apply to persons who stand in near relationship to each other ’.”

The Honourable Sir Muhammad Zafrullah Khan : Sir, I have nowhere come across the doctrine to which Dr. Banerjee refers that in the case of near relations—and, incidentally, this expression is nowhere defined—the principle which he alleges is applicable. I do concede, however, that in some cases a husband or wife may be absolved from liability where other persons would be liable and, therefore, I am quite willing, if the House agrees and if you, Sir, permit, that for the words “ to screen from punishment any person ” the following may be substituted, namely, “ by any person to screen from punishment any one other than the husband or wife of such person ”.

Dr. P. N. Banerjee : In that case, Sir, I beg leave of the House to withdraw my amendment.

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

Sir George Spence (Secretary, Legislative Department) : Sir, I move :

" That in part (vi) of sub-clause (3) of clause 2 of the Bill, for the words ' to screen from punishment any person ', the following be substituted :

' by any person to screen from punishment any one, other than the husband or wife of such person '."

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

" That in part (vi) of sub-clause (3) of clause 2 of the Bill, for the words ' to screen from punishment any person ', the following be substituted :

' by any person to screen from punishment any one, other than the husband or wife of such person '."

The motion was adopted.

Dr. P. N. Banerjee : Sir, I beg to move :

" That in part (viii) of sub-clause (3) of clause 2 of the Bill, the words ' or person ', wherever they occur, be omitted."

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

" That in part (viii) of sub-clause (3) of clause 2 of the Bill, the words ' or person ', wherever they occur, be omitted."

The Honourable Sir Muhammad Zafrullah Khan : Sir, I accept the amendment.

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

" That in part (viii) of sub-clause (3) of clause 2 of the Bill, the words ' or person ', wherever they occur, be omitted."

The motion was adopted.

Mr. Akhil Chandra Datta : Sir, I beg to move :

" That part (a) of sub-clause (4) of clause 2 of the Bill be omitted."

Sir, even at the risk of being characterised as fantastic and absurd, I do submit that this delegation of the power from the Central Government to any official or authority subordinate to the Central Government is not a sound proposition.

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

" That part (a) of sub-clause (4) of clause 2 of the Bill be omitted."

The Honourable Sir Muhammad Zafrullah Khan : I am afraid I must oppose the amendment.

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

" That part (a) of sub-clause (4) of clause 2 of the Bill be omitted."

The motion was negatived.

Mr. Akhil Chandra Datta : Sir, I beg to move :

“ That in part (b) of sub-clause (4) of clause 2 of the Bill, the words ‘ or by any officer or authority subordinate to such Government, or ’ be omitted.”

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

“ That in part (b) of sub-clause (4) of clause 2 of the Bill, the words ‘ or by any officer or authority subordinate to such Government, or ’ be omitted.”

The motion was negatived.

Mr. Akhil Chandra Datta : Sir, I beg to move :

“ That part (c) of sub-clause (4) of clause 2 of the Bill be omitted.”

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

“ That part (c) of sub-clause (4) of clause 2 of the Bill be omitted.”

The Honourable Sir Muhammad Zafrullah Khan : Sir, I oppose this amendment. This was added by the Select Committee.

Mr. Akhil Chandra Datta : But at the instance of the Government.

The Honourable Sir Muhammad Zafrullah Khan : Yes, but without any dissentient voice. It was adopted unanimously in the Select Committee.

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

“ That part (c) of sub-clause (4) of clause 2 of the Bill be omitted.”

The motion was negatived.

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

“ That in part (c) of sub-clause (4) of clause 2 of the Bill, the words ‘ person or ’ be omitted.”

Sir, I do not think there will be any objection to my amendment, as a similar amendment has been accepted before.

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

“ That in part (c) of sub-clause (4) of clause 2 of the Bill, the words ‘ person or ’ be omitted.”

The motion was adopted.

Mr. Akhil Chandra Datta : Sir, I beg to move :

“ That sub-clause (5) of clause 2 of the Bill be omitted.”

[Mr. Akhil Chandra Datta.]

Sir, the same principle of devolution of power is involved, namely, from the gods to the tin gods.

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

"That sub-clause (d) of clause 2 of the Bill be omitted."

The motion was negatived.

Mr. Lalchand Navabhai : Sir, I beg to move :

"That in sub-clause (d) of clause 2 of the Bill, the word 'person', occurring in the tenth line, be omitted."

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

"That in sub-clause (d) of clause 2 of the Bill, the word 'person', occurring in the tenth line, be omitted."

The motion was adopted.

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

"That clause 2, as amended, stand part of the Bill."

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Clauses 3 and 4 were added to the Bill.

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

"That clause 5 stand part of the Bill."

Mr. Suryya Kumar Som (Dacca Division : Non-Muhammadan Rural) : Sir, I move :

"That in sub-clause (1) of clause 5 of the Bill, the words 'death, or' be omitted."

This is a temporary measure and transportation ought to be enough punishment. After a change of circumstances it will very likely be found that the men who had been transported were not so useless or dangerous to society and in many cases we have seen that such men have become very useful members of society. Here I say that a man's life should not be ended at all. Transportation should be sufficient and I appeal to the House to delete the sentence of death.

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

"That in sub-clause (1) of clause 5 of the Bill, the words 'death, or' be omitted."

The Honourable Sir Muhammad Zafrullah Khan : Sir, the reason advanced by the Honourable the Mover is the old one whether the death penalty should continue to be imposed in any case whatsoever. I am afraid this is not the occasion to resolve that controversy.

Sardar Sant Singh : Sir, I want to point out a few implications behind this. Sections 121, 120-B, etc., of the Indian Penal Code deal with the offence of waging war or conspiring to wage war against the King and the death penalty is provided therefor. So that for waging war or conspiring to wage war the ordinary law of the land is enough. But under this clause what is proposed to be made punishable is the contravention of any provision of the rules made under clause 2 or any order issued under any such rule with intent to wage war against the King or to assist any State at war with the King. Therefore, a distinction has to be drawn between the two. If he actually assists in waging war or conspires in waging war he may be punished by section 121 and 120-B of the Indian Penal Code. But if his intention is to wage war and with that intention contravenes any provision mentioned in the clause he is to be punished with death. I may draw the attention of the Law Member to this point.

The Honourable Sir Muhammad Zafrullah Khan : It is no use drawing my attention to it now. The Honourable Member had an opportunity of speaking before me, and I could have answered his questions, but he deliberately refrained from doing so.

Sardar Sant Singh : In their zeal to see this enactment on the Statute-book Government are too much in a hurry to get up and reply before the matter is sufficiently threshed out. The Honourable the Leader of the House should have waited to see whether any other Member of the House wanted to make a speech.

The Honourable Sir Muhammad Zafrullah Khan : I certainly waited and looked at those Benches and only got up to speak when no one stood up on that side.

Sardar Sant Singh : I am submitting that we should be in no hurry to pass this legislation which may prove to be very harmful and injurious and which is covered by the already existing law of the land. If this provision means the same thing as is contained in the Indian Penal Code it should not be here but if it goes beyond that we should pause and think whether we should give our sanction to it. The question then would be, why not confine the punishment to the crisis through which the country is passing and why go beyond that ? Sir, we have got an Honourable Member here now who was punished with death on an interpretation of the Defence of India Act because he suggested a constitution for the future of India. Today this constitution-making is a hobby and even the Premier of the Punjab has a scheme of Federation which has been permitted to be published. In 1915 he would perhaps have been hauled up as a criminal and hanged. What is the meaning of the penalty here ? We know that emergency penalties are done away with as soon as normal conditions prevail. Why hang a person for having in the heat of the moment done something which the Executive do not like ? Therefore, for waging war or conspiring to wage war the provision already exists in the Statute. But if the pre-

[Sardar Sant Singh.]

sent provision goes beyond that they should do away with the death penalty and confine the punishment to transportation for life so that if in the heat of the moment any injustice is done it may be remedied when the emergency is over. Therefore, I once more appeal to the Government of India to consider their position and not to go beyond what is considered necessary or desirable in the interests of the security of the country.

Mr. M. S. Aney : Sir, I want to add one word to what has been said by my Honourable friend, Sardar Sant Singh. Here, the offence that is being punished is not waging war or conspiring to wage war but doing something against the rules that may be made under this Act, with an intention to wage war. Therefore, the actual offence is different from that for which the Indian Penal Code furnishes capital punishment. That point has been very lucidly put before the House by my Honourable friend, Sardar Sant Singh. Capital punishment is the last punishment and once that is inflicted there remains nothing else. In ordinary cases when the charge of waging war or conspiracy to wage war will be brought against a man under section 121 or any other section of the Indian Penal Code the procedure by which he will be tried is laid down in the Criminal Procedure Code. He will be hauled up before a committing magistrate first ; then he will be taken to the Sessions Court and there will be a due trial with the aid of a jury or assessors as the case may be ; and he will be given all the facilities for proving his innocence with the assistance of lawyers—one, two or three, whatever he can afford. If he cannot do that, the Government will give him the assistance of a lawyer. Having given all these facilities, if a man is found to be guilty, then there is some meaning in holding that the offence is really proved against him. Here, what is the position ? I do not want to refer to subsequent sections which will be later on discussed, but once a man is to be hauled up for any offence under this, he will be tried by a special tribunal which is empowered to deal with the case in a summary way. Do you think that that is a proper tribunal to invariably come to a correct finding on that point ? Emergency might excuse a decision which the court may come to and it may be even condoned on account of the existence of the emergency for the time being. If that is the position, why should we allow so much of our liberty and so much of our legal rights which we possess in the matter of trial to be given up ? It is because of the existence of the emergency. But the punishment of death can be certainly reserved only for those offences and for such trials as can be properly made where the whole thing can be properly and strictly sifted according to the recognized principles of criminal jurisprudence. If all ordinary procedure is to be suspended and summary trial is to be made, I think the aims of justice will certainly be safe by transporting a man for life and we need not go to the extreme punishment, namely, infliction of the capital sentence. I, therefore, want to appeal to the Honourable the Leader of the House, to consider the point seriously in spite of the fact that he has got an opportunity of bringing a charge against me that I have deliberately sat down and did not get up earlier in the debate,—he can make that charge against me because I did not want to speak till now, but I find now there is a point here, a point which the Government ought to consider

seriously if they have got any respect for human life. The point is this. Emergencies may condone suspension of the ordinary procedure and infliction of punishment, but taking away the life of a man, who cannot have a proper and fair trial, is something of a very dangerous nature and I, therefore, think that the Honourable the Leader of the House should see that the special tribunals are not armed at least with the power of inflicting the extreme punishment on a criminal who cannot have a proper trial under these circumstances. I, therefore, support the amendment which has been moved.

