

13th November 1941

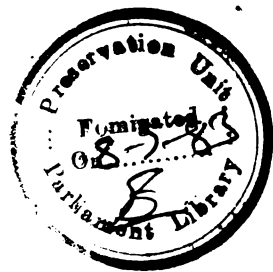
**THE
LEGISLATIVE ASSEMBLY DEBATES**

Official Report

Volume IV, 1941

(27th October to 18th November, 1941)

**FOURTEENTH SESSION
OF THE
FIFTH LEGISLATIVE ASSEMBLY,
1941**



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LEGISLATIVE ASSEMBLY

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

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CORRIGENDUM.

In the Legislative Assembly Debates, Budget Session, 1936, Volume I, dated the 10th February, 1936, page 471, for the subject heading "DEMAND OF SECURITY FROM THE ABHYUDAYA OF ALLAHABAD." substitute the following independent heading, namely:—

"MOTION TO DISCUSS A QUESTION OF PRIVILEGE, NAMELY, HOW FAR PRESS PUBLICATION OF A MEMBER'S SPEECH IN THE ASSEMBLY IS PRIVILEGED."

LEGISLATIVE ASSEMBLY.

Thursday, 13th November, 1941.

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

STARRED QUESTIONS AND ANSWERS.

(a) ORAL ANSWERS.

AMALGAMATION OF GRADES I AND II OF ALL CLERICAL STAFF ON NORTH WESTERN RAILWAY.

164. *Mr. Lalchand Navalrai: (a) With reference to the Honourable the Railway Member's reply to my starred question No. 70, asked on the 14th February, 1941, and supplementary questions thereon, in regard to the amalgamation of grades I and II for all clerical staff, will he be pleased to state the result of the examination of the existing distribution of grade I and II posts in various categories of staff on the North Western Railway?

(b) Is the Honourable Member aware that the block at Rs. 60 is keenly felt by the staff and there is great agitation for its removal? If so, what steps does he propose to take to remove the discontent? If none, why not?

The Honourable Sir Andrew Clow: (a) As a result of their examination of the position, Government have issued orders for increasing the number of posts in grade II by 503 with a corresponding reduction in grade I posts and for the distribution of these additional posts among the various categories in such a manner as to secure that the proportion of grade I posts to grade II posts is approximately the same.

(b) I am aware that a number of the staff were anxious to secure better prospects of promotion and conducted an agitation for this purpose. While I cannot regard such desires as affording an adequate ground for concessions, I am happy to think that the decision referred to in the reply to part (a), which was based on wider grounds, will bring a direct benefit to a considerable number of men and thus tend to greater contentment.

Mr. Lalchand Navalrai: May I know, Sir, on what basis was the distribution made in the different provinces?

The Honourable Sir Andrew Clow: I do not know myself whether it is completed or not, but the endeavour is to ensure that the proportion in the different branches shall be approximately the same.

Mr. Lalchand Navalrai: Is it based on the size of the divisions or on the strength of the staff?

The Honourable Sir Andrew Clow: I don't see the distinction.

Mr. Lalchand Navalrai: The distinction will be this; if the distribution is made on the strength of the staff, then the strength in each division should be made accordingly.

The Honourable Sir Andrew Clow: I will convey that suggestion.

STOPPAGE OF THE DUSEHRA HOLIDAY RETURN TICKETS ON NORTH WESTERN RAILWAY.

165. *Mr. Lalchand Navalrai: (a) Will the Honourable Member for Railways be pleased to state whether it is a fact that Dusehra cheap holiday return tickets were stopped on the North Western Railway this year?

(b) Since when were Dusehra holiday return tickets being issued on the North Western Railway, and what were the special reasons for stopping the issue of these tickets this year?

(c) Has the issue of such tickets been stopped on other Railways as well? if so, on which Railways?

