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(1st February to 21st February, 1933)

FIFTH SESSION

OF THE

FOURTH LEGISLATIVE ASSEMBLY, 1933

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Legislative Assembly.

President:

THE HONOURABLE SIR IBRAHIM RAHIMTOOLA, K.C.S.I., C.I.E. (Upto 7th March, 1933.)

THE HONOURABLE MR. R. K. SHANMUKHAM CHETTY. (From 14th March, 1933.)

Deputy President:

MR. R. K. SHANMUKHAM CHETTY, M.L.A. (Upto 13th March, 1933.)

MR. ABDUL MATIN CHAUDHURY, M.L.A. (From 22nd March, 1933.)

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KHAN BAHADUR ABDUR RAHIM, K.C.S.I., KT., M.L.A.

MR. LESLIE HUDSON, KT., M.L.A.

MR. MUHAMMAD YAMIN KHAN, C.I.E., M.L.A.

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MR. ABDUL MATIN CHAUDHURY, M.L.A., *Chairman*. (From 22nd March, 1933.)

MR. LESLIE HUDSON, KT., M.L.A.

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MR. B. SITARAMARAJU, M.L.A.

MR. C. S. RANGA IYER, M.L.A.

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LEGISLATIVE ASSEMBLY.

Thursday, 9th February, 1933.

The Assembly met in the Assembly Chamber of the Council House at Eleven of the Clock, Mr. Deputy President (Mr. R. K. Shanmukham Chetty) in the Chair.

QUESTIONS AND ANSWERS.

CHILD MARRIAGE RESTRAINT ACT.

303. ***Pandit Satyendra Nath Sen:** (*a*) Is it a fact that Government lent their support to the Child Marriage Restraint Act (Sarda Act)? If so, why?

(*b*) What were the numbers of signatures submitted to Government for and against the passing of the said Act?

(*c*) Which provincial Governments gave their opinion *for* and which *against* the measures?

(*d*) Are Government aware that the said Sarda Act has produced widespread discontent in the country among the orthodox sections of the Hindus and Muhammadans?

The Honourable Sir Harry Haig: (*a*) Yes. The reasons for the attitude adopted by Government were fully stated when the Child Marriage Restraint Bill was under consideration.

(*b*) I would draw the Honourable Member's attention to the answer given by Sir James Crerar to the short notice question asked by Mr. M. K. Acharya on the 4th September, 1929, to the answer given to his starred question No. 656 on the 19th March, 1930, and to the statements laid on the table from time to time by the Secretary of the Assembly on petitions relating to the Hindu Child Marriage Bill which are included in the Assembly Debates of 1929, Volume IV.

(*c*) I would refer the Honourable Member to the Legislative Assembly papers containing opinions on the Bill which are available to Honourable Members.

(*d*) Government are aware that the Act is viewed with disfavour by certain sections of opinion.

Pandit Satyendra Nath Sen: Was there any pressure put upon the Government from any quarter outside India regarding the passing of this Bill?

The Honourable Sir Harry Haig: The Government took their action in accordance with their own judgment of what was right.

Pandit Satyendra Nath Sen: Do Government realise the magnitude of the section which has been dissatisfied by the passing of this Act?

The Honourable Sir Harry Haig: I am not prepared to go further than what I have already said, namely, that they are aware that the Act is viewed with dissatisfaction by certain sections of opinion.

CHILD MARRIAGE RESTRAINT (AMENDMENT) BILL BY RAJA BAHADUR G. KRISHNAMACHARIAR, M.L.A.

304. ***Pandit Satyendra Nath Sen:** (*a*) Did Government put any pressure on any Nominated Official or Non-Official Member to vote against the Child Marriage Restraint (Amendment) Bill of Raja Bahadur G. Krishnamachariar which was discussed by the House in Simla in September, 1932?

(*b*) If so, who are they?

(*c*) Are Government aware that marriage is an essential part of religion among Hindus as well as Muhammadans?

(*d*) If so, why was the Bill opposed by Government?

(*e*) Are Government prepared to change their attitude now?

(*f*) If not, why not?

The Honourable Sir Harry Haig: (*a*) It is well understood that nominated officials vote with Government. No pressure was brought to bear on nominated non-officials.

(*b*) Does not arise.

(*c*) Government are aware that the view is widely held that marriage rests ultimately upon a religious basis.

(*d*) I explained the attitude of Government in the House on the 13th September, 1932, during the course of the discussion of the motion that the Bill be taken into consideration.

(*e*) and (*f*). Government do not propose to change that attitude.

Pandit Satyendra Nath Sen: If marriage is regarded as a religious matter, how is it that Government did venture to interfere with that practice and acted contrary to the Queen's Proclamation?

The Honourable Sir Harry Haig: If the Honourable Member was present in the House in Simla in September last when this matter was under discussion and did me the honour of listening to my speech, I think he would there have found the answer.

PROTECTION TO THE INDIAN HOSIERY INDUSTRY.

305. ***Bhai Parma Nand** (on behalf of Lala Rameshwar Prasad Bagla): (*a*) Will Government please state if they have received any representation from the United Provinces Chamber of Commerce, Cawnpore, on the desirability of giving adequate protection to the Indian hosiery industry? If so, when?

(*b*) Will Government please state what action, if any, they took on the above letter?

(*c*) Will Government please state if they are aware that the value of the *yen* has been unceasingly falling every day since Japan went off the gold standard?

(*d*) Will Government please state if they are aware of the effects of the fall in the value of the *yen* on the hosiery industry?

(*e*) Are Government aware that Japan has been always a great menace to the Indian hosiery industry and that it is the more so at present?

(*f*) Have Government made any efforts so far to counteract the effects of the fall in the value of the *yen* on Indian manufacturers of hosiery goods? If so, will Government please state the action they have already taken or propose to take in the matter?

(*g*) Will Government please state if the Tariff Board, during their last inquiry into the cotton textile and hosiery industries, failed to get convincing evidence in support of the need for granting further protection to the hosiery industry?

(*h*) Will Government please state the number of witnesses who appeared before the Tariff Board to give evidence exclusively for the protection of the hosiery industry?

(*i*) In view of the present plight of the industry, have Government considered the question of instituting another independent inquiry into the hosiery industry?

The Honourable Sir Joseph Bhore: (*a*) No.

(*b*) Does not arise.

(*c*) The value of the *yen* in terms of the rupee has certainly fallen since Japan went off the gold standard, but to say that it "has been unceasingly falling every day" is an exaggeration.

(*d*) to (*i*). As the Honourable Member is obviously aware, the claim of the Hosiery Industry to protection has been examined by the Tariff Board as part of its recent enquiry into the question of protection for the Indian Cotton Textile Industry. The Board's Report has been received by the Government of India and is still under their consideration. Until this is completed and decisions taken, I am not, as the Honourable Member doubtless realizes, in a position to make any announcement on this subject.

Cuts in the Salaries of Government Servants.

306. ***Mr. Muhammad Muazzam Sahib Bahadur:** (*a*) Will Government be pleased to state whether the temporary cuts in salaries of all employees will be restored from the 1st April, 1933?

(*b*) Is it proposed to restore the cuts in the salary of the employees of certain departments only and, if so, what are the departments to be thus benefited?

(*c*) What are the reasons for such discrimination in treatment?

(*d*) Is it proposed to restore only a portion of the emergency cut in salaries in the coming year and, if so, what is the percentage proposed?

The Honourable Sir George Schuster: I would refer the Honourable Member to the reply given to an identical question asked by Mr. Lalchand Navalrai on February 7th.

GRIEVANCES OF POSTMEN PROMOTED TO THE CADRE OF LOWER DIVISION CLERKS.

307. *Mr. Muhammad Muazzam Sahib Bahadur: (a) Will Government be pleased to state whether their attention has been drawn to the article under the heading "Sad plight of postmen promoted to lower division clerks cadre" published in the December, 1932, issue of the *General Letter* of the All-India Postal and Railway Mail Service Union, Madras Circle, Madras?

(b) Has the Director General, Posts and Telegraphs, received any communication from the General Secretary of the All-India Postal and Railway Mail Service Union, Delhi, for the redress of the grievance complained of?

(c) Have any orders been issued by Government in the matter and, if so, what are the orders issued?

(d) Is not reversion of the officiating lower division clerks, promoted from postmen to lower division leave reserve clerks, a violation of the Government of India orders creating such appointments and filling up such appointments exclusively by duly qualified postmen?

(e) Are Government prepared to restore the aggrieved men to their original pay and position immediately? If not, why not?

Sir Thomas Ryan: (a) Government have seen the article referred to.

(b) Yes.

(c), (d) and (e). The matter is at present under correspondence with the Postmaster-General, Madras, and on receipt of his report Government will take such action as may be considered necessary.

CONVERSION OF THE PARK TOWN DELIVERY POST OFFICE, MADRAS CITY INTO A NO-DELIVERY POST OFFICE.

308. *Mr. Muhammad Muazzam Sahib Bahadur: (a) Will Government be pleased to state whether there is any proposal to convert the Park Town Delivery Post Office, Madras City, into a no-delivery post office and locate it in some other place and, if so, where and why?

(b) For how many years has the Park Town Post Office been working as a delivery post office?

(c) Are Government aware that it is one of the heaviest and busiest town sub-offices in the Madras City next in importance to the Mount Road Post Office?

(d) If the Park Town Post Office is converted into a no-delivery office, is it proposed to issue the delivery of articles for residents on the east and north of Park Town from Madras General Post Office, the postmen being conveyed in *jutkas* to the starting point in the delivery area?

(e) Are Government aware that on account of the delivery jurisdiction of the Madras General Post Office being very wide, the residents at the extreme wings of the delivery area receive articles some hours after the mails are received in the Madras City?

(f) Is it the policy of the Department to curtail all the facilities for the public while the postal charges are ever on the increase?

(*g*) Simultaneously with the conversion of the Park Town Post Office into a no-delivery office, is it proposed to remove the Ripon Buildings No-Delivery Post Office to some other place and convert it into a delivery post office?

(*h*) Do Government propose to abandon the proposal? If not, why not?

Sir Thomas Ryan: (*a*) to (*e*), (*g*) and (*h*). Government have no information on the subject. The matter is within the competence of the Postmaster-General, Madras, to whom a copy of the question is being sent.

(*f*) No.

INADEQUACY OF THE SPACE FOR THE STAFF IN THE MADRAS GENERAL POST OFFICE.

309. ***Mr. Muhammad Muazzam Sahib Bahadur:** (*a*) Will Government be pleased to state whether the inadequacy of the space for the staff in the Madras General Post Office was brought to the notice of the Government by interpellations in the Legislative Assembly in the year 1930?

(*b*) Is it a fact that as a result of the enquiries made in the matter, the Madras Post and Telegraphs Co-operative Credit Society, Ltd., and the Postal and Railway Mail Service Co-operative Benefit Fund Ltd., which were located in the Madras General Post Office Buildings and which paid a total rent of about Rs. 150 were removed from the Madras General Post Office Buildings and that thus the requisite accommodation was made available to the General Post Office staff?

(*c*) Is it a fact that some time back the Bag Office which was located in a spacious building elsewhere was removed to the Madras General Post Office Building and located in a very inadequate place?

(*d*) Is it a fact that the window delivery post boxes were removed from the ground floor of the Madras General Post Office to the first floor making the Delivery Department ill ventilated and very much congested?

(*e*) Is it a fact that the Foreign Money Order Department was removed to a very narrow and congested place and located in the Money Order Department?

(*f*) Is it a fact that the tiffin room used by the Hindu clerks, postmen and officials of the lower grade staff of the Madras General Post Office and the rest room used by the postmen have been vacated and smaller and narrower areas provided for them and that the old tiffin room is being kept vacant?

(*g*) What is the total strength of the staff in the Madras General Post Office Building including the staff of the Customs Department working in the General Post Office?

(*h*) What is the total area available for each department in the Madras General Post Office and the total staff of each department?

Sir Thomas Ryan: With your permission, Sir, I propose to take questions Nos. 309—314 together. Information is being collected and replies will be placed on the table of the House in due course.

INADEQUACY OF THE SPACE FOR THE STAFF IN THE MADRAS GENERAL POST OFFICE.

†310. ***Mr. Muhammad Muazzam Sahib Bahadur:** (*a*) What is the space provided for a postmaster, clerk, postman and lower grade staff as per rules of the department?

(*b*) Are Government prepared to provide additional space over that provided in the rules for certain departments for counter work, strong room, area covered by special furniture like big delivery tables for emptying the contents of the large number of bags opened, sorting cases, window delivery post boxes, etc.? If not, why not?

(*c*) Are Government aware that during delivery hours the staff of the delivery department are put to very serious inconvenience having practically not an inch of space to move about and the congestion in the department causes grave risk to the health of the staff and the performance of efficient work?

(*d*) Is it a fact that the Money Order Department is so congested that in some portions of the department there is hardly two feet of space between two clerks and in some places groups of four clerks are seated within an area of about 30 square feet?

INADEQUACY OF THE SPACE FOR THE STAFF IN THE MADRAS GENERAL POST OFFICE.

†311. ***Mr. Muhammad Muazzam Sahib Bahadur:** (*a*) Is it a fact that the records of most of the departments of the Madras General Post Office are kept in the Correspondence Department?

(*b*) Is it a fact that if the space absorbed by the records is excluded, the rest of the space is inadequate for the staff of the Correspondence Department?

INADEQUACY OF THE SPACE FOR THE STAFF IN THE MADRAS GENERAL POST OFFICE.

†312. ***Mr. Muhammad Muazzam Sahib Bahadur:** (*a*) Is it a fact that electric fans are not run in many of the departments in the first floor of the Madras General Post Office between October and March, and that the space in each department is much congested and that the officials are surrounded by lots of almirahs, racks and sorting cases which obstruct free entry of light and air?

STRUCTURE OF THE MADRAS GENERAL POST OFFICE BUILDING.

†313. ***Mr. Muhammad Muazzam Sahib Bahadur:** (*a*) When was the Madras General Post Office building constructed?

(*b*) Are Government aware that the structure of the Madras General Post Office building is such that except the central hall in the first floor and the place where the Correspondence Department is located, the rest of the building is unfit for use as a public office on account of the absence of adequate light and air?

(*c*) What is the width of the passage in the central hall in the first floor of the Madras General Post Office leading to the several departments?

†For answer to this question, *see* answer to question No. 309.

(*d*) Are Government aware that it is very inadequate for the several hundred officials working in the Madras General Post Office who have to pass through the passage frequently?

WANT OF PROPER LAVATORY ARRANGEMENT IN THE MADRAS GENERAL POST OFFICE BUILDING.

†314. ***Mr. Muhammad Muazzam Sahib Bahadur:** (*a*) Is it a fact that about 300 clerks and about an equal number of postmen and lower grade staff working in the Madras General Post Office have no access to any lavatory in the General Post Office buildings and that they have to use a very small lavatory at a distance of nearly a furlong from the Madras General Post Office?

(*b*) Was any representation received by Government for the provision of adequate space for each department and for the provision of adequate tiffin rooms and latrines in the General Post Office buildings and, if so, what action has been taken by the department?

REMOVAL OF THE SORTING OFFICE TO THE MADRAS GENERAL POST OFFICE BUILDING.

315. ***Mr. Muhammad Muazzam Sahib Bahadur:** (*a*) Will Government be pleased to state whether their attention has been drawn to the article under the caption "Economy on the wrong side" published in the *General Letter* of the All-India Postal and Railway Mail Service Union, Madras Circle, of December, 1932?

(*b*) Is there any proposal to remove the Madras General Post Office Sorting Office to the Madras General Post Office buildings and, if so, for what reasons?

(*c*) What is the total plinth area occupied by the several departments of the Madras General Post Office Sorting Office in the present building?

(*d*) What is the total strength of the staff of the Madras General Post Office Sorting Office and what is the total area required for the staff as per rules prescribed by the department?

(*e*) Are Government aware that the present building is quite insufficient for the large staff working in the office and for the proper conduct of the work?

(*f*) Is it a fact that the building belongs to the Madras and Southern Mahratta Railway authorities who have leased the building to the post office and, if so, on what rent?

(*g*) Have the Railway authorities agreed to put up some extension to the building provided additional rent is paid and, if so, what is the increase in the rent demanded?

(*h*) Is it a fact that the building was originally constructed by the railway authorities for the location of the Madras General Post Office Sorting Office and the Park Town Post Office?

(*i*) Was the building taken by the post office on any lease and, if so, when does it terminate?

†For answer to this question, *see* answer to question No. 309.

(*j*) Is the necessary space available in the Madras General Post Office for the removal of the Madras General Post Office Sorting Office?

(*k*) Is it proposed to remove the Madras General Post Office Sorting Office to the ground floor of the Madras General Post Office building?

(*l*) What is the height of the roof of the ground floor of the Madras General Post Office buildings, where the Stores and Sorting Departments are located?

(*m*) What is the length and breadth of the portion of the building used by the Stores and Sorting Departments?

(*n*) Is this portion of the building pitch dark at mid-day?

(*o*) Is it a fact that this portion of the building is surrounded on almost all sides by various other departments which are themselves working in darkness and where the staff could not work without powerful electric lights and fans?

(*p*) Is it a fact that some years back the Postal Stock Depot was situated here?

(*q*) Is it a fact that at no time was any department with a large number of staff located in this portion of the building?

(*r*) Is it proposed to alter the structure of this portion of the building to suit the General Post Office Sorting Office?

(*s*) Is it a fact that the place being at the basement and surrounded by massive walls does not admit of any large alterations?

(*t*) Was any engineer consulted about the alterations and, if so, what is his opinion?

(*u*) Was the Director of Public Health consulted as to the suitability of the place for a public office consisting of about 200 officials? If not, why not?

(*v*) Will not the health of the staff and their eye-sight be seriously impaired if they are made to work with artificial light and air throughout the day?

(*w*) Is it the policy of the department to sacrifice the health of the staff at the cost of a small saving to the department?

(*x*) Has any representation been received by the Director-General of Posts and Telegraphs from the All-India Postal and Railway Mail Service Union protesting against the removal of the Madras General Post Office Sorting Office to the Madras General Post Office buildings and, if so, will the question of the removal of the Sorting Office be dropped? If not, why not?

Sir Thomas Ryan: Government have seen the article referred to in the question. Information is being collected and will be laid on the table of the House in due course.

ALLEGED CASE OF ASSAULT AGAINST THE DORSET REGIMENT AT DACCA.

316. ***Pandit Satyendra Nath Sen:** (*a*) Has the attention of Government been drawn to the report of a case of assault which appeared in the *Amrita Bazar Patrika* of the 10th January, 1933, under the caption "Dorset Regiment at Dacca"?

(*b*) If so, what is the result?

Mr. G. R. F. Tottenham: (*a*) Yes.

(*b*) Inquiries are being made and the result will be communicated to the House in due course..

EXPENDITURE INCURRED ON THE EDUCATION OF THE CHILDREN OF THE EAST INDIAN RAILWAY EMPLOYEES.

317. ***Pandit Satyendra Nath Sen:** (*a*) Will Government be pleased to state separately the amount of expenditure incurred by the East Indian Railway in 1931-32 on the education of the children of Indian employees and those of European and Anglo-Indian employees?

(*b*) Will Government be pleased to state the amounts spent by the East Indian Railway in 1931-32 on the Oakgrove European School and the East Indian Railway Indian High Schools separately stating the number of railway pupils under instruction in each case?

(*c*) Is it a fact that the East Indian Railway Oakgrove European School was excluded from the scope of enquiry of Mr. Smith, officer on special duty, while the Indian schools were included? If so, why was this discrimination made in this case?

(*d*) Is it a fact that the Oakgrove School was included within the terms of enquiry conducted by Mr. Jones, officer on special duty, in 1926-27?

(*e*) Is it a fact that according to Mr. Jones, the Oakgrove School and the Indian schools maintained and controlled by the East Indian Railway are in the same category?

(*f*) Is it a fact that Mr. Smith too has observed that the Oakgrove European School and the other East Indian Railway schools are on the same footing?

Mr. P. R. Rau: (*a*) Children of Indian Employees, Rs. 77,823; Children of European and Anglo-Indian Employees, Rs. 2,56,967.

(*b*) Oakgrove European School, Rs. 1,62,847—Number of Children 404; Indian High Schools, Rs. 42,929—Number of Children 1,065.

(*c*) to (*f*). The attention of the Honourable Member is invited to my replies to Mr. M. Maswood Ahmad's questions Nos. 292, 293 and 297 respectively, given on the 7th February, 1933.

Pandit Satyendra Nath Sen: I have seen the Honourable Member's reply of yesterday. It was "It was intended to deal with it separately." But why?

Mr. P. R. Rau: I replied to that also yesterday in reply to supplementary questions. The reason is probably that the institution caters for the needs of two different Railways.

STATUS OF TEACHERS IN THE EAST INDIAN RAILWAY SCHOOLS.

318. *Pandit Satyendra Nath Sen: Was an enquiry into the status of teachers in the East Indian Railway schools within the terms of reference of Mr. Smith's enquiry? If so, under which clause does it come?

Mr. P. R. Rau: I would refer my Honourable friend to the reply given by me yesterday to part (*a*) of Mr. Maswood Ahmad's question No. 295.

STATUS OF TEACHERS IN THE EAST INDIAN RAILWAY SCHOOLS.

319. *Pandit Satyendra Nath Sen: (*a*) Is it not a fact that on the 1st February, 1928, Sir (then Mr.) Alan Parsons, the then Financial Commissioner to the Railway Board, in answer to a question by Pandit H. N. Kunzru, said:

"The Oakgrove School is under the East Indian Railway Administration and its teachers and those of the Indian Schools maintained by the East Indian Railway Administration are Government servants"?

(*b*) Is it a fact that on the 25th February, 1928, Sir George Rainy, the then Commerce Member, Government of India, in course of the debate on the Railway Budget, referring to the schools maintained by the Great Indian Peninsula and East Indian Railways, said:

"Now the schools of two of the biggest Company Railways have come under the direct control of the State."?

(*c*) Is it a fact that on the 21st February, 1929, Sir George Rainy, the then Commerce Member, Government of India, in course of the debate on the Railway Budget, said:

"What we contemplate is that at any rate on the State-managed Railways, our line will be that so long as the schools will be under our control, it is reasonable that the teachers should receive pay on about the same level as they would receive if they were employed in a school run by the Local Government.

* * * * * * *

As regards the higher English schools maintained by the East Indian Railway we have already issued specified orders to that effect."?

(*d*) Is it a fact that on the 12th September, 1929, Sir George Rainy, the then Commerce Member, Government of India, in reply to a question by Pandit H. N. Kunzru, said:

"The schools are the property of the East Indian Railway and the East Indian Railway belongs to the Government and I do not think that there can be any doubt that they are Government Schools in that sense"?

(*e*) Is it a fact that the Railway Board in their reply in June, 1928, to a reference by the Agent of the East Indian Railway said:

"In the opinion of the Railway Board teachers employed in the schools maintained by the Railway Administration for the education of Railway children are Railway employees even though the teachers may actually be employed by the Local Committees of the several schools."?

(*f*) Why did Government now consider an inquiry into the status of the Railway schools and the teachers employed therein necessary?

Mr. P. R. Rau: (*a*) to (*e*). I am glad to be able to congratulate my Honourable friend on the correctness of his quotations.

(*f*) I would refer my Honourable friend to the reply I gave yesterday to Mr. M. Maswood Ahmad's question No. 295.

STATUS OF TEACHERS IN THE EAST INDIAN RAILWAY SCHOOLS.

320. ***Pandit Satyendra Nath Sen:** (*a*) Was Mr. Smith specially authorised or instructed to review the previous decisions of the Government of India and the Railway Board regarding the status of the Railway schools and the teachers thereof and to report whether they were right?

(*b*) Is it a fact that this part of the enquiry was kept a secret from the school committees and the teachers concerned by the special officer and the Railway Headquarters?

