

5th April, 1933

THE
LEGISLATIVE ASSEMBLY DEBATES
(OFFICIAL REPORT)

VOLUME IV, 1933

(31st March to 12th April, 1933)

FOURTH SESSION
OF THE
FIFTH LEGISLATIVE ASSEMBLY,
1933



SIMLA
GOVERNMENT OF INDIA PRESS
1933

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.)

Panel of Chairmen :

SIR HARI SINGH GOUB, KT., M.L.A.

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

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

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

Secretary :

MR. S. C. GUPTA, C.I.E., BAR.-AT-LAW.

Assistants of the Secretary :

MIAN MUHAMMAD RAFI, BAR.-AT-LAW.

RAI BAHADUR D. DUTT.

Marshal :

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

Committee on Public Petitions :

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

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

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

SIR ABDULLA-AL-MAMÜN SUHRAWARDY, KT., M.L.A.

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

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

CONTENTS.

VOLUME IV.—31st March to 12th April, 1933.

| PAGES. | PAGES. |
|---|--------|
| FRIDAY, 31ST MARCH, 1933— | |
| Unstarred Questions and Answers 2893—2904 | |
| Statement of Business .. 2904—05 | |
| Statements laid on the Table 2905—08 | |
| Proposals for Indian Constitutional Reform—Adopted 2908—78 | |
| SATURDAY, 1ST APRIL, 1933— | |
| Questions and Answers .. 2979—3037 | |
| Unstarred Questions and Answers 3037—40 | |
| Motion for Adjournment—Whole-sale arrests in connection with the Congress Session at Calcutta Negatived .. 3040, 3069—92 | |
| Message from the Council of State 3040 | |
| The Indian Income-tax (Amendment) Bill—Amendment of section 4—Presentation of the Report of the Select Committee .. 3040—46 | |
| Resolution re Release of Mr. Gandhi, Mufti Kifaetullah and other Political Prisoners—Discussion not concluded .. 3046—69 | |
| MONDAY, 3RD APRIL, 1933— | |
| Questions and Answers .. 3093—3103 | |
| Statements laid on the Table 3103—04 | |
| The Indian Tariff (Ottawa Trade Agreement) Supplementary Amendment Bill—Passed as amended 3104—24 | |
| The Provincial Criminal Law Supplementing Bill—Discussion not concluded .. 3124—54 | |
| Appendix .. 3155 | |
| WEDNESDAY, 5TH APRIL, 1933— | |
| Questions and Answers .. 3157—76 | |
| Unstarred Questions and Answers 3177—79 | |
| The Provincial Criminal Law Supplementing Bill— <i>contd.</i> 3179—3227 | |
| Statement of Business .. 3227 | |
| FRIDAY, 7TH APRIL, 1933— | |
| Members Sworn .. 3229 | |
| Questions and Answers .. 3229—43 | |
| Statements laid on the Table 3243—53 | |
| The Provincial Criminal Law Supplementing Bill—Passed as amended .. 3254—68 | |
| The Auxiliary Force (Amendment) Bill—Passed as amended 3268—72 | |
| The Indian Merchant Shipping (Amendment) Bill—Discussion not concluded .. 3272—3303 | |
| SATURDAY, 8TH APRIL, 1933— | |
| Message from the Council of State 3305 | |
| The Indian Merchant Shipping (Amendment) Bill—Discussion not concluded .. 3305—15, 3316—75 | |
| Statement of Business .. 3315—16 | |
| The Safeguarding of Industries Bill—Introduced .. 3375 | |
| The Indian Tariff (Amendment) Bill—Introduced .. 3375 | |
| MONDAY, 10TH APRIL, 1933— | |
| Questions and Answers .. 3377—3401 | |
| Unstarred Questions and Answers 3401—05 | |
| Statements laid on the Table 3405—08 | |
| The Indian Income-tax (Second Amendment) Bill—Presentation of the Report of the Select Committee .. 3411 | |
| The Indian Merchant Shipping (Amendment) Bill—Passed as amended .. 3411—35 | |
| The Indian Income-tax (Amendment) Bill—Discussion not concluded .. 3435—72 | |
| Appendices .. 3473 | |

| PAGES. | PAGES. |
|--|--|
| TUESDAY, 11TH APRIL, 1933— | WEDNESDAY, 12TH APRIL, 1933— |
| Short Notice Questions and Answers 3475—76 | Questions and Answers .. 3547—52 |
| Message from the Council of State .. 3476 | Short Notice Questions and Answers 3552—54 |
| The Indian Income-tax (Amendment) Bill—Passed as amended 3477—3532 | Unstarred Questions and Answers 3554—56 |
| The Safeguarding of Industries Bill—Discussion not concluded 3532—46 | The Safeguarding of Industries Bill—Passed 3557—96 |
| | The Indian Tariff (Amendment) Bill—Passed 3587—98 |
| | The Indian Medical Council Bill—Referred to Select Committee 3588—3625 |
| | The Indian Merchant Shipping (Second Amendment) Bill—Discussion on the motion to refer to Select Committee not concluded 3625—33 |

LEGISLATIVE ASSEMBLY.

Wednesday, 5th April, 1933.

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

QUESTIONS AND ANSWERS.

BOUNDARIES OF THE PROPOSED ORISSA PROVINCE.

1120. ***Mr. B. Das:** (a) Will Government be pleased to state the nature of the recommendations they made in their Despatch to the Secretary of State on the boundaries of the Orissa Province?

(b) In what way did it follow the recommendations of the O'Donnell Committee?

(c) Did Government recommend the exclusion of the Jeypore Agency as is contained in the award of the British Government?

(d) Will Government be pleased to lay on the table a copy of the Government of India Despatch regarding the Orissa Province?

The Honourable Sir Brojendra Mitter: With your permission, Sir, I propose to answer questions Nos. 1120 and 1121 together.

I am not in a position to supply the information asked for by the Honourable Member or to lay on the table the correspondence referred to.

Mr. B. Das: May I inquire when Government intend to publish the Despatches that were sent on the Orissa boundary question?

The Honourable Sir Brojendra Mitter: My Honourable friend assumes that the Despatches will be published. I do not agree with him.

Mr. S. O. Mitra: Will Government please explain what are the reasons for not publishing those Despatches?

The Honourable Sir Brojendra Mitter: They are confidential.

BOUNDARIES OF THE PROPOSED ORISSA PROVINCE.

†1121. ***Mr. B. Das:** (a) Will Government be pleased to state the nature of the recommendations by the (i) Government of Bihar and Orissa, (ii) Government of Madras, and (iii) Government of Central Provinces, on the boundaries of Orissa as was recommended by the O'Donnell Committee?

(b) Is it not a fact that the Government of Bihar and Orissa support the majority report of the O'Donnell Committee regarding the inclusion of the Parlakimedi Estate in Orissa Province?

† For answer to this question, see answer to question No. 1120.

(c) What were the recommendations of the Government of Bihar and Orissa regarding the inclusion of the Parlakimedi Estate and the Jeypore Agency in Orissa?

(d) What were the recommendations of the Government of Madras regarding the inclusion of Jeypore and Parlakimedi?

(e) Will Government be pleased to lay on the table the Despatches of the Government of Bihar and Orissa and of the Government of Madras on the O'Donnell Committee Report?

COMPLAINTS ABOUT ADULTERATION IN COUNTRY LIQUOR BOTTLES IN DELHI.

1122. ***Mr. B. N. Misra:** (a) Are Government aware that there is a general complaint of the Delhi public about the adulteration up to 25 per cent. in country liquor bottles at the retail sale shops? If not, do Government propose to order an open enquiry into the matter?

(b) Are Government aware that when the public do not get real wine in Delhi, they are obliged to get their requirements at much trouble from the rural shops near Delhi, such as Sonipat, Bahadurgarh, Palwal, Gohana, etc., in the Rohtak and Gurgaon districts of the Punjab Province?

The Honourable Sir George Schuster: Enquiries are being made and the information asked for by the Honourable Member will be laid on the table in due course.

DUTY ON COUNTRY LIQUOR.

1123. ***Mr. B. N. Misra:** (a) Is it a fact that reduction was made in 1932 in Delhi in the duty on country liquor and that the auction of country liquor shops was let off at higher bids in licence fees than in previous years?

(b) Is it a fact that Government again reduced the duty on country liquor in the Delhi Province this year and that in the auction of 1933 of country liquor shops in Delhi the licence fee has actually decreased instead of going up?

(c) Are Government in a position to account for the fall in licence fees in the auction of 1933 of country liquor shops in Delhi?

(d) Is it a fact that the retail sale merchants of country liquor purchase bottles at Rs. 1-7-0 per bottle from the distillery and sell at Rs. 8-2-0 per bottle?

The Honourable Sir George Schuster: The information asked for by the Honourable Member is being collected and will be laid on the table in due course.

GRANT OF PENSION TO BAUDOT MISTRIES.

1124. ***Mr. N. M. Joshi:** With reference to the reply given to my question No. 181 on the 4th September, 1928, regarding the grant of pension to Baudot mistries, will Government be pleased to state whether they have come to a final decision on the matter and, if so, what are the decisions?

Sir Thomas Ryan: The attention of the Honourable Member is invited to the reply given by me on the 7th March, 1933, to part (b) of Pandit Satyendra Nath Sen's starred question No. 676.

RETIREMENTS OF TELEGRAPH EMPLOYEES OF CERTAIN GRADES.

1125. ***Mr. N. M. Joshi:** Will Government be pleased to furnish a statement showing the number of retirements (a) compulsory, and (b) voluntary in each of the following grades after the introduction of Sir Cowasji Jehangir's Report:

- (1) Telegraphists, (2) Telegraph Masters, (3) Deputy Superintendent, (4) Officers of the first and second Divisions, (5) Officers of the Engineering Branch, and (6) Clerks?

Sir Thomas Ryan: The figures asked for are as follows, the numbers of compulsory and of voluntary retirements being given in that order in each case:

| | |
|--|-------------|
| Telegraphists | 93 and 180. |
| Telegraph Masters | 64 and 39. |
| Deputy Superintendents | None and 1. |
| Officers of the 1st and 2nd Divisions of the Superior Traffic Branch | None and 3. |
| Gazetted Officers of the Engineering Branch | 1 and 6. |

The total number of clerks (including Head Postmasters, Sub and Branch Postmasters, Inspectors and Town Inspectors of Post Offices, Sorters, Supervisors, etc.) retrenched up to the 30th November, 1932, is 2,484 but no information is available as to the number who retired voluntarily or were compulsorily retrenched.

CALCULATION OF THE MINIMUM NECESSARY FOR INCOME-TAX.

1126. ***Mr. N. M. Joshi:** Will Government be pleased to state whether in the calculation of the minimum necessary for income-tax, the gross or net pay is taken into consideration? If it is the latter, what items of deductions are excluded?

The Honourable Sir George Schuster: As regards income chargeable under the head "Salaries", tax is deducted at source on the amount payable by the employer to the employé concerned without any deductions whatever except those specified in section 7 (1) proviso, section 15 and section 58-F of the Income-tax Act in respect of life insurance premium and contributions to certain provident funds subject to the restrictions prescribed in the Act. Barring these deductions, gross pay is taxed.

PROSECUTION OF THE RIYASAT BY THE BHOPAL STATE.

1127. ***Mr. B. Das:** (a) With reference to the prosecution sanctioned by the Government to the Bhopal Durbar against the *Riyasat* and the judgment of the Magistrate, Mr. Isar, on the case, has the attention of Government been drawn to the following passage:

"It is the State Police that carried on the investigation in Delhi and other places in British India without the assistance even of the local police. It is the State that has paid all expenses."

(b) Was the Delhi Police aware of these independent investigations and did Government take any action at the time against the encroachment of the liberties of British Indian subjects by an Indian State?

The Honourable Sir Harry Haig: I have made enquiries from the Delhi Administration and will lay a reply on the table in due course.

HYGIENE ON RAILWAYS.

1128. ***Mr. B. Das:** (a) Will Government please say if their attention has been drawn to an article in the *Bombay Chronicle*, dated the 18th March, 1933, regarding hygiene on railways?

(b) If not, are Government prepared to send for the article and consider ways and means of improving the flooring of railway carriages, especially third class carriages?

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

(b) This question has been engaging the attention of railways and endeavours have been made to improve the flooring of carriages, particularly lower class carriages. Composition flooring has been tried fairly extensively but the types used have, after a few years service, been found to disintegrate rapidly, necessitating premature renewals. Further experiments are being carried out but so far no satisfactory substitute for wood in railway carriage flooring has been found.

AREA OF LAND IN NEW DELHI RESERVED FOR ALLOTMENT TO DIWANS AND RAISES.

1129. ***Mr. S. G. Jog:** (a) Is it a fact that a separate area of land in New Delhi is reserved for allotment to Diwans and Raises? If so, what proportion does it bear to the total area of land in New Delhi?

(b) Will Government please state which Department deals with this allotment of plots and who is the final authority and what is the procedure for this?

(c) When plots are available for allotment, are the public or the Rais class informed about it and applications invited?

(d) Will Government please state how many plots have been so far allotted and how many are available at present?

(e) How many applicants are on the waiting list and for how long a period?

(f) Will Government please state the number of allotments as per provinces?

(g) In view of the fact of the transfer of more States from the Central Provinces, Bombay and Bihar, do Government propose to provide for more plots so as to make them available to the Diwans and Raises of all provinces?

(h) Are Government prepared to resume possession of the plots in New Delhi that have been given long ago and not built upon and thus make them available for others who want them?

Mr. G. S. Bajpai: I have called for certain information and will lay a reply on the table in due course.

LOANS ADVANCED BY THE GOVERNMENT OF INDIA TO INDIAN STATES AND BRITISH INDIAN PROVINCES.

1130. *Sirdar Harbans Singh Brar: (a) Will Government please state the amounts advanced as loans to different Indian States and British Indian provinces giving the dates of advances, the dates of the Secretary of State's sanction in respect of each advance and the rates of interest thereon?

(b) Will Government please state the funding arrangements which have been made in respect of each of these advances and the amounts recovered by way of interest and capital thereof?

(c) What are the amounts written off or proposed to be written off as irrecoverable or otherwise?

The Honourable Sir George Schuster: (a) and (b). As regards advances to Provinces, the Honourable Member will find a full statement in Account No. 86-A of the Finance and Revenue Accounts, of which copies are available in the Library. These advances are made from the Provincial Loans Fund and a notification showing the position of this Fund is published every year, the last copy being published with Finance Department notification No. F.-2-(4)-B./82, dated the 18th May 1932. As regards loans to Indian States, the total is shown in Account No. 95 of the Finance and Revenue Accounts. The rate of interest is based on the borrowing rate of the Government of India, though with minor variations to meet individual cases. The funding arrangements also vary. A full statement giving all the details required by the Honourable Member could not be prepared without an expenditure of time and labour which would not be justified, but if he desires information regarding any particular loan and will put in a question stating the date from which he requires it, I shall do my best to supply what he wants.

(c) According to my information nothing has been written off in the last three or four years. We have not continued the investigations further back than this, but there is no reason to suppose that any considerable amount has ever had to be written off.

HOT WATER BATH AND RATES FOR CATERING IN THE LONGWOOD HOTEL, SIMLA.

1131. *Sirdar Harbans Singh Brar: (a) Will Government please state if it is a fact that officers residing at Longwood Hotel, Simla, get hot water for baths free of charge while Members of the Legislature have to pay for it?

(b) Is it a fact that the rates for catering irrespective of the period of stay is as follows:

| | Single. | Couple. |
|-----------------------|---------|---------|
| Officers | Rs. 4-8 | Rs. 8 |
| Legislators | Rs. 6 | Rs. 11 |

The Honourable Sir Frank Noyce: (a) The officers do not get hot water free of charge. The rent payable by them includes a charge for hot water, while the Members have to pay for it separately to the caterer.

(b) Yes.

RETRENCHMENT OF INCOME-TAX OFFICERS IN BIHAR AND ORISSA.

1132. ***Mr. Gaya Prasad Singh:** (a) Will Government be pleased to state on what principle retrenchment has been made in the strength of the Income-tax Officers, in the province of Bihar and Orissa?

(b) Have Government satisfied themselves that the discretion exercised by the Commissioner of Income-tax, Bihar and Orissa, in the selection of senior officers for retrenchment in the presence of several junior ones has been rightly exercised?

(c) Have Government considered the extent of expenses entailed by the abovementioned selection of senior officers in the form of long leave, large gratuities and high pensions? Are Government aware that these measures have practically frustrated the very object for which the retrenchment is professed to have been made?

(d) Have Government considered the desirability of providing elsewhere those retrenched officers and thus taking active work from them rather than giving them pensions?

(e) Have Government given them any understanding that they would be re-called as soon as there are vacancies in the sanctioned cadre or that they would be the first to be taken in whenever there is any vacancy in any other Department of the Government of India or of the Provincial Government?

(f) Have Government granted them certificates of character and efficiency to enable them to find employment elsewhere until they are re-called or re-employed by Government?

The Honourable Sir George Schuster: I have called for a report on the matter referred to and will lay a statement on the table in due course.

VOLUNTARY RETIREMENTS IN THE RAILWAY CLEARING ACCOUNTS OFFICE, DELHI.

1133. ***Pandit Satyendra Nath Sen:** (a) Is it a fact that in the office of the Director, Railway Clearing Accounts Office, an office order has been circulated that those who would retire voluntarily, but could not do so upto the 31st November, 1932,—the time fixed for voluntary retirement,—should give their names with proper reasons for not submitting their applications in time for the consideration of the Controller of Railway Accounts?

(b) Are Government prepared to cancel the restrictions contained in the above office order and to issue an unconditional one for retirement of the senior men in service and give more concessions if necessary?

Mr. P. R. Rau: (a) The Office order stated:

“If there be anyone who wants to offer for voluntary retirement, he should apply for the same immediately stating reasons why he did not avail of the chance upto 31st October, 1932, the date fixed by the Railway Board so that his application may be forwarded to the Controller of Railway Accounts”.

(b) Government do not consider that any restrictions have been imposed in the order which was purely in the nature of an inquiry. In response to this, one clerk has already offered to retire and he has been allowed to do so. Government are not at present satisfied that there is any necessity to give further concessions to those desirous of retiring voluntarily.

UNEMPLOYMENT PROBLEM.

1134. ***Mr. S. G. Jog:** (a) Will Government please state whether they have any statistics or figures to show the number of unemployed persons fit for employment in mills, factories, railways and Government and private services?

(b) Will Government please state whether they have any agency or bureau or department which collects this information?

(c) If Government have this information, will Government please state the number of the unemployed in different branches as per provinces, during the last five years?

(d) If Government have no such information or no such agency, are they prepared to set up machinery to collect this information with a view to combating the unemployment problem and menace?

(e) Are Government aware that such attempts are made in the other countries of the world?

(f) If so, will Government please state what steps they propose to take and on what lines?

The Honourable Sir Frank Noyce: (a) Government are not in possession of any such statistics.

(b) No.

(c) Does not arise.

(d) and (f). The matter is primarily one which concerns the Local Governments and the Government of India have no proposals for setting up machinery of the kind suggested.

(e) Certain countries publish statistics of unemployment.

Mr. S. G. Jog: Do the Government of India consider that this is a civilised country and that it is necessary to institute these inquiries?

The Honourable Sir Frank Noyce: The difficulty is that it is impossible to obtain any statistics of this kind unless they are combined either with a system of unemployment insurance or of trade union benefits. I may point out to the Honourable Member that, to the best of my belief, another country, the United States of America, which, I think, he will agree, is highly civilised, is also not in possession of any accurate statistics of this kind.

Mr. S. G. Jog: Are Government aware at least that there is vast unemployment in India at present?

The Honourable Sir Frank Noyce: That there is a considerable amount of unemployment I do not deny. As I have pointed out in my reply I gave to the Honourable Member's question, this is primarily a matter for the Local Governments, and, as I think he is doubtless aware, they do pay a considerable amount of attention to it.

Mr. S. G. Jog: Do the Government of India think that they are in any way concerned with this unemployment problem, and do they want to shirk their responsibility on to the Provincial Governments?

The Honourable Sir Frank Noyce: The subject is a provincial transferred subject and, therefore, there is, as I have explained to the House on more than one occasion, very little that the Government of India can do in regard to it. If the Honourable Member has any concrete suggestions as to what the Government of India can do in the circumstances I have explained, I shall be glad to have them.

Mr. S. G. Jog: Have the Government of India given any thought to the question as to what means can be found out to relieve the situation?

The Honourable Sir Frank Noyce: I do not see what the Government of India can do in regard to a provincial transferred subject.

Mr. S. O. Mitra: Have the Government of India done anything for the centrally administered areas for which they are responsible, in the way of getting statistics for unemployment?

The Honourable Sir Frank Noyce: I have explained the difficulties in collecting unemployment statistics. Those difficulties apply equally to the centrally administered areas.

Mr. S. O. Mitra: Is the difficulty of collecting figures for unemployment peculiar to India or is it a difficulty which is met everywhere in the world where figures are collected?

The Honourable Sir Frank Noyce: It is a difficulty which is met everywhere except in countries which have a system of unemployment insurance or trade union benefits.

Mr. Lalchand Navalrai: Does the Honourable Member know that an association has been started in the Punjab with regard to this unemployment question, and are Government going to co-operate with them?

The Honourable Sir Frank Noyce: I take it, Sir, that the first action of the people who have taken up this question will be to secure the co-operation of the Local Government.

Mr. N. M. Joshi: May I ask, under what section of the Government of India Act are the Government of India precluded from legislating on unemployment insurance and such subjects?

The Honourable Sir Frank Noyce: The Government of India are not precluded from legislating on the subject, but we should want a very definite request from Local Governments before we take action.

Lieut.-Colonel Sir Henry Gidney: Will the Honourable Member inform this House whether he has any information as to the total number of the unemployed in the Government of India services?

The Honourable Sir Frank Noyce: There is no unemployment in the Government of India services; all the people who are serving under the Government of India are presumably employed. (Laughter.)

Lieut.-Colonel Sir Henry Gidney: The Honourable Member knows well that I refer to those people who were in the Government of India services and have been retrenched and are, therefore, now unemployed.

The Honourable Sir Frank Noyce: That information can be obtained.

Dr. Ziauddin Ahmad: In view of the fact that the Government of India are the employers of two largest Departments, that is the Post Office and Railways, is it not possible for the Government to help unemployment by starting fresh schemes and fresh proposals and undertakings?

The Honourable Sir Frank Noyce: That, Sir, is a question which could more properly be directed to my Honourable friend, the Member for Railways.

Mr. Lalchand Navalrai: Might I know from the Honourable Member if it would be difficult to know the number of unemployed people in the Posts and Telegraphs Department, where there are Unions, and Government can find this out very easily?

The Honourable Sir Frank Noyce: It is quite easy to find out the number of employees who have been retrenched in the Posts and Telegraphs Department. If my Honourable friend wants those statistics, I can give them to him.

