

19th February 1941

THE

LEGISLATIVE ASSEMBLY DEBATES

Official Report

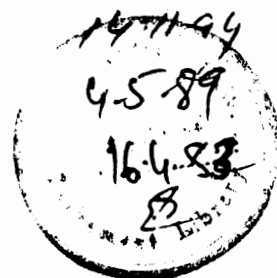
Volume I, 1941

(11th February to 27th February, 1941)

THIRTEENTH SESSION

OF THE

FIFTH LEGISLATIVE ASSEMBLY,
1941



NEW DELHI : PRINTED BY THE MANAGER
GOVERNMENT OF INDIA PRESS : 1941.

Legislative Assembly

President:

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

Deputy President:

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

Panel of Chairmen:

DR. SIR ZIAUDDIN AHMAD, C.I.E., M.L.A.

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

MR. L. C. BUSS, M.L.A.

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

Secretary:

MIAN MUHAMMAD RAFI, BAR.-AT-LAW.

Assistants of the Secretary:

MR. M. N. KAUL, BAR.-AT-LAW.

KHAN BAHADUR S. G. HASNAIN.

Marshal:

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

Committee on Petitions:

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

SYED GHULAM BHIK NAIRANG, M.L.A.

MR. L. C. BUSS, M.L.A.

SIR ABDUL HALIM GHUZHNAVI, M.L.A.

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

CONTENTS.

VOLUME I.—11th February to 27th February, 1941.

	PAGES.		PAGES.
TUESDAY, 11TH FEBRUARY, 1941—		TUESDAY, 11TH FEBRUARY, 1941—<i>contd.</i>	
Members Sworn	1	Statement re alleged forcible occupation of the <i>Idgah</i> at Burhanpur in the Central Provinces	63—64
Starred Questions and Answers	1—16	Nomination of the Panel of Chairman	64
Statements laid on the Table	17—50	Committee on Petitions	64
Deaths of Pandit Krishna Kant Malavia and Pandit Pyare Lal Sharma	51—53	Governor General's Assent to Bills	64—65
 Motion for Adjournment re—		Certain Home Department Declaration of Exemption laid on the Table	65—66
Prohibition of the filling of Census Forms in Urdu and insisting upon filling those Forms in Hindi in Sheikhpura District, Bihar—Leave refused	53—55	Report on the Indo-Ceylonese Situation	66—79
Refusal of the Telegraph Authorities at Sargodha in the Punjab to transmit certain Telegrams—Ruled out of order	55—57	The Indian Railways (Amendment) Bill—Presentation of the Report of the Select Committee	79
Misuse by the Government of India of their Powers under the Defence of India Act—Ruled out of order	57—58	The Indian Merchandise Marks (Amendment) Bill—Presentation of the Report of the Select Committee	79
Failure of the Government of India to supply Census Forms in Urdu in Bihar and the Compulsion to fill up these Forms in English or Hindi only—Leave refused	58	Election of two Members for the Committee on Public Accounts	80
Standard Agmark Grades in Leather Contracts—Not moved	59—60	Election of a Non-Official Member to serve on the Standing Committee to advise on subjects, other than "Roads" dealt with in the Department of Communications	80
Non-Grant of Dearness Allowance to Central Government Servants—Disallowed	60—62	Election of four Members for the Court of the University of Delhi	80—81
Removal of Muslim Officers from the Railway Board—Disallowed	62	The Insurance (Amendment) Bill—Introduced	81
Disallowance of the use of Urdu in Money Orders and Registered Letters by the Calcutta Post Office—Disallowed	62—63	The Insurance Deposits (Temporary Reduction) Bill—Introduced	81—85
Non-Supply of Urdu Census Forms in Bihar—Barred	63	 WEDNESDAY, 12TH FEBRUARY, 1941—	
		Starred Questions and Answers	85—102
		Unstarred Questions and Answers	102—06
		Motion for Adjournment re Detention of Prof. N. G. Ranga, M. L. A.—Ruled out of order	106—07

WEDNESDAY, 12TH FEBRUARY 1941— <i>contd.</i>	PAGE.	FRIDAY, 14TH FEBRUARY, 1941— <i>contd.</i>	PAGE.
Resolution re—		The Insurance Deposits (Temporary Reduction) Bill—Passed	252—59
Appointment of a Com- mittee to examine the conditions of Detenus under the Defence of India Act.—Negatived	107—43	Motion re Documents relat- ing to the Indo-Ceylon Conversations Adopted as amended	259—83
Appointment of the Chair- men of certain Port Haj Committees as <i>Ex- Officio</i> Members of the Local Port Trust Boards —Discussion not con- cluded	143—66	MONDAY, 17TH FEBRUARY, 1941—	
		Member Sworn	285
		Starred Questions and An- swers	285—306
		Unstarred Questions and Answers	306—08
THURSDAY, 13TH FEBRUARY, 1941—		Statements laid on the Table	308—14
Starred Questions and An- swers	157—78	Motion for Adjournment re Refusal of Census Enume- rators in Bihar, Orissa, Jora State, Central Pro- vinces and United Pro- vinces to return "Urdu" or "Hindi" as the mother tongue of persons—Leave refused.	315—16
Unstarred Question and An- swer	178	Grievances of the Hindus in the United Provinces with regard to a certain instruction given by the Census Authorities— Ruled out of order	316
The Muslim Intestate Suc- cession Bill—Motion to continue adopted	178	Election of a Member to the Standing Com- mittee for the Depart- ment of Communications	316
The Indian Railways (Am- endment) Bill—Motion to consider withdrawn	179—84	Election of Members to the Public Accounts Committee	316
The Code of Criminal Proce- dure (Amendment) Bill— Circulated	185—88	The Berar Laws Bill— Presentation of the Report of the Select Committee	317
The Land Acquisition (Am- endment) Bill—Motion to consider negatived	188—93	The Muslim Intestate Suc- cession Bill—Presentation of the Report of the Select Committee	317
The Muslim Kazis Bill—In- troduced	194	The Indian Merchandise Marks (Amendment) Bill —Passed	317—22
The Delhi Muslim Wakfs Bill —Introduced	194	The Insurance (Amendment) Bill—Referred to Select Committee	322—38
The Hindu Marriage Dis- abilities Removal Bill— Introduced	194		
The Code of Civil Procedure (Amendment) Bill—Intro- duced	194	TUESDAY, 18TH FEBRUARY, 1941—	
The Code of Criminal Proce- dure (Amendment) Bill— Introduced	195	Member Sworn	339
FRIDAY, 14TH FEBRUARY, 1941—		Starred Questions and An- swers	339—45
Starred Questions and An- swers	197—210	Message from H. E. the Governor General	345
Unstarred Question and An- swer	210		
Message from H. E. The Governor General	211		
Report on the Progress of the schemes financed from the grants for Rural Develop- ment	211—51		
Rules re Destructive Insects and Pests Act	251—252		

	PAGES.
TUESDAY, 18TH FEBRUARY, 1941—contd.	
Motion for Adjournment <i>re</i> Rifle Range built outside the Peahwar Cantonment—Disallowed	345
Election of Members to the Court of the Delhi University	346
The Indian Railways (Amendment) Bill—Discussion on consideration of Clauses not concluded	346—97
WEDNESDAY, 19TH FEBRUARY, 1941—	
Member Sworn	399
Starred Questions and Answers	399—403
Presentation of the Railway Budget for 1941-42	403—12
The Petroleum (Amendment) Bill—Introduced	412
The Indian Railways (Amendment) Bill—Discussion on consideration of Clauses not concluded	412—58
THURSDAY, 20TH FEBRUARY, 1941—	
Starred Questions and Answers	459—74
Resolution <i>re</i> —	
Appointment of the Chairmen of certain Port Haj Committees as <i>Ex-Officio</i> Members of the Local Port Trust Boards—Negated	474—76
Appeals of Railway Employees—Negated	477—520
Recognition of Unions of Government Employees—Discussion not concluded	520—28
SATURDAY, 22ND FEBRUARY, 1941—	
Starred Questions and Answers	529—37
Unstarred Questions and Answers	537—39
Motion for Adjournment <i>re</i> Alleged repression and interference with the election of a Congress Candidate for the Central Legislative Assembly—Disallowed	539—40
General discussion of the Railway Budget	540—91

	PAGES
TUESDAY, 25TH FEBRUARY, 1941—	
Starred Questions and Answers	593—626
Unstarred Questions and Answers	627—499
The Assam Rifles Bill—Introduced	650
The Delhi Restriction of Uses of Land Bill—Introduced	650
The Petroleum (Amendment) Bill—Passed	650—53
Resolution <i>re</i> Payment of Compensation to Masters and Seamen of Sea-Going Ships for War injuries and damage—Adopted	653—67
WEDNESDAY, 26TH FEBRUARY, 1941—	
Starred Questions and Answers	669—97
Postponed Question and Answer	697—98
Unstarred Questions and Answers	698—700
Statement laid on the Table	700
The Railway Budget—List of Demands—Demand No. 1 Railway Board—	702—45
Suspension of the pledge for manufacture of Locomotives in India for the period of War	702—16
Policy of purchase in connection with development of Indian Industries	716—22
Policy of Rates and Freights	722—34
Communalism in Railway Services	734—35
Grievances of the North-Western Railway Employees	735—45
THURSDAY, 27TH FEBRUARY, 1941—	
Starred Questions and Answers	747—56
Unstarred Question and Answer	756—67
Messages from the Council of State	757
The Railway Budget—List of Demands—	
Demand No. 1—Railway Board—	757—91
Dearness Allowance for Railway Employees	757—72

THURSDAY, 27TH FEBRUARY, 1941— <i>contd.</i>	PAGES.	THURSDAY, 27TH FEBRUARY, 1941— <i>conold.</i>	PAGES.
The Railway Budget—List of Demands— <i>contd.</i>		The Railway Budget—List of Demands— <i>conold.</i>	
Policy of Selection for certain Posts as ob- tains in Railway Ad- ministrations and Railway Board with particular reference to Medical Appoint- ments	772—78	Demand No. 6-C—Working Expenses — Maintenance of Carriage and Wagon Stock	793—94
The Control of the Rail- way Board and Com- munications Member over Company-man- aged Railways with special reference to the South Indian Rail- way.	780—82	Demand No. 6-D—Working Expenses — Maintenance and Working of Ferry Steamers and Harbours	794
Policy governing the al- teration of Date of Birth of Railway Em- ployees	782—84	Demand No. 6-E—Working Expenses—Expenses of Traffic Department	794—96
Grievances of Railway Workers	784—91	Indianisation of Higher and Responsible Positions	794—96
Demand No. 2—Audit	791	Demand No. 6-F—Working Expenses of General De- partments	796
Demand No. 3—Miscellan- eous Expenditure	792	Demand No. 6-G—Working Expenses — Miscellaneous Expenses	796—97
Demand No. 5—Payments to Indian States and Com- panies	792	Demand No. 6-H—Working Expenses—Expenses of Electrical Department	797
Demand No. 6-A—Working Expenses—Maintenance of Structural Works	792	Demand No. 7—Working Expenses—Appropriation to Depreciation Fund	798
Demand No. 6-B—Working Expenses — Maintenance and Supply of Locomotive Power	792—93	Demand No. 8—Interest Charges	798
		Demand No. 10—Appropri- ation to Reserve	798
		Demand No. 11—New Cons- truction	798
		Demand No. 12—Open Line Works	799—801

LEGISLATIVE ASSEMBLY

Wednesday, 19th February, 1941.

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

MEMBER SWORN.

Mr. Chandra Bhal Johri, M.L.A. (Cities of the United Provinces: Non-Muhammadan Urban).

STARRED QUESTIONS AND ANSWERS.

(a) ORAL ANSWERS

DEMAND FOR RUK-KOTRI TRUNK TELEPHONE CONNECTION IN SIND.

98. **Mr. Lalchand Navarai:** (a) Will the Honourable the Communications Member be pleased to state if he is aware that there is a long standing demand, for a trunk telephone connection between Ruk-Kotri in Sind?

(b) Is it a fact that during the riots in Sind, the Collectors of Larkana and Dadu felt the urgent need for a telephone connection to communicate with the Government at Karachi and were much handicapped for the absence of such a facility?

(c) Is it a fact that the Divisional Engineer of the Postal Department recently visited Larkana and the merchants and officers convinced him of the necessity of the trunk connection and agreed to take sufficient local connections and the Collector also agreed to give a plot of land adjacent to the post office for telephone purposes?

(d) Do Government propose to take into consideration the present War conditions and the urgent need and carry out the pending scheme at an early date? If not, why not?

Sir Gurnath Bewoor: (a) The Honourable Member made requests about the end of 1939 and beginning of 1940 for the trunk telephone connection referred to, and an article appeared on the same subject in the *Sind Tribune*, a local weekly paper which is issued from Larkana, and is, I understand, edited by the son of the Honourable Member.

(b) No complaints of the nature mentioned in the question were received from the Collectors of the Districts by the Head of the Circle.

(c) The Divisional Engineer, Telegraphs, visited Larkana and Dadu with a view to seeing what the demand for telephone facilities was likely to be and made local enquiries. He did not ask the Collector of Larkana to give a plot of land adjacent to the Post Office for telephone purposes and, therefore, the question of the Collector agreeing to give such a plot does not arise.

(d) No, because the scheme is unremunerative and there are more urgent demands on the resources of the Department.

Mr. Lalchand Navalrai: With regard to these telephone connections, may I know from the Honourable Member which are the other places which are more important than this part of the Upper Sind?

Sir Gurunath Bewoor: I have not said that any other places are more important.

Mr. Lalchand Navalrai: Then, what are the other causes which come in the way of this important part of the country for the convenience that is being asked for?

Sir Gurunath Bewoor: I said the scheme was unremunerative.

Mr. Lalchand Navalrai: How can the Honourable Member say that the scheme is unremunerative when the telephone connections have not been established? It is only a surmise.

Sir Gurunath Bewoor: No. We have made inquiries.

Mr. Lalchand Navalrai: Will the Honourable Member personally go into this matter and consult the Collector and other persons concerned and find out the exact position, and not give a disappointing reply?

Sir Gurunath Bewoor: The Divisional Engineer, 'Telegraphs, has made full inquiries and reported to us.

Pandit Lakshmi Kanta Maitra: May I inquire if for administrative purposes, if it is not desirable to have a telephone connection from Larkana to Karachi?

Sir Gurunath Bewoor: I have already replied that no demands of the kind have been made by the Collectors of the districts concerned.

Mr. Lalchand Navalrai: May I know if the Honourable Member is going to hold this view all the time he is the Director General, or is he also going to leave a legacy to his successor that there should be no telephone connection on this side?

Sir Gurunath Bewoor: I cannot say anything about the future.

COMPLAINTS AGAINST THE HINDUSTANI LANGUAGE AS USED IN ALL-INDIA RADIO BROADCASTS.

99. ***Mr. Lalchand Navalrai:** (a) Is the Honourable the Communications Member aware that complaints have been made that All-India Radio stations have been using "Urdu mixed with abstruse Arabic and Persian words, unintelligible to the popular mind while broadcasting in Hindustani?"

(b) Has the attention of the Honourable Member been drawn to the presidential address recently delivered at the 29th session of the All-India Hindi Sahitya Sammelan at Poona, protesting against the use of such difficult words which are not appreciated and followed by general populace?

(c) What is the object of Government in allowing such difficult and abstruse Persian and Arabic words to be used in broadcasting in Hindustani, especially when separate broadcasting in Persian and foreign languages is done from the All-India Delhi Radio station?

(d) What steps do Government propose to take to see that the afore-said complaint is removed? If none, why not?

The Honourable Sir Andrew Olow: (a) Yes, but I would remind the Honourable Member that we have had similar complaints on the score of All-India Radio using unfamiliar Hindi and Sanskrit words.

(b) Yes.

(c) and (d). Difficult and abstruse words, whatever their origin, are, as far as possible, avoided in the Hindustani news bulletins. The policy of All-India Radio is, to use a vocabulary which is understood by the largest number of listeners over an area which extends to Peshawar, Lahore, Lucknow, Patna, Nagpur and Bombay. In pursuance of that policy All-India Radio is now engaged on the preparation of a lexicon of Hindustani words most generally in use which are required for news bulletins.

Dr. Sir Ziauddin Ahmad: *Ulta Chor Kotwal ko date.* May I ask the Honourable Member to listen to some of the speeches? It is a definite complaint that they use Sanskrit and Hindi words which neither the Honourable gentleman nor I can understand.

Lieut.-Colonel M. A. Rahman: Is it the intention of the Government to deprive the Urdu knowing public of broadcasting in Urdu?

The Honourable Sir Andrew Olow: No, Sir. The Hindustani that we use is used in the news bulletins.

Lieut.-Colonel M. A. Rahman: If it is so, then Government will please fix a few days in the week for broadcasting good Urdu for the intelligentsia of India who can really enjoy the civilised and sweet language?

The Honourable Sir Andrew Olow: I do not accept the implication that the entire intelligentsia understands such a language. We have found that the use of either a highly Persianised or a highly Sanskritised language gives, on the whole, more pain than pleasure.

Manvi Syed Murtuza Sahib Bahadur: May I know if the Honourable Member is alive to the fact that Urdu has now become "Urdu-i-Mualla", which means an exalted language, inasmuch as it contains much of Urdu literature which is beneficial not only to the Muslims, but also to all other communities of India?

The Honourable Sir Andrew Olow: I do not think the addition of a title should alter the view that we take of its utility for broadcasting.

Kunwar Hafeez Ismael Ali Khan: What is the difference between the Urdu and the Hindustani?

The Honourable Sir Andrew Olow: There is a difference in the common understanding of these terms in that, Urdu contains a larger percentage of Persian words than Hindustani.

Mr. Lalchand Navalrai: What I want is that the words used by the All-India Radio should be very simple, so that all people may be able to understand them. Will the Honourable Member appoint some officers to go into this question and simplify the language that is being used?

The Honourable Sir Andrew Olow: I have stated at the end of my reply to the Honourable Member that the All-India Radio is now engaged on the preparation of a lexicon of Hindustani words most generally in use which are required for news bulletins.

Mr. Muhammad Azhar Ali: Does the Honourable gentleman know that the Hindu Kashmiri friends and also the Kayastha friends of the country all enjoy Urdu language just as the Mussalmans of India do?

The Honourable Sir Andrew Olow: Did the Honourable Member suggest just as the Mussalmans of India enjoy Hindi?

Mr. Muhammad Azhar Ali: My question is about Urdu alone?

The Honourable Sir Andrew Olow: The complaints that we receive in the All-India Radio do not suggest that that conclusion is correct.

APPOINTMENT OF AN INDIAN AS CHAIRMAN OF THE KARACHI PORT TRUST.

100. ***Mr. Lalchand Navalrai:** (a) Will the Honourable Member for Communications be pleased to state if Government received a telegram from the Shippers and Buyers' Association, Karachi, urging that an Indian Officer should be appointed as Chairman of the Karachi Port Trust?

(b) Is it a fact that the present Chairman of the Karachi Port Trust, Colonel Johnston, is due to complete his fifty-fifth year by August next and is expected to retire?

(c) If so, do Government, in view of their policy to Indianise the Port Trust Services, propose to appoint an Indian as Chairman of the Karachi Port Trust?

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

(c) The question of the arrangement to be made is under consideration, and I must ask the Honourable Member to wait until a decision has been reached.

Mr. Lalchand Navalrai: Will the Honourable Member continue to hold the policy that an Indian officer should be appointed as Chairman whenever it is possible to do so?

The Honourable Sir Andrew Olow: I am not aware that that policy has been enunciated, but I am considering whether a suitable Indian Chairman can be found.

MEASURES FOR PREVENTION OF TAMPERING WITH SEALS ON POSTAL BAGS.

101. ***Mr. Lalchand Navalrai:** (a) Will the Honourable the Communications Member be pleased to state if it is a fact that the postal bags in which post is despatched and cash remitted are sealed with wax impressions of the despatching offices?