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

“ That in sub-clause (1) of clause 5 of the Bill, the words ‘ death, or ’ be omitted.”

The Assembly divided :

AYES—9.

Aney, Mr. M. S.
Banerjee, Dr. P. N.
Datta, Mr. Akhil Chandra.
Lalchand Navalrai, Mr.

Maitra, Pandit Lakshmi Kanta.
Malaviya, Pandit Krishna Kant.
Parma Nand, Bhai.
Sant Singh, Sardar.
Som, Mr. Suryya Kumar.

NOES—42.

Abdul Hamid, Khan Bahadur Sir.
Ahmad Nawaz Khan, Major Nawab Sir.
Aikman, Mr. A.
Aiyar, Mr. T. S. Sankara.
Bewoor, Sir Gurunath.
Bhandarkar, Mr. K. Y.
Boyle, Mr. J. D.
Bozman, Mr. G. S.
Campbell, Mr. D. C.
Caroe, Mr. O. K.
Clow, The Honourable Sir Andrew.
Crofton, Mr. D. H.
Dalal, Dr. R. D.
Dalpat Singh, Sardar Bahadur Captain.
Gorwala, Mr. A. D.
Greer, Mr. B. R. T.
Hodson, Mr. D. C.
James, Mr. F. E.
Jawahar Singh, Sardar Bahadur Sardar Sir.
Kamaluddin Ahmed, Shams-ul-Ulema.
Khaleeli, Mr. A.
Khan, Mr. N. M.

Khurshaid Muhammad, Khan Bahadur Shaikh.
Kushalpal Singh, Raja Bahadur.
Mackeown, Mr. J. A.
Miller, Mr. C. C.
Mudaliar, The Honourable Diwan Bahadur Sir A. Ramaswami.
Mukerji, Mr. Basanta Kumar.
Nehru, Mr. B. K.
Ogilvie, Mr. C. M. G.
Rahman, Lieut-Colonel M. A.
Roughton, Mr. N. J.
Scott, Mr. J. Ramsay.
Shahban, Mian Ghulam Kadir Muhammad.
Sheehy, Mr. J. F.
Sivaraaj, Rao Sahib N.
Spence, Sir George.
Sukthankar, Mr. Y. N.
Talukdar, Mr. J. N.
Thorne, The Honourable Mr. J. A.
Wakely, Mr. L. J. D.
Zufrullah Khan, The Honourable Sir Muhammad.

The motion was negatived.

The Assembly then adjourned for Lunch till Thirty-Five Minutes Past Two of the Clock.

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

Dr. P. N. Banerjee : Sir, I beg to move :

“ That in sub-clause (1) of clause 5 of the Bill, for the words ‘ and shall also be liable to ‘ the words ‘ or with ‘ be substituted.”

In this sub-clause three alternative forms of punishment are provided, namely, death, transportation for life, and imprisonment, and fine is provided as an additional form of punishment. What I urge is that fine should also be provided as an alternative form of punishment. Why ? Because there may be cases in which the offence may not be of a very grave character,—it may be of a very minor character,—and in such cases it would not be desirable to punish a man with imprisonment. Therefore, I urge that fine may be made an alternative form of punishment in this sub-clause. I move.

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

“ That in sub-clause (1) of clause 5 of the Bill, for the words ‘ and shall also be liable to ‘ the words ‘ or with ‘ be substituted.”

Mr. Lalchand Navalrai : I support this amendment. I see that the provision is made for this purpose, that when any offence under this Act or under any rules is committed, of such a nature as to be severely punished, the punishment provided is death, transportation for life or imprisonment, and he shall also be liable to fine, that is to say, it will be imperative upon the tribunal to impose fine as well. I do not think the object of this Bill is to make money. If it is professed that war requires money and that this is one of the circuitous ways of earning money for the war, then one can understand, but if the purpose of this Bill is to punish those people who go out of their way and wage war or commit any offence which is detrimental to the prosecution of the war, the punishment that is already provided is sufficient. But I go....

The Honourable Sir Muhammad Zafrullah Khan : The Party appears to be at loggerheads.

Mr. Lalchand Navalrai : About what ?

The Honourable Sir Muhammad Zafrullah Khan : The Honourable Member assumes that these words “ and shall also be liable to fine ” make a fine compulsory.

Mr. Lalchand Navalrai : Yes, I do.

The Honourable Sir Muhammad Zafrullah Khan : That is wrong.

Mr. Lalchand Navalrai : May be, but in practice I am saying....

The Honourable Sir Muhammad Zafrullah Khan : The Honourable Member saying, that does not alter the position.

Mr. Lalchand Navalrai : Even granting that what the Honourable the Leader of the House says is correct, I know in practice the Magistrates take it upon themselves that it is their imperative duty to impose a fine also. I do not know about the Punjab and other places, but I know of

Sind where this kind of thing happens. For instance, take perjury. It says, there shall also be a fine, and I have seen invariably that they impose a fine also. I give credit to the Honourable the Mover of this amendment who has asked that it should be in the alternative. Let the fine be imposed for war or for any other purpose, but it should be in the alternative. If the Honourable the Leader of the House interprets the phrase as leaving a discretion to the Magistrate, then why not say so, so that the Magistrate may be clear on the point and there may not be any difference of opinion as there is at present between myself and the Honourable the Leader of the House? Therefore, I would submit that this is an amendment which should be accepted.

Pandit Lakshmi Kanta Maitra : I could not really understand what the Leader of the House said.....

The Honourable Sir Muhammad Zafrullah Khan : I do not wonder.

Pandit Lakshmi Kanta Maitra : Don't be in a huff.

Dr. P. N. Banerjee : is that sarcastic—what the Leader of the House said?

Pandit Lakshmi Kanta Maitra : I wanted to know from the Leader of the House whether this phrase, "and shall also be liable to fine" is not a mandatory provision.

The Honourable Sir Muhammad Zafrullah Khan : I shall explain when my turn comes.

Pandit Lakshmi Kanta Maitra : As my Honourable friend, Mr. Lalchand Navalrai, has said, it has been our experience and I think also the experience of my Honourable friend the Leader of the House—that the provision has, as a matter of fact, been construed in law courts to impose a mandatory duty and the magistrate rightly or wrongly feels that he is not complying with the requirements of the law if he does not impose a sentence of fine in addition to a substantive sentence of imprisonment. Therefore, in order to clarify the situation, we want to make it an alternative provision so that if there be circumstances which may be pleaded in extenuation of the offence an alternative sentence of fine may be imposed and that the accused may not be twice mulcted with imprisonment and also a fine. I think this clarification of the position is necessary. If the Honourable Member thinks that he cannot accept this amendment may I suggest to him that the mandatory character of "shall" may be changed into "may", so that the phrase will be, "and may also be liable to fine".....

The Honourable Sir Muhammad Zafrullah Khan : "and may also be liable to fine"? With all respect that will be absurd.

Pandit Lakshmi Kanta Maitra : I quite realise, I quite see it. I am only making a suggestion, I am not saying that that should be the particular wording, but if the Honourable Member thinks that he can accommodate us in this matter, we can then evolve a phraseology which will not have a mandatory import but will at the same time provide for some alternative form. Sir, I support the amendment.

Sardar Sant Singh : After this wordy passage at arms between the Leader of the House and one of the Members of my Party I really want to understand whether the principle underlying this amendment is acceptable to the Government or not. Here, as I read the clause, with the substantive punishments which are provided there of imprisonment, the punishment of fine is mandatory. The principle underlying the amendment is that it should be discretionary and not mandatory. It should be left to the magistrate. That is the principle underlying the amendment. I think the Honourable the Leader of the House is too experienced a lawyer not to understand the difference between the language used in the two cases. The phrase 'shall also be liable to fine' means that the magistrate shall be bound when inflicting punishment of imprisonment to inflict the punishment of fine as well.

The Honourable Sir Muhammad Zafrullah Khan : No. The wording is "shall be liable".

Sardar Sant Singh : So far as I know, the three phrases used in the Indian Penal Code in this connection are, imprisonment and shall also be liable to fine, imprisonment or fine, imprisonment as well as fine.

The Honourable Sir Muhammad Zafrullah Khan : I would challenge the Honourable Member to cite one section in the Penal Code which prescribes "as well as fine".

Sardar Sant Singh : I should like to accept the challenge of my friend. There are several sections in the Indian Penal Code in which the phrase 'as well as' has been used. If you agree to the principle underlying the amendment, it is not the words that matter. Then, Sir, another consideration is this. I ask is it the intention of Government by this drastic measure to raise revenue. Is it a revenue consideration or a penal consideration. If it is a revenue consideration, of course there can be no controversy. It is open to the Government to say that the provision is being made in order to pay for the special tribunals who may be appointed later on. But if it is a penal provision, I will insist that it should be judged by juristic principles and not by revenue considerations. That is the point on which I should like the Honourable the Leader of the House to enlighten the House.

The Honourable Sir Muhammad Zafrullah Khan : Sir, I was guilty of saying and I repeat that the different sections of the Nationalist Party appear to be at loggerheads with regard to the object of this amendment.

Dr. P. N. Banerjee : Is my object clear to you ?