(*c*) Is it a fact that in the letters issued both by the East Indian Railway Head Office and the special officer to the schools the scope of the enquiry was given out as only estimating the cost of assistance to employees towards the education of their children under the new scheme of assistance? If not, will Government be pleased to lay copies of those communications on the table?

(*d*) Did Mr. Smith make any enquiry as to the status of teachers in the schools visited by him, either with the school committees or with the teachers?

(*e*) Will Government be pleased to state the grounds on which the Agent of the East Indian Railway in his letters to the Railway Board of 1927, referred to in p. 153 of Mr. Smith's report, drew a distinction between the Oakgrove European School and its teachers and the Indian schools and their teachers, saying that the teachers in the Oakgrove School were practically Government servants while the other schools were not Government schools proper and that their teachers were not railway employees?

Mr. P. R. Rau: (*a*), (*b*) and (*e*). I would refer my Honourable friend to the replies I gave yesterday to Mr. M. Maswood Ahmad's questions Nos. 295, 296 and 297.

(*c*) Government are not aware of this. The terms of reference to Mr. Smith are contained in his reports.

(*d*) The Honourable Member's attention is drawn to paragraph 86, page 158, of Mr. Smith's Report on the North Western, East Indian and Great Indian Peninsula Railways.

CONTROL OF THE EAST INDIAN RAILWAY SCHOOLS.

321. ***Pandit Satyendra Nath Sen:** Will Government be pleased to state whether the Agents of the Railways and the Secretary to the Agent and Superintendent of the East Indian Railway Schools control the railway schools in their official capacity or in their personal capacity as Mr. so and so?

Mr. P. R. Rau: In their official capacity.

RULES FOR THE MANAGEMENT OF THE EAST INDIAN RAILWAY SCHOOLS.

322. ***Pandit Satyendra Nath Sen:** (*a*) Is it a fact as stated by Mr. Smith that "the school committees derive their existence and their powers from the Agent"?

(*b*) Is it a fact that the rules framed by the Agent for the management of the East Indian Railway schools were framed in 1885 under the authority and with the approval of the Government of India, P. W. D.—Railway

Department, as conveyed in their letter No. 113-R. E. of February that year to the Agent?

(c) Is it a fact that ever since 1885, for about half a century, the Secretary to the Agent, East Indian Railway, has been Superintendent, East Indian Railway Schools?

(d) Is it a fact that according to the East Indian Railway Rules:

(i) the Divisional Superintendent is the *ex-officio* President of all the railway schools in the Division;

(ii) local school committees are constituted by him according to the railway rules, by successive co-option;

(iii) the Superintendent, East Indian Railway Schools, has the right to order the dissolution of a local committee and to object to the appointment of a particular member;

(iv) the resolutions of the local committee can not be acted on before they are approved by the Superintendent; and

(v) if a school is closed down, all furniture and equipment will revert to the Railway Stores?

Mr. P. R. Rau: (a) This is Mr. Smith's opinion. His report has not yet been considered by Government.

(b) The latest rules for all East Indian Railway Schools were issued in 1925 and are printed on pages 208—210 of Appendices to Mr. Smith's Report on N. W., E. I. and G. I. P. Railways' educational facilities.

(c) Yes.

(d) (i) and (ii). Yes.

(iii) No. The Honourable Member is referred to Rules 4 and 8 mentioned above.

(iv) and (v). Yes.

APPOINTMENT OF TEACHERS IN THE EAST INDIAN RAILWAY SCHOOLS.

323. ***Pandit Satyendra Nath Sen:** (a) Is it a fact that though teachers in the East Indian Railway schools may actually be appointed by the local committees, the Agent is really the Principal?

(b) Is it a fact that teachers in the East Indian Railway schools are appointed on terms previously approved by the Superintendent, East Indian Railway Schools?

(c) Is it a fact that, according to the East Indian Railway rules, all decisions of local committees regarding salaries, leave and change of staff are subject to confirmation by the Superintendent, East Indian Railway Schools, and may be vetoed by him?

(d) Is it a fact that agreements with the teachers were devised by the Superintendent, East Indian Railway Schools, and enforced by him and not by the school committees?

Mr. P. R. Rau: (a) This is the opinion expressed by Mr. Smith in his report.

(b) The teachers of the East Indian Railway schools are appointed by the Local Committee on a written agreement subject to one month's notice on either side on terms previously approved by the Superintendent of Schools, who is the Secretary to the Agent.

(c) and (d). Yes.

TEACHERS IN THE EAST INDIAN RAILWAY SCHOOLS.

324. *Pandit Satyendra Nath Sen: (a) Is it a fact that the names of the teachers in the East Indian Railway Indian schools are shown in the East Indian Railway classified list of subordinate staff on Rs. 250 and above?

(b) Is it a fact that the salaries of teachers in the State Railway schools were brought up to the level of those prevailing in the Provincial Government schools under the orders of the Government of India acting through the Railway Board?

(c) Is it a fact that teachers in the East Indian Railway schools have, under the orders of the Agent, been subjected to the same salary cut of 10 per cent. as the other railway employees?

(d) Is it a fact that the teachers have a right of appeal to the Agent, and, if necessary, to the Railway Board?

Mr. P. R. Rau: (a) to (c). Yes.

(d) Teachers have a right of appeal to the Agent. If a subscriber to Provident Fund is dismissed with forfeiture of the bonus contribution to his Provident Fund, an appeal lies to the Railway Board.

STATUS OF TEACHERS IN THE EAST INDIAN RAILWAY SCHOOLS.

325. *Pandit Satyendra Nath Sen: Do Government propose to go against their previous declarations and withdraw the status of Government employees from the teachers now employed in the East Indian Railway schools?

Mr. P. R. Rau: I would refer my Honourable friend to the answer given by me yesterday to Mr. M. Maswood Ahmad's question No. 296.

Pandit Satyendra Nath Sen: May I know what difference it will make if these institutions are regarded as Government institutions and if they are not so regarded?

Mr. P. R. Rau: I am afraid, Sir, I am not in a position to give a categorical answer to this question, because the report of Mr. Smith is still under consideration and Government have not yet considered what will be the effect of the recommendations made by him.

Pandit Satyendra Nath Sen: When did Mr. Smith actually submit his report?

Mr. P. R. Rau: I believe it was recently. I do not remember the exact date.

MR. SMITH'S REPORT ON THE EAST INDIAN RAILWAY SCHOOLS.

326. *Pandit Satyendra Nath Sen: (a) Have Government come to any decision on the proposals contained in Chapters XIV, XVI and XVII of Mr. Smith's report? If so, what are the decisions?

(b) If the report is still under consideration, do Government propose to lay their decisions before the Central Advisory Council for Railways and the Legislative Assembly before giving effect to them?

Mr. P. R. Rau: (*a*) No.

(*b*) The matter will certainly be placed before the Central Advisory Committee for Railways, but Government are unable at present to say whether it will be placed before the Legislative Assembly before any decisions are arrived at.

Pandit Satyendra Nath Sen: Is that Central Advisory Council for Railways still in existence?

Mr. P. R. Rau: Yes, Sir.

Pandit Satyendra Nath Sen: When was it last formed?

Mr. P. R. Rau: About this time last year.

Pandit Satyendra Nath Sen: Has it ever met?

Mr. P. R. Rau: Many times.

Pandit Satyendra Nath Sen: Has it met after it was last formed?

Mr. P. R. Rau: It has not met this year.

Pandit Satyendra Nath Sen: That is, since 1932. Then it has got rusty.

STATEMENTS LAID ON THE TABLE.

Sir Thomas Ryan (Director General of Posts and Telegraphs): Sir, I lay on the table the information promised in reply to supplementary questions to starred question No. 1449 asked by Mr. M. Maswood Ahmad on the 28th November, 1932, and to starred question No. 1375 asked by Seth Haji Abdoola Haroon on the 22nd November, 1932, and the information promised in reply to starred question No. 1598 asked by Mr. Jagan Nath Aggarwal on the 6th December, 1932.

COMMUNAL COMPOSITION OF THE APPROVED CANDIDATES FOR CLERICAL CADRE IN GENERAL POST OFFICES AND POSTAL CIRCLES.

*1449. The figures for direct recruitment to the clerical cadre of the Calcutta General Post Office since 1928 have been verified and are noted below:

	Hindus.	Muslims.	Anglo-Indians.	Indian Christians.	Total.
1928	30	10	3		43
1929	30	13	2	2	47
1930	2	1		..	3
1931					
1932	..	..	..	..	..
Total	62	24	5	2	93

NON-RECRUITMENT OF MUSLIM CLERKS IN THE CENTRAL TELEGRAPH OFFICE, NEW DELHI.

*1375. The following is the result of my further enquiry:

(*a*) The two Muslim clerks were Messrs. Ikramuddin and Fakhrul Husain. The former was not dismissed as stated by the Honourable Member but he resigned his appointment after about three months' service. The consequent vacancy was filled, not by direct recruitment but by the transfer of a Hindu clerk from the Lahore telegraph office, who had to be moved from there to make room for a dismissed clerk who was reinstated on appeal. Mr. Fakhrul Husain had to be retrenched in October, 1932, and his post was abolished.

(*b*) Of the other six officials named by the Honourable Member, two, *viz.*, Messrs. Madho Ram and Devi Parshad were not direct recruits but were promoted as clerks; Mr. Sohanlal, Time-keeper, did not belong to the clerical cadre but to the separate cadre of Time-keepers. The remaining three officials were appointed not in the New Delhi telegraph office but in the Simla telegraph office which is distinct and separate from the former office. My statement that six clerks only were recruited in the New Delhi telegraph office is therefore correct. Of these recruits two were Muslims (as stated in the answer to the question). The rest were three Hindus and one Sikh, all four were not Hindus as the Honourable Member has assumed.

COMPETITION OF AMERICAN FRUITS WITH THE KULU VALLEY FRUITS.

*1598. (*a*) Government are aware that the Indian fruit growing industry is meeting with increased competition in its home market from the United States of America, the value of imports of fruit from that country having increased appreciably during the years 1930-31 and 1931-32.

(*b*) Government have no information to the effect that the increasing competition of American fruit is due to the increase in postal charges.

(*c*) It is a fact that the only road from Kulu to Pathankot is *via* Mandi. The *passenger* lorry service along that route is run by monopolists, but any *goods* lorry may run on that route on payment of toll to the Mandi State.

(*d*) The reply to the first part is in the affirmative. As regards the latter part, Government have no information.

(*e*) No.

(*f*) Government do not propose to take special steps. As regards postal rates they do not see reason to distinguish between various commodities; as regards improvement in communications the matter is one for the Local Government to whom a copy of the question and of my reply have been sent.

Mr. G. R. F. Tottenham (Army Secretary): Sir, I lay on the table the information promised in reply to starred question No. 1597 asked by Sirdar Sohan Singh on the 6th December, 1932.

HIGHER SALARIES DRAWN BY THE STAFF OF THE BARODA CANTONMENT.

*1597. (*a*) I am informed that the salaries of the Ahmedabad Cantonment staff are higher than those of the staff employed in the Baroda office.

(*b*) Before the Cantonment Act of 1924 came into operation, the clerk of the Cantonment Court whose substantive pay was, I understand, Rs. 80 a month, received an allowance of that amount in addition, for part-time work in the Cantonment office. I do not know when these amounts were fixed. On the constitution of a Cantonment Authority in 1924, a full-time Head Clerk was employed on a time-scale of salary, the maximum of which is Rs. 150. The present maximum of the time-scale of pay of the Sanitary Supervisor is Rs. 10 more and the minimum Rs. 15 less than the pay of the appointment in 1924. There is no separate appointment of Tax Collector. The question of revising the salaries of the cantonment employees is at present being examined by the Cantonment Authority.

Mr. P. R. Rau (Financial Commissioner, Railways): Sir, I lay on the table:

(*i*) the information promised in reply to starred question No. 1145 asked by Dr. Ziauddin Ahmad on the 14th November, 1932;

(*ii*) the information promised in reply to starred question No. 1467 asked by Mr. K. Ahmed on the 28th November, 1932;

(*iii*) the information promised in reply to starred question No. 1474 asked by Mr. K. Ahmed on the 28th November, 1932;

(*iv*) the information promised in reply to unstarred question No. 79 asked by Mr. S. C. Mitra on the 27th September, 1932;

(*v*) the information promised in reply to starred question No. 1014 asked by Mr. Lalchand Navalrai on the 28th September, 1932; and

(*vi*) the information promised in reply to starred question No. 1459 asked by Mr. Muhammad Anwar-ul-Azim on the 28th November, 1932.

EXPENDITURE ON RAILWAY WORKSHOPS.

*1145.

Statement showing the Total Capital expenditure incurred on all workshops on all the State-owned Railways.

Year.	Expenditure.
	Rs.
1926-27 .	2,14,45,000
1927-28 .	1,32,88,000
1928-29 .	2,55,85,000
1929-30 .	95,53,000
1930-31 .	64,66,000
1931-32 .	53,80,000

Capital expenditure year by year on workshops on all the State-owned Railways.

(In thousands.)

Railway.	1926-27.	1927-28.	1928-29.	1929-30.	1930-31.	1931-32.
N. W. Railway . .	4,12	4,97	4,37	2,02	3,18	1,39
E. B. Railway . .	1,61	8,42	12,73	4,73	1,12	1,33
Burma Railways . .	3,38	1,10	4,54	4,73	1,09	1,48
E. I. Railway . . .	1,08,15	26,41	1,71,46	17,57	16,85	9,15
G. I. P. Railway . . .	21,05	18,35	4,23	6,89	2,92	2,43
Total (State) .	1,38,3 1	59,25	1,97,33	35,94	25,16	15,78

Capital expenditure year by year on workshops on all the State-owned Railways—contd.

(In thousands.)

Railway.	1926-27.	1927-28.	1928-29.	1929-30.	1930-31.	1931-32.
R. & K. Railway . .	1	4	33	3	—2	..
B. & N. W. Railway . .	64	29	42	12	1,52	33
S. I. Railway . .	39,19	33,71	27,41	7,49	8,87	2,75
A. B. Railway . .	9,05	2,34	3,00	4,17	2,21	49
B. N. Railway . . .	6,86	1,68	7,08	6,72	82	65
B., B. & C. I. Railway . .	8,52	10,68	9,16	10,63	3,23	2,17
M. & S. M. Railway . .	11,88	24,90	11,13	30,43	22,89	31,63
Total (Company) .	76,15	73,64	58,53	59,59	39,52	38,02
Grand Total .	2,14,46	1,32,89	2,55,86	95,53	64,68	53,80

Seniority List of the Senior Staff of the East Indian Railway.

*1467. Government are informed that for the purpose of regulating seniority the Chief Operating Superintendent and Chief Engineer of the East Indian Railway maintain separate lists, one list for the old East Indian Railway staff and one for the old Oudh and Rohilkhand Railway staff. The Chief Mechanical Engineer does not maintain such lists because the shops at Lucknow and Jamalpur are self-contained units and promotion is normally confined to the staff in the shop concerned. There is no reason to consider that this system of regulating promotion acts to the prejudice and detriment of senior and deserving hands.

Regulations for Recruitment of Station Masters and Assistant Station Masters on the East Indian Railway.

*1474. A copy of the rules has been placed in the Library of the House.

Employment on Indian Railways of Indians trained in England.

79. Government regret that information with regard to the examination held in 1926 is not available. The following replies relate to the examination held in 1927:

(*a*) (*i*) Government are not aware of the number of candidates trained in the United Kingdom who applied to Local Governments for nomination for the examination in 1927 and how many were rejected, as only the names of those selected by the Local Selection Committees were communicated to the Public Service Commission.

(*ii*) to (*v*). One candidate, named Sisirendra Kisor Datta Ray, was selected by a Local Government, but as he has had less than two years' practical training in the United Kingdom, which was compulsory in the case of those candidates not possessing any of the educational qualifications prescribed for the examination, he was not allowed

to appear for the examination. His qualifications, as stated in his application, were as follows :

Name.	Qualifications.	Particulars of training.	Examinations passed at the London School of Economics and Political Science.
Sisirendra Kisor Datta Ray.	Graduate of the Institute of Transport (London). Fellow of the Royal Economic Society.	Underwent a course of practical training in the Traffic Department of the London and North-Eastern Railway from May, 1924, to December, 1925. Also visited and went through the systems of the Great Western and London and Midland Railways. Was engaged by the British Tabulating Machine Co., Ltd., for sometime in their London Head Office.	Joined the London School of Economics and Political Science (London University) as an evening student in 1924 and took the full course on Transport, consisting of 11 different subjects and passed all the 11 examinations there in one session securing several first and second classes.

(*b*) and (*c*). Statements showing the names and particulars available of the officers appointed on Company-managed railways are laid on the table.

Statement showing the names of officers recruited to the Transportation (Traffic) and Commercial Departments of Company-managed Railways from 1st January, 1920, to 30th September, 1932.

Names.	Railway.	Academical qualifications or particulars of training before employment.	Remarks.
Mr. M. A. Saqui .	A. B. . .	....	
Mr. T. V. Woods .	,, .		
Mr. L. E. Hayman	,, .	....	Not in service.
Mr. O. Ormerod .	,, .	....	
Mr. B. G. Roy .	,, .	....	
Mr. A. N. Roy .	,, .	....	

Statement showing the names of officers recruited to the Transportation (Traffic) and Commercial Departments of Company-managed Railways from 1st January, 1920, to 30th September, 1932—contd.

Names.	Railway.	Academical qualifications or particulars of training before employment.	Remarks.
Mr. G. F. d'Adhemar	B. & N. W.	Trained in Traffic working on B. & N. W. Railway.	
Mr. L. K. L. Pearson	,,	Trained on British Railways	Left service in 1924.
Mr. C. S. Khan	,,	Ditto.	
Mr. P. L. Sahgal	,,	Ditto	Left service in 1930.
Mr. W. A. Hewitt	,,	Ditto.	
Mr. R. K. Polwhele	,,	Ditto.	
	R. & K.	*Nil.*	
Mr. A. C. Chatterjee	B. N.	....	
Mr. R. C. Curtis	,,	B.A. (Cant.), LL.B., Captain in I. A. R. O. Was posted as Cantt. Magistrate at Allahabad. Had 3 years' active service in the War.	
Mr. J. Blackburn	,,	Was in command of hill station, Kasauli, and also worked as Cantt. Magistrate, Punjab.	Services terminated in 1923.
Mr. J. W. Mitchell	,,	Worked on North Eastern Railway for 8 years. Passed examinations in different Railway branches.	Resigned.
Mr. R. A. P. Johns	,,	....	Dead.
Mr. B. K. De	,,	Graduated with Honours in English. Studied in Trinity College, Cambridge, for Economic Tripos for 6 months and joined the London School of Economics for the degree of B. Com. Also studied for I. C. S.	
Mr. W. J. Coode	,,	Worked in Kashmir General Agency.	
Mr. R. A. L. Pears	,,	Joined the Grange (Preparatory School), Crowborough. Joined Royal Naval College (Osborn). Went to Royal Naval College (Dartmouth), went to sea.	Resigned.
Mr. B. N. Verma	,,	Was a scholarship-holder in B.A. class. Underwent a training on the Great Central Railway, London.	Transferred to Bikaner State Railway.
Mr. C. Faruque	,,	B.A.	
Mr. A. S. Yusoof	,,	F.A.	
Mr. G. L. Cockburn	,,	....	Since resigned.

Statement showing the names of officers recruited to the Transportation (Traffic) and Commercial Departments of Company-managed Railways from 1st January, 1920, to 30th September, 1932—contd.

Names.	Railway.	Academical qualifications or particulars of training before employment.	Remarks.
Mr. M. A. Lawton	B. N.	Educated at Monkton Combe School and went to Clifton College for 5 years and had a training for a year on Great Western Railway. Passed the qualifying examination and obtained an efficiency in Railway Signalling and Accountancy.	
Mr. C. E. M. Ridsdale.	,,	Educated at Cheltenham College. Passed out of Sandhurst for the Indian Army in which he served from 1921 -23.	
Mr. L. M. Mazumdar	,,	B.A. (Hons.). Had a training in the various phases of Railway Transportation work. Became conversant with operating Passenger, goods and mineral work, both in door and outdoor work on London Midland and Scottish and Southern Railways.	
Mr. K. W. R. O'Reilly.	,,	Previous experience as A. T. S. on B. N. Railway for over 5 years.	
Mr. S. R. Das	,,	Underwent training on the Great Eastern Railway, London.	
Mr. T. V. Croley	,,	Underwent training on the Great Western Railway.	
Mr. S. Sen	,,	Received training in Commercial and Transportation Departments on London Midland and Scottish Railways for 1½ years.	
Mr. G. F. Fitzgerald	,,	....	Since resigned.
Mr. H. F. Simpson	,,	Employed on British Railways for about 6 years.	
Mr. W. K. Orton	,,	....	
Mr. N. A. Shad	,,	Passed through a course of training on the London Midland and Scottish Railways for 2 years.	
Mr. R. H. Duncan	,,	....	
Mr. B. C. Mallik	,,	Studied up to degree examination in Science. Joined London School of Economics and passed the University examination in Control and Principal factors of Freight training, and had about 3 years' training on Railways in England.	

Statement showing the names of officers recruited to the Transportation (Traffic) and Commercial Departments of Company-managed Railways from 1st January, 1920, to 30th September, 1932—contd.

Names.	Railway.	Academical qualifications or particulars of training before employment.	Remarks.
Mr. K. T. Ahmad .	B. N.	Attended lectures for 3 years in the Intermediate College, Aligarh and had a year's training in the Southern Railway, England.	
Mr. W. E. C. Greenham.	,,	....	
Mr. J. W. Marshall	,,	Held a degree of Bachelor of Engineering, Cambridge.	Since resigned.
Mr. F. J. St. John Croley.	,,	Educated at Shrewsbury and Sandhurst.	
Mr. A. K. Basu .	,,	B.Sc. (Calcutta).	
Mr. N. K. Ganguly	,,	M.Sc. (Punjab).	
Mr. I. S. Malik .	,,	Spent 6 years in England and passed final examination of Mechanical Engineering course at the College of Technology and graduated for which he had the honour of the Associateship of the College conferred on him.	
Mr. K. M. Ishaq .	,,	B.A. of Aligarh Muslim University.	
Mr. R. R. M. Dunn	,,		
Mr. R. Baylay .	,,	....	
Mr. H. D. Khanna.	,,	Educated at Government College, Lahore, and is under training as Traffic probationer.	
Mr. R. M. Simmons	B., B. & C. I..	....	
Mr. P. D. Mitton .	,,	....	
Mr. E. Hudson .	,,	....	
Mr. J. N. A. James	,,	B.A. (Cantab.). Experience in working in Traffic offices at Albert and Lille.	
Mr. A. J. Kerwick	,,	....	
Mr. F. R. F. Wall	,,		
Mr. E. C. Arimitage	,,		
Mr. N. Iredale .	,,	....	
Mr. Kunwar Amarsingh.	,,	....	
Mr. G. T. Simpson	,,	....	
Mr. A. A. Brown .	,,	....	

Statement showing the names of officers recruited to the Transportation (Traffic) and Commercial Departments of Company-managed Railways from 1st January, 1920, to 30th September, 1932—contd.