(d) Is it a fact that there is a demand in certain parts of the country through which the North Western Railway passes, that the holiday return tickets be issued on Diwali holidays? Is it proposed to do so next year, in view of the stoppage of Dusehra holiday tickets? If not, why not?

(e) On which railways in India, whether State or Company-managed, are holiday return tickets issued on:

(i) Dusehra, and

(ii) Diwali?

(f) Is it proposed to stop the issue of holiday return tickets on the North Western Railway during:

(i) Christmas,

(ii) Moharrum, and

(iii) Easter Holidays?

If so, why? If not, why was the issue of these tickets stopped during Dusehra holidays only?

The Honourable Sir Andrew Clow: (a) Yes.

(b) I do not know when these concessions were originally introduced but I understand that they were reintroduced in 1924 for First, Second and Inter class passengers and were extended to third class passengers in 1927. The concession has been withdrawn in accordance with the general policy of withdrawing such passenger concessions as might foster additional traffic.

(c) I understand that the North Western Railway alone gave this concession.

(d) The reply to the first portion of the question is in the affirmative. I understand the Railway does not propose to issue concessions during either the Dusehra or Dewali holidays as present conditions do not permit of it.

(e) (i) North Western Railway.

(ii) These have been generally allowed by the Bombay, Baroda and Central India, Great Indian Peninsula, Jodhpur, Madras and Southern Mahratta and South Indian Railways. On the occasion of the last Dewali holidays, the concession was allowed only over the Jodhpur Railway.

(f) I understand the North Western Railway have decided not to allow any concession during the ensuing Christmas holidays and are considering their withdrawal for Muharram and Easter. Conditions arising out of the war necessitate discouragement of passenger traffic.

Mr. Lalchand Navalrai: Is it not a fact, Sir, that on account of these concession tickets the railways make more money and there is an increase in traffic?

The Honourable Sir Andrew Clow: The concession was designed to attract traffic.

Mr. Lalchand Navalrai: When the railways get that advantage, why should the concession tickets be withdrawn or stopped?

The Honourable Sir Andrew Clow: Unfortunately we are now compelled to discourage traffic and have, therefore, to move in the reverse direction.

NOMINATION AND ELECTION OF MEMBERS TO THE RAILWAY CENTRAL AND LOCAL ADVISORY COMMITTEES.

166. *Sardar Sant Singh: Will the Honourable Member for Railways be pleased to state:

- (a) in regard to the nomination of members by the General Manager, etc. to the Local Advisory Committees of the Railways, whether the members so nominated belong to the areas for which such committees are formed;
- (b) whether one and the same member has been nominated for a number of years;
- (c) whether one and the same member has been nominated by more than one Railway to the Advisory Committees for the same area for the same period of time;
- (d) whether, with regard to the Central Committees of different Railways, there are members elected or nominated to it who do not belong to their areas, and, if so, which are the Railways?
- (e) whether there are any rules governing the nominations and elections in this respect; if so, whether he will place a copy thereof on the table of the House; and
- (f) the names of the members elected to different Railways and their constituencies?

The Honourable Sir Andrew Clow: (a) This is generally the case.

(b) I understand this has been the case.

(c) I believe this is not so at present but whether it has been done in the past, I am unable to say.

(d), (e) and (f). I am not sure what the Honourable Member means by 'the Central Committees of different Railways', but assume that these parts of the question relate to the nominations made by the Central Advisory Council to the various Local Advisory Committees. On this assumption, the present rule is that only persons representing a constituency or actually resident within an area to which the Local Advisory Committee relates are eligible for election. The present list of Members will be found in the proceedings of the Central Advisory Council for 1st April, 1941, and their constituencies are given in the official list of Members of the Legislative Assembly.

PROVISION OF A PLATFORM AT THE PARASNATH RAILWAY STATION.

167. ***Qazi Muhammad Ahmad Kazmi:** (a) Will the Honourable the Railway Member please state whether it is or it is not a fact that Parasnath (formerly known as Isri) Station has been in existence for the last 40 years or so?