Mr. S. O. Mitra: Is not labour legislation a Central subject, and as such any legislation about unemployment will come under the purview of the Central Legislature?

The Honourable Sir Frank Noyce: There is a difference between legislation and administration, Sir, and I am not sure how mere legislation is going to help. In any case, as I have explained, the matter is primarily one for Local Governments. If they want Central legislation passed by us, we shall be happy to examine any proposals they make on the subject.

Mr. S. O. Mitra: I was thinking of unemployment insurance and such matters. Will they not come under the purview of the Central Legislature?

The Honourable Sir Frank Noyce: There would be no difficulty about undertaking Central legislation in regard to unemployment insurance, but we are a very long way from being in a position to evolve any satisfactory system of unemployment insurance for such a vast country as India, with her very special conditions.

Mr. S. G. Jog: In the general census which was taken last year, did the Government of India suggest that any column or heading should be opened in those remarks from which an enquiry could have been made?

The Honourable Sir Frank Noyce: I believe, Sir, there was an effort made to obtain some figures in regard to certain classes of unemployment in the census, but it proved impossible to get any satisfactory figures on that subject.

Mr. Lalchand Navalrai: May I ask, which were those classes for which that column was made?

The Honourable Sir Frank Noyce: Unemployment amongst the educated classes.

AMOUNT RECOVERED BY WAY OF ESCHEAT.

1135. ***Mr. S. G. Jog:** (a) Will Government please state whether they have any such head as "Escheat" or any other name of similar import under which Government get some property or money?

(b) If so, how much amount have Government recovered by way of escheat during the last five years?

(c) What use do Government make of this amount?

The Honourable Sir Harry Haig: (a) The sale proceeds of unclaimed and escheated property are entered as receipts in table No. 48, under the head "Administration of Justice" in the Finance and Revenue Accounts of the Government of India.

(b) The total receipts for the last five years for central areas including the North-West Frontier Province amounted to Rs. 64,773.

(c) The receipts form part of the revenues of Government under sub-section (3) (iii) of section 20 of the Government of India Act, and when not disbursed in accordance with the provisions of section 31 of that Act are credited to revenue.

APPOINTMENT OF A MUSLIM AS EXECUTIVE OFFICER IN THE DELHI CANTONMENT.

1136. ***Maulvi Sayyid Murtuza Sahab Bahadur:** (a) Is it a fact that no Muslim has been appointed as Executive Officer in the Delhi Cantonment, since its establishment, though three chances had presented themselves for such an appointment?

(b) Are Government prepared to appoint a Muslim when the next vacancy occurs?

Mr. G. R. F. Tottenham: (a) I have no information. The post is held by a civilian appointed by the General Officer Commanding-in-Chief, Eastern Command, under authority delegated to him under section 13 of Cantonments Act, 1924.

(b) Government do not propose to interfere with the discretion of the General Officer Commanding-in-Chief.

PROCESSION WITH MUSIC IN THE DELHI CANTONMENT.

1137. ***Maulvi Sayyid Murtuza Sahab Bahadur:** (a) Is it a fact that no procession was ever taken out with music in the Delhi Cantonment?

(b) Is it a fact that the said procedure is being departed from for the last two years?

(c) Is it a fact that when this innovation was objected to by the Muslim residents of the Cantonment, they were given to understand both by the police and executive officers that singing and music made with instruments would not be allowed before the mosque?

(d) Is it a fact that this promise was not kept up on the first occasion?

(e) Is it a fact that on the representation of the Muslims, the Cantonment authorities decided that no procession with music of any kind should pass the mosque?

(f) Is it a fact that notwithstanding this decision of the Cantonment authorities, the present Executive Officer supported the application of a certain community and recommended the issue of a licence in its favour for taking out a procession, and, accordingly, a procession passed the mosque in 1932?

(g) Are Government aware that concentration of mind is indispensable for Muslim prayer, and the play of music before the mosque is calculated to disturb the devotees in their prayers?

(h) Are Government aware that but for the intervention of some elderly Muslims not to obstruct the procession, there would have been a serious communal riot even in the Delhi Cantonment?

(i) Do Government propose to issue strict orders to the officers concerned to abide by the decision of the Cantonment authorities and not to allow any procession with music to pass in front of the mosque?

Mr. G. R. F. Tottenham: (a), (b) and (c). In 1930 and in 1931, processions with music passed along the road in front of the mosque. In 1932, as a result of objections on the part of the Muslim residents, the music was stopped when the procession passed the mosque.

(d) No.

(e) The Cantonment Authority issued orders that religious processions should not be allowed to halt or play music in front of any religious edifice.

(f) No. In August 1932, a licence for the procession was issued by the Senior Superintendent of Police, Delhi, but music was not played in front of the mosque.

(g) This is a matter on which I am not qualified to give an opinion.

(h) No.

(i) No further orders appear to be necessary.

UNPAID APPRENTICES WORKING IN THE GOVERNMENT OF INDIA SECRETARIAT AND ITS ATTACHED AND SUBORDINATE OFFICES.

1138. ***Maulvi Sayyid Murtuza Saheb Bahadur:** (a) Will Government be pleased to lay on the table a statement showing the names of the paid and unpaid apprentices who are working in the Government of India Secretariat and attached offices and subordinate offices?

(b) Will Government be pleased to lay on the table a statement showing the amount of travelling allowances and honorarium that has been paid to the apprentices mentioned in part (a) above, since 1930?

The Honourable Sir Harry Haig: (a) and (b). I lay on the table a copy of the Home Department Office Memorandum No. F.-32/38/29-Establishments, dated the 9th December, 1929, which prohibits the employment of

apprentices in the Government of India and its attached and subordinate offices. I have no reason to believe that the orders in this Office Memorandum are not being observed, and I do not, therefore, consider it necessary to call for the information required.

Copy of an Office Memorandum No. F-32-38-29-Establishments, dated the 9th December, 1929, from the Government of India, Home Department, to all Departments of the Government of India.

The undersigned is directed to refer to the correspondence ending with the office
etc.
memorandum from the Foreign and Political Department, No. 58-F. O/29, dated the
27th August, 1929
etc.

regarding the employment of apprentices. The Llewellyn Smith Committee referred to the practice in paragraph 51 of their Report and recommended its discontinuance. The replies received from the Departments to the recent reference show that the employment of apprentices is now rare and objections to the system are generally accepted. The introduction of the system of leave reserves since the Committee reported should make it unnecessary to resort to it, and the undersigned is directed to say that the employment of apprentices in the Departments of the Government of India and its attached and subordinate offices should now be totally discontinued.

CONFIRMATION OF STATE RAILWAY ACCOUNTANTS.

1139. ***Mr. S. O. Mitra:** (a) Will Government please state the total number of State Railway Accountants under each State Railway, officiating in grades I and II who are awaiting confirmation in the respective grades?

(b) Is it a fact that an embargo has been imposed on the officiating accountants according to which their confirmation in the grade has been kept in abeyance?

(c) Is it a fact that before this embargo was introduced, certain State Railways as well as Company accountants were confirmed?

(d) Is it not a fact that the embargo has recently been withdrawn in respect of accountants, grade II, and some confirmations were made?

(e) Is it not a fact that the confirmation of accountants, grade I, is still kept in abeyance?

(f) Will Government please state when the question of confirming accountants, grade I, will be taken up? Are there vacancies at present?

(g) Will Government please state whether there is any truth in the rumour that scales of pay are going to be revised? If so, what will be the fate of officiating accountants? Will they continue in their old grades or be brought under the new ones?

Mr. P. R. Rau: (a) The number of officiating accountants who are awaiting confirmation is as follows:

Grade I—

- 5 on the North Western Railway,
- 4 on the East Indian Railway, and
- 3 on the Eastern Bengal Railway.

Grade II—

- 4 on the North Western Railway.

(b) to (f). The facts are as stated. The postponement of confirmations is due to the fact that the claims of people borrowed from the Audit Department under the control of the Auditor General and the claims of people who are permanent in the Accounts Department have to be balanced. The whole question is under re-examination at present.

(g) Revised scales of pay, which will primarily affect newly recruited staff, are now under consideration. I am unable to give a definite reply to the last part of the question at present.

LEVEL CROSSING ON EITHER SIDE OF THE RAILWAY STATION AT UNAO.

1140. ***Mr. Goswami M. B. Puri:** (a) With reference to starred question No. 889, asked by Rai Bahadur Lala Brij Kishore, on the 21st February, 1938, have Government asked the Agent to the East Indian Railway to expedite the replies promised in reply to that question?

(b) Are Government prepared to enquire whether the complaints referred to in the above question are very keenly felt by the people and whether the closing of the gates at Court time is a great nuisance to the people?

Mr. P. R. Rau: (a) and (b). The Agent has replied that steps are being taken to minimise detentions to vehicular traffic at Unao.

RETRENCHMENT IN THE DEHRA DUN POSTAL DIVISION.

1141. ***Maulvi Badi-uz-Zaman:** (a) Is it not a fact that the relative records of all the officials of the Dehra Dun Postal Division were not placed before the house which sat for the retrenchment?

(b) Is it not a fact that there are some more Hindu clerks in the Dehra Dun Division whose names were selected for retrenchment and have not yet been discharged?

(c) If the replies be in the affirmative, will Government be pleased to state:

(i) why the records of all the officials were not placed before the house that sat for retrenchment;

(ii) why those remaining Hindu selected men are not discharged and the posts abolished?

Sir Thomas Ryan: (a) to (c). Government have no information. The matter is within the competence of the Postmaster-General, United Provinces, to whom a copy of the question is being sent.

ORDER PLACED BY THE RAILWAY BOARD FOR CAST IRON SLEEPERS WITH THE TATA IRON AND STEEL COMPANY, LIMITED.

1142. ***Mr. Jagan Nath Aggarwal:** (a) Is it a fact that the Railway Board have placed a very big order for 840,000 cast iron sleepers with the Tata Iron and Steel Co., Ltd.?

(b) Are Government aware that the North Western Railway asked the permission of the Railway Board to purchase 70,000 wooden B. & sleepers from the Punjab timber traders?

(c) Are Government aware that the Railway Board did not permit the North Western Railway to call for tenders for these sleepers, and that until this huge quantity of metal sleepers has been absorbed, no further orders for wooden sleepers could be placed?

(d) Are Government aware of the present depressed state of the Punjab timber market, and the effect which the present policy of the Railway Board of utilising metal sleepers is likely to produce?

(e) Are Government aware that the utilising of wooden sleepers in place of the purchase of this huge quantity of metal sleepers would amount to a saving of Rs. 88,60,000?

(f) What are the reasons for the excess capital expenditure on this bargain in the face of the economy that is at present necessitated by the financial position of the Indian Railways?

(g) What steps do Government intend to take to assist the timber trade of the Punjab?

Mr. P. R. Rau: (a) During 1933-34, orders are being placed for 129,000 cast iron sleepers. The pig iron has been obtained from the Indian Iron and Steel Company. The sleepers will be manufactured by the Tatanagar Foundry and the Bengal Iron works.

(b) Yes.

(c) The Railway Board did not authorise the call for tenders for these sleepers by the North Western Railway, but contracts for about 450,600 sleepers annually for the next three years have already been placed with the Punjab and Kashmir Timber contractors by the Northern Group for the North Western Railway.

(d) Government are aware that the Punjab Timber Market is, like many others, in a depressed state at present. The policy of the Railway Board has always been to make purchases both of wooden and metal sleepers as circumstances dictate, and they are not prepared to give either a practical monopoly.

(e) and (f). I am unable to follow my Honourable friend's calculations. The difference between the price of wooden sleepers and metal sleepers is roughly Rs. 3-8-0 per sleeper, but as my Honourable friend is no doubt aware, the life of a cast iron sleeper is more than twice that of a wooden sleeper.

(g) Government regret they cannot at present increase the purchases of wooden sleepers beyond what they have already arranged for.

CHIEF MEDICAL OFFICER, EAST INDIAN RAILWAY.

1143. *Lieut.-Colonel Sir Henry Gidney: (a) Will Government please state if:

(i) the East Indian Railway is one of the largest State Railways in India with the largest medical service and sick rate;

(ii) the Calcutta University is the largest university in India?

(b) (i) Will Government please state if it is a fact that the present Chief Medical Officer, East Indian Railway, is a whole time servant of the State?

(ii) If the answer be in the affirmative, will Government be pleased to state whether such an officer is permitted to accept any additional office requiring whole time service?

(iii) Do the rules of Government demand that their permanent whole-time servants should obtain Government's permission before accepting such an office as Vice-Chancellor of a University?

(iv) If the answer to (iii) be in the affirmative, was permission applied for from Government by this Chief Medical Officer, and when was this given?

(v) Is it a fact that the present Chief Medical Officer, East Indian Railway, is also the Vice-Chancellor of the Calcutta University?

(c) Do Government propose to call upon the present Chief Medical Officer to resign his office as Vice-Chancellor of the Calcutta University? If not, why not?

The Honourable Sir Joseph Bhoré: (a) Yes.

(b) and (c). The Chief Medical Officer of the East Indian Railway is a whole time servant of the State. At the special request of the Chancellor of the Calcutta University, Government agreed to his being permitted to continue as Vice-Chancellor of the Calcutta University for a period of two years from August last on the distinct understanding that his duties as such do not interfere with his duties as Chief Medical Officer of the East Indian Railway.

A formal application for permission was submitted by the Chief Medical Officer on the 16th July, 1932, and was sanctioned by Government on the 28th July, 1932. Government do not propose to call upon him to resign the office of Vice-Chancellor unless it is found that he cannot carry out effectively his duties as Chief Medical Officer combined with those of Vice-Chancellor.

Sir Muhammad Yakub: Are Government aware that a very large number of Vice-Chancellors of the Calcutta University have formerly been either Judges of the High Court who had to do very strenuous legal work in the High Courts or members of the Bar who had dashing practice and, that, in the case of the Judges of the High Court, it was never found that their Vice-Chancellorship of the University in any way hampered their work as Judges of the High Court?

The Honourable Sir Joseph Bhoré: To the best of my knowledge, Sir, I think the suggestion made by my Honourable friend is correct.

Lieut.-Colonel Sir Henry Gidney: When this matter was originally referred to the Railway Board, will the Honourable Member please inform the House, did the Railway Board object to this officer taking over the additional duties of the office of the Vice-Chancellor of the Calcutta University?

The Honourable Sir Joseph Bhoré: I must have notice of that question.

Lieut.-Colonel Sir Henry Gidney: Will the Honourable Member please state whether or not it is a fact that the pressure was brought to bear on the Government of India by the Government of Bengal in the person of the Governor of Bengal with a view to obtaining the necessary permission from the Railway Board?

The Honourable Sir Joseph Bhowe: I can only repeat what I have said in my reply, namely, that at the special request of the Chancellor of the Calcutta University the Government agreed to this arrangement.

Lieut.-Colonel Sir Henry Gidney: Under the circumstances, when Government permitted these two appointments to be held by one person, did they consider it fair to either post—that these should be held by the same Officer, and is it not a fact that the performance of these two responsible duties by one official shows that the official work performed by the Chief Medical Officer of the East Indian Railway is not enough or adequate for whole-time service? If the answer to this be in the affirmative, will Government be pleased to recommend amalgamation of the Chief Medical Officer, East Indian Railway, with that of the Eastern Bengal Railway? My object is entirely one of economy and is not a personal matter at all. It is a measure I have been advocating for nearly two years long before the present incumbency.

The Honourable Sir Joseph Bhowe: If my Honourable friend will put his questions singly, I shall be in a better position to reply.

Lieut.-Colonel Sir Henry Gidney: I will certainly put my questions singly. Is it not a fact that the holding of these two responsible offices by one officer shows that the official work performed by the Chief Medical Officer, East Indian Railway, is not enough to be considered adequate or as whole-time service?

The Honourable Sir Joseph Bhowe: Not necessarily so, Sir.

Lieut.-Colonel Sir Henry Gidney: If the answer is “not necessarily so”, will Government be pleased to recommend the amalgamation of these two offices.

The Honourable Sir Joseph Bhowe: That is a *non sequitur*.

Sir Muhammad Yakub: Are Government aware that frequent attacks by the Leader of the Anglo-Indian community in this House against the first Muslim Vice-Chancellor of the Calcutta University create a very bad blood amongst Mussalmans and expose the Anglo-Indian community to attacks on behalf of the Mussalmans?

Dr. Ziauddin Ahmad: May I ask Government, not necessarily the Member-in-charge of Railways, that if this principle enunciated be accepted, will Government always reduce one Judge of the High Court, if the Judge of the High Court happens to be doing the work of the Vice-Chancellor?

The Honourable Sir Joseph Bhore: Sir, I am not connected with the High Court of Calcutta.

Mr. K. O. Neogy: Are Government aware of an impression that prevails, at least in Bengal, that although Sir Hasan Suhrawardy is the *de jure* Vice-Chancellor, there is another gentleman who is the *de facto* Vice-Chancellor, and that so long as this arrangement continues, there is no reason of the interests of the Railways suffering in the least?

The Honourable Sir Joseph Bhore: I think I may say that my Honourable friend is imparting information rather than seeking information.

Sir Hari Singh Gour: Is it not a fact that the Judges of the High Court have stated hours for work in Court, whereas a Medical Officer has not got the same stated hours of work for doing medical duties?

The Honourable Sir Joseph Bhore: I am not acquainted with the work of the Judges of the High Court, but I should certainly think that Judges of the High Court work outside their stated office hours.

Mr. S. C. Mitra: Was ever any question raised when successive Judges of the High Court were also Vice-Chancellors of the Calcutta University about their doing only one work exclusively?

The Honourable Sir Joseph Bhore: I am afraid I cannot give any reply to that.

Mr. S. C. Mitra: Is it not also known to the Government that the Chief Medical Officer has not actually to attend to medical duties, but to supervise the work of other medical officers, and as such he is not required to work beyond specified hours generally?

The Honourable Sir Joseph Bhore: It is a fact that his duties are very largely supervisory in character.

Sir Hari Singh Gour: Is the Chief Medical Officer a touring officer or is he stationed at a particular place and is like a Judge?

The Honourable Sir Joseph Bhore: Obviously he is a touring officer.

Mr. C. C. Biswas: Is it not a fact that the present Vice-Chancellor carries on his University duties outside office hours, and that he does not allow the same to interfere with his work as Chief Medical Officer?

The Honourable Sir Joseph Bhore: I think that the reply to that question is implicit in the reply I have already given.

Mr. Lalchand Navai: Will the Honourable Member be pleased to give a direct reply whether, as a matter of fact, this Chief Medical Officer has got sufficient work to do or not?

The Honourable Sir Joseph Bhore: I should have thought that my Honourable friend would have already deduced the nature of the reply to his question: we certainly think the Chief Medical Officer has sufficient to occupy his time.

Lieut.-Colonel Sir Henry Gidney: Sir, before I raise another supplementary question, with your permission, I should like to make a personal explanation. Sir Muhammad Yakub, in going off the deep end, as he often does, has charged me with making a communal attack on a Muslim. (Interruption by Sir Muhammad Yakub). I do not want any interruptions from you. I am making a statement, not you. You have had your say, I shall make mine despite your uncalled for personal insinuations.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): The Honourable Member should address the Chair.

Lieut.-Colonel Sir Henry Gidney: I beg your pardon, Sir. But, Sir Muhammad Yakub, has gone off the deep end as he often does. I made the statement in the interests of economy and I want to ask the Honourable Member if he will be good enough to give a definite reply to my question, whether, if the holding of these two offices can be done by one man, the Government will recommend amalgamation of the Chief Medical Officers of the East Indian Railway and the Eastern Bengal Railway? The whole purport of my question was to that effect: will the Honourable Member be good enough to give a reply, yes, or no?

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): That question has already been answered.

Sir Cowasji Jehangir: Is it not a fact that the duties of the Vice-Chancellor of the University of Calcutta are honorary?

The Honourable Sir Joseph Bhoré: They are.

Sir Cowasji Jehangir: Is it not also a fact that many hardworked Government officials do honorary duties of this sort in India, both Indians and Englishmen?

The Honourable Sir Joseph Bhoré: I believe that that is so.

Sir Hari Singh Gour: Is it not a fact that Sir Michael Sadler and his Committee went into the question thoroughly and recommended that the Vice-Chancellorship of the Calcutta University was an onerous office and must be filled by a whole-time servant?

The Honourable Sir Joseph Bhoré: I do not pretend to know everything that is contained in the Sadler Commission's Report.

Sir Cowasji Jehangir: May I ask the Honourable Member whether a Member of the Government of India is not a pro-Chancellor of the University of Delhi?

The Honourable Sir Joseph Bhoré: That is a question that the Department of Education, Health and Lands would be able to answer more accurately than myself.

Mr. Abdul Matin Chaudhury: Is it a fact that the late Sir Ashutosh Mukherji, while he was an officiating Chief Justice of the Calcutta High Court, was also holding the post of the Vice-Chancellor of the Calcutta University?

The Honourable Sir Joseph Bhore: That, I think, is a very well known fact.

Lieut.-Colonel Sir Henry Gidney: There was and is only one Sir Ashutosh Mukherji: there are many Suhrawardis.

Mr. B. Das: Arising out of this question, can an Honourable Member, while asking supplementary questions, lose his temper and snap his fingers at another Honourable Member?

Lieut.-Colonel Sir Henry Gidney: You practise what you preach.

Pandit Ram Krishna Jha: Are Government aware that Justice Macpherson of the Patna High Court is doing both the duties satisfactorily?

The Honourable Sir Joseph Bhore: I am not aware of the fact, but I have no doubt that it is so and I will accept my Honourable friend's statement.

Sir Muhammad Yakub: Are Government aware that the Honourable Lieut.-Colonel Sir Henry Gidney asked Dr. Sir Hasan Suhrawardy to preside over a meeting in Calcutta and that, late in the evening, the Honourable the Doctor was unable to preside over that meeting and that these attacks on the Vice-Chancellor started after that date?

Lieut.-Colonel Sir Henry Gidney: Tomy rot! My demand is two years old.

The Honourable Sir Joseph Bhore: May I suggest that my Honourable friend should seek information from the Honourable Lieut.-Colonel Sir Henry Gidney on that point?

CONNECTION OF THE IMPERIAL BANK OF INDIA WITH THE GOVERNMENT OF INDIA.

1144. ***Bhai Parma Nand:** Will Government be pleased to state:

- (a) what is the connection of the Imperial Bank with the Government of India;
- (b) what is the number of Indians and Anglo-Indians trained or kept on probation under the scheme since the inception of the Bank in 1920; and
- (c) what is the number of Hindus and Muslims as belonging to various provinces?

The Honourable Sir George Schuster: (a) The attention of the Honourable Member is invited to the Imperial Bank of India Act, 1920 (XLVII of 1920), and also to the agreement between the Government of India and the Imperial Bank, of which a copy was laid on the table on the 17th July, 1923.