The Honourable Sir Muhammad Zafrullah Khan : I thought something was beginning to be clear to me when the Honourable Member was speaking but when he began to be reinforced by his colleagues, I found that they had understood him in quite a different sense from that in which I had understood him. The object of the amendment, as I see it,—I may be entirely wrong—is that it should be open to a court trying an offence under this section to award any of the punishments mentioned in this section or only to award a fine. That I understand to be the object of the amendment.

An Honourable Member : We are all agreed upon that.

The Honourable Sir Muhammad Zafrullah Khan : Some Honourable Members have inquired why have a provision with regard to fine at all ? It was suggested we are enacting these clauses for the purpose of revenue.

Mr. M. S. Aney : Why have a mandatory provision for inflicting fine ?

The Honourable Sir Muhammad Zafrullah Khan : With regard to the mandatory provision, I may say at once that not till this day has this phrase 'and shall also be liable to fine' been interpreted by any court in India as meaning that fine must be added to a sentence of imprisonment. 'And shall also be liable to fine' means and has always been construed to mean that if having regard to the criminality of the act of which a person is convicted and to the other circumstances of the case, the court so chooses and considers fit it can also add a sentence of fine to a sentence of imprisonment. That is the meaning. The effect of the amendment would be that a court could, if it so chose in a particular case, inflict only a sentence of fine and would not be bound to inflict a sentence of imprisonment. The object of the amendment is that a court should not be bound under this section to award a sentence of imprisonment in all cases of conviction. My reply is that that is not an unusual provision. There are scores of sections in the Penal Code in which a similar provision is made. True, occasionally, a case may arise as cases arise under the provisions of the Penal Code also, where a court may be of opinion that a substantial term of imprisonment is not necessary to be inflicted. Having regard either to the offence committed or say, to the position of the accused, or some other factor it may think that a substantial fine would meet the requirements of the case. In that case, it would be open to it to impose a sentence of imprisonment till the rising of the court and a substantial fine. That is done very often in cases of conviction under section 325 of the Penal Code. There is no particular hardship in the phraseology of this section being adapted to the phraseology which has been so often employed in the Penal Code. Sir, I oppose the amendment.

Mr. M. S. Aney : The first thing that I want to draw the attention of the Honourable the Leader of the House to is this. He says that the phrase 'as well as' is never used. I wish to bring to his notice section 64 which reads :

"In every case of an offence punishable with imprisonment as well as fine, in which the offender, etc., etc."

The Honourable Sir Muhammad Zafrullah Khan : That section does not provide a punishment. That is entirely different from what Sardar Sant Singh said.

Mr. M. S. Aney : This is a comparatively unimportant point. The real point is this. The Honourable the Leader of the House has made it perfectly clear that a fine need not necessarily be imposed in every case of imprisonment. That is the interpretation he has given. Now, cases under this clause will be tried by special tribunals and it is better that we try to have our phraseology here as free from objection as possible and not rely upon the interpretation of it as given in the law reports. If that is the real object, I think he should have no objection in

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the first place to changing the word "shall" and having the word "may" there. That will keep the matter entirely beyond doubt and there will be no possibility of misconstruing the words "shall also be liable to fine". My friend's amendment is for a different purpose. There should be an alternative punishment—that is what we want, and not that there should be only discretion for the court to award imprisonment with or without fine. That is not his point. On that point I want the House to consider the amendment on its own merits, but so far as the question of language is concerned, I believe nothing of the force of this clause will be lost if the word "shall" is changed and the word "may" is put in there. I think if the Leader of the House himself may move that suggestion, the House will agree to that change, because the spirit in which he reads the section is the same. The word "shall" is liable to be misunderstood and misconstrued.

The Honourable Sir Muhammad Zafrullah Khan : Sir, a word of personal explanation. I said and I repeat it that, where the Penal Code prescribes a penalty, it never expresses itself in the form that a person shall be liable to imprisonment "as well as fine". Section 64 is one of the general sections which provides what shall happen in certain cases; it explains the effect of a sentence where imprisonment as well as fine are awarded. But there is no section where the penalty is expressed in those terms; there may be cases in which a man is sentenced to imprisonment as well as fine but in no case does the penal code prescribe imprisonment as well as fine. That may be the effect of the sentence.....

Sardar Sant Singh : Please refer to sections 312 to 314.

The Honourable Sir Muhammad Zafrullah Khan : That is, after all, a small point. Assume that the Penal Code does use that expression. The effect of "and shall also be liable to fine", nevertheless, is that the court has discretion in the matter to impose a fine or not.

Sir Muhammad Yamin Khan : But he has suggested that the word "shall" may be changed to the word "may" !

The Honourable Sir Muhammad Zafrullah Khan : Take section 379 dealing with theft :

"Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Then, take section 380 :

"Whoever commits theft in any building, tent....shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Then, take section 381 :

"Whoever.....shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Then, take section 382 :

"Whoever commits theft.....shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

Now, why should I go out of the way to coin a new expression when there is a perfectly well-understood expression which I have taken from the Indian Penal Code ?

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

“ That in sub-clause (1) of clause 5 of the Bill, for the words ‘ and shall also be liable to ’ the words ‘ or with ’ be substituted.”

The motion was negatived.

Dr. P. N. Banerjee : Sir, I move :

“ That in sub-clause (2) of clause 5 of the Bill, after the words ‘ five years ’ the words ‘ or with fine ’ be inserted.”

Here, again, I suggest that fine should be prescribed as a form of punishment in the alternative. This sub-clause provides that the punishment may extend up to five years’ imprisonment. This is somewhat more lenient than the form of punishment prescribed in the previous sub-clause. I do not think that any harm will be done if fine is prescribed as an alternative form of punishment because in the case of some minor offences, instead of awarding the sentence of imprisonment, the court will be entitled to award a sentence of fine only, and that would meet the ends of justice.

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

“ That in sub-clause (2) of clause 5 of the Bill, after the words ‘ five years ’ the words ‘ or with fine ’ be inserted.”

The Honourable Sir Muhammad Zafrullah Khan : Sir, this is an amendment similar to the one that the House has just disposed of and in support of what I have said before I may say that I have looked up for my satisfaction as well as for the satisfaction of Sardar Sant Singh sections 312, 313 and 314 of the Penal Code to which he referred me so kindly. The expression there used is “ shall also be liable to fine ”.

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

“ That in sub-clause (2) of clause 5 of the Bill, after the words ‘ five years ’ the words ‘ or with fine ’ be inserted.”

The motion was negatived.

Dr. P. N. Banerjee : Sir, I move :

“ That in sub-clause (2) of clause 5 of the Bill, for the words ‘ and shall in either case also be liable to ’ the words ‘ or with ’ be substituted.”

Here, Sir, fine is provided as an additional form of punishment. But my object in moving this amendment is that fine should be provided as an alternative form of punishment.

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

“ That in sub-clause (2) of clause 5 of the Bill, for the words ‘ and shall in either case also be liable to ’ the words ‘ or with ’ be substituted.”

The motion was negatived.

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

“ That clause 5 stand part of the Bill.”

The motion was adopted.

Clause 5 was added to the Bill.

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

“ That clause 6 stand part of the Bill.”

Sir George Spence : Sir, I move :

“ That in sub-clause (3) of clause 6 of the Bill, for the word, brackets and figure ‘ sub-section (4) ’, the word, brackets and figure ‘ sub-section (1) ’ be substituted.”

This, Sir, merely corrects a mis-citation.....

Pandit Lakshmi Kanta Maitra : We cannot hear you. Please speak up.

Sir George Spence : I said, “ Sir, I move ” ; then I recited the words contained in amendment No. 49 and then I proceeded to say that this corrects a mis-citation arising out of a mis-print.

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

“ That in sub-clause (3) of clause 6 of the Bill, for the word, brackets and figure ‘ sub-section (4) ’, the word, brackets and figure ‘ sub-section (1) ’ be substituted.”

The motion was adopted.

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

“ That clause 6, as amended, stand part of the Bill.”

The motion was adopted.

Clause 6, as amended, was added to the Bill.

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

“ That clause 7 stand part of the Bill.”

Sir George Spence : Sir, I move :

“ That in sub-clause (1) of clause 7 of the Bill, for the word and figure ‘ section 6 ’ the word and figure ‘ section 5 ’ be substituted.”

This corrects another misprint.

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

“ That in sub-clause (1) of clause 7 of the Bill, for the word and figure ‘ section 6 ’ the word and figure ‘ section 5 ’ be substituted.”

The motion was adopted.

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

“ That clause 7, as amended, stand part of the Bill.”

The motion was adopted.

Clause 7, as amended, was added to the Bill.

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

“ That clause 8 stand part of the Bill.”

Mr. Lalchand Navalrai : Sir, I move :

“ That in part (i) of sub-clause (2) (b) of clause 8 of the Bill, the words ‘ Chief Presidency Magistrate, Additional Chief Presidency Magistrate ’ be omitted.”

The meaning of this will be quite apparent to those who know that the object of this Bill is that a Tribunal should be appointed. Now, it is not denied but on the contrary admitted by the Government so many times that this Bill is very drastic. I would say that it is something like giving a blank cheque to be used in any manner they like and get the money and use it.

The Honourable Sir Muhammad Zafrullah Khan : Provided you get the money !

Mr. Lalchand Navalrai : You will get the money all right. I want that in such an extensive Bill at least some semblance of justice and fairness should be shown and that is the reason why I am moving this amendment. If the object is to give justice, then this Tribunal should be of a judicial character. The clause itself says that the Provincial Government may constitute a special Tribunal and those who will be its members are mentioned in the sub-clause. Now, in sub-clause (i) it is said that there shall be the Additional Sessions Judge. That is all right because he is a judicial officer. But I object to the justice which you propose to give in a half-hearted manner in the case of appeals.

The Honourable Sir Muhammad Zafrullah Khan : In those cases it is full.