(b) Are Government aware that these seals are sometimes tampered with and removed in transit and similar impressions reproduced by a process from the original seal impressions and re-affixed on the bags after removing some of the contents?

(c) Have such cases occurred in India and, lately, in Sind in the Sewhan Post Office?

(d) If so, what measures or contrivances have Government adopted to deter such tampering?

Sir Gurunath Bewoor: (a) Yes.

(b) and (c). Heads of Circles were asked to report the number of such cases and have stated that they know of no case except the one at Sewhan which occurred in 1937.

(d) Departmental instructions already prescribed careful examination of the cord and seal of all bags before they are opened and no further measures are called for.

Mr. Lalchand Navalrai: Is the Honourable Member aware that these bags are opened and the seals removed, and then by some contrivance the seals are reproduced? What is the Honourable Member going to do with regard to that? I want something should be done; instead of only applying that seal, there should be some other safety measure adopted by the Department.

Sir Gurunath Bewoor: I do not know what other safety method the Honourable Member is referring to, but any safety method adopted is always liable to be tampered with.

Mr. Lalchand Navalrai: Why not try a better method? The intelligence of the Director General of Posts and Telegraphs must be able to devise a better method.

Sir Gurunath Bewoor: There has been only one case of this kind in 1937. We cannot trace any other.

Mr. Lalchand Navalrai: Is the Honourable Member waiting for many more cases to happen? There may be more cases in other parts of India.

Sir Gurunath Bewoor: We have enquired from the whole of India.

RAILWAY BUDGET FOR 1941-42.

The Honourable Sir Andrew GLOW (Member for Railways and Communications): Sir, I have the honour to present to the House the Railway Budget for 1941-42. The year that has elapsed since we discussed the Budget for the current year has been momentous. Then we had seen five months of what now seems little more than the overture to the actual war and as I then said the possible developments arising out of the war were largely hidden from our eyes. The succeeding months, with their cataclysmic events, have altered the whole outlook here and elsewhere. The

[Sir Andrew Clow.]

nation has realized that the war is an issue on which neutrality is impossible and it is one of its compensations that so many millions, in all walks of life, have been drawn by the common danger and the common need into a fellowship of concentrated effort. On the railways, as on our big industries, the war has had far-reaching effects. These have been, on the financial side, mainly beneficial, so that, while I am able to present a remarkable balance-sheet, it is as well to remind ourselves of the other side of the picture. Our profits are, in considerable measure, the result of traffic due, more or less directly, to the war and thus represent a devastating sacrifice not merely of property but of life and welfare.

2. Compared with the sacrifices that are being made, not only in India but by millions who have never seen India, and who are yet contributing to our railways' prosperity, any efforts that the railways have made cannot loom large; but they are doing what they can, and the effort in itself is considerable. A certain number of officers and men have gone to join the fighting forces; a great many more are engaged in ancillary war work. Whole workshops have been turned over to military needs, and those we retain are producing, in increasing quantities, various war requirements. These range from a whole ambulance train to small parts of shells, and include articles used in clothing, feeding, arming, transporting and housing the fighting forces.

3. In addition to manufacturing war equipment, we have had to provide for war needs out of what we were using ourselves. The most important development here has been the dismantling of railway lines for shipment overseas. After utilizing to the full available stocks and rails released by relaying, we had no alternative but to close and take up a number of lines. Changes in the situation have made it unnecessary as yet to go as far as at one time seemed imperative, and we have so far closed or ordered the closing of only 9 lines out of 18 which the House will find detailed in the memorandum placed before the Central Advisory Council last December. Of the 9 lines selected for dismantling 6 were opened in the period 1927—32 and of the other 9 on the list, 7 were opened in that period. We regard all the lines notified as unremunerative so that, while I deeply regret the resulting dislocation, enhanced as it was by the shortness of the notice given, I doubt if we are doing more than taking precipitately action which, even without any war needs to satisfy, would be inevitable at a fairly early date. It is some consolation to know that lines which, if we had remained at peace, would soon have proved superfluous, are going to meet an urgent need and to feel that it is not a case, as in the last war, of leaving the tracts affected without mechanical transport altogether. In present circumstances, the motor transport industry should be able to carry profitably most of the traffic which these branch lines found inadequate for their maintenance.

4. We have also had to defer hopes and in particular the hope of seeing the manufacture of broad gauge locomotives undertaken as a large-scale industry. The heavy demands for skilled labour, machine tools and materials resulting from the immense expansion in the production of munitions and other military requirements made it out of the question to embark at this stage on a new large-scale industry, and the workshop which we regarded as most suitable for the purpose has been completely turned over

to war work. We have placed orders for ten broad gauge locomotives for the North Western Railway and 15 for the Great Indian Peninsula Railway with the Bombay, Baroda and Central India Railway Company, but it has not yet been possible to secure all the necessary materials even for these.

Capital Position, 1940-41.

5. In entering the financial field, I propose on this occasion to deal first with the capital position and to turn later to the working results of the three years with which we are concerned. The capital at charge at the opening of the current year was 758½ crores. To this the main asset added during the year was the Bengal-Dooars Railway, which was company-owned, and extended to 161 miles of metre gauge line. At a price of 178 lakhs it passed into our hands on 31st December last, and has been incorporated in the Eastern Bengal administration. We have opened for traffic during the year the Sind Right Bank feeder line running for 84 miles from Larkana to Jacobabad, while a small but important link on the South Indian Railway has brought the broad gauge system to the heart of the great new harbour at Cochin.

6. The chief reduction in our assets arises from the dismantling of the branch lines. If no others are added to their number, the total mileage reduced by the end of the year will be about 305 miles, of which 44 are of 2' 6" gauge and the rest broad gauge. The dismantled lines on State-managed railways represent a capital of 190 lakhs. Of this amount, we shall write-off, by debit to the depreciation fund, a sum of 90 lakhs, of which we expect that 50 will be credited to the depreciation fund on account of the sale proceeds of materials. The balance represents our estimate of the amounts contributed in respect of these railways to the fund since its inception. The remaining crore we propose to meet from the railway reserve fund. In regard to Company-managed railways, the terms of their contracts do not contemplate the writing-off of capital in such cases, except to the extent of the value of released materials, which we estimate at 15 lakhs out of the total of approximately 70 lakhs of capital involved. We propose also to write-off, by means of withdrawal from the depreciation fund, a capital sum of 41 lakhs representing assets on State-managed railways, which were abandoned in previous years.

7. The House may be interested to know that there is a further sum estimated at 118 lakhs of our capital in Company-managed lines which represents abandoned assets. For the reason already mentioned, it is not practicable to write this off, but it is well to bear these dead assets in mind in assessing our capital position and judging of the adequacy of the depreciation fund. This fund began the year with assets of 80½ crores. The estimated net receipts during the year are 4½ crores so that the assets at the end of this year should be 85 crores. This excludes the debt of 30½ crores, representing raids on the fund in the years of depression; under the moratorium approved by this House, we are not at present liable to repay these and do not propose to make any repayment this year.

8. Difficulties in obtaining materials were responsible for capital expenditure on works falling well below our budget estimate. Apart from the payments for the Bengal-Dooars Railway and the Hardwar-Dehra Railway, we added only about 3½ crores to our capital and we shall be writing-off almost the same amount. At the end of this year the capital at charge should be about 761 crores.

[Sir Andrew Clow.]

Capital Programme, 1941-42.

9. For next year our capital programme includes no new lines, but there will be other capital transactions of great importance. The House is already aware of the decision to terminate during next financial year the contracts of two important railways—the Bombay, Baroda and Central India Railway and the Assam Bengal Railway. These decisions were taken after reference to the Standing Finance Committee and the Central Advisory Council for Railways and as Honourable Members will find the main considerations set out in the proceedings of the Council, I need not enlarge upon them here. I will only say that the divided votes in both bodies reflect our own views, namely, that while there were arguments of weight against purchase in both cases, and particularly in the case of the Assam Bengal Railway, where the majority in the Advisory Council was small, the balance of advantage in both cases lay with terminating the contracts. I should like to make it clear, in view of possible misapprehension, that the Government of India have never accepted the view that every contract for the working of a State-owned railway should be terminated whenever opportunity offers, irrespective of the merits of the case. Indeed, in the case of one of these railways, the previous option, which arose in 1931, was not exercised, and all cases must be considered in the light of the advantages and disadvantages as they present themselves at the time.

10. In the present cases, as I have said, the advantages appeared to outweigh the disadvantages. The Bombay, Baroda and Central India Railway yields a good return and appears to offer a sound investment. The Assam Bengal Railway does not yield an adequate return on the capital; the Company depends for its dividend upon the three per cent. guarantee and there was, so far as we could foresee, no prospect of their passing the stage at which the guarantee would be inoperative and surplus profits would become available. But this does not constitute an argument against purchase, for it means that at present all losses and gains fall on Government, whether it is managed by the company or by ourselves, and the shareholders' dividends have for a number of years been entirely independent of the working results. Moreover, the bringing of the Assam Bengal Railway and the Eastern Bengal Railway under unified control, which is a step we propose to take, offers the prospect of some saving of expenditure and a little increase in traffic.

11. The disadvantages inherent in any form of State-management are, I know, increasingly recognised and were prominently in the minds of some of those who considered the question on this occasion. I would like to assure the House that we, on our part, are by no means oblivious of them. Officials are at times accused of overestimating their abilities, but our faith in bureaucratic competence is considerably less than that evinced by those who are so constant in asking us to undertake new tasks. And, apart from any difficulties inherent in official management of an industrial enterprise, the handicap to efficient administration which is involved in a system rendering the organization answerable to a popular legislature not merely in respect of questions of general policy but in respect of details must be constantly present to reflecting Members of this House.

12. At the same time, the advantages of retaining adequate State control over a great organization of this kind, which is so vital to the

economy of the country and which gives a living to so many of its citizens, are to my mind obvious. It is my hope that in days to come it will be possible to introduce a system which will combine these effectively with a measure of that flexibility in administration, that readiness to make experiments, that ability to decentralize and that health-giving lack of uniformity which are today more characteristic of private enterprise than of bureaucratic responsibility. Unless this hope can be realized, the big step we have now taken may prove anything but profitable to the commonwealth in future years.

13. In the case of the Bombay, Baroda and Central India Railway, Government already own 96 per cent. of the capital and the payments to the Company will amount to £2 million or 2½ crores. In the case of the Assam Bengal Railway, Government own nearly 92 per cent. of the capital and the payments to the Company will be £1½ million or 2 crores. In addition, we have given notice to the Tapti Valley Railway Company of the purchase of their line, which is a broad gauge line 156 miles in length. It is owned by this Indian Company but operated by the Bombay, Baroda and Central India Railway Company. The purchase becomes effective on the 31st March, 1942, but as the purchase price of about 1½ crores will not be paid till early in 1942-43, no provision has been made in the present budget.

14. Other capital expenditure next year has been put at about 10½ crores of which about four crores will be charged to capital and the rest to the depreciation fund. That fund should receive about 12½ crores, and if there are no unexpected charges against it, the assets at the end of the year should be 41 crores. There are those who, seeing a difference between what is going into and what is coming out of the depreciation fund, tend to assume that that difference represents money that should not go in at all. This is, of course, a fallacy and it is well to remember that in the present situation, the special difficulties in the way of making replacements and renewals must be reflected here. The curtailment of replacements represents a definite deterioration which will have to be made good at a later date.

Accounts for 1939-40.

15. I turn now to the income and expenditure of the past, the present and the coming year. Beginning with 1939-40, I estimated that the year would end with a surplus of 361 lakhs. But traffic in the last two months proved better than we expected by about 35 lakhs, while expenditure was below the estimate by half a crore. Interest and other charges were up by 19 lakhs, but miscellaneous revenue and expenditure gave us six lakhs more, so that we had a surplus of 498 lakhs. Even so, this did not provide the one per cent. on capital which had to be paid to general revenues, so that these took the whole of our surplus and carried forward a demand for a further 80 lakhs to make good the deficit. That sum comes as a first charge against this year's surplus.

Revised Estimates for 1940-41.

16. Passing to the current year, I estimated the traffic-receipts at 108 crores. That figure looks like being considerably exceeded and we have

[Sir Andrew Clow.]

placed the revised estimate at 100½ crores, a figure more than 11½ crores above the receipts of 1939-40. This large increase is due in part to the increases in freights and fares which were announced in the last budget statement; these are expected to have yielded over 6½ crores by the end of the year. The rest represents the actual and expected improvement in traffic. Whereas the increase we got last year was entirely in goods traffic, this year's increase has been mainly in passenger traffic. Our estimate allows for an increase in the volume of goods traffic of 2½ per cent. and in coaching traffic of 8 per cent. This increase in coaching traffic is particularly encouraging as affording evidence of increased prosperity among the masses, and it is satisfactory to find that the increased charges have not produced the dire effects that were apprehended by some of their critics. In only a few directions did it prove desirable to grant exemptions from the enhanced scale of freights. The most important of these were the complete exemption of newsprint and newspapers and the concessions given to flour and pig iron on a number of lines. We are at the moment carrying particularly heavy traffic and are limited in respect of goods in important areas by the wagons available.

17. A shortage of wagons at this season is no new thing, but the main shortage this year has been in unusual areas and occurred in spite of big improvements in operation which have added substantially to the effective supply of wagons. An expert committee on wagon turn-round, after a rapid survey last winter, recommended a large number of improvements that are saving wagon-time. A special Transport Advisory Officer, appointed in January, was able, with the co-operation of the interests concerned, to point the way to better wagon supplies, particularly for coal. In the result during the five months ending with April last, the East Indian and Bengal Nagpur Railways were able to supply to the trade 48,000 more wagons than in the corresponding months of the previous year—an increase of about 12 per cent. We are also pressing on with works designed to secure better operation. In particular the provision of a second down line from Khana to Ondal, a work now in progress, should go a long way to assisting the East Indian Railway in meeting the demands of the coal trade, while goods yards and goods sheds are being remodelled in many places, notably Moradabad, Sealdah and Bezwada.

18. Our revised figure for working expenses and depreciation for this year is 66·71 crores, which is only seven lakhs more than the original estimate. We have saved about half a crore because prices did not rise to the extent we anticipated, but we have added an equivalent sum to meet possible charges for war allowances and other emergent charges, so that our figures virtually mean that the substantial increase in traffic is not reflected in our expenditure figures. This, as I hope the House will agree, is not the least remarkable feature of this year's working. It has of course to be remembered that the increase in traffic is not on the same scale as the increase in earnings, for we raised the rates, and that a large part of the increase in passenger traffic goes to fill out seldom over-crowded carriages and thus does not add appreciably to our expenses. Moreover the repercussions which a sudden increase in traffic produces in the way of increased charges for maintenance and repairs are felt more in later years than at the time.

19. Adding interest charges of 28,74 lakhs to the working expenses and deducting 79 lakhs as the balance of miscellaneous receipts over expenditure, we get an expenditure figure of 94.66 crores. This has to be set against an income of 109.25 crores. I exclude on both sides a figure of 547 lakhs for worked lines. The resultant estimated surplus for the year is 14 crores 59 lakhs.

20. This, if it is realized, will be the highest surplus attained in any year since railway finances were separated. I hope that those critics who were, in the darker years, so ready to measure the railways' inefficiency by the deficits, will apply the same canons of judgment to this year's surplus. But it is a very faint hope and I do not share their views. Deficits and surpluses alike depend largely on factors outside the control of railway administrations. This is not only because they reflect so largely the economic situation in the country: it has also to be remembered that with railways under State control, the aim is not profits but service. Our rates, on which our income depends, are not fixed with a view to securing the maximum income: still less are our wages, which form the most important element in our expenses, fixed with a view to a minimum expenditure.

21. At the same time, I am convinced that the efficiency of the railways has been rising steadily in recent years and the results now presented could not have been achieved without an immense amount of loyal work from all ranks in the railway service. They have had, in most cases, to work harder, to deal with many more passengers, to transport increased goods, to meet urgent and important demands from the military authorities. To all grades we have reason to be grateful. I would like to take this opportunity of acknowledging specially the services rendered by Sir Guthrie Russell, who relinquished the appointment of Chief Commissioner during the year to take up work more intimately connected with the war. He held that onerous and responsible post for eleven years, which were for the most part years when the task was particularly difficult. Solicitous alike for the interests of the public and of the staff, he made his influence felt in every direction and has left behind him an organization which is far more adequately equipped to meet the needs of the community than it was a dozen years ago and which secures better working conditions for those who man its ranks.

Estimates for 1941-42.

22. In framing the estimates for next year we are confronted with difficulties at least as great as those which faced us last year. We are living in a time when prophecy is particularly hazardous. No one in this House, I imagine, foresaw with any approach to accuracy the main events in the international sphere during the last year, and the only certainty is that the war has not exhausted the surprises it can bring. There are various developments that might swiftly stultify any calculations we may make; and even events which, from the historical point of view, may be of minor importance can produce large reactions in our economic life. I would remind the House that within the last ten years the Railway Member has twice found his estimate of the year's balance more than ten crores out on the wrong side. If unexpected variations on this scale can occur in peace time, we who face far greater uncertainties run the risk of greater falsification of our expectations. What we have done is to put our figure for next year's receipts at a crore below the revised estimate for this year.

[Sir Andrew Clow.]

that is, at 108½ crores. This is simply because the few factors in the situation whose effects we can calculate seem in the aggregate to justify such a variation. Our figure for this year had to be greatly increased, at the last moment, on account of the phenomenal traffic figures in a few weeks in January, and it would be unsafe to bank on their repetition, while there are other factors which suggest a little caution. But I must repeat that the unknown factors are more important than those which we have considered and our figure would be more accurately described as a guess than as an estimate. Adding 78 lakhs for net miscellaneous receipts, we get a total income of 109·03 crores.

23. This allows for no important changes in freights or fares. We intend to reduce the surcharge on coal by five per cent. for the months from April to October inclusive: this seasonal variation is designed to encourage those who can to place their orders at times when the wagon position is easier. We are examining the question of whether the rebates designed to encourage the export of coal and wheat are still justified, and the question of whether suburban season ticket fares which were not altered when we enhanced passenger fares last year, are giving a fair return at their present levels. We are also considering whether the scale of fares for distances above 50 miles on the East Indian Railway should not be brought more into line with those in force on other State Railways. But no change will be made in these charges at present or within the next three months at least. We propose to continue the exemptions for food-grains and fodder from the increased freight given last year, because so far as we can see, extra expenditure on staff will not be on a scale rendering it necessary to secure more revenue in that direction; but I would remind the House of the warning I gave last year that the maintenance of the exemption on food-grains must depend on the demands made on us for the remuneration of our staff, and that the case for exemption of fodder is not so strong as it then was.

24. On the expenditure side we have put the working expenses, including depreciation, at 68·60 crores. This is an increase of 1·89 crores over this year's revised estimate; the largest item in this increase represents a provision for possible war allowances. Interest charges are put 14 lakhs lower than last year at 28·60 lakhs, so that our expenditure has been put at 97·20 crores. This figure, and the figure I gave for receipts of 109·03 crores, exclude an item of 5½ crores which appears on both sides of the balance sheet on account of worked lines. The estimated surplus comes to 11·83 crores.

Allocation of Surplus.

25. In conclusion, I deal with the allocation of the surplus we expect to have. Were it not for the moratorium, this would have to go to the replacement of the loans taken from the depreciation fund, but the moratorium relieves us from this obligation for the present, and the first charge will be the unpaid balance of the one per cent. contribution to general revenues for last year; this amounts to 30 lakhs.