(b) Is it or is it not a fact that thousands of Jain pilgrims going to Parasnath hills pass on their way through this Railway Station?

(c) Is it or is it not a fact that there is no platform at this station and the passengers have to alight from the train directly on the flat ground?

(d) Have Government considered the great inconvenience to the pilgrims on this account, who are mostly old men and women, and who carry considerable luggage with them on their long journeys to this place of pilgrimage?

(e) Have Government received a number of representations in this behalf from the Jain community, specially from the Sri Jain Prem Sabha?

(f) Have Government considered the advisability of providing a platform at this station—even a kachcha platform may meet the needs of the passengers—and removing this old standing grievance of Jain pilgrims?

The Honourable Sir Andrew Clow: (a) Yes.

(b) I am prepared to accept the Honourable Member's estimate of the pilgrim traffic to Parasnath.

(c) I understand that there is no raised platform at the station.

(d) I am not aware that pilgrims are mostly aged and heavily cumbered with luggage, but Government recognize that a raised platform affords greater convenience to all passengers.

(e) Yes.

(f) The provision of such amenities at stations is a matter within the discretion of Railway Administrations who with the assistance of their Local Advisory Committees are in the best position to decide between the claims of the various stations. The representations received were accordingly passed on to the Railway Administration for disposal.

Qazi Muhammad Ahmad Kazmi: Has anything been done till now or is under contemplation in respect of providing a raised platform and also proper lights?

The Honourable Sir Andrew Clow: There is no raised platform provided so far, as far as I am aware.

Qazi Muhammad Ahmad Kazmi: Has anything been done in respect of that or is anything under contemplation or under consideration? Can the Honourable Member give any information on that point?

The Honourable Sir Andrew Clow: Consideration in one sense is never finished, because the claims of competing stations are always being considered and amenities are always being extended.

Qazi Muhammad Ahmad Kazmi: I want to know whether, in view of the importance of this station, the Honourable Member has got any information that the Railway concerned has any scheme under contemplation to supply a raised platform or not.

The Honourable Sir Andrew Clow: I cannot say for which stations they contemplate providing platforms next year, and it is obviously impossible for me here to assess the claims of one station against another.

Qazi Muhammad Ahmad Kazmi: I am only asking about this particular station on account of the large pilgrim traffic that goes on there?

The Honourable Sir Andrew Clow: But there are stations to which a substantial number of passengers go which are thus similarly situated.

Qazi Muhammad Ahmad Kazmi: Has the special importance of this station been considered, that is the only point on which I want information.

The Honourable Sir Andrew Clow: That consideration has certainly not been overlooked.

Mr. Govind V. Deshmukh: If, after receiving the representations, may I know if Government suggest that this matter should be put before the local Advisory Committee for Railways?

The Honourable Sir Andrew Clow: I would require notice of that question.

Mr. Govind V. Deshmukh: May I know, Sir, whether, in view of the fact that it has been admitted that Jains from all over the country visit this place, Government imagine that they can visit the place without any luggage?

The Honourable Sir Andrew Clow: No, Sir; but I have always understood that pilgrims travelled light.

Sardar Sant Singh: May I know what the attitude of the Railway Board is when they receive representations from the public? Do they examine them and express their own opinion with respect to them or the Railway Board simply forward them and act as post office?

The Honourable Sir Andrew Clow: It depends on the matter. If it is a particular question of policy, naturally they try and form their own conclusions on them; but if it relates to a wholly local matter, their knowledge is certainly inferior to that of the men on the spot.

Mr. Lalchand Navalrai: May I know, Sir, whether in regard to this particular matter the Railway Board have given their own opinion or they have sent the papers to the railway concerned?

The Honourable Sir Andrew Clow: I did not say that the Railway Board expressed a definite opinion that this platform should be built.

Mr. Govind V. Deshmukh: May I know whether they were informed as to the proper approach regarding the solution of this question?