Mr. Lalchand Navalrai : I have searched the Honourable Member's heart and when I come to that I will ask him whether in the case of 10 years' punishment there should also be no appeal. Then, we will be able to see what tender heart the Honourable the Leader of the House possesses. Sir, what I submit is this. You should show at least some semblance of justice and fairness to the public. When you are going to have a Tribunal of such a nature and when you propose to give it so many powers, why not restrict it to the judicial officers ? Why should you put the Presidency Magistrates, the Additional Presidency Magistrates and the District Magistrates on it ? Now, let us see how the judiciary is being worked in India under the present constitution. We have Presidency Magistrates in the Presidency Towns and the District Magistrates in the district towns. They are the persons who are the guardians of justice, guardians of police and guardians of everybody that can possibly come under their clutches. What I submit is this that the District Magistrate will be the prosecutor in cases of this important nature.

The Honourable Sir Muhammad Zafrullah Khan : This clause does not refer to the District Magistrates.

Mr. Lalchand Navalrai : If the Honourable Member had heard me, I did say that in the Presidency Towns there will be Presidency Magistrates and the same powers are being used in the districts by the District Magistrates. Therefore, my argument is relevant. Generally, what happens is this that the District Magistrate orders certain prosecutions and he is responsible for the executive duties of the district just as the Presidency Magistrates are responsible for the executive duties of the

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Presidency Towns. The Government has the most trusted agent in the District Magistrate who is also the Collector of the district. Now, that gentleman will be the prosecutor. I do not know if they will have a public prosecutor to conduct these cases. If they are going to do it, then he will also be the creature of the Presidency Magistrate and the District Magistrate.

Sir Muhammad Yamin Khan (Agra Division : Muhammadan Rural) : Not the same man will sit on the Tribunal ?

Mr. Lalchand Navarai : It may be the same : where have you provided the other way ? I hope the members of the Muslim League Party will permit me to say that they should have made no pact or alliance with the Government on a Bill of this magnitude. They have all been sitting mum. Not one Member has spoken a word on all these amendments. In their heart of hearts they must be feeling that this is a very hard thing which they have done.

Syed Ghulam Bhik Nairang (East Punjab : Muhammadan) : On a point of order, Sir. The Honourable Member has no business to talk of the Muslim League Party. He does not know what the Muslim League Party did in the Select Committee. We talked on all these things there and settled all these points. Of course, if we choose to speak on any point now, we are at liberty to do so, otherwise we will keep silent. The Honourable Member should mind his own business.

Mr. Lalchand Navarai : I did not say that with any hostile attitude. If what was done in the Select Committee was sufficient, then you should have passed this Bill there. Why did you bring it to the House ? My humble submission is—and I am only appealing to the Honourable Members of the Muslim League Party—that some of the provisions are so hard that their heart ought to melt. The point as to who should try these persons is a very important point. Then, there will be the point whether there should be an appeal for the offences which are different from those.....

Sir Muhammad Yamin Khan : Does the Honourable Member think that for each case there ought to be a special Tribunal appointed to try that particular case ? If he does not think so, then he should remember that once a Tribunal is constituted, the District Magistrate or the Presidency Magistrate will no longer be in charge of that district because he will be sitting somewhere else.

Mr. Lalchand Navarai : How is the Honourable Member going to satisfy me that the general mentality of the District Magistrate remains where it is : he is not a judicial officer ? The Honourable Member must have known the habits of these District Magistrates and how they behave. My submission to the House is that if you are going to have a Tribunal, let it be wholly judicial. Sir, I move.

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

" That in part (i) of sub-clause (2) (b) of clause 8 of the Bill, the words ' Chief Presidency Magistrate, Additional Chief Presidency Magistrate ' be omitted."

Sardar Sant Singh : Sir, this Clause 8 of the Bill is a crucial clause and the various amendments suggested which will follow one after another—they cannot all be moved together—raise certain common principles which with your permission, I shall discuss.

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

First of all, I want the House to appreciate this one factor that the courts of justice are too sacred institutions to be lightly meddled with. The security of the administration, mind, not the security of the people alone, the security of the executive government presupposes that courts of justice should in fact as well as in law administer legal justice in accordance with the sanctioned forms. The Judges presiding over such courts not only should do justice to people, but the people should feel that justice is being done. That is the crucial point that is involved in the conception of a court of justice.

Then, again, Sir, the Government should remember that the ordinary function of a court is the administration of legal justice. That is the function of the civil courts of a country that have been established, courts that have come to enjoy certain prestige, courts that have come to enjoy certain confidence of the people. Therefore, when occasions arise, when the welfare of the State compels that the ordinary civil courts of a country should be superseded, such supersession can only be justified, in the interests of State and for no other considerations. It is only when the existence of the State is threatened that such supersession is permissible. I am afraid, Sir, the Government of India do not fully appreciate the implications of the concession the Opposition has made when it agreed to the supersession of ordinary courts. In view of this great concession that the Opposition has made the Government of India were expected to welcome such a gesture and to make a suitable response. The Opposition have agreed to the supersession of the ordinary civil courts of the land. Once having agreed to this, the Government should appreciate this concession and they should feel grateful to the sense of responsibility on the part of the Opposition. They should not talk as if this House is not helping them in the passage of this emergency legislation. By not moving the deletion of the clause constituting new Tribunals,—we have made a concession, and let the Government understand that that concession has been made in the full realisation of the crisis and the emergency that is facing this country. I may say, Sir, that in this respect we have shown a greater sense of responsibility towards the Executive Government than the Executive Government have shown towards us. (Interruption.) My Honourable friend may give expression to reasons in support of this clause, but I dare say that he is not speaking his real mind, after having had experience of special tribunals in the Punjab. I know what a special tribunal implies and that is why I want the House to appreciate the tremendous sacrifice we are making by agreeing to the establishment of these special tribunals. My Honourable friend also knows it. I cannot forget the memory of the scores of my countrymen who were swung on the gallows on flimsiest evidence by such tribunals constituted under Defence of India Act, 1915, on the evidence that was not sufficient to hang a dog. This happened in martial law days in the Punjab and also before that. A

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man of the position of a High Court Judge presided over such a tribunal. I need not remind my Honourable friend as to who that judge was. He was transferred from the High Court Bench to be the President of the Tribunal. What kind of language he used during the trial, how he set aside all judicial considerations, judicial acumen in his misconceived zeal to save the country from a supposed rebellion. The records of these trials are still available to substantiate my charges. Therefore, I say, Sir, that it is a great point we are conceding when we agree to the appointment of special tribunals again. I submit my Honourable friend should have more confidence in us than he has in his own words or in his own power backed by the solid votes behind him. I know he has got a solid phalanx of votes behind him and he can defeat us easily. But he shall not go unchallenged on any point relating to the administration of justice.

Therefore, Sir, after having conceded to the suppression of the ordinary civil courts of the land, our demand is very ordinary. We want a judicial tribunal, a tribunal consisting of judicial men. We know the difference between England and India. We know the training of judicial persons in England, we know how they are scrupulous in sticking to the principles of justice even in emergent times. I may remind the House, Sir, of the famous speech which was delivered by one of the King's Counsel in England when he was defending a person who was accused of espionage in the last war. In that speech he made his position clear. Though he was defending a spy, a criminal most dangerous in times of war, a spy who could probably have turned a victory of the Allies into a defeat, yet the King's Counsel made it clear that it was at such a time, at such a critical and emergent hour that justice should be kept clear, free and clean. I submit, Sir, that so far there is no emergency in this country—but if an emergency does arise and even in the trials of those who are accused of such heinous offences as spying, and espionage, the principles of justice ought not to be lost sight of. With regard to the judiciary of my province, or even with regard to the judiciary of India generally, I am afraid I cannot say the personnel is judicially minded to that extent. I cannot say that members of the executive government have got that judicial training or that regard for judicial principles which we wish them to be possessed of.

After all what do we demand? We demand the continuance of that rule of law in the country which we have. We do not want the rule of the Executive in its entirety in the country. Whom do we want to be placed in such tribunals? Situated as we are, even the best of the Sessions Judges and even the High Court Judges will lose their balance of mind when executive considerations prevail. But we cannot help that. We are helpless, because unfortunately the material that is available in the country for filling up these sacred judicial appointments is not good. We must use the material such as it is. But at the same time, we do not want to add another disadvantage, namely, that the men trained as executive officers should be made eligible as Judges. Here comes the difference. I want the executive government should know that in the critical times, if you want more powers, we want more safeguards in the use of those powers. At any rate we want such safeguards as are humanly possible in the circumstances in which we are placed.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member must really deal with the specific amendment before the House. The Honourable Member need not dilate on these general questions.

Sardar Sant Singh : The point is this. I was making out the point that we do not want those persons to be placed on these tribunals who have been trained in the executive side, whose prospects in life depend upon executive favour, whose promotion and future career depends upon the executive's goodwill. And the Chief Presidency Magistrate, the District Magistrate and the Additional District Magistrate are such persons. With High Court Judges we have some consolation that, after all, if they do not do justice they will be militating against the very principle which they have been laying down in their judgments. But in the case of the District and Additional District Magistrate and the Chief Presidency Magistrate there cannot be that satisfaction and that consciousness. Therefore, Sir, Government should pause and consider before they decide to take steps which are calculated to lose the confidence of the public. The public cries against it. If the emergency develops and things become more critical,—though I hope it will not develop,—Government will need the co-operation of the people to maintain law and order. You are now offending the people in the name of co-operation.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member has repeated that more than once.

Sardar Sant Singh : It needs further repetition because Government are quite blind to the facts and the realities of life.

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

Sardar Sant Singh : I think I may rub in the position.

Mr. President (The Honourable Sir Abdur Rahim) : There is no question of rubbing in.