(b) and (c). Government have no records on these subjects.

Mr. Lalchand Navalrai: Has there been no change in the policy since that paper was placed on the table, and does it continue?

The Honourable Sir George Schuster: There has been no change in the Act or in the agreement.

Mr. B. Das: May I ask whether the agreement with the Imperial Bank which was passed up to 1931 has since been renewed and, if so, for how long?

The Honourable Sir George Schuster: My Honourable friend, I think, is aware that the agreement now runs on from year to year, subject to yearly notice of termination.

Mr. B. Das: Does that mean that until the Government decide upon having a Reserve Bank, they will go on with the yearly renewal of agreement with the Imperial Bank?

The Honourable Sir George Schuster: That does in fact represent the policy of the Government that until the Reserve Bank question is settled, the present agreement with the Imperial Bank shall run on undisturbed. That is really what our position is.

ALLEGED INSULTING BEHAVIOUR OF THE EXECUTIVE OFFICER, NOWSHERA CANTONMENT.

1145. ***Khan Bahadur Haji Wajihuddin:** (a) Has the attention of Government been drawn to an article headed "Alleged Insulting Behaviour of the Executive Officer" published on page 80 of the *Cantonment Advocate* for October, 1932?

(b) Have Government made an enquiry into the incident and taken steps to prevent its recurrence? If so, what steps have been taken?

(c) If no enquiry has been made, are Government prepared to make one without delay and state the true facts?

(d) Is it a fact that the party offended sent representations about the alleged insulting behaviour of the Executive Officer, Nowshera to the President of the Board and to the General Officer Commanding-in-Chief, Northern Command?

(e) What action was taken on these representations? If none, why?

Mr. G. R. F. Tottenham: (a) I have not seen the article.

(b) to (e). I have made enquiries and have ascertained that the allegations referred to were withdrawn by their author in December last.

UNSTARRED QUESTIONS AND ANSWERS.

PREPONDERANCE OF MUSLIMS IN THE POSTS OF DEPUTY SUPERINTENDENTS AND INSPECTORS OF POLICE IN DELHI.

180. **Sardar Sant Singh:** (a) Will Government please state the number of sanctioned appointments of (i) Deputy Superintendents, (ii) Inspectors of Police including those of the Criminal Investigation Department, and special staff for the Delhi Province?

(b) How many of the appointments referred to at (i) and (ii) above are held by Hindus, Muhammadans and Sikhs?

(c) Will Government please state the ratio of population of the three communities in the Delhi Province?

(d) Do Government realise the preponderance of Muslims in the posts of Deputy Superintendents and Inspectors of Police in Delhi?

(e) What action do Government propose to take to give the Hindus their due share in the appointments referred to above?

The Honourable Sir Harry Haig: (a) The numbers of sanctioned appointments are 4 Deputy Superintendents and 11 Inspectors.

(b) Of the 4 Deputy Superintendents, 1 is a European and 3 are Muhammadans. Of the 11 Inspectors, 5 are Europeans, 3 are Muhammadans and 3 are Sikhs.

(c) The population of the three communities in the Delhi province is:

| Hindus. | Muhammadans | Sikhs. |
|----------|-------------|--------|
| 4,05,849 | 2,06,960 | 6,437 |

(d) and (e). Vacancies in the ranks of Inspectors and Deputy Superintendents in Delhi are filled by suitable officers from the Punjab cadre who happen to be available at the time. Government have not accepted the position that the selection should be determined by the population ratio of the three communities in the province.

REPAIRS TO IBBETSON LANE, NEW DELHI.

181. **Sardar Sant Singh:** (a) Is it a fact that a portion of the Ibbetson Lane (road running from the Gole Market to the peons quarters behind the Foch and French Squares) was repaired in 1931-32, and that the same portion has been tarred this year?

(b) Has the President, New Delhi Municipal Committee, seen the portion of the said lane which has not been repaired?

(c) If not, will they please state the reasons for repairing a portion of the road and leaving the rest unrepaired?

(d) When does the New Delhi Municipality propose to repair the unrepaired portion? If not, why not?

Mr. G. S. Bajpal: (a) and (b). Yes.

(c) and (d). Owing to lack of funds the whole of lane could not be repaired at the same time. Repairs to the portion of the road referred to

by the Honourable Member will be taken in hand as soon as funds permit.

†182—188.

FREQUENT TRANSFERS OF A MUSLIM EMPLOYEE OF THE DEHRA DUN POSTAL DIVISION.

184. Maulvi Badi-us-Zaman: Is it a fact that M. Nazim Hassan Ansari was transferred by Mr. Harbans Lal Jirath, the Superintendent, Post Offices, Dehra Dun Division, about 11 times during the period of 14 months involving the payment of over Rs. 700 as travelling allowance? If so, will Government please intimate the justification of the transfer in question?

Sir Thomas Ryan: Government have no information. The matter is within the competence of the Postmaster General, United Provinces, to whom a copy of the question is being sent.

MUSLIM ASSISTANTS AND CLERKS IN THE RAILWAY BOARD'S OFFICE.

185. Mr. M. Maswood Ahmad: Will Government be pleased to state:

- (a) How many assistants there are in the Railway Board's Office (officiating and permanent) and how many of them are Muslims?
- (b) What is the total number of second Division clerks and how many of them are Muslims?
- (c) What was the total number of Muslim Assistants and second Division clerks in 1925, respectively?
- (d) Will Government please state the reasons for its variation?

Mr. P. R. Rau: (a) 27 and 3.

(b) 43 and 7.

(c) Nil and 6.

(d) Casualties and recruitment.

INADEQUATE REPRESENTATION OF MUSLIMS IN THE PERSONNEL BRANCHES OF CERTAIN OFFICES OF THE NORTH WESTERN RAILWAY.

186. Mr. M. Maswood Ahmad: (a) Is it a fact that the Muslims are very inadequately represented, especially in the higher grades, in the personnel branches of the headquarters, Divisional and extra-Divisional offices of the North Western Railway?

(b) Is it a fact that, as a result of the repeated representations of Mussalmans and by way of reply to several questions on the floor of this House, the Government have on more than one occasion promised to redress the communal inequalities in the personnel branches of the North Western Railway?

(c) If the replies to parts (a) and (b) are in the affirmative, will Government be pleased to state what steps have so far been taken to implement the promises given? Will Government be pleased to place before this House a statement of their endeavours?

(d) Is it a fact that certain Muslim employees belonging to other branches applied for transfer to the Personnel Branch? If so, will Government be pleased to state if it was found possible to entertain any of these applications, and, if not, why not? Are Government prepared to consider them favourably on the occurrence of fresh vacancies?

† These questions were withdrawn by the questioner.

Mr. P. R. Rau: (a) I would refer the Honourable Member to Chapter IV of Mr. Hassan's report on the representation of Muslims and other minority communities in the subordinate railway services.

(b) and (c). I presume my Honourable friend is referring to the speeches made by Mr. Hayman and Sir George Rainy on the 24th and 25th February, 1931, respectively. Extracts from these speeches have been sent to Agents of Railways with the request that the employment of an adequate number of Muslims as Staff, or Establishment, or Employment Officers and also Office Superintendents and Head Clerks, may be borne in mind in making appointments to such posts.

(d) Government have no information, but I am sending a copy of the Honourable Member's question to the Agent of the North Western Railway who is competent to deal with the matters raised therein for such action as may be deemed necessary.

UNDUE CONCESSIONS GIVEN TO THE MEMBERS OF THE WORKS COMMITTEE OF THE GOVERNMENT OF INDIA PRESS, NEW DELHI.

187. **Mr. M. Maswood Ahmad:** Are Government aware that the Manager, Government of India Press, New Delhi, gives undue concessions to the members of the Works Committee?

The Honourable Sir Frank Noyce: No.

MUSLIM LINO-OPERATORS AND READERS IN THE GOVERNMENT OF INDIA PRESS, NEW DELHI.

188. **Mr. M. Maswood Ahmad:** (a) Will Government please state how many lino-operators are Muslims, Hindus, Bengali Hindus and Christians in the Government of India Press, New Delhi?

(b) Will Government please also state how many sets of Muslim Press Readers are in the Press?

The Honourable Sir Frank Noyce: (a) Three Muslims, including one learner; 6 Bengali Hindus, including one learner, one other Hindu and two Christians.

(b) There are six Muslim readers, including a reviser who is officiating.

THE PROVINCIAL CRIMINAL LAW SUPPLEMENTING BILL
—contd.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): The House will now resume consideration of the motion:

"That the Bill to supplement the provisions of the Bengal Public Security Act, 1932, the Bihar and Orissa Public Safety Act, 1933, the Bombay Special (Emergency) Powers Act, 1932, the United Provinces Special Powers Act, 1932, and the Punjab Criminal Law (Amendment) Act, 1932, for certain purposes, be taken into consideration."

Mr. K. O. Neogy (Dacca Division: Non-Muhammadan Rural): Sir, I rise to oppose this motion. I oppose it, because the measure that is before us is one which is the outcome of a policy to which I am opposed.

[Mr. K. C. Neogy.]

I further oppose this measure, because I am equally opposed to the measures of provincial legislation which this Bill seeks to supplement. My Honourable friend, Mr. Biswas, stated the other day that so far as the question of policy is concerned that has been settled and settled by the Provincial Legislatures, and, therefore, the question that we have to deal with in this House is a very narrow one. I for myself am not prepared to surrender my judgment in favour of the Local Legislatures. As a matter of fact, I have a better conception of the duties of this House than to think that it is merely a kind of an automatic machine which should bring out measures of this character in obedience to the orders of our Lords and masters in the Local Legislatures.

Now, Sir, it has been pointed out that this Bill, while seeking to take away the jurisdiction of the High Court in certain matters, does confer certain privileges on the subject in so far as it provides for appeals in matters in which no appeal is provided in the provincial legislation. Now, it will be found that so far as the privilege of appeal is concerned, it relates only to cases within the jurisdiction of the High Court of Calcutta, because by a provision in the Bengal Public Security Act of 1932, the Bengal Legislature has set up a class of Special Magistrates to try certain offences mentioned in that Act, and that the right of appeal from the decisions of those Magistrates has been restricted by that Act. Now, Sir, this particular clause 2 of this Bill seeks to give the right of appeal to the High Court in certain cases, in cases in which the sentences passed by the Special Magistrates may exceed four years. I should like to know as to whether from the practical point of view there is any great likelihood of any large number of cases coming up in which the sentence passed by the Special Magistrates may exceed four years. If a reference is made to section 18 of the Bengal Act, it will be found that primarily the Special Magistrate is expected to try offences which are offences punishable under this Act, and if we turn to the other provisions of this Act, it will be found that the offences specifically mentioned in the Act are not punishable to any period beyond one year, six months in one case and one year in another being the maximum. Of course, there is a further provision that these Special Magistrates may try offences which may be committed in furtherance of a movement prejudicial to the public security, and the Honourable the Law Member, in giving an illustration of this class of cases, mentioned political dacoities. I have a faint recollection that the Honourable Member himself at one time found it rather difficult to define what a political prisoner was. I am glad to find that my Honourable friend has after all succeeded in finding a definition of political dacoity. Now, Sir, I really wonder whether my Honourable friend was not confusing this measure with another, namely, the Bengal Suppression of Terrorist Outrages Act of 1932 which makes provision for the trial of dacoities and two scores more of offences which are mentioned in the Schedule to that Act. If the Honourable the Law Member will turn to the Bengal Suppression of Terrorist Outrages Act of 1932, he will find that there is a similar provision for the appointment of Special Magistrates for the trial of offences mentioned in that Act, and that, in a Schedule to that Act, there is mentioned a large number of offences of the Penal Code including dacoities. I do not really know whether my friend was seriously putting forward

the suggestion that a dacoity could be committed in furtherance of the movement which is contemplated in the Public Security Act as distinct from the Suppression of Terrorist Outrages Act. Now, Sir, if my friend's contention is to be taken seriously, section 18, second part of section 18 of clause 1,—which mentions offences committed in furtherance of a movement prejudicial to the public security,—if that is to be interpreted according to the dictum laid down by the Honourable the Law Member, then this would cover very many sections of the Indian Penal Code. Do I take it then that by this Act of the Bengal Legislature, the Bengal Public Security Act, 1932, the procedure laid down in the Criminal Procedure Code in regard to all those offences has by implication been changed, and that all the offences of the Indian Penal Code which could possibly come within this description could be tried under the special procedure laid down in the Bengal Public Security Act.

My friend, Mr. Biswas, said, referring to another clause of this Bill, whereby the jurisdiction of the Original Side of the High Courts is taken away in regard to taking cognisance of certain cases, that the Provincial Acts have by implication taken away the jurisdiction of the High Court so far as the Appellate Side is concerned. Because, in so far as the Provincial Acts lay down the bar against any suit or proceeding in regard to certain matters to be brought before the District Courts over which the Provincial Legislature had jurisdiction to legislate, they have taken away by implication,—that was the argument of my friend,—the jurisdiction of the Appellate Side of the High Court. And he said that, for the sake of uniformity, for the sake of avoiding a possible anomaly, we must take away the jurisdiction that is yet left to the Original Sides of the different Chartered High Courts. Now, Sir, if we are to be consistent in one matter, why not be consistent in another, and why seek to make a distinction between a sentence of four years and say five years? If in regard to sentences up to four years the appeal lies to the Sessions Court, why give the right of appeal to the High Court in regard to sentences exceeding four years? Why not bring about uniformity, why not invest the Sessions Courts with the right of appeal in regard to all the cases that might be tried by the Special Magistrates? Apart from that, Sir, I would ask my friend, Mr. Biswas, to tell this House from his experience as to the number and proportion of cases in which, particularly in political appeals, he expects the Calcutta High Court, of which he has got first hand knowledge, to upset the decisions of the lower Courts. He can certainly give us an estimate of the proportion of cases in which decisions in political.

Mr. O. C. Biswas (Calcutta: Non-Muhammadan Urban): On a point of personal explanation, Sir. What I said had reference to the provision in the latter part of section 27 of the Bengal Public Security Act, and not the earlier part which says:

“Except as provided in this Act, no proceeding or order purporting to be taken or made under this Act shall be called in question by any Court”.

I was not referring to the proceedings in connection with the trials under that Act. I was referring only to possible suits or prosecutions in respect of certain acts done under the Security Act, and my contention was that as no suits or prosecutions could be brought in the mufassil Courts in respect of such matters, these could not come up at all to the High Court.

Mr. K. O. Neogy: It was never my intention to misrepresent my Honourable friend. I never said that he was saying any thing with regard to the question of trials. What I said was that on a parity of reasoning and for the sake of uniformity of practice, why not do away with the High Court altogether in regard to appeals. If you want to prevent the original jurisdiction of High Courts from taking cognisance of certain proceedings as contemplated in clause 4, why not take away the jurisdiction of the High Court in regard to appeals also, which is sought to be given by virtue of clause 2 of the present Bill. I say, in the interest of uniformity and consistency, do away with the High Court appeal altogether. That was my argument; and I was inquiring from my Honourable friend, Mr. Biswas, about the percentage of cases in which relief is being obtained at the present moment or has been obtained in the recent past in the Calcutta High Court, particularly in political cases. If we are expected to attach any value to this so-called right of appeal, we must be in a position to find out exactly what it means in practice. In the first place, I say that it is very difficult for us to conceive, as practical men, of instances in which sentences will go beyond four years under the Bengal Act. If there be any such cases, if we are to accept the dictum laid down by the Honourable the Law Member, I wanted to know in what proportion of those appeals does my Honourable friend, Mr. Biswas, expect to get relief for the accused.

Now, Sir, there is one other point, which I want to submit entirely from the practical aspect of the matter. Even Mr. Biswas would be able to tell this House that in numerous instances when people accused of offences of, as the Honourable the Law Member would call, a political character, have been properly tried and either discharged or acquitted by competent Courts in the districts, they have been arrested within the very compound of the Courts themselves. They had no opportunity of leaving the Court compound after the pronouncement of the verdict of the Judges either acquitting or discharging them. I take it that the argument in favour of this clause is that in certain cases in which persons may be convicted of an offence under the Bengal Act, they would get a chance of getting acquitted on appeal before the High Court. Now, Sir, sufficient has already been done by the executive Government to deprive the district Courts of their prestige and dignity in the manner I have just indicated. I want to spare the High Court that indignity. Is the Honourable the Home Member in a position to get up in this House and give an assurance that in no case in which a person is let off by the High Court, as a result of an appeal, will he be further molested by the police or taken into custody and kept in detention? When I oppose this provision for appeal, I do it in the interest of the accused themselves, because if they get convicted by a Special Magistrate, they are sentenced to a definite term of imprisonment, but if once they are acquitted, and if once they are pounced upon by the police, they are clapped into prison for an indefinite period of time,—it may mean a life long imprisonment. I want to save them from that fate and it is for that reason I vehemently oppose this provision which seeks to give a right of appeal to the accused.

Now, Sir, my Honourable friend, the Law Member, agreeing with my Honourable friend, Mr. Biswas, said referring to clause 4, that in those cases where any person has acted illegally, that is to say, where he has acted outside the provisions of this Act, such a person will not be protected by virtue of clause 4, that is to say, any illegal executive action for

illegal exercise of executive powers will not be protected by this clause. That is the purport of the argument of the Honourable the Law Member who agreed on this point with my Honourable friend, Mr. Biswas. If that be the position, why have a provision like that at all.

If this clause is taken to give no protection to a person who may be acting illegally, then I do not see any special reason why this clause should be incorporated into this measure at all. Sir, let us turn to the wording of the clause itself:

"Except as provided by the Bengal Public Security Act, 1932, as supplemented by this Act, no proceeding or order purporting to be taken or made under the Bengal Public Security Act, 1932, shall be called in question by any Court, and no Civil or Criminal proceeding shall be instituted against any person for anything in good faith done or intended, to be done under the said Act or against any person for any loss," and so on.

Several Honourable Members have already made their submissions on this point, but I should like to invite the Honourable the Law Member to give an interpretation of this clause "purporting to be taken". What does that mean? Does it mean merely a legal act or an action which is taken in the belief that it is sanctioned by the Provincial Act? Now, Sir, the Honourable the Law Member says, the right of testing the legality of executive actions is not at all taken away by this Bill. Now, let us turn to section 3 of the Bengal Act and find out the circumstances in which a proceeding like this would be permissible according to the dictum laid down by the Honourable the Law Member. The section reads thus:

"Any officer of Government, authorised in this behalf by general or special order of the Local Government, may, if satisfied that there are reasonable grounds for believing that any person has acted, is acting or is about to act in furtherance of the objects of any unlawful association or in furtherance of the commission of an offence under section 23 or of any offence, prejudicial to the public security, arrest such person " and so on.

Now, Sir, in what circumstances would it be open to anybody to question the action taken under this particular section? My Honourable friend, Mr. Biswas, said that in the first place the very jurisdiction of the Bengal Legislature could be challenged. That certainly is a conceivable case, but it gives scope for only one suit which would settle this particular point. Now, the only other instance in which an order under section 3 could be challenged would be if an officer who was not authorised by general or special orders would take action under this section. The wording of the section is so wide that the remedy which the Honourable the Law Member says is open to the accused is absolutely no remedy at all; and if I could be permitted to use the expression which the Honourable the Law Member used with reference to the argument of my Honourable friend, Mr. Sen, I would say that it was a most fantastic argument that the Honourable Member put forward in this connection. Now, I am in a very strong position while making my submission on this particular section. Let us take the case which occurred only the other day in regard to the arrests of hundreds of people who were proceeding to attend the Session of the Congress in Calcutta. I understand that action was taken by the Government of Bengal under this section, and I said that I am in a very strong position on this particular point because, in the protest which this House made the other day against their action in that particular connection, we had my friend, Mr. Biswas, voting with us in the same Lobby. Now, I invite my Honourable friend, the Law Member, and my Honourable friend, Mr. Biswas, to enlighten us on the manner in which the validity

[Mr. K. C. Neogy.]

of the action which was taken by the police in that instance—action against which Mr. Biswas protested—is to be tested, and on what basis. Is it to be on the basis as to whether that particular officer was properly authorised? Is it to be on the basis as to whether this particular Act, the Bengal Public Security Act, is a valid legislation which was within the jurisdiction of the Bengal Legislature to pass? Or can this action be tested on any question of merits? That is the test. “Any offence prejudicial to the public security”—says this particular section. Now, I do not find any definition anywhere of the expression, “public security”. What is the meaning of public security, and what is intended to be meant by “any offence prejudicial to the public security”? It will be seen that the widest possible discretion is left to any officer of a particular grade belonging to the police, and it is these men who have been authorised by a general order under this particular section to do certain things. Now, it is left to the discretion of this class of police officers to say whether any person has acted, is acting or is about to act—he must be in a position to divine the thoughts of human beings—in furtherance of the commission of any offence prejudicial to the public security. Now, the judgment of this class of police officers as to whether any person was about to act in furtherance of the objects of any unlawful association or in furtherance of the commission of any offence prejudicial to the public security, is absolutely beyond challenge. If that is the position, I would like my Honourable friend, the Law Member, to tell me what is the practical value of the assurance which he has given that the remedy which the aggrieved people have in regard to instances of executive action will not be affected, so far as acts done, without the legal authority of this Provincial Act, are concerned. Now, my Honourable friend, Mr. Biswas, said that we have to thank for this kind of legislation the people who have brought about the state of social anarchy. I do hope, my Honourable friend on calm reflection would regret the use of this expression, “social anarchy”. I do not know what my friend’s general attitude is towards the policy of repression which the Government has been persistently following all these years. I do not know what his attitude would have been, had he been a member of the Bengal Legislative Council which was called upon to pass the Bengal Public Security Act. But so far as I am concerned, so far as most Members on this side are concerned, I may tell my Honourable friend that the difference between him and us on this particular point is most fundamental. We consider that the Government policy in regard to the general political situation in the country is no less responsible for bringing about the state of upheaval which my Honourable friend, Mr. Biswas, describes as a “state of social anarchy”, and the contribution which the Government have themselves been making towards the creation of this political upheaval in the country has been further strengthened by the very weighty contribution from across the seas in the shape of the White Paper. Now, so far as I am concerned, I shall never be a party to any legislation which seeks to do away with the liberty of the subject, and which seeks to lay down any special procedure hampering the prosecution of legal remedies open to the subject in any manner whatsoever; and so far as this particular measure is concerned, I am going to overlook the merits, the so-called merits of any particular clause. I am going to vote blindly against the Government and oppose this measure outright. (Loud Applause from the Opposition Benches.)

Mr. Muhammad Azhar Ali (Lucknow and Fyzabad Divisions; Mubam-madan Rural): Sir, I find that by clause 3 of this Bill, special powers that have been given to the Special Magistrates in my own Province are sanctioned. That section 14 of the United Provinces Special Powers Act will now be enforced, although not sanctioned so far by this Legislature. But, after the passing of this Bill, sanction will be given and the Bill will apply to the United Provinces, giving no liberty to people to bring in a suit or an appeal before the High Court against anything done by the Magistrates.