Names.	Railway.	Academical qualifications or particulars of training before employment.	Remarks.
Mr. L. R. Mayall .	B., B. & C. I.	....	
Mr. G. P. Leeper .	,, .		
Mr. A. Ramchandra Rao.	M. & S. M.	B.A., B.L. . .	Trained as a traffic candidate in all branches of work of the Department.
Mr. M. S. Sivasankaram.	,, .	B.A.	Ditto.
Mr. B. C. Desikachari.	,, .	B.A., LL.B., B.Com. . .	Ditto.
Mr. N. Kamalakara Rao.	,, .	B.A., B.L. . . .	Ditto.
Mr. H. E. Edwards	,, .	Recruited in United Kingdom. Had training on English Railways.	
Mr. A. L. E. Hooper	,, .	Recruited in United Kingdom	Undergoing training.
Mr. H. M. Gordon	,, .	Ditto.	Ditto.
Mr. D. B. Patel .	,, .	Had training on English Railways.	Ditto.
Mr. R. J. J. Perry.	,, .	Ditto.	
Mr. J. G. Fawcett	,, .	Ditto.	
Mr. K. L. Crawford	,, .	Had training on E. I. Railway.	
Mr. C. G. Reynolds	,, .	Ditto.	
Mr. Ramaswam Sarma.	,, .	B.A. (Hons.) .	Trained in India.
Mr. S. R. Kalyanaraman.	,, .	B.A. (Hons.) . .	Ditto.
Mr. T. Stephenson	,, .	Was once an officer of this Railway. Resigned and reappointed.	
Mr. A. C. Read .	,, .	B.Sc. Had training on English Railways.	
Mr. B. T. Singh .	,, .	Ditto.	
Mr. E. Lee . .	,, .	Had training on English Railways and on E. B. Railway.	Since left service.
Mr. S. Ramachandra Rao.	,, .	B. A.	Ditto.
Mr. Aga Md. Ebrahim Ali Khan.	,, .	....	Ditto.

Statement showing the names of officers recruited to the Transportation (Traffic) and Commercial Departments of Company-managed Railways from 1st January, 1920, to 30th September, 1932—concld.

Names.	Railway.	Academical qualifications or particulars of training before employment.	Remarks.
Mr. M. Baliah .	M. & S. M. .	....	Since left service.
Mr. D. C. Cathie .	,, .		Ditto.
Mr. G. Charlton .	,, .	....	Ditto.
Mr. T. L. Shield .	S. I. . .	Studied in the School of Commerce for Railway Works, Dublin and had 4 years' experience in Irish Railways previous to his appointment on this Railway.	Trained in India.
Mr. H. J. Crane .	,, .	Was employed in Great Western Railway, Worcester and had 4 years' experience.	Ditto.
Mr. Sidney Smith .	,, .	Passed Oxford Senior Local Examination. Was probationer in the Metropolitan Railway, London, for about a year.	Ditto.
Mr. L. T. Hockley.	,, .	Was employed as paid probationer in the Great Eastern Railway, London.	Ditto.
Mr. C. M. Dodge .	,, .	Passed the Senior Cambridge Examination also the Examination of Institution of Mechanical Engineers for Associate Membership. Was employed in the London South Western Railway work at Eastleigh.	
Mr. T. Padmanabha Menon.	,, .	Studied up to B.A. of the Madras University.	Ditto.
Mr. R. C. Bater .	,, .	Educated at the Magdalene College, Oxford. Entered service in the L. M. & S. Railway Co. and worked as Assistant Train Controller.	Ditto.
Mr. V. R. Rajagopalan.	,, .	B.A. (Madras). . . .	Ditto.
Mr. K. Basheer Ahmad.	,, .	B.A., B.L. . .	Ditto.
Mr. N. Krishnamurthi.	,, .	M.A. (Madras) . . .	Ditto.

Statement showing the names of officers promoted to the Transportation (Traffic) and Commercial Departments of Company-managed Railways from 1st January, 1920, to 30th September, 1932.

Names.	Railway.	Academical qualifications or particulars of training before employment.	Remarks.
Mr. V. L. Thompson	A. B.	Promoted subordinate.	
Mr. C. J. B. Armour	,,	Ditto.	
Mr. S. C. Ghosh	,,	Ditto.	
Mr. L. J. Harris	,,	Ditto.	
Mr. J. P. Sinha	B. & N.-W.	Promoted subordinate. Trained on State Railways in Rates works.	
Mr. M. F. Hanafi	,,	Promoted subordinate. Trained on British Railways. M.A. from Dublin University.	
Nil.	R. & K.	*Nil.*	
Mr. J. P. McNamara	B. N.	Promoted subordinate	Retired.
Mr. S. N. Bose	,,	Ditto.	
Mr. J. Roy	,,	Ditto	Retired.
Mr. N. Laharry	,,	Ditto.	
Mr. R. E. Robbins	,,	Ditto.	
Mr. N. S. Iyer	,,	Ditto.	
Mr. B. W. Heanly	,,	Ditto.	
Mr. C. S. Moore	,,	Ditto.	
Mr. S. C. Tapsell	,,	Ditto.	
Mr. S. K. Basu	,,	Ditto.	
Mr. P. O. Bingham	,,	Ditto.	
Mr. W. F. Scutt	,,	Ditto	Retired.
Mr. W. R. S. Morley	B., B. & C. I.	Ditto.	
Rai Sahib Manilal D.	,,	Ditto.	
Khan Sahib Cowasji R. Jagose.	,,	Ditto.	
Rao Sahib G. Pandurang Rao.	,,	Ditto (B.A.).	
Mr. F. DeBretton	,,	Ditto.	
Mr. E. W. Stanley	,,	Ditto.	
Mr. V. Aquine	,,	Ditto.	
Rai Sahib Girdharilal D.	,,	Ditto.	
Mr. Balkrishna G.	,,	Ditto.	
Mr. M. D. Sethna	,,	Ditto (B.A., B.Sc.).	
Mr. Ram Nath Kaul	,,	Ditto.	
Mr. Dara Jehangir	,,	Ditto.	
Mr. R. A. B. Graveston.	,,	Ditto.	
Mr. O. Gomes	,,	Ditto.	
Mr. Mirza Fazal Ahmad.	,,	Ditto (B.A.).	

Statement showing the names of officers promoted to the Transportation (Traffic) and Commercial Departments of Company-managed Railways from 1st January, 1920, to 30th September, 1932—concld.

Names.	Railway.	Academical qualifications or particulars of training before employment.	Remarks.
Mr. N. Tyabji .	B., B. & C. I.	Promoted subordinate.	
Mr. Vithalrao, P. .	,, .	Ditto (B.A.).	
Mr. B. N. Wahal .	,, .	Ditto (B.A.).	
Mr. Kunwar Ajit Singh.	,, .	Ditto.	
Mr. N. C. Hoon .	,, .	Ditto (B.A.).	
Mr. G. A. H. Martelli	,, .	Ditto.	
Mr. D. Wilson .	,, .	Ditto.	
Mr. W. O. Browne	M. & S. M.	Ditto.	
Mr. N. Seshagiri Rao.	S. I. . .	Ditto (B.A.).	
Mr. A. Vieyra .	,, .	Ditto.	
Mr. A. H. Jones .	,, .	Ditto.	
Mr. O. S. Vankatarama Iyer.	,, .	Ditto.	
Mr. V. Kanagasabapathy Iyer.	,, .	Ditto.	
Mr. F. G. Natesa Iyer.	,, .	Ditto.	
Rao Sahib R. G. Subramania Iyer	,, .	Ditto.	
Mr. E. S. Ramaswamy Iyer.	,, .	Ditto.	
Mr. T. W. Parker .	,, .	Ditto.	
Mr. A. R. Lambie .	,, .	Ditto.	
Mr. N. V. Vaithinatha Iyer.	,, .	Ditto (B.A., B.L.).	
Mr. A. V. Natesa Iyer.	,, .	Ditto.	
Mr. P. M. Vanspall	,, .	Ditto.	
Mr. E. P. DeMonte	,, .	Ditto.	
Mr. H. L. Biswas .	,, .	M.A., B.L., B.Com. (Lond.), Bar.-at-Law. Has had practical training in Great Western Railway, England, Railway Clearing House, England, etc.	

CONFIRMATION OF ASSISTANT CONTROLLERS ON THE NORTH WESTERN RAILWAY.

*1014. (*a*) The matter is within the competence of the Agent who reports that the case has received detailed consideration.

(*b*) Yes.

(*c*) All Controllers are imported from other classes. Five men who had formerly worked as Assistant Controllers and who were erroneously omitted from consideration when the confirmations were first made have now been confirmed.

(*d*) and (*e*). Length of service was one of the factors considered. It was also necessary that an individual should be able to earn a recommendation of fitness for permanent promotion to this post. A list giving the names of the 14 men not confirmed and 5 men now confirmed in order of length of service is attached.

(*f*) Five.

(*g*) The Agent reports that the case of each individual who has not secured confirmation has been very carefully considered and that further examination would serve no useful purpose.

List of men confirmed and not confirmed according to length of service.

Names.	Dates of appointment.	Remarks.
1. Mr. Waryam Singh	12th May 1902.	
2. Mr. Fazal Karim	6th Dec. 1908	Confirmed.
3. Mr. Lilloram V.	11th Dec. 1911.	
4. Mr. Lokoo Mall	2nd May 1912.	
5. Mr. Sahibrai J.	7th July 1913.	
6. Mr. D. Bejou	21st Oct. 1913.	
7. Mr. Kabir Ali	20th Nov. 1916	Confirmed.
8. Mr. Paman Dass T.	22nd Oct. 1917	Do.
9. Mr. E. A. Buston	27th Aug. 1919	Do.
10. Mr. G. J. Ross	26th Jan. 1920.	
11. Mr. R. J. Birkett	14th April 1920.	
12. Mr. G. M. Tappin	25th April 1922	Confirmed.
13. Mr. David Sen	7th Sep. 1925.	
14. Mr. Narain Singh	3rd April 1926.	
15. Mr. Gian Singh	6th April 1926.	
16. Mr. O. E. Ryan	30th July 1926.	
17. Mr. Sardari Lal Bhandari	12th Aug. 1926.	
18. Mr. J. A. Michael	6th Feb. 1927.	
19. Mr. C. W. Cooper	16th Sep. 1927.	

PAY OF ASSISTANT STATION MASTERS ON THE EAST INDIAN RAILWAY.

*1459 (*a*) No; this is not the case. The maximum pay of Assistant Station Master varies according to the importance of a station; the highest maximum for the most important station being Rs. 290.

(*b*) There have been no promotions for the last 8 or 10 years from the rank of Assistant Station Master scale 'C' to that of Station Master scale 'B' because there have been no vacancies.

(*c*) A few selected Assistant Station Masters grade 'C' are in a panel to relieve Assistant Station Masters Class 'F', but there have been no cases of permanent promotion.

STATEMENT OF BUSINESS.

The Honourable Sir Brojendra Mitter (Leader of the House): With your permission, Mr. Deputy President, I rise to make the usual statement regarding the course of Government business next week. The legislative programme has fallen somewhat into arrears, and we propose to devote as much time as possible to this class of business, next week. Three days are allotted for Government business, Monday, Tuesday and Thursday. On Thursday forenoon, the Railway Budget will be introduced; apart from this, the remainder of the time available will be devoted to legislative business. We propose to proceed with the motions on Bills which have already been put down. In addition, the Honourable the Finance Member will move for reference to Select Committee of his two Income-tax Bills, one relating to foreign income and the other to various matters of administrative procedure. The Honourable the Commerce Member will also introduce a Bill to extend the operation of the Wheat (Import Duty) Act, 1931, for another year.

THE INDIAN "KHADDAR" (NAME PROTECTION) BILL.

Mr. Gaya Prasad Singh (Muzaffarpur *cum* Champaran: Non-Muhammadan): Sir, I beg to move:

"That the Bill to provide for the protection of the names 'Khaddar' and 'Khadi', used as trade descriptions of cloth spun and woven by hand in India, be taken into consideration."

In making this motion, I submit that it is a very short and simple Bill which only seeks to give legal protection to the names "khaddar" and "khadi" which have come to signify cloth spun and woven by hand in India. There are many mills, whether in India or outside, which produce a sort of cloth in their mills, and which they designate as "khaddar" and "khadi". That infringes upon the names which have come to be associated only with hand woven and hand spun cloth. It is, therefore, my proposal to restrict the name "khaddar" or "khadi" to the particular sort of cloth we find in India. The definition of "trade description", as given in section 2 of the Merchandise Marks Act, is as follows:

" 'trade description' means any description, statement or other indication, direct or indirect,—

(*a*) as to the number, quantity, measure, gauge or weight of any goods, or

(*b*) as to the place or country in which, or the time at which, any goods were made or produced, or

(*c*) as to the mode of manufacturing or producing any goods, or

[Mr. Gaya Prasad Singh.]

(*d*) as to the material of which any goods are composed, or

(*e*) as to any goods being the subject of an existing patent, privilege or copyright;

and the use of any numeral, word or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Act."

Now, Sir, my proposal is that this expression "khaddar" or "khadi" should be included as "trade description" within the definition which I have just read out; and an application of such trade description to mill products be punishable under section 6 of the Merchandise Marks Act, which says:

"If a person applies a false trade description to goods, he shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be punished with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees, and in case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both."

Sir, I hope there is nothing controversial in this measure. It only wants to protect a hand-woven industry of this country against spurious imitations, and which, as a result of the impetus, given to it by the nationalist movement in recent times, is on the increase. It will also give relief to unemployment. I understand that Government have given notice of their intention to move an amendment for the circulation of this Bill. Personally I do not think that circulation of a non-contentious measure like this would be necessary, but I am advised by some of my friends that, in order to save the time of this House and to allow it to proceed to other business which is down on the agenda, I should not oppose the circulation of this Bill I, therefore, would be willing to agree to the circulation of this Bill if the House agrees to such course of action. Sir, I move.

Mr. Deputy President (Mr. R. K. Shanmukham Chetty): Motion moved:

"That the Bill to provide for the protection of the names 'Khaddar' and 'Khadi', used as trade descriptions of cloth spun and woven by hand in India, be taken into consideration."

The Honourable Sir Joseph Bhore (Member for Commerce and Railways): Sir, I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st July, 1933."

The Honourable the Mover need not think that in making this motion Government necessarily intend to oppose the Bill. But Government have come to the conclusion that they cannot decide on their course of action until they have much fuller information than they have at present on one or two very important points. The first point of importance is, whether, as a matter of fact, trade custom does confine the use of the terms "khaddar" and "khadi" to cotton textiles woven by hand from yarn spun by hand. My Honourable friend has stated in his Statement of Objects and Reasons that "khaddar" and "khadi" have come to denote hand-spun and hand-woven cloth only. What we want to be sure is that trade custom does actually confine those terms to the particular class of commodity to which he has referred. If it does not, we would have to consider very carefully whether by legislation we should interfere with any established trade custom. Then, another point of some importance is for us to be satisfied, if this legislation is passed, that administratively it will

be possible to give effect to it in the internal markets in India. We wish to know whether it will be possible to administer it successfully without the fear of fraud or corruption to any extent. That is the information which we shall have to get. But I want to assure the Honourable Member that he must not understand me as necessarily opposing this Bill. I am very glad that he has consented to accept this motion for circulation. Sir, I move.

Mr. Deputy President (Mr. R. K. Shanmukham Chetty): Amendment moved:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st July, 1933."

Mr. S. C. Mitra (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I support the motion for circulation as moved by the Honourable the Commerce Member, though I would have been glad also to support any motion for referring it to a Select Committee, because I think the House should be in a position to commit itself to the general principle of the Bill and that no attempt should be made by the trades people to take advantage of the name or description of "khaddar" by any spurious means; and I am glad that Government have not taken any definite attitude yet and if they find it possible on administrative grounds to accept the Bill like this, I hope there will be no objection from the Government side. Sir, I support the principle of the Bill as well as the motion for circulation.

Mr. C. S. Ranga Iyer (Rohilkund and Kumaon Divisions: Non-Muhammadan Rural): Sir, I wish the Honourable the Commerce Member had not proposed the circulation of this Bill, but straightaway taken it to the Select Committee and expeditiously removed those difficulties, administrative or customs or otherwise, and enabled this Assembly to pass this measure into law.

It will be recalled that an identical Bill was in the name of our late lamented leader, Pandit Motilal Nehru. This is not a new Bill; this is really an old Bill which has been before the public for so long a time. However, it is a matter for great satisfaction that the Honourable the Commerce Member shares the enthusiasm and does not deny the sympathy that the Government ought to have for a Bill of this kind. In this country, as everybody knows, more than half the population, the agricultural population, are unemployed for half the year; and unless and until the cottage industries are developed, for India lives in the cottages and in the villages, until and unless this "khaddar" industry develops, I cannot see how we can attack the problem of unemployment. Government ought to be more sympathetic in this matter and attack all spurious competitors who use the name of "khaddar". Who does not know that Japanese "khaddar" flooded the market and cheated people, who were enthusiastic about the indigenous industry being developed, into buying that mill "khaddar"? I think the competition, especially at a time when the "khadi" and "khaddar" industry was beginning to flourish, was so great that after serious consideration in the old Swaraj Party, of which you, Sir, were the Whip and, later on, the Secretary—and you are fully aware of the serious consideration we gave to this matter,—it was decided to bring forward a Bill. We are, I believe, within sight of passing this measure; and, having waited so long, we do not mind waiting a little more, especially as the Honourable the Commerce Member has not denied the

[Mr. C. S. Ranga Iyer.]

sympathy of the Government for this measure. With these few observations, I commend the acceptance of the motion before the House for circulation.

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Sir, I am always for eliciting public opinion. In this case, it is wise on the part of the Government to have agreed to this and put in an amendment for the purpose. It is very necessary that the country should give their own opinion on matters as important as this. We know that "khadi" has come to stay in India, and it is very necessary that the Legislature should give all support to an attempt which tends to give protection to "khadi". What is intended by this Bill, as it has been presented, is to define what "khadi" is; and it is very necessary that we should have a clear definition. The proposed one, *viz.*,—cloth spun and woven by hand—is adequate. Clause 3 requires that there should be protection for "khadi", woven and spun in India, against fabrication of trade marks, by fixing the trade description of the cloth. Therefore it is very necessary that a Bill like this should be passed as early as possible. But as Government have thought it fit to get public opinion—and I think very rightly—I hope that opinions will be elicited without much delay and the measure passed into law. Sir, I support the amendment.

Mr. Muhammad Azhar Ali (Lucknow and Fyzabad Divisions: Muhammadan Rural): Sir, after the sympathetic speech which we heard this morning from the Honourable the Commerce Member, there are very few of us here on this side to oppose the circulation motion. "Khadi" and "khaddar" have now come to stay and remain in India. There cannot be two opinions about that now But we always wait for such considerations from the Government Members to express their sympathy. The only fear that we have, when a motion for circulation comes, is that the matter may be put off for a long time. We hope that so far as this Bill is concerned, Government will take care really that this matter is passed; and the sympathetic attitude is adopted by the Government . . . .

The Honourable Sir Joseph Bhore: May I point out to the Honourable Member that my motion is for eliciting opinion by the 31st July, 1933?

Mr. Muhammad Azhar Ali: Quite so: I quite see the point that it is in July; then, we will have an opportunity to discuss the Bill at Simla. Sir, I support the motion

Mr. Deputy President (Mr. R. K. Shanmukham Chetty): Does the Honourable the Mover wish to say anything?

Mr. Gaya Prasad Singh: No, Sir.

Mr. Deputy President (Mr. R. K. Shanmukham Chetty): The original question was:

"That the Bill to provide for the protection of the names 'Khaddar' and 'Khadi', used as trade descriptions of cloth spun and woven by hand in India, be taken into consideration."

Since which an amendment has been moved:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st July, 1933."

The question I have now to put is that that amendment be made.

The motion was adopted.

Sardar Sant Singh (West Punjab: Sikh): Sir, I beg to move:

"That the Bill further to amend the Indian Limitation Act, 1908, be referred to a Select Committee consisting of the Honourable Sir Brojendra Mitter, Mr. D. G. Mitchell, Dr. F. X. DeSouza, Mr. Jamal Muhammad Saib, Sir Cowasji Jehangir, Mr. N. N. Anklesaria, Mr. Rahimtoola M. Chinoy, Mr. K. C. Neogy, Sir Abdur Rahim, Mr. G. Morgan, Sir Hari Singh Gour and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Sir, in moving the amendment of the Indian Limitation Act, my object is to help both the debtor as well as the creditor in seeking their remedy for enforcing their contract in Courts. Honourable Members are aware that in these days of depression, it is very hard, both for the creditor as well as for the debtor, to seek a remedy in Court at an earlier stage. The present period of limitation for money suits is three years throughout India. In the Punjab, there was a special Limitation Act passed in which the period of limitation for such suits was extended to six years, but it is now several years since that Act was repealed. Now, we find that the creditors have no money to pay the enhanced rates in Court-fees, and they have to ask the debtors to give acknowledgments, with the result that the debtors have to pay compound interest on their debts. If the period of limitation is extended to six years, the debtors will be relieved considerably of the payment of compound interest, and, possibly, owing to a change of circumstances in the country, they will have to pay a lesser amount than they are liable to pay at the present time. It should be remembered that recently the rupee has appreciated considerably and the debts have, on account of the appreciation of the rupee, in some cases become doubled. In these circumstances, I think it is but fair to the debtors that the period of limitation should be extended, because the value of the rupee, when it depreciates, will help the debtor considerably. Therefore, Sir, I propose that the period prescribed in the provisions of Articles 52, 53, 54, 57, 58, 59, 60, 61, 62, 63, 64, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83 and 85 should be extended from three years to six years. All these articles relate to money suits in various forms. Therefore, I will beg the indulgence of the House to consider this Bill on its merits for the benefit of the debtor. Sir, I move .

Mr. Deputy President (Mr. R. K. Shanmukham Chetty): Motion moved:

"That the Bill further to amend the Indian Limitation Act, 1908, be referred to a Select Committee consisting of the Honourable Sir Brojendra Mitter, Mr. D. G. Mitchell, Dr. F. X. DeSouza, Mr. Jamal Muhammad Saib, Sir Cowasji Jehangir, Mr. N. N. Anklesaria, Mr. Rahimtoola M. Chinoy, Mr. K. C. Neogy, Sir Abdur Rahim, Mr. G. Morgan, Sir Hari Singh Gour and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Raja Bahadur G. Krishnamachariar (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural): Sir, I welcome this Bill. In these days of depression and want of money, it is certainly a nuisance that one has to borrow, and, within the expiry of three years, the creditor begins to worry the debtor for the money. Seasons are getting more and more unfavourable year after year, and there is considerable difficulty to meet even the Govern-

[Raja Bahadur G. Krishnamachariar.]

ment demand, let alone the expenses to keep up one's establishment on the land and keep them in a fit and efficient manner so as to get something at least for the next year, the mere sight of the money-lender from whom you have to borrow, whether you like it or no, is simply horrifying. His excuse is: "I cannot help it; the period of limitation runs against me; I must put you in Court or you must pay." Well, the compromise that we have to arrive at is, as my friend, Sardar Sant Singh, has just pointed out, that we have got either to pay compound interest and renew the pro-note or enhance the original rate of interest which itself is ruinous in all conscience, and, then, what is called a hand note, agreeing to pay this enhanced interest, has to be executed, whereas if the period is extended to six years, and if the creditor is really bent upon recovering his money and not harassing the debtor, he can get it very easily. I think, Sir, this measure will be a great relief to agriculturists, because it is they who have to borrow year in and year out. Therefore, I support this motion.

Rai Bahadur Lala Brij Kishore (Lucknow Division: Non-Muhammadan Rural): Sir, I am not a lawyer, but, as a Talukdar in a large way, my family has been very greatly interested in money lending transactions with our tenants and others for generations together, and I must congratulate my Honourable friend, Sardar Sant Singh, for bringing forward this Bill, as, I believe, it will relieve me personally from many embarrassments due to the present economic depression. Sir, I am told by my lawyer friends that Statutes of Limitation are Satutes of repose, peace and justice. But my own personal experience of the transactions mentioned in the various articles of the Limitation Act is that these Statutes work more as Statutes of discord and litigation.