The Honourable Sir Andrew Clow: I think so; I have recently had a letter from an Honourable Member of this House, which I am answering in that sense.

GRIEVANCES OF THE EMPLOYEES OF SHAHDARA-SAHARANPUR LIGHT RAILWAY.

168. *Mr. Lalchand Navalrai: Will the Honourable Member for Railways please state:

- (a) whether the employees of Shahdara-Saharanpur Light Railway have formed a trade union under the name of the Shahdara-Saharanpur Light Railway Employees' Union and got it registered;
- (b) whether the Shahdara-Saharanpur Light Railway administration have, subsequent to the formation of the Union aforementioned, formed another union under their patronage;
- (c) whether the staff of the Shahdara-Saharanpur Light Railway have represented to the administration of this railway certain grievances regarding dearness allowance and increase in pay;
- (d) whether the Shahdara-Saharanpur Light Railway administration have failed to take notice of any of these grievances;
- (e) whether there is great unrest among the staff and they are contemplating to close up this railway;
- (f) whether Government propose to call upon the Managing Director of the Company who own this Railway, to go into the grievances of the staff in co-operation with the Union to avoid strike over this railway; and
- (g) whether, in case of an apprehended strike, Government will call upon the administration of the railway to accept a conciliation board to settle the dispute between the employer and the employees, under section 16 of the Trade Disputes Act?

The Honourable Sir Andrew Clow: (a), (b), (c), (d) and (e). I have no information regarding this matter. The Shahdara-Saharanpur Light Railway is not either owned or managed by the Central Government.

(f) No.

(g) This is a hypothetical question; but I might add that section 16 of the Trade Disputes Act does not invest Government with the powers to take the action suggested.

Mr. Lalchand Navalrai: If the Honourable Member has no information, may I ask him to call for information and see that these two unions do not exist because there will be clashes between them, and also see that other conveniences also are given?

The Honourable Sir Andrew Olow: No. I cannot enquire into the affairs of a private company in matters which are not my concern.

Qazi Muhammad Ahmad Kazmi: May I know whether the Honourable Member really made any enquiry into the matter,—that he has got no reply from the railway concerned?

The Honourable Sir Andrew Olow: The answer is in the negative.

Mr. Lalchand Navalrai: What is the remedy when the Railway Board and Government are not interfering in these inconveniences caused when they are caused by a company railway? What is the remedy then? How to do it?

The Honourable Sir Andrew Olow: I am not sure what the Honourable Member wants to do.

Mr. Lalchand Navalrai: I want that the grievances should be remedied. I want that there should be no clash between the two unions and others. These are matters into which the Railway Board and Government should at least enquire.

The Honourable Sir Andrew Olow: But in a private concern it is not the Government's function to intervene except in so far as the Legislature has vested them with statutory powers.

Mr. Lalchand Navalrai: Government have got certain powers, the Railway Board have got certain powers, powers of supervision at least, and why should they not interfere?

The Honourable Sir Andrew Olow: They have general powers of supervision as they have the duty of seeing that safety conditions are preserved.

Mr. Lalchand Navalrai: But the point is

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

LATE ARRIVALS OF THE GRAND TRUNK EXPRESS AT NEW DELHI RAILWAY STATION.

169. *Sir F. E. James: Will the Honourable the Member for Railways be pleased to state:

- (a) on how many days since the 1st October the Grand Trunk Express has been more than thirty minutes late in arriving in New Delhi station;

- (b) on how many occasions has it been more than an hour late;
- (c) what is the reason for the dilatoriness of this Express;
- (d) if he is aware that mail from South India arriving in New Delhi before mid-day is not delivered until the evening and frequently late in the evening; and
- (e) whether, if nothing can be done to improve the service of the Grand Trunk Express and the subsequent delivery of the mails, he is prepared to consider the advisability of instituting an air service between Madras and Delhi during the Delhi season for the carriage of mails?