26. The calculation of the contribution for this year brings us to the complicated provisions of the Convention governing the separation of railway finances; most of us had forgotten how complicated these provisions were

because for many years the surplus, if there was any, was not large enough to bring its complications into play. The first payment to Government consists of the one per cent. on the capital at charge of commercial lines, less the loss incurred on working strategic lines: this will amount to 4.68 crores. The Convention provides that the next three crores should go to the railway reserve and that thereafter only two-thirds of the surplus should go to the railway reserve. The remaining third goes to general revenues and we estimate this amount at 2.22 crores. Adding these together and the demand on account of last year, the total of the three payments comes to 7.15 crores.

27. This would seem to leave 7.44 crores for the railways, but we have to reckon with yet another provision of the Convention. This stipulates that there shall be added to the one per cent. contribution one-fifth of the surplus profits remaining after payment of that contribution. The fixed contribution is based on the capital at charge in the penultimate year and this one-fifth is calculated likewise. What that means is that this sum, which we estimate at 1.82 crores, is only put into the railway reserve to be taken out again in the year after next. We propose, however, to surrender this sum during next year, when the amount will be determinate. The needs of the taxpayer are needs of the present and of the immediate future and there is nothing—if we ignore a few lakhs of interest that the railways would otherwise receive—to be gained by our holding on to the money till the following year. Thus the sum which, under the convention, the railways receive “to have and to hold” is reduced to 5.62 crores.

28. From this reduced sum it is proposed to make a further large reduction outside the Convention. We propose, in fact, to surrender half of it to general revenues which will treat it as a payment against the debt to Government. Speaking for the railways, I cannot but regard that debt as in large measure the result of an arrangement which imposes on the railways a burden too heavy for normal times. But we are living in abnormal times and feel that we should do all we reasonably can by way of direct assistance to the taxpayer at a time when he needs assistance more than ever before.

29. This reduces, in the final result, the gain to the railway reserve to 2.81 crores while general revenues stand to receive, by the five amounts I have mentioned, an aggregate of 11.78 crores—9.96 crores in this year's accounts and 1.82 crores in next year's. Against the railway's credit of 2.81 crores has to be set the disbursement of a crore which I mentioned earlier, so that the railway reserve will get a net increase, if our estimates prove accurate, of 1.81 crores. Even that, I may remind the House, has as its first object, to quote the Convention, “to secure the payment of the annual contribution to general revenues”.

30. I do not propose to take the House through the calculations for next year. The figures are much more hypothetical and before the year comes to a close, we shall have to consider the position created by the expiry of the moratorium. I will only say, therefore, that on the basis of the estimates we have framed and of the system adopted for dividing this year's surplus, general revenues would receive, in addition to the payment of 1.82 crores already mentioned, sums amounting to 8.86 crores. The railway reserve would receive 3.47 crores. There would of course be the deduction of that 1.82 crores from the railway's share, but I have taken this into account in estimating the net accretion of this year at 1.81 crores, and therefore omit it here. But there would be a further liability to

[Sir Andrew Olow.]

Government on account of the one-fifth of next year's surplus which would amount to 1.25 crores, so that the final net gain to the railways would be 2.22 crores and to general revenues 9.61 crores.

31. These results will, I realize, come as a disappointment to many who are interested in the railways. Although we expect a record surplus, and one far exceeding my estimate of a year ago, our reserve gains a very small sum. It is true that we have strengthened our capital position, but even if we take that into our calculations, the betterment to our position still falls short of the sum I hoped to receive on the basis of the original estimates—that three crores which the Convention treats as the first payment to the railways.

32. Railway administrators remember that in the difficult years of the last decade, they were cramped and confined in attempts to make ends meet when the ends, in their view, had been so adjusted against the railways that they could not equitably meet. Retrenchments and economies were enforced which they felt to be against the interests of successful working and consequently against the interest of the community, which owns the railways and should be keenly interested in their prosperity. Now when the prospect appears of providing a little insurance against a recurrence of such events, general revenues come in by another door, as it were, to remove that protection. But I feel confident that when it is realized that the needs of general revenues are war needs and that the alternative to an arrangement such as we propose would be an even heavier burden on the general taxpayer than he must in any case be called upon to bear, the justification for this arrangement will be recognized.

33. I would, however, add one word of appeal. I hope that in the future this House or its successors will not forget the service which the railways have been able to render at this juncture and will be ready, when peace is restored, to give the railways generous treatment. Generosity by the community here is generosity to themselves, and a liberal policy towards the railways will not fail of its reward.

THE PETROLEUM (AMENDMENT) BILL.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar (Member for Commerce and Labour): Sir, I move for leave to introduce a Bill further to amend the Petroleum Act, 1934.

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

"That leave be granted to introduce a Bill further to amend the Petroleum Act, 1934."

The motion was adopted.

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

THE INDIAN RAILWAYS (AMENDMENT) BILL.

Mr. President (The Honourable Sir Abdur Rahim): The House will now resume consideration of the Bill further to amend the Indian Railways Act, 1890, as reported by the Select Committee. The question is:

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

I think Sir Muhammad Yamin Khan has not finished his speech on the motion before the House.

(Sir Muhammad Yamin Khan was not in his seat.)

Dr. Sir Ziauddin Ahmad (United Provinces Southern Divisions: Muhammadan Rural): I should like to continue the debate on this motion. I understand that the amendment is:

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

I thought that this was at least one particular piece of good work which we did in the Select Committee. In the Bill, which was presented before the House in 1936, there was a provision that if a person who could not purchase a ticket had informed a railway servant authorised in this behalf and took a certificate, then he would be charged no penalty. The present Act provides that, whether you inform the authorised person or not, the penalty will be there.....

Dr. P. N. Banerjee (Calcutta Suburbs: Non-Muhammadan Urban): In the absence of this particular provision, the provisions of the existing Act will continue.

Dr. Sir Ziauddin Ahmad: In the absence of such a provision, the present Act says that in any case you will have to pay the penalty, the penalty clause will stand, i.e., penalty equivalent to 1/6th. May I refer you to page 53 of the Act, section 113 (3) which says:

"Where a passenger has immediately after incurring the charge and before being detected by a railway servant notified to the railway servant on duty with the train the fact of the charge having been incurred, be one rupee, two annas or eight annas, and (b) in any other case be six rupees, one rupee or three rupees, according as the passenger is travelling."

So that if you will read carefully section 113 (3) of the present law, you will observe that if a person has incurred this charge, that is, if he has entered the compartment and come to the railway station without a ticket and he himself has informed the authorised railway official in a *bona fide* manner that he has entered the compartment without a ticket, even then there will be a penalty. It is to remove this particular clause that this provision was made. The present enactment does not really exempt a person who is a *bona fide* passenger, who does not intend to cheat, and who informs in time the persons concerned before being detected. In the Bill of 1936 it was thought that there should be no penalty in the case of such passengers. In order to secure the very object that my Honourable friend has, this provision was added and this was the only concession which we got in the Select Committee in favour of *bona fide* passengers who could not purchase tickets for *bona fide* reasons. As regards the question about 'may' and 'shall', I would have very much liked the word 'shall', but the arguments advanced by some members in the Select Committee did appeal to me. Supposing there is a big *mela*, a large number of people may enter the train and every one may want to have a certificate. According to the law a certificate must be given to everybody and then the train will have to be detained for about fifteen minutes or half an hour. I thought that it was not desirable to have such a state of things, and I was given to understand that in this particular case "may" has really the meaning of "shall", because we know that in law whenever we use the word "may" it really has the same

[Dr. Sir Ziauddin Ahmad.]

meaning as "shall". This provision is really for the benefit of the *bona fide* passenger, and I hope that my Honourable friend will not press his amendment to a division.

Mr. Govind V. Deshmukh (Nagpur Division: Non-Muhammadan): As a member of the Select Committee who happens to be blamed for allowing the Bill to emerge out of the Select Committee in the form in which it has been out, and particularly this clause, I wish to say a few words in defence. What section 68 of the Act of 1880 contemplates is this:

"No person shall, without the permission of a railway servant, enter any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket."

In other words, a person can only under certain circumstances travel with the permission of a railway servant. By this Bill we are making a provision regarding the permission of a railway servant,—how that permission is to be obtained. In the section nothing is said, it may be verbal. In that case what is to happen? A person granting permission to a passenger who has been unable to purchase a ticket at the booking office—that person who generally happens to be a ticket collector or a guard, may or may not remember at a certain stage whether he had granted the permission. It may be that the guards change and then there is no proof whether a particular person was granted permission to travel or not. In order to get over this difficulty—may be lapse of memory of the person who grants the permission, and to facilitate in other ways—we have, in other words, armed the person who is travelling without a ticket, to get a writing in order that he may be saved trouble later in the course of his journey. Supposing the present amendment we have introduced here were deleted, what would be the position? The position would be that this old section, so far as permission is concerned, remains intact. What happens? My Honourable friend has said and so many other Honourable Members have said, that there is nobody who recognises any obligation to give a certificate or to give permission. The ticket collector says, go to the guard, the guard says go to somebody else, and so on. If this is the condition at present, what we are doing is really to get you over that difficulty.

Dr. P. N. Banerjee: To create further difficulties.

Mr. Govind V. Deshmukh: I am prepared to meet all your arguments. What happens if this new provision is not there? You are not able to purchase a ticket at the booking office, or it may be you have reached the platform when the train is starting. You are unable to purchase the ticket, but you wish to get into the compartment and travel. There is nobody who has got any obligation under law to give you permission. The ticket collector may very well say, what is the obligation under which I am compelled to give you permission? He may refuse. There is no obligation on him.

Dr. P. N. Banerjee: When you use the word "may", there will be no obligation.

Mr. Govind V. Deshmukh: I am coming to that, but let us restrict ourselves now to this. You want this clause or not?

Dr. P. N. Banerjee: The original clause I want.

Mr. Govind V. Deshmukh: I cannot understand this argument. How can the substitution by the word "shall" be an improvement on the state of affairs existing now when the clause does not exist there? Would that be an improvement on the condition of things as it prevails today? By deleting this clause, do you improve upon the present condition of things? If you cannot, then you have this clause. I say this, only if you have this clause, can it be improved to any extent, but if written permission you do not want, then say so. Either you want verbal permission or you do not want it. If you wish to have a sort of written permission and armed with that permission to enter a carriage and be saved from bother later, because you can say, here is a certificate granted to me—either you are in favour of a certificate like this, or you are satisfied with the present state of things. At present, according to your own story, nobody holds himself responsible. The guard says, go to the ticket collector, the ticket collector says, go to the guard, and so on. Do you wish to be satisfied with such a state of things?

Dr. P. N. Banerjee: You are confusing things.

Mr. Govind V. Deshmukh: These are conflicting things and that is why we want to solve the difficulty.

Dr. P. N. Banerjee: I said, confusing things. You are not solving the difficulty, you are adding to the difficulty.

Mr. Govind V. Deshmukh: If it adds to the difficulty, then do not have the clause at all. Do not say that the word "shall" will improve the present state of things. If you are against written permission, how can the word "shall" improve the present condition of things? Either you are in favour of oral permission

Dr. P. N. Banerjee: You are confusing the two things.

Mr. Govind V. Deshmukh: Either be in favour of the clause as it is, which means that somebody may give permission or may not give permission, there is nobody who is responsible to give permission,—or be in favour of the clause which gives you a written permission, a written certificate to travel. I grant that this can be improved by substituting the word "shall", but I am in favour of a written certificate.

Dr. P. N. Banerjee: If time does not permit?

Mr. Govind V. Deshmukh: If you have time to approach the guard or the person who is authorised to give the certificate, all that he has to do is this. They will have printed forms.....

(At this stage Dr. P. N. Banerjee again interrupted.)

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member (Dr. Banerjee) should not go on interrupting the speaker like this.

Mr. Govind V. Deshmukh: I am making a suggestion. You go to the station, there is a minute or two before the train leaves, and the number of persons travelling without tickets and coming at the nick of time and approaching the guards is not very much, at the utmost it may be one or two, and even those cases are rare. Yesterday, Honourable Members were under the wrong impression—for instance, Sir Muhammad Yamin Khan said yesterday that he took twenty minutes to get a return ticket. That has got nothing to do with the present case. When we say that a passenger is to get permission from a person who is authorised to give it under this Act, that does not mean you go to booking office. It is said, "We cannot purchase a ticket, we have not got the time to purchase a ticket, and what time is there to get a certificate?" Well, if the provision would have been that you have to go to the booking office to get a certificate from the person who issued a ticket, there would have been a difficulty but that is not so. The section contemplates persons who could be given power to issue this permission and such persons would be besides the persons who issue tickets and persons who would be on the platform near about the train which means station master, assistant station master, guard, collector and so on.

Dr. P. N. Banerjee: Add those words.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member should not be interrupted so often.

Mr. Govind V. Deshmukh: I take it that this clause is acceptable, provided persons are mentioned in this. Under the rule-making power, this can be done, or, if you like, you should have had amendments on those lines. To say that the Select Committee of which I was a member has really committed such a blunder and made the Bill so obnoxious that new clause like this is unacceptable I cannot understand. So, let us come to this. A verbal permission or no permission, a section which gives you under law a facility to obtain written permission from an authorised person is of much greater value and I am supporting this particular clause in the Bill as it is, apart from what my colleague, Dr. Sir Ziauddin, has said. Of course, so far as this demand of excess is concerned, I do not wish to co-relate that with this section. Section 58 by itself is a great advantage to the travelling public and I support the clause as it is, and I oppose the amendment.

The Honourable Sir Andrew Olow (Member for Railways and Communications): I find myself in a little difficulty here, having agreed to what was the desire of certain Members in the Select Committee who have now defended the clause—at least I think the last speaker was defending the clause—but I must say that I feel a certain amount of force in the arguments raised by Prof. Banerjee. The fact is that this clause was included in the original Bill but it was included there for an entirely different purpose. That Bill proposed to place the burden of proof on the passenger that he was travelling without intent to defraud and this clause was, therefore, included to give him a method of proving that he had not that intent. Sir Ziauddin fastened upon it and said that it would be an improvement here. We, on our part, see no great objection to it but there is a good deal in Prof. Banerjee's suggestion that it might conceivably prejudice the position of the passenger rather than help him. Prof.

Banerjea yesterday gave us some interesting experiences of his and from what he told us I gather that in none of the three cases that he mentioned had he ever been subjected to a penalty or even asked for a penalty. I think I can claim that our staff are on the whole reasonable with passengers who owing to exceptional circumstances find themselves in difficulties and they allow them to get on the train without enforcing the provision of a penalty.

Dr. P. N. Banerjea: Occasionally.

The Honourable Sir Andrew Olow: It is intended only for that purpose—for occasional use. We could not agree to have it as the normal procedure.

I would point out that if the amendment to put in the word 'shall' without any qualification were adopted, the position would be greatly worsened, because if the guard or whoever is authorised were obliged to give a certificate, in many cases he would have to refuse permission. It would be impossible for him to give a certificate in time.* There are times when large parties come in and owing to an unfortunate accident are not able to buy their tickets and they are occasionally allowed on the trains. It is not possible for the guard or any officials, who, after all, have other important duties in seeing that the trains run punctually, to issue certificates of this kind, specifying the nature of the permission. I thought that the last speaker was rather confused as regards the possible effects of the amendment. As I said I don't feel that I ought to go back on an arrangement agreed to in the Select Committee. Government, therefore, will remain neutral on this question and leave the question to be decided by the votes of the other Members of the House. I would add that this would necessitate consequential amendments in the first part. This would have to be moved at a later stage. I take it that it will be completed by the omission of the proviso which Prof. Banerjea is also moving at the end of clause 4.

Mr. M. S. Aney (Berar: Non-Muhammadan): Sir, on reading this section carefully I find there is some distinction made here between two kinds of things. Some persons will be allowed to travel without tickets with permission and then in the case of some persons, the railway officer is also allowed to issue certificates. The advantage of having a certificate is indicated in a subsequent section—that he who shows the certificate will not have to pay excess charge. These are the three things which are connected together. I can understand cases such as those to which reference is made by the Honourable the Communications Member where it may not be possible to issue the certificates at all. Suppose a marriage party arrives at the eleventh hour at the station and the guard or the station master, whoever is the officer that may be empowered to issue certificates, may not be in a position to give certificates to all those persons and they will have to travel with permission.

Dr. P. N. Banerjea: Verbal permission.

Mr. M. S. Aney: So, in the first place it is necessary to retain the first clause that there should be an arrangement as it exists today that passengers who come late should be allowed to go with permission because we can imagine cases where it would not be physically possible for the

[Mr. M. S. Aney.]

officer empowered to issue the certificate at all. The question is whether it is necessary to have a clause with certificate at all. I do not think that the certificate will really give any very great advantage but I have no objection in retaining that clause provided it is 'may' there and not 'shall', because if it is 'may' it is possible that some persons can be allowed by him to go without certificates. If you put 'shall' then the first part of the section will have to be deleted completely. Secondly, the sub-clause also contemplates one more thing, that it will be only some officers who will be permitted to grant certificates and not all. Who those officers will be is not known to us. It may be that the kind of officer that shall be empowered to give certificates may not be available at the time and some other railway officer will be there on whose permission these persons will have to go. Therefore what I feel is this, that there is no harm in retaining the word "may" there and at the same time it will be necessary to add some more clause to this Bill which will require the Railway Administration to make the necessary rules in order to lay down the various officers who shall be empowered to give this permission and the conditions on which the permission or the certificate should be given. Secondly, what I want is this, that in the last section, clause 3 of the Select Committee's Report, where the provision has been made not to charge an excess charge from those who hold a certificate, I think that requires to be enlarged in my opinion. It ought to include the cases of persons who hold a certificate as well as those who have gone on a permission because the position will be the same; whether the man gets the certificate or not depends upon the time,—whether such officer was there at the time or not or whether such officer was available or not. On the other hand, the main condition that the man has not entered the train or has not remained on the train without the permission of the railway officer is fulfilled by him. Having fulfilled that essential condition, so far as the recovery of the excess charge is concerned, he should be entitled to the same concession which is extended under that clause to a man holding a certificate. If a necessary change is made there, I do not see any harm in retaining the word "may" or substituting the word "shall". That is the only suggestion I want to make, and until that change is made, I do not see that even if we put the word "shall" there, the position will be improved.

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

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

The motion was negatived.

Mr. President (The Honourable Sir Abdur Rahim): There is an amendment in the name of Mr. Chattopadhyaya, of which he gave notice last evening, the Chair understands, to sub-clause (1) of clause 2. The Chair understands the Honourable Member wishes to move that amendment?

Mr. Amarendra Nath Chattopadhyaya (Burdwan Division: Non-Muhammadian Rural): Yes, Sir.

The Honourable Sir Andrew Clow: Sir, I must take exception to this, owing to want of notice.

Mr. President (The Honourable Sir Abdur Rahim): Then, the Honourable Member cannot move the amendment.

Pandit Lakshmi Kanta Maitra (Presidency Division: Non-Muham-
madan Rural): Sir, I move:

"That in sub-clause (2) of clause 2 of the Bill, in the proposed sub-section (2), for the word 'may', occurring in line 2, the words 'shall ordinarily' be substituted."

Sir, this sub-clause (2), as was mentioned by my Leader, Mr. Aney, is of dubious utility so far as passengers are concerned. It has been contended that the addition which has been made to this sub-clause by the Select Committee has been in the nature of a concession. But it has been pointed out that very many cases are imaginable when it may not be possible for *bona fide* passengers to have the necessary permission from the persons who are authorised by the Railway Administration to grant a permission or a certificate. Sir, in this connection I should like to draw the attention of my Honourable friend, the Railway Member, that on certain systems of Railway,—notably in the suburban sections of the E. I. R., the E. B. R., the B. B. & C. I., and the G. I. P.,—they have got a "stop start",—in other words, the train steams into the station and as soon as it stops, it goes on starting again. This is particularly noticeable on the E. B. R. in the section between Calcutta and Ranaghat, in the B. B. & C. I. suburban stations and in the G. I. P. from Bombay to Kalyan. So also it is noticeable in the suburban sections on the S. I. R. and the M. and S. M. What happens usually is this that passengers without tickets having to board these trains have very little time left over for meeting the guards or any other persons who may have the authorization of the Railway to grant the necessary permission. As I say, the system in all these places is one of "stop start". Therefore, by providing for the grant of a certificate, no real benefit is actually conferred on the passengers. Anyhow now that this section has come to stay, one has to see that the permission may not be ordinarily withheld by persons from whom permission is sought by passengers. It will be necessary to authorise a number of officials for granting the necessary permission. It will not do simply to authorise the guard; neither will it be sufficient if the travelling ticket checker is also authorised, but I believe the Administration will have to take into consideration the number of officers available on a railway train or at a station who may be authorised to grant such permission. This amendment will make it obligatory, on all persons so authorised, to grant permission so that *bona fide* passengers travelling without tickets with no intent to defraud the Railway may be protected and may not be mulcted in any penalties or damages. Sir, I move.