Sir, as you know, respectable people dislike litigation for enforcing their rights and claims, however just these may be, but generally they are compelled to file a suit so that their claim is not barred by limitation. If the period of limitation is enhanced, as is contemplated by this Bill, litigation and breaking up of long standing relations between the creditor and the debtor may, to a great extent, be avoided. In short, Sir, my experience is that shortness of the period of limitation tends to make a dishonest debtor more dishonest, and an impatient creditor more impatient. Sir, I believe in the goodness of human nature, and I believe that, if sufficient time is allowed to a debtor, he is more likely to be honest in clearing up his liabilities. In the same way, a longer period of limitation enables a creditor to wait for a longer period and afford greater convenience and facility to the debtor for paying off his debt. Sir, according to our Indian customs and business morality, we do not pay much regard to the period of limitation and the consequent result has been that in India the creditor has always been more indulgent and the debtor more honest than those in countries where specific periods of limitation are prescribed. I also understand from my lawyer friends that the period of limitation in England, in connection with many of the transactions treated under the Articles mentioned in my Honourable friend Sardar Sant Singh's Bill is six years instead of three years as set forth in the Indian enactment. For all these reasons, Sir, I welcome this Bill, and I support the motion of my Honourable friend, Sardar Sant Singh, especially because clause 3 of the Bill will remedy all possible inconveniences and hardships which we experience at present.

Mr. T. N. Ramakrishna Reddi (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): I have great pleasure in supporting this Bill. It has not come too soon, and it is a very useful measure in these days of economic depression. Even the creditors need not oppose this Bill; those money-lenders—who are the bane of this country to some extent—need not also oppose this Bill, because they are equally affected in these days of economic depression. If only three years' time be given, necessarily they will have to file their suits within the period of limitation, or else they will lose their money, and this Bill enables them to wait for six years. There are many cases in which creditors are not able to realise their money, because they do not possess sufficient money with which to file suits, and they have compromised with the debtors and got half the amount or three-quarters. By giving a longer period the Bill is helpful to them to get back their full money. As regards the debtors, the Bill is also helpful to them, because, if a suit is filed within three years, the creditor or the plaintiff will have to execute his decree, and, at the time of filing the execution petition, he has to calculate interest up to that date and execute for the whole amount. If that amount is not realised, then, in the second execution, he will have to calculate interest on the aggregate amount, and, thus, for each execution petition, the amount will increase and the debtor will have to pay compound interest. If this period be extended, it will alleviate the debtor to some extent. I was just referring to the Schedule of the Limitation Act to find why my learned friend, a lawyer Member from Lyallpur, has not included article 84 in this Schedule. I find, to my surprise, that article 84 refers to a suit "by an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid". So, he has made himself secure that he could file a suit for realising costs from his clients within a period of three years. I cannot say that it has been deliberately omitted by him, but I wish that he had included it in this Bill. As it is not included, I will move an amendment to include that article also in this Bill. I am also a lawyer, but yet I am more altruistic than my learned friend who has introduced this Bill, and I am prepared to include that article also. With these words, I support the Bill.

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): I have much pleasure in supporting this motion for reference to a Select Committee. It seems to me that the Honourable Member has been wise in bringing forward this Bill, because he wants to move with the times. It cannot be denied that these are days of depression when it is necessary that the debtors should have some relief and should not be harassed especially when they have not got sufficient to eat. It is very necessary that a Bill of this kind should be considered favourably. It is claimed by the Honourable the Mover that this Bill will bring good both to the debtor as well as to the creditor. I find, however, that there is some printing mistake in the Statement of Objects and Reasons. It is said therein:

> "The unprecedented economic depression in the country has materially affected the economic condition of *half* the debtor as well as the creditor."

The word "half" is a mistake; it should be "both".

I do think that this Bill will do good both to the debtor and the creditor. There are numerous articles of the Limitation Act that have been referred to, in respect of which the period of limitation is sought to be extended. We know that suits for recovery of a debt, or suits on promissory notes,

[Mr. Lalchand Navalrai.]

or suits for the recovery of price of goods sold become time-barred if they are not filed within three years. The present attempt to amend the Limitation Act is only in respect of such suits. It should not frighten any Honourable Member, because many articles are sought to be included in this amending Bill. Surprise was, however, expressed in some quarters when my Honourable friend was mentioning the huge number of articles. I will not take the House through all the articles, but I will take one or two to show that they are of a like nature. The time limit in Article 52 is asked to be extended. That article deals with suits "for the price of goods sold and delivered, where no fixed period of credit is agreed upon", and the period given for it is three years from the date of delivery of the goods. Article 57 deals with suits "for money payable for money lent". Article 59 deals with suits "for money lent under an agreement that it shall be payable on demand", Article 61 deals with suits "for money payable to the plaintiff for money paid for the defendant". So, it is clear, that what is sought to be done, is to extend the period of limitation with regard only to such suits in which money transactions are involved. Money, nowadays, as everybody knows, is very rare in the market, and people are very much affected on that account and it is necessary that debtors should be given some relief. It will not only give the honest debtor some breathing time to pay but he will have sufficient time to adjust his own conditions as well as to be honest in paying off his debt.

At present the creditor is required to go to Court within three years, and, therefore, whether the debtor is able to pay or not, he has no other alternative but to sue him within time. This means harassment of the debtor with a view to extracting money out of him. The creditor cannot be blamed for it. But if he knows that he has more time, he will be more reasonable and he may wait for a longer period. Therefore, it is necessary that in these days the period of limitation should be extended. It will spare just this moment both parties from incurring litigation expenses. It will be advantageous to the creditor, in these days of depression, if he will not have to go to Court to save the limitation and thus he will save himself the litigation expenses which otherwise will have to be incurred in going to Court. The law has already provided some way out. Section 19 of the Limitation Act provides that within the period of limitation, that is to say, the three years, if the debtor acknowledges the debt of the creditor, a fresh period of limitation will begin from the date of the acknowledgment. This is a contrivance by which an adjustment is nowadays being made between creditors and debtors, but there is one difficulty in this for the debtor. If he approaches the creditor for time, surely the latter will say: "Well, I will give you time, but on certain advantageous terms only". These terms usually are that he has to add the interest, payable up to the time of the acknowledgment, to the capital and, then, for three years more, the interest will run not only on the original capital debt, but on the capital plus the former interest included in the capital. This is certainly detrimental to the debtor. What is aimed at in this Bill is to ask for a straight dealing, that is to say, the Legislature is asked to extend the time to six years and save the debtor from the payment of the compound interest. My friend, Mr. Reddi, raised a question as to the costs of the pleaders or the advocates and interjected as to why no similar provision for extension of time for payment of such a debt is asked for. I do not think, there arises any relation of a creditor or a debtor in such cases.

Many a time the creditors play the part of Shylocks. In the case of pleaders, they are reasonable to give indulgence for easy payments and do not harass their clients. Therefore, I do not think that that article relating to lawyer's charges need be included. With these remarks, I support the motion for the Select Committee.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): I should be failing in my duty if I did not inform the House as to what would be the implication of the enactment of this Bill. My Honourable friend, Sardar Sant Singh, is naturally anxious that the debtors should be assisted in these days of depression and, if I had some little hope that the debtor in this case would be benefited by the enactment of this measure, no one would have more heartily welcomed this Bill than I; but when I feel that the enactment of this measure would be a cruel kindness to the debtor and, instead of benefiting him, would benefit the creditor, I hope my friend will forgive me if I interject a few observations on his well intentioned Bill. I can well understand that the present depression is to be tided over to the advantage of the debtor. A Bill that would create a moratorium for a period of three years would have been a very good Bill, but this Bill does not create a moratorium, that is the suspension of all rights as between creditor and debtor. What we are trying to do is to saddle upon the unfortunate debtor a heavier debt than he would be liable to pay under the present law. What is more, the creditor will be entitled to recover from the debtor a heavier rate of interest due to the enlargement of the period of limitation from three to six years.

Now, let me illustrate what I mean. Under the law, as it exists on the Statute-book, and, so far as I am aware, it has existed on the Indian Statute-book for nearly half a century, the creditor's remedy for an unsecured and unregistered debt becomes barred, unless he institutes a suit within three years. Now, let us assume that in these petty transactions unsecured and unregistered debts are mostly petty debts carrying a high rate of interest. Now, a creditor, if he does not institute his suit within three years, he stands to lose his principal as well as his interest. Therefore, he has to immediately launch his suit in Court and, as soon as he has got a decree, the Court awards a smaller rate of interest which is usually six per cent., half of the contractual rate. The result, therefore, is that some relief comes to the debtor immediately after the passing of the decree, and it is competent to the Court for a sufficient cause to decree the payment of a debt in suitable instalments. That is provided for in the Code of Civil Procedure. Now, if the Bill becomes law, he might well wait for six years. The rate of interest might be one per cent., two or three or four or five per cent. per month, and Honourable Members on the opposite side have given cases on previous occasions of interests at exorbitant rates. Now, if the creditor is given the larger period of limitation of six years, even then he will say that he is getting the contractual rate of interest of one, two, three, four or five per cent. whereas, if he was to immediately launch the suit in Court, his rate of interest will perhaps come down to six per cent. per annum, and the Court has the discretion of passing the decree, without any interest, so that the creditor cannot get any interest at all. Now, therefore, the debtor stands to benefit by the creditor bringing his claim into Court within three years rather than within six years. I, therefore, think that the remedy provided by the Sardar Sahib for the benefit of the debtor is worse than the disease from which the debtor is suffering at the present moment.

[Sir Hari Singh Gour.]

Now, I have another observation to make in this connection. The depression which is visiting this country and the world at large is, let us hope, of a temporary duration. We shall all cease to exist if this depression became a normal state of our life and we can only hope that the depression is a passing phase of our economic life which will pass away, I hope, within a few years, whereas, if this Bill becomes law, it changes the law for all time. It is not limited to the period of depression, whether it be three or four or five years, but it will radically change the law, depression or no depression.

Now, the third thing that I wish to bring to the notice of Honourable Members is this: At the present moment, it is open to the debtor to stipulate for a longer period. The debtor can go to the creditor and say: "I wish to borrow money and I do not want the period of three years' limitation to apply to my case", and the option is with him. I, therefore, want that the bond, or whatever may be the contractual obligation, is registered and, under the present law of limitation, all debts secured by a registered deed are *ipso facto* recoverable within six years instead of three years, so that the debtor is not without his remedy in providing against depression by stipulating for a longer period of time. But, if you were to compel the debtor to pay the money within six years, you are compelling the debtor to pay a much larger sum.

12 NOON.

Mr. Lalchand Navalrai: He is not debarred from paying at any time. He may save himself that larger interest.

Sir Hari Singh Gour: My Honourable friend has not really grasped the point I am making. Let him reflect upon what I am saying and he will immediately see that, instead of benefiting the debtor, the Bill would have the direct effect and the resultant effect of benefiting the creditor. Let him focus his mind upon the point as to what extent it will benefit the debtor and think of any conceivable circumstances under which it will have that effect and then he will immediately see that this Bill will result not in benefiting the debtor, but in benefiting the creditor, since his right to sue remains and the option is his in any case to sue his debtor within three years, which the Bill seeks to extend to six years. Sir, I am in entire sympathy with the underlying principle that the Sardar Sahib has in sponsoring this Bill. If he could devise some plan for creating a moratorium in this country for the payment of debts for a reasonable time, I am quite sure a very large section of the Members occupying these Benches would support such a plan, but I should be failing in my duty, as I have said, if I do not warn the House that, in the guise of helping the debtor, we should be directly helping the creditor and making the position of the debtor more pitiable if we placed this Bill upon the Statute-book.

The Honourable Sir Brojendra Mitter (Law Member): Sir, when I read the Statement of Objects and Reasons, I felt complete sympathy with the object, but remained unconvinced by the reasons. The object is to give relief to poor debtors. The Government are in full sympathy with that object. But my submission is, that the Bill, instead of achieving that object, will have exactly the opposite result. I shall presently show how that is so. It has been assumed in the course of the debate that, by extending the period of limitation, you compel the creditor to hold his

hands. You do nothing of the kind. Whether the limitation be three years or six years, the creditor can go to Court the moment his cause of action arises. The creditor will choose his time for his suit. If he feels that the debtor's position is getting worse and worse, he will rush to Court at the earliest possible moment. If he feels that by waiting he will be better able to recover his money, he will wait. The creditor in ordinary circumstances will guide his conduct according to his own interest. Will the extension of the period of limitation help the creditor or help the debtor? So far as the debtor is concerned, instead of the sword hanging over his head for three years after which the remedy will be barred, the sword will be hanging over his head for six years. He can get relief if the creditor shows mercy to him; not otherwise. By extending the period, you do not help the debtor in any way, because the creditor can go to Court at any moment.

Let us see what are the sections which are sought to be amended. I have divided these various sections into four categories. Sections 52—54 deal with the price of foods sold and delivered. Sections 57—64 deal with suits for money lent or money had and received. I am only giving a rough description. Sections 66—68 deal with suits on bonds, promissory notes, bills of exchange, surety and indemnity; and section 85 deals with mutual open and current account. Sir, when, over sixty years ago, the Limitation Act was passed, the period for these four classes of suits was very carefully considered as a matter of policy. Dr. Whitley Stokes, at that time, in his speech, explained why in India three years was a more suitable period than six years which obtained in England. Sir, it has been said:

"The progress of commerce leads to the multiplication of contracts, and the frequency of intercourse between man and man, and thus enlarges the field of dispute and litigation. To check this litigation, rules of limitation more or less stringent are rendered necessary."

Dealing with the specific period of three years, Dr. Stokes said this:

"The fact that written evidence is more liable to destruction in this country is one reason why our periods of limitation are shorter than in England."

Therefore, when this period of three years was decided upon, it was not decided upon in a haphazard manner. It was considered desirable that in this country litigation, which was more rife than in England, should be checked. Sir, the shorter the period of limitation, the better is the check, because immediately the period is over, the remedy is barred. By extending the period of limitation, litigation is encouraged. That was one reason. The second reason was that in this country men depended upon documentary evidence of a rather flimsy character, a little *purja*, a *chit* or something of that sort, not a document drawn up in a solicitor's office, a formal document. Such documents are more liable to destruction than formal documents. Having regard to all these considerations, the shorter period of three years was decided upon.

Now, the only ground which I heard my Honourable friend, Sardar Sant Singh, to urge for extending the period was the present trade depression. Sir, this is, as has been pointed out by several previous speakers, we hope, a temporary phase. In order to meet a temporary phase, is it necessary to change the general law of the country? As the learned Leader of the Opposition pointed out, if it were a Bill to establish a moratorium for a certain period, that certainly would have given relief to debtors. But it does not do that. By merely extending the period

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of limitation, you give a longer rope to the creditor; the debtor is not relieved and the creditor can go to Court any moment. How the creditor benefits by having this longer period, I will presently show. My Honourable friend, Sir Hari Singh Gour, anticipated my argument to a large extent on this point. Suppose a debt is carrying compound interest at 12 per cent. If you give a longer period and if the creditor feels that the debtor is substantial enough, then he will wait till the last moment in order to recover the higher rate of interest. But, if the creditor has to go to Court within three years, then all he will get under the decree is the Court rate of interest which is always very much lower than the contractual rate. Therefore, to compel the creditor to go to Court at an earlier period is to the interest of the debtor, because the burden is lessened when the contract merges into the decree. The contract, as a rule, in this country is more onerous than the decree. Now, Sir, take the case of a friendly creditor and a friendly debtor. The creditor does not want to break the debtor: he wants to give him time to pay up. Sections 19 and 20 of the Limitation Act itself provide that a creditor need not go to Court within three years. If he finds that the debtor is in temporary difficulties and he wants to help him, all he will ask the debtor to do is to acknowledge his debt or ask him to pay something by way of interest or make a part payment. Either acknowledgment or part payment or payment of interest will extend the period by another three years. Therefore, a friendly creditor, who does not want to hurt his debtor, can always help him. He can always extend the period. Extension is at his option. Sir, for the benefit of non-lawyer Members of the House, I wish to draw their attention to sections 19 and 20 of the Limitation Act to which my learned friend, Mr. Lalchand Navalrai, has made a reference.

Section 19 runs thus:

"Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed."

This is one method by which the period can be prolonged. Section 20 says:

"Where interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorised in this behalf, or where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf, a fresh period of limitation shall be computed from the time when the payment was made."

Therefore, my submission is this: The Limitation Act, as it is, contains provisions for extension and a friendly creditor can always allow the debtor to take advantage of that extended period. But if the creditor be not friendly, then you cannot help the debtor by mere extension of the period. On the contrary, you give the creditor a longer period in order to accumulate his interest at a higher rate and you give him a longer period to choose his time when he can hit the debtor. Sir, when you come to examine the Bill closely, it appears more a creditor's Bill than a debtor's Bill, a Bill for helping the creditor and not for helping the debtor. The debtor will be seriously prejudiced by this extension, whereas, at present, on the expiration of three years, if nothing else happens, the remedy is

completely barred. But if you accept this Bill, then you allow three more years to the creditor to keep his claim alive. I do not see how Sardar Sant Singh can claim that this is a Bill which will help the debtor; it will undoubtedly help the creditor.

Then, Sir, it has been said that compound interest may accumulate under the three years limitation, but it will cease to accumulate if you extend the period by another three years. I cannot understand this position. Compound interest will cease the moment a suit is filed or, as some Courts have held, the moment the decree is passed. But, by extending the period, you do not stop the running of compound interest in any way, because so long as the suit is not brought, the contract is operative. If the contract provides for compound interest, it will go on accumulating till the suit is brought.

Mr. Lalchand Navalrai: If it provides.

The Honourable Sir Brojendra Mitter: Yes; and if it does not provide, then the question of compound interest does not come in.

Sardar Sant Singh: May I, Sir, explain what my point is. I meant to meet the same argument which the Honourable Member is advancing now, that is, to get the period extended by making an acknowledgment in accordance with section 19 of the Limitation Act. If you make an acknowledgment, it will contain both the principal and the interest and in future both the interest and the principal under section 19 of the Limitation Act will bear interest for the next three years. That is the accumulation.

The Honourable Sir Brojendra Mitter: Very well, Sir. Then, I take it, that Sardar Sant Singh's argument is that the contract is a burdensome contract for the debtor and the acknowledgment only continues that burden. I take it, that is his argument. If the contract is a burdensome contract, then the sooner it comes to an end and merges into a decree, the better it is for the debtor, because the decree is necessarily less onerous than the contract itself. If, however, the contract is not burdensome, then his argument does not apply. But if it is a burdensome contract, then the decree gives greater relief to the debtor than the continuance of the burdensome contract. Then, Sir, it has been said by Raja Bahadur Krishnamachariar that if you do not extend the period, then the creditor may claim an enhanced rate of interest from the debtor on pain of a suit being brought against the debtor. What prevents a creditor from claiming an enhanced rate of interest from his debtor even when the period is extended? As soon as his money falls due, he has got the right to go to Court and he can say to his debtor: "Unless you raise the rate of interest from 12 to 18 per cent., I shall bring my suit." He can do so even if the period be extended to 20 years, because his right to sue accrues as soon as the money falls due. So what difference it makes if the period is extended, I for one cannot make out.

Then, another argument, which was used, was that a short period makes a dishonest debtor more dishonest and an impatient creditor more impatient. Sir, frankly speaking, I do not follow this argument. If the debtor is dishonest, the creditor will not hesitate to go to Court at the earliest possible moment. By extending the period, you cannot prevent the creditor from going to Court. If the creditor be impatient, he has always the right to go to Court as soon as his cause of action arises. But do you improve the position of the debtor in any way by extending the

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period? By extending the period, the creditor is absolutely unaffected. I have said this many times and I repeat it, because that is a point which seems to have been lost sight of in the debate. By extending the period, you do not compel the creditor to hold his hand in any way. He can go to Court any moment he likes. Only he gets a longer period to choose his time, and he will choose his time according to his own interest and not to the debtor's interest. Thus, you are helping the creditor by extending the period.

Rai Bahadur Lala Brij Kishore: Sir, may I ask a question? If the paper which contains the acknowledgment is lost, what course should we adopt?

The Honourable Sir Brojendra Mitter: The liability of papers being lost in this country was one of the reasons why the period in India was made shorter than in England. If the paper be lost, the creditor has to thank himself for his negligence.

Sir Hari Singh Gour: If the acknowledgment is lost, the creditor loses his remedy; so much the better for the debtor. (Laughter.)

The Honourable Sir Brojendra Mitter: Sir, I have said that this Bill will afford no relief to the debtor. It will give considerable advantage to the creditor which the creditor is not asking for, because the Bill, as I understand it, is designed to give relief to the debtor. I have endeavoured to show that it will give no relief to the debtor, but will give additional advantage to the money-lender and, instead of being a measure of mercy towards the debtor, it will be an instrument of greater oppression. For these reasons, Sir, although I fully sympathise with the object with which Sardar Sant Singh brought this Bill, I cannot, on behalf of Government, accept this measure.

***Mr. Muhammad Yamin Khan** (Agra Division: Muhammadan Rural): Sir, after the very lucid and learned speeches of my Honourable friends, the Law Member and the Leader of the Opposition, it was not necessary for anybody to stand up and lend support or repeat the same arguments. The only reason why I have stood up is just to give a little bit of my moral support in opposing the Bill.

I will only give two illustrations which will convince the House that this Bill will not give the desired remedy, but will have the reverse effect. In the Aligarh district, there was a case against one zamindar. He had borrowed Rs. 400 and the interest went on accumulating. The result was that the decree which was passed against him by the Allahabad High Court was for Rs. 3,68,000. That is the evil effect of accumulation of interest; a man borrowing Rs. 400 and having to pay Rs. 3,68,000.

An Honourable Member: Is it a reported case?

Mr. Muhammad Yamin Khan: Yes, it is a reported case. That is the evil effect of the accumulation, and I would be the last person to allow the creditor to go on accumulating the interest quietly over the head of

*Speech not revised by the Honourable Member.

the debtor. Nowadays the chief classes who borrow are the tenantry and the zamindars. The poor tenants have got no money to pay, and to allow any debt against them to accumulate and the interest to be heavier on their shoulders, which they would be unable to pay later on, would be defeating the object which my Honourable friend has in view. And I think the arguments advanced by the Law Member met his case fully. He will understand that at present in the villages the unsecured and unregistered debts which are contained in a *khata* carry interest at the rate of two per cent., and very seldom below that. At the rate of two per cent. per month with compound interest the sum accumulated becomes from Rs. 100 to Rs. 200 in three years time. If, instead of three years, the period becomes six years, this sum of Rs. 200 will double itself after the next three years. That is to say, the man who borrows Rs. 100 will, after six years, if the creditor is sitting quietly and not demanding payment, have to pay Rs. 400. To allow the interest to be accumulated at this rate or to this extent cannot and will not help the debtor, and, in actual practice, my Honourable friend's object will be frustrated unless my friend says that he wants to help the creditor. Of course it is the choice of the creditor to go to Court after a year or after six years. But why should that choice, which is limited to three years, be allowed to extend to six years? I think my Honourable friend, the Mover, comes from a province which calls itself an agricultural province and I think there is some kind of law there which distinguishes between an agriculturist and a non-agriculturist. In my province, there is no such thing. It will be in the interest of the people, whom he comes to represent, that he should withdraw this Bill and not press it further.

The Honourable Khan Bahadur Mian Sir Fazl-i-Husain (Member for Education, Health and Lands): Sir, I would not have intervened in this debate after the most convincing and lucid speech of the Leader of the House. But perhaps the Honourable the Mover of this motion would like me to remind him that what he wants to do now for India, the Punjab Government did for the Punjab agricultural debtors about 1917 or 1918—I forget which. That is to say, they passed a special Limitation Act. It appears that the experiment did not succeed. In any case, under the reforms, the first, I believe, or the second private Bill, which was enacted by the Reformed Legislative Council, was repealing that Limitation Act. Whether the agricultural representatives in the Punjab Legislative Council were right or wrong, it is not for us to determine; but certainly the view they took was that the six years' limitation was against the interests of the agricultural debtors, and they restored the all-India provision of three years. I just wanted to state this fact to the Assembly.

Some Honourable Members: The question may now be put.

Mr. C. F. Grant (Burma: Nominated Official): First of all, Sir, I must ask for the indulgence which this Honourable Assembly customarily extends to those who address it for the first time. I had not intended to speak on this motion, and I trust it will not be thought that I am unduly breaking the tradition of silence in this Assembly which has been generally observed by those who come from my province of Burma.