Sir, these enactments are bound to create a sort of repercussion and, I am sure, that such harsh and strict measures will mostly have the result of hardening the heads of the public all the more against the Government. Sir, it is a fact known to everyone that Special Magistrates and Honorary Magistrates are appointed only as a rule by way of favouritism. Such powers, if given to such people, as are not at all trained or versed in law, will prove fatal. Many Honorary Magistrates, in fact, know nothing of law or regulations at all. They are not trained as the I. C. S. or the P. C. S. people, and the result always is that their decisions are mostly not only abnormal, but to a great extent—simply because of their having no training in law—erroneous and misplaced. Sir, we had expected that these Federal Courts and other sorts of Courts that are proposed to be established by the White Paper would, to a certain extent, relieve India of these hardships, but what we find is that in the White Paper there is no mention at all of even the principle of the separation of judicial from executive functions. On the other hand we find that every day more and more restrictive rules and regulations are made so as to give more and more extensive powers to

the executive. Sir, our sanctioning the powers for the United
12 NOON. Provinces, will, I am sure, work very harshly on the public. Conditions may be different in Bengal and conditions may be different in other places, but I do not see any reason for the extension of these powers to the United Provinces Executive. Those arguments, which have been advanced by my friends from Bengal opposing this motion, do equally apply to my province and I do not see any reason to traverse the same ground again. But it is, indeed, very cruel not to allow the members of the public even to get a redress from their own High Courts by taking undue advantage and throwing the public in the hands of incompetent people. Sir, with these words, I oppose this motion.

Mr. Gaya Prasad Singh (Muzaffarpur cum Champaran: Non-Muham-madan): Sir, I rise to oppose this motion. My task is lightened by the fact that other Members who have spoken on this side of the House have subjected the provisions of this Bill to a thorough criticism. It would not have been necessary for me to stand up at all had it not been for the fact that my province is also included as coming within the scope of at least one clause of this Bill. Clause 3 says:

"Section 15 of the Bihar and Orissa Public Safety Act, 1933,.....shall have effect as if these sections had been enacted by the Indian Legislature."

It is, therefore, necessary to see what section 15 of the Bihar and Orissa Public Safety Act is. Now, section 15 of this Act is as follows:

"No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act."

[Mr. Gaya Prasad Singh.]

This, I submit, is a very wide power which has been given by the Local Legislature of my province. Even during the days of the martial law, an Act of Indemnity was passed after the martial law administration had come to a close, but this is giving a *carte blanche* to the officers of the Government beforehand. Under the colour of this provision of the Local Act, it is possible that in political cases the executive officers of the Government might go beyond the legitimate scope of their duties and might be guilty of offences for which there will be no remedy in the hands of the aggrieved people later on. It is, therefore, most objectionable from that point of view. Now, section 15 gives an indemnity to the local officers of the Government, but, as this section cannot affect the jurisdiction of the High Court, opportunity has been taken to extend the provisions of the indemnity to the High Court of Bihar and Orissa, and from that point of view it is open to grave objection. My first and fundamental objection to this measure is that I do not agree with the provisions enacted in the Local Legislature, because the powers taken by the Government, under the provisions of the Local Act, are very wide and are of a drastic and sweeping nature. And, in so far as the present Bill is intended to supplement the provisions of the Acts of the Local Legislature, I have very strong objection to them. In many cases the appeal to the High Court is barred. That also, I submit, is a most serious encroachment upon the rights and liberties of the people however limited the extent of those rights and liberties may be. Under clause 5 of the Bill, the right of *habeas corpus* under section 491 of the Code of Criminal Procedure is also sought to be taken away so far as the Punjab is concerned. My friends from the Punjab have already protested against this provision and all that I wish to say is that I quite agree with them. The right of *habeas corpus* should not be taken away by this Act of the Legislature.

Sir, I have no other remarks to make. My Honourable friend, Sir Abdur Rahim, the distinguished Leader of the Independent Party, has spoken with his usual vigour and has subjected the provisions of this Bill to a thorough criticism. I have no doubt that my revered Leader, Sir Hari Singh Gour, will re-inforce the arguments advanced and also will join us in strongly opposing this measure. I do not suppose that he is thinking of maintaining a discreet silence on this Bill, and I have no doubt that when he will rise to speak, he will give a convincing reply to some of the legal or constitutional points that have been raised by the Honourable the Law Member. Partly, or to a great extent, my Honourable friend, Mr. Neogy, and other Members have also given replies to the legal aspects of the question which has been raised, and I have no doubt that my revered Leader will also join us and take the lead in opposing this measure.

Mr. B. V. Jadhav (Bombay Central Division: Non-Muhammadan Rural): Sir, on behalf of the province of Bombay, I wish to raise a protest against the passing of this new measure. In clause 3 of the Bill, the Province of Bombay is particularly mentioned and it is said that section 29 of the Bombay Special (Emergency) Powers Act, 1932, shall have effect as if that section had been enacted by the Indian Legislature. That is to say, in the absence of the provision under this clause 3, section 29

of the Bombay Act will be *ultra vires* and will be inoperative. Now, section 29 runs as follows:

"Except as provided in this Act, no proceeding or order taken or made or purporting to be taken or made or deemed to have been so taken or made under this Act shall be called in question by any Court and no civil or criminal proceeding shall be instituted against any person for anything done or in good faith intended to be done under this Act or against any person or any loss or damage caused in respect to any property wherever possession has been taken under this Act."

These are very wide powers and the Government of India have now realised that the Local Legislatures had no power to enact such a provision and, therefore, they have come before this House to validate those provisions passed by the Local Legislatures. The Ordinance Bill passed in this House as well as in the Local Councils was a measure which did not meet with the approval of a large section of the population. It was an emergency legislation and exorbitant powers were taken under them. Sir, at that time the Government of India did not realise this and gave their sanction to the Local Legislature to introduce such measures, though some of the sections then included were beyond their powers. The powers bestowed upon the Local Governments by the various Legislatures and by the Indian Legislature have been variously interpreted and variously brought into operation in different provinces. The same offence in Bengal is punished with rigorous imprisonment for six months or three months while in the province of Bombay the Magistrates think that those offences merit a very heavy sentence of two years or one year at all events. And some of the Magistrates cannot award three years sentence as under the law they cannot pass a sentence exceeding two years. This thing will go on for some time no doubt until Government realise that this is not the right way to secure the goodwill and sympathy of the people. It is a matter for congratulation, Sir, that the Government of Bengal have come to realise that severity of sentences does not lead to the preservation of peace and order; and although Bengal is at present suffering from an anarchical movement leading to violence, in spite of it, the Government there have kept their head cool and are not resorting to very heavy sentences. The other provinces also will have to realise the same thing; and I congratulate the Government of India as well as that of Bengal on their not taking the disobedience of their recent order of prohibiting a Session of the Congress seriously inasmuch as the Congress leaders who proceeded to Calcutta have been let off without much inconvenience to Government or to the persons concerned. Therefore, I hope, Sir, that better counsel will prevail in future, and in that case I do not think that the Government should insist on this legislation being passed. I, therefore, oppose this Bill.

Sir Hari Singh Gour (Central Provinces Hindi Division: Non-Muham-madan): Sir, in one respect I should have been in a somewhat enviable and happy position of keeping my silence, because, while my friends from Bengal, Orissa, Bombay and Punjab to a certain extent are directly affected by the provisions of this Bill, my own province is in no way affected by it. And my friends behind me remind me that even Madras stands exactly in the same position. It is a purely Provincial Criminal Law Supplementary Bill in which first-hand knowledge of the provinces and of the conditions in those provinces has been so aptly described by the provincial representatives that I can only supplement what they have

[Sir Hari Singh Gour.]

got to say by resorting to what I may call the principles of abstract constitutional law; and I think it is upon that point that my friends behind me are anxious that I should make a contribution to this debate.

In the first place, Honourable Members will see that the Provincial Legislative Councils of Bengal and elsewhere have passed legislation of their own. Now, the main provisions of the enactments of the various Local Legislative Councils deal with three aspects of the question. In the first place, they give the executive large powers in respect of certain offences against what is described as menace to public security. In the second place, special tribunals are created by the Local Acts for the trial of those offences. In the third place, a restricted right of appeal is given to the accused upon a conviction. And lastly, if I may be permitted to add, an indemnity in advance is given to the judicial and executive officers doing anything in good faith in pursuance of these Local Statutes. Now, I wish to point out that, so far as the new powers given to the executive over the administration of law as enacted in the Local Councils is concerned, this House you have ruled, Sir, is not to sit in judgment in the sense of questioning the jurisdiction of the Local Councils to enact such laws. The question, therefore, is *res judicata*, as it were, because the Local Councils have passed laws and those laws are all before us. The next question is that the Bengal Government and the other Governments cannot give effect to the full provisions of the Local Acts unless some supplementary legislation is passed by the Central Legislature. Now, if we turn to the provisions of the supplementary Bill we shall find that it deals with two aspects of the question. One is to give the power of appeal which is in the interest of the accused, and the second is to give indemnity which is not in the interest of the subject. My Honourable friend, Mr. Neogy, recognises that so far as the right of appeal is given, limited though it be, it is a right which is in the interest of the accused. What he objects to, and I understand the other Members from the various provinces object to, is the constitution of the special Court for the trial of such offences.

Now, coming as I do from a province in which I was born and brought up all my life, in face of section 30 of the Code of Criminal Procedure which has been paraphrased in these Local Acts, that is to say, powers have been given to First Class Magistrates for the trial of all offences not punishable with death, all I can say is that the general question about giving power to a section 30 Magistrate has been the subject of frequent debate and frequent decisions of this House. In 1922, the Racial Discrimination Committee and the Criminal Procedure Code Amendment Committee decided that Government should take early steps to repeal section 30 and relegate cases, triable by section 30 Magistrates, as they were called to be tried by the Sessions Court with the help of jurors or assessors, as the case may be. Therefore, so far as I am concerned, I cannot reconcile myself to the special constitution of a tribunal for the trial of these cases by a Special Magistrate.

Then comes the next question of the right of appeal. Everybody recognises, and I understand my friends behind me are at one, that the right of appeal is in the interest of the accused. But the point that my friends on the Opposition Benches make is that the right of appeal is not given in all cases and is not given in all cases in which they would

have a right of appeal if they were to be tried in the ordinary way as they would be but for the intervention of these Local Statutes. Now, Sir, the first point, and the point upon which much emphasis has been laid on these Benches and upon which I interjected a remark the day before yesterday to the Honourable the Law Member, when he was giving his exposition on the meaning of clause 4 of the Supplementary Bill, is on the question as to the extent of the indemnity granted in advance to the executive officers. It is perfectly true that, under the law of constitution, *habeas corpus* is suspended in cases of grave national crisis. It is equally true that as to the right of indemnity, an Indemnity Act is passed by the various Parliaments, including the Parliament of Great Britain, but it is always *post facto*. But the point that I made in the November Session and a point that was made from the Opposition Benches, in the course of the debate here, was that the right of indemnity has in this case been granted in anticipation of the offences which the executive officers may commit. In other words, the indemnity had been granted in advance and it is not reconcilable with constitutional propriety. The third point that my friend, Mr. Neogy, has drawn the attention of the House to is also a point I interjected the day before yesterday, namely, an act may be done, an order passed, or an act purporting to be taken or made, under the Bengal Public Security Act. Now, if an executive officer purports to do a certain thing under the Bengal Public Security Act, but it does not come under the Bengal Public Security Act, is he indemnified under section 4? That is the question on which, I am sure, the Honourable the Law Member and myself will be at one, because if it does not come within the purview of the Bengal Public Security Act, then it cannot be purported to be done, because it would not be done in good faith. Everybody is supposed to know the law, and the executive officer, who handles such a dangerous weapon, as a local and an emergency local Act passed for a period of three years to tide over a national crisis that justifies its enactment, must be aware of the fact that these are special laws, and consequently, they have to be dealt with in a special manner, and if, therefore, he acts under the Bengal Public Security Act when the position did not justify it, I venture to submit that he cannot be said to have purported to have done an act under the colour of his authority and *bond fide*. That, I submit, will clear up the doubts that arise owing to the language of this section. I have not the slightest doubt that apart from section 4, we had over 10 years ago enacted a measure called the Judicial Officers Protection Act, and the object of that Judicial Officers Protection Act was to protect all judicial officers for anything done *bond fide* in the exercise of their duties, and I venture to submit that, so far as the executive officials are concerned, their indemnification cannot go beyond the terms of the Judicial Officers Protection Act. In other words, when the judicial officer is protected under the Act, known as the Judicial Officers Protection Act, the executive officers cannot be protected further and beyond the rigid terms under which the judicial officer is protected under the Judicial Officers Protection Act, and, if that be the intention, the intention can be made abundantly clear by the Honourable the Law Member or by the Honourable the Home Member when they reply to this debate.

Now, Sir, the last point upon which we would like to draw the attention of the Government is clause 5. The Honourable the Law Member, if I understood him aright, the day before yesterday, when setting out the

[Sir Hari Singh Gour.]

constitutional point of view which justified the enactment of section 5 or clause 5, he said that clause 5 was really not necessary. It was enacted *ex majori cautela*. In other words, it was enacted by way of greater caution that even though the provisions of clause 5 are implicit in the Local Acts, Government want them to be supplemented by the Bill which we are about to enact. If that is so, I would ask Government: "Why keep that thing at all on the Statute-book, if it is only a second string to your bow", and, after all, the second string cannot be required for the next three years. The law itself will cease to operate after 1935. Then, why keep a second line of attack? The necessity for it admittedly is very contingent and indeed very remote. These, I submit, are the observations which I can justifiably make from a safe distance, seeing that I and my province are not affected by the provisions of the local measures to which the provisions of this Bill are supplementary.

Sir Cowasji Jehangir (Bombay City: Non-Muhammadan Urban): Mr. President, by no means am I a constitutional lawyer and, therefore, I may be allowed to speak more or less from a common sense point of view on the measure before us. Not only am I not a constitutional lawyer, but I had the misfortune of not being in the House to hear the Honourable the Law Member speak the day before yesterday, nor did I have the opportunity of hearing my Honourable friend, Mr. C. C. Biswas, and, therefore, if I do betray some ignorance, Mr. President, I trust I shall be excused by you and the Honourable House.

Sir, this Bill is called a supplementary Bill. Certain Acts have been passed in certain Provincial Legislative Councils. We are not, I understand, here to revise or amend any sections in any of the Bills which have now become Acts of the Provincial Legislatures. We have talked a great deal about Provincial Autonomy and I venture to suggest that there is no one in this Honourable House who would take up the line that we should now or in the future have the power to reject legislation or amend any Bills that Local Legislatures may consider to their advantage to pass into Acts. Therefore, any criticism of the Acts passed by Local Legislatures appears to me to be outside the sphere of our legitimate duties on the present occasion. Criticisms of what Local Legislatures have done can do no good at this stage. It only shows that Honourable Members who make these criticisms would have been in the minority if they had been in the Local Legislatures at the time when these Bills were being discussed and not so unfortunate as to be in this Honourable House. Beyond that, no useful purpose can be served by these criticisms. Now, coming to the Bill that is before us and looking at it from that point of view, I would ask Honourable Members to consider to what extent this Bill affects the Acts of the Local Legislatures. Suppose this Bill had not been brought forward at all, what would have been the effect on the Acts which this Bill is meant to supplement. So far as I can see, and I am not a lawyer, one clause in the Bill gives the accused the power of appeal to the High Court. I can understand my Honourable friend Mr. Neogy's point of view. I heard him with the greatest attention, and, with his usual lucidity, he made his point so clear that no body could misunderstand him. He said that he would rather do without that appeal to the High Court. That is a point of view which everybody can understand and is a legitimate question that can be raised in this Honourable

House. He would rather that these men were deprived of these privileges, because he considers them not to their advantage. Then, I understand that the other clauses of this Bill have the effect of making certain clauses in the Acts now in existence practically operative and supplementing them to the extent to which the Local Legislatures would have done had they themselves the power to do so. I really do not know what the effect on the Local Acts would be if the Honourable the Home Member withdrew this Bill. So far as I can see, it would have very little effect except that it would deprive some of the accused of this appeal to the High Court. It might also create a little confusion in the law. The Local Legislatures intended that the High Court should not interfere in the original side in certain matters that may be contested. There may be legal quibbles raised; but beyond that I do not see that even the Honourable the Home Member, if he chose to, could bring a Bill before this House to affect radically any of the Acts already in existence and passed in 1932. I think that position is the correct position and, if that be the correct position, all this criticism against the Acts themselves is futile. By all means let us deprive, if this Honourable House so chooses, the powers given to some accused to appeal to the High Court: let them deprive them of that privilege and that power; but beyond that this Honourable House can go very little further; and, therefore, by all means, if this is the place to ventilate your views on Acts that have been passed by the Local Legislatures, Honourable Members can take advantage of this opportunity; but it can do no good. It would certainly be in order, if it was not, you, Sir, would have ruled it out. But I do deprecate futile criticisms which can have no effect. I can understand criticisms which would lead to some end; but I cannot understand criticisms which, after all, although they may be in order, in this House, cannot affect Acts that have been already passed by Local Legislatures.

Sir Muhammad Yakub (Rohilkund and Kumaon Divisions: Muhammadan Rural): Sir, my Honourable friend, Mr. Azhar Ali, has raised objection against section 14 of the United Provinces Special Powers Act, 1932. My Honourable friend has said that under this section cases would be tried by Special Magistrates who are not trained in law and, therefore, these judgments would be open to criticism.

In the first place, I would ask my Honourable friend to read the Act itself. Probably he is under some misunderstanding. Under the United Provinces Act, no special Courts have been formed to try these cases. Then, section 13 of the United Provinces Act makes it quite clear that no Court other than the Court of a Magistrate of the First Class shall take cognisance of or try any offence under this Act. We know it very well that it is only experienced and trained Magistrates who are vested with powers of First Class Magistrates. We also know that special Honorary Magistrates having first Class powers are mostly retired Deputy Collectors or retired Sub-Judges, who have spent a very great deal of their lives in judicial work and are trained in law. There is another class of Special Magistrates also in the United Provinces who belong to non-official classes; but they are very very few. You will find that Special Magistrates belonging to the non-official classes, having first class magisterial powers, are very few and they are mostly those who have received their training at the Moradabad Training School. We had a training school for Honorary Magistrates, Deputy Collectors and other I.C.S. people, and

[Sir Muhammad Yakub.]

Special and Honorary Magistrates of non-official classes, who wanted to train themselves, were entitled to be admitted to that school and they received training there in criminal work and law; and after that they were invested with powers of a First Class Magistrate. So the objection raised by my Honourable friend as regards the apprehension that these cases will be tried by some untrained lawyers is altogether without any foundation. Then, again, not a single political case, in the United Provinces, has up to this time come to my knowledge, which was tried by any Honorary Magistrate. District Magistrates and Local Governments always take care that political cases are tried by exceptionally capable and trained Magistrates, either District Magistrates themselves or very experienced First Class Magistrates, who have crossed the efficiency bar, and will soon become District Magistrates. (Interruption.) If there were no convictions, probably my friend from Burma would not have been here after the Burma riots of last year: it is the result of convictions which has enabled my learned friend from Burma to save his life and give us the pleasure of his company in this House.

My Honourable friend, Mr. Azhar Ali, has again said something about depriving the people of their right of appeal. Again, I would read section 14 of the United Provinces Act to which reference has been made by my Honourable friend. That section says:

"Provided also that nothing herein contained shall affect the appellate or revisional power of the Courts under sections 31 and 32 of the Code of Criminal Procedure, 1898."

I think that my friend had no opportunity to go into this Act, otherwise he would not have raised this objection.

As regards the Bill under discussion, I would only submit that this Bill, if it indicates anything, is one that gives right of appeal to certain persons to whom this right was denied by the Provincial Acts. Whatever may be the argument of my Honourable friend, M. Neogy, I do not think there will be any sane person in this House, or outside, who will deny the provision of appeal to an accused or convicted person. The reasoning of my Honourable friend, if it is taken to its logical length, would be that "convict no man to any sentence except death", because, by sending a man to jail and keeping him there for two years, you put him to great agony and trouble and, therefore, it is better that his life should come to an end immediately and he should be relieved of all troubles! Probably this is the same sort of argument which my friend, Mr. Neogy, has used. We all know that these Acts are supplementary to the main Criminal Law Amendment Act, which this Assembly passed at its special Session. It was made abundantly clear on that occasion that the provisions contained in that enactment were, no doubt, of a drastic nature. No doubt they were bound to bring hardship upon certain persons. But it was also made abundantly clear that the conditions prevailing in the country were such as justified taking drastic measures. Take the case of my own province, the United Provinces. I would refer my Honourable friend, Mr. Azhar Ali, to a district in the neighbourhood of his home, I mean the district of Barabanki where my friend, Mr. Amir Hussain, is now going as Deputy Commissioner

Mr. Muhammad Azhar Ali: No; he is not. He is going to Rai Bareli.

Sir Muhammad Yakub: Some other gentleman is going, if he is not going. I am glad that he will not have the worry of going to that disturbed district; but what I wanted to say was that the troubles created by the no-rent campaign in the whole of the United Provinces and specially in the district of Barabanki were so great that if the United Provinces Government had not taken drastic measures, there would, I think, have been anarchy in the whole of my province. The result of the prompt measures taken by the United Provinces Government was that since last year we have quite a good and appreciable amount or realisation of revenue and rent, and there is also, to a very large extent, calm and peace in the province, and I must say that the present conditions of a partial peace in the provinces are due to these extraordinary measures which have been taken by the Government of India and the Provincial Government. We cannot say that the revolutionary activities have altogether ceased, or that lawlessness is altogether dead in the country. It has only subsided. It is with the help of these extraordinary measures that Government have been able to restore peace in the country. What has happened in Calcutta is a sufficient answer to the question of my friend from Burma. If these measures are withdrawn before a particular time, that is to say, until these revolutionary activities have ceased, I am sure that lawlessness will again become rampant in the whole country and the introduction of reforms, to which everybody is looking forward, would become very difficult.

Sir, one word more and I have done, and that is about the Act in the United Provinces to which my friend has taken serious objection. Probably he does not know that this Act in the United Provinces did not come into force *ipso facto*, in all the districts. Sub-section (2) of section 11 says this:

"This section and section 2 shall extend to the whole of the United Provinces and the Governor in Council may, by notification in the United Provinces Gazette, extend all or any of the remaining sections to any district or to any part of a State in the United Provinces."

Therefore, *ipso facto* all the provisions of this Act will not apply to the whole of the United Provinces. Of course, they will be applied to any turbulent districts in which they are considered necessary.