Sardar Sant Singh : My submission is that the Government of India are dealing with fundamental rights of the people, rights, the existence of which is most vital to the elementary principles of liberty. If Government reject the co-operation that is offered by this House the time will not be far off when they will have to repent. Therefore, I say with regard to this amendment and the amendments which follow which are all based on the same principle that the Government of India should pause and consider before the Government of India stand committed to the contemplated step. The Government are giving too wide powers to the Executive. The Chief Presidency Magistrate or the District Magistrate may be a third Judge. Probably the two other judges may form a majority but in case they differ the final decision will be that of the man with an executive mind and training. In the circumstances Government should see that with the procedure curtailed and the right of appeal and revision gone such a man should not have the final word in such grave decisions. Therefore, Government cannot expect us, situated as we are, to be judged according to the standards prevailing in England and Great Britain. The standard is different there. We have past experience of these judges and know what they do. With that past experience Government cannot surely

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expect of us to bow down and say " because there is war in Europe which may extend to India we must surrender our body and soul to the executive government ". That is a position which we refuse to be willingly reduced to. I must say that this is a very crucial amendment. Government have already rejected the amendment to do away with the death penalty and there is a greater responsibility upon them to win the confidence of the people. By appointing executive-minded magistrates on these tribunals they will be cutting their own feet and the time will come when they will repent of it. Things are getting more and more critical. It is to their ultimate interest to approach the real leaders of the people and not be guided by the majority which they have here today. The Congress Party is absent and the Muslim League somehow or other have decided to adopt a particular attitude. I do not quarrel with that attitude but our Party is fighting upon principles. We come with facts and figures and ask that they should pause and consult the leaders of the people. Sir, I support the amendment.

The Honourable Sir Muhammad Zafrullah Khan : Sir, I am rather surprised at the quantity of heat that has been engendered in the course of the consideration of this amendment. To begin with I may point out that,—though perhaps that will give no satisfaction to Sardar Sant Singh but it should to the majority of the House,—the setting up of these tribunals will be in the hands of the Provincial Governments.

Sardar Sant Singh : So much the worse.

The Honourable Sir Muhammad Zafrullah Khan : Apart from the fact that in the majority of the Provinces power is in the hands of Ministers who should be, to say the least, fully alive to the considerations that Sardar Sant Singh has put forward, for his special satisfaction there is this consideration that one Honourable Minister in a certain Province to which he referred during the previous stages of the debates on this Bill has had experience of the kind which Sardar Sant Singh has had. Therefore, I think that is a sufficient guarantee that in setting up tribunals of this kind care will be taken that they should be comprised of men who have had plenty of judicial experience. Secondly, I may draw his attention to the fact that the clause, as it has emerged from the Select Committee, now makes it compulsory that at least one member of these tribunals shall be qualified for appointment as a High Court Judge. I am conscious of the fact that the clause, as it has emerged from the Select Committee, now grievously on the last occasion.

Sardar Sant Singh : Did they not ? What is your experience ?

The Honourable Sir Muhammad Zafrullah Khan : I am afraid I was not in the unfortunate position of Sardar Sant Singh. But then, as he himself has said, members of these special tribunals have to be appointed from the material available. I have not the low opinion of the judiciary of this country that Sardar Sant Singh has. I have pointed out that at least one member of a special tribunal must be qualified as a High Court Judge ; and if there is only one member so qualified one other member must be qualified under sub-clause (2) (b) (i). The third consideration is this : that if there were no special tribunals, 99 per cent. of these cases, that is to say, cases where the capital sentence cannot be imposed, would

be triable by only a single one of these magistrates—a Chief Presidency Magistrate, or Additional Chief Presidency Magistrate or District Magistrate or Additional District Magistrate—under the ordinary procedure. In a special tribunal, you will have three judges instead of one : and at least one of them qualified as a High Court Judge.....

Dr. P. N. Banerjee : Any pleader of ten years' standing is qualified whether he has any practice or not !

The Honourable Sir Muhammad Zafrullah Khan : What is the objection to that ? That is the qualification. Would you say that only that pleader of ten years' standing should be qualified to be a High Court Judge who has during the five years immediately preceding paid so much income-tax on so much professional income ? You could not import that kind of qualification in a Statute. Sir, I should have thought that the objection was to people drawn from the magistracy who have also executive functions to perform and not to people drawn from the bar. As I have said before, on most of these matters Members of the Nationalist Party seem to be at loggerheads with each other and I am not surprised at that. But I would draw Sardar Sant Singh's attention to these factors. In spite of the unfortunate experience which he says he had during the martial law days, ordinarily a tribunal of that kind would be a very much better court to go before than the ordinary magistracy, according to him, of the province to which he has the misfortune to belong.

Sir Muhammad Yamin Khan : Sir, I want to draw attention to what is apparently a misprint here—that is my excuse for intervening in this debate—in sub-clause (3), last but one line where it says “exclusive of those specified in sub-clause (ii) of the said clause (b)”. That means District Magistrate, or Additional District Magistrate. If there is only one man out of this category, that is, qualified to be a High Court Judge, then one must necessarily be a person who is qualified to be a District Magistrate.....

The Honourable Sir Muhammad Zafrullah Khan : No. It is entirely the contrary of what the Honourable Member has understood.

Sir Muhammad Yamin Khan : It says :

“At least one member of a Special Tribunal shall be qualified for appointment thereto under clause (a) of sub-section (2).”

That is all right. It continues :

“and where only one member is so qualified under that clause, at least one other member shall be qualified for appointment under clause (b) of that sub-section by virtue of having exercised powers exclusive of those specified in sub-clause (ii) of the said clause (b).”

The Honourable Sir Muhammad Zafrullah Khan : The clause amounts to this : one member at least shall be qualified under (a), that is, as a High Court Judge : if out of three there is only one so qualified, then at least one more shall be qualified under (b), but not under (b) (ii)—therefore, under (b) (i)—“shall be qualified under (b) exclusive of the qualifications under (b) (ii), i.e., under (b) (i).”

Sir Muhammad Yamin Khan : That is not very clear. That ought to be made clear.

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

"That in part (i) of sub-clause (2) (b) of clause 8 of the Bill, the words 'Chief Presidency Magistrate, Additional Chief Presidency Magistrate' be omitted."

The Assembly divided :

AYES—8.

Aney, Mr. M. S.
Banerjee, Dr. P. N.
Datta, Mr. Akhil Chandra.
Lalchand Navabai, Mr.

Maitra, Pandit Lakshmi Kanta.
Malaviya, Pandit Krishna Kant.
Parma Nand, Bhai.
Sant Singh, Sardar.

NOES—45.

Abdul Hamid, Khan Bahadur Sir.
Ahmad Nawas Khan, Major Nawab Sir.
Aikman, Mr. A.
Aiyar, Mr. T. S. Sankara.
Bewoor, Sir Guranath.
Bhandarkar, Mr. K. Y.
Boyle, Mr. J. D.
Boxman, Mr. G. S.
Buss, Mr. L. C.
Campbell, Mr. D. O.
Caroe, Mr. O. K.
Clow, The Honourable Sir Andrew.
Crofton, Mr. D. H.
Dalal, Dr. R. D.
Dalpat Singh, Sardar Bahadur Captain.
Gorwala, Mr. A. D.
Greer, Mr. B. R. T.
Hodson, Mr. D. C.
James, Mr. F. E.
Jawahar Singh, Sardar Bahadur Sardar Sir.
Kamaluddin Ahmed, Shams-ul-Ulema.
Khaleeli, Mr. A.
Khan, Mr. N. M.
Khurshaid Muhammad, Khan Bahadur Shaikh.

Kushalpal Singh, Raja Bahadur.
Mackown, Mr. J. A.
Miller, Mr. C. O.
Mudaliar, The Honourable Diwan Bahadur Sir A. Ramaswami.
Mukerji, Mr. Basanta Kumar.
Nehru, Mr. B. K.
Ogilvie, Mr. C. M. G.
Rahman, Lieut.-Colonel M. A.
Rahman, The Honourable Sir Jeremy.
Roughton, Mr. N. J.
Scott, Mr. J. Ramsay.
Shabban, Mian Ghulam Kadir Muhammad.
Sheehy, Mr. J. F.
Sher Muhammad Khan, Captain Sardar Sir.
Sivraj, Rao Sahib N.
Spence, Sir George.
Sukthankar, Mr. Y. N.
Talukdar, Mr. J. N.
Thorne, The Honourable Mr. J. A.
Wakely, Mr. L. J. D.
Zafrullah Khan, The Honourable Sir Muhammad.

The motion was negatived.

Pandit Lakshmi Kanta Maitra : Sir, I beg to move :

"That part (ii) of sub-clause (2) (b) of clause 8 of the Bill be omitted."

The arguments advanced in connection with the amendment which has been disposed of just now apply with greater force to the case of recruitment of members for the Special Tribunal from the category known as District Magistrates and Additional District Magistrates. Sir, I listened to the arguments of the Honourable the Leader of the House with close attention. He stated that there was a very salutary safeguard in the provision that one of the members of the Special Tribunal would be a man with qualifications for appointment as a High Court Judge. We