I entirely agree with the remarks which have been made by recent speakers that the case has been covered so lucidly and elaborately in the speeches of the Honourable Leaders on both sides of the House that it is not necessary for me to traverse the short provisions of the Bill. I am

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afraid that anything I might say has already been much better said. However, there are one or two small points to which I should like to draw attention. First of all, it is advantageous, I think, that a number of people should express their opinions on this Bill, so that the reasons for opposition to it should not be misunderstood. This is a Bill which is brought forward with the intention or belief that it will help the unfortunate debtor class at a time when most of the world falls into that unhappy class, and, therefore, it is important that there should be no misrepresentation of the opposition to the Bill. I sincerely believe that its provisions will not be in the interests of the debtor. I think that most people who study these questions have come to the conclusion that all over the world one of the necessities for restoring a reasonable degree of prosperity is scaling down of all kinds of debt. This is not a thing which people willingly face. Claims which are just and reasonable ought to be paid. In normal times, they would be paid. These are not normal times; and I think any measure, which tends to increase or to prolong—I would rather say both to prolong and to increase—the amount of debt which is at present carried all over the world, is mistaken. This Bill not only tends to prolong the period of indebtedness but may increase the amount of interest payable. It should be clearly pointed out in the interests of the debtors themselves that any extension of time of the nature indicated in this Bill would tend to carry on for a longer period the already very heavy burden of debt. I am sure that most people who are creditors in their heart of hearts fully realise that many of the debts which are at present due to them will never be paid in full. I agree that we must all view with a great deal of regret the fact that the scaling down of debt will mean the destruction of invested capital and a great deal of loss, and we have already suffered so much from the destruction of values that naturally any further losses cannot be easily faced. I am quite sure that those of us who have had at some time or other in our service to deal with agricultural debt and with co-operation realise that the chief difficulty is to get the debtor to face the situation and face unpleasant facts; and, frequently, in the case of the petty debtor, these facts are so unpleasant that we can hardly be censorious when we find that he does not willingly face them. I think that this measure would tend to keep him from facing facts for a further period and will not be either to his material or his moral interests. The danger, as we all know who have any experience of co-operation, is that the debtor will procrastinate as long as he can. I do not think I need make any further remarks, and I think that the Bill must be opposed.

Mr. Muhammad Anwar-ul-Azim (Chittagong Division: Muhammadan Rural): Sir, I do not think it is necessary at all for me at this stage to intervene in this debate. But it seems that we have not been able to be convinced of the cogency or the purpose for which this Bill has been introduced by my learned friend, Mr. Sant Singh. In his Statement of Objects and Reasons he states that he is for uplifting the present so-called deplorable condition of the poorer agricultural debtors inhabiting his part of the country. Mr. Deputy President, I am quite certain, he would not like to take the responsibility of representing the interests of the tenants or the debtors in other parts of the country, and perhaps he has brought forward this measure merely because he is interested in elevating the condition of the agricultural labourers in his part of the country. After

listening to the observations made by the Honourable the Leader of the House and our esteemed friend, the Leader of the Opposition, I do not think there can be any doubt in the mind of anybody about this matter that this measure is never likely to benefit the debtor. So far as I am concerned, I think my friend, Sardar Sant Singh, has not made out a strong case in favour of his motion. It appears to me, Sir, that my friend, Sardar Sant Singh, by endeavouring to improve the condition of the agricultural labourer, has indirectly tried to improve the cause of the money-lenders and others who are interested in money-lending. If he had referred to the present law of limitation, he would certainly have found that sections 19 and 20 amply provide for the extension of the period from three to six years which he seeks through this Bill. What is prevalent in most parts of the country is this, that in the cases of small debts, if the debtor is not able to pay off the loan immediately, he executes a small bond, and it is registered, and when registration is done, the period runs up to six years, and the debtor cannot be troubled until the expiry of that time. Therefore, if my friend thinks that, by extending the period from three to six years, he will benefit the country's cause by this measure, he must be sadly mistaken. Many speakers have spoken before me, and, I am sure, that almost all of us are convinced that there is hardly any necessity to change the existing law on the subject. If we had adequate information from all parts of the country, from responsible public bodies who generally deal with these measures, perhaps there might have been some justification for us to consider this matter at this stage. But, in the absence of that, I feel that no case has been made out before this House to necessitate a change in the period of limitation. A friend of mine, who was just talking to me, a Punjab zamindar, said that the zamindar classes in his part of the country were very indolent; and if the period is extended, as suggested in my friend's measure, to six years, the noose will be much bigger, and, in their indolence, the zamindars will entirely forget to pay up their dues, with the result that there will be chaos in the country and nobody will be benefited by it. I, therefore, oppose this measure.

***Mr. B. N. Misra** (Orissa Division: Non-Muhammadan): Sir, I strongly oppose this measure. If you want to make lazy people more lazy, I think you have to pass this Bill. The position is, the debtor is always in a very unhappy position; he has to repay when he borrows money, and it is his duty to do so. We have many duties to discharge, and so to pay up a debt is also a great duty devolved upon a debtor. Now, if you extend the period of limitation, what will be the consequence? Sir, I remember a case in which a pro-note was executed for Rs. 200. At the end of three years, the amount doubled to Rs. 400, and in eight years, it probably came to Rs. 800, because the rate of interest specified was 25 per cent. or so. Then, after a few years, it was found that the total amount came up to Rs. 1,600 or so, whereas the money originally taken was only Rs. 200, because every three years the pro-note was renewed for an enhanced sum including the interest. Therefore, by extending the period of limitation, you place a temptation in the way of a lazy man to renew the pro-note and avoid payment in due time; he sleeps over the matter.

I think, Sir, the period of limitation is very healthy, and, the shorter the period, the better it is to all concerned, because, as I pointed out just now, a sum of Rs. 200, which was first taken as a loan, accumulated to

*Speech not revised by the Honourable Member.

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Rs. 1,600 in eight years by renewing the pro-note every three years. If the law was stringent, this man would have paid back his debt in time and would have saved his land and property. My opinion is that it will do good to nobody if the period of limitation is extended. If a debt is to be paid within a certain period, it must be paid by that time. Therefore, considering all facts, I oppose extending the period of limitation.

An Honourable Member: Sir, I move that the question be now put.

Mr. Deputy President (Mr. R. K. Shanmukham Chetty): The question is that the question be now put.

The motion was adopted.

Sardar Sant Singh: Sir, when I introduced this measure, I never though it would arouse so much opposition, as I find it has done, in the House. I least expected that opposition would come even from my Leader whom I am very proud to follow, and I never thought that he would supply all the arguments to the Honourable Member opposite against my proposition. At the same time, I do not know how it is that the real significance of the measure, as it is on the present occasion, has been lost sight of by such a shrewd gentleman as my friend, Mr. Yamin Khan. The position is this. At the very outset, I mention the fact that the Punjab had a special Act governing limitation from the year 1904 probably up to the year 1925. This Act was known as the Punjab Loans Limitation Act, and the period for money suits was six years. In 1925, the local Legislature repealed that Act and brought down the period to three years. This fact has been mentioned by the Honourable Sir Fazl-i-Husain to show that the agricultural opinion in the Punjab was against this measure. I submit, Sir, that if the monetary state of the world has been the same, as it was in 1925, this measure would be against the interests of the agriculturists. But the times have changed. The value of the rupee, that had appreciably depreciated in the year 1925, has considerably appreciated in the year 1932. In the year 1925, the intrinsic value of the debts had gone down, while, in the year 1933, (though I am not an economist and am not able to explain the thing so well,—I wish Dr. Ziauddin Ahmad were here to put the whole thing in proper light),—the value of the rupee having appreciated the burden of debt has increased on the peasantry and the agriculturist. Therefore, relief is wanted till the time when the value of the rupee depreciates and the intrinsic value of the debts goes down again. May I remind my Honourable friends that England is refusing to pay her debt to the United States of America simply because the intrinsic value of the debt has increased by the exchange going down from 4·86 to 3·42 as it is today.

An Honourable Member: That is quite different.

Sardar Sant Singh: That may be different, but I may point out this to those friends of mine who think that this measure is for the benefit of the creditors. I still believe that the measure, I have introduced, is in the interests of the agriculturists and not in the interests of the capitalists like Sir Hari Singh Gour and the Law Member who come from the class of capitalists. How can they oppose a measure if it is in their

favour? The position is this. The Honourable the Law Member opposes this Bill on the ground that the creditor remains unaffected by the passing of this Bill and that he is at liberty to go to Court at any time he likes and force his remedy as soon as the cause of action accrues to him. There is no doubt about that. But the debtor is affected. The threat is held out to the debtor to be sued in Court immediately or to give an acknowledgment. If he gives an acknowledgment, he is burdened with compound interest, because the interest that has accrued till the date of acknowledgment will become part and parcel of the principal amount and the principal and interest added together will bear interest in future.

The Honourable Sir Brojendra Mitter: An acknowledgment means this. It is an acknowledgment of liability. It does not affect the quantum of liability, nor does it have the effect of increasing the liability.

Sardar Sant Singh: I am constrained to say that the Honourable the Law Member is ignorant as to how acknowledgments are made in ordinary village transactions. My Honourable friends will bear me out when I say that an acknowledgment is not an acknowledgment of debt as it is, but the whole account is gone through and the acknowledgment contains both the principal and interest and a particular sum is arrived at . . . . .

The Honourable Sir Brojendra Mitter: That is a new contract. It is not an acknowledgment.

Sir Hari Singh Gour: Account stated.

Sardar Sant Singh: But, Sir, that is the way in which acknowledgments are made in the Punjab, and I hope that my friends from the Punjab and my lawyer friends in this House will bear me out that that is the practice. They have to pay compound interest after the acknowledgment has been made.

Mr. G. S. Dutt (Bengal: Nominated Official): If it is in the Punjab, then bring a Bill in the Punjab Council.

An Honourable Member: That does not apply to other parts.

Sardar Sant Singh: I do not know about the other parts, but I know that is the usual way for giving acknowledgment. After the acknowledgment, which is known as *Baqi*, interest accumulates on the interest as well as on the principal which was previously due. What I want to point out is that there are two alternatives open to the debtor—either to be sued in Court immediately, or without giving an acknowledgment the debt should remain for a period of six years. If he is sued in Court, the argument advanced is that the Court will extend indulgence to him by refusing interest or by not granting further interest and granting instalments for the payment of the debt. It is quite true, but what about the costs that are burdened on him on account of the suit that has been instituted? That exceeds the amount of interest, and, then, what about

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the harassment that is caused to him after the decree is passed? Apart from the legitimate charges of the Court-fee and Counsel's fee, he has to pay other charges which become part of the decree passed. He is harassed every day by attachment, by visits from process servers, by arrest and detention . . . .

An Honourable Member: They will be doubled after six years.

Sardar Sant Singh: They will not be doubled—that is exactly what I am pointing out. I want the period of limitation to be extended, so that the remedy may be kept alive for a period of six years.

An Honourable Member: Remedy to whom?

Sardar Sant Singh: The argument is that section 20 of the Limitation Act may be made use of and thus the period of limitation may be extended. There are two ways of meeting that argument. Section 20 is made very little use of by ordinary peasants or agriculturists. It is made use of only in the cases of banking institutions or highly organised bodies and not in the case of transactions by ordinary debtors and creditors. This argument reminds me of a story about the working of an oil mill. A guest was being entertained in a house where an oil mill was working. A buffalo was working the mill. There was a bell attached to this buffalo's neck. The guest asked the host: "What is the use of this bell?" The host replied: "We know that the buffalo is going round and does not stop." The guest said: "If the buffalo stands still and shakes his head the bell will still ring." The host replied: "My buffalo is not a philosopher like you." So, in the villages, among the agriculturists and peasants, there are no Hari Singh Gours or other lawyers to advise them to make a payment of eight annas and save limitation for six years. Again, suppose, if the limitation can be saved in that way, what difference does it make if the Legislature comes to the help of the debtor and saves the limitation for him? After all, these are the two ways arriving at the same result. If the limitation can be saved by payment of a small amount of money, the same thing can be done by the Legislature coming to help in these days of depression and extending the period of limitation from three years to six years.

The Honourable Sir Brojendra Mitter: How do you prevent the creditor from going to Court within the three years? That is what I cannot understand.

An Honourable Member: By force.

Sardar Sant Singh: This Bill will leave the creditor unaffected. Whether the limitation is for three years or for six years, it does not affect the creditor so far as his right of going to Court is concerned within the stipulated period. But, what I say, is, that this Bill is for the benefit of the debtor at this time of the year when the depression is on.

Captain Sher Muhammad Khan Gakhar (Nominated Non-Official): You are asking for a permanent amendment.

Sardar Sant Singh: As regards that, I shall be glad to consider any amendment to the effect that the Bill should be limited to three or four years, so long as this depression lasts. That will be a reasonable way of meeting it. If the Law Member had come forward with any such suggestion, I should have absolutely no objection to withdraw this Bill and agree to his suggestion. But the Honourable Member has not made any such proposal.

Captain Sher Muhammad Khan Gakhar: Would you agree to the vote of the Punjab debtors? You can come to the lobbies and take the vote.

Sardar Sant Singh: Certainly. If my Honourable friend can manage that, I will be most willing to co-operate with him. Another argument that has been advanced against the measure is that this House will never be a party to any measure which helps the accumulation of interest against the debtor. My submission is that this argument is directed more against the rate of interest than against extending the period of limitation for bringing the suit. If this House feels, and I also feel along with them, that the way in which the money lending business is being carried on in the country is highly detrimental to the interest of the agriculturist, if any gentleman brings forward a measure which fixes the maximum rate of interest, I will certainly be in sympathy with him. My friend's argument that in a particular case, before the Allahabad High Court, a sum of Rs. 400 was accumulated to something Rs. 3,68,000 is quite sound and, if he had come forward with a measure limiting the rate of interest or fixing the maximum rate of interest in the case of debts advanced to agriculturists, I would have supported him. But this has nothing to do with the fixing up of the period of limitation for suits. I do not see the relevancy of it. I appreciate the position of the debtor whose debt has increased considerably owing to the accumulation of interest, but this is not the aim of the Limitation Act. For that another Bill should be introduced fixing the maximum rate of interest.

1 P.M.

An Honourable Member: Why don't you bring in a Bill about that?

Sardar Sant Singh: That is an entirely different question. My position is that a measure like this is needed at the present time to help the debtor. I still remain unconvinced that this will not help the debtor. Sir, I commend the Bill to the House.

Mr. Deputy President (Mr. R. K. Shanmukham Chetty): The question is:

"That the Bill further to amend the Indian Limitation Act, 1908, be referred to a Select Committee consisting of the Honourable Sir Brojendra Mitter, Mr. D. G. Mitchell, Dr. F. X. DeSouza, Mr. Jamal Muhammad Saib, Sir Cowasji Jehangir, Mr. N. N. Anklesaria, Mr. Rahimtoola M. Chinoy, Mr. K. C. Neogy, Sir Abdur Rahim, Mr. G. Morgan, Sir Hari Singh Gour and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The motion was negatived.

***Sardar Sant Singh** (West Punjab: Sikh). Sir, I move:

"That the Bill further to amend the Code of Criminal Procedure, 1898, be referred to a Select Committee consisting of the Honourable Sir Harry Haig, Sir Hari Singh Gour, Mr. S. C. Mitra, Rao Bahadur B. L. Patil, Mr. Lalchand Navalrai, Mr. Abdul Matin Chaudhury, Mian Muhammad Shah Nawaz, Mr. B. R. Puri, Sir Abdur Rahim, Mr. Gaya Prasad Singh, Mr. D. G. Mitchell, and, I would add, with your permission, Mr. S. R. Pandit, and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

This Bill deals with a number of sections of the Criminal Procedure Code. I am conscious that some of these amendments, which I propose and which I shall explain presently, may not be to the liking of some of the Honourable Members, but they have become necessary on account of the changes both in the constitutional position of the country as well as to certain abuses that have been pointed out from time to time during the trials of those persons who are commonly known in the press as political prisoners. With your permission, Sir, I will deal with the clauses briefly in order to explain what I want to amend. Clauses 2, 3, 4 and 5 are the clauses which propose the omission of section 30 from the Criminal Procedure Code. Clauses 3, 4 and 5 are incidental to the omission of this section. Clause 30 of the Criminal Procedure Code reads:

"In the territories respectively administered by the Lieutenant-Governors of the Punjab and Burma and the Chief Commissioners of Oudh, the Central Provinces, Coorg and Assam, in Sind and in those parts of the other provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may, notwithstanding anything contained in section 29, invest the District Magistrate or any Magistrate of the First Class, with power to try as a Magistrate all offences not punishable with death."

The House knows that the status of these provinces has been changed from, what I may call, the inferior status of government by Lieut.-Governors and Chief Commissioners to the status of Governor's Provinces. This is an anomaly to have Magistrates invested with powers of sending the accused to jail for seven years under one count and 14 years under two counts. From my experience of criminal trials, now extending over 25 years, I can assert that the conduct of trial is not so conducive to confidence in the administration of justice as is the case with the trial in the Courts of Sessions Judges. The first disadvantage is that in such serious cases there are no assessors as in Sessions trails and, being without the aid of assessors, the Magistrate deals with the serious cases as if they were petty cases. The other disadvantage is that according to the rules, made by the several High Courts, the Magistrates have to show a certain amount of disposal and that necessity makes them to hurry on with the trial of cases involving serious charges. The third disadvantage is that so long as the executive and judicial functions remain vested in the same Magistrate, he cannot dispense justice impartially and judicially as a judicial officer is expected to do.

You know, Sir, that it has been a long standing complaint in India that judicial and executive functions are vested in one individual and there has been a consistent and persistent demand for their separation. This complaint has been in existence for the last 100 years or so and my Honourable

*Speech not revised by the Honourable Member.

friends are aware that in reply to a question put in 1927 and again repeated in 1928 in the House of Commons the Under Secretary of State said that the Government of India had been considering this question for the last 90 years and still it has not been decided. There is no knowing when this desirable separation will be brought about. Therefore, it is necessary that this section should be omitted from the Criminal Procedure Code. I want that any person who is to be tried for a serious offence should be tried by a competent judicial authority. This is not only in the interest of those persons who are accused of the offence, but it is in the interest of the administration as well that the confidence of the public in the impartial administration of justice should be rehabilitated. I think it is a matter of common knowledge that in India the people have lost a good deal of faith in the impartial administration of justice. It is high time, and especially so when the repressive laws are in full swing, that there should be established in India a sense of confidence in the Magistrates and that the orders of the Courts should be regarded as something very solemn and very serious. Secondly, I do not see any reason why the Punjab and other provinces should be considered of an inferior status and why the system which is followed in other provinces should not be introduced in the Punjab also. Therefore, I suggest that section 30 Magistrates should be done away with and the trial of these serious offences should be held by superior officers.

The next section, Sir, which I propose to amend, is section 103 of the Criminal Procedure Code. Section 103 deals with the procedure for carrying out a search. It is laid down in that section that:

"Before making a search, under this Chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do."

In this section it has been provided that it shall be necessary for the officer, who conducts the search, to call for two respectable inhabitants of the locality. The reason for this is that, in order to avoid any sort of underhand dealing by the officer conducting the search, two persons of the locality who are respectable citizens should be present there. This is a very healthy provision and nobody can take exception to the spirit which underlies the insertion of such provisions. But the difficulty which stands in the way of the working of this section is that the word "locality" has been interpreted in a manner which makes this section a dead letter. It has been held that the word "locality" does not mean the same quarter of the town as the place searched is situated, *vide* 4 Cr. L. J. page 222. Now, this interpretation of the word "locality" has led to this that the officer, who wants to make the search in the house of a suspect, takes two Lambardars or Zilladars, who, after all, are semi-Government officials, from the place wherefrom he starts and then he conducts the search. They sign the search list, with the result that they go into the Court and give evidence in support of whatever the searching officer says, and . . . . .

Mr. Deputy President (Mr. R. K. Shanmukham Chetty): The House will now adjourn for Lunch till Half Past Two.

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. R. K. Shanmukham Chetty) in the Chair.

Sardar Sant Singh: Sir, before the House rose for Lunch, I was referring to the amendment which I propose to make in section 103 of the Criminal Procedure Code. My amendment aims at two things. In the first place, the persons who should be present at the time, when the search is to be carried, should belong to the vicinity where the house to be searched is situated and, secondly, the search list should alone be a legal evidence to prove the search. I will quote an authority about this object which I have in view. It says:

"The provision is aimed against possible chicanery and unfair dealing on the part of the officers entrusted with the search-warrants and was made to ensure confidence that anything incriminating which may be found in premises searched shall be really found and shall not be what is called 'planted'."

This is the object of this section. The present section, worded as it is, has failed to achieve this object. We find that in 21 Madras, page 83, it has been held:

"The word 'locality' does not mean the same quarter of the town as the place searched. The stress is on the word 'respectable' and not on the word 'locality'. Failure to call inhabitants of the locality as witnesses does not make a search illegal."

If the provisions of this section are not strictly observed, even then, if an incriminating article has been found, independent evidence for that can be given and, if the Magistrate is satisfied that the incriminating article has been found, he can proceed with the case on its merits. My object is that such healthy provisions, as are enacted in this section, should be made really effective. To achieve that object, what I propose, is, that not only respectable persons should be called to witness the search, but also witnesses should come from the locality so that it should not be easy for any official to plant anything in the premises. The working of this section, during my practice, has been that investigating officers, especially in excise cases, go to a village and take certain Lambardars and Zamindars with them; they make the search and discover certain articles: a list is made of the articles and it is signed by those persons who accompanied the investigating officer. The man is then brought to the place of trial where the evidence of these persons is recorded and the man is convicted. I may say that it is not at all a rare occurrence that incriminating articles were planted in the house and the convict is not guilty at all. In the Punjab, at any rate, the impression is that excise cases are very often fabricated cases. Persons, who witness the search, accompany the investigating officer for the purpose of getting some reward, because in excise cases big rewards are offered. These rewards are a sufficient temptation to support the excise officer in whatever view he takes of a particular search. As the provision is aimed at such practices, I think the House will be justified in making the real object of the section effective by making the necessary changes. I propose two changes in this section. Firstly, that the word "locality" should be replaced by the word "vicinity". I have no special love for the word "vicinity" and if, in the Select Committee, a better word can be found, I will have no objection to change this word. My object, however,

is quite clear. The second thing that I wish to do is to add a new sub-section which runs thus:

"No evidence other than the list drawn up in accordance with the provisions of this section shall be admitted to prove the articles discovered during the search."

This provision has become necessary on account of the ruling of the Full Bench in the case reported in 34 Madras, 349, in which it has been held:

"When a search has been conducted under section 103, evidence can be given regarding the things seized in the course of the search and regarding places in which they were respectively found other than the list which the law in the section directs to be drawn up containing these particulars."

My submission is that this interpretation of section 103 means that the investigating officer need not have observed the conditions laid down in section 103. If he can independently prove that he found an incriminating article, the man can be punished. This will amount to making this section a dead letter in the Criminal Procedure Code. Again, my object is that this section is a very healthy one and it should be made really effective and binding in all the investigations that are carried on under the Criminal Procedure Code.

I now come to the next amending section. This is section 167 of the Criminal Procedure Code, and it relates to the remand. The provisions that already exist in the Criminal Procedure Code about the grant of the remand are like this: a person is arrested, and he can remain in police custody for not more than 24 hours. If the police think that the investigation cannot be completed within 24 hours, they have to produce him before the Magistrate in order to get a remand and the maximum period of this further remand is fixed at 15 days. The investigating officer arrests a person, detains him for full 24 hours and then sends him to the nearest Magistrate. When he is so produced, this section requires that the Magistrate can only grant a further remand up to 15 days if he is satisfied that there are reasons for doing so. This is a very healthy provision that the Magistrate should know the reasons why a further remand is demanded by the investigating officer. But, in practice, things are not done as the law requires. There have been persistent complaints that in political cases and, especially, in civil disobedience cases, the Magistrate gives a remand without recording any reasons and without insisting on the presence of the accused; and sometimes remand papers are signed without reading the diaries and going into the papers. At other times remand has been given by the Magistrate going to the place where the accused is detained. There have been persistent complaints in the Press that the accused have been detained in unauthorised places; and, if I mistake not, the Punjab High Court had to interpret the Prison Act saying that the Lahore Fort, where the accused in several Conspiracy Cases were detained, was not an authorised place where they could be detained. The Magistrates have gone there, seen the accused from a distance and have written an order of remand. This is not what the section contemplates, but that has been the practice. What I am aiming at is that, first of all, the remand should be given in the place where the Magistrate ordinarily holds his Court. This will add not only dignity to the proceedings, but a sort of sublimity and solemnity also.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Why? To fill the pockets of the pleaders?