Then, again, we find in sub-section (3) of section 1 that the Act shall remain in force for one year. So this measure is not to remain permanently or perpetually on the Statute-book, and therefore, I do not think it is right to raise any serious objection to it.

Then, Sir, as regards the indemnity, section 14 of the United Provinces Act makes it clear that no proceeding or order purporting to be taken or made under this Act shall be called in question by any Court and no suit shall be instituted in good faith under this Act. Therefore, the rights of persons who are molested in bad faith are protected; those officers who have acted in good faith need not be afraid of this measure. Of course, if they have acted *mala fide*, their conduct can be challenged in a Court of law, as it could have been challenged before this Act was passed. With these few remarks, Sir, I consider that the Bill, which is under discussion, is a measure in the right direction, and if it does anything, it gives a right of appeal to certain persons to whom this right was denied by the Provincial Acts, and I, therefore, support the motion before the House.

U Kyaw Myint (Burma: Non-European): Sir, you might perhaps remember that, at the time of the introduction of this Bill, I lodged a formal protest. I was fully aware at that time that the Province of Burma was not the subject of this particular legislation. Sir, I sought election to this House for various reasons, one of them being my personal education, political and otherwise, and I have been sadly educated during the past two years. At the same time, I take pride in the fact that I have acquired, if nothing else, what I call the All-India eye. I refuse, at any rate on the floor of this House, to look at anything with the provincial eye.

Sir, the last three Honourable speakers have been a great disappointment to me. My agony over the White Paper debate has hardly subsided, it has been augmented this morning, first by the lamentable speech of my revered Leader. My Honourable friend, Mr. Gaya Prasad Singh, must have been exceedingly sorry: he must have greatly regretted the fact that it was he who practically forced my revered Leader to take part in the debate. From first to last, I was not sure whether he was supporting or opposing this Bill. He exhibited an air of detachment which one might admire in the Treasury Benches, but which one really regrets in the person of one's own Leader. On more than one occasion in the course of his speech he said that the Bill had nothing to do with his particular province. Sir, it might interest the House to know that I recently exchanged a word or two with a friend of mine who followed the White Paper debate from the galleries. He buttonholed me as I was going out of the House on the last day and wanted to know why the speeches of Leaders on the Opposition Benches in this House were what he called milk-and-water speeches. I contradicted him. I said that I had not seen any milk in them at all. And that remark, I think, must be applied to the last three speeches I have heard today

Mr. A. H. Ghuznavi (Decca cum Mymensingh: Muhammadan Rural): You mean they were all water?

U Kyaw Myint: Yes, and not very clear water, either. (Laughter.)

Sir, I was also greatly disappointed with my Honourable friend, Sir Cowasji Jehangir's speech, because although, I think, he was opposing this Bill, he talked, in the latter part of his speech, of futile criticism. What do we care whether our criticism is futile or not

Sir Cowasji Jehangir: That is the worst of it.

U Kyaw Myint: It is better to have criticised and been overruled than not to have criticised at all. That is our attitude.

Sir Cowasji Jehangir: Is it my friend's attitude that in this House his criticism should be futile?

U Kyaw Myint: I will answer my Honourable friend, with your permission, Sir. We criticise, and, if our criticism is futile, it is the fault of the Constitution and not ours.

Sir Cowasji Jehangir: That means that my friend desires this House to amend or reject local legislation. That is exactly his plea then.

U Kyaw Myint: If the Honourable Member will kindly give me a chance of explaining matters, I shall try and convince him. I am trying to be perfectly logical

Sir Cowasji Jehangir: I hope you will try it successfully.

U Kyaw Myint: Your hopes will be favoured with success. I have been trying to be perfectly logical. Here, on the floor of this House, we, who sit on the Opposition Benches, when any enactment comes up, must criticise, as representatives of the people, any legislation proposed by the Government. Are we to hold our tongues, simply because Government will not listen to us? Are we to agree silently to the enactment of this legislation? We have got to criticise; we have got to raise a protest, in as emphatic a manner as possible. If the Constitution does not allow us to render our criticism effective, we will wait for a better Constitution, but we shall go on criticising in the meantime. I am perfectly aware, Sir, that even if we throw this Bill out, those Acts of the Local Legislatures will remain law. We cannot help that. I daresay, all these Acts

Sir Hari Singh Gour: There will be no appeal

U Kyaw Myint: There may not be. Sir, my revered Leader says that if we throw out this Bill, we will throw out the right of appeal.

Mr. K. C. Neogy: Less briefs.

U Kyaw Myint: Mr. Neogy has argued the point at elaborate length. The right of appeal, which is one of the provisions of this Bill, is of no value, as Mr. Neogy has explained. If my revered Leader and my Honourable friend, Sir Cowasji Jehangir, have failed to appreciate Mr. Neogy's point, it is their fault and not Mr. Neogy's. I understood him.

The third speaker, my Honourable friend, Sir Muhammad Yakub, is such a habitual supporter of Government that his arguments do not need any reply from me. But I should like to give him some information. The riots in Burma subsided, not because of special legislation, not because of the fact that soldiers and police were called out, but because certain elders from both communities advised all the members of the two communities that the riot was pointless and that it had been engineered by English stevedoring firms. I would have survived the riot even if it had taken 20 days instead of the two days it lasted.

Sir, my opposition to this Bill is vehement. We have got to oppose any legislation like this, because this kind of legislation is opposed to the principles of jurisprudence. The British legal system has aroused the admiration of the world—until recently—because of its sense of justice and fair play; but this sort of legislation is neither justice nor fair play. There are sufficient enactments in force already. I can be arrested any day under the ordinary law. You do not require a Bill like this. They cannot arrest me on the floor of the House, but they can "Nab" me at the gate, if I may use that common expression.

There are three fundamentally objectionable provisions in this Bill. The first is the special tribunals. Any legislation that provides for any kind of special tribunal must be opposed. I have seen dozens of special

[U Kyaw Myint.]

tribunals which were held to try rebellion cases in Burma in the past two years and I have a chronic objection to special tribunals, because special tribunals are "special" in more senses than one.

Sir Cowasji Jehangir: What legislation provides for special tribunals?

U Kyaw Myint: The Provincial Act. Throwing this Bill out will not do away with the Bengal Act, but we cannot allow on the floor of the House anything that savours of special tribunals. We oppose any provision in this Bill relating to special tribunals. On the same grounds, we oppose the right of appeal. The second provision is the suspension of the right of *habeas corpus*. That must be opposed tooth and nail at every stage. The right of *habeas corpus* is one of the fundamental rights given to the subject and one of the most valuable rights. The third is what even my revered Leader called "the indemnity in advance". These three provisions in the Bill, the special tribunals, the suspension of the right of *habeas corpus*, and the giving of indemnity in advance, are sufficient to create opposition in these Benches, whether our criticism is effective or not. The ground has been covered meticulously by Mr. Neogy and other Honourable speakers on this side of the House, and I do not propose to go over the technical aspect of the question. But I do say this as a warning to the British Government, whether they take it or not: when some future historian writes about the Decline and Fall of the British Empire, this emergency legislation will be given a special chapter.

Mr. Amar Nath Dutt (Burdwan Division: Non-Muhammadan Rural): I cannot give my support for the consideration of the Bill before the House for reasons which I shall state presently. It has been said that by rejecting this Bill, you will be depriving the accused of the right of appeal. In this connection, I am reminded of a story. A man brought a camel to the market and proclaimed that he would make a free gift of the camel, but when a man asked for the camel from the generous donor, he found a cat tied to the camel and the price of the cat was fixed at Rs. 500 which the donor demanded, as the two were inseparable. The right of appeal in the Bill is like the free gift of the camel. You are given the right of appeal provided you agree to be deprived of all rights of proceeding against those esteemable gentlemen who are to be entrusted with powers to administer the law under this special legislation. If Bengal is placed in this predicament, nothing can be said against Mr. Neogy if he refuses to accept this right of appeal to the High Court. I am sorry that Mr. Neogy has been misunderstood by my Honourable and amiable friend, Sir Cowasji Jehangir, who said that Mr. Neogy said that this right of appeal was of no use.

Sir Cowasji Jehangir: I never misunderstood Mr. Neogy. What I said was that I could understand his point of view. You are mistaking me for somebody else.

Mr. Amar Nath Dutt: As I am suffering from fever, I mistook my friend for the Knight from Moradabad.

Sir Muhammad Yakub: An unhealthy body carries an unhealthy brain. Therefore, I do not object.

Mr. Amar Nath Dutt: Mr. Neogy meant that not many of these people will be punished for more than four years. They will form a very small percentage of those convicted and still fewer of them are likely to be successful in their appeals to the High Court, knowing as we do the fate of appeals in political cases in any Court whatsoever in British India. And if any of them are acquitted, how long will they be allowed to enjoy their liberty? That was Mr. Neogy's point. My friend, Sir Muhammad Yakub, having probably practised on one side, by pleading for the prosecution and getting convictions, failed to appreciate the point of view of such lawyers as Mr. Neogy who are always in the unfortunate predicament of defending the accused.

Sir Muhammad Yakub: The Honourable Member must know that I have never practised on the criminal side.

Mr. Amar Nath Dutt: I bow down to his inexperience in criminal law and procedure. I was surprised that this should act as a bait for any of us to give our support to the whole Bill, for even if this provision of an appeal to the High Court against convictions for more than four years were not there, I submit this provision would have been sufficient if any of the appeals were to be admissible before the District and Sessions Judges as is the case in the case of sentences for less than four years. Am I to understand that District Judges in Bengal are incapable of sitting in appeal over judgments delivered by such eminent bodies of Magistrates, because possibly they have not had the advantage of training in Moradabad? Of course, in Bengal, they have not had the advantage of that training.

Pandit Ram Krishna Jha (Darbhanga cum Saran : Non-Muhammadian): Why do you not have one in Burdwan?

Mr. Amar Nath Dutt: I would like to have such a system. Sir, if these eminent gentlemen are invested with such powers and they choose to punish men by inflicting on them sentences for more than four years, they at once become such eminent criminal Judges that their judgments cannot be understood by a man of the calibre of a District and Sessions Judge who happens to be there, but when it is for less than four years, they can do so. Now, that is a thing which I fail to understand and appears to be very anomalous. Then, I beg to submit that I cannot subscribe to the provisions that are to be found in clause 4 of the Bill, which provides:

"Except as provided in the Bengal Public Security Act of 1932, as supplemented by this Act, no proceedings or order purporting to be taken or made..."

Here I would draw the special attention of the House to the words "purporting to be taken". It means that any order that may be issued by these eminent gentlemen who may be invested with powers under the provisions of this Act of the Bengal Legislature—which I am told we are not to criticise here. . . .

Mr. S. C. Mitra (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): We can criticize, but we cannot say it is *ultra vires* of the local Legislature.

Mr. Amar Nath Dutt: Whatever that may be, under the provisions of the Bengal Act, any act done under its provisions becomes a special act and shall not be called in question in any Court and no civil or criminal suit shall lie. Here I beg to submit that if the Law Officers of the Government had properly advised the Honourable the Home Member—who I believe had some training at Moradabad, because he happens to come from the United Provinces—it would have been otherwise. In spite of his possible Moradabad training, I think the Law Officers of the Government might have drawn his attention to a particular Act which is only 83 years old, namely, Act XVIII of 1850, and that Act is named “an Act for the protection of judicial officers”. Of course in common parlance in bar libraries we call it “an Act for the protection of judicial offenders”, but here I find the wording, “an Act for the protection of judicial officers”. Now, here the protection, that has been given, certainly extends to all those officers who are invested with judicial duties and powers under the Bengal Act. It may be said that only those men who are not judicial officers are not protected by this Act. If that be so, then, why not say that? Why do you make this redundant provision of extending the protection to all offenders, all officers, whatever they may be, judicial or otherwise, while there is protection for them in this Act of 1850?

“No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duties whether or not within the limits of his jurisdiction”.

provided that he at the time believed himself in good faith to have such jurisdiction. Now, if he merely thinks that under this Act he had jurisdiction, whether he had it as a matter of fact or not, that is enough. If he chooses to think that he has jurisdiction, he is exempt. Then, again, if he purports to order anything under this Act, whether it is in the Act or not, that does not matter, he is protected. So he constitutes himself the sole judge of facts as also the legislator in these matters, because we find in the local Acts that the Magistrates will decide what is for the purposes of security of the public:

“Any officer of Government authorised in this behalf”

—he is not named by general or special order of the Local Government—

“may, if satisfied that there are reasonable grounds for believing that any person has acted, or is acting in furtherance of the commission of an offence or of any offence prejudicial to the public security...”

Now, Sir, I do not know whether Honourable Members opposite who are responsible for the drafting of this Bill are aware of the conditions prevailing in the mufassil and what are the powers of officers of Government there. Now, if any of the Official Members nominated by the Government who hail from the mufassil will choose to state—and there are some on the other side—or to give us a correct impression of how these police officers actually behave and what act they do not do in the mufassil, and in spite of that what protection is ordinarily afforded to them from their immediate superior up to the District Magistrate, if they will frankly state here on the floor of this House from their own knowledge as to what are the real facts, then, I think, Sir, even the Honourable the

Home Member will shudder and then he will find that there is no necessity to grant further protection to these officers who are already beyond the pale of any law Courts whatsoever or of any disciplinary jurisdiction whatsoever. If I have said these things against a particular class of officers, it is because I happen to have 30 years' experience of the mufassil Courts as also of the mufassil itself (Hear, hear), and I speak from personal knowledge. If I were to give here a detailed list of all that has taken place and all that I have personally witnessed from the very beginning of my practice in district Courts up till now, I think the Honourable the Home Member will stay his hands and will cry "halt", and exclaim "we cannot give the police further powers to act in this way. You are already exempt from any punishment whatsoever in spite of our desire to do justice between man and man as you are supposed to protect the people and not to harass them in the way you do".

Sir, I agree with the Honourable the Law Member who, if I remember aright, once observed that it was the substitution of executive judgment for judicial judgment. If that be so, I beg to ask the Honourable the Home Member if the condition of the country is such that it is necessary that the judicial judgment should be replaced by executive judgment. I beg to say, no. The Honourable the Knight from Moradabad has given us to understand that there is perfect peace prevailing in his province. But what he is apprehensive of is that, unless you have this power, there may be recrudescence of anarchy again in his province. Sir, if we are to legislate for future contingencies, which may or may not happen, then, I think, we will not have any rest whatsoever and I think my Honourable friend, the Law Member and his Secretary also will have no rest, not to speak of the Honourable the Home Member. So I take it that it is not for any future contingency that may or may not happen that we are to legislate, but probably the Home Member thinks that the state of the country is such that such legislation is necessary. Sir I beg to submit that the Governors and their Executive Councillors in their wisdom thought it necessary for the purpose of good government of those provinces that the Acts which we want to supplement should be passed. But I would like to know what the people in those provinces do think. It will not do for you to say that the Act was passed in the Legislature in which there is a non-official majority. Now, Sir, the constitutions of these various Legislatures are too well known to be repeated again and again in this House and the Opposition in those Houses however small it may be does represent the true voice of the provinces and the people of India.

Mr. Muhammad Yamin Khan (Agra Division: Muhammadan Rural): How?

Mr. Amar Nath Dutt: My friend over there asks me how? Sir, Meerut and Moradabad are the only exceptions which have never voiced the popular sentiments of the country.

Mr. Muhammad Yamin Khan: My Honourable friend ought to know that in the United Provinces Council there are other places also which are represented in it.

Mr. Amar Nath Dutt: Yes, there are other places also, and my Honourable friend from Lucknow

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): Order, order: The Honourable Member can resume after Lunch.

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. President (The Honourable Mr. R. K. Shanmukham Chetty) in the Chair.

Mr. Amar Nath Dutt: Sir, I was going through sub-clause (4) of clause 1 of the Bengal Act and I found therein words to this effect:

"Provided that the Local Government shall not direct that any provision of these Chapters shall come into force in any area unless it is satisfied that by reason of a movement subversive of law and order a state of emergency has arisen in that area of such a kind that the existing powers of Government are inadequate for the maintenance of public security."

Sir, it occurred to me that the proviso foreshadows the White Paper. In fact, if we came in possession of the White Paper on the 18th March last, it seems that the Government of Bengal knew full well with what powers they will be vested in the coming Constitution; and till the Constitution comes into existence, as this Act will continue till the year 1935, they have made ample provision that they may exercise the coming powers which they knew full well they will be vested with. And here the Local Government is the sole judge of the situation whether or not an emergency has arisen, when to exercise the powers under the Act and that the existing powers of Government are inadequate for the maintenance of public security. These are very laudable objects no doubt; in fact the desire of Government to maintain law and order is one of the primary functions of Government.

Up till the year 1905, I believe no one had much quarrel with Government save and except with individual officers who might have exceeded their powers under the law; but after the Partition of Bengal, that brilliant measure of that still more brilliant Viceroy, Lord Curzon, during the last 28 years we have seen enactments like this. Of course I do not forget the history of the British Indian legislation when one Viceroy brought about overnight the Press Act, and we remember that a nationalist vernacular paper, the *Amrita Bazar Patrika*, was forced to come out the next day in English instead of in Bengalee. There may be such instances of British Indian legislation, but they were few and far between. Also, Sir, it was a pleasure to know that, after the Viceroyalty of Lord Lytton, we had the Viceroyalty of Lord Ripon, whose name is still remembered with gratitude by the people of this country. Lord Dufferin came after him, and it was his suggestion which gave birth to the Indian National Congress. For when he found that the Indian Constitution had nothing, by which to know the views of the people, he wanted to have an Institution which could give expression to the views of the people of the country, and it was at his suggestion that a Member of the Government of India at that time whose name is still adored in this country, I mean Allan Octavius Hume, who suggested the formation of some sort of an organisation. Our memory goes back to those days

when only 70 delegates from the different parts of India, men of light and leading, beginning with Mr. Dadabhai Naoroji and others, attended the first Congress. The suggestion was first made that Lord Reay, the Governor of Bombay, should preside, but it was Lord Dufferin who suggested that that was not his suggestion but he wanted to have non-official views. Sir, the Congress was started at that time, and its programme in those days was such that neither any one on this side of the House nor any one on the side of Government will in these days oppose. But we remember the volume of opposition that was attempted to be created against that body even in the early years of the Congress at Allahabad. Even the Governor of a province went to the length of putting up some men against it. This is all past history, and during those days there may have been legislation, but never legislation like this. In those days the representatives of the people could inform the Government of what they felt on particular measures and on most occasions Government used to consider those views and respected them even when they could not accede to them. But since 1905 as I was submitting things have gone otherwise. It has created a gulf between the rulers and the ruled, a most undesirable thing, for the rulers exist for the benefit of the ruled and the ruled also ought to know that the best friends to whom they can look up to are the rulers. But what is the position now? The experience of Members of this House since the inauguration of the reforms has been legislation like the one with which we are proceeding in this House. From day to day, year in and year out, we have some sort of reactionary legislation like this brought in this House and we the representatives of the people are asked to give our assent to them. This is certainly not a state of things which is good either for the rulers or for the ruled. As for the rulers they have this one consolation that they may go away to their own native land and then forget the few years of their service in this country, but for us who have to live in this country and die here, where our bones will rest along with the bones of our forefathers, in what plight do they leave us? I appeal to the Honourable Members on that side to consider the effect if the representatives of the people are asked to assent to repressive legislation like this. This began from the year 1906 or 1907, and the policies that they have been adopting are not only not wise, but hardly worthy of the great race to which they belong.

We know, Sir, that our cries in this House as well as out of this House have been of no avail. They seem to think that we do not offer this advice in any spirit of co-operation, but that we are always for antagonising the Government. I can assure the Government that they may rest content that there is a very vast volume of people, millions of people, who do not subscribe to those views and to those acts which they condemn and along with which we also condemn them, but, at the same time, we do not wish that the only way by which these acts can be put down or put a stop to is legislation like this. On the other hand, Sir, it increases the sore instead of healing it. We have seen how the volume of anarchical opinion and how these terrorist activities have increased. The more repressive legislation, the more we have of it. Whenever you attempted to conciliate, there have been peace and order throughout the country. Sir, if you succumb to the temptation of interested individuals and listen to the voice—the siren voice—of those whom you ought not care to listen, as statesmen, you put this country in a turmoil. Mr. Neogy said that it is the Government which is the main cause of these terrorist activities. If I do not go to that length, still I do say that certain measures of the

[Mr. Amar Nath Dutt.]

Government are responsible for these. I shall give one instance, Sir. One day, I remember, when I was addressing a band of young men, patriotic men, fired with a zeal to serve their motherland and assembled together, I asked them to take to constructive work under the Constitution, instead of bringing disorder and lawlessness in the country. The reply at once came: "Unless we create disaffection in the land, we shall not be able to rouse the masses and the repressive measures of the Government alone will help us more than anything else." I realised that these people really want repression. Why? Because the vast millions of people that are not disaffected towards the Government, and still wish conciliation and co-operation with Government, may be disaffected and their sympathies may be alienated, but, Sir, the Government forget all these. They have been forgetting all these since the year 1906 or 1907. The policy that they have been resorting to is one that has been indicated by Machiavelle in his book, the "Prince". I remember a great predecessor of the Honourable the Home Member, in reply to one of my statements like that, appealed to the Chair and said "Sir, do we look like Machiavelle?" I say: "You do not look like Machiavelle, but some of your acts are such which you unwittingly do and those who do not know you intimately may be tempted to say that your Government is Machiavellian". Sir, one of the principles laid down in that book called "Prince" by that great political philosopher, is that if you want to rule an alien people, the first thing that you ought to do is to divide and rule. You must create in the country a body of men whose interest will be bound up with the interests of the foreigners and with their help you will be able to go on. That is the fundamental principle upon which that philosopher statesman wanted to rule over foreign lands. Here, Sir, in pursuance of that political philosophy or, for any other reason, I find that the Government of India have been following that principle and we find that they have been able to win over, after the year 1905, a class of people amongst us by holding out some bait, some office, some honour, something like that, and at once purchase them. Mr. W. C. Bonnerjee, the first President of the Indian National Congress, even in his wildest dreams never thought an Indian could ever be raised to the British Peerage. You went to the length of raising a member of an Indian Bar to the British Peerage. What was the effect? There were a dozen other aspirants in the Bar which led to consequent demoralization throughout the country. You made men Executive Councillors and what is the effect? I would have been glad if you had the courage to appoint men like Mr. W. C. Bonnerjee, Sir Surendra Nath Banerjee or Mr. Ananda Mohan Bose in their days to those great offices in order to conciliate Indian opinion; but that was not your policy. You wanted to demoralise, as you have been still trying to demoralize the Opposition Benches by a simple bait of a free trip across the seas.