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

"That in sub-clause (2) of clause 2 of the Bill, in the proposed sub-section (2), for the word 'may', occurring in line 2, the words 'shall ordinarily' be substituted."

The Honourable Sir Andrew Olow: Sir, I cannot accept the arguments based on this supposed "stop-start system". No such system is authorised on railways, but we are prepared to accept this amendment if it is generally acceptable to the House.

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

"That in sub-clause (2) of clause 2 of the Bill, in the proposed sub-section (2), for the word 'may', occurring in line 2, the words 'shall ordinarily' be substituted."

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): Then, there is another amendment to this clause notice of which was given this morning by Mr. Amarendra Nath Chattopadhyaya, which has not been circulated to all the Members. Is that so?

Mr. Amarendra Nath Chattopadhyaya: It has not been circulated.

Mr. President (The Honourable Sir Abdur Rahim): Then, it cannot be proceeded with. 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.

The Honourable Sir Andrew Clow: Some Members are anxious to consider a possible proposal in respect to clause 3 which will be acceptable to the House. Although I have no great hope of reaching an agreement, and there is a possibility of shortening our debate. If there is no objection, I would prefer to go on to clauses 4 and 5 which are not directly connected with clause 3.

Mr. President (The Honourable Sir Abdur Rahim): That will perhaps suit the convenience of the House.

(Voices of "Yes, yes".)

Then, we will go on to clause 4. The question is :

"That clause 4 stand part of the Bill."

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

"That in sub-clause (a) of clause 4 of the Bill, in the first Proviso to the proposed sub-section (3) of section 113, for all the words occurring after the word 'incurred', in the sixth line, the words 'no excess-charge shall be payable' be substituted."

Sir, in connection with my speech yesterday, I explained the position of this class of passengers and also at the time of his reply I interrupted my Honourable friend, the Railway Member, and stressed this very point which is sought to be covered by this amendment. Sir, I move.

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

"That in sub-clause (a) of clause 4 of the Bill, in the first Proviso to the proposed sub-section (3) of section 113, for all the words occurring after the word 'incurred', in the sixth line, the words 'no excess-charge shall be payable' be substituted."

The Honourable Sir Andrew Clow: Sir, I must oppose the amendment. I tried to explain yesterday the reasons why it would create an impossible position. If everybody was of the utmost probity, I would not have any objection to it, but it obviously would leave enormously wide loopholes to the man who, while not—shall we say—greatly dishonest, feels he may as well take a chance. He will get into the train and as soon as he sees that there was a possibility of tickets being checked at a ticket checking station or perhaps just before that, he will go up and inform the authorities that he was travelling without a ticket and had only got in at the last station, a fact which there is no means of checking. We would really be putting a temptation in the way of lots of people who will not normally succumb to such a temptation but may just as well try their luck and see whether they can get away without a ticket.

Dr. Sir Ziauddin Ahmad: Sir, I have got certain difficulties in this matter. I very much sympathise with the amendment but there are some practical difficulties in its working for which I have no solution in my mind. Suppose a ticket collector or a ticket examiner goes to the person and he charges him the excess fare. That is all right. But there is an additional thing which he has to charge. He has to charge the penalty. So, in order to exempt him from penalty, it is very desirable that some third party ought to certify that this notice was given to him and it was for this reason that it was provided that unless he informs some person beforehand, he cannot get off the penalty. It is quite possible that in the rules this thing may be mentioned. If the man could not inform the guard, who may be authorised to issue the memo. that he has been travelling without a ticket, they may also authorise the head ticket collector to certify the same. If this fact could be mentioned on the excess charge ticket, then it may be taken as equivalent to a certificate granted by the guard. It is very desirable that we should not leave it to the ticket collector alone. There should be a certificate by a third authority and it was for this reason that this provision was made there.

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

"That in sub-clause (a) of clause 4 of the Bill, in the first proviso to the proposed sub-section (3) of section 113, for all the words occurring after the word 'incurred', in the sixth line, the words 'no excess-charge shall be payable' be substituted."

The motion was negatived.

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

"That in sub-clause (a) of clause 4 of the Bill, in the first proviso to the proposed sub-section (3) of section 113, for all the words after the words 'excess charge', occurring in the sixth line, the words 'may be two annas' be substituted."

Sir, failing to carry the first amendment, I think the next best would be this amendment. I do not want that a *bona fide* passenger, who has failed to notify to any authorised railway servant the fact of his travelling without a ticket, not for any default of his own but for a variety of circumstances over which he may not have any control, should unnecessarily be harassed and subjected to pay the excess fare in addition to the ordinary legitimate fare payable by him. But as my Honourable friend, Sir Andrew Clow, seems to think that it will be giving a sort of unwarranted latitude to people of questionable probity, who may take the chance of travelling without ticket and may not be detected,—a proposition which I do not accept,—I think he would be amenable at least to charge such a man only two annas as the excess charge over and above the amount of charge incurred by him for the journey. That is quite fair and reasonable. The Railway is not losing anything. The mere fact that the *bona fide* passenger unable to purchase a ticket could not inform the railway officer in the running train before he actually came to be detected by the railway servant does not necessarily prove that the man was trying to evade detection or payment of fare. Very many cases may happen when there is absolutely no dishonest intention. I, therefore, suggest that to give benefit of doubt to all classes of people and at the same time to give the railway some additional revenue, the excess fare that shall be charged from such a passenger should be only two annas in addition to the ordinary charges to which he may be liable.

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

"That in sub-clause (a) of clause 4 of the Bill, in the first proviso to the proposed sub-section (3) of section 113, for all the words after the words 'excess charge', occurring in the sixth line, the words 'may be two annas' be substituted."

The Honourable Sir Andrew Olow: Sir, I would point out that this provision really does not alter the principle in the original Act. The real effect of the amendment would be to place the first class passenger on the same level as the third class passenger. At present we have provided one-sixth of the excess charge otherwise payable or two annas whichever is greater. That one-sixth will enable a third class passenger to travel about 40 miles before he gets over the two annas limit.

Pandit Lakshmi Kanta Maitra: But he will be charged with normal fare for the distance he is travelling. This is the additional amount.

The Honourable Sir Andrew Olow: If the Honourable Member reads the proviso, he will find :

"the excess charge shall be one-sixth of the excess charge otherwise payable calculated to the nearest anna, or two annas, whichever is greater."

So that a third class passenger can travel a long distance before he exceeds the two annas limit, but a first class passenger cannot. Of course, in his case, the amount he will have to contribute will be considerably greater in the ordinary case.

Pandit Lakshmi Kanta Maitra: I do not know how the Honourable Member calculates. I cannot follow his trend of arguments.

The Honourable Sir Andrew Olow: I am sorry if I cannot help the Honourable Member. The clause says "the excess charge shall be one-sixth of the excess charge otherwise payable calculated to the nearest anna, or two annas, whichever is greater".

Pandit Lakshmi Kanta Maitra: That is what you are proposing.

The Honourable Sir Andrew Olow: I am saying that under that, one-sixth will amount in the case of the third class passenger to more than two annas, only, if he has travelled about 40 miles so that the real effect of this amendment would be to put all passengers on the same level. We do not want to encourage this system. At some later stage, after travelling some 40 miles, the passenger will say, please charge me with excess. This costs us a certain amount of trouble and I do not myself see why the higher class passenger should not pay more proportionately than the third class passenger. Sir, I oppose the amendment.

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

"That in sub-clause (a) of clause 4 of the Bill, in the first proviso to the proposed sub-section (3) of section 113, for all the words after the words 'excess charge', occurring in the sixth line, the words 'may be two annas' be substituted."

The motion was negatived.

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

"That in sub-clause (a) of clause 4 of the Bill, the second proviso to the proposed sub-section (3) of section 113 be omitted."

Sir, my Honourable friend, the Honourable the Railway Member, pointed out that if the sub-clause in clause 2 is retained, then this sub-clause would be needed, but the Leader of my Party, Mr. Aney, said that in that case there might be some change in the sub-clause. If that is agreeable to the Honourable Member for Communications, I will withdraw this amendment and the change may be made in these words: "In clause 4, second proviso, for the words 'with him', the words 'obtained verbal permission or possesses' be substituted".

The Honourable Sir Andrew Clow: I am not prepared to accept that.

Mr. President (The Honourable Sir Abdur Rahim) : Does the Honourable Member wish to press his amendment.

Dr. P. N. Banerjee: When Mr. Aney suggested, I think the Honourable Member for Railways was agreeable.

The Honourable Sir Andrew Clow: I have never spoken on this.

Mr. President (The Honourable Sir Abdur Rahim) : Does the Honourable Member move his amendment?

Dr. P. N. Banerjee: I have already moved the amendment.

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

"That in sub-clause (a) of clause 4 of the Bill, the second proviso to the proposed sub-section (3) of section 113 be omitted."

The Honourable Sir Andrew Clow: This is on the same point as the previous amendment of Dr. Banerjee and I am prepared to leave it to the vote of the House.

Mr. M. S. Aney: Sir, I was a little bit surprised and disappointed with the remarks of the Honourable Member for Communications on this point: The suggestion that I made was in my opinion perfectly logical and equitable. (Interruption.) I always believed that the Honourable Sir Andrew Clow looked at things from an equitable point of view. Sir, we cannot read clause 4 of the Bill without knowing what clause 2 is. In clause 2 we have done this. We have allowed certain classes of passengers to travel with permission of railway servants and in the case of certain passengers, we have also made a provision that they should be enabled to get a certificate. Now, Sir, the certificate is only a kind of proof in the hands of the passenger given by the officer empowered to issue that certificate to the effect that he has asked permission of the Railway officer and occupied the train. A certificate means nothing more than that. But by keeping both the clauses in sub-clauses (1) and (2) the Honourable Member for Railways himself concedes the position that we have to allow persons merely to go on verbal permission also. He contemplates the possibility of persons required to travel and yet no possibility of a certificate being given to them for doing so. That thing is conceded by him. If that is conceded and persons have gone on permission, I really do not know why those persons who have gone on verbal permission should be singled out from those persons who hold a certificate because they happen to meet an

[Mr. M. S. Aney.]

officer who is empowered to give a certificate at the time when they boarded the train. If there was no officer who could issue the certificate at that time, it was not the fault of the passenger. It is because the Railway authorities have not got sufficient arrangement to keep the required number of officers present on the station premises. I therefore submit that it was the duty of the Honourable Member in charge of the Bill when he allowed the last proviso to this section 4, to have both kinds of passengers—those who travel with verbal permission and those who travel with certificates in their hands. For the purpose of exemption from excess charge, both classes of persons are on the same footing. From that point of view it seems to me to be eminently reasonable that the suggestion I made should be accepted. I suggested that the necessary amendment should be made to this proviso to bring about equitable results. But the Honourable Member for Railways thinks that he should not do anything more than what is already in the proviso. We are making the proviso an unreasonable one. At the same time I do not want to oppose this proviso for this reason that the concession given to persons who hold a certificate will also be taken away. I do not want to be guilty of that. I am surprised that the Honourable Member does not see the inequity of the position he has taken. That is what strikes me as unusual in him.

Dr. Sir Ziauddin Ahmad: Sir, I have great sympathy with the object of the Honourable the Mover of this amendment. Suppose a person came in a *bona fide* manner and he could not purchase a ticket and he informs the guard of that or he informs any other authority on the railway premises who may be appointed in this behalf. There is no time for him to purchase a ticket because the train will not wait or because the number of passengers approaching that authority may be too large to issue the certificate. Then, what happens? In that case, if the railway authority says verbally, "all right, I will give the certificate later on at the next station" or if the head ticket collector who happens to be there says, "you get into the train, we shall see at the next station", then I suggest this verbal permission should be deemed to be equivalent to issuing a certificate. That is the real object which the Honourable the Mover has in mind with which I am sure even the Honourable Members on the Treasury Benches will have great sympathy. But I am afraid the object which the Honourable the Mover of the amendment has is not achieved by this amendment, because if we delete the second proviso to sub-clause (3)

Dr. P. N. Banerjee: I had no time to give notice of further amendment. I have made the suggestion to the Honourable Member for Railways and he can suitably alter that.

Dr. Sir Ziauddin Ahmad: It is a fact that his object is not achieved by this amendment.

Mr. President (The Honourable Sir Abdur Rahim): What is under consideration now is the amendment moved by Dr. Banerjee.

Dr. Sir Ziauddin Ahmad: I have great sympathy with the object, but this is not achieved by the amendment. If anything, he has worsened the

position by this amendment. If you omit the second proviso altogether, then the original sub-clause remains. If this is deleted the original clause remains, namely :

"Where the passenger has immediately after incurring the charge and before being detected" etc. . . . "the excess charge will be one rupee, eight annas and two annas."

This will make the position very much worse. So this amendment is really doing an injustice to *bona fide* passengers. I understand the Bill as drafted does not go far enough and the amendment which Dr. Banerjee had in mind may be introduced. But the present amendment does not achieve the object and makes the position difficult because under the original clause even if you give information the penalty will be one rupee, eight annas and two annas.

Qazi Muhammad Ahmad Kazmi (Meerut Division : Muhammadan Rural): Sir, with regard to this particular amendment, so far as I can see, this clause will not at all be of any use to the public in actual practice. The reason is that whatever may be the intention of the Legislature, in actual practice, it is found to be different. By making this proviso, it appears that there will be two separate persons, one being the servant on duty with the train, and another who will grant the certificate. The first proviso says :

"Provided that where the passenger has immediately after incurring the charge and before being detected by a railway servant notified to the railway servant on duty with the train the fact of the charge having been incurred", etc.

It appears that probably this gentleman, the servant on duty with the train, shall not have the authority to give the certificate. There is another person who can give the certificate, and if we can get hold of this gentleman, we can avoid the penalty. My submission is that, as a matter of practice, neither of these two gentlemen will be available. So far as I know, the gentlemen who are actually working as travelling ticket examiners or guards have got other duties to attend to rather than give certificates. I can here give my own experience. I was once coming from Bombay and had a ticket only up to Muttra, and I wanted to get it extended up to Delhi. I started my attempts in this direction from Jhansi where I went out of the train and tried to find out any gentleman who could give me an extended ticket from Muttra to Delhi. I got hold of the travelling ticket examiner and he said he could not give me an extension unless I reached Muttra, and I should get a certificate from the guard. I went up to the guard and asked him for a certificate that I should be allowed to travel from Muttra to Delhi. He said that it was yet too early to ask for a certificate from him, and I must see him at Agra. I said it would be about 2 o'clock in the morning. Anyway, I got up at Agra and tried to get a certificate from the guard. He said it was still early, with the result that I decided that whatever might be the penalty I would pay afterwards rather than keep awake the whole night. So I slept on in my compartment and did not worry about the guard any more. I came up to Delhi and at the gate I found that the ticket collector was fighting with some passenger, and thinking that it would cause all the more delay, I simply slipped out, because I knew definitely that I would have to spend at least two hours more before I could get a certificate and prove myself an honest man. I have absolutely no hesitation in making this admission before the House only to show how people who really want to pay have,

[Qazi Muhammad Ahmad Kazmi.]

on account of the system of administration, got to travel without a ticket. What are the other members of the staff doing? They are interested only in those persons from whom they can have some penalty or who may put some thing in their pockets. The *bona fide* passenger who really wants an extended ticket is not treated with half that attention with which a person who is travelling without ticket or who wants to defraud the railway is treated. So I submit that all these regulations will be only on paper and the railway staff will be interested more in people whom they can harass rather than in honest people. For this reason I say that the deletion of this clause adds nothing and takes away nothing. The word "shall" will be there, and the word "may" will be there. I am absolutely indifferent as to what word remains there, and I say that by keeping this clause you unnecessarily impose two different duties on two different railway servants, while, as a matter of fact, there will be no railway servant with any duty at all. Therefore, it is an unnecessary and superfluous clause, and I oppose it.

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

"That in sub-clause (a) of clause 4 of the Bill, the second proviso to the proposed sub-section (3) of section 113 be omitted."

The motion was negatived.

Pandit Lakshmi Kanta Maitra: Sir, I move :

"That sub-clause (b) of clause 4 of the Bill be omitted."

This sub-clause deals with the procedure of recovery of any demand that a railway officer may make through a magistrate. I devoted a considerable portion of my speech yesterday to this particular provision and I need not repeat those arguments now. Sir, I move.

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

"That sub-clause (b) of clause 4 of the Bill be omitted."

The Honourable Sir Andrew Clow: Sir, I oppose this amendment. The greater part of the clause merely reproduces what is in the existing Act. The new element introduced is the provision making it clear that if the penalty which is recoverable as a fine cannot be recovered, imprisonment can be imposed in default. That was the view formerly taken by at least one High Court in India. But the recent rulings, as I explained in an earlier speech, have been of a contrary opinion. The view taken is that although the money is recoverable as a fine, and the law provides that, it cannot be treated as a fine in respect of imposing imprisonment in default. It is to remedy that defect that this amendment has been put in the Bill.

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

"That sub-clause (b) of clause 4 of the Bill be omitted."

The motion was negatived.

Pandit Lakshmi Kanta Maitra: Sir, I move :

"That in sub-clause (b) of clause 4 of the Bill, after the words 'railway servant' the words 'who is not a ticket collector or a ticket inspector and who is not below the rank of a station master', be inserted."

The amendment speaks for itself. The clause as it is gives any railway servant appointed by the railway administration in this behalf power to approach any magistrate with respect to any demand against a passenger who may have travelled without a ticket. I want to curtail this power of giving a blank cheque to any railway employee in this respect. It might well be that the power may be given to a man of very inferior position in the railway service. I wish it to be laid down that if this new provision is to stand there should be some qualifications in the railway servant who will be entitled to approach a magistrate with the demand contemplated in this sub-clause. I suggest that such a person shall not be a ticket collector or ticket checker or supervisor, because to all intents and purposes he will be an interested person. I think many Members of this House know that in many railway administrations the work of travelling ticket checkers is periodically supervised by higher authorities as to their efficiency and the only test applied is the number of people got hold of by them in their work. So a spirit of competition goes on between ticket collectors in getting victims. This fact cannot be gainsaid and very often a particular travelling ticket checker is asked to explain why it is that he has been able to get only half a dozen cases in a month while another of his confreres has been able to get a dozen cases. The fact that a particular ticket checker cannot bring in more cases and incidentally more revenue to the Railway is definitely set down against his efficiency. From that point of view I think it would be extremely unsafe to allow a travelling ticket inspector or checker to have anything to do with this business of charging men and getting the charge realised through the machinery of a magistrate. I, therefore, suggest, that if such a power is to be given at all, it must be given to an officer holding some responsible position in the railway service and in this amendment I suggest the class of persons who may be authorised to exercise this power. Sir, I move.

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

"That in sub-clause (b) of clause 4 of the Bill, after the words 'railway servant' the words 'who is not a ticket collector or a ticket inspector and who is not below the rank of a station master', be inserted."