The Honourable Sir Andrew Olow: (a) and (b). During the month of October, this train arrived at New Delhi over an hour late on 19 occasions and on three occasions between thirty and sixty minutes late.

(c) I am informed that the bad running has been due to a combination of circumstances including Engineering speed restriction resulting from an accident between Itarsi and Amla on the 9th October, Engineering speed restriction due to relaying of track between Agra Cantonment and Delhi, heavy loading of fresh fruit parcels *en route* and military traffic.

(d) If the Grand Trunk Express arrives at New Delhi Railway Station after 9-15 A.M. mails are sent out by the 4 P.M. delivery by the New Delhi Post Office.

(e) Government do not consider it practicable to operate an air mail service between Madras and Delhi at present.

Sir F. E. James: May I ask my Honourable friend if he recollects that on a previous occasion this department was censured by one of the few snap divisions in this House in recent years, for the intolerable conditions under which this train runs? If so, is he aware that still on this train the engines are archaic, the food is bad, the rolling stock is old, and the average speed is that of an elderly but slightly intoxicated caterpillar?

An Honourable Member: What about passengers?

The Honourable Sir Andrew Olow: I am well aware of the decision of this House but cannot accept the Honourable Member's description in its entirety.

Sir F. E. James: Will my Honourable friend explain the extraordinary reluctance of this train to arrive at New Delhi on so many occasions since the 1st October, and what improvements, if any, he has personally attempted to make in the service of this train since he was censured by an overwhelming vote of this House?

The Honourable Sir Andrew Olow: I do not think the vote was overwhelming, but actually I think it is within the recollection of my Honourable friend that, largely in consequence of his endeavours, an attempt was made to speed up the train and it is probably partly due to that that the train is not arriving in time.

Sir F. E. James: Will my Honourable friend consider the advisability of paying a small bounty to passengers who travel on that train by necessity?

The Honourable Sir Andrew Clow: We pay a small bounty to the Members of the Assembly who do not travel by it.

Sir F. E. James: May I ask one other question? If the mail arrives in New Delhi from the south,—it covers an enormous area, Hyderabad, Madras, Travancore, Cochin . . . (*An Honourable Member:* "Ceylon"). If it arrives a minute after 9-15 A.M. it is not delivered in this town until—well, if it is sent out at 4 o'clock, it does not actually reach those to whom the mail is posted, until sometimes 5, 6, 7 or 8 o'clock in the evening, or next morning as the case may be. Will he really enquire into the possibility of having a special delivery in view of the transcendant importance of this train from the south?

The Honourable Sir Andrew Clow: I cannot accept the view that this train is of transcendant importance. There are three deliveries—one at 8 A.M. one at 10-30 A.M. and one at 4 o'clock in the evening. The time of 9-15 A.M. allows a considerable margin. The scheduled arrival time of the train is 7-45 A.M.

Sir F. E. James: I would point out to my Honourable friend that the mail, if it arrives at 9 o'clock in the morning—which is assuming a great improvement in its service—if it arrives at 9 o'clock in the morning, the mails from South India are not, in fact, delivered until the evening. There is no possibility of the mail then catching 10 o'clock delivery. May I suggest that there is a possibility of speeding up in the delivery of service of the post office in New Delhi in view of the fact that this is the capital city of this great Empire.

The Honourable Sir Andrew Clow: I will ask the Postmaster-General to examine the point, but I am not sure whether the extent of the mails is such as to render it reasonable.

Sir F. E. James: May I ask, before he lays down his office—and, I understand, he goes to Orissa as Governor—that he should earn for himself undying fame by making some change in the irregularity of the arrival of this train and in benefiting all of us by arranging for the earlier delivery of the mails, at any rate, during the season?

The Honourable Sir Andrew Clow: The Railway Board are examining the possibility of improvement with the Managers who are now in Delhi.