Sir, I beg to submit that neither that policy nor the policy represented by this small Bill is one with which you should govern this country. You should adopt a better policy and try to ascertain the real views and the grievances of the people and conciliate them and I tell you, there is still time, for I believe that England and India are bound to work hand in hand, long long after we are dead and gone, for the mutual benefit of both. Sir, why I have been saying all this? Because I was startled to find a

provision in this Bill which gives immunity to wrong-doers of the worst type—you want to invest a body of officers with powers that are not entrusted by any civilised system of administration. What are those powers? A short perusal of the headings of the different clauses will at once convince you, Sir. Power to seize and detain suspected persons—you will please see that there is no limit—no credential necessary but subserviency is the sole test, for his bread depends upon it:

"Any officer of Government, authorised in this behalf by general or special order by the Local Government, if satisfied that there are reasonable grounds, etc., etc."

The words are "any officer". Then, there are powers to control suspected persons, power to prohibit or limit access to certain places, power to prohibit or regulate traffic, power to control posts and telegraphs, power to give effect to orders if disobeyed, and so on. I shall not tire the patience of this House by reading all the powers with which these special officers are vested and to whom you want to give immunity if they go wrong. The Indian Penal Code is full of general exceptions and they are in Chapter IV, beginning from section 76 right up to section 95, excluding the right of private defence which covers some more sections. We find not less than 20 sections in the Indian Penal Code itself giving them immunity, and what are they? Acts done by a person bound, or by mistake of fact believing himself bound, by law—section 76. This section says:

"Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law, in good faith believes himself to be bound by law to do it."

This is such a wide definition that we, with our humbler brains, have found ourselves often in difficulty to find out what is not covered by this; and, in fact, when we found that the accused was a police officer and the trying Magistrate is not a Magistrate trained at Moradabad, but unfortunate officers like my friends over there, and if we find that his views are that this fellow should not be harassed, we have found that this interpretation of section 76 covers every field of activity in this world. I will not cite instances, the inglorious instances of lapses of officers who have soiled the name of British administration: many names will occur in every province, I think, even in the province of my friend over there who is not in his seat now—Mr. Jadhav who has been kind enough to say that in Bombay the Magistrates are worse than they are in Bengal. I wish it is so: then, at least, my province is safe. Of course I am not saying anything here to please any Bengal official who at one time or other may govern my own district (Laughter): I do not care much, because I have never been a law breaker (Laughter) . . . (*An Honourable Member*: "Why are you not?"), because I have great respect for law and order. The next exception is the act of a Judge when acting judicially:

"Nothing is an offence which is done by a Judge when acting judicially, in the exercise of any power which is, or which in good faith he believes to be, given to him by law."

Then we have acts done pursuant to the judgment or order of Court:

"Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction."

I invite my Honourable friend, the Law Member's attention to this last portion of the section. Supposing a judgment is passed that a man

[Mr. Amar Nath Dutt.]

should be hanged: the man is hanged; and, in spite of that, you can have no remedy against him. Such exceptions show to what extent immunity has been given to officers of the Government. That being so, I appeal to the Honourable the Home Member to say how was it at all necessary to have clause 4 in this Bill. Some of the sections in this Bill seem to be in-offensive. I will not tire the patience of the House by reading all the general exceptions

An Honourable Member: Read the whole of it.

Mr. Amar Nath Dutt: I got it by heart thirty years ago, but since then I want to use it by referring to the section. Certain exceptions occurred to me to which I may draw the attention of Honourable Members opposite, namely, acts of a child under seven years of age and act of a person of unsound mind (Interruptions) and acts of a person incapable of judgment by reason of intoxication caused against his will. (Interruption.) The insinuation of the interruptions seems to be against those Benches opposite; but I do not go to that extent—I have more respect for the Honourable the occupants of the Treasury Benches than some of my friends behind me have; but I beg to submit that this general exception also applies to those officers whom they may invest with powers like these. Can you say that that man is not insane who will be given powers of the nature conferred by an insane Act like this? Is he a man of sound mind? Certainly the Ranchi Mental Hospital would be the proper place for men who are responsible for this sort of legislation (interruption) and if that place is overcrowded, I think the Government of India will be justified in granting more money to these Provincial Governments where such Acts are enacted. But, in the serene atmosphere of this House, composed of Members from every part of the country, composed of Members from provinces which are not affected by this Bill, like my Honourable Leader, who was not, therefore, much interested except in the constitutional aspect of the question and the aspect of constitutional law, is this the proper place where we should be asked to enact such insane or unsound legislation? I will not go to the length of calling it an intoxicating piece of legislation though we are almost intoxicated with legislation day after day like this. That being my view of this Bill, which I could not peruse as thoroughly as I ought to have done, as I have been suffering from fever,

I beg to oppose the motion for consideration of this Bill. If I have said anything which might have wounded the feelings of any of my friends, either on this side or the other side of the House, I would ask them to excuse me. But, at the same time, I would request both my official and non-official friends and the Government not to have anything to do with such Bills.

Beo Bahadur B. L. Patil (Bombay Southern Division: Non-Muhammadan Rural): Sir, this is really an unprovoking Bill, and had not the copies of the Provincial Acts been supplied to us, many of the Honourable Members would not have cared to get up in their seats and make speeches. But unfortunately that mistake was committed by the Government, and thus they have provoked a good deal of discussion in the House.

Sir, coming from a province which has also been drawn into the arena of this Bill, I think it is my duty to speak out my mind frankly and, at the

same time, boldly. Sir, it was argued by an Honourable Member belonging to my Party that the provision to which this Bill refers is necessary just to make Provincial Acts workable. In the opinion of my Honourable friend, Sir Cowasji Jehangir, it was necessary, in order to work out the Acts, that these provisions should be sanctioned by this Legislature and he further argued that it would be futile to go into the merits of the various provisions of those Acts. Here I beg to differ from him and I say that it would not be futile to do so, but it would be just the thing if we are to do our duty in this House. Let me advert to a section embodied in the Act passed in the Bombay Provincial Legislature, namely, section 29 of the Act. That Act takes away the powers of the Civil Courts: that Act prevents an aggrieved person from taking any matter to a Court of law and yet we are asked to give our assent to this provision in that Bill. Sir, let me also advert to section 4 of that very Act. There we will see in the marginal note that it is meant to control the suspected persons. Now, what is the nature of the provisions contained in this section? In sub-section (1) of that section, we will see that after the District Magistrate reports to the Local Government, the Local Government can order that a person :

- "(a) shall not enter, reside or remain in any area specified in the order ;
- (b) shall reside or remain in any area specified in the order ;
- (c) shall remove himself from, and shall not return to, any area specified in the order ;
- (d) shall conduct himself in such manner, abstain from such acts, or take such order with any property in his possession or under his control, as may be specified in the order."

In this connection, I should only like to bring to the notice of this Honourable House some harrowing stories told in the Bombay Legislative Council by the speakers. Let me, first of all, read a few lines that appertain to some events that have taken place in my own district. Mr. Jog in the Bombay Council said :

"Several gentlemen, who have ceased to have anything to do with the Congress, have been served with orders and they are required to go and live away from their usual places. I say that they have ceased to have anything to do with the Congress. But Government might have received some rumour, some report about them, and they are served with orders. These persons are on parole since June and September. They are asked to go and live away from their places. They have to give parole twice or thrice a day. They are doing it. What does it show? It shows that they do not want to take any part in the movement and hence they are submitting to all this humiliation. The point to which I particularly draw the attention of Government is that they are taken to such places that they cannot find good houses to live, where they have no source for their maintenance. Such places the Government officers have selected for these persons to be taken away. And who are these persons? They are 6 pleaders practising in Dharwar. They are taken to places which are called in Dharwar the 'Andamans' of Dharwar."

Sir, I may add that it is not impossible for the officers to send these persons to places where, for example, some epidemic like plague is raging or which are infected with some other disease. Then, Sir, I come to another instance to show what extensive powers are given to the executive. Here are a few sentences from the speech of Mr. C. N. Patel from Bombay. He says :

"The car was seized under the belief that it was the *Sumiti* or Congress property. The Congress car was absolutely safe somewhere else. My car was in the same compound in which the Congress car used to be. The Congress were not the only tenants of the premises; there were other tenants in the building, and one of the other tenants had a loan of my car. That car remained with Government, and against all principles of justice that car was driven for the use of police servants, for the use of the Collector, and for the use of several other officers, by an unlicensed driver, with the result that it met with an accident, and it was almost smashed to pieces. When I got back that car, I could not say that it was my car, except that the number plate was there."

[Rao Bahadur B. L. Patil.]

Sir, I have quoted this to show what would be the effect if this Bill was passed into law. Under section 29 of the Bombay Act, an aggrieved person cannot go to a Court of law for damages. An aggrieved person is helpless; he has no remedy in law. The moment he goes to a Court of law, this section will be pleaded in bar and he is out of Court. In the case of the instance, which I have just now cited, the House will be pleased to note that the unfortunate victim did not get a pice for the damage of his car. Then, Sir, I heard a good deal of the nature of a rigmarole from the Honourable the Law Member on this Bill. He said that anything done outside the four corners of the Act would be, of course, illegal and would be actionable. He forgot very conveniently that the same section contains the words "purporting to be taken or made or deemed to have been so taken or made under this Act". Therefore, in my humble opinion, this section is so drastic that no sane person would agree to its being passed into law. If the consideration of this Bill is pressed to a division, I hope Honourable Members of this House would not forget their duty and would record their protest against this Bill. In the interest of the provinces affected, such enormous powers should not be entrusted to the executive. With these words, I oppose the consideration of the Bill.

Several Honourable Members: I move that the question be now put.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): I accept the closure. The question is that the question be now put.

The motion was adopted.

The Honourable Sir Harry Haig (Home Member): This Bill involves a number of technical and intricate legal points and not unnaturally the debate has at times become exceedingly technical. Fortunately, my Honourable colleague, the Law Member, has been able, I hope, to guide the House through those technicalities and I shall not attempt to add anything to the exposition of the intentions and effect of the provisions of the Bill which he has so clearly given to the House. I shall confine myself to a few remarks of a more general character.

This morning my Honourable friend, Mr. Neogy, made an attack on the provisions of the Bill relating to the grant of a power of appeal to the Calcutta High Court. My Honourable friend, Mr. Amar Nath Dutt, related a story, I am not quite sure that I caught the whole purport of it, but I understood him to suggest that we were offering the House a camel, but that there was a trap in the offer. My Honourable friend, Mr. Neogy, seemed to think that we were not offering a large and substantial animal like a camel, but something more in the nature of a mouse, for he complained that in fact the provisions relating to appeal would affect very few people. Whether they be many or few, our view is that the provision is required. There may certainly be cases in which trial will be held under the special procedure in the Bengal Act in which a sentence of more than four years' imprisonment may be imposed. Now, I understood my Honourable friend, Mr. Neogy, to say that if a Sessions Judge should be empowered to hear appeals from sentences up to four years, there was

no reason why he should not hear appeals from sentences in excess of four years, and he would prefer to keep the High Court out altogether. What we are doing really is to assimilate the procedure to that which is in force in what are known as section 80 cases, to which my Honourable friend, the Leader of the Nationalist Party, referred. If Mr. Neogy will refer to section 408(b) of the Criminal Procedure Code, he will see that when any Magistrate, specially empowered under section 80 (and these Special Magistrates under the Bengal Act correspond very closely to those), passes any sentence of imprisonment for a term exceeding four years, an appeal shall lie to the High Court. That was the reason why we have inserted that provision. I should like to make plain once more a point which was explained by my Honourable colleague, the Law Member, that in this legislation, that we have placed before the House, we have done nothing to take away the powers of the High Court in regard to ordinary trials. The powers of appeal and of revision in regard to prosecutions and trials remain intact. What we have done is to provide that in the case of the special emergency executive orders that may be passed under the provisions of the Provincial Acts, it should not be open to the High Courts, except in so far as section 107 of the Government of India Act empowers them, to call in question those orders.

Now, Sir, my Honourable friend, Mr. Jadhav suggested, I think, that the Local Governments had embarked on legislation under a misapprehension of the powers of the local Legislatures, and finding those powers were insufficient, had now come to us with a request that they should be supplemented. I should like to correct that point. Local Governments realised from the beginning that this local legislation, initiated in the local Legislatures, should, in certain respects, in order to make it complete, be supplemented by a Bill in the Central Legislature. So far as the local Legislatures had powers over the Courts subordinate to the High Courts, they have exercised those powers. But in relation to the High Courts they have not powers and, therefore, it was necessary to apply to the Government of India to make the provisions complete. My Honourable friend, Sir Cowasji Jehangir, reminded the House that the Acts with which we are dealing are Acts passed on the responsibility of provincial Legislative Councils dealing with the conditions present in those provinces, and I would remind the House they were passed by substantial majorities of those Legislative Councils; and though I think it is Mr. Amar Nath Dutt who queried the representative character of those Members of the Legislative Councils who did not agree with his politics, I am afraid I cannot accept that view. They are the elected representatives of the people in the provinces and they have by substantial majorities passed the Act. I do not think there is any other point of substance that I need deal with. I notice that, as I had anticipated, the proceedings were causing once again agony to my Honourable friend, Mr. Kyaw Myint. The agony, I take it, was not so much induced by the moderation of the speeches as by the fact that he had no personal and individual grievance on this occasion. (Laughter.) I quite appreciate his philosophy of criticism, which he explained to the House, but I trust that, with the introduction of the new Constitution, that philosophy and practice of criticism will become more and more out of date (Applause), and that the ability of the country will be directed more and more into practical and constructive channels. In conclusion, I would say, Sir, that this Bill, so far as we can see, completes the provisions which the Government of India and Local Governments

[Sir Harry Haig.]

have considered necessary,—the special and emergent provisions, which they have considered necessary—for dealing with a very dangerous movement.

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

“ That the Bill to supplement the provisions of the Bengal Public Security Act, 1932, the Bihar and Orissa Public Safety Act, 1933, the Bombay Special (Emergency) Powers Act, 1932, the United Provinces Special Powers Act, 1932, and the Punjab Criminal Law (Amendment) Act, 1932, for certain purposes, be taken into consideration.”

The Assembly divided :

AYES—51.

Abdul Hye, Khan Bahadur Abul
Hasnat Muhammad.
Acott, Mr. A. S. V.
Ahmad Nawaz Khan, Major Nawab.
Allah Baksh Khan Tiwana, Khan
Bahadur Malik.
Amir Hussain, Khan Bahadur Saiyid.
Anklesaria, Mr. N. N.
Anwar-ul-Azim, Mr. Muhammad.
Bajpai, Mr. G. S.
Bhore, The Honourable Sir Joseph.
Biswas, Mr. C. C.
Clow, Mr. A. G.
Dalal, Dr. R. D.
Dutt, Mr. G. S.
Dutt, Mr. P. C.
Fox, Mr. H. B.
Ghuznavi, Mr. A. H.
Gidney, Lieut.-Colonel Sir Henry.
Gwynne, Mr. C. W.
Haig, The Honourable Sir Harry.
Hezlett, Mr. J.
Ismail Ali Khan, Kunwar Hajee.
Jawahar Singh, Sardar Bahadur
Sardar.
Lal Chand, Hony. Captain Rao
Bahadur Chaudhri.
Leach, Mr. A. G.
Mackenzie, Mr. R. T. H.
Megaw, Major General Sir John.

Metcalfe, Mr. H. A. F.
Millar, Mr. E. S.
Misra, Mr. B. N.
Mitchell, Mr. D. G.
Mitter, The Honourable Sir
Brojendra.
Morgan, Mr. G.
Mukherjee, Rai Bahadur S. C.
Noyce, The Honourable Sir Frank.
Pandit, Rao Bahadur S. R.
Rafuddin Ahmad, Khan Bahadur
Maulvi.
Raisman, Mr. A.
Rajah, Rao Bahadur M. C.
Rau, Mr. P. R.
Ryan, Sir Thomas.
Schuster, The Honourable Sir
George.
Scott, Mr. J. Ramsay.
Seaman, Mr. C. K.
Sher Muhammad Khan Gakhar,
Captain.
Singh, Mr. Pradyumna Prashad.
Smith, Mr. R.
Tottenham, Mr. G. R. F.
Vachha, Khan Bahadur J. B.
Wajihuddin, Khan Bahadur Haji.
Yakub, Sir Muhammad.
Yamin Khan, Mr. Muhammad.

NOES—28.

Abdul Matin Chaudhury, Mr.
Abdur Rahim, Sir.
Azhar Ali, Mr. Muhammad.
Das, Mr. B.
Dutt, Mr. Amar Nath.
Gour, Sir Hari Singh.
Gunjal, Mr. N. B.
Harbans Singh Brar, Sirdar.
Jadhav, Mr. B. V.
Jha, Pandit Ram Krishna.
Jog, Mr. S. G.
Kyaw Myint, U
Lalchand Navalrai, Mr.
Mitra, Mr. S. C.
Murtuza Saheb Bahadur, Maulvi
Sayyid.

Neogy, Mr. K. C.
Parma Nand, Bhai.
Patil, Rao Bahadur B. L.
Ranga Iyer, Mr. C. S.
Reddi, Mr. P. G.
Reddi, Mr. T. N. Ramakrishna.
Sant Singh, Sardar.
Sen, Mr. S. C.
Sen, Pandit Satyendra Nath.
Singh, Mr. Gaya Prasad.
Thampan, Mr. K. P.
Uppli Saheb Bahadur, Mr.
Ziauddin Ahmad, Dr.

The motion was adopted.

Clause 2 was added to the Bill.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): The question is that clause 3 stand part of the Bill,

Mr. S. O. Mitra: Sir, I oppose the insertion of this clause, which reads as follows:

"Section 15 of the Bihar and Orissa Public Safety Act, 1933, Section 29 of the Bombay Special (Emergency) Powers Act, 1932, and Section 14 of the United Provinces Special Powers Act, 1932, shall have effect as if these sections had been enacted by the Indian Legislature."

Sir, credit has been claimed for the Provincial Legislatures for passing this legislation. Let them have all that credit by all means for passing any legislation they like for their province. Why should we be asked to share the responsibilities of this irresponsible legislation? It has been shown by this side of the House that the passing of this clause will mean that there will be no remedy in Courts, both Civil and Criminal, against irregularities and illegalities or any unjust act done by the executive. Now, it is clear that the Government have no confidence even in their Courts of law. If the Provincial Legislature thought that they also could not trust the Courts like the Government of India, let them think so, but we should like to make it clear that we, the representatives of the people, do not agree to the curtailment of the powers of the Courts, whether Civil or Criminal, and if anybody wants to have some remedy from these Courts, they have no forum to which they can appeal. With these few words, I oppose this clause.

Mr. Gaya Prasad Singh: Sir, I also oppose this clause 3, because it affects my province prejudicially. In the speech which I made a few minutes ago, I pointed out how clause 3 was objectionable. Section 15 of the Bihar and Orissa Public Safety Act has been referred to in this clause. That section reads as follows:

"No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act."

This is a very comprehensive provision. The words "good faith" have not been defined, and in political cases it is very difficult for executive officers to restrict themselves to the limits of the law. Sir, this section 15 is capable of extensive misuse and it affords beforehand indemnity to executive officers who may in future commit acts in excess of their powers. Under these circumstances, as I pointed out a few minutes ago, even when martial law has been proclaimed, the indemnity legislation does not come with the passing of the martial law, but it is passed later on; but here Government attempt to indemnify all their officers for whatever misdeeds they may commit in the course of their official work. Therefore, I object to clause 3 of this Bill,

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Sir, I have already given my full reasons why clause 3 should not be allowed to be inserted in this measure, but to put the whole matter in a nutshell, it is absolutely wrong that the High Courts in this country should be subordinated to the local Legislatures, and the odium for so doing will fall on us, the Legislators. In my opinion, no Constitution will allow such a thing

[Mr. Lalchand Navalrai.]

to be done; even the coming Constitution has not allowed it to be done. I, therefore, strongly oppose this clause.

Sardar Sant Singh (West Punjab: Sikh): Sir, this is a most mischievous provision of the Bill. Really speaking, there is no civilized Government on the face of the earth which abrogate the rule of law in favour of their official servants. This clause and the various provisions quoted in this clause which are to be found in the Acts of the local Legislatures abrogate the rule of law and give a free hand to the servants of the Government. (*Some Honourable Members*: "Shame, shame.") As a matter of fact, if the coming Constitution is to be a success at all, such provisions as these will defeat the object for which the Constitution is being given to this country. If the object of giving the new Constitution is to restore peace and goodwill,—and that I suppose is the real object,—if the object is that discontent should give place to contentment among the people, then, if there is anything to defeat the very object of changing the Constitution, it is provisions like these. May I know why such a free hand should be given to the servants of Government to deal with the liberty of the person, to deal with the property of the subject and to behave in a manner which probably may create bloodshed in the country. The provisions that have been framed provide for indemnity. We are not to judge as to what the executive officers do; we are not to know whether the emergency really exists, and we are asked to give these officers a free hand. It has often been repeated from the Benches which are adorned by Honourable Members opposite that people in India are getting out of hand, they have no respect for the judgment of the Courts, and they are out for civil disobedience. May I in turn ask them if they are not practising a sort of civil disobedience against the prestige of the Civil Courts, against the prestige of the High Courts, by proposing such measures? Why should Government be afraid of their Courts? The work of these Government officials will be scrutinised by eminent Judges who are appointed by the Government and who probably look for promotion to them and not to the public? When the public opinion has no voice in the appointment, transfer or dismissal of the Judges, there seems to be the least reason why those Judges should be distrusted by the very officials who appoint them; why should they not be given some control to scrutinise the work of these executive officers who are called upon to administer these repressive laws? I have already submitted my reasons for deletion of this clause, and now I again take this opportunity of strongly opposing the provisions of this clause.

Mr. Amar Nath Dutt: Sir, one aspect of the passing of a clause like this has not been as yet discussed and I must respectfully point out that aspect of this clause. As has been already observed, indemnity is generally provided after all the disorders are over in the case of martial law. What I want to submit is this that it is improper that Government officers, who are entrusted with such responsible work, should be told from before to go and do anything they like, for they have not to fear any Court, Civil or Criminal. Knowing human nature as we do, if we give a *carte blanche* like this, there will be all sorts of mischief and naturally there will be all sorts of resentment. To put down that resentment, the man or the officer will

be authorised to perform an unpleasant work and if he is resisted or some obstacle is offered, he will pursue his end with more vigour and abuse his power. That is human nature and I think these officers, whatever may be their position under Government, are also human beings. Not only that; the class of men to whom these powers are likely to be given are men who know the poor inoffensive villagers too well and know how to bring money to their pockets. I think the Honourable Members on the other side will bear me out, when I say that low-paid officers screw out money in many ways from the poorest in the land. This is a thing in which Government are interested. But in things and matters in which Government are not interested, such as settlement work, we know what oppression is practised upon the poor people in the mufassil. In fact some member of the provincial service at one time told me that it was settlement duties which were spoiling the executive, because once they learn the art of making money, they bring it over when they change their office from settlement to that of a Judge. I say all this with a full sense of my responsibility and I would invite any one to come with me and hear details from every village where settlement operations have been going on in my unhappy province. Come with me to any district, and I will show you what amounts are going from the pockets of the poor and illiterate tenants. And, now, if we provide indemnity from before, there will be all the more temptation to tyrannise and oppress, and poor men will have no remedy. That will be the effect of providing for indemnity beforehand. If after anything has been done, we really find that the man has acted in good faith, but perhaps he exceeded his powers a little, certainly the Courts of law and the superior officers will not launch a prosecution. Then why these provisions from before and encourage them in their misdeeds? That is an aspect of the thing which I beg to submit before all the Members of the House in the hope that they will not insist on the insertion of a clause like this.