The Honourable Sir Andrew Olow: Sir, I fail to find in my Honourable friend's speech any real argument for this change. The humblest person in the land can apply to a magistrate if he feels that he has been wronged or those whom he represents have been wronged. The decision does not rest with that person at all. The decision rests with the magistrate; and I am perfectly willing, later on, to accept the amendment standing in the name of Mr. Essak Sait which will make that clear. All that the clause gives is power to this officer, whoever he is, to approach the magistrate and put his case before him; and I cannot see that there is any danger involved in that, provided the decision rests with the magistrate himself. Obviously the person who ought to apply normally is the person within whose knowledge the facts lie. My Honourable friend said that certain people will be interested. I hope that every railway servant will be interested in recovering penalties from those who travel without tickets.

Mr. Muhammad Nauman (Patna and Chota Nagpur cum Orissa Muhammadan): Sir, I do not want to make any long speech and I just want to support the amendment and impress on the Honourable Member the fact that he should know that the checking staff who are normally

[Mr. Muhammad Nauman.]

ignorant would not be able to interpret the legislation which we may pass here and, therefore, we want that the responsibility should be given to such of the Railway employees who can really see to the circumstances in which the crime has been committed. The Honourable Member for Railways has explained that the humblest man in the street can go to a magistrate if any offence has been committed either on him or on any one whom he may represent, and he said why should not that power be given to any railway employee. I am afraid the analogy is not at all correct. If a man has been killed, the humblest man can certainly go to a magistrate because the regular service of the police is there and regular investigation will follow before prosecution is completed. Here, the magistrate sits with no police enquiry or help for any investigation: he has to decide the case as presented by that railway employee. If all Railway complaints have had to undergo a regular course of inquiry by the administration of the Government of India or a Provincial Government then things would be different. That is why we want that only responsible men on the railway staff should be given this authority of being a complainant and a party both. Probably the Honourable Member does not know that many of his Railway employees in the ticket checking staff do not know the alphabet of law and cannot interpret the same rightly. Only last September, when I was travelling from Delhi to Lucknow in a first class compartment I had a ticket for Patna Junction (Return Half) and I wanted to travel via Lucknow. You will be surprised to hear that before I reached Lucknow there were ten T. T. Is. trying to calculate the excess charge: one batch calculated the amount at Rs. 6, another at Rs. 1-8-0 and a third batch said it amounted to Rs. 8: at last they decided that I ought to pay about Rs. 1-8-0 and I paid that amount after 2 hours discussion. That is the calibre of the checking staff; and I ask the Government whether can this be in the interests of the administration to entrust such powers to that class of staff without putting some restriction or prescribing some qualifications for those who will interpret and give effect to this law? That is the point of view held on this side of the House and set out in the amendment. With these few words I support the amendment.

Mr. Akhil Chandra Datta (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I support this amendment. I am afraid the Honourable the Railway Member has altogether overlooked the actual words of this clause. It is certainly open to the meanest man to make a complaint to the magistrate. At the same time it is not open to the meanest man, or for the matter of that, to a man of higher status, to approach a magistrate only to dictate the order he desires to be passed. The section as it is worded wants this to be done: the magistrate's function is merely to register the decree made by the railway servant

The Honourable Sir Andrew GLOW: I thought I had made it clear that I was willing to accept the amendment standing in the name of Mr. Essak Sait, later on in the list, which would make it clear that that was not the magistrate's function, and that he had to be satisfied on the facts.

Mr. Akhil Chandra Datta: In that case I have nothing more to say.

Dr. Sir Ziauddin Ahmad: Sir, there is one point which I would like to make clear, that in this particular case the claimant is the railway administration: it is not the ticket collector: and it is really a question of their convenience whom the railway administration appoints to claim on its behalf. I think it is very desirable in the interests of the administration themselves that they appoint somebody else to claim on their behalf for the recovery of this money, because the ticket collector will be a witness. Whenever the magistrate wishes to satisfy himself, then he might like to examine the ticket collector who will be the witness, and I think all Honourable Members here who are lawyers know that a claimant and witness should be two different persons. So I thought that it would be convenient for the Administration to say that the person claiming the money must be different from the person from whom money has to be recovered.

Mr. Muhammad Azhar Ali (Lucknow and Fyzabad Divisions: Muhammadan Rural): Sir, since the Honourable Member in charge has
 1 P.M. already agreed to yield on this point when the next amendment of Mr. Essak Sait comes up, I would suggest that this discussion might stand over till that amendment comes up. Otherwise, as it is, you do not make any distinction between an organized body as the Railway Administration is, and the public at large, because you say that any one from among the public can put in a complaint or give information to the police officer,—but there is no administration or organization there; there is only the public at large. Here the railway staff is concerned; and the complaint can be made either to the station master or the Superintendent of the Railway, and it will be for these people to inform the magistrate. It is well known to all of us that if an offence is committed, then the complaint is made to the highest authority. In this case you make both the claimant and the applicant the same person, and on the evidence of that single person the magistrate will have to give a decision. How is it possible for a complainant, if he is travelling to several stations, to accumulate all the evidence and collect witnesses in all separate cases? I submit, Sir, it will be very difficult for him to do all that. My submission is that this is a hard and fast rule and should not be enforced. Since you have an organization, where is the difficulty to make the complaint to the highest authority. Everybody knows that any man on the platform can come forward and claim to be an applicant. Of course, it will yield some revenue to the Railway Administration, because it is said here that the sum recovered will go to the coffers of the railways. My point is that the person should inform some responsible authority at some big railway station, otherwise the railway staff itself will be brought to very great difficulty. Therefore, I support this amendment.

Mr. M. S. Aney: Sir, if this section is read carefully, I feel it requires some explanation on the part of the Honourable the Communications Member so as to make it properly understood by many of us. The section reads thus, to which my friend, Pandit Lakshmi Kanta Maitra, has given an amendment. "Any railway servant appointed", and the amendment that is suggested is that the officer who is to be appointed should be of a particular rank and should not be below the rank of a station master and so on. It is clear from the wording of the clause itself that the railway authority have a certain class of servants in their mind

[Mr. M. S. Aney.]

whom they want to appoint for this purpose. When this clause was moved, at least when this amendment was moved, I think it was up to the Communications Member to get up and say what is the class of servants whom he wants to appoint. This is evidently indicated in the clause itself. Instead of making that position clear as to the status or position of the person who is going to be appointed, he only said that anybody in the world was entitled to put in a complaint. From that reply it is clear that their appointment might cover any class of railway servant, and not necessarily a responsible railway servant at all. The position is this. As a matter of fact, Honourable Members know that even in police cases they have a regular prosecuting Inspector of the rank of a Sub-Inspector appointed, who generally puts in complaints of a certain class of cases, and anybody or any police constable, even though he is entitled to arrest a person for cognisable offences, is not entitled to take the chalan in the court. There is some specially appointed officer duly authorised to do that work, and he is generally an officer not below the rank of a Sub-Inspector. So far as I know, even in the Railways, when cases are chalaned, there are certain responsible officers who file complaints. We want to know whether in dealing with this particular class of offences the Railways are going to entrust that work to some responsible officers or not, and if so, who is that class of responsible officer who is going to be entrusted with this prosecution? I think the reply given by the Honourable the Communications Member had given greater suspicion rather than satisfaction on this side of the House. It may not be that the precise amendment may be accepted, but if a satisfactory explanation is forthcoming, it will then be for us to consider whether the amendment should be pressed or not.

Maulvi Muhammad Abdul Ghani (Tirhut Division: Muhammadan): Sir, the amendment is only explanatory to the provision of the Bill. It does not seek anything more than what is the present practice. The present practice is that whenever a person is travelling without a ticket, if he is detected and does not pay his fare, he is handed over to the Station Master, or if anybody gives out his name, he is reported to the Station Master who submits reports. The amendment here also makes the same demand. Nothing more. As regards the analogy of a private person making a complaint to a magistrate, I say that if a person making a complaint to a magistrate is found to be making it falsely he is liable to prosecution either under section 182 or 211 of the Indian Penal Code, but here the case is quite the reverse, because the person who gives the information does so under a certain law. He gets the benefit and protection of the law. With these words, I support the amendment.

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Sir, I wish to say a few words in connection with this matter, because a legal point is involved in this. We have not been told which will be the railway servant who will be appointed by the railway administration in this behalf to go to the magistrate and ask for his interference in the matter. Perhaps he may have to make a judicial enquiry. He shall have to take evidence and find out also whether the complaint that was made before him was true and that the persons who were dragged before him were rightly dragged or not. If he finds that the complaint is false, the question will

arise whether he can award compensation under section 250 of the Criminal Procedure Code, or give sanction for his prosecution under section 211 for making a false complaint.

Mr. Akhil Chandra Datta: What is the point of law involved?

Mr. Lalchand Navalrai: That is the point of law, he cannot do that. We know that in many cases, when complaints are made and information is sent to the court through a particular man who is only a tool in the hands of those people who send him or who is not responsible, no compensation under section 250 can be imposed and also the man cannot be prosecuted. If the ticket collector or the station master does not himself go but sends only a porter to lodge the complaint or give information to the magistrate, do you think that the magistrate will be justified, according to law, if he finds that the case is false or that the men have been dragged in for nothing and in a vexatious manner—should he impose a fine on such a person? He will not! Therefore, I submit that it is only just and reasonable that authority should be given to some responsible person who should, first of all, find out for himself whether the person whom he is taking is really liable to pay the penalty or not. You are making it a fine, you are making it more or less as an offence and then you are giving powers that any railway servant can go and file a complaint. The magistrate may find that there is no case for the complaint and there will be no remedy for the accused. Therefore, I submit that it will be better to accept the amendment to the extent that a ticket collector or the station master or some such person should be substituted.

Mr. J. H. F. Raper (Government of India: Nominated Official): Sir, I would like to point out that there is really no change in the wording under this Bill on this particular point. It has been in force in the Indian Railways Act since 1890 and I may just read it.

“... the sum payable by him shall, on application made to any Magistrate by any railway servant appointed by the railway administration in this behalf. . . .”

Those words are repeated here, and there is no intention to change the procedure that has been in force for many years. We know that in actual practice the ticket collector who may find a passenger without a ticket against whom he feels it necessary to take action under section 113 will report the case to the station master and receive instructions from him. Very little power is actually vested in ticket collectors. Some railways have rules that do not permit ticket collectors even to collect excess fares from passengers, they have to refer them either to a booking clerk or some higher authority.

An Honourable Member: Speak up, please.

Mr. J. H. F. Raper: Then, mention was made that it was not fair that the complainant should be a witness. That is a perfectly normal procedure. The complainant may be the chief witness. No single instance has been mentioned by Honourable Members of any abuse or difficulty under the present procedure.

Pandit Lakshmi Kanta Maitra: Does the Honourable Member say that he does not appear before the magistrate as a complainant according to his view?

Mr. J. H. F. Raper: He would be the complainant, he would be entitled to appear, and in fact, he must appear if the magistrate desires him to do so.

Pandit Lakshmi Kanta Maitra: It is obligatory on him to appear before the Court if he makes the complaint.

Mr. J. H. F. Raper: There is no change on this point whatsoever in the Bill now before the House and there is no necessity for this amendment in consequence.

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

"That in sub-clause (b) of clause 4 of the Bill, after the words 'railway servant' the words 'who is not a ticket collector or a ticket inspector and who is not below the rank of a station master', be inserted."

The motion was negatived.

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

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

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

"That in sub-clause (b) of clause 4 of the Bill, for the words 'any Magistrate' the words 'any Magistrate of the first class' be substituted."

By a previous amendment I sought to restrict the power of making complaint to the magistrate to a certain class of railway officials only. I wanted to prescribe the particular status of the class of railway servants who would be entitled to approach a magistrate for recovery of dues from a person found travelling without ticket. By this amendment I seek to prescribe also the status of the magistrate who is going to act under this section. Sir, in connection with the general discussion on the clauses several Honourable Members pointed out to the House that such a power should not be vested in any and every magistrate. We have for instance the broad classification of honorary and stipendiary magistrates and speaking for myself I generally do not have a very high opinion of that institution of honorary magistrates in this land. I do not say that there may not be decent and really honest and capable officers in that category but their number is few and far between. We have to consider in connection with this fact that magistrates may be in receipt of certain favour or concessions at the hands of railways on behalf of which they are asked to act. We have heard that these railway magistrates are given free passes which is nothing but a form of tip and gloss it how you will, you cannot get out of the ugly fact that it is a form of bribery which is not allowed to stipendiary magistrates either by law or by convention. When a prospect of free travel in railway systems is dangling before their eyes, knowing human nature as I do, it will be extremely difficult for these magistrates to take an unbiassed view of the cases that may be placed before them. I have, therefore, thought that while it is not possible to completely eliminate the chances of corruption in that respect we may be going perhaps one step forward in reducing the vice to some extent if we seek to confer such power on the magistrates of the highest class who may be presumed to be above these petty temptations.

Mr. Lalchand Navalrai: Even though honorary?

Pandit Lakshmi Kanta Maitra: I quite see that point as well but circumstanced as we are we have to put up with that evil. As I have told you just now I am no admirer of that institution. Whether he is a magistrate of the first class or of the second class does not matter to me. Though they are called honorary, they do not in fact remain honorary, for they receive payments in kind, very often in lieu of monthly salary or stipend. So, I move that this power should be given only to the first class magistrates. I know that it may be argued that we are going a step in advance of the existing provisions contained in the Railways Act of 1890. Section 133 prescribes the classes of magistrates that will have jurisdiction under the Railways Act of 1890. There it has been provided that no magistrate other than a Presidency Magistrate or a magistrate whose powers are not less than those of a Magistrate of the Second Class shall try any offence under this Act. I am one of those who do not believe that whatever is contained in the Railways Act of 1890 is sacrosanct or that it should not be interfered with by the legislators even when an amending Bill is brought in. But having got this new provision which is rather identical with the existing one relating to the question of the jurisdiction of magistrates, I think this question of their status must be clearly settled. It will be clear to every Honourable Member that the Presidency Magistrate generally holds very high rank and his powers are far more than that of ordinary magistrates but from this there is an abrupt jump downwards to the magistrate of the second class. Under the provisions of section 133, any Presidency Magistrate of whatever class will be entitled to try such cases. But now that the law is going to be made more stringent, I propose that such power shall only be conferred on first class magistrates and not on magistrates of any other class. I want to secure this safeguard to the public by my amendment. I am sorry that the other amendment which I proposed about the status of the complainant has been defeated. Having failed in that, I am moving this amendment to raise the status of the rank of magistrates who will be vested with these powers. Sir, I move.

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

"That in sub-clause (b) of clause 4 of the Bill, for the words 'any Magistrate' the words 'any Magistrate of the first class' be substituted."

The Honourable Sir Andrew Olow: Sir, the mover of this amendment has just referred to section 133 of the Railways Act, which provides that "no Magistrate other than a Presidency Magistrate or a magistrate whose powers are not less than those of a magistrate of the second class shall try any offence under this Act." Here we are dealing with something which is technically not an offence, and I fail to find anything in the arguments of the Honourable Member to convince me why in this case we should demand a higher standard of magistrate than is provided under section 133.

Pandit Lakshmi Kanta Maitra: That is all the more reason, because in a judicial trial we have got many safeguards?

Mr. Lalchand Navalrai: Because you are providing so much imprisonment?

The Honourable Sir Andrew Olow: We are not providing imprisonment under this section except in the case of default. Under section 112 the provisions of section 133 apply. Actually of course this reference to any magistrate has stood in the Act for fifty years without, so far as I know, any grave harm being occasioned thereby.

Pandit Lakshmi Kanta Maitra: Then why amend it, if it embodies the height of human wisdom?

The Honourable Sir Andrew Olow: I do not think it is the height of human wisdom; I also agree with Pandit Lakshmi Kanta Maitra, but we have to amend these Acts from time to time. In fact that is what we are trying to do so at the moment, but I do not see any reason for going higher than a magistrate of the second class. There is another amendment standing in the name of Mr. Essak Sait to that effect and that strikes me as a more reasonable proposition. I oppose this motion.

Dr. Sir Ziauddin Ahmad: Sir, there is one point I would like to know. In all the offences mentioned in this Act a person has got a right to be represented by a vakil or a pleader. I should like to know whether in this particular case whenever a matter comes up before a magistrate demanding that the fine should be paid, and supposing the man has some objections, can he there be represented by a pleader in this case? If he can be represented by a pleader as in other cases, then of course there can be no justification for any change in the requirements of the standard of magistrates, but if in these cases the client has not got any right to be represented by a pleader, then I think it is but just and right that we should demand a higher standard in magistrates.

An Honourable Member: Why should not a pleader be allowed?

Mr. Lalchand Navalrai: There is no prohibition.

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

"That in sub-clause (b) of clause 4 of the Bill, for the words 'any Magistrate' the words 'any Magistrate of the first class' be substituted."

The motion was negatived.

Mr. H. A. Sathar H. Essak Sait (West Coast and Nilgiris: Muham-madan): Sir, I move:

"That in sub-clause (b) of clause 4 of the Bill, for the words 'any Magistrate' the words 'any Magistrate of the first or second class' be substituted."

Sir, the meaning of my amendment is obvious. My friend Mr. Maitra has laboured the point sufficiently elaborately and I do not think I need make any speech about it. The idea is to keep out all magistrates below the rank of second class magistrate and to restrict this power only to magistrates holding first or second class power. Incidentally, I may say that my amendment is bringing this clause into line with section 133 with which my friend Pandit Maitra is so much in love. Even though, Sir, that has nothing to do with this.

Pandit Lakshmi Kanta Maitra: I was never in love with anything in my life.

Mr. H. A. Sathar H. Essak Sait: However, Sir, I move.

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

"That in sub-clause (b) of clause 4 of the Bill for the words 'any Magistrate' the words 'any Magistrate of the first or second class' be substituted."

The Honourable Sir Andrew Olow: Sir, I am prepared to accept this amendment.

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

"That in sub-clause (b) of clause 4 of the Bill for the words 'any Magistrate' the words 'any Magistrate of the first or second class' be substituted."

The motion was adopted.

Pandit Lakshmi Kanta Maitra: Sir, I move:

"That in sub-clause (b) of clause 4 of the Bill, the words 'as if it were a fine' be omitted."

Sir, this amendment is in line with the principle which I have laid down for myself in connection with this Bill.

An Honourable Member: What is that principle?

Pandit Lakshmi Kanta Maitra: Well, I am surprised that at this stage my friend asks, "what is the principle". The principle, broadly speaking, is this, that the Indian Railways are a system of monopolistic concern to which it is not proper to give any greater privileges than those enjoyed by other alternative systems of transport. We have already given it enough protection; we have given it enough latitude to carry on the administration in any way it likes. I believe that the granting of further privileges will be putting a further premium on its inefficiency. The very fact that it is desired or designed to place it on a level with a fine which may be imposed by a competent court of a magistrate gives it an entirely different colour. Those who are in the legal profession know very well that by the addition of these words, "shall be treated as a fine", enormous powers are sought to be transferred. For instance, if the fine is not paid, a distress warrant may be issued. The magistrate can realize the fine by a distress warrant. The House will have to consider that proposition. Failing recovery of the money by a process of distraint, there has already been a provision for sentencing him to imprisonment up to one month. I do not think that we should be justified in giving this drastic power. Sir, I move.

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

"That in sub-clause (b) of clause 4 of the Bill, the words 'as if it were a fine' be omitted."