Sardar Sant Singh: I will come to that later on and meet your objections.

The proposed procedure is likely to go a long way in establishing confidence in the administration of justice. Another advantage would be that the accused, by being taken before the Magistrate, will be afforded an opportunity for putting his case before the Court. The section says:

"The officer in charge of the police station or the police-officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Magistrate."

Further on, sub-section (*2*) says:

"The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody, as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction."

Then, in sub-section (*3*) it is laid down:

"A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing."

Now, generally the reasons are not recorded. What I mean is that even if the reasons were recorded, no opportunity is given to the accused to say something against those reasons which are advanced by the investigating authority who wants the remand for a period of 15 days. How can the Magistrate be in a position to judge between the investigating officer and the accused if only one party is heard and the other party is given no opportunity to be heard in the matter. This is against the elementary principles of justice. The second advantage would be that if the accused is brought before the Magistrate, he can certainly complain of the improper treatment, if any, that has been meted out to him during the time that he has been in custody. The object of the remand is that if any torture or any improper conduct is attributed to the investigating officer in the conduct of the case, the accused should be enabled to complain to the Magistrate not only about such improper conduct, but also of the irregularities, if any, of the investigating officer. If the remand is given in his absence, how can he put his complaint before the Magistrate? Honourable Members of this House are aware that during the last few months there have appeared in the Press certain statements made in a certain Conspiracy Case alleging serious charges of torture against the investigating officers. These are due to the fact that the remand order was not taken properly in the first instance. If the remand orders had been taken, in accordance with the provisions of law, or at a place where the Court is ordinarily held, there would have been no such complaints; and, even if there are, the accused can be met by saying that he had had an opportunity of seeing the Magistrate and making such complaint to him at an earlier stage.

Mr. K. Ahmed: It is just the other way round.

Sardar Sant Singh: I do not follow the Honourable Member. Therefore the provision is aimed at doing away with this sort of injustice. The amendment says that the remand should be given at the place where the Magistrate ordinarily holds the Court; and, secondly, it should be explicitly

laid down in the section itself that the accused should have the right of addressing the Court against the reasons for further remand and, if he chooses, engaging Counsel. This will meet the requirements of my friend, Mr. K. Ahmed, because he would like to be engaged as a criminal lawyer and show his ability by arguing why a remand order should not be given in a particular case.

The next section which, in my opinion, requires amendment is section 205 of the Criminal Procedure Code.

Mr. Deputy President (Mr. R. K. Shanmukham Chetty): I do not want to interrupt the Honourable Member. I recognise that in the case of a Bill of this nature it is difficult to define what exactly is the principle; but, in any case, I am afraid, at this stage the Honourable Member is going into too many details. I would very much like that the Honourable Member should speak in more general terms at this stage and reserve his detailed remarks for a later stage of the Bill.

Sardar Sant Singh: Very well, Sir; I will not go into details. I will only explain the principles which have called forth these amendments. Section 205 of the Criminal Procedure Code restricts the discretion of the Magistrate to grant exemption from personal appearance only in cases where summons have been issued in the first instance. There have been cases where Magistrates have issued warrants in the first instance and the person, against whom a warrant was issued, happened to be a *pardanashin* lady. An application was made for exemption from personal appearance at that stage of the proceedings. The Magistrate, though feeling inclined to help the unfortunate accused, pleaded his inability to do so for want of jurisdiction. The case goes up to the High Court and the High Court gets round this section by ordering cancellation of the warrant, issues summons again and then applies this section. This is, I think, in the interests of the Magistrates now that they should have full discretion when they want to exercise their discretion in dispensing with the personal attendance of a particular accused.

The next section, Sir, which requires to be amended, is section 386 of the Criminal Procedure Code. This section has created anomalies. The court sentences a particular accused to a fine and adds that, in case the fine is not paid, he will suffer imprisonment. The person undergoes imprisonment, but, even then, the power of realising the fine is given to the Magistrate. Of course he is called upon under this section to record reasons for exercising that power that the fine should be realised by attachment and sale of moveable property. The amendment is that this power of the Magistrate should be taken away. It is a double hardship. If the Magistrate, in the first instance, thinks that the person convicted is rich enough to pay the fine, he need not pass an order for imprisonment in default of payment of fine. He can issue a warrant and realise the fine, but, if he thinks that the fine is not recoverable, why give this power to the Magistrate and create a situation where double punishment may be meted out to the accused. When once he has undergone the imprisonment for not having paid the fine, why should the fine be recovered by attachment of his moveable property.

The next section, Sir, which I want to amend is section 406 of the Criminal Procedure Code. This relates to the right of appeal against the preventive sections of the Criminal Procedure Code, *viz.*, sections 107 to

[Sardar Sant Singh.]

110. In the last amendment, which was undertaken, probably in 1922 or 1923, the course of appeal was changed. Originally the appeals lay to the District Magistrate, but, by the amendment, the appeal was to lie before the Sessions Judge. But a proviso was added that the Local Government might issue a notification by which they could invest the District Magistrate with powers to hear such appeals. What I understand, Sir, from general conversation is that, no other Local Government has issued such notifications except the Punjab Government. In the Punjab, the Local Government has issued a notification and appeals are heard by District Magistrates. In most cases, it is the District Magistrate who initiates the proceedings under the preventive sections of the Criminal Procedure Code. So, the healthy provision, which was enacted in 1923, is not being followed in the Punjab and what I say is that this power of issuing notification in the local Gazette should be taken away.

The last clause, Sir, relates to the sections relating to the hearing of appeals. Certain restrictions exist, Sir, in the Code. In petty cases, where a fine is imposed up to the limit of Rs. 50, there is no right of appeal and only revision lies. In case the revision is made before the Sessions Judge, he has to recommend to the High Court for giving the redress to the person convicted in cases where he is of opinion that conviction is not justified. That is an anomalous position. The anomaly lies in this, Sir, that a Sessions Judge, who has power to upset convictions involving sentence of imprisonment up to the limit of four years and a limitless fine, has no power to remit a fine of Rs. 50. The reason for this anomaly is stated to be that the case is a petty one. It is said that Magistrates should be vested with full powers which should be final. Supposing a respectable person is sentenced to 15 days imprisonment. For him, 15 days is a great hardship. He cannot have any right of appeal under the Code. He may be perfectly innocent. He puts in a revision application—the Sessions Judge has no power to accept such revision. He must recommend to the High Court for setting aside the conviction. The Sessions Judges are very chary of making such recommendation and thus the poor victim is deprived of his rightful redress. Cases have happened where the High Court has intervened and has upset the judgments of the Magistrate, not only the conviction was set aside, but strong remarks were made deprecating the practice of awarding non-appealable sentences. This section, Sir, wants to do away with all these inconsistencies, and to remove all these anomalies. These are the provisions, which, I think, are necessary to be amended in the Code of Criminal Procedure. I tried to point out that all these provisions, if amended, would go to re-establish the confidence of the public in the administration of justice, and especially so, when the Statute-book has got very severe and repressive measures which are being administered by the Magistrates who exercise both the judicial and executive functions. It is absolutely necessary that this measure should be passed. Sir, I move.

Mr. P. C. Dutt (Madras: Nominated Official): Sir, if I rise to speak on this occasion, it is not because I am enamoured of my own voice and should like to hear it, but because I feel that having been long connected with the administration of the Code, which is proposed to be amended, I ought to speak a few words on the subject.

At this stage we are not to discuss in detail the clauses of the Bill; we are only to discuss the principle underlying the Bill. What is the underlying principle of the amending Bill which my Honourable friend wants to refer to a Select Committee? The underlying principle, I am sorry to say, Sir, is one of distrust of the police and of the magistracy. As regards the distrust of the police, we are familiar with that attitude among a certain section of our countrymen, but as regards the distrust of the Magistrate, that is a new attitude and is an attitude which should be deprecated and which should not be encouraged. Here, for instance, we are told that the Magistrates should not be allowed to give remand to prisoners except in their Courts. Magistrates are on duty all through the day, everywhere within their jurisdiction, and there is no reason whatever why that duty should be discharged only inside and not outside their Court house. Again, we are told that the Magistrates should not hear appeals, but only the Sessions Judges should hear appeals in security cases. Well, I do not see why you cannot entrust your District Magistrate with this power of hearing appeals. Has there been abuse of that power? No instances have been mentioned, and I do not think anybody could say that there has been. It is pertinent to ask, Sir, is my Honourable friend's amending Bill, is his motion, opportune? I am sure, nobody can reasonably say that it is. What with our civil disobedience movement, what with our terrorist movement, with the coming Reforms in the constitution of the country, I do not think that the present is the right time for amending an Act which is really the corner-stone of our criminal administration, the Criminal Procedure Code. The Reforms are imminent, and our constitution is going to be radically changed, and the time will come—and will come very soon I expect—when we shall get what is called Provincial Autonomy, perhaps Swaraj. Cannot my Honourable friend wait till then? It occurs to me that my friends on the opposite side of the House will not perhaps be so very hasty then to amend a code which is, as I have remarked, the corner-stone of our criminal administration. It has happened many times in the history of the world and it may happen again. After the French Revolution, what happened? After the Russian Revolution, what happened? The hands of the officials were strengthened: they were given more power than the old bureaucrats had under the *ancien régime*, and I expect that when the time comes, when we get our Swaraj, when we get our autonomy, our District Magistrates and our police will get more power than they ever had before.

3 P.M.

An Honourable Member: No fear.

Mr. P. C. Dutt: A succession of British and Indian administrators have laboured long to build up an administration which, with all its defects, with all its shortcomings, is the wonder and the admiration of the world. I do not say for a moment that there are no defects in the British administration of this country: nothing is perfect as my friend behind me says. But the time will come later on, after we have set our house in order, after we have settled down a bit, when we may coolly and collectedly think over these defects and try and remedy them. As I have said, and as the Chair has ruled before, I got up to address the House not for discussing in detail the clauses of the Bill; and, on these general grounds, I have enumerated, I think this House should throw out this motion for referring the Bill to amend the Criminal Procedure Code to a Select Committee. Sir, I oppose the motion.

Mr. K. Ahmed: Sir, I did not know that I had to speak on this subject until I heard my friend only after the luncheon hour. I never tried to hear him, because from time to time I hear things sometimes very absurd. Before luncheon hour, I never made up my mind; so I am very sorry if my friend will think that I neglect him; but I saw his activity was very great at the time he was coming into the Assembly Chamber after the luncheon hour. I heard from him partly what he wants to say and I at once wanted to give him a reply outside in the lobby, that it will not be for the good of the country at large. My friend wanted to say that, under section 103 of the Criminal Procedure Code, two witnesses of the "locality" should be replaced by two witnesses of the "vicinity". He said that they must be witnesses to the search. In 1923, this section 103, I believe, which was the old section 102 of the Criminal Procedure Code, 1898, was amended, and I was a member of the Assembly along with six other elected Members of my friend's section of the Punjab Province alone, besides other Members, as we have now.

Sardar Sant Singh: Before the Englishman came?

Mr. K. Ahmed: Long after the Englishman came in and long after the arrival of the Punjab representatives, Sikhs, Muhammadans and Hindus; it was, if I remember correctly, in the beginning of the month of March, 1923; and in the seat of my friend, I think, Mr. Bhai Man Singh was sitting and Mr. Bhai Man Singh also took part in the debate. He is also a District Court pleader,—may not be of Lyallpur, but of a place nearer to Delhi—of Ambala; and Mr. Bhai Man Singh supported, I think, the provision that two independent witnesses of the locality should be present. "Locality" does not mean "vicinity"; respectable people of the vicinity may be his relatives, may be the wrong-doers, aiders and abettors of the theft for which the search is taking place. As the poor sub-inspector of police in charge of the police station will make a search and prepare a search list, certainly he has got a right and option to bring two witnesses of the locality. "Vicinity" means nearness and neighbourhood. Next, my friend from the district will go before the sub-divisional Magistrate who is to look into the papers and probably send the case to the file of certain first-class Magistrate to try the accused, his client; he will certainly enter into the search list whether there is any authentic proof that this man in broad daylight or in midnight committed the offence in question; and two respectable people of the locality means not his near neighbours or relations or abettors, but some respectable people in the broad sense of the term, not with the narrowness of the meaning interpreted by my Honourable friend of the District Court. Again, in 1923, the late Mr. Seshagiri Ayyar was representing the Democratic Party,—a better party than probably his own party, and his own leader was also a member of the Democratic Party then and probably President of the Party for some time, who also supported the provision, I believe. As I said, his seat was occupied by Mr. Bhai Man Singh, who was an advocate of the Punjab High Court, I understand, and a leading practitioner: we had the views of the libraries, not only of the Ambala district, but from Lyallpur and the High Court of the Punjab; and he had nothing to say on that score and no lawyers up till now submitted that the word "vicinity" should be used instead of the word "locality". I suppose "locality" was in the old section 102 of the Code of 1898 also; it is

distinctly stated there—two independent men of the locality. Here is a case in a village; independent men may not be found, and to interpret who is independent and who is not is again another difficulty. In the circumstances, the words "two respectable men of the locality" were adopted. That is to say, two gentlemen who were respected by the people of the "locality", not of the "vicinity". It is a very very narrow word that is suggested in this Bill. It is stated in the Statement of Objects and Reasons that sections 30 and 34 should be omitted and there should be something between the figures 31 and 32—that, again, in order that the Special Magistrate may convict persons if the conviction is less than a death sentence: that has also been misinterpreted and it is said that it should be omitted. Section 103 has again been misapplied and misinterpreted by my friend, and, in the Statement of Objects and Reasons, again, he made a hopeless mistake, which should not have been done.

Again, in clause 7, my friend says that in most cases the Magistrates were taken to the place where the accused were detained, and his amendment says that after the words "such Magistrate" the words "where he ordinarily holds his Court" shall be added, so that the Magistrate should pass an order of remand not anywhere else or at the place where the occurrence has taken place but at the place where he ordinarily sits. The order of remand may be passed at the place where he is taken by the police or where the accused is detained,—what is the harm? The Magistrate gets an opportunity to enter into the testimony of respectable people, see the guilt of the person before him; he can also see whether the accused has committed the particular offence or not; but if, on the other hand, he passes the order at the headquarters, the pleaders will be there, because my friend suggests that immediately after the words "this section", in sub-section (2), the words "after hearing the accused or his counsel if the accused so desires" should be added, and this will give an opportunity for the accused to be represented by his counsel if he so desires. Sir, "counsel" is a term which is not applied to that class of lawyers who generally stand surety. Is it for the benefit of that class that the Magistrate should pass his orders of remand at the headquarters? Will my Honourable friend, sitting on the right of the Honourable the Mover, who also comes from the Punjab, say that this section should be amended? Probably he will oppose the Honourable the Mover, because the learned Magistrate must see the offender, hear the evidence; he has to hear also the police, he has to enter into the details of the whole case, and so it is not necessary that the counsel should be heard there. But if the accused person is so rich as to engage a counsel from the Punjab or even from Calcutta, as he says, he can certainly do so, because it is his pleasure. But, so far as the Magistrate is concerned, he is an official, he has to look to the administration of justice, and, therefore, in the interests of justice it is very desirable that he must see for himself things at first hand before he passes an order of remand, and, so it is incumbent on him to go anywhere or to the place where the accused is detained. Why should he be criticised by a Member of this House, like my friend, the Advocate from Lyallpur, who says that the order of remand should be passed only at the headquarters, because the pleaders are there who can stand surety for the accused? What is the object? I interpellated my friend only a few minutes ago when he was on his legs as to what were his reasons for putting forward such a suggestion. My learned friend sat down at once. Perhaps he wanted to hear reasons from me. I am very sorry, Sir,—and the reason would appear

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to be this, that he wanted to fill the pockets of his own friends, because he has not given any explanation as to why this particular section should be amended in the manner suggested by him.

Then, my friend suggests that sections 205 and 386 should also be amended, and, in making this suggestion, I think my friend has political motives in his mind. I should like my friend to clear up his mind as a lawyer, only for the sake of justice and nothing but justice. Let us forget for a moment the political bias. In the absence of sufficient evidence, the balance should hang not partially, but impartially. How can you suggest to the Magistrates to administer justice in a particular way in these political cases? That is not fair. It is for the Magistrates to come to any decision that they think fit, based upon the materials placed before them, and to pass such orders as they consider desirable. There is no use of quoting one case from I. L. R. 21, Madras, page 83, or from 4, Criminal Law, page 390. They are all misapplied and misquoted in support of the proposition that is brought forward by my friend here. My friend for the time being is drowning himself, he will have now to plunge into the water and come to the shore, when he will find that he has a lot of things to do for the good of the country and that the administration of justice should be absolutely impartial. He must leave things as they are for the present.

Mr. C. K. Seaman (Central Provinces: Nominated Official): If, Sir, in obedience to your ruling I endeavour to trace some of the underlying principles running through the miscellaneous clauses of the proposal now before the House, I find myself in some difficulty, for the very reason that they deal with so many disparate subjects; but, as far as I can see, the principles are two—one, as the Honourable Member on my right has said, distrust of Magistrates, or, I rather think, a disposition to assume that all Magistrates will always be unreasonable, and, secondly, a desire to increase the rigidity of the rules of procedure, and convert, what are intended to be guiding-lines, into bar-fetters. Both those principles, I submit, are misguided. So far as reasonableness of Magistrates is concerned, I think, if they were consulted from that point of view alone, they would be largely disposed to agree with my Honourable friend, the Mover, for, their personal preferences, I am sure, would prompt them to be quickly rid of what are known as section 30 powers. Speaking from my own experience, I can say that these cases are frequently an additional burden to an already hard-worked District Magistrate. I think all such Magistrates would be glad to be relieved of such cases, but that, after all, is not the point at issue. The point at issue is the administration of justice, and speed is an element,—one of the most important elements—in the administration of justice, and it will not, I think, be denied that disposal of the so-called section 30 cases by District Magistrates is rapid compared with the alternative procedure, and I cannot accept the proposition that it conduces less to justice in effect. Again, so far as personal predilections are concerned, the wishes of the Judges, to whom it is proposed that these cases should be transferred, might well be considered. I do not know whether they will be prepared to thank my friend the Mover, for his suggestion to add this work to their already congested files.

In his opening speech, I think the Mover referred to that old subject, the anomaly of a District Magistrate, who is also responsible for the law and order of his district, having anything to do with the judicial determination of cases. It seems hardly necessary to point out that in these

so-called section 30 cases he has nothing to do with them from the executive point of view. The prosecution is initiated in the ordinary way by the prosecuting agency, that is to say, the police. Speaking again from my own experience, I can only say that as far as my knowledge goes, he never hears of the case till it comes before him in the Court and he is as much in a position to dispose of it in a fair and judicial manner as any Sessions Judge can be. Moreover, it seems to be overlooked that in many of these cases, the section 30 Magistrate may be somebody other than the District Magistrate. It seems to have been assumed that the District Magistrate alone will exercise these powers. That, Sir, is not so in the province at least which I have the honour to represent in this House. In the district I last came from, there were three of my assistants who held these powers. In important districts, the heavier districts, the Deputy Commissioner's work is considerably relieved by these cases being given to experienced assistant magistrates. The argument, therefore, of the anomaly of the executive and the judicial function being combined in one man falls to the ground. And the moral of that is that the real remedy is not fewer section 30 Magistrates, but more.

An Honourable Member: Then spread them all over the country?

Mr. C. K. Seaman: Yes, everywhere.

The alternative suggested in my Honourable friend's proposal is one which, if I may say so, likely to command less confidence now than it would have three or four weeks ago before such publicity was given to certain remarks made in an authoritative quarter upon juries in some parts of the country. I do not think that it can be seriously contended that justice, real justice, will be served by the abolition of the section 30 powers of Magistrates.

Then, Sir, I need not quarrel with my Honourable friend about the use of the word "locality" or the word "vicinity". I have not brought with me my copy of the Oxford English Dictionary to find out exactly the difference in the shade of meaning, but personally I should have thought that "vicinity" was the wider word, "locality" being on the spot, and "vicinity" being near the spot. However, we need not go into that; that no doubt could be settled later. But I should like to remark—again referring, if I may, to my personal experience—that in the jungly districts of the Central Provinces it is not always easy to find two respectable persons in either the locality or the vicinity of a jungle, for instance, where an illicit still is being conducted.

An Honourable Member: Respectable?

Mr. C. K. Seaman: Respectable or not,—probably not. In many cases the illicit still, as the Honourable Member may no doubt be aware, is frequently a co-operative institution run by a whole village, removed some distance away into the jungle, and the only persons in the "locality" or "vicinity" are persons directly interested in the conduct of that still; and, in other cases, even where the offence is being committed in the village itself, the village may consist of two or three huts and the nearest inhabitants of the vicinity—I do not know where to draw the line for the meaning of vicinity—may be some miles away. Therefore, the

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attempt to make rigid what is now an implication of the section will defeat the whole object of the section and make it impracticable. The tendency which I notice in this clause and in other clauses is to make the Criminal Procedure Code not, as it should be, a means to an end, but an end in itself, a rigid ritual, something with a mumbo-jumbo magic virtue in it, failure to comply with which takes away all value from it. The High Courts have, for forty years or more, been struggling to free themselves from the uncomfortable implications of a strict interpretation of the Privy Council's ruling in Subramania Aiyar's case, reported in 25 Madras, I think.

An Honourable Member: Yes.

Mr. C. K. Seaman: Some more recent pronouncements have inspired in the minds of those of us who have to administer these criminal enactments some hope that we may achieve a greater freedom instead of a greater rigidity. I would strongly deprecate any proposal such as this, which would confine, cabin and restrict us in carrying out what is our object,—not the following of a programme or the performance of a rite, but the doing of justice between man and man. (Hear, hear.) As regards my Honourable friend's proposal to exclude a certain class of evidence which is otherwise perfectly legal, I did not catch from him any very strong grounds for putting that forward, but it seems to me to be a revolutionary and tyrannous proposal. That any evidence which is sound and can be proved by good testimony should be excluded seems to me to be putting not only an unfair burden on the prosecution in any particular case, but to be a breach of the commonest and the most fundamental principle of hearing both sides and deciding accordingly.

In regard to the proposals relating to the remand of under-trial prisoners, I can reinforce what my Honourable friend on my right has said. I should like to say that I have never known a case personally where the accused was not produced before the Magistrate for remand. I can say I have never known of a case where remand had been applied for or given without the man having been produced. As to the suggestion that the man may have complaints to make of ill-treatment, well, Sir, matters, such as that, are, in my own province certainly, and I make no doubt, in all other provinces, dealt with under the criminal circulars which lay down clear instructions as to what should be done if a prisoner makes allegations of ill-treatment or brings other matters to the notice of the remanding Magistrate requiring some investigation. In fact, even if such instructions were not embodied in those circulars, surely any Magistrate, who has any experience, has also sufficient reasonableness to see what the occasion demands. My Honourable friend is, I think, a legal practitioner, familiar with the maxim *Omnia rite ac solemniter peracta esse præsumenda sunt*: we must presume that everything has been done properly: there is too great a tendency to presume the opposite. If experience shows, as my Honourable friend's unfortunate experience seems to have shown him, in the Punjab at least, that Magistrates are not disposed to act reasonably and as the occasion demands, surely the remedy is to train the Magistrates and not to bind their hands and feet. More training, control and supervision—these, rather than a rigid code of instructions for every single contingency, are more likely to evolve a humane agency for doing justice.