Sir Cowasji Jehangir: Although Madras people may be more leisurely than the Bombay people, will the Honourable Member explain why the Frontier comes late by one hour also? There were two occasions when I had been to Delhi. On the first occasion the train ran over an wild blue bull and was late by one hour, and on the second occasion there was no wild bull, and still the train came one hour late.

The Honourable Sir Andrew Clow: Punctuality cannot be guaranteed in the case of any train. The Honourable Member has himself given a very adequate explanation of why the train arrived late on one occasion.

SHORT NOTICE QUESTIONS AND ANSWERS.

SUPPLY OF ROPES AND *Newars* TO THE ARMY FOR TENTS.

***Mr. Govind V. Deshmukh:** Will the Honourable the Supply Member please state:

- (a) if ropes and *newars* are supplied to the Army for tents; if so, of what counts the cotton yarn used in them is; whether he is prepared to consider the modification of the specification, in consultation with the Defence Department, of these ropes and *newars* so as to consume short staple cotton; and
- (b) if ropes and *newar* of the value of Rs. 30,00,000 (thirty lakhs of rupees) are supplied to the Army every month?

The Honourable Sir H. P. Mody: (a) Ropes and *Newars* for tents are not directly purchased as such but are supplied by the tent makers with whom orders are placed for complete tents.

Yarn of 18s counts is usually used for ropes which may be reduced in some cases to an average of 14s in an emergency. *Newar* is woven of 2 fold 10s yarn.

The possibilities of extending the use of short staple cotton are already under examination by the Standing Committee on Specifications, Cotton Textiles Directorate.

(b) Considerable quantities of ropes and *newar* are supplied with tents but not to the extent of Rs. 30,00,000 per month. Half of this figure will be nearer the mark, since total purchases of tents during the last 18 months have averaged Rs. 60,00,000 per month.

Mr. Govind V. Deshmukh: Have you considered the possibility of reducing the 14s. counts to lesser counts, such as 8 or 10s?

The Honourable Sir H. P. Mody: I have already said that the matter is under consideration.

PROCEDURE FOLLOWED IN EXECUTING ARMY ORDERS FOR THE SUPPLY OF WOOLLEN BLANKETS.

***Mr. Govind V. Deshmukh:** Will the Honourable the Supply Member please state:

- (a) the procedure followed in executing army orders for the supply of woollen blankets; and
- (b) if the procedure followed in executing army orders for the supply of woollen blankets can be followed in executing orders for ropes and *newars* of short staple cotton; if not, why not?

The Honourable Sir H. P. Mody: (a) Orders for Army Blankets are placed partly with Mills and partly with the Handloom Industry through the Directors of Industries of Provinces and Indian States. Mill spun yarn is used in the former; the latter are handspun and hand woven.

(b) As I have explained in reply to the preceding question, ropes and *newars* are supplied by the tent makers. The question of placing orders for these materials in the same way as for blankets does not, therefore, arise under the existing arrangements. I may add that both these materials are mostly hand woven or hand made, to a large extent under the control of the tent makers themselves.

Mr. Govind V. Deshmukh: In view of the fact that the ropes and *newars* are supplied by persons who get these contracts in tents, is there any responsibility on them to provide ropes and *newars* of particular count or they can supply of lesser count?

The Honourable Sir H. P. Mody: They have to comply with the specifications.

DESIRABILITY OF USING SHORT STAPLE COTTON YARN OF A SMALL COUNT FOR ROPES AND *Newars* FOR TENTS FOR THE ARMY.

***Mr. Govind V. Deshmukh:** Will the Honourable the Supply Member please state:

- (a) if the price of the coarse cotton yarn will go down if short staple cotton yarn of a small count is used for ropes and *newars* for tents for the Army; if so, by how much;
- (b) if the mills spinning yarn for ropes and *newars* and weaving *newar* on the present specification for the same would be relieved of much of the pressure, if the same work is done by *charkhas* and handloom weavers?