Mr. O. C. Biswas: Sir, there is just one matter that I wish to point out in connection with this clause. If you turn to this clause, you will find it refers to three of these local Acts, the Bihar Act, the Bombay Act and the U. P. Act. Now, Sir, if you turn to the relevant sections of these three Acts, what do you find? Take section 15 of the Bihar Act. That says:

“No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.”

If you turn next to section 14 of the U. P. Act, you find a similar provision. But, in addition to that, there is a further provision and that is that no proceeding or order under that Act shall be called in question by any Court. This additional provision also finds a place in the Bombay Act, section 29. What in fact we find is that whereas there is a provision in all the local Acts that no suit or prosecution shall lie in any Court against any person in respect of any act done or purporting to be done thereunder, it is only in some of the Acts that you find the further provision that no act or proceeding under these Acts shall be called in question in any Court.

Now, Sir, taking the first provision, the provision which is common to all the Acts, what is the position? Suppose there was no question of our passing this Bill here, and the local Acts were all that we had. There

[Mr. C. C. Biswas.]

can be no doubt that the effect of the local Acts is to take away the jurisdiction of all the subordinate Courts in the provinces,—the jurisdiction to entertain any damage suits or prosecutions. Where, however, there is a High Court in any province exercising original jurisdiction, that is not and cannot be affected by the local Acts, and it becomes necessary, therefore, to legislate here for such provinces to bar the jurisdiction of the High Courts therein. Bombay and Calcutta are the only two provinces of this description: and civil suits might be conceivably brought in the High Courts in these provinces, if the local Acts were only there, and no special supplementary legislation was enacted by this Legislature barring their jurisdiction. So far as the other provinces are concerned, provinces where there is no High Court exercising original jurisdiction, the only Courts, as I have pointed out, which are open to any aggrieved party, are the subordinate Courts,—the district Courts,—the mufassil Courts, as we say in Bengal. Well, Sir, their jurisdiction has already been effectively taken away, and, so far, therefore, as this part of these provisions is concerned, no supplementary legislation is called for for these provinces,—no necessity to invoke the aid of this Legislature for the purpose of extending the provisions made in the local Acts. From this point of view, Bihar and the United Provinces might as well have been left out of clause 3 of the Bill, as the Punjab in fact is. But supplementary legislation will no doubt be required for even these provinces, so far as the other provision is concerned,—the provision, namely, which says that no act or proceeding done under these Acts shall be called in question in any Court. Here you require to bar the jurisdiction not only of the district Courts which is done by the local Acts, but also of the High Courts,—not merely of the High Courts, which exercise original jurisdiction, as in Bombay and Calcutta, but of all High Courts in view of section 491 of the Criminal Procedure Code. For, so far as section 491 of the Code of Criminal Procedure is concerned, it extends to the limits of the Criminal appellate jurisdiction of every High Court. That makes it necessary, Sir, to have this Bill, not only for provinces like Calcutta and Bombay, but for the other provinces—to provide that the local enactments should have force in the same way as if they had been enacted by the Central Legislature. That is the position.

Mr. Lalchand Navalrai: May I know from the Honourable Member, if he is in favour of clause 3 or against it?

Mr. C. C. Biswas: What I am pointing out is, that as regards the provision barring suits or prosecutions, we are in a sense concluded by the local legislation. All that we are now required to do is to assimilate the position so far as certain classes of persons are concerned. But for this Bill, it would be open only to a limited class of persons affected by the local Acts to seek remedy in the High Courts, only a very limited class of persons, I say. As regards the majority, their remedy rightly or wrongly has already been taken away by the local Acts. The question is this—are you going to take away this remedy from a very large class of persons affected by these local Acts, and leave it open only for the benefit of a few? Where you have a High Court exercising original jurisdiction as in Calcutta or Bombay, I say, therefore, it becomes necessary to provide that these Courts will not be competent to entertain any such suits or other proceedings any more than the subordinate Courts.

Sardar Sant Singh: May I ask the Honourable gentleman why U. P. is included and not the Punjab in this clause?

Mr. C. C. Biswas: What I venture to suggest is that so far as the province of Bihar is concerned, the reference to the Bihar Act might have been altogether left out of this clause. Take the Bihar Act, section 15 of which only says that "No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act". This Act contains no provision to the effect that any proceeding under this Act cannot be called in question in any Court. If there were such a provision in the Bihar Act, then, no doubt, as I have already explained, it would be necessary to invoke the jurisdiction of this House, but that is not so. The Bihar Act, I repeat, merely provides that no suit or prosecution shall lie against any person in respect of any act done under this Act. Now, in Bihar, a suit or a prosecution can be instituted only in a Court which is subordinate to the High Court and which, therefore, comes within the purview of the powers of the local Legislative Council. There is no question of the High Court at all. Therefore, Sir, I say, this province might have been left out altogether from this clause. This is just the reason why you find no reference in clause 3 to section 17 of the Punjab Act. Section 17 also lays down merely that:

"No suit, prosecution, or other legal proceedings whatsoever shall be entertained in any Court against any police officer or person for anything in good faith done, or intended to be done, in pursuance or execution of this Act."

Nothing is said about the other matter, that is to say, that no act or proceeding under this Act may be called in question in any Court. That probably explains why the Punjab Government do not ask for the inclusion of section 17 of the Punjab Act in clause 3. So, I say, Sir, in the same way as the Punjab has been left out, Bihar also might have been left out.

An Honourable Member: What about U. P.?

Mr. C. C. Biswas: The U. P. could not be left out. It could be left out if section 14 of the U. P. Act was confined merely to providing that no civil or criminal proceeding shall be instituted against any person for anything done or intended to be done, in good faith, under this Act. There is no High Court here, and, therefore, the only Courts you had to provide for for this purpose, i.e., to bar a suit or a prosecution would be the Courts for which the Local Legislature was competent to and did legislate. But, as a matter of fact, the U. P. Act contains a further provision which is now found in Bihar, namely, the provision that no proceeding or order purporting to be taken or made under this Act shall be called in question in any Court. So far as this is concerned, the intervention of this House does become necessary. This is all that I wanted to point out, Sir. So far as this provision is concerned, I repeat, you have got to provide not merely that the subordinate Courts in the provinces shall have no jurisdiction to call in question the acts or orders under these Acts, you want also to provide that section 491 shall not operate; in other words, that the High Courts there will not be competent to deal with these matters in the exercise of their powers under this section, which, as I have pointed out, extend to their appellate jurisdiction. As a matter of fact, you will notice that the Punjab Government have left out all reference to

[Mr. C. C. Biswas.]

section 17 in clause 3, but have asked for a special clause, i.e., clause 5, to take away the powers under section 491. They say in clause 5 that the powers conferred under section 491 of the Criminal Procedure Code shall not be exercised in respect of any person arrested, or committed to or detained in custody. So far as the other provinces are concerned, there is no such express provision in regard to section 491. That is because section 491 is already covered by the general provision that no Court shall be entitled to or call in question any proceeding under these Acts. That is the position.

The Honourable Sir Brojendra Mitter (Law Member): May I clear the point, Sir, which has been raised by my friend, Mr. Biswas? Clause 3 is necessary to deal with the powers of the High Court. In so far as the district Courts are concerned, they have been dealt with by the Provincial Acts, but since the Provincial Legislatures could not deal with the powers of the High Court, it is necessary for this Legislature to do so, and clause 3 is intended to deal with the powers of High Courts only, not with the powers of the district Courts which are already covered by the provisions in the Provincial Acts.

Mr. Lalchand Navalrai: What is the necessity?

The Honourable Sir Brojendra Mitter: I am not dealing with the necessity. Now I am dealing with the legal position, what the scope of clause 3 is. I am not now dealing with the policy of it. Sir, if you take the Behar Act section 15 of which says:

"No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act."

Now, there are three categories mentioned—suit, prosecution or other legal proceeding. So far as the district Courts are concerned, neither a suit, nor a prosecution, nor any other legal proceeding can be entertained by them. The Bihar High Court is an appellate High Court. Therefore no suit or prosecution lies there; but it can entertain legal proceedings other than suits and prosecutions. Take, for instance, a pro-

4 P.M. ceeding under section 491. That can lie only in the High Court: it does not lie in the district Courts. Therefore, in so far as other legal proceedings are competent in the High Courts, section 3 covers them. And that is the necessity of clause 3

Sardar Sant Singh: May I inquire from the Honourable Member why clause 5 has been restricted to the Punjab alone?

The Honourable Sir Brojendra Mitter: Clause 3 does not mention Punjab. What about proceedings under section 491 which may be instituted in the Punjab High Court? For that provision has been made in clause 5.

Mr. S. O. Sen (Bengal National Chamber of Commerce: Indian Commerce): Sir, I have listened with great interest to the speech delivered by the Law Member. But I do not understand how he reconciles the inclusion of the United Provinces Bill in clause 3 consistent with section 14 of the Provincial Act.

—The Honourable Sir Brojendra Mitter: The U. P. Act cannot affect the powers of the Allahabad High Court or the Oudh Court and it is, therefore, necessary to include the United Provinces in section 3.

Mr. S. C. Sen: As a matter of fact, the U. P. Act does not purport to limit in any way the power not only of the High Court, but of any of the Courts subordinate to the High Court so far as regards appeal or revision. That is provided for in the proviso to section 14 where it says:

"Provided also that nothing herein contained shall affect the appellate or revisional power of the courts under chapters 31 and 32 of the Code of Criminal Procedure."

So, under these sections, they never attempted to curtail the power of the High Court in any way and we all know that the United Provinces High Court has not any original jurisdiction. Therefore, it cannot entertain any original suit. Under these circumstances, I do not understand why the indemnity provided in section 14 of the U. P. Act should have also been included in this clause 8.

Mr. O. C. Biswas: That proviso refers to the trial of offences under this Act. The High Court's power is reserved in respect thereof.

Mr. S. C. Sen: This Act does not provide for anything else: it does not provide for murder cases in villages or for elopement cases. There are certain offences mentioned in the Act and the Act says that, so far as regards the offences mentioned in the Act, the power of the High Court or of the Sessions Court, so far as appeal or revision is concerned, is not affected by the Act.

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

"That clause 3 stand part of the Bill."

The Assembly divided:

AYES—51.

Abdul Hye, Khan Bahadur Abul
Hasnat Muhammad.
Acott, Mr. A. S. V.
Ahmad Nawaz Khan, Major Nawab.
Allah Baksh Khan Tiwana, Khan
Bahadur Malik.
Amir Hussain, Khan Bahadur Saiyid.
Anklesaria, Mr. N. N.
Bajpai, Mr. G. S.
Bhore, The Honourable Sir Joseph.
Biswas, Mr. C. C.
Clow, Mr. A. G.
Dalal, Dr. R. D.
Dutt, Mr. G. S.
Dutt, Mr. P. C.
Fox, Mr. H. B.
Ghuznavi, Mr. A. H.
Gidney, Lieut.-Colonel Sir Henry.
Gwynne, Mr. C. W.
Haig, The Honourable Sir Harry.
Hezlett, Mr. J.
Ismail Ali Khan, Kunwar Hajee
Ismail Khan, Haji Chaudhury
Muhammad.
Jawahar Singh, Sardar Bahadur
Sardar.
Lal Chand, Hony. Captain Rao
Bahadur Chandhri.
Leach, Mr. A. G.
Mackenzie, Mr. R. T. H.

Megaw, Major General Sir John.
Metcalf, Mr. H. A. F.
Miller, Mr. E. S.
Miera, Mr. B. N.
Mitchell, Mr. D. G.
Mitter, The Honourable Sir
Brojendra.
Morgan, Mr. G.
Mukherjee, Rai Bahadur S. C.
Noyce, The Honourable Sir Frank.
Pandit, Rao Bahadur S. R.
Rafiuddin Ahmad, Khan Bahadur
Maulvi.
Raisman, Mr. A.
Rajah, Rao Bahadur M. C.
Rau, Mr. P. R.
Ryan, Sir Thomas.
Schuster, The Honourable Sir George.
Scott, Mr. J. Ramsay.
Seaman, Mr. C. K.
Sher Muhammad Khan Gakhar,
Captain.
Singh, Mr. Pradyumna Prashad.
Smith, Mr. R.
Tottenham, Mr. G. R. F.
Vachha, Khan Bahadur J. B.
Wajihuddin, Khan Bahadur Haji.
Yakub, Sir Muhammad.
Yamin Khan, Mr. Muhammad.

NOES—26.

Abdul Matin Chaudhury, Mr.
 Abdur Rahim, Sir.
 Azhar Ali, Mr. Muhammad.
 Das, Mr. B.
 Dutt, Mr. Amar Nath.
 Gunjal, Mr. N. R.
 Jadhav, Mr. B. V.
 Jha, Pandit Ram Krishna.
 Jog, Mr. S. G.
 Kyaw Myint, U
 Lahiri Chaudhury, Mr. D. K.
 Lalchand Navalrai, Mr.
 Mitra, Mr. S. C.
 Murtuza Saheb Bahadur, Maulvi
 Sayyid.

Neogy, Mr. K. C.
 Parma Nand, Bhai.
 Patil, Rao Bahadur B. L.
 Ranga Iyer, Mr. C. S.
 Reddi, Mr. T. N.
 Ramkrishna.
 Sant Singh, Sardar.
 Sen, Mr. S. C.
 Sen, Pandit Satyendra Nath.
 Singh, Kumar Gupteshwar Prasad.
 Singh, Mr. Gaya Prasad.
 Thampan, Mr. K. P.
 Uppi Saheb Bahadur Mr.

The motion was adopted.

Clause 3 was added to the Bill.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty):
 The question is that clause 4 stand part of the Bill.

Mr. S. C. Mitra: Sir, I oppose this clause. The clause runs as follows:

"Except as provided in the Bengal Public Security Act, 1932, as supplemented by this Act, no proceeding or order purporting to be taken or made under the Bengal Public Security Act, 1932, shall be called in question by any Court, and no civil or criminal proceeding shall be instituted against any person for anything in good faith done or intended to be done under the said Act or against any person for any loss or damage caused to or in respect of any property whereof possession has been taken under the said Act."

Sir, it is difficult to understand why our province of Bengal has been given a prominent place, for it has been given a separate clause for itself. Perhaps the reason is that one of the greatest sons of the province is now at the head of legal affairs in the Government of India and so he has given this special prominence to Bengal. It has been just now said that the purpose of this Bill is merely to regularise the actions of some of the Provincial Councils. Referring to the Bengal Public Securities Act, I find that section 27 reads thus:

"Except as provided in this Act no proceeding or order purporting to be taken or made under this Act shall be called in question by any court, and no civil or criminal proceeding shall be instituted against any person for anything in good faith done or intended to be done under this Act or against any person for any loss or damage caused to or in respect of any property whereof possession has been taken under this Act:

Provided that nothing in this section shall affect the jurisdiction of the High Court."

That was the Provincial Act. But now, I think, due to the kindness of the Honourable the Law Member for his province, he wants to take away the little power that was left in the Bengal High Court by making a special provision in this clause. Further, I could not understand his argument why he was so considerate about Punjab. Why has Punjab been excluded from clause 3? So far as I can understand, he could have put in in an omnibus way all the provinces in one clause and take away all the powers of the High Courts. The Honourable the Law Member promised to prove his wisdom why Punjab was not put under this clause, but he has not yet done so. I think the Local Council of Bengal in its wisdom felt that the power of the High Court should not be curtailed, but the Honourable the Law Member, by this provision, has abolished that privilege also. With these words, Sir, I oppose this clause.

Mr. Muhammad Ashar Ali: Sir, whenever these terrorist Bills come before this House, we find that somehow bad drafting is the greatest feature of such Bills. This bad drafting may have been due either to hurry, or to carelessness or to the fear in the mind of the drafters of this Bill. When I spoke on this Bill before, I did not purposely refer to the powers of the High Court or to any such powers pointedly that are mentioned in the present Bill. But my friend, Sir Muhammad Yakub, in his turn has touched that point and I submit that it was a wrong touch which he inadvertently made in his vehemence to pass the Bill. Sir, his argument was that the words "good faith" were put in the Act, but we, the practising lawyers of the Courts, whether they be on this side or the other side of the House, who have had occasions to appear before the Sessions Court or the High Court, know what these words mean and how they are acted upon. It may be that those lawyers who have not had the occasion to appear in higher law Courts or who are not very much in the habit of appearing before law Courts, may interpret the words "good faith" in their own way, but those, who know what they mean, can say that they have absolutely no meaning and are never cared for by the Courts. They never listen arguments on that point; they think that "good faith" is never to be interpreted.

Sir, the other point which my Honourable friend, Sir Muhammad Yakub, made was about the training of Special Magistrates. Sir, I do not know whether it is under the rules made by the Government of India or the Local Government that in the school at Moradabad these Honorary and Special Magistrates are given education. I do not know of such cases. Sir Muhammad Yakub may know of such rules, but so far as I guess, it is not compulsory. I take it that they are meant only for those people, who have absolutely no knowledge of law and that those, who do not know really what law is, are sent to such schools. At least in my part of the country I do not find people going to such schools as they may be doing in Moradabad. When I spoke on this motion first, I knew that in the United Provinces the powers of the High Court were not curtailed. The High Court had the revisional powers; they had their appellate powers left intact. The question was raised by Mr. Sen just now and he asked the Honourable the Leader of the House in what way do the United Provinces come into the four corners of this Bill when there is absolutely nothing in the United Provinces Act to curtail the powers of the High Courts.

Mr. Muhammad Yamin Khan: On a point of order, Sir. May I ask, how does this clause 4 affect the United Provinces about which my Honourable friend is making his speech?

Mr. Muhammad Ashar Ali: The clause, which is under discussion, raises the question of revisional and appellate powers of the High Court and so I am in order. However, as my friend, Mr. Sen, has just asked the question in what way does the United Provinces Act come in this Bill, I too raise the same question and I stick to my former opinion.

Mr. C. C. Biswas: There is no doubt that this Bill lacks in symmetry in drafting, because in one Bill you are providing for a number of provinces. The different local Acts have not made the provisions in exactly the same form or in the same words, but in principle there is no difference. Clause 4 does exactly for Bengal what clause 3 which the House has now

[Mr. C. C. Biswas.] |

accepted does for the other provinces mentioned in that clause. As the House has accepted clause 3, I do not see how the House can possibly refuse clause 4. The only reason why there is a special provision for Bengal, as has already been explained by the Honourable the Law Member and the Home Member is this, because in the Bengal Act, section 27, the Bengal Legislature went out of its way to insert that provision, just as in this House a suggestion has been made that we ought to insert a provision that nothing that we enact here shall take away the jurisdiction of the High Court under section 107 of the Government of India Act. Similarly, so far as the Bengal Legislature was concerned, they were not competent to take away the jurisdiction of the High Court.

Mr. S. C. Mitra : On a point of order. You, Sir, ruled that no Member is permitted to say that the Bengal Legislature did something beyond their power.

Mr. C. C. Biswas : I never suggested that the Legislature went beyond its powers. Just as this House wants a provision that nothing contained in this Act will take away the powers of the High Court under section 107 of the Government of India Act, so by way of abundant caution the Bengal Council inserted that provision. But just as it would be open to Parliament, if they so chose, to enact that the powers of the High Court under section 107 may be taken away in regard to these matters, so it is open to this House to legislate that the powers of the High Court under the Criminal Procedure Code should be taken away. That is exactly what is being done. Nothing is being done which has not been done for the other provinces.

Sir Cowasji Jehangir : I am afraid I am unable to follow exactly the meaning and purport of this clause 4, nor am I able to follow the exact logic of my friend, Mr. Biswas. We are here trying to supplement a Provincial Act. I believe this point was explained by the Law Member, but unfortunately I was not here to hear it. The Bengal Act has clearly provided in clause 27 of Act XXII of 1932 that the jurisdiction of the High Court shall in no way be affected. Here you go out of your way to provide exactly the contrary. Why should this House, even if it has the power, and I do not deny it has the power, go much further than the Provincial Legislature intended to go. I would ask that question. I want enlightenment. I am quite prepared to do anything that would carry out the intentions of the local Legislature as explained in clause 27, but I see no reason why this House should go any further. Until I get a satisfactory explanation, I am inclined to think that the criticisms that have been levelled against clause 4 seem to be reasonable and just.

The Honourable Sir Harry Haig : My answer to the question put to us by my Honourable friend, Sir Cowasji Jehangir, is, I venture to think, quite simple, and in fact I had endeavoured to give it in my opening speech in introducing the Bill. It is merely a drafting point, that the provision relating to Bengal has been put into a separate clause, clause 4, instead of being included in the form which has been adopted for other provinces in clause 3. We should naturally have preferred to include the Bengal provision in clause 3. The reason why we could not do that is, as has been pointed out by Sir Cowasji Jehangir and also by Mr. S. C. Mitra, that a proviso was inserted in the Bengal Act saying—"Provided

that nothing in this section shall affect the jurisdiction of the High Court". Now, the point that is perplexing my Honourable friend, Sir Cowasji Jehangir, and it is perfectly natural, is that he takes this to be a statement of policy by the Bengal Legislature. But, during the discussion in the Bengal Legislature, it was made perfectly plain that this was not a statement of policy but merely a statement of the fact that the Bengal Legislature had no power to affect the jurisdiction of the High Court. That was all that was intended, just as it is proposed that this House should insert later on in the Bill we are now considering a statement that nothing that we have put into our Bill affects the Government of India Act . . .

Sir Cowasji Jehangir: Why was this not put in the other local Acts?

The Honourable Sir Harry Haig: The point was never raised in those other Legislatures. It was merely in the Bengal Legislature that certain Members raised the point. They said that the Provincial Legislature was going beyond its jurisdiction in passing a clause worded in such a wide way. The Government said: "Very well. We all know, as a matter of fact, that the local Legislature has no jurisdiction to affect the powers of the High Court, but, if you like, we will say so in the Act" and, as I read out to the House before, this was what the Government spokesman said when he accepted that proviso. He said:

"It must be perfectly understood that this proviso is not to be interpreted as interfering with the freedom of the Local Government to obtain the introduction of legislation subsequently by which the jurisdiction of the High Court may be barred."