Mr. Lalchand Navalrai: Sir, I want to support this amendment, as we find that what is now being attempted is to make the penalty to be construed as a fine. This clause has reference to section 113 of the Railways Act and not 112, where it is laid down that whoever enters any carriage in contravention of section 68 or travels fraudulently, then he would come under section 112. One can understand that where there is an element of fraud, you might consider it to be an offence. With regard to any punishment that is imposed, if the man has to pay any amount that would

[Mr. Lalchand Navalrai.]

be considered to be a fine, then the fine refers to no offence, but if through inadvertence or through a chance travelling he has to pay a penalty, that may at the most be said to be an infraction of a certain rule and that cannot be considered to be an offence. This clause has reference to section 113 in respect of which he incurs a penalty. He may pay up the penalty but the offence is still on him. It is quite a common thing that a man catches the train at the nick of time and he gets in. If he has to pay a penalty, you say that he has been convicted because he committed an offence. This will be only twisting the penalty into fine. It is said that the Railway Member wants to get the sanction of the Legislature to put the interpretation on the word 'penalty' and call it a fine. As I said, if it is a penalty, then it will be a misnomer to call it a fine and bring it in a clause and give power to the Magistrate to order him to pay that fine. If he does not pay the fine, then he should issue a warrant against his property and he can also send him to prison. Formerly, penalty was being recovered departmentally. Now, they want to give power to the court and they want to consider it as an offence and to get him punished with imprisonment in default of payment of fine. The reason that is given in support of this is, that the majority of High Courts have decided that penalty is fine. The Legislature can change that. Anything can be done but it should be reasonable, it should be judicial and it should be considered to be fair. Because the Railways consider that there is some difficulty to recover the penalty, they should not come to the House and ask us to treat it as an offence especially when it is decided that it is not an offence. There is a judicial pronouncement that it is not. Finding the House to be what it is, there being no support from the Opposition Benches to our side, their Benches are all vacant and they are yawning at us, they have thought it fit to ask for these powers. This is a legal question. It is a question of a very important nature. In future, whatever may be the nature of the case, they may say that it may be recovered as a penalty. They will say they have got the sanction of the Legislature that penalty means a fine. I submit there is no justification for this kind of legislation. On the contrary, it will be *ultra vires* of this Legislature to do it. Even if a question like this goes to the Federal Court, they will not allow a penalty to be considered a fine. Besides, those High Courts which decided that penalty is not a fine, never recommended that the Legislature should be moved for the purpose of giving that meaning to it. I am sorry the Law Member is not in the House. We would like to have his opinion on this question. We would like to have his lead on this matter; otherwise an illegal thing may be made legal by the sanction of the Legislature. I, therefore, strongly oppose the clause and support the amendment.

The Honourable Sir Andrew Olow: Sir, this amendment has apparently been moved under a misapprehension and I am quite certain it has been supported by Mr. Lalchand Navalrai under a misapprehension. We have heard Mr. Maitra saying how we are trying to pile on privileges on the railways and invest them with new powers and we have heard a long disquisition from Mr. Lalchand Navalrai on the subject of our wickedness in finding the House rather thin and endeavouring to introduce this terrible thing that would make this sum recoverable as a fine. Well, I speak on questions of law with diffidence, but this is not a question on which it

is at all necessary to invoke the assistance of my Honourable colleague, the Leader of the House. If Mr. Lalchand Navalrai had taken the trouble of reading the existing Act, he would have found that these words are there. They have only been brought in here because the Draftsman found it a very convenient way of doing it. We are not making any change in the law in this respect. The penalty at present is recoverable as a fine.

Dr. Sir Ziauddin Ahmad: Under what section?

The Honourable Sir Andrew Clow: Under the concluding words of sub-section (4) of section 113 of the existing Act. All that has happened is that we want to make it clear that imprisonment should be awarded in default and that is the new portion, in effect, of this clause. As I said, the Draftsman found it more convenient to recast the clause and has included these words "as a fine" which were in the old Act.

Apart from this, I do not think Mr. Maitra's amendment would leave any sense in the clause at all. It would then read that one may apply to the Magistrate for the recovery of the sum payable and the Magistrate shall order it to be so recovered. I do not know what the word 'so' means and how it is to be recovered. Most Magistrates would feel that as the law had given them no indication of recovery but had given them power to impose imprisonment in default, therefore they ought to impose imprisonment in every case. Sir, I oppose the amendment.

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

"That in sub-clause (b) of clause 4 of the Bill, the words 'as if it were a fine' be omitted."

The motion was negatived.

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

"That in sub-clause (b) of clause 4 of the Bill, for the words 'Magistrate shall order' the following be substituted :

'Magistrate after being satisfied on evidence to be recorded in writing shall order'."

This I consider to be a very vital point in the Bill. Yesterday, in connection with the general discussion, I devoted a considerable portion of my speech to this portion of the Bill. As it stands now, it means that any railway servant appointed by the railway administration in this behalf may apply to any Magistrate for the recovery of the sum payable as if it were a fine, and the Magistrate shall order it to be so recovered. In other words, the Magistrate no longer remains a Magistrate. He is degraded to the position of a railway fines collector on behalf of the Railway Administration. In connection with this, I drew the attention of the House to several reported judicial decisions of the High Courts in India where it has been clearly laid down that it is perfectly open to the Magistrate to go into the question of the liability of the person so charged as also to go into the question of the quantum of the charge made. Not only that, Sir. The trend of the judicial decisions so far has virtually conferred the right on a person so charged to have those questions opened up and if possible to give a rebuttal to the charge that may be brought against him. The argument of the other side would be, well this is a verbal transcript from the provisions of the Railways Act as they are at present and the Draftsman has simplified matters by putting all these together. I want the House to remember that

[Pandit Lakshmi Kanta Maitra.]

the Railways Act was passed in 1890 and it took thirty long years for judicial courts in India to clarify the meaning of that section. When going through the setting of that section the High Courts came to that conclusion. But here, the situation is different. Here we are ostensibly legislating for the purpose of rigorously checking a ticketless travelling. This Bill has got a set object in view. If this amending Bill, we confer certain powers on the Railway Administration and the Magistrate in clear and specific terms, it is up to us to see that the judicial interpretation as has been given by the different High Courts be also crystallised and tagged on to this provision. In other words, it should not be left to the region of speculation whether the duty cast on the Magistrates by the judicial decisions was or was not taken away by the express provisions of this Bill where there is not the faintest indication of any investigation by the Magistrate. Nor is there any suggestion here that the accused will be entitled to lead evidence and rebut the charges that may be brought against him. My amendment is only to clear that point, to clarify it beyond any shadow of doubt. I want that when such a case is brought up before a Magistrate, the Magistrate has to go through a certain procedure satisfying himself that the charge has been actually due. In other words the Magistrate has to satisfy himself as to the liability of the accused to pay it as also the amount of charge that is claimed against him. I want these two points to be made clear. Mere 'Magistrate being satisfied' will not serve my purpose. As I have said, Sir, the Magistrate may be satisfied without going through any judicial procedure. The Magistrate may satisfy the qualms of his conscience by simply enquiring of another officer the credentials of the man who applies to him for proceeding against the accused. I am not going to countenance that. It has also been argued that the man may plead guilty, when no evidence will be tendered.

Let us not confuse a warrant case with a summons case. In a summons case, of course, if the accused admits his guilt, that will be enough. It is only in warrant cases that some form of evidence has to be gone into and that evidence is very simple. The man complaining may say that the person charged did not pay the railway on demand the proper fare and that he was sending him up to the Magistrate for realising that. That itself would be evidence. All I want by this amendment is to lay down the procedure which the Magistrate will be bound to follow when such cases are brought before him. Unless that is done, Sir, I do not think that we shall be doing our duty. It is a corresponding obligation on our part. While we are giving certain very drastic powers to railway authorities there should be corresponding obligation to see that the formalities of law are complied with so as to prevent any likely miscarriage of justice. It is only from this point of view that I am moving this amendment. I know that my Honourable friend, the Railway Member, will say, "Well, I have got another amendment to meet your point". But I do not understand why he should hesitate to accept the legal phraseology which fully clarifies the position and which clearly sets all doubt at rest. Sir, I move.

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

"That in sub-clause (b) of clause 4 of the Bill, for the words 'Magistrate shall order' the following be substituted :

'Magistrate after being satisfied on evidence to be recorded in writing shall order'."

The Honourable Sir Andrew Olow: Sir, I do not altogether share the apprehensions of my Honourable friend. I should have thought myself that the word 'payable' was adequate to make it clear that the Magistrate must be satisfied that the sum is payable. But I recognise that in a matter of this kind there is no harm in being entirely sure on the point and in avoiding any of the doubts and fears which you, Sir, expressed this morning. I am, therefore, in sympathy with the object underlying my Honourable friend's amendment, but quite frankly I prefer the wording of another amendment which has been tabled, that is No. 9 in the Supplementary List No. 1, both because that has been prepared in consultation with the Draftsman and because I am not at all clear as to what the effect of this particular amendment will be. There are a great many of these cases which go uncontested. They are tried in a summary way which might involve merely the recording of a short memorandum, not evidence in writing and I apprehend that the effect of this amendment might be to insist in all cases on the sort of transcription that is required in trials other than a summary trial. This is not even a trial of an offence, and, therefore, a summary procedure is suitable. While, therefore, I am quite prepared to accept the later amendment, if it is moved, I am not prepared to accept this one.

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

"That in sub-clause (b) of clause 4 of the Bill, for the words 'Magistrate shall order' the following be substituted :

'Magistrate after being satisfied on evidence to be recorded in writing shall order'."

The motion was negatived.

Pandit Lakshmi Kanta Maitra: Sir, I move :

"That in sub-clause (b) of clause 4 of the Bill, for the words 'the Magistrate shall' the words 'the Magistrate may' be substituted."

This is merely a change from 'shall' to 'may'. I think we should at least give the magistrate a discretion as to whether he should proceed in the matter or not. Sir, I move.

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

"That in sub-clause (b) of clause 4 of the Bill, for the words 'the Magistrate shall' the words 'the Magistrate may' be substituted."

The Honourable Sir Andrew Olow: Sir, I can see no point in this amendment whatever and no reason has been given for it. If the magistrate is satisfied that the sum is payable is there any reason why he should not recover it?

Pandit Lakshmi Kanta Maitra: But that amendment is not before the House or in the wording of the present Bill.

The Honourable Sir Andrew Olow: The Honourable Member might have trusted Mr. Essak Sait to move his amendment.

Pandit Lakshmi Kanta Maitra: It is not a question of trusting any one.

The Honourable Sir Andrew Olow: Sir, I oppose this amendment.

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

"That in sub-clause (b) of clause 4 of the Bill, for the words 'the Magistrate shall' the words 'the Magistrate may' be substituted."

The motion was negatived.

Mr. H. A. Sathar H. Essak Salt: Sir, before I move my amendment, I should like to know from my Honourable friend if he will accept amendments 9 and 10 together.

The Honourable Sir Andrew Olow: The difficulty is that it may be an uncontested case, and the acceptance of No. 10 might impose further investigations. I am quite prepared to accept No. 9.

Mr. M. S. Aney: If that is the only objection of the Honourable Member even in an uncontested case it may be that the accused will plead guilty. In summons cases the procedure is that the trial begins with the recording of the plea. If the accused pleads guilty recording that plea itself becomes a part of the investigation and that is final.

The Honourable Sir Andrew Olow: Sir, there is no amendment before the House yet.

Mr. M. S. Aney: In his reply the Honourable Member referred to that.

Mr. H. A. Sathar H. Essak Salt: Sir, I move:

"That in sub-clause (b) of clause 4 of the Bill, after the word 'Magistrate', where it occurs for the second time, the following words be inserted:

'if satisfied that the sum is payable'."

An amount of difficulty has arisen because of the words in the clause which say that the recovery will be made "as if it were a fine". The general impression that has gained ground is that it will be only necessary for any railway servant to put in a memorandum before a magistrate and say that so much is due from such and such a person and the magistrate at once proceeds to recover it as if it were a fine. There is no evidence and no need for the magistrate to call for evidence or call for proof, and so on, and this bill which is put in by the railway official is enough to prove the truth of the allegation. It is to provide against that that my Honourable friend Mr. Maitra has been trying his best to improve this clause in the Bill and my amendment also tries to do the same. The words to be inserted are, "if satisfied that the sum is payable". By what methods is he to be satisfied? I suggest to my Honourable friend to accept the next amendment also along with this so that it will read, "after proper investigation if satisfied that the sum is payable". In that case of course the provision will be for a proper investigation first and then if the magistrate is satisfied he will issue orders for the recovery of the amount. This is what we are trying to get at. I do not know why my Honourable friend does not agree to accept No. 10 along with No. 9. But in any case if the magistrate is to be satisfied some sort of investigation has to be held. I do not know what my Honourable friend means or understands by the word "satisfied". What I understand by the word that I have used is this that there will be a proper investigation before the magistrate is satisfied. If the magistrate simply sits in his chair and says that he is satisfied with the memorandum which has been put before him, that is not the

idea underlying my amendment. What I meant was that the magistrate should be satisfied only after proper investigation and not simply say that he is satisfied. Sir, I move.

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

"That in sub-clause (b) of clause 4 of the Bill, after the word 'Magistrate', where it occurs for the second time, the following words be inserted:

'if satisfied that the sum is payable'."

Mr. M. S. Aney: Sir, I think this is an amendment which really requires to be amplified by some more words. The word "satisfied" is used in the Criminal Procedure Code. If sections 107, 108, 145, 147 etc. of the Criminal Procedure Code are read it will be found that mere laying of the information before a magistrate by a certain officer authorised in that behalf and taking a statement in verification of that information from that officer is enough for the magistrate to be satisfied for issuing a certain process against the person or issuing certain orders under those sections. For being satisfied he is not required to record any evidence in support of the information laid except a statement made by the officer who lays that information before the court and wants to set the judicial machinery in motion for taking out a particular process or a particular action. If that is the procedure contemplated by my Honourable friend I think it is open to objection because what is to be done here is not to prevent a man from doing anything. Here, the magistrate is called upon to find out if a certain sum is payable. And if he is to hold it as payable it is necessary to prove that the man has travelled without a ticket for a certain distance. It may be that the evidence of one man may be sufficient and, as everybody knows, it does not make it incumbent upon the magistrate to have a certain number of witnesses in proof of anything. But if the man stands in the witness box and offers himself for cross-examination by the accused, it is part of investigation. But when a mere statement is made in verification of the thing and the other party concerned has no opportunity to cross-examine him, that is not the kind of investigation which is contemplated at all. So if the accused is to be taken to the magistrate it is not for the sake of asking the magistrate to issue a warrant of distress for recovering the money; that is more or less work to be done by the process servers and other people in the court. The magistrate is approached in order that an opportunity may be given to the man to prove that the allegation made against him by the particular officer who has brought the complaint is true or false; and if that is the object I think there can be no reasonable objection on the part of the Honourable Member to the insertion of the words "on proper investigation made" or "on investigation made" if the word "proper" is too big. Otherwise the laying of information and being satisfied with the information itself is provided for in the Criminal Procedure Code in many places. And the magistrate cannot be satisfied with a mere statement of the man in verification without there being an opportunity given to the other person to cross-examine the informant. If they want to do anything like that, taking the matter to a magistrate has absolutely nothing judicial about it. I do not think that that should be our object in enacting a provision of this kind. In order to inspire confidence in the person proceeded against, an investigation of some kind is necessary; and I believe the Honourable the Communications Member will not be in favour of leaving deliberately a section in a chaotic condition, to be interpreted by the

[Mr. M. S. Aney.]

magistrates in any way they like: instead of being a useful provision it may give rise to a good deal of confusion and even harassment. I think the amendment moved is incomplete though I support it; I am sure the Honourable Member will see that in order to make its meaning clear and to give an intelligent lead to the magistrates who have to administer this law, some better provision is made by inserting some such words as these. I support the amendment.

Mr. Govind V. Deshmukh: Sir, this is a funny part of this clause. A railway servant goes before a magistrate and puts in a memo; and it would appear from the present wording of the clause that this memo. has the effect of some sort of decree and cannot be challenged. This is what they want. I submit it is very unfair to the person against whom this claim is to be made. He should have a chance of disputing the claim put before the magistrate. What they are doing is to debar him from proving that he is not liable, on this memo. which has the effect of a decree, to pay the amount mentioned. We have seen and we have had here stories narrated that it is very difficult, many a time, to calculate the excess fares: so when we find that there have been such instances quoted in this House today and which are likely frequently to arise under these different sections, why should a man be denied the opportunity to prove his real claim? I cannot understand this also, that he should be denied a chance of leading evidence because if the word 'satisfied' has any meaning, a person can only be satisfied, not by intuition, but by evidence. The difficulty put forward is that if he has to record evidence and do this and that, time will be taken and something else may happen. What do we find in certain civil cases? It is not necessary that the whole of the evidence should be recorded, as in cases which are tried in small cause courts. The evidence is not recorded *verbatim* in those cases—merely the gist of it. We do not claim that any claim put forward before a magistrate should be tried like a regular suit. We merely say the man should not be denied the opportunity to prove his own case—that is all we want. If this amendment is accepted, it will be only fair to him that the magistrate should be satisfied on proper investigation. The argument is always advanced that this is what we have copied from the old Act. But the old Act was never enacted before a representative assembly like this. That argument can never prevail with us. Another argument is again the same—that this is or is not in the old Act: in other words, that it is an immutable act and whatever is found there ought to be found here and we cannot propose any change. It cannot be sacrosanct. We are here to make laws and to change laws. You yourself have brought it here in the new form and you are asking us to put our seal on the wording as it is today. You cannot ask us to put our seal on the old Act which was passed by somebody—I do not know whether there was any legislature then.

These are my arguments and I submit that both these amendments seem to me to be very reasonable. We do not seek to lay down any new procedure. "Satisfied"—with regard to evidence—does not mean that there should be a *verbatim* record. I submit under the circumstances that these are reasonable amendments and should be adopted.

Mr. Muhammad Azhar Ali: Sir, this section in fact makes the reporter a full-fledged court in himself. Is that the object of this section that he

should be invested with the powers of a court? I do not know whether the magistrate will be a civil court or a criminal court.....

Mr. M. S. Aney: He will be an execution court!

Mr. Muhammad Azhar Ali: I agree. His decree will be final. There is no evidence to be given, there is nothing that the accused will have power to say. The magistrate will simply receive the fiat from the railway officials saying that so much is to be realised from so and so, and it is final. He cannot lead any evidence and if anybody says it is proposed to give evidence to prove his innocence or prove anything which may contradict the complainant, he will be out of court. I have heard nothing like this in any legislature or elsewhere. Even if these are to be summary proceedings, we know that such proceedings are held and something is jotted down by way of notes by the magistrate or the civil court, in small cause courts or in criminal courts. But this is a very novel procedure, which I think no man with any sense can allow to be made into law. There is a memo. put in that so and so is liable for so much and the order is final. A paper has merely to be laid before the magistrate for the conviction of a person and he will be convicted. That is something very serious for the man concerned. The other thing is that he will be fined or whatever the magistrate decides. Without any evidence and without any trial, if this legislature is asked to sanction such a procedure I think we will be doing a very great injustice to Indians, and you will be making the Railway Department an eye-sore in the eyes of Indians by giving such drastic powers to their servants who may place any paper before the magistrate and that will be final. Sir, I support the amendment.

Mr. Lalchand Navarai: Sir, it is apparent that we are solely at the mercy of the Honourable the Railway Member. He is credited with being very reasonable in doing things, and I hope now he will be so reasonable because as I understood what he said a short while ago, this investigation or inquiry by the magistrate will be covered by the word "payable" to be decided by him. If that is so, then the words at present are "if the magistrate is satisfied that the sum is payable." How is he going to be satisfied? I believe the Honourable Member will himself say, —and I think if I remember aright, he said he would have to satisfy himself by some kind of material before him. Now, the only fear is that there are magistrates and magistrates, and some magistrates might say that they are satisfied with what a particular gentleman has said before them or with the materials placed before them, and on that some of the magistrates might decide that the amount is payable and then apply the stringent provisions of the powers under this clause. Therefore, I would be quite satisfied even if the Honourable the Railway Member were to give his interpretation of the word 'payable' in clear language. If he were to give his interpretation in a clear and unambiguous language in replying to the debate, there will be at least something on record, but I am afraid that the proceedings of our Legislature are not taken any notice of by the magistrates when they are cited in courts; the magistrates never care to look at the words; they merely look at the actual wording of the enactment itself. Of course, there are reasonable magistrates also who go through the proceedings to see what help they can get from these proceedings in order to find out what was the meaning intended by the Legislature.