quite see that, but it is not provided anywhere that such a member of the Special Tribunal would actually be a High Court Judge. The minimum qualification laid down for appointment to Judgeship of the High Court is, in the case of lawyers, that they should be of at least 10 years' standing. I can well imagine how even this provision will be actually worked. Public Prosecutors and Assistant Public Prosecutors with little or no knowledge of criminal or judicial procedure or even of sifting evidence who might all along be acting on the instructions of the Court Inspectors and Superintendents of Police may be patronised by the Provincial Governments by conferring on them these jobs, and it might be pleaded that the requirements of the first part have been complied with. If there is any complaint, it will of course be effectively muzzled, and it will be met by saying that a person qualified to sit on the High Court Bench has been appointed. Is that the kind of thing that we really want? Does it really meet with the demands of those who want a purely Judicial Tribunal? The provision desired, I believe, by the members of the Select Committee was that some form of safeguard should be provided by enjoining appointment of some, one who has a judicial trend of mind, who has had experience in the matter of sifting evidence, who is thoroughly versed in matters of practice and procedure, but the very purpose might be defeated if it is operated in the way I am suggesting. If that main safeguard goes, then you fall back upon two other categories from which the rest of the tribunal must be appointed. The third category is the category of District Magistrates and Additional Magistrates. Members of the heaven born service, popularly known as the Indian Civil Service, of which my Honourable friend, Mr. Mackeown, is one—he has been whipping people here,—for them it will be an easy walk over, because the very fact that they are members of the Indian Civil Service gives them certain exceptional privileges in the service. Ordinarily in Districts I. C. S. officers are first made to serve a period of apprenticeship for some months, then they are given the designation of Joint Magistrates—some faces are withering at my remarks,—and at the end of two years or so they become Additional District Magistrates. So generally in two or three years' time they begin to officiate as Additional Magistrates. These District Magistrates are ordinarily entitled to hear appeals from judgment of third class and second class Magistrates. This is the power they have got, but when they would be elevated to the Special Tribunal, they would be authorised to try any case coming under this Act or other Acts and to inflict any sentence including the sentence of death. I do not know what kind of sophistry would be advanced to gloss over this fact. It has been very clearly pointed out by us that, these people are, by their nature, by their training, by their inclination and by their traditions, bound to the chariot wheels of the bureaucratic executive Government, and they cannot easily be made to get over those tendencies and to fairly adjudicate upon, or to apply their mind judicially to, matters that may come up before them. This is really a matter for very serious consideration. I know that Presidency Magistrates in Presidency towns have enormous powers to exercise. For instance, they can send a man to prison for six months without recording even a line of evidence; they enjoy such powers because of their position and experience, but the same cannot be said of District Magistrates. Very often overzealous Deputy Magistrates are promoted to the rank of Magistrates and Additional Magistrates in supersession of the claims of more capable and deserving officers. They may be further patronized by the

[Pandit Lakshmi Kanta Maithra.]

Government and be appointed members of the Special Tribunal. So, we cannot view the situation with indifference. We feel that the Government ought to constitute the tribunal in such a manner that these chances may be eliminated and that a thoroughly judicial body set up which will try the cases and exercise these powers. Sir, enough has been said about it and I would again appeal to the Honourable the Leader of the House to see if he can eliminate at least this category of people. That will not take away from the Bill any very valuable powers so far as the Government are concerned in the matter of effective prosecution of the war, but it will be going a great way in allaying the suspicions of the people by excluding from appointment to the Tribunal a class of officers who are not fit to try cases of this grave nature involving as it may the extreme penalty of the law, that is, transportation for life or death. Sir, I move.

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

“ That part (ii) of sub-clause (2) (b) of clause 8 of the Bill be omitted.”

Sardar Sant Singh : I find, Sir, that the executive Government in India are not in a mood to listen to reason from the popular side of the House and it is useless to appeal to them in the name of justice, in the name of humanity, what to say of liberty or such noble sentiments which are ornaments of humanity and civilization. They say that they are fighting for democracy. Well, I will reply to them on the third reading of the Bill, but I will ask them, is it democracy to appoint the District Magistrate or an Additional District Magistrate as members of the tribunal with power to punish any man to any period of imprisonment, without any right of appeal, without any procedure as prescribed in the Criminal Procedure Code ? Is it democracy that we are asked to fight for ? It is a shame that in the name of democracy they are appealing to us that we should help them and co-operate with them in this war—I know that loyalty has gone mad in my province and that fact alone makes the danger of trusting the executive there greater and greater. My Honourable friend in his reply to my previous remarks has told me that popular Ministers will be in charge of the appointment of tribunals, and at least one of the Ministers is a man who suffered at the hands of the tribunal. May I ask him whether he suffered rightly ? Did that tribunal do justice to him, a man whom the executive Government today considers to be fit to control the jails and some other portfolios in a major province ?

The Honourable Sir Muhammad Zafrullah Khan : So far as I am aware, that Honourable gentleman was acquitted. If that was not doing justice to him, I suppose the Honourable Member means he should have been convicted.

Sardar Sant Singh : May I ask him why he was arrested ? Was it necessary for the successful prosecution of the war ? Was he not arrested because he was a trustee of the Tribune and the Tribune wrote an article, “ The Blazing Indiscretion of Sir Michael O'Dwyer ”....

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member need not go into all that. The Honourable Member himself has said more than once that there is one principle governing all these clauses and he has dealt with it at length.

Sardar Sant Singh : I am not repeating the old arguments. I am only telling the Government that they should beware of the reactions that will follow their attitude in this House. District Magistrate and fight for democracy are two things that cannot be reconciled in any manner. He is a Hitler, and why fight the German Hitler? Here in India they want to adopt methods which savour of Hitlerism and not French and British methods. We want them to be honest to themselves if they cannot be honest to others. You appeal to the country to enlist their sympathy for the fight in favour of democracy, but here you are thinking of appointing District Magistrates and Additional District Magistrates, that wretched class of people who do not know law, or how the law is administered. The word "judicial" is not to be found in their dictionaries. You propose to vest these men with such vast powers and yet you ask us to fight for democracy! What a shame! My submission is, I cannot tolerate the inclusion of District Magistrates and Additional District Magistrates in the tribunal. (Interruption.) They are incapable of doing justice. Even if they occasionally try to do justice, it is because there is a salutary provision that there is a right of appeal against their decisions. Here you have no recording of evidence, you are doing away with the normal procedure....

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member is repeating the same argument over and over again.

4 P. M.

Sardar Sant Singh : I am bound to repeat it. If the Government appeals to the country by statements and by other methods, I am bound to tell the people, here is a Government which is not worth cooperating with. They are treating our co-operation with contempt simply because in the absence of the Congress Party Government enjoys majority. The Government is showing regrettable callousness in the House. I wish that they would take the lesson to their heart. They will have to come to us six months hence asking for our co-operation. And I tell you that the co-operation of reasonable men will be given only on reasonable terms. From the very beginning of the Session I have asked the Government to show confidence and trust in the Legislature if they want that the Legislature should trust them. You are not showing that trust and confidence in us. Therefore, I will say, whatever happens, I am very strong,—I told them in the Select Committee, and also before that, that I want the little rule of law that we have to be allowed to remain in the country. I do not want the rule of law to be replaced by placing District Magistrates and Additional District Magistrates on the tribunal, and to have the rule of the executive under a different garb. (*An Honourable Member* : "The rule of the jungle.") If they want the rule of the executive, why not come straightaway? Let them be honest to us, let them be honest to themselves, honest to the country. Why not say, that the executive Government shall dispose of these cases without recording evidence, without having any procedure, without doing anything, only the Regulation of 1818 will be applied, warrant issued, the man shut up, and that is the end of all, why the poor taxpayer should be made to pay for these tribunals? If you were going to do so, why all this expense to the poor taxpayer? I really cannot understand. This is an attitude which is highly deplorable, especially at this

[Sardar Sant Singh.]

time. This was the time when the Government of India should have come to the Legislature with confidence....

Mr. President (The Honourable Sir Abdur Rahim) : The Chair must ask the Honourable Member not to repeat his own argument so often.

Sardar Sant Singh : May I ask, without repeating it, you and through you the Government of India what their mental attitude is today ? Do they mean to trust us or not ? If they do not mean to trust us, say so. We will frame our own policy about it. But if they mean to trust us, they must respond to us as reasonable men. We feel very strongly on the constitution of this tribunal ; there is no doubt about it. And, if they are not listening to us, we will be compelled to frame our policy accordingly. With these words I support the amendment.

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

" That part (ii) of sub-clause (2) (b) of clause 8 of the Bill be omitted."

The motion was negatived.

Pandit Lakshmi Kanta Maitra : Sir, I move :

" That in part (ii) of sub-clause (2) (b) of clause 8 of the Bill, the words ' Additional District Magistrate ' be omitted."

Enough has been said on this subject, and I hope that at least this amendment will be accepted. Sir, I move.

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

" That in part (ii) of sub-clause (2) (b) of clause 8 of the Bill, the words ' Additional District Magistrate ' be omitted."

The motion was negatived.

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

" That clause 8 stand part of the Bill "

The motion was adopted.

Clause 8 was added to the Bill.

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

" That clause 9 stand part of the Bill "

Mr. Akhil Chandra Datta : Sir, I move :

" That in clause 9 of the Bill, all the words occurring after the words ' section 2 ' be omitted."

We have now passed clause 8 as part of the Bill. We have constituted special tribunals for the trial of offences. The next question arises as to what are the offences which ought to be tried by this special tribunal. That question is answered in clause 9 which provides that special tribunals shall try two distinct classes of offences—any offence under rule made under section 2 and any offence punishable with death, transportation or imprisonment for a term which may extend to seven

[Mr. Akhil Chandra Datta.]

but there is the difficulty of drafting, namely, how to make a schedule for those offences which the Government intend to be tried by the Special Tribunals. That was the simple reply of the Government. They did not dispute the principle.....

Mr. President (The Honourable Sir Abdur Rahim) : Is the Honourable Member referring to what happened in the Select Committee ?

Mr. Akhil Chandra Datta : I am referring to what happened during the debate in the open House in 1915.