As regards the question of imprisonment in default of fine, I would remind my Honourable friend that this is not an alternative penalty but a means of putting pressure on the accused to pay the fine and, at the same time, to save the administrative machine considerable labour, expense and time in recovering it by coercion. And it is not as though it was merely a matter of penalty: the question of compensation comes in. That fine may not be a fine: it may be a sum ordered to be paid to the wronged person. I might perhaps be allowed to quote what was almost the last case I tried under section 20, where a man was convicted of a wanton and grievous offence against a young girl. Without presuming to put any monetary value or price upon what she suffered, I did think it proper to order that she should be paid compensation out of the fine. I cannot think that there was anything in principle that could be said against putting pressure on the accused and ensuring that that sum should be paid, and I have not ceased to regret since that those efforts were infructuous. I cannot feel that justice has been fully done in that case, because the fine has not been recovered.

My Honourable friend has assumed that security cases will always be initiated by the District Magistrate. That may be so in the Punjab—I cannot say—but, again, if I may speak for my province, I can say that frequently, I think I might say generally, it is not so. The sub-divisional system is in force and Chapter VIII of the Criminal Procedure Code empowers Sub-Divisional Magistrates to initiate security proceedings and that, Sir, is usually done. The suggestion, therefore, that the District Magistrate should be disqualified from hearing appeals in such matters falls to the ground. But even if it were not so,—even if the District Magistrate has in the first instance sanctioned these proceedings being initiated, surely that commits him to nothing. Surely an officer of the experience and standing of a District Magistrate is able to take an unbiassed and unprejudiced view of the case when it comes before him in appeal. Because he was satisfied that there was a *primâ facie* case for investigation, that does not bind him in any way to a final view that the respondent is a person to be bound over. He is perfectly capable of taking a dispassionate view when all the evidence on both sides is before him. I do not think that this proposal is one that has any urgency or necessity behind it.

And, finally, as regards these proposals regarding appeal. Behind the Code, as it now stands, there is a very definite principle—the principle of reducing congestion of work, making sure that the time of superior and hard-worked Courts shall not be taken up with petty matters. That, Sir, I submit, is a very salutary principle—a principle that might well be extended rather than restricted in the way my Honourable friend proposes. The effect of clause 11, if it is passed into law, would simply be to increase congestion in the upper Courts already over-worked—and congestion not with important matters, but with trivial cases where, even if a mistake has been made, no great harm has been done. I am often tempted to feel that if there were no appeals at all in any kind of case, the sum total of injustice done under human error would be no greater than it is at present. That may be rather an extreme view, but, at least, Sir, it cannot be contended seriously that every petty matter must go through a series of Courts whose business and proper function is to attend to matters of greater importance.

So, Sir, I would repeat what I began by saying—that the general principle of my friend's Bill seems to be to increase rigidity and to

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proceed upon the false assumption that all Magistrates will be unreasonable. I submit, Sir, that both those principles are incorrect and the Bill should, therefore, be opposed.

Mr. Jagan Nath Aggarwal (Jullundur Division: Non-Muhammadan): Sir, in deference to your ruling that we must discuss the principle of the Bill, I shall try my best to discover a principle and I am glad that I have discovered one. We have been treated to speeches on this section 30 and some other sections of the Criminal Procedure Code by gentlemen, white and brown, who have dealt with these sections and have administered these provisions and perhaps it would have been better if other people had showered encomiums upon those who administered them. They have chosen to do it themselves and, therefore, it is time that the other side was also put before the House. We have been told that section 30 is an admirable provision of law leading to rapidity of decision and to speedy justice. If it came from an Indian, I might tolerate it, but, coming as it did from an Englishman, I shall examine the proposition a little more seriously.

Mr. K. Ahmed: Why this distinction?

Mr. Jagan Nath Aggarwal: I shall presently tell my friend, Mr. Kabeer-ud-Din Ahmed, in particular. I see that the Home Member is leaving the House and so I shall reserve a part of my remarks till he returns. The point of this section 30 is that in certain provinces and in certain tracts of provinces, which are unfortunately known as non-regulation provinces and which are looked upon as fit for this kind of jurisdiction, certain Magistrates, including the District Magistrate, have got the power of awarding sentences up to seven years' imprisonment. Short of death and transportation, they can inflict any sentence up to seven years' imprisonment. Now, Sir, if that is a good rule, why does not Mr. K. Ahmed stand up and say that he wants it for Bengal. Why does not Mr. Ramaswami Mudaliar get up and say "We want it for Madras". Why does not Mr. Anklesaria get up and say "We want it for Bombay". It is very well and convenient for gentlemen like Mr. K. Ahmed to mutter something inaudible to this part of the House and say "Oh, it is very convenient", because it does not hurt him at all. It does not affect him.

Diwan Bahadur A. Ramaswami Mudaliar (Madras City: Non-Muhammadan Urban): But I did not mutter anything at all.

Mr. Jagan Nath Aggarwal: I was speaking of Mr. K. Ahmed in particular. It does not affect him. He knows nothing about it. He has inflicted it on us and he goes on merrily thinking that something good has been done.

Now, let me just go into this matter of the provinces which have been treated in this extraordinary manner among which my province unfortunately comes first:

"In the territories respectively administered by the Lieutenant-Governors of the Punjab and Burma and the Chief Commissioners of Oudh, the Central Provinces, Coorg and Assam, in Sind, and in other parts of the other provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may, notwithstanding anything contained in section 29, invest the District Magistrate or any Magistrate of the first class, with power to try as a Magistrate all offences not punishable with death."

Well, Sir, at the first blush I will say that these appear to be untouchable provinces—hopeless tracts of the country! I ask, why this ring of inferiority about them? Whatever is good anywhere else—for Madras, Bombay and Bengal—is good for the Punjab and the other provinces. For these tracts you say there shall be section 30 Magistrates. Why? They are not hopelessly untouchable provinces!

Mr. K. Ahmed: Yesterday you contended that you were martial and very strong!

Mr. Jagan Nath Aggarwal: Then, for that reason, we should have different treatment? Has a martial race got to be treated in this differential manner? The first point then is that there is a ring of inferiority, a relic of the old days when there came to be this distinction between regulation and non-regulation provinces. What is the justification for it now? To tell us that "we have thus administered this section well" is neither here nor there. Even in the worst administrative system there will be some good, and that is no argument. Then the principle underlying it is that there must be uniformity of laws in this country and from that point of view there is no justification for this section. Coming to the criticism that this section is useful in dealing out speedy and sharp justice,—coming from an Englishman that looks strange. Sir, if speedy and fast justice is good, it should be good for the whole of India.

Mr. K. Ahmed: But you are a particularly strong people.

Mr. Jagan Nath Aggarwal: I am coming to that. Now, if it is good anywhere, it should be good for the whole country. Why have not the other provinces adopted it? Why has not the Home Member moved that this provision shall apply to the whole country? Let us now go further. We remember that sometime back in 1923, there was a Bill dealing with racial discrimination which was passed and the Criminal Procedure Code was altered, and one of the points taken was that the trial of Englishmen in India and Indians should be the same. What was the point? An Indian can be tried for any offence except murder by a Magistrate. In other provinces he can be tried without any jury excepting in certain cases with assessors.

Mr. K. Ahmed: No, no. Tried by his own jury.

Mr. Jagan Nath Aggarwal: I am coming to that. Well, Sir, this is so far as Indians were concerned. An Englishman has got the sacred right of trial by a jury and that is very lengthy. In this connection, let us recall the days of the Ilbert Bill agitation when Englishmen fought hard for that system of trial by a jury. Now, nobody could then say, "No, there shall not be such a system, we must have speedy trial, do not ask for any jury or assessor of any kind". Very well, then, unless Englishmen are now prepared to forgo the right of trial by jury and to be tried even by Magistrates of their own colour, but without jury, such a contention in the present case comes with very bad grace. The point here is one of principle. Are you going to allow the trial of serious

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offences involving sentences up to seven years' imprisonment to the unfettered discretion of an individual?

[At this stage, Mr. Deputy President (Mr. R. K. Shanmukham Chetty) vacated the Chair which was occupied by Sir Hari Singh Gour.]

The point underlying it is that the District Magistrate or section 30 Magistrates are finally to try cases which ordinarily should go up ultimately to a Sessions Judge. If you are in any case going to perpetuate that, have it, I say, with the aid of assessors. But there is a point of distinction between the two,—in the one case the District Magistrate or those working under his orders are more amenable to police influence than the Sessions or the Assistant Sessions Judge. My friends opposite may be Sessions Judges or Assistant Sessions Judges. We give them credit for this, that their administration of justice will command a greater confidence and will inspire a greater confidence in the minds of the accused. Therefore, Sir, my point is that if you leave these things to be conducted by Magistrates under the District Magistrate or by the District Magistrate himself, they have greater opportunities of being influenced by police considerations or by executive considerations than the Sessions Judges, and that is a point which is respected by everyone. Therefore, Sir, I say that from this point of view the amendment proposed by my friend is a very modest measure tending towards equality of justice in all provinces, and the contrary arguments do not convince anybody apart from the argument advanced that this system has done well in practice. That is not the question. The point is one of principle and I do not see how anything that Mr. K. Ahmed may have suggested to the House may have altered the fact that for certain provinces only this extraordinary provision exists and it is time that such an enactment should be done away with.

Mr. K. Ahmed: Will you read the Statement of Objects and Reasons appended to the Bill which became law for these tracts?

Mr. Jagan Nath Aggarwal: What is the reason? Simply that otherwise it would take a lot of time. But, then, you can rule that if the number of crimes in certain areas goes up by leaps and bounds and beyond a reasonable percentage, this system may be in vogue by way of a punitive measure, but then that should be only by way of a punishment for certain things done, and it should not be sought to be justified by past events of history. Therefore, the principle underlying this part of the Bill is that you should have uniformity of laws, and unless something happens which can justify certain provinces being dealt with in a different manner, the administration of justice should be uniform.

Mr. K. Ahmed: But are they uniform people?

Mr. Jagan Nath Aggarwal: I need not say anything more, Sir. My friend knows that he certainly is not uniform. (Laughter.) He knows it, and we know it to our cost how law and order has got to be kept in his province, thanks to the doings of men like him. Sir, so far as the other provisions of this Bill are concerned, it is unfortunate that so many provisions have been lumped together in one Bill. I have no

serious quarrel with the provision differentiating between "vicinity" and "locality". My friend drew attention to there being readymade witnesses of a certain class, in which case the search lacks the element of trustworthiness. You want intelligent, trustworthy evidence to bear out the fact that certain things were found from a certain locality, in order to put it beyond doubt.

Then, Sir, there are other important questions involved in section 167, sub-section (7). One of the points my Honourable friend's amendment deals with is that this practice of remands at all kinds of inconvenient hours and without having the accused before the Magistrate or his pleader should be done away with.

Sir, there is a distinct point about this. Why should anybody go and say that it is a distrust of the magistracy. There is no distrust of the magistracy; it is the proper way of doing things. Look at certain provisions of the Evidence Act. In section 25, it is said that any confession made before a police officer shall not be produced in the Court. The Evidence Act starts with a distrust of the police. (Interruption by Mr. K. Ahmed). I am afraid, my friend has forgotten the Evidence Act and I shall have to make a present of it to him. My friend ought to know that no confession made before a police officer can be produced before a Court of Law.

Mr. K. Ahmed: Advocacy will not pay, Sir.

Mr. Jagan Nath Aggarwal: I am not prepared to give way to my friend. If he wants to make any constructive suggestion, I am prepared to listen to him, but I cannot help him if he makes these meaningless interruptions. The point underlying this section is that the Magistrate at present is at liberty to give an order at 12 o'clock in the night sitting quietly at his house and he can do so without the accused or his pleader being present. It has so happened that in certain cases a remand has been granted by a Court in the district of Lahore, when the period is going to expire by the Courts of the districts of Amritsar or Lyallpur. This kind of business has been going on for months and months, because the case was being taken up in various districts. This proposition is a very serious one. It is not a matter of the distrust of this man or that man. Surely the provisions of the Criminal Procedure Code are not so sacred as to be above any improvement. That is a proposition which has on many occasions been set right by moving the High Courts for a writ of *habeas corpus*. My friends forget that such occasions have arisen in the trial of cases of a political nature. I do not see what objection there can be if we ask that the remand shall be given by the Magistrate at the place where he ordinarily sits which would mean the place where he is working in Court hours. Where is the difficulty about it? We are told: You cannot go into an out of the way place and do this and that. Sir, this is not a very suspicious looking amendment. It only asks that a Magistrate will grant a remand only in his office hours. The real essence of a trial is that it should be conducted in the open Court where everybody has access to it. I do not think there is anything to be said against it. The other thing is that the remand should be given in the presence of the accused or his pleader. This, too, is quite harmless and I hope Government will accept it.

The amendment to section 205 is a formal one and I need not dwell upon it.

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Clause 9 raises a question of principle and a good deal can be said on both sides. If a man has suffered imprisonment, shall you make him pay the fine also? He has already suffered in body and if, afterwards, it is found that the man is able to pay his fine, you cannot ask him to pay. If he was able to pay, why did you not make him pay in the first instance? The object of the State should be not to keep people in the jail for a day longer than it can help it. It is from that point of view that the amendment is moved. I do not know, Sir, whether I should take more time of the House, but I would like to submit that there are several provisions in the Bill which have great merit about them and I commend them to the acceptance of the House.

Mr. G. S. Dutt (Bengal: Nominated Official): I am sorry, Sir, that the first non-official Bill that I have the misfortune to oppose should be that of my dear friend, Sardar Sant Singh. But, from my personal experience of the working of the Criminal Procedure Code, I find the provisions of this Bill to be of such an untenable character that I feel that I have no option but to oppose it. I have been at some pains, Sir, to find out the principles underlying the various clauses of this Bill as this is a stage at which it is the duty of this House to discuss the principles and not the details. I confess that I have had considerable difficulty in discerning the principles. My Honourable friend, Mr. Aggarwal, has admitted that he also feels a similar difficulty. I take it, however, that the one main principle that underlies this Bill is that my Honourable friend, Sardar Sant Singh, is very anxious to bring in certain amendments to the Code of Criminal Procedure and that he wants to do so at the earliest possible moment although it is evident that he has not given full consideration to the issues involved in his proposals.

Now, Sir, as one of the previous speakers has pointed out, one ought to exercise great circumspection before making suggestions for changes in an enactment of the magnitude and importance of the Code of Criminal Procedure which forms the foundation of the Law of Criminal Procedure in this country. The principle that the Government follow when a zealous officer sends up a sheaf of proposed amendments is to bring home to the officer the fact that, before bringing forward amendments to such a Code, one must give serious consideration to all its aspects. The Bill before us, Sir, transgresses this principle as I shall presently show. Let us first consider the proposed repeal of sections 30 and 34. There are certain areas in which the ordinary procedure of trial of serious cases by Sessions Judges is dispensed with and the Local Government has been authorised to empower District Magistrates and certain First Class Magistrates to exercise the power of Sessions Judges in these restricted areas. What is the principle underlying this? The principle is not that the Local Government wants to exclude the jurisdiction of the Sessions Judges from areas which ought to have trial by Sessions Judges. It is just the opposite. The Local Government is allowed discretion to exclude areas which are not fit to have trials by Sessions Judges owing to their being not sufficiently developed from the point of view of education and from the point of view of availability of the necessary legal help. And, I think, it will be admitted by the Honourable the Mover and those who are of his point of view that there are certain areas like the Chittagong Hill Tracts and certain areas in Assam where education is not sufficiently developed and

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where legal help is not sufficiently available to make those areas fit for the applicability of trial by Sessions Judges; and, it is in the interest of the accused and in the interest of administration of justice, and not in order to deprive the accused of the privilege of trial by Sessions Judges, that this salutary provision has been inserted in the Code. It will be a pity if this provision is taken away from the Code. It is only an enabling provision. It is not compulsory on the Local Government to dispense with trials by Sessions Judges in those areas even after they have been sufficiently advanced. My Honourable friend who moved this Bill proceeds on the assumption that the Magistrates who have dealt with cases in those areas have failed to deal properly with them. In the Statement of Objects and Reasons he says:

"in most cases the Magistrates in their zeal to show, what they term good disposal, hurriedly proceed with the trial with the result that a cool and calm consideration of the facts of the case is not possible," and so on.

This is a very serious charge, Sir, to level against "most Magistrates". I do not think my Honourable friend has any reasonable foundation on which to base a charge like this. Has he got any decisions of High Courts to support him?

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Does not the Honourable Member know that very often there are transfer applications made on that ground alone?

Mr. G. S. Dutt: My Honourable friend knows well that transfer applications are frequently made against Sessions Judges too, and not merely against Magistrates. And even cases decided by High Courts are often upset. Sir, it is only human to be fallible, and Magistrates do not claim infallibility as a class; but to go to the other extreme and accuse "most Magistrates" of proceeding to show good disposal by hurrying on "without cool and calm consideration" is wholly unfair and unreasonable. And yet that is the reason which underlies this amendment. I could understand it if my friend had said that these areas were properly developed and advanced now. My Honourable friend, Mr. Aggarwal, appears to have been cut to the quick because the Punjab is included in the list of backward areas. We know the Punjab has made great strides of late and Punjabis now regard themselves as a very forward people, which they are no doubt getting in many respects. But my Honourable friend, the Mover, does not go on that basis. One could understand him if he had said that these areas have now become politically and educationally developed, that there are now facilities for trial by Sessions Judges and for obtaining legal help and, therefore, these provisions are out of date with regard to those particular areas and so they should be excluded from the operation of this section. But that is not the standpoint of the Honourable the Mover. He wants to do away with the whole section, merely because he thinks Magistrates are not to be trusted with the trial of cases. Well, Sir, if you cannot trust your Magistrates to try cases fairly and equitably, then, on this principle, you should do away with the whole Criminal Procedure Code. That is not, I submit, Sir, the way to attack a provision of a Code, particularly a provision like section 30 which was enacted on very definite grounds which my Honourable friend has not even touched upon in his Statement of Objects and Reasons.

Sardar Sant Singh I do not want to interrupt my Honourable friend, but I should like to tell him one incident which will probably bring light

. . . . . .

Mr. Chairman (Sir Hari Singh Gour): Order, order; the Honourable Member can reserve that for his reply.

Mr. G. S. Dutt: The first province mentioned in section 30 is the Punjab. In the edition of the Code published by Government I find a foot-note which says:

"These territories included, at the time the Code was passed, the territories which now form the North-West Frontier Province."

The implication is clear that it was not the whole of the Punjab which was meant to be excluded ordinarily from the jurisdiction of Sessions Judges, but certain backward areas in the Punjab frontier which were undeveloped. Those areas have also become more advanced now and they now constitute a Governor's province; and, I daresay, as soon as it can be shown that circumstances justify it, the Local Government will allow trial by Sessions Judges there too. I come from the province of Assam myself. I belong to the district of Sylhet and there is a Sessions Judge there. Thus the whole of Assam is not excluded from this privilege of trial by Sessions Judges. My Honourable friend said that accused persons charged with serious offences were not satisfied with trial by Magistrates in the areas in question, but he has not shown any authority or statistics on this point in his Statement of Objects and Reasons or in his speech. And he will, I hope, pardon me if I say that he has failed to grasp the principle on which this section was enacted. If he thinks that the Punjab has outgrown this section, his proper procedure is not to repeal the section itself, but to move an amendment asking for the removal of the word "Punjab" from this section. But one is inclined to suspect that the object of my Honourable friend is to have an increase in the number of Sessions Judges. Section 30 of the Code not only ensures speedy trial in serious cases in backward areas, but it also conduces to a great deal of economy by reducing the number of Sessions Judges in backward tracts. I do not deny for a moment, Sir, that Sessions Judges are able to give better justice in serious cases than District Magistrates. But, as I have already shown, it will be a waste of public money to provide Sessions Courts for areas which are not sufficiently developed to deserve trial by Sessions Judges. If my Honourable friend's principle is that we ought to have more officers of the standing of Sessions Judges, then this is obviously not the time, when we are having retrenchment in all directions, to come in with an amendment for an increased number of Sessions Judges for areas where their services are not really called for.

We now come to section 103. In dealing with the principle upon which the amendment is based, the Honourable the Mover objects to the word "locality" and he wants to replace it by the word "vicinity". Section 103 (1), with my Honourable friend's proposed amendment will read thus:

"Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the *vicinity* in which the place to be searched is situate to attend" etc.

Well, I have always understood the word "vicinity" to be a relative expression. My knowledge of English may be very limited, but it appears to me that unless you refer expressly to some object or place in the vicinity of which a place is situate, the word "vicinity" has no meaning whatever. You cannot say "I am sitting in a vicinity", but you may say "I am sitting in a place in the vicinity of something else". My Honourable friend, I think, had some sort of uncomfortable feeling that the word "vicinity" was not quite appropriate and so he said in his speech that if the word "vicinity" was not suitable, when the Bill goes to Select Committee, they might change it. But it is obviously not open to an Honourable Member to propose an amendment to an Act in admittedly inappropriate terms and then to leave it to the Select Committee to supply the correct amendment. The meaning of the word "locality" is perfectly simple. It means a local area in which a house to be searched is situate. The connotation of the local area is intentionally left elastic, because this would vary according to the circumstances of particular cases. You might have one house in the middle of a field. There might be a dacoity committed in that house, but there might be no houses within two miles of that field. In that case "vicinity" will have no meaning. Whereas "locality" or "local area" would include the nearest village two miles away. Let us consider for a moment what is the real principle underlying this section. When the Legislature enacted this section, what it had in mind was that the police officer, when he goes to make a search, should not take a man, say, from his thana or from his headquarters or from some other place which may be, say, 20 miles off. Therefore, the word "locality" is used. The witnesses, must be men from the local area. The local area may be an area of two yards, 20 yards, one mile, two miles or five miles radius. That will depend on the circumstances. If you go to search the locality of a criminal tribe and if you have to select your witnesses from the "vicinity" only, then you will have men of that criminal tribe alone, but you would not have independent witnesses from there at all. It is obvious that, you must leave some discretion to the officer in charge to take two respectable and trustworthy men from the local area where the house is situate, and not tie up his hand by requiring that the witnesses must come from the neighbouring houses alone. It is obvious, Sir, that if my Honourable friend's suggestions were adopted, there would be great difficulty in the administration of the law.

Then, Sir, my Honourable friend, in his Statement of Objects and Reasons, makes the following statement:

"This has led to the view that failure to call inhabitants of the locality as witnesses does not make a search illegal",

and he quotes 21 Madras 83 in the support of this view. Well, Sir, I have got 21 Madras in my hand, and I fail to find any warranty for the above statement. This is what the ruling reported in 21 Madras says . . . . .

Mr. Chairman (Sir Hari Singh Gour): Order, order. The Honourable Member might leave 21 Madras alone and deal with the principle of the Bill.

Mr. G. S. Dutt: The ruling reported in 21 Madras does not justify the view put forward by the Honourable the Mover about "locality" in his Statement of Objects and Reasons. In this ruling the Honourable Judges have not, as represented by my Honourable friend, held that

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failure to call inhabitants of the locality as witnesses does not make a search illegal. They have only held that such failure does not necessarily expose the conduct of the police to suspicion or render the evidence of the search inadmissible—which is quite a different matter. This is what the judgment says:

"Section 103, Criminal Procedure Code, requiries the officer about to make a search to call upon two or more respectable inhabitants of the locality in which the place of the search is situate to attend and witness the search. There is nothing in that or in any other section of the Code to justify the notion that the required witnesses are to be selected by any person other than the officer conducting the search. Assuming what is by no means clear that the witnesses to the search of the first and second prisoners' houses were not inhabitants of the locality, we do not think that that circumstance must necessarily expose the conduct of the police to suspicion, or render the evidence of the search inadmissible."

It is thus quite clear that this does not bear out my Honourable friend's statement in the Statement of Objects and Reasons. This disposes of that portion of his argument.

Then, again, my Honourable friend says in the Statement of Objects and Reasons that the principle upon which he attacks this section is that—

"anything incriminating which may be found in the premises searched shall really be found and shall not be planted".