An Honourable Member: High Courts discourage it.

Mr. Lalchand Navalrai: I know the High Courts do not encourage it, but there are some Magistrates and Judges who without telling the public quietly go through the proceedings of the Legislature and go through them and then apply their commonsense and judicial mind before deciding cases. Therefore, what I am saying is if the Honourable Member in charge has really in his mind that investigation should be made or that some kind of evidence should be taken, then I do not think he should be deterred from expressing his opinion plainly and frankly in his reply. Unless my friend, the Railway Member, has something up his sleeves—we do not know what he has in his mind with regard to the interpretation of the word 'payable',—the inquiry will be made by a Magistrate and he will not be barred from making an inquiry, we cannot be satisfied. If that is his intention, it means that he agrees with the amendment that comes later. Then if that amendment is accepted, it will put the meaning very plainly and clearly. I do hope that the Honourable Member in charge will make the point clear and put the meaning beyond any shadow of doubt. Sir, I support this amendment.

Dr. Sir Ziauddin Ahmad: Sir, I am not a lawyer myself, and I wish some of the lawyer Members sitting on the back Benches on the opposite side would help me on what I am going to say. Unfortunately, these gentlemen have got ears, they have got good brains, but they have no tongue. We have already swallowed one pill, and I understood,—subject to correction by someone on the opposite side,—that whenever any amount is due either by way of income-tax or canal dues, then it is provided explicitly that it will be collected as if it is an arrear of land revenue. That is clearly provided, and in this case, we have swallowed the pill that it is not to be collected as arrears of land revenue, but it will be collected as fine. I think it was rather a big pill to swallow. But the argument on the other side was that we swallowed it in 1890,—fifty years ago, because it was in the original Bill, and since then there has not been any great abuse of the powers, and therefore everybody tried to keep quiet. Then the second point is this. Whenever any case of non-payment occurs, then the other party should also have a right to say whether the demand is or is not just, and if he is a respectable man, he should be represented by a pleader. This provision ought to be there so that the other party should have the right to contest whether the amount is payable or not, and that party should have the right to be represented by a pleader. If these words are included in the amendment now before us, then the other party can argue about the correctness of the amount and that he can be represented by a pleader. If that is not the case, then it is very unfair to demand payment in this way. I shall give the House one instance. A man had a return ticket from Lyallpur to Calcutta. According to the rule, he ought to have travelled *via* Ambala, Saharanpur, Lucknow and so on. Instead of going *via* Saharanpur and Lucknow, he travelled *via* Delhi and Cawnpore. He was questioned at the Cawnpore station, and they asked him to pay the second class fare together with all the penalties from Ambala right up to Cawnpore, because that is the place at which he changed. The man argued and said: 'Suppose I am travelling without ticket, you would only charge me from the last checking station, that is from Tundla and not from Ambala'. He argued this way, and I do not want to say what subsequently happened. Suppose a similar case arises, and a ticket collector charges a passenger fare from Ambala to Cawnpore, while really speaking he ought to charge him

from the last checking station, that is from Tundla,—supposing such a case arises, then I should like to know whether, according to the words of the amendment, it will include the right of the passenger to lay the facts before a Magistrate and point out that the sum demanded is not correct. According to the railway rules, they ought to make a charge only from the last checking station, and the charge made from Ambala is not correct,—and I want to know whether my right of pleading before a Magistrate is or is not there. Even if some of my lawyer friends say that the words 'sum payable' include that right of pleading before a Magistrate and that I could be represented by a lawyer, I shall be satisfied. But if that right is not there, some greater clarification is very necessary. This is really a point for the lawyer friends on the opposite side to satisfy us.

The Honourable Sir Andrew Olow: I do not recollect having had such a long debate on an amendment on which we all seem to agree. The discussion has taken place mainly on an amendment which has not been moved and which cannot be moved for want of notice. I have been asked to give an interpretation of the words "if satisfied that the sum is payable". There is a terrible threat that some magistrate, not realising my lack of qualifications to speak on the subject, may look up what I said later and be guided thereby. I feel sure that if he did look up and put in his judgment that I suggested it to mean what it does mean, he will get a rap on the knuckles from some superior court.

Subject to that, I do not mind saying that this is an additional safeguard which in my view is quite adequate. You have got to remember that a good many of these cases are entirely uncontested. In some cases the man does not even bother to appear. The officer making the complaint puts in his complaint, he declares before the magistrate that this and that sum is payable. If the magistrate so requires, that statement is recorded on oath. But if, as seems to be the case in the minds of most Honourable Members, the case is contested and the man charged appears before him and says, "I never travelled by that train. I never travelled that distance. This sum is not payable"; obviously, there is no magistrate who would not allow him to cross examine, would not allow him to bring in evidence and would not make an enquiry into the matter. The words "after proper investigation" frighten me. Mr. Aney has referred to some technical meaning of "satisfied". What is the technical meaning of "investigation" I do not know, and "proper" is a word which I am quite unable to define. I feel that this amendment really meets the point which is behind the fears and apprehensions, "real or imaginary" to quote a distinguished man, of Honourable Members in this House, and I also support the amendment.

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

"That in sub-clause (b) of clause 4 of the Bill, after the word 'Magistrate', where it occurs for the second time, the following words be inserted:

"if satisfied that the sum is payable'."

The motion was adopted.

Mr. Deputy President (Mr. Akhil Chandra Datta): Amendment No. 10 on the Supplementary List.

The Honourable Sir Andrew Olow: I must object to this amendment being moved. There has not been sufficient notice.

Mr. M. S. Aney: But it has been circulated to Members.

The Honourable Sir Andrew Clow: I have no objection to a motion on the amendment. I feel that it was fully debated and there is nothing to be gained by waiving notice.

Mr. Deputy President (Mr. Akhil Chandra Datta): The Honourable Member can move No. 10.

Mr. Amarendra Nath Chattopadhyaya: I beg to move:

"That in sub-clause (b) of clause 4 of the Bill, after the words 'Magistrate shall order' the words 'after proper investigation' be inserted".

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

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

"That in sub-clause (b) of clause 4 of the Bill, after the words 'Magistrate shall order' the words 'after proper investigation' be inserted".

The Assembly divided:

AYES—19.

Abdul Ghani, Maulvi Muhammad.
Aney, Mr. M. S.
Azhar Ali, Mr. Muhammad.
Banerjee, Dr. P. N.
Chattopadhyaya, Mr. Amarendra Nath.
Datta, Mr. Akhil Chandra.
Deshmukh, Mr. Govind V.
Essak Sait, Mr. H. A. Sathar H.
Fazl-i-Huq Piracha, Khan Bahadur Shaikh.

Ghiasuddin, Mr. M.
Lalchand Navalrai, Mr.
Maitra, Pandit Lakshmi Kanta.
Muhammad Ahmad Kazmi, Qasi.
Murtuza Sahib Bahadur, Maulvi Syed.
Nauman, Mr. Muhammad.
Parma Nand, Bhai.
Rafuddin Ahmad Siddiquee, Shaikh.
Zafar Ali Khan, Maulana.
Ziauddin Ahmad, Dr. Sir.

NOES—42.

Abdul Hamid, Khan Bahadur Sir.
Abdul Hamid, Khan Sahib Shaikh.
Ahmad Nawaz Khan, Major Nawab Sir.
Bewoor, Sir Gurunath.
Boyle, Mr. J. D.
Buss, Mr. L. C.
Caroe, Mr. O. K.
Chapman-Mortimer, Mr. T.
Chettiar, Dr. Rajah Sir S. R. M. Annamalai.
Clow, The Honourable Sir Andrew.
Daga, Seth Sunderlal.
Dalal, Dr. R. D.
Dalpat Singh, Sardar Bahadur Captain.
Dumasia, Mr. N. M.
Frampton, Mr. H. J.
Griffiths, Mr. P. J.
Gwilt, Mr. E. L. C.
Ikramullah, Mr. Muhammad.
Imam, Mr. Saiyid Haider.
Ismail Ali Khan, Kunwar Hajee.
James, Sir F. E.
Kamaluddin Ahmed, Shams-ul-Ulema.

Kushalpal Singh, Raja Bahadur.
Lawson, Mr. C. P.
Maxwell, The Honourable Sir Reginald.
Mazharul Islam, Maulvi.
Miller, Mr. C. C.
Muazzam Sahib Bahadur, Mr. Muhammad.
Mudaliar, The Honourable Diwan Bahadur Sir A. Ramaswami.
Mukharji, Mr. Basanta Kumar.
Pillay, Mr. T. S. S.
Rahman, Lieut.-Colonel M. A.
Raper, Mr. J. H. F.
Rau, Sir Raghavendra.
Scott, Mr. J. Ramsay.
Shahban, Khan Bahadur Mian Ghulam Kadir Muhammad.
Sivaraj, Rao Sahib N.
Spence, Sir George.
Staig, Mr. B. M.
Thomas, Mr. J. H.
Tyson, Mr. J. D.
Zafrullah Khan, The Honourable Sir Muhammad.

The motion was negatived.

Mr. Lalchand Navalrai: Sir, I move:

"That in sub-clause (b) of clause 4 of the Bill, all the words beginning with the words 'and may order' and ending with the words 'to one month' be omitted."

This is a clause which has been added and which has relation to section 113 of the Indian Railways Act. Now, by this clause a complaint is being made to the magistrate by any railway servant. There was an amendment that it should be declared which railway servant he will be, and he should be of some higher grade. "Some railway servant" will include any man in the service of the railway. That has not been accepted. Now, it is said that the magistrate shall recover the sum payable as if it were a fine and the magistrate shall order it to be recovered. So far, of course the clause has been passed but then I say that no further hard provision should be made. It is provided in this sub-clause that the magistrate may order that the person liable for the payment shall in default of payment, suffer imprisonment of either description for a term which may extend to one month. There are two points in this connection. It is said that the imprisonment will be for one month and also it is said that the imprisonment may be of either description. Under section 65 of the Indian Penal Code, the fine would be one-fourth of the maximum punishment prescribed for the offence. Here there is no fixed period of any imprisonment. Therefore you are going beyond in fixing one month. That is one point and the other point is, that if only fine is imposed, it is simple imprisonment that is given but here also it is going to be made that the imprisonment may be of either description as well as fine. Rigorous imprisonment cannot be given in default of payment of fine. Therefore, it is a legal mistake and if we are a party to it, we will be doing a thing which is *ultra vires*. I also say that the provision at present is simpler, in which the man is asked to pay penalty and the penalty is recovered. Now, if we are going to make it so stringent as that, I submit, and I hope that the House would agree with me, that in cases of these infractions of the rules, there should be no imprisonment at all. Therefore, we are against any imprisonment being awarded, for, what is only an infraction of a rule there should be no imprisonment even in default. Therefore, the fine may be recovered in an ordinary way by attachment.

An Honourable Member: Suppose he has no property.

Mr. Lalchand Navalrai: Then why are you proceeding in a matter like this. If you consider it from the point of view of beggars, it is quite a different thing. You may provide any punishment for him but if the man has travelled only by mistake, you make a rule jointly for all. Therefore we should be cautious. Let us first of all try it without any imprisonment.

An Honourable Member: Why?

Mr. Lalchand Navalrai: Even if it is a fine, or it is a larger fine, that may be also a deterrent? Why at once jump from one hundred
4 P.M. rupees fine in the case of fraud at once to one year? Is not that a big jump? Is there any principle in that? I, therefore, move this amendment.

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

"That in sub-clause (b) of clause 4 of the Bill, all the words beginning with the words 'and may order' and ending with the words 'to one month' be omitted."

The Honourable Sir Andrew Olow: Sir, I oppose this amendment,—not unnaturally I hope, because it is only the inclusion of this provision that is the sole object in having this clause at all.

An Honourable Member: The sole object is imprisonment?

The Honourable Sir Andrew Olow: The sole object of amending this particular sub-clause is to ensure that when a man does not pay, you can impose imprisonment in default. I was a little surprised to hear my Honourable friend say that, "Oh, you can do what you like with the beggars, but of course with the people who can pay, you must be very careful". That sounded like a complaint that we were trying to treat all alike and like appealing to me to have one law for the poor and another law for the rich. I am afraid that is a principle with which I cannot agree. But as regards the gentlemen for whom he is so solicitous, who are able to pay, obviously, if they are able to pay, there is no question of suffering imprisonment. They can pay up the amount due and get out of prison or of going there. He asks us to try and see what would be the effect of doing this. Well, we have tried and seen that for a great many years and that is exactly why we are proposing to add this provision.

Pandit Lakshmi Kanta Maitra: Mr. President, I am surprised to hear the argument advanced by the Honourable the Railway Member against this amendment. I think he completely missed the point when he sought to make out that this amendment was designed to have one set of laws for the poor and another for the rich

The Honourable Sir Andrew Olow: On a point of explanation, Sir, I did not say that the amendment was designed to that end; I said that Mr. Lalchand Navalrai's argument was designed to that end.

Pandit Lakshmi Kanta Maitra: Thank you very much. Sir, after the arguments of my Honourable friend, the Railway Member, I would like again to draw the attention of the House to what happened a few minutes ago. We had a full dress debate on the question of the procedure that, in our opinion, ought to be adopted in connection with this matter.

Sir F. E. James: Also a full-dress division.

Pandit Lakshmi Kanta Maitra:and as my Honourable friend points out, we had a full-dress division too. I think, after the results of the division, we should insist on having this portion of the clause deleted.

An Honourable Member: Why?

Pandit Lakshmi Kanta Maitra: The simple reason is that if the magistrate is not even going to hold any investigation, why are you going to arm him with the powers of sentencing men to imprisonment? If he had conceded the demand of an investigation, that is, if the accused could have an inquiry or an investigation or trial as a matter of right, he would have got an opportunity to establish his innocence, he could have rebutted the charge brought against him. Not conceding that right of an inquiry or of an investigation, why should he come forward to ask for

powers for his magistrates to send men straight to jail? Let us not forget that there is a section 112 which is also sought to be drastically modified. That section deals with the cases where people have the intent to cheat, to defraud the Government. There you have prescribed imprisonment. But this class of cases is entirely different. Here no question of intent to defraud or cheat comes in. Here the very fact of a man travelling without a ticket and not paying may be reported by any railway servant to any second-class magistrate and that charge shall be final and conclusive against the man. He has not to go behind it. This magistrate will satisfy the demands of his conscience, I do not know how, may be by revelation or by intuition. Those of us who do not believe in these methods but believe in the procedure laid down by the judicial courts in this country, believe in open trial or investigation, have been denied that right of trial or investigation. Now, there may be a person who may disagree with the railway servant about a certain amount and if, because of that disagreement he does not want to pay in spite of the direction of the magistrate, he may be sentenced to prison. May I ask if the Honourable Member thinks that because the Railways are earning a huge income this time the public tax-payers are going to foot the bill for putting all manner of people in jail? Is the jail going to be a hospitable or charitable organization? We taxpayers have got our duty and are we going to allow that at the whims and caprices of the executives, people are going to be sent to jail? Sir, that is a charge upon the public revenues. Moreover, there is another point. If it had been a fine imposed by a magistrate after coming to some judicial decision, then one could understand the prescription of a sentence of imprisonment in default of the payment of fine which he himself imposes. In this case the matter is entirely different. The magistrate here merely becomes a registering machine on behalf of the Railway Administration. I do not understand how the question of showing undue leniency comes in. There may be cases where there is absolutely no fraudulent intent whatsoever,—and what is the Railway going to gain? Supposing you fail to get your proper dues from him, are the Railways going to gain anything by putting these men in jail and calling upon the public exchequer to incur the expenses for nothing? In the case under section 112, it is a crime against society as there is an intent to cheat and it stands on an entirely different footing. One can understand the prescription of a sentence like that for that class of case but here it is entirely different. From that standpoint we cannot support a provision for imprisonment. My friend says, "Well, it is only with this purpose that we are getting this provision modified." Hitherto, my friends over there had been swearing by what was contained in the provisions of the Indian Railways Act of 1890. If you read that section 113 and sub-clause (4), you will find absolutely no provision for such things. So I think, Sir, that this is an extremely unreasonable demand made on behalf of the Railway Administrations and we cannot satisfy it. Sir, I support this amendment.

Dr. Sir Ziauddin Ahmad: Sir, we have a provision in the Indian Penal Code for the recovery of fines and I do not see why an additional provision should be inserted in this particular Bill for the recovery of this fine. There should be a common procedure for the recovery of the fines. I think the last speech of the Honourable Member has clearly shown that the cat is out of the bag. The object of the Bill is not to stop ticketless travelling. So far as ticketless travelling is concerned, we have our sympathies with him and we are quite prepared to support any

[Dr. Sir Ziauddin Ahmad.]

measure which will help him to achieve this object. But, as my friend, Mr. Maitra, said, the object of this Bill is imprisonment. My Honourable friend, Mr. Navalrai, also said that it is not a ticketless passengers Bill: it is really an imprisonment Bill. In this particular demand of the Honourable Member we very much regret that we do not see eye to eye with him and we do not sympathise with him. I can also say now that the objection raised by my Honourable friend the other day over my speech was not a correct one. Still, it is irrelevant for the simple reason that it is not a ticketless travellers Bill. It is really an imprisonment Bill and, therefore, I regret we cannot support it.

Mr. Muhammad Nauman: Sir, I do not want to make a long speech as the relevant point has already been explained by the previous speakers. I have just risen to implore the Honourable Member to look into this particular situation carefully. When a certain Bill is introduced in the House, it is certainly the duty of the Government to see that there is all possible unanimity on the part of all the parties enacting the proposed legislation. We conscientiously feel that by enacting this the Government knowingly or unknowingly is doing something which is against the approved consensus of opinion of the people of this country. The Government should realise why all clauses should be maintained against the will of the majority of the elected members of this House and that, we, as responsible representatives of the people, look upon this particular clause without this amendment as one which could only mean that the Bill is meant to imprison people and not to realise money from those whom the Railways accuse for defrauding their legitimate dues. We do not want that the railways should be deprived of their legitimate dues nor do we want that they should be put to unnecessary trouble for realising their dues, but certainly, we cannot be a party to a law which ignores all the procedure of enquiry which is being followed in this country for all the other crimes of similar nature. Therefore, I support my friend, Mr. Maitra, and I hope the Honourable the Railway Member would accept the amendment. He should realise that we on this side honestly feel that an amendment of this nature is absolutely necessary in the interests of the people of this country and also in the interests of the Government of the land. Either the Government should convince us that they are doing something which is in the interests of the country or they should accept our view and should not coerce us because of a particular circumstance of a weak Opposition consequent on Congress Party's absence.

Maulvi Muhammad Abdul Ghani: Sir, the purpose of the railway authority in having their sum realised or recovered is served by the former portion of the clause. The latter portion does not serve their purpose. It is only meant, according to my view, to harass the people and to give a weapon in the hands of undesirable persons so that they may be able to satisfy their grudge. The Railway Member wants to send people to jail for either description of imprisonments, simple or rigorous, but he forgets who will feed them there. Will the railway authority bear the expenses? Why should the public tax-payer be made to pay for the benefits of the railways concerned? There is no justification at all. It would have been fair on the part of the railway authority or the Honourable Member in charge at least to provide for the maintenance of those whom they wish to send to the jail. But the Honourable

Member has failed to do so. The tax-payer should not unnecessarily, illegitimately and unfairly be burdened with such an unnecessary expenditure. With these words, I support the amendment.

The Honourable Sir Andrew Olow: May I say a word of explanation before you put the motion? I did not say that our only object was to send persons to prison. What I said was that the inclusion of this, the substantive part of this clause, was necessary to make that possible, the point being that the High Courts had ruled that, although it was recoverable as a fine, one of the normal methods of recovering a fine, namely, that of imposing the imprisonment in the court, was not admissible under the section as it stands.