Now, Sir, that was the objection raised. It was said that " we are bound, in the circumstances, in view of the difficulty of drafting a schedule for those offences which are intended really to be tried by a special tribunal " and it was on that ground that this sub-clause (b)—of course this clause was not there,—I mean, the offences specified in sub-clause (b) of this clause were retained in the corresponding clause of the Act. Now, they made a clear-cut distinction between war offences and ordinary offences. But what is the position now in India ? There is no indication, there is no complaint that there is any disturbance in any part of the country like the abnormal disturbances that existed in 1915 in those two Provinces, viz., the Punjab and Bengal. If this is so, it is very difficult to understand why these offences should be inserted in this clause as triable by a special tribunal. May I ask whether, if the statement that I have made with regard to the actual position in 1915 is correct, with regard to the ground on which this was inserted, and the ground on which it was not dropped altogether, and if my statement of fact is correct, may I ask the Government of today if they are prepared to accept the principle that was laid down in 1915 by the then Government, because as a matter of fact up till now, during any stage of this Bill, there has never been any allegation made whatsoever that any of these provisions of this Bill are warranted and necessitated by internal disturbances in India ? Now, Sir, I have got to add this, that although, in view of the difficulty of drafting, they had to retain this provision with regard to offences punishable under the ordinary law committed even in peace time, yet the Government in 1915 did their best to minimise the evil as much as possible, and that is to be found in section 1, sub-clause (3), where it was laid down that only sections 1 and 2 would come into force immediately,—that is, war offences, the provisions relating to war offences. But as regards the rest of the Act, including the provisions about a special tribunal and so on, they laid down that that portion of the Act was not to come into operation at once but that the remaining portion of the Act would be extended as occasion arose in any particular province or in any particular district of any particular province by a special notification in the Gazette. But, as a matter of fact, we know that all the provisions about the special tribunals and so on were not extended to all the provinces. Not only were they not extended to all the provinces but even in the case of those provinces to which those provisions were extended by a special notification in the Gazette, they were extended only to particular isolated districts where the Government thought that there was disturbance and lawlessness,—and that was done after the greatest discrimination, because it would appear from the notification on the subject that in some provinces they

were not extended at all and in the same Province, of two adjoining districts there was one district in which there was lawlessness and these provisions were extended thereto by a special notification, while in the neighbouring district they were not so extended.

Therefore, Sir, my submission is—starting with this central, cardinal fact, *viz.*, that there is no disturbance now in India as there was in 1915 in two of the Provinces—that there is no justification for the insertion of these offences in this clause. Now, Sir, this clause is a very important one because, after all, what is the result of all this? The result is the suspension of the ordinary law and the suspension of the ordinary law courts and their supersession by summary courts of special jurisdiction. Sir, I am afraid that the Government of today are rushing in where the Government of 1915 feared to tread. Now, Sir, the country has certainly to organize itself for war and victory, but it cannot be organized by resorting to pure bureaucracy; it can only be successfully organised by willing co-operation and not by causing irritation and dissatisfaction, and not by creating panic and alarm. Sir, repression always frustrates its own object. That is the verdict of history. Sir, I move.

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

“ That in clause 9 of the Bill, all the words occurring after the words ‘ section 9 ’ be omitted.”

Mr. M. S. Aney : Sir, I have nothing to add to what has been said by my friend, the Deputy President. The question is this. What is the scope of this legislation which is of a very peculiar and extraordinary nature? It is intended to meet the requirements of an emergent situation and for that purpose we are arming the executive Government with extraordinary powers. The special tribunals are intended, therefore, to meet the requirements of the situation. We have, therefore, to see whether, in defining the powers and jurisdiction of the special tribunal, these cardinal points are definitely kept in view or not. I am afraid the language in which section 9 is worded gives a very comprehensive jurisdiction to the special tribunals. As has been rightly pointed out, sub-clause (b) of clause 9 enables the special tribunal to try offences :

“ punishable with death, transportation or imprisonment for a term which may extend to seven years triable by any court having jurisdiction within the local limits of the special tribunal and may in any such order direct the transfer to the special tribunal or any other criminal court not being a High Court.”

The idea underlying this clause seems to be that, if there is a special tribunal created and the jurisdiction or the local limits of the jurisdiction are specified, then, for the purposes of those offences which are mentioned here, all other tribunals shall cease to have any jurisdiction at all. Ordinary tribunals will not function for the trial of offences mentioned in sub-clause (b). Not only that, but if they are already seized of the jurisdiction of those offences and the trials are going on, power is given here to transfer those cases from those courts and bring them within the jurisdiction of the special Tribunal. I do not understand why the Government think it necessary to deprive the ordinary tribunals of trying cases punishable with these punishments if those offences are not at all connected with anything for the defence of India or for the prosecution of the war. If ordinary offences are committed, then why should the ordinary tribunals be deemed incompetent to try the accused persons

[Mr. M. S. Aney.]

under conditions laid down in the Criminal Procedure Code simply because a special Tribunal has been set up to try offences arising out of war situation. I am afraid that the existence of the war emergency is made the pretext by the Executive to deny the people the ordinary rule of law in such localities as they may deem proper. The plan contemplated appears to be that the Tribunals should be set up and their local limits of jurisdiction should be defined. Wherever the Local Government or the Central Government think that a special Tribunal has to be set up in particular cases, it seems to me that in the case of those offences which are covered by these clauses, ordinary courts will have nothing to do with these offences. It shall be the special Tribunal alone that will be able to deal with those cases. I cannot understand the rationale that is underlying this kind of conferring of comprehensive jurisdiction on special tribunals and the denial of jurisdiction to the courts which have been exercising those powers till the establishment of these special Tribunals. Any offences which have got some relation to the war or to the situation arising out of the war or matters that have got some remote connection with war preparations or matters arising out of the contravention of rules or matters provided for by rules made under clause 2, can be dealt with in a special way and, therefore, there should be a special Tribunal to deal with them in a summary manner. But why those offences which have nothing to do with the war should not be dealt with under the ordinary law, I have not been able to understand. Why should the ordinary law be suspended at all? That is the point which has to be clearly grasped by the Honourable the Leader of the House and those who want to sponsor this Bill. This occasion of the war and the emergency arising out of it ought to be used for the limited purpose for which this legislation is being brought and it ought not be made an occasion for enlarging the powers of the Executive and of special Tribunals in such a way as to supersede everything else. Is the ordinary rule of law going to come to an end in this country? Is that going to be the position? If that is so, what are you going to do with your First class and Second class Magistrates? Under the terms of sub-clause (2) almost all the important offences are likely to be dealt with as war offences and most of the First and Second class Magistrates will have practically nothing to do at all. Their work will either be transferred to the special Tribunal and the Magistrates themselves will be asked to work on the special Tribunal if they are eligible to be there or they shall be getting their salaries for doing nothing. Are you going to create and keep up the situation like that? I think a situation like that is going to arise if the jurisdiction of the special Tribunal is not confined to what my Honourable friend, the Deputy President, said are war offences or offences arising out of the provisions made for the purpose of the prosecution of the war and for the defence of India or for the public safety and security and public interest as has been laid down in the preamble of this Bill.

Then, Sir, I do not know why care has not been taken in this Bill to specify that the establishment of these special Tribunals and the extension of powers to them shall be used in the same discriminate manner in which it was used in 1915, that it shall be extended in accordance with certain procedure and that it shall not be extended to every part of British India as appears from certain clauses of the Bill.

My objection is this. We are conferring unnecessarily wide powers on the special Tribunals. They are not required by the situation as it exists today and they shall not be required even if the situation becomes worse hereafter. If it becomes worse, it is open to the Governor General in Council to have another Ordinance to provide for the situation. But taking the situation of the country as it is, I believe the powers that are being extended to the special Tribunals are unnecessarily wide and therefore the amendment which my Honourable friend, the Deputy President, has moved deserves not only to be considered but accepted by the House. Sir, I support the amendment.

Sardar Sant Singh : Sir, I think the House will be interested to know what sort of offences this present provision embraces. The special Tribunal shall try any offence punishable with death, transportation or imprisonment for a term which may extend to seven years. Those illustrative offences will probably be sufficient to open the eyes of the House whether the Government should be armed with this power or not. I have taken only a few of them, *e.g.*, abetment of suicide by a child or insane person. That may be necessary for the prosecution of the war. Then there is the abetment of suicide or attempt to commit suicide. Then, there is the causing of miscarriage without woman's consent. That is punishable by 10 years' imprisonment. Then, there is the death caused by hurt done with intent to cause miscarriage. Then, there is the act, done with intent to prevent child being born alive. Then, there is the other class of offences. Intentional omission to apprehend on the part of a public servant bound to apprehend a person. I do not want to read further but this list will show what a comprehensive jurisdiction has been given to them. Are these the offences which are necessary for the successful prosecution of the war or for the maintenance of law and order or for public safety ?

Sir Muhammad Yamin Khan : These special Tribunals shall not try all such offences, but some of them.

Sardar Sant Singh : I have given the illustrative list. Now, my Honourable friend Sir Muhammad Yamin Khan's objection is that the Provincial Government has not gone mad to empower this Tribunal to try all such cases.

Sir Muhammad Yamin Khan : That is right.

Sardar Sant Singh : That is the objection and my answer to that objection is a very simple one. Review the past record of these Tribunals. Even adultery cases were tried by these Tribunals ; cheating cases were tried by these Tribunals. Now, you will be satisfied that our stand on this point is not without a strong foundation. But I am afraid it is difficult to take the Government seriously as it is constituted today. I am tempted to relate a story which will probably humour the House to some extent. A mother was very much annoyed with her child and wanted to abuse the child. She wanted to use strong language in the abuse and she said "I wish you were bitten by a dead snake" and still apprehending lest the dead snake bite the child, the mother immediately added "by the tail side". So the Government of India are afraid that the dead snake might bite their child, so they assure themselves to put the tail end of it. What is this nonsense of a special tribunal that is to be constituted with

[Sardar Sant Singh.]

men, men who have been working in executive capacity. Then the Provincial Government is to be delegated the power to nominate this tribunal and to crown all, the ordinary power vested in civil courts for any offence should be superseded. The procedure also is to be modified. An offence whether bailable or not should be modified by rules; even the commitment is gone and every sort of safeguard which a civilised society considers essential for the security of life, liberty and property is dispensed with. I still ask the Honourable the Leader of the House who is sponsoring this Bill, who is in charge of Law Department, whether he has forgotten all the principles of jurisprudence. Will he hand over all those sacred principles of jurisprudence which govern the administration of law and justice in the country to the executive for the mere satisfaction of his colleague. He is now under this Bill surrendering those principles without the least demur on his part.

Mr. F. E. James (Madras : European) : They are sacred principles in debate, but not in war.

Sardar Sant Singh : I wish my Honourable friend, Mr. James, had talked like this against the rule of law in his own country, and I should like to see what the *London Times* writes about him.

The Honourable Sir Muhammad Zafrullah Khan : The *London Times* will ignore him altogether.