I do not see, Sir, how the amendment which he proposes makes it any the more certain that anything incriminating which may be found in the premises shall really be found and not planted. He further says:

"The present amendment is intended to invalidate the search if not conducted strictly in accordance with the provisions of this section."

Surely, if the search is not conducted in accordance with the provisions of section 103, it is invalid under the present law . . . .

Sardar Sant Singh: Under the present law it is not. There is a Full Bench case, 34 Madras 349—when a search has been conducted under section 103, evidence can be given regarding the things seized in the course of the search and regarding places in which they were respectively found, other than the list which the law in the section directs to be drawn up containing these particulars.

Mr. G. S. Dutt: That is quite a different matter. In any case, my Honourable friend has not mentioned that in the Statement of Objects and Reasons; he has only mentioned 4 Cr. L. J. This is something else. Apparently he has found that what he has quoted in the Statement of Objects and Reasons does not support him and he is, therefore, now turning to something else . . . . .

Mr. Lalchand Navalrai: Can he not go beyond it?

Mr. G. S. Dutt: He cannot expect me to anticipate what he has not stated. Then, as an Honourable Member on this side has pointed out, my Honourable friend the Mover, has not given any reason in support of his proposal to add a new sub-section to section 103.

[At this stage, Mr. Deputy President (Mr. R. K. Shanmukham Chetty) resumed the Chair.]

I submit, that not only has he adduced no reason in support of this proposal, but the proposal itself is of such an extraordinary nature that I find it difficult to understand it. What was at the back of his mind when he proposes this amendment to add a new sub-section, namely, that "no evidence other than the list drawn up in accordance with the provision of this section shall be admitted to prove the articles discovered during the search"? What is meant by "proving the articles"? I suppose he means proving the discovery of the articles. But supposing that not merely the two witnesses taken by the police officer, but the people of the whole village turn up and, among them, there are respectable people, like the Union Board President or a Commissioner of a Municipality or the President of the District Board, are they to be excluded, because they are not in the list? Nothing but the list, says my friend: no evidence other than the list shall be admitted: therefore, not even the witnesses who have attested the list can be allowed to give evidence to prove the discovery of the articles. That is clear from the language of this amendment. But, even assuming these two witnesses are not excluded, why should other witnesses be excluded? There may be better witnesses present than those whom the police officer has brought with him. My Honourable friend himself may turn up: if there is a theft in his village, he might turn up when the house of the thief is being searched. Are we to exclude him from the list of witnesses, because of this provision? I submit, Sir, that it will reduce the whole thing to an absurdity. Take for instance, again, a case where a cow is stolen and the owner finds it in the accused's house and takes a police officer along with the witnesses, is that man also to be excluded to prove the fact that he found his own cow there? The fact is, Sir, my Honourable friend has rushed to amend the section in the manner proposed without sufficient thought, if he will pardon my saying so.

We come now to the next proposal and that is with reference to section 167 where there is an application for a further remand to police custody. Here also I find it difficult to understand the principle upon which the amendment is based. My Honourable friend seems to think there is a sort of magical potency attached to the place where the Magistrate usually holds his Court. No doubt the place is sanctified by the presence of pleaders and barristers; but surely the whole importance lies in the procedure, not in the place. His complaint is that when an accused is sent up, the Magistrate does not often record his statement, does not even see him. I entirely agree with my Honourable friend that if any Magistrate was guilty of such omission, he would be quite unjustified and it would be an abuse of the law. But what is the sanctity or potency attached to the place where the Magistrate usually holds his Court? If a Magistrate is irresponsible, he can be just as irresponsible in the place where he usually holds his Court: he may not have the accused brought before him even there. It sometimes does happen in ordinary cases in the course of trial that on a particular date of hearing, when the police ask for a remand, the accused remain in the *hajat*. It may be that the witnesses are not ready and the Magistrate passes an order although the accused are not brought before him in person. There is no miscarriage of justice there. But I agree entirely with the Honourable Member that cases where a remand to police custody is asked for stand on an entirely different footing—and that, before an order of remand to police custody is made the Magistrate ought to have the accused before him in person. But if the Magistrate is so irresponsible as not to do that, he would not be rendered more responsible merely by the fact that he happens to be sitting at his

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Court room and not in his house. Then, again, supposing the prescribed time under the law—24 hours—expires at midnight as it often happens: the poor Magistrates are knocked up at unearthly hours by the police who say "Here is a man whom we want to be remanded". Does the Honourable Member want the Magistrate to go and sit in his Court at midnight and pass a remand order? Would there be any special virtue in that?

Sardar Sant Singh: My Honourable friend forgets that 24 hours is the maximum limit granted to the investigating officer: he can come up within five or six hours.

Mr. G. S. Dutt: I am merely giving an illustration of what may often happen and then the whole thing will be reduced to an absurdity by having a rigid rule like the one he proposes. It is easy to draft an amendment of a law by taking paper and pen while one is sitting in a room in a town and one is apt to ignore or lose sight of grim realities. I would remind my Honourable friend that we are here dealing with cases which occur in the mufassil, miles and miles away: the accused might be miles away from the Magistrate; the police might be miles away; they send a man to the Magistrate from a far off place; the prescribed time expires, it might be at midnight, it might be on a Sunday or a holiday. My Honourable friend wants to make it compulsory in every such case, when an accused is produced for remand, that it does not matter where the Magistrate may be at the time, he should run to the place where he usually holds his Court, and sit there and pass the order. The place where the Court room is may be near or it may be far. It may be a holiday when the Court room is quite deserted; or it may be in the middle of the night. That does not matter: the Magistrate should be compelled to go and sit in the Court room and there pass his orders! Perhaps my friend is thinking that the mere fact of sitting in the Court room would change the character of the Magistrate. That is not what would happen. As I have said, if the Magistrate was so disposed he could do in his Court room exactly what he would do in his house. My Honourable friend further says that the accused must be actually produced before the Magistrate. That is a different thing and there I am at one with my Honourable friend. But what is the particular virtue in the Magistrate having necessarily to go to the place where he holds his Court? You may make the law as definite as you like, but, after having done that, you must trust your Magistrate; if you cannot trust him, then you may as well scrap the whole of the Criminal Procedure Code . . .

Sardar Sant Singh: Trust the Magistrate and have the law definite: that is exactly my proposition.

Mr. G. S. Dutt: I can understand my Honourable friend's proposal that the Magistrate must hear the accused: that is quite intelligible; it can be carried out and it is practicable and reasonable; and, if a Magistrate does not do so, he can be penalised, he can be brought to book by the superior Courts; but to compel him to go to an empty Court room, either in the middle of the night or on a holiday, is, it seems to me, to do a thing which has no rhyme nor reason behind it. So, I say, Sir, there is no reasonable principle upon which this Bill is based . . . .

Mr. K. Ahmed: He should withdraw the Bill.

Mr. G. S. Dutt: Then, again, my friend suggests the addition of these words—"after hearing the accused or his counsel if the accused so desires" after the words "this section". Well, Sir, I certainly think that the Magistrate ought to hear the accused if the accused wishes to be heard, and I take it, Sir, that under the present law there is no bar to it. There have been numerous cases when the accused were taken before Magistrates and there they made certain allegations. We know of cases even in connection with the civil disobedience movement,—and my friend knows of them,—both in his own province or outside it,—where the accused were taken before a Magistrate where they made allegations, and the Magistrate made inquiries. There have been many such reported cases and some of the cases were discussed in the Legislature, but when my friend insists that the Magistrates should go and hear the accused even in an empty Court or on a holiday, I presume what is really at the back of his mind is that the accused should be given an opportunity to have their counsel or pleader to be present. Well, Sir, that is a very questionable matter at that particular stage . . . . .

Mr. Lalchand Navalrai: Is it a painful idea?

Mr. G. S. Dutt: I say it is open to question whether at that stage the Court should be bound to hear a lawyer if the accused so desires. It raises a matter of principle and I leave it to the House to decide.

Then, Sir, there is the proposal to amend section 205, about which I do not think I need say anything. That is not a very important matter in an omnibus Bill. But let us come to clause 9. Here my friend suggests the deletion of the words "unless for special reasons to be recorded in writing he considers it necessary to do so". In his Statement of Objects and Reasons he goes further and says "the amendment of section 386 is intended to do away with a hardship". And, what is that hardship? He proposes that if the Magistrate thinks that the accused is rich enough to pay fine, he should not pass a sentence of imprisonment in default of fine. That is to say, the Magistrate should first of all make an inquiry whether the accused is rich enough to pay a fine or not, and then only he should pass a sentence to that effect. In every case practically it implies that the Magistrate should make inquiry in the first instance whether the accused is rich enough to pay a fine, and, if so, how much fine should be imposed on him. It may be that the evidence may disclose that the accused is or is not well-to-do enough to pay a fine; but surely the principle upon which the sentences are passed is not merely whether the accused is able to pay a fine, but also whether, in view of the nature of the offence committed, a sentence of fine should be imposed and whether imprisonment should be inflicted in default of payment of a fine or whether there should be imprisonment imposed in addition to fine. I think, Sir, it will be entirely unreasonable to expect a Magistrate, before passing a sentence, to inquire in every case whether the accused is rich enough to pay a fine. As an Honourable Member on this side of the House pointed out, even if an accused is rich enough to pay a fine, he does not always pay it; he often evades payment, and my friend would have it that in such cases, as soon as he has served the sentence of imprisonment, he should be exonerated from the liability to pay the fine. What would happen in such case, to the aggrieved party to whom the Court has ordered compensation,—I would ask my friend to tell me. I believe he is a lawyer . . . . .

An Honourable Member: Why do you say you believe? He is a lawyer.

Mr. G. S. Dutt: Very well. I would then ask my friend, who is a lawyer, to take the case of his own client; to take the case, say, of a poor woman whose house has been burnt and property destroyed. The Court orders a fine of Rs. 500, out of which Rs. 200 is to be paid as compensation to the poor woman. Supposing the wrong-doer elects to undergo imprisonment instead of paying the fine. Such cases often occur; they do not come merely out of my conjecture. In such cases in which the accused deliberately evades payment of the fine and elects to undergo imprisonment, there will be a serious miscarriage of justice. If, afterwards, the accused undergoes imprisonment in default, the Magistrates would have no discretion to order the realisation of the fine. Here the present section merely gives a discretion to the Court, and, to remove that discretion will, I think, be highly undesirable . . . . .

Sardar Sant Singh: Why should there be a double punishment?

Mr. S. C. Mitra (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): You don't consider that it is a double punishment.

Mr. G. S. Dutt: Then, Sir, coming to section 406, I have very little to say. I have experience of Bengal where all appeals in security cases are heard by Sessions Judges. It may be that there are special circumstances in the Punjab which make it desirable to empower the Local Government to exercise a discretion and empower District Magistrates to hear such appeals. I do not think that my friend has cited any instance in which this discretion has been abused or there has been any miscarriage of justice. But when my friend suggests the wholesale repeal of sections 412, 413, 414 and 415, his argument appears to be on a par with his proposal for the wholesale repeal of section 30 with which I have dealt in some detail.

I think, Sir, I have taken enough time, and I do not propose to take any more time of the House, but I should say this, that when you propose the wholesale repeal of a section of an Act, and, particularly, of a law of such solemnity as the Criminal Procedure Code, you must be armed with better reasons than you have revealed in the Statement of Objects and Reasons which shows evidence of having been very hurriedly drawn up by my friend in the midst of other pre-occupations, judged by the way in which it is worded. Now, his reason for suggesting the wholesale repeal of these sections is very simple, that it wastes the time of the two highest tribunals. This is exactly what it does not, but what will exactly happen if my Honourable friend succeeds in getting these sections repealed. If my friend has his way in repealing these four sections, the numerous appeals filed will very much waste the time of the two highest Courts, the Sessions Court and the High Court. What is the principle, I ask my friend, underlying these four sections 412 to 415? Let us consider them for a moment. Section 412 simply provides that there will be "no appeal in certain cases when the accused pleads guilty",—my friend would not accept it, and he will say "you must have an appeal in every one of these cases"—even in cases "where an accused has pleaded guilty and has been convicted by a Court of Session". My friend has hitherto shown a great distrust of District Magistrates only and not of Sessions Judges, but here apparently he will extend his distrust to the Court of Session. He has refrained from extending his distrust to the High Court, perhaps because its result will be rather inconvenient. My friend does not trust such an exalted authority

as the Sessions Court. He will not have even the Sessions Court—let alone District Magistrates and First Class Magistrates—pass a sentence of imprisonment which is non-appealable. It is very right that the time of the highest tribunals should not be taken up with petty cases unless there are very exceptional reasons. When such reasons exist, there is already a provision to move the High Court by way of revision of orders in such cases. I feel sure that very few Honourable Members will come forward to support clause 11. The sections which are proposed to be repealed are salutary and do prevent the wasting of the time of the higher Courts which is the very principle upon which my Honourable friend has proposed this clause. Section 413 says:

"Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session passes a sentence of imprisonment not exceeding one month only or in which a Court of Session or District Magistrate or other Magistrate of the first class passes a sentence of fine not exceeding fifty rupees only."

My Honourable friend says in his Statement of Objects and Reasons:

"Similarly section 413 has given rise to fantastic results. A Sessions Judge can remit a fine without a limit, but in cases where the fine is less than Rs. 50, and he is of opinion that the conviction is not justified, he must recommend remission of fine to the High Court."

Now, Sir, this section, as I have already observed, deals only with very petty cases. It only provides that in petty cases where the Sessions Judge himself has passed a sentence of not more than one month in a summary mode, there should be no appeal, and, where a lower Court has passed a sentence of small magnitude, the Sessions Judge can move the High Court in his discretion. There will be no right of appeal *ipso facto*. There is nothing fantastic about it. It merely guards against the wasting of the time of higher Courts by indiscriminate appeals. Therefore, my Honourable friend's statement of principle entirely falls to the ground. Similarly, section 414 bars appeal from certain summary convictions in petty cases. It says:

"Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in any case tried summarily in which a Magistrate, empowered to act under section 260, passes a sentence of fine not exceeding two hundred rupees only."

Obviously this is a very salutary section which should not be repealed.

We are left lastly with section 415. It says:

"An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or more of the punishments therein mentioned are combined . . ."

This section, of course, depends on sections 413 and 414. If they are repealed, then section 415 goes.

I think I have shown, Sir,—although I have taken a great deal of the time of the House—and I apologise for having done so, but I felt that there was a great deal to be said —— I think I have shown that we should not hurry with a measure of this kind, in which provisions of great importance have been tackled in such a summary fashion without having regard to the principles upon which the Legislature, after mature consideration, passed these sections which have stood the test of ages and which were examined last in 1923. I submit to the House that we should not go on with such piecemeal amendments, but that we should reserve the amendments, if they are required in any particular item—it may be some of them require amendment. There may be no objection to some

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of the minor clauses of the Bill of my Honourable friend, but I have shown that the main provisions of the Bill need further consideration and that such questions should be dealt with in a Bill drawn up after mature consideration as an amendment to the entire Act and not in such piecemeal fashion unless there is any very great urgency which makes an amendment imperative. No such urgency has been shown to exist in the present case. I, therefore, oppose the motion.

Some Honourable Members: Let the question be now put.

Major Nawab Ahmad Nawaz Khan (Nominated Non-Official): I oppose the Bill. The last speaker has very lucidly and splendidly explained its defects. The Bill is very badly worded and it is full of ambiguities and absurdities. What my Honourable friend has stated in his Statement of Objects and Reasons goes against the Bill and the defects have all been exposed. But there is one other aspect of this Bill. It strikes me that the Honourable Member has perhaps produced this Bill with the idea of helping the political agitators or those who carry on the propaganda of civil disobedience. My Honourable friend knows very well that in the last Session we passed the Ordinance Bill, and, in order to remove its effect, he has been trying to have this Bill passed and facilitate the actions of those persons against whom the Ordinance Bill was passed in the last Session. I, therefore, oppose this motion.

Some Honourable Members: Let the question be now put.

Mr. S. C. Mitra: I support the motion of my Honourable friend, Sardar Sant Singh, for referring this Bill to a Select Committee, and I think that my Honourable friend, Mr. G. S. Dutt, in his elaborate speech, also supported the same idea. I did not hear his last sentence, but all I could gather was that he thought that there should be a comprehensive amendment and not by driblets.

The main argument against the Bill was, as I understood it, that there was no one principle underlying this Bill. That is the main complaint. In an amending or repealing Bill I have still to learn that there must be one main principle. The Honourable the Law Member will shortly, I think, bring in a Bill for amending and repealing some enactments. It is strange that all the official luminaries and their friends should expect to find only one principle in that amending Bill also. I thoroughly agree that it would have been better if some of these provisions in the present Bill could be introduced separately, but those who know the difficulties of the non-official Members will realise how many chances they have got in the whole course of their non-official career of three years to pass non-official legislation. If my Honourable friend has to wait to bring in these amending clauses separately by different Bills, he should have to wait till the Greek Kalends. During all these years only my Honourable friend, Diwan Bahadur Harbilas Sarda, has been fortunate enough to have his Marriage Bill passed. Therefore, from practical expediency, it is sometimes necessary for non-officials in an amending Bill to provide for sections that may not deal with only one principle. I think I have said sufficiently enough to show that it is not possible ordinarily to have one principle in an amending Bill. This Bill is of the nature of an omnibus Bill dealing with several principles. But, if that was the main argument

against this Bill, and, as my Honourable friend, Mr. G. S. Dutt, has admitted that some of the present sections cause inconvenience and hardship—there is an admitted necessity for bringing forward amendments to the Indian Penal Code and the Criminal Procedure Code . . . .

Mr. G. S. Dutt: Not by the provisions of this Bill.

Mr. S. C. Mitra: These would not stand in the way. In the Select Committee, necessary alterations may be made. I think the House will remember how many times the Honourable the Home Member comes in with amending Bills to tighten up some section or other. The Commerce Member also, only the other day, brought forward amendments to the Railway Act. So, Government also bring in these amendments by driblets. The argument that this Bill has no general principle is worthless. If some principle must have to be shown, then it is that there have been abuses and mis-uses of some of these sections and the principle is to amend them. My friend, Mr. G. S. Dutt, said he did not know whether Sardar Sant Singh was a lawyer or not. I may tell him that he is a practising lawyer with a big criminal practice in the province of the Punjab and, in connection with his daily practice in Courts, he has found practical difficulties and hardships in the way of his clients under these sections. It is not from a theoretical standpoint that he is speaking. I don't know whether Mr. Kabeer-ud-Din Ahmed has any criminal practice at all. I would appeal to my friend, Mr. Jagan Nath Aggarwal, not to take my friend from Bengal so seriously that Bengalees or the Bengalee Members generally desire that there should be a discrimination between the Punjab and other provinces in the matter of the administration of these laws. We do not want any distinction either in the Punjab or Baluchistan or the North-West Frontier Province. We want the same law to be administered everywhere. Mr. Jagan Nath Aggarwal made it perfetcly clear that if there was criminality in a certain part of the country which required special treatment, then you can say that there should be provision for speedy trial and some of these sections should be applied, but that is no reason why an advanced province like the Punjab should be treated as a non-regulation province and the District Magistrate should have power to pass a sentence of seven years or so.

Now, I shall deal with some of the main clauses of the Bill. I will deal with section 7 first. Under the existing provisions of law, the accused are not required to be presented before a Magistrate in open Court or in the presence of lawyers. I am not drawing here any picture from my own imagination. I shall deal with it purely from a political standpoint, and, I can say from my own experience, that in almost every political case the accused are first kept in the custody of the police. It is not only in one or two cases, but this happens in innumerable cases. There they are tortured by the police. These under-trial prisoners are never brought before a Court when the Court is sitting. On another occasion in this House, I have narrated what they do. They send up some papers to the Magistrate to be signed in his home, they get the case remanded for another seven days or 15 days. As I narrated on the previous occasion, I have had personally to wait for the accused to be brought in till after dusk. This was the case of my own nephew in a political case. I waited till five and all lawyers went home. All the Court rooms were vacated at Alipore. Then the Magistrate had a phone from the C. I. D. and the case was brought on at half past five. There was not a single man left

[Mr. S. C. Mitra.]

in the Court room. I do not like to go into the details of this case again. He was tortured by the police. The case was remanded and he was not allowed even to give a description of the torture to the Magistrate who told him to write to him later on. The Magistrate said that he should be sent to the jail lock up and not to the police lock up. Immediately after that I read in the papers that he was brought under the Criminal Law Amendment Act. There was no trial and nobody could meet him and he had no opportunity of making any allegations against the police. In innumerable cases, allegations have been made of police torture while under custody. There was no opportunity given to these under-trial prisoners to prove these cases of allegation of torture by the police. British sovereignty in India rests on real justice and not on the apparent strength of the executive who ride rough shod over all these laws and rules. In innumerable cases there have been allegations that while these under-trial prisoners were in police custody they were tortured. I ask the House, in all seriousness, where is the opportunity for these people to bring these facts to the notice of the Court? They are not brought to the Court during trial hours in the presence of lawyers. This is a very salutary rule to produce accused persons in open Court, for which my friend, Sardar Sant Singh, has brought forward this Bill. It is not, as Mr. G. S. Dutt thinks, to inconvenience the Magistrate that this alteration is wanted.

Mr. G. S. Dutt: I never said so.

Mr. S. C. Mitra: It is the business of the District Magistrate to attend from 11 to 5, the official hours, and why should Government fight shy of this provision?

Mr. G. S. Dutt: On a point of personal explanation. I never said that this would put the Magistrate to any inconvenience. I said it will not be of any use to the accused.

Mr. S. C. Mitra: If my exposition will not convince him, then nothing will convince him. He has no option but to support this Bill. So I leave him there. (Interruption from Mr. K. Ahmed.) I have also failed to convince Mr. K. Ahmed as he is determined not to be convinced.

Mr. G. S. Dutt: My Honourable friend is misrepresenting what I said. Am I not entitled to give a personal explanation?

Mr. Deputy President (Mr. R. K. Shanmukham Chetty): The Honourable Member is entitled to give a personal explanation, but not an exposition of what he said in his speech.

Mr. S. C. Mitra: Now I shall turn to another section. That is about the provision under the present procedure to realise the fine even after the accused had undergone a period of sentence in default of payment of fine. I have heard strange arguments from the opposite benches. Do they not see any inconsistency in their position? Fine is considered as a lesser kind of punishment than imprisonment. Now, failing to pay the fine, the man has to undergo imprisonment. When he suffers
5 P. M. the whole period of imprisonment, the man is released. What is this principle of equity and justice of the great Magistrates—who are

occupying the back Benches in this House,—to uphold that this poor man, who has undergone in this way a severer kind of punishment, to realize from him again the whole amount of the fine, where is the justice, I ask, in all earnestness? Of course, with some of my friends they have no option, but to support anything that comes to be put forward by the Government That argument is certainly conclusive from that standpoint. Otherwise, that any man with any sense can uphold such a doctrine that in spite of the man suffering a more severe kind of punishment, when he comes back, after a year or so, he should be compelled to pay the whole amount of the fine, is absurd and most unjust. Sir, I think the Government should still consider whether such a procedure should be allowed to be continued and whether such an absurd section should be maintained in the permanent Statute-book of this country.

Mr. K. Ahmed: Possibly that will not be applicable.

Mr. S. C. Mitra: Sir, as I have said, the motion is not for final consideration, it is for reference to a Select Committee. If there is any inconsistency, or if it is not possible for the House to accept all the suggestions made here, in the Select Committee certainly they can make necessary changes. In those cases where perhaps even Mr. Dutt agrees that there is real hardship, Government might accept those clauses or, if necessary, amend them in a way acceptable to Government, but that is no reason why, in an amending Bill, because my Honourable friend, Sardar Sant Singh, is said to fail to show them the one principle underlying all these provisions, it should not be referred to a Select Committee. With these words, I support the motion.

The Assembly then adjourned till Eleven of the Clock on Monday, the 13th February, 1933.