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

"That in sub-clause (b) of clause 4 of the Bill, all the words beginning with the words 'and may order' and ending with the words 'to one month' be omitted."

The Assembly divided:

AYES—19.

Abdul Ghani, Maulvi Muhammad.
Aney, Mr. M. S.
Azhar Ali, Mr. Muhammad.
Banerjee, Dr. P. N.
Chattopadhyaya, Mr. Amarendra Nath.
Datta, Mr. Akhil Chandra.
Deshmukh, Mr. Govind V.
Essak Sait, Mr. H. A. Sathar H.
Fazl-i-Haq Piracha, Khan Bahadur Shaikh.

Ghiasuddin, Mr. M.
Lalchand Navalrai, Mr.
Maitra, Pandit Lakshmi Kanta.
Muhammad Ahmad Kazmi, Qazi.
Murtuza Sahib Bahadur, Maulvi Syed.
Nauman, Mr. Muhammad.
Parma Nand, Bhai.
Rafuddin Ahmad Siddiquee, Shaikh.
Zafar Ali Khan, Maulana.
Ziauddin Ahmad, Dr. Sir.

NOES—40.

Abdul Hamid, Khan Bahadur Sir.
Abdul Hamid, Khan Sahib Shaikh.
Ahmad Nawaz Khan, Major Nawab Sir.
Bewoor, Sir Gurnath.
Boyle, Mr. J. D.
Buss, Mr. L. C.
Caroe, Mr. O. K.
Chapman-Mortimer, Mr. T.
Chettiar, Dr. Rajah Sir S. R. M. Annamalai.
Clow, The Honourable Sir Andrew.
Daga, Seth Sunderlal.
Dalal, Dr. R. D.
Dalpat Singh, Sardar Bahadur Captain.
Dumasia, Mr. N. M.
Frampton, Mr. H. J.
Griffiths, Mr. P. J.
Gwilt, Mr. E. L. C.
Ikramullah, Mr. Muhammad.
Imam, Mr. Saiyid Haider.
Ismail Ali Khan, Kunwar Hajee.

James, Sir F. E.
Kamaluddin Ahmed, Shams-ul-Ulema.
Kushalpal Singh, Raja Bahadur.
Lawson, Mr. C. P.
Maxwell, The Honourable Sir Reginald.
Mazharul Islam, Maulvi.
Miller, Mr. C. C.
Muazzam Sahib Bahadur, Mr. Muhammad.
Mudaliar, The Honourable Diwan Bahadur Sir A. Ramaswami.
Mukharji, Mr. Basanta Kumar.
Pillay, Mr. T. S. S.
Rahman, Lieut.-Colonel M. A.
Raper, Mr. J. H. F.
Rau, Sir Raghavendra.
Scott, Mr. J. Ramsay.
Sivaraaj, Rao Sahib N.
Spence, Sir George.
Staig, Mr. B. M.
Thomas, Mr. J. H.
Tyson, Mr. J. D.

The motion was negatived.

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

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

The motion was adopted.

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

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

"That clause 5 stand part of the Bill."

Mr. Amarendra Nath Chattopadhyaya: Sir, I beg to move:

"That in clause 5 of the Bill, in the proposed section 113-A, after the words 'may be removed' the words 'to a station suggested by the person to be removed' be inserted."

Sir, the object of the Bill is to realise proper fares with penalty, and my amendment also seeks to give effect to the same thing. A person who is found to be travelling without ticket is to be removed from the train. Then, with a view to pay proper fare, he might have some friends in some other place who may be able to help him to pay the fares. He may suggest some other station where he might get down and get his friends to pay the fare. Why should he be punished, if he is ready to pay the fare? He may not be able to pay the fare then and there, but if he is allowed some facility, he will pay it at some other station. That is the whole implication of my amendment. If it is the intention of the Honourable Member for Railways only to punish a man, it is quite different. But if he wants to get the proper fare with penalty, and if the passenger is willing to pay the fare by getting down from the train somewhere without being removed at the sweet will and pleasure of the servants of the railway, I do not think there will be any difficulty in realising the fares. Sir, I believe the Honourable Member for Railways will accept my amendment. Sir, I move.

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

"That in clause 5 of the Bill, in the proposed section 113-A, after the words 'may be removed' the words 'to a station suggested by the person to be removed' be inserted."

The Honourable Sir Andrew Olow: Sir, if I had not been a little somnolent, I ought to have objected to this on the ground of want of notice. Actually the amendment would reduce the section to an absurdity.

Sir F. E. James (Madras: European): Object to it on the ground of want of sense.

The Honourable Sir Andrew Olow: That is the ground I am taking now. Under this extraordinary provision, apparently a man who leaves Delhi, let us say for Muttra, and who wants to get a nice journey to Madras, if only he gets apprehended at the next station might suggest that he be taken to Madras, and the Railway will be obliged to remove him to Madras. Actually our right of removal which is embodied in this section does not involve, as other acts including the British Act do, the right of detention. The man is free when he is removed. This will mean that he will have to be removed in custody to some station selected by himself out of the very large number of stations we have in India. Sir, I oppose the amendment.

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

"That in clause 5 of the Bill, in the proposed section 113-A, after the words 'may be removed' the words 'to a station suggested by the person to be removed' be inserted."

The motion was negatived.

The Lalchand Navalrai: Sir, I move:

"That in clause 5 of the Bill, in the proposed section 113-A, for the word 'person', occurring in the 16th line, the words 'railway subordinate' be substituted."

This Bill when passed into law will, I think, be popularly called the Railway Imprisonment Act. The object throughout has been imprisonment wherever the Honourable Member would like to have it. Therefore we have to be very careful. We will make our suggestions and if they are not accepted that will not deter us from putting forward our views. I hope this amendment will be considered reasonable because I am not asking anything new but what this clause itself provides at one place. This clause 113A enables any railway servant authorised by the railway administration in this behalf to remove a particular man from a railway compartment. But to say that he can call to his assistance "any person" in removing that man would be to leave it very loose and undefined. It may mean a person who is objectionable to the man removed; he may be his enemy. To give such an extensive power would be open to objection. Specially, "any person" would include a police constable also and we have got experience of police constables and their high-handed methods. Therefore it is better that the words that I have suggested should be put in so that there may be no such difficulty or mischief. I hope this amendment will be considered reasonable and accepted.

Sir, I move.

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

"That in clause 5 of the Bill, in the proposed section 113-A, for the word 'person', occurring in the 16th line, the words 'railway subordinate' be substituted."

The Honourable Sir Andrew Clow: Sir, the main object of this amendment appears to be to exclude a railway servant from having the assistance of the police in these matters. Normally, when a man is asked to leave the compartment under this section, there can be no question of assistance. The man who is travelling without a ticket, if he is an honest man, will get out without any question of a railway servant having to use any force or having to seek assistance of any kind. But my Honourable friend is surely well aware that there is another class of ticketless traveller which is apt to be very truculent. In fact I think he will recollect a case in Sind in which an unfortunate railway servant who assisted a ticket collector lost his life dealing with a ticketless traveller. If there is an attempt at resistance I do not think there is anybody more suitable than the police to call to their aid and I do not see why a railway servant should be denied that assistance if it is necessary.

Mr. M. S. Aney: Is it the police that is contemplated here or anybody else?

The Honourable Sir Andrew Clow: The Honourable Member will find a somewhat analogous provision in section 182 of the Indian Railways Act where it refers to "any railway servant or police officer or any other person whom such servant or officer may call to his aid".

Mr. M. S. Aney: If you want the police that is one thing. But if the railway authority wants the assistance of some passengers in the train or some other people to help him to get this man out, and they refuse to render him this assistance, what is the liability of such people? You seem to create a criminal liability. What will be the position of those people who refuse to help you in removing that man?

Mr. J. H. F. Raper: I would explain, Sir, that there is no obligation imposed on the persons concerned. If they help their help will be welcomed, but there is no provision for any penalty for refusing to come to the assistance of a railway servant under this clause.

Maulana Zafar Ali Khan (East Central Punjab: Muhammadan): Sir, I have not spoken on this Bill yet. I will have my say very soon. But to this particular amendment I will lend my support. In this year of grace,—or, shall I say 'disgrace',—1941, battles for the freedom and liberty of mankind are being fought all over the world. The British Government is fighting Germany for obtaining liberty for the whole world. Here, in India, we have got a Legislative Assembly in which we are supposed to represent the views of the public. The Party on the other side may consist of very big men with fat salaries in their pockets of five or six thousand rupees a month. They may have the power of the Defence of India Act at their back and they are able to do anything. It is said of the British Parliament that she can do anything except turn a man, into a woman; but here in India they can do that also! From what I have seen yesterday and today it seems to me that their attitude is very unsportsmanlike. Here we are, poor people, 19 in number and there they are 40, and they are fighting with us. We are the elected representatives of the people and whom do they represent? They represent the British Government in all its might and glory. They represent the dreadnoughts, the aeroplanes, the anti-aircraft guns, swords, bayonets; we represent logic and reason. Where is reason and logic? We have seen it today. I may tell you, Sir, that it is no use carrying on this discussion. Rule by ordinance. You have got a Railway Department. Issue an Ordinance that any man who travels without a ticket shall be hanged and suspended by the neck till he dies. And why one year? Why not 14 years? Why not transportation for life? If imprisonment is to be your principle . . .

Mr. President (The Honourable Sir Abdur Rahim): There is no question of imprisonment so far as this amendment or clause is concerned.

Maulana Zafar Ali Khan: I support the amendment moved by Mr. Lalchand Navalrai. I was not castigating the Treasury Benches. I was only putting my own views in my own way.

Mr. President (The Honourable Sir Abdur Rahim): It must relate to the amendment before the House.

Maulana Zafar Ali Khan: The amendment before the House is that if a man who enters a railway compartment without a ticket and is detected by a railway servant, the railway servant shall have the power of asking him to get out of the compartment, and if he does not do so, the Railway

servant can ask any man to come to his help. Any man may be his enemy, as has been pointed out. Any man may be a constable; any man may be a sweeper

An Honourable Member: Or a woman!

Maulana Zafar Ali Khan: Any man may be any undesirable person. This is very unsatisfactory and, therefore, we should like the Honourable the Railway Member to be a little more sensible. Yesterday when I pointed out to him that the consensus of opinion in this country was against this Bill and asked him whether he had received a communication from the Madras Railway Users Association that this Bill was undesirable and should be thrown out, my question was treated with derision by the Honourable gentleman, although he knew that the gentleman sitting next to him, Sir Ramaswami Mudaliar, also came from Madras, and if the whole of Madras came under his derision and the whole lot of them were travelling without tickets, then Sir Ramaswami Mudaliar is one of them also! What did that communication say? It says that the number of travellers who travel without tickets in India in a year is '6 per cent. For fifty years you have been carrying on this administration and the heavens have not fallen down!

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member must confine himself to the amendment. He will have his opportunity, if he likes, of speaking on the third reading.

Maulana Zafar Ali Khan: I am coming to the amendment. I was just saying that the punishment is sufficiently deterrent already—one hundred rupees and then a year's rigorous imprisonment. They are not desired. The other amendments which you are carrying through in a desperate hurry are undesirable. Do what I want you to do, and not do what you can do, because we are the elected representatives of the people; and you know that perfectly well; and if you treat us in this cavalier fashion the whole world will say what it is saying

Dr. P. N. Banerjee: They do not care for the opinion of the world!

Maulana Zafar Ali Khan: If you do not care for the opinion of the world, the world does not care for you. I support the amendment.

Mr. H. A. Sathar H. Essak Sait: Sir, somehow, I feel very unhappy about this expression here "any person". It is too wide an expression, especially in view of what has been stated in the House, that this person may be an enemy of the person who has to be removed, or somebody who may not have any good feelings for this man: or it may be a woman, as somebody said. It is much too wide. But as my Honourable friend pointed out, almost the same expression has been used in section 192 of the Railways Act, though I find there is a slight distinction. It says there "any railway servant or police officer or any other person". I am not a lawyer, but I think there is a distinction. Here there is an obligation to try first a railway servant, then to apply to a police officer and then if he still fails he can ask for any other person. I believe that is the interpretation of that wording. However, I would like to appeal to my Honourable

[Mr. H. A. Sathar H. Essak Sait.]

friend to see whether he cannot consider this suggestion and restrict this power, because, this is the first time we are giving this power to railway officials and these are drastic powers where physical force may have to be used to eject people from compartments

The Honourable Sir Andrew Olow: Not normally.

Mr. H. A. Sathar H. Essak Sait: Not normally, I agree; but if a passenger, when detected without ticket, refuses to get out he may have to be ejected. But this is the first time we are taking this power of ejecting a man from a railway compartment and this may later on lead to very serious complications: perhaps riots may occur. Supposing a Brahmin or Pujari is there and a sweeper is asked to help to eject him there is going to be a big row. I appeal to my Honourable friend to see if he cannot restrict this expression and see that it is not open to objection. I, therefore, support this amendment.

Dr. Sir Ziauddin Ahmad: Sir, on the occasion of the general discussion, I raised this question and I thought that the Honourable gentleman would reply to me when replying to the debate on the consideration motion or at least in the debate on this particular clause: the point is this. I wanted him to visualise the case of a person who could not pay the railway fare when demanded and is ejected by undesirable authority and if so what will happen to such a person. Will he be allowed to walk away and do what he likes? Or will he be taken again in the train to a magistrate for trial? If he is allowed to walk away, I do not think you are getting very much farther and you will find it does not pay. If he is taken to a magistrate for trial or taken into police custody, then you will have to take him to a place where police stations exist either at a junction station or district headquarters. But if you take him to a side station, what will happen? Will he be allowed to walk away. Perhaps he will walk to the next station, and get in again. Will he be taken into custody and brought before a magistrate? If you do the latter, then he will necessarily have to be brought in the railway train to a place where there is a police station and a magistrate to try him and he must travel without a ticket to that place. When I put this thing forward in the Select Committee, I was told "No, he has travelled so much and we will not allow him to travel a bit further." I say very good. It really means you allow him to go away and make no attempt to bring him before a magistrate and recover the money. What is the idea in your minds? It appears to me that you have got absolutely no imagination. You do not realise what will happen. The section is silent about what will happen to such persons if they will not pay and we do not know what will happen. We do not know the intention of this particular section. I hope the Honourable Member will explain why this particular section has been created, and with what object? In what way he will gain. I would like the Honourable Member to explain the point.

The Honourable Sir Andrew Olow: Sir, before you put the question, I would, if I may, answer that question. I have already spoken.

Mr. President (The Honourable Sir Abdur Rahim): All right, if it is a personal explanation.

An Honourable Member: He cannot speak now as he has already spoken.

Another Honourable Member: With the permission of the Chair.

The Honourable Sir Andrew Olow: I was willing to answer the question.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member can not have the permission of the Chair to speak twice.

Mr. Muhammad Azhar Ali: Sir, I find that in the Railway Act itself, wherever the word 'person' is used, there is some qualifying phrase attached to it. I do not think this expression of 'person' is contained in any other legislation, nor is it used in the way in which it is intended to be used under this clause. I refer to sections 121, 122, 123 and 125 of the Railway Act, and I shall read them one by one.

Section 121 says:

"If a person wilfully obstructs or impedes any railway servant in the discharge of his duty, he shall be punished with fine. . . ."

Now, there is a qualifying phrase—which person who wilfully obstructs or impedes railway servant?

Section 122 says:

"If a person unlawfully enters a railway, he shall be punished with fine. . . ."

Here also there is a qualifying phrase. One can very easily see who is the person meant.

Similarly, sub-section (2) of section 122 says:

"If a person so entering refuses to leave the railway on being requested to do so by a railway servant",
and so on.

In the same way, section 125, says:

"The owner or person in charge of any cattle straying on a railway provided with fencing. . . ."

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: Here also any person who without having obtained the permission. That is the phrase you are referring to.

Mr. Muhammad Azhar Ali: No, Sir. There is always a qualifying phrase attached to the word 'person'. When you say that any other person who may be called to aid, there the word 'person' is general. It is not qualified by such a phrase as to give a definite meaning as to what that person is. In the sections I have quoted, it is specially mentioned who that person is. In this case the word is very general, and so we want to know why a qualifying phrase should not be attached and use the words 'a railway subordinate'. Where is the harm in using those words? What is the object of excluding a railway subordinate. If it is meant that only a police officer should be called to aid, then it must be clearly mentioned here. Sir, I support this amendment.

Kunwar Hajeer Ismaiel Ali Khan (Nominated Non-Official): Sir, the question may now be put.

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

"That the question be now put."

The motion was adopted.

(After the motion was actually adopted, some Honourable Members said "No.")

Mr. President (The Honourable Sir Abdur Rahim): I said the "Ayes" have it.

Some Honourable Members: "Noes" have it.

Mr. President (The Honourable Sir Abdur Rahim): Nobody said "no". The Chair did not hear anybody saying "No" after the Chair had said the "Ayes" have it.

The question is:

"That in clause 5 of the Bill, in the proposed section 113-A, for the word 'person', occurring in the 16th line, the words 'railway subordinate' be substituted."

The Assembly divided:

AYES—18.

Abdul Ghani, Maulvi Muhammad.
Aney, Mr. M. S.
Azhar Ali, Mr. Muhammad.
Banerjee, Dr. P. N.
Chattopadhyaya, Mr. Amarendra Nath.
Datta, Mr. Akhil Chandra.
Deshmukh, Mr. Govind V.
Essak Sait, Mr. H. A. Sathar H.
Ghiasuddin, Mr. M.

Lalchand Navalrai, Mr.
Maitra, Pandit Lakshmi Kanta.
Muhammad Ahmad Kazmi, Qazi.
Murtuza Sahib Bahadur, Maulvi Syed.
Nauman, Mr. Muhammad.
Parma Nand, Bhai.
Rafiuddin Ahmad Siddiquee, Shaikh.
Zafar Ali Khan, Maulana.
Ziauddin Ahmad, Dr. Sir.

NOES—38.

Abdul Hamid, Khan Sahib Shaikh.
Ahmad Nawaz Khan, Major Nawab Sir.
Bewoor, Sir Gurunath.
Boyle, Mr. J. D.
Buss, Mr. L. C.
Caroe, Mr. O. K.
Chapman-Mortimer, Mr. T.
Chettiar, Dr. Rajah Sir S. R. M. Annamalai.
Clow, The Honourable Sir Andrew.
Daga, Seth Sunderlal.
Dalal, Dr. R. D.
Dalpat Singh, Sardar Bahadur Captain.
Dumasia, Mr. N. M.
Frampton, Mr. H. J.
Griffiths, Mr. P. J.
Gwilt, Mr. E. L. C.
Ikramullah, Mr. Muhammad.
Imam, Mr. Saiyid Haider.
Imaiel Ali Khan, Kunwar Hajee.
Kamaluddin Ahmed, Shams-ul-Ulema.

Kushalpal Singh, Raja Bahadur.
Lawson, Mr. C. P.
Maxwell, The Honourable Sir Reginald.
Mazharul Islam, Maulvi.
Miller, Mr. C. C.
Muazzam Sahib Bahadur, Mr. Muhammad.
Mudaliar, The Honourable Diwan Bahadur Sir A. Ramaswami.
Mukharji, Mr. Basanta Kumar.
Pillay, Mr. T. S. S.
Rahman, Lieut.-Colonel M. A.
Raper, Mr. J. H. F.
Rau, Sir Raghavendra.
Scott, Mr. J. Ramsay.
Sivraj, Rao Sahib N.
Spence, Sir George.
Staig, Mr. B. M.
Thomas, Mr. J. H.
Tyson, Mr. J. D.

The motion was negatived.

The Assembly then adjourned till eleven of the clock on Thursday, the 20th February, 1941.