Sardar Sant Singh : I do not think so. I submit that these wide and drastic powers should not be given. Sir, I do not want to make further speech on this point. I will certainly say that if the Government of India should consider that their prestige will suffer if they agree even to any reasonable amendment of our party, are the Government prepared to issue executive instructions to Provincial Governments in which way to act in the constitution of these tribunals and in the exercise of these powers. I do not think the Honourable the Leader of the House would be prepared to give even this modest guarantee to this House and in that event there is no course open to me except to support the amendment which aims at the deletion of such wide powers as are proposed to be vested in the tribunal.

Mr. Lalchand Navalkar : Sir, I rise to put one question to the Honourable the Leader of the House. Does he mean that under this clause 9 powers are being given to the Tribunal to try all ordinary offences which would come under the Indian Penal Code ?

The Honourable Sir Muhammad Zafrullah Khan : No power is being given to the Tribunal as such. Power is being given to the Provincial Governments "which may, by general or special order, direct that a Special Tribunal shall try any offence :

- (a) under any rule made under section 2, or
- (b) punishable with death, transportation or imprisonment for a term which may extend to seven years."

The Provincial Governments may not send any of these offences for trial to a special tribunal; they may send only a certain class of offences. They may send all these offences for trial to a special tribunal. All will depend upon the circumstances obtaining in a particular Province.

Mr. Lalchand Navalrai : Will they be offences punishable under this Act or under the Indian Penal Code ? I want this point to be elucidated. The Provincial Governments by rules would ask a tribunal to try certain cases. But then when it is said any offences, I may say there are offences provided in this Act. There are also other offences provided under the rules. I am, therefore, asking whether this section will be restricted to those offences or any offences under the Penal Code.

The Honourable Sir Muhammad Zafrullah Khan : Sub-clause (a) is restricted to any offence under any rule made under section 2 ; and sub-clause (b) relates to *any* offence punishable with death, transportation or imprisonment for a term which may extend to seven years.

Mr. Lalchand Navalrai : Under any law ?

Pandit Lalohmi Kanta Maitra : You want a special tribunal for the trial of ordinary offences also ?

The Honourable Sir Muhammad Zafrullah Khan : This clause invests the Provincial Governments with certain powers. It has been assumed by Honourable Members that those powers will be, from the very beginning, exercised to the fullest extent. That assumption is entirely misconceived. No doubt power is being taken that Provincial Governments should be able to give those directions.

Sardar Sant Singh : Why ?

The Honourable Sir Muhammad Zafrullah Khan : Because there may be a recrudescence of all kinds of lawlessness in the country under the stress of war. There may, for instance, be a large number of dacoities in certain Provinces.

Sardar Sant Singh : Will they not come under clause 2 of the Bill. I think there is a comprehensive and all embracing clause on that point. Dacoities and the recrudescence of riots and lawlessness will fall under the public safety, and maintenance of law and order clause. That is already provided for in clause 2.

The Honourable Sir Muhammad Zafrullah Khan : It would depend upon how the Rules are framed ; whether a particular kind of lawlessness is or is not comprised within the rules framed, and if it is not so comprised, it will have to be dealt with otherwise.

Mr. M. S. Aney : Then we do not know what we are legislating for.

The Honourable Sir Muhammad Zafrullah Khan : I thought the Honourable Member had finished his speech.

Mr. M. S. Aney : I am not making any fresh speech.

The Honourable Sir Muhammad Zafrullah Khan : So the apprehension, that adultery, abortion and offences of that kind, in which a certain Honourable Member appears to be so keenly interested, will be tried by these special tribunals, is entirely misplaced.

Sardar Sant Singh : The Provincial Governments may be interested in such things.

The Honourable Sir Muhammad Zafullah Khan : Obviously the Provincial Governments will direct offences to be tried by these special tribunals with regard to which some special need has arisen. If the ordinary judicial machinery is adequate to deal with the situation there is no reason why special tribunals need be set up at all. But if the ordinary machinery is not adequate power must be taken that these special tribunals may be set up and that they shall have jurisdiction to try these offences.

With regard to the reason why the clause stands in its present form it is quite enough to repeat what the Honourable the Mover of this amendment has said that it was put in this form by the Select Committee because he himself suggested that it should take this form.

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

“ That in clause 9 of the Bill, all the words occurring after the words ‘ section 2 ’ be omitted.”

The motion was negatived.

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

“ That clause 9 stand part of the Bill.”

The motion was adopted.

Clause 9 was added to the Bill.

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

“ That clause 10 stand part of the Bill.”

Mr. Lalchand Navarai : Sir, before amendment No. 58 is moved, I submit that amendments Nos. 59 and 60 should be moved first. My reason is that those amendments are very comprehensive and ask that all the evidence should be taken in *extenso*. If those are lost, it will be for amendment No. 58 to be moved.

Mr. President (The Honourable Sir Abdur Rahim) : No. 58 seeks to substitute a different clause for the clause of the Bill and should be moved first.

Sir Muhammad Yamin Khan : Sir, I move :

“ That in sub-clause (2) of clause 10 of the Bill, for the words ‘ In trials before a Special Tribunal it shall not be necessary ’ the words ‘ Save in cases of trials of offences punishable with death or transportation for life, it shall not be necessary in any trial for a Special Tribunal ’ be substituted.”

I should not have moved any amendment as I had fully explained our attitude, but as it is a consequential amendment to the one which had been made by the Select Committee in clause 13, I am obliged to move this. I have cleared this point in the general discussion.

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

“ That in sub-clause (2) of clause 10 of the Bill, for the words ‘ In trials before a Special Tribunal it shall not be necessary ’ the words ‘ Save in cases of trials of offences punishable with death or transportation for life, it shall not be necessary in any trial for a Special Tribunal ’ be substituted.”

The Honourable Sir Muhammad Zafrullah Khan : Sir, this is not a consequential amendment, but I accept it.

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

“ That in sub-clause (2) of clause 10 of the Bill, for the words ‘ In trials before a Special Tribunal it shall not be necessary ’ the words ‘ Save in cases of trials of offences punishable with death or transportation for life, it shall not be necessary in any trial for a Special Tribunal ’ be substituted.”

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim) : No. 59 is now barred.

Mr. M. S. Aney : Sir, before Sir Yamin Khan moved his amendment, the point was raised that amendments Nos. 59 and 60 should be given preference and precedence over amendment No. 58. We were not quite able to follow what you decided. But if you have decided that 58 is to be moved first, it means that you have allowed 59 and 60 to be moved after 59 is disposed of. But if you have decided.....

Mr. President (The Honourable Sir Abdur Rahim) : The practice is that any amendment which wants to substitute a different clause for the clause in the Bill is to be taken first. If that is thrown out, the other amendments are to be moved.

Pandit Lakshmi Kanta Maitra : Sir, I move :

“ That sub-clause (3) of clause 10 of the Bill be omitted.”

Sir, there may be occasions when it may be argued by these special tribunals that an application for adjournment will not be in the interest of justice. Even when an accused person is brought before a special tribunal there may be good reasons for getting an adjournment on various grounds, such as the absence of witnesses owing to illness or on account of their being in another place wherefrom to bring them some time will be necessary. In all these cases the special tribunal, which is charged with the duty of speedy disposal of cases and of summary dispensation of justice, may be led to think that applications for adjournment on these grounds are all frivolous applications made for getting time. In criminal trials it very often happens that the failure to grant adjournment virtually ends in miscarriage of justice. That has been the experience of many of us in the law courts. In the present case it will not be an ordinary judicial machinery which is guided and regulated by practice and precedents prevailing in the ordinary courts. We are having special tribunals without any tradition behind them either of practice or of precedent and this provision might lend itself to abuse resulting in failure of justice. I think if this provision is eliminated it will not interfere with the smooth working of special tribunals for they will always have the power to grant adjournment on suitable occasions and to refuse adjournment when they consider it unnecessary in the interests of justice. They have got that inherent power. All courts have got that inherent power even if it is not specifically provided ; but to go out of the way and to provide specifically that in no circumstances should an adjournment be granted unless it is in the opinion of the tribunal absolutely necessary for the ends of justice is quite unnecessary ; and as I said it may operate to the prejudice of the accused. We must bear in mind the very unfortunate position in which

[Pandit Lakshmi Kanta Maitra.]

the accused is placed when he is on trial, and the difficulty of his position is sure to be greatly enhanced by reason of the fact that he is not before an ordinary court but before a special tribunal charged with the special duty of administering speedy justice without recording evidence *in extenso*, except in cases where capital sentence or sentence of transportation for life can be given. In these circumstances I think that this power of refusing adjournment should not be granted. If this provision is allowed to remain there will be another danger. In entering on his defence the accused may not know at first what exactly the charge against him is and what evidence is going to be tendered against him. Until and unless he has been thoroughly posted with the charge and the evidence against him he may not be able to understand what evidence, if any, he will have to adduce to rebut the charge against him. There has been a well-established practice in the sessions courts that when an accused is first committed, whether he is on bail or not, he is asked beforehand, long before the trial commences, as to what would be his defence, if any. He gets a chance beforehand because in the lower court he knows the charge against him. In the commitment proceedings more or less a *prima facie* case is made out before he is committed and he knows the charge he will be called upon to meet and accordingly with the help of his legal advisers he is in a position, long before he is made to stand his trial before the court of session, to know the charge and be ready with his evidence. In the particular class of cases which may be brought before the special tribunal, cases which may not be penalised with death sentence or sentence of transportation for life, we have not provided for the recording of the evidence in full and he will feel considerable difficulty, if he does not get adjournment, to consult his people, his legal advisers and to send for witnesses, to give them notice and so on and so forth. I am apprehensive that the power that is sought to be given under this provision may be tantamount to a denial of defence in his case.

Mr. President (The Honourable Sir Abdur Rahim) : It is five o'clock.

5 P.M. If the Honourable Member wants to continue, he can do so tomorrow.

Pandit Lakshmi Kanta Maitra : All right, Sir. Tomorrow.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 20th September, 1939.