So, that was perfectly clear to the Bengal Legislature and it was on that understanding that the clause was passed in that form. I hope this has cleared up the point which has been raised by my Honourable friend, Sir Cowasji Jehangir.

Sir Cowasji Jehangir: The two things will be inconsistent. This Supplementary Bill that you are passing just now will be inconsistent with clause 27 of the Bengal Act.

The Honourable Sir Harry Haig: Not inconsistent.

Sir Cowasji Jehangir: This Act says that "nothing in this section shall affect the jurisdiction of the High Court", but here you say exactly the contrary.

The Honourable Sir Harry Haig: We are making a special provision. The Bengal Legislature could not affect the jurisdiction of the High Court. They have said so in their local Act. Now, we have the jurisdiction and are taking the power.

Sir Muhammad Yakub: My friend, Mr. Azhar Ali, has made a second speech this afternoon without reading the U. P. Act.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): The Chair cannot allow a discussion on the U. P. on clause 4. I allowed the Honourable Member just to make a passing reference to the U. P. Act, but clause 4 deals with the Bengal Act.

Sir Muhammad Yakub: This is what I was going to say. His speech was directed on clause 4, which has nothing to do with the U. P. In his speech he has made another point about the words "good faith" which occurs in the clause. He says that no Court would accept the plea of good faith. My Honourable friend has no faith in the integrity of Indian Judges and the Judges of the High Courts, many of whom are eminent Indian lawyers, whose independence has never been questioned. If my Honourable friend has no faith in the integrity of the Courts, then all this talk about responsible Government to Indians has no meaning in it.

Mr. Gaya Prasad Singh: It is a question of loose wording, not a question of integrity.

Sir Muhammad Yakub: Well he pointedly said that the plea of good faith was never accepted by Courts, meaning thereby that he did not believe in the integrity of the Courts. Then something was pointed out about special Courts—and I have already said that clause 4 has nothing to do with the United Provinces—because special Courts are not to be constituted in the United Provinces, that it is only in Bengal. Now, my friend here made a second speech simply for the sake of making a speech.

An Honourable Member: You have done the same.

The Honourable Sir Brojendra Mitter: Sir, I want to make a few remarks on only one point raised by my Honourable friend, Sir Cowasji Jehangir. He seems to suggest that what we are seeking to do here is inconsistent with what the Bengal Legislature has done. I only want to point out that that is not so. What the Bengal Legislature in that proviso has said is this:

"Provided that nothing in this section shall affect the jurisdiction of the High Court",—which, paraphrased, would read like this—

"Nothing which we are doing in Bengal Legislature shall affect the powers of the High Court."

That is not inconsistent with the position that the powers of the High Court may be affected by a different and competent authority. The two are not inconsistent.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): Is the House to understand that the Government of India are incorporating clause 4 at the request of the Bengal Government?

The Honourable Sir Harry Haig: Yes, Sir, and, further, when the clause was under discussion in the Bengal Legislature, the Bengal Government made it perfectly clear that they were going to ask the Government of India to incorporate that clause.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): The position of the Government of India is that the Bengal Government wanted that the jurisdiction of the High Court should be taken away in certain respects; that they could not get that power from the local Legislature; and that, therefore, they have approached the Government of India and this House for the necessary power. Is that the position?

The Honourable Sir Harry Haig: That, Sir, is the position with regard to all these local Acts. But I am not sure whether the words you used implied that the Bengal Legislature had objected to granting these powers. All that they said is that "this is not within our power". They have made a mere statement of fact, not a statement of policy.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): Evidently there is some confusion with regard to clause 4, and, on such occasions, it is the duty of the Chair to intervene to make the position clear. Does the Chair understand the position of the Government to be this, that the Bengal Government wanted certain powers under which the jurisdiction of the Bengal High Court would be taken away, that it was not competent for the Bengal Legislature to give the Bengal Government those powers and that, therefore, the Bengal Government has approached the Government of India to get the sanction of this House?

Sir Gowaji Jehangir: Sir, if that was so, there was no necessity to put in this proviso. The statement read out by the Honourable the Home Member appears to have been on behalf of the Bengal Government. We want a statement on behalf of the Bengal Legislature. We are not here to carry out the intentions of the Bengal Government. We are rather here to put the seal on what the Legislature wants. That is my standpoint. I do not wish to interfere with what the Bengal Legislature wants, but we have nothing to do with what the Government of Bengal wants. Therefore, I am not considering the questions on their merits. Here is a local Legislature which has made a certain provision in their Act. It is for us merely to pass a Supplementary Act, if necessary. The Bengal Legislature definitely stated, which no other Legislature has done:

"Provided nothing in this section shall affect the jurisdiction of the High Court."

They go out of their way to say this. But we seek, by a clause in this Bill, to strike those words practically out of the Bengal Act.

Sir Hari Singh Gour: Sir, there seems to have been a considerable amount of confusion in the drafting of this clause. Honourable Members will see that here is a very clear enunciation of a principle by the Bengal Legislature that:

"Nothing in this section shall affect the jurisdiction of the High Court."

Now, if Honourable Members will turn to the United Provinces Act, section 14, they will find that there is a similar provision there. In fact the U. P. Act (XIV of 1932) says:

"Provided also that nothing herein contained shall affect the appellate and revisional power of High Courts under Chapters XXXI and XXXII of the Code of Criminal Procedure."

Here you have the local Government wanting not to repeal that clause. In other words, so far as one local Legislature is concerned, the appellate and revisional jurisdiction of the High Courts are safeguarded by the local Legislature, and the local Legislature, having safeguarded those rights, no further action is to be taken by this Legislature. But so far as the Bengal Act is concerned, the Bengal Act has said:

"Nothing in this section shall affect the jurisdiction of the High Court."

[Sir Hari Singh Gour.]

That is the enunciation of a principle, not by the executive, but by the Legislature: and this Legislature can only act if the Bengal Legislature wanted this Legislature to confer a power which the Legislature of Bengal was incompetent to confer; but there is nothing whatever to show that. On the other hand, the language used in clause 4 seems to be somewhat open to objection. Let me read to the Honourable Members the opening sentence:

"Except as provided in the Bengal Public Security Act, 1932, as supplemented by this Act...."

If the intention was to do away with the proviso, I should have expected the draftsman to say:

"Notwithstanding the proviso contained in section 27 of the Bengal Act (XXII of 1932), nothing will give the right of suit", and so on.

That would have been the language, but the opening sentence seems to imply that the rights under section 27 of Act XXII of 1932 are intended to be supplementary and not repealing. That is the position into which we land ourselves. The difficulty is this. I have not been able to see the other Acts, but I have before me the Acts of four Legislative Councils which are sought to be supplemented. The language of these four Acts is not identical; they are all differently worded. There seems to be no one train of thought running through the various local Acts so far as safeguarding the rights of the High Courts are concerned, and the Bengal Act is very explicit. This Legislature, while anxious to supplement anything that the local Legislature has done, is not, I think, prepared to supplement anything that the local executive may demand. I submit that that is the clear position of this part of the House.

Mr. S. C. Sen: Sir, the Bengal Act bars all other jurisdiction, but it expressly provides for non-interference with the jurisdiction of the High Court of Bengal. That is contained in the proviso to section 27. Now, what are we going to do here? Whether we have succeeded or not, we purport to amend that section, namely, to have a proviso to repeal that proviso. If that is our intention, I say that will be going beyond the preamble of the present Bill.

The second point is this. The Bengal Government knew it perfectly well so early as December, 1932, after the discussion in this House over the Supplementary Bill in connection with the Terrorist movement that under section 107 of the Government of India Act the High Courts have power of superintendence over all inferior Courts and, therefore, they have revisional powers over all such Courts, but, all the same, I know, as a matter of fact, that the Bengal Government, in spite of the assurance given by the Honourable Member in this House that the proviso to section 107 provides not only for supervision, but also for revisional power, instructed their law officers to argue before the Courts that supervision did not include revision. That was the opinion which the Bengal Government held in December, 1932. The case which was referred to by the Honourable the Law Member was decided by the Chief Justice there, and they came to the conclusion that they could not do anything. Therefore, this proviso was advisedly put by them. As Mr. Biswas says, they went out of their way to put it.

Now, Sir, we do not know whether the Bengal Legislature wants this portion of their Act to be repealed. Unless it is repealed, as Sir Hari Singh Gour pointed out, that proviso also remains a part of the Act, and

nothing we are doing here can affect that proviso. As regards the point raised yesterday, namely, that this House cannot affect the jurisdiction of the High Court, I see some amendment has been put in, and so I shall not say anything on it at present, but I hope that the Government will proceed with that amendment.

The Honourable Sir Harry Haig: Sir, as some doubt has been thrown on my assurance that this provision in the Bengal Act was intended merely to clear up the legal authority of the Bengal Council and not to state the policy, I am afraid, I must ask you, Sir, to bear with me when I read out at some length the proceedings in the Bengal Legislative Council. This is what the President said:

"Clauses 19 and 27-A raise practically the same point, namely, barring the jurisdiction of the High Court. The ruling in regard to the point of order which Mr. N. K. Basu raised yesterday with reference to clause 19 which I propose to give now will also govern the point of order which Mr. S. M. Bose has just now raised. Let me tell the House that I did not dispose of Mr. Basu's point of order then and there, because it occurred to me that a properly worded Explanation, if added to clause 19, might effectively remove the doubts that appeared to exist with regard to that clause, and which cast doubts in the mind of Mr. Basu as to the validity of that clause. I thought that it would be expedient to draft such an explanation during the first prayer adjournment and to ascertain the views of the Honourable the Home Member in respect thereof. The Honourable Mr. Prentice, I must tell the House, paid the fullest possible attention to my suggestion, but he requested that the matter might be taken up the next day, and that is why I did not give my ruling yesterday. I naturally agreed to give him some time to think it over and I informed the House accordingly, after we re-assembled after the first prayer adjournment yesterday. I may say at once that when Mr. N. K. Basu raised his point of order, I was sure in my mind that the clause under review as drafted, could not take away the jurisdiction of the High Court. It is beyond the shadow of a doubt that the local legislature possesses no power to bar or in any way restrict the jurisdiction of the High Court; even if there is anything in the clause which may appear to affect the jurisdiction of the High Court it is null and void. I might draw the attention of the House to section 80A (7) of the Government of India Act and to the first of the two new paragraphs which were inserted after sub-section (c) of section 84 of the same Act. These clearly support the view that I have taken in the matter, but having regard to the fact that the words which have actually been employed in framing the clauses appear to be rather elastic and ambiguous, I thought that explanations like the ones I am now suggesting should be added to in the clauses in order to clear up any points of doubt that there may be. What I should like the Honourable the Home Member to consider is this: whether he could add something like the following as Explanation to the two clauses to which exception has been taken by the two Honourable Members.

'Nothing in this sub-section—(that was the suggestion made by the Honourable the President)—shall affect the jurisdiction of the High Court unless such jurisdiction is otherwise barred by a competent authority'. A similar explanation should also be added to clause 27A of the Bill. I think that if this is done it should satisfy the two Honourable Members who have raised the points of order, apart from the question of the intrinsic value or merits of the clauses as they stand. The Honourable the Home Member, on the other hand, cannot possibly have any objection to do something like that, as it is the intention of the Government, if I have understood them aright, to affect by these clauses only the jurisdiction of courts under the administrative control of the local government other than the High Court. So I think if the Honourable Member would kindly consider the suggestion I have made and if he is prepared to add to the clauses an explanation like the one I have suggested, there need be no difficulty in the matter.

The Honourable Mr. W. D. R. Prentice: I recognise, Sir, that it is the duty of the Government to clear up as many difficulties as possible, and I am willing to do all I can to remove the difficulties that have been pointed out. I would suggest that to clause 19 (2) the following words be added: "Provided that nothing in this sub-section shall affect the jurisdiction of the High Court" and to clause 27-A the following words "provided that nothing in this section shall affect the jurisdiction of the High Court". That ought to make things perfectly clear. But I would also make another thing clear. It must be clearly understood that this proviso is not to be interpreted as interfering with the freedom of the local government to obtaining the introduction of legislation subsequently, by which the jurisdiction of the High Court may be barred, in the same way as subsequent legislation will be introduced in order to supplement clause 18 in respect of appeals. I trust that if these two provisos are inserted all these difficulties will be removed."

Sir Hari Singh Gour: May I just point out to the Honourable the Home Member that the difficulty will not be removed at all. Will the Honourable the Home Member read section 124.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): Will the Honourable Member kindly state his point first? What is the point?

Sir Hari Singh Gour: The point I am making is this. Clauses 3 and 4, as the Honourable the Home Member has explained, are now intended to take away the jurisdiction of the High Court in respect of acts mentioned in section 27 of the Bengal Act, and the Honourable the Home Member has read out the discussion that preceded the enactment of this proviso safeguarding the rights of the High Court in the Bengal Council. Now, that difficulty, according to the Home Member, will be removed by the enactment of either clause 3 or 4, because we then are face to face with another section of the Government of India Act, a Parliamentary statute, which this House has no jurisdiction to modify, and it is to this section that I draw the attention of the Government—section 124, clause 1, of the Government of India Act. That says:

“If any person holding office under the Crown in India does any of the following things, that is to say—

(1) if he oppresses any British subject within his jurisdiction or in the exercise of his authority;”

he shall be guilty of, etc.

Now, read this along with section 4.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): Order, order. Is it the Honourable Member's contention that Government have not succeeded in clause 4 in making the law as tight as it otherwise would be?

Sir Hari Singh Gour: That is not my point, Sir. The point that I am making is that, in trying to overrule the Bengal Council, the Government of India are confronted with another difficulty that they in their turn are likely to be overruled by an enactment of the British Parliament, and, therefore, the whole question of the jurisdiction of this Legislature requires to be examined at leisure. The question is, how far this House has got the power to overrule Parliamentary legislation and how far clauses 3 and 4, largely as they are enacted, would not contravene section 124(1). I have not myself considered this question, but it occurred to me just at this moment, and, therefore, I ask the Home Member and the Law Member to examine the situation carefully with the help of the Legislative Department and let us have their considered view at the next sitting of the Assembly. The question is not a simple one.

The Honourable Sir Brojendra Mitter: Sir, there is nothing to examine and I propose that we get along with the business.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): Government are satisfied with the powers that they get here. The Chair ought to intervene before the question is put, and make the position clear as it appears to the Chair. The point of contention of the Honourable Members on the Opposition side is this. According to them the object of the Government is to carry out the intentions of the various local Legislatures and to supplement those intentions in those matters in which

the local Legislatures have no jurisdiction. In considering clause 4, Honourable Members point to the proviso of section 27 of the Bengal Act which provides that it is not the intention of the Bengal Legislature to bar the jurisdiction of the High Court, and, therefore, by clause 4 the Government of India are not attempting to carry out the intention of the Bengal Legislature, but to do the opposite of it. From the explanation given by the Honourable the Home Member and the Honourable the Law Member, the Chair understands the position to be this. The Bengal Government could not ask the Bengal Legislature to enact a clause which was beyond the jurisdiction of the Bengal Legislature. When clause 27, without the proviso, was placed before the Bengal Legislative Council, it was the intention of the Bengal Government to ask the Bengal Legislature to restrict itself to its own jurisdiction. But since a point of order was raised, just as a similar point was raised the other day by Mr. Sen, the Honourable the President of the Bengal Legislative Council wanted evidently to make the position clear and place the matter beyond doubt. He, therefore, advised Government to introduce this proviso. The Government of Bengal have acted accordingly. Now, from these facts this House has no indication of the mind of the Bengal Legislative Council. This House has no evidence as to whether it was the intention of the Bengal Legislative Council to bar the jurisdiction of the High Court or to retain it. Either *suo motu*, or, at the instance of the Bengal Government, the Government of India want this House to take away the Calcutta High Court's jurisdiction, and clause 4 attempts to do that. The Chair hopes that the position is now clear.

5 P.M.

The question is:

"That clause 4 stand part of the Bill."

The Assembly divided:

AYES—50.

Abdul Hye, Khan Bahadur Abul
Hasnat Muhammad.
Acott, Mr. A. S. V.
Ahmad Nawaz Khan, Major Nawab.
Allah Baksh Khan Tiwana, Khan
Bahadur Malik.
Amir Hussain, Khan Bahadur Saiyid.
Anklesaria, Mr. N. N.
Bajpai, Mr. G. S.
Bhore, The Honourable Sir Joseph.
Bhawas, Mr. C. C.
Clow, Mr. A. G.
Dalal, Dr. R. D.
Dutt, Mr. G. S.
Dutt, Mr. P. C.
Fox, Mr. H. B.
Ghuznavi, Mr. A. H.
Gidney, Lieut.-Colonel Sir Henry.
Gwynne, Mr. C. W.
Haig, The Honourable Sir Harry
Hezlett, Mr. J.
Ismail Ali Khan, Kunwar Hajee.
Jawahar Singh, Sardar Bahadur
Sardar.
Lal Chand, Hony. Captain Rao Baha-
dur Chaudhri.
Leach, Mr. A. G.
Mackenzie, Mr. R. T. H.
Megaw, Major General Sir John.

Metcalf, Mr. H. A. F.
Millar, Mr. E. S.
Mitchell, Mr. D. G.
Mitter, The Honourable Sir
Brojendra.
Morgan, Mr. G.
Mujumdar, Sardar G. N.
Mukherjee, Rai Bahadur S. C.
Noyce, The Honourable Sir Frank.
Pandit, Rao Bahadur S. B.
Rafuddin Ahmad, Khan Bahadur
Maulvi.
Raisman, Mr. A.
Rajah, Rao Bahadur M. C.
Rau, Mr. P. R.
Ryan, Sir Thomas.
Schuster, The Honourable Sir
George.
Scott, Mr. J. Ramsay.
Seaman, Mr. C. K.
Sher Muhammad, Khan Gakhar,
Captain.
Singh, Mr. Pradyumna Prashad.
Smith, Mr. R.
Tottenham, Mr. G. R. F.
Vachha, Khan Bahadur J. B.
Wajihuddin, Khan Bahadur Haji.
Yakub, Sir Muhammad.
Yamia Khan, Mr. Muhammad.

NOES—32.

Abdul Matin Chaudhury, Mr.
 Abdur Rahim, Sir.
 Azhar Ali, Mr. Muhammad.
 Das, Mr. B.
 Dutt, Mr. Amar Nath.
 Gour, Sir Hari Singh.
 Gunjal, Mr. N. B.
 Ismail Khan, Haji Chaudhury
 Muhammad.
 Jadhav, Mr. B. V.
 Jehangir, Sir Cowasji.
 Jog, Mr. S. G.
 Kyaw Myint, U
 Lahiri Chaudhuri, Mr. D. K.
 Lalchand Navalrai, Mr.
 Misra, Mr. B. N.
 Mitra, Mr. S. C.

Murtaza Saheb Bahadur, Maulvi
 Sayyid.
 Neogy, Mr. K. C.
 Parma Nand, Bhai.
 Patel, Rao Bahadur B. L.
 Ranga Iyer, Mr. C. S.
 Reddi, Mr. T. N. Ramakrishna.
 Roy, Rai Bahadur Sukhraj.
 Sant Singh, Sardar.
 Sarda, Diwan Bahadur Harbilas.
 Sen, Mr. S. C.
 Sen, Pandit Satyendra Nath.
 Shafee Daoodi, Maulvi Muhammad.
 Singh, Mr. Gaya Prasad.
 Thampan, Mr. K. P.
 Uppi Saheb Bahadur, Mr.
 Ziauddin Ahmad, Dr.

The motion was adopted.

Clause 4 was added to the Bill.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty):
 The question is that clause 5 stand part of the Bill.

Sardar Sant Singh: Sir, this clause affects the jurisdiction of the Punjab High Court. Therefore, Punjab alone is interested in discussing this. I am glad, Sir, (Some Honourable Members: "We shall all support you.") Some of my friends are supporting the Punjab in getting this clause deleted. The position is this, that section 491 of the Criminal Procedure Code is the only provision in the Criminal Law of the land where the liberty of the subject can be protected against the illegal acts of the executive. That is the only provision in the nature of *habeas corpus*, given to the High Court of Judicature at Lahore. By this clause the executive means to deprive the High Court of this highly valued right. My submission is, Sir, as I said, when discussing the Bill, at its consideration stage, that section 491 of the Criminal Procedure Code can hit the executive only in those cases where their acts are illegal. Clause 2 of the section is quite clear on this point. If the act of the executive officer is not illegal, the High Court has no power to interfere with that act, and, as pointed out by the Honourable the Law Member, the other day, the High Court would summarily reject a petition under section 491, Criminal Procedure Code, if the act of the official is covered by any provision of the local enactment or of the Act of the Central Legislature. This is exactly the position. I quite agree with the Honourable the Law Member that the position is exactly the same as he explained so lucidly the other day. If it is so, why such a provision then?

The local Acts give very extensive powers to the executive to detain or arrest a person. If the executive exercise those powers in a manner provided in the local Acts, the executive need not be afraid of the scrutiny of their acts by the High Court. But in cases of illegal exercise of the powers of arrest and detention, the unfortunate victim has the protection of section 491, Criminal Procedure Code alone. It passes our comprehension why should the executive be freed from all control. Sir, the

liberty of the subject is a very precious matter. It is highly impolitic that first of all extensive powers of repression should be placed in the hands of the executive. Secondly, they should be indemnified in advance by giving them a blank cheque to deal with the liberties of the subjects and, lastly, to crown all, to deprive the High Court even to look into their acts whether these are legal or illegal. I really cannot understand what the intention of the Honourable Member is in asking us to enact this provision when so vast powers have already been given to them under clauses 3 and 4. What it comes to is this: Notwithstanding the provisions of the local Acts, notwithstanding the provisions in the nature of indemnity in advance, the executive says that it shall not be controlled by anybody. How can we be a party to a measure, Sir, which abolishes the liberty of person as well as of property so completely. Mughal despots did not possess greater power. The Czar of Russia was never clothed with greater authority. Their despotism has at least one grace and that is 'nakedness'. Their despotism never wore any garment of any sham Legislature. But, here, in India, under the garb of a legislative measure, the executive asks for power to rule this land without any law. This amounts practically to this, but I would respectfully and emphatically request the Members of this House to oppose this clause.

Mr. President (The Honourable Mr. R. K. Shanmukham Chetty): The Leader of the House will now make a statement in regard to the re-arrangement of the programme of Government business.

STATEMENT OF BUSINESS.

The Honourable Sir Brojendra Mitter (Leader of the House): Mr. President, with your permission, I wish to inform Honourable Members of a slight re-arrangement in the programme of Government business. This week we shall go on with the motions necessary for the passing of the Auxiliary Force Bill, the Haj Bill and the Income-tax (Foreign Income) Bill. If there is time, we shall take up the motions for reference to Select Committee of the Indian Medical Council Bill and the Indian Merchant Shipping (International Convention) Bill.

The Assembly then adjourned till Eleven of the Clock on Friday, the 7th April, 1933.