The Honourable Sir H. P. Mody: (a) Short staple cotton is already used in 2/10s counts in *Newars* and to a small proportion in ropes. If its use is further extended by adoption of coarser counts (which matter as I have stated is under examination) the price of yarn may go down, but the net saving may not be appreciable as it may be necessary to use thicker rope to retain the strength required.

(b) If the *charkha* could economically and expeditiously deal with the volume of spinning required, spinning mills would be correspondingly relieved, but as it is they are employed on this work only to a very small extent. A large proportion of *newar* is already handwoven.

UNSTARRED QUESTIONS AND ANSWERS.

EXEMPTION FROM AGE RESTRICTION OF CERTAIN MARKERS FOR RECRUITMENT TO HIGHER GRADES IN THE SUBORDINATE SERVICE ON NORTH WESTERN RAILWAY.

61. Mr. Lalchand Navalrai: (a) Will the Honourable Member for Railways be pleased to state whether the age restriction on educationally qualified Markers to compete for higher grade appointments on the North Western Railway, such as "Commercial Group students", "clerical jobs", etc., has been removed? If so, when, and will the Honourable Member please lay a copy of the orders on the table of the House?

(b) Is it a fact that recently certain Markers who were over the prescribed age for recruitment to various posts in the subordinate service on the North Western Railway, were exempted from the age restriction? If so, will the Honourable Member please lay on the table of the House a statement of such exempted persons from the 1st April, 1940, to this day?

(c) If the reply to the first portion of part (a) above be in the affirmative, why has the exemption been granted to some and not to others? Have not the provisions of rules or orders general application on the North Western Railway? If not, why not?

The Honourable Sir Andrew Olow: (a) Government understand that there have been no recent orders removing the restrictions in cases to which it is applicable.

(b) Inquiries have been made from the headquarters of the railway, who have no information of any such relaxation. The second part does not arise.

(c) Does not arise.

ABOLITIONS AND REDUCTIONS OF POSTS IN THE TRANSPORTATION SUBORDINATE AND INFERIOR SERVICES IN THE KARACHI DIVISION OF NORTH WESTERN RAILWAY.

62. Mr. Lalchand Navalrai: (a) Will the Honourable Member for Railways be pleased to state the number or grades of various kinds of posts in the transportation subordinate and inferior services abolished or reduced in the Karachi Division of the North Western Railway from the 1st January, 1940 to the 30th September, 1941?

(b) What is the total amount of saving on this account?

(c) How do these abolitions of posts and grades compare with corresponding periods in 1938 and 1939?

(d) Is it a fact that the movements of traffic on the North Western Railway are more brisk since January 1940 than those in the years 1938 and 1939? If so, what is the reason for these abolitions and reductions?

(e) Is it a fact that on account of abolitions and reductions in grades, there has been an increase in accidents of all classes in Karachi Division?

(f) Will the Honourable Member please lay on the table of the House a statement showing all kinds of accidents in the Karachi Division of the North Western Railway during the last four years, separately for each year from the 1st January, 1938 to the 30th September, 1941?

(g) What steps do Government propose to take to ensure that there is no undue reduction in the numbers or grades of transportation staff in the Karachi Division of the North Western Railway system? If none, why not?

The Honourable Sir Andrew Olow: (a), (b), (c) and (f). The attached table gives the required information.

(d) The answer to the first part is in the affirmative as far as the North Western Railway as a whole is concerned; on the Karachi Division itself traffic has exhibited an upward trend only from the end of 1940. As regards the second part, posts are abolished when experience showed them to be redundant; where additional posts are found necessary to deal with the traffic they are created.

(e) There is no reason for believing that the abolitions or reductions have had any such effect.

(g) Government are satisfied that the matter receives the constant and careful attention of the Administration and do not consider any action necessary.

Statement of posts abolished or devalued and savings effected thereby in the Transportation branch of the Karachi Division on the North Western Railway.

Year.	No. of subordinates posts abolished or devalued.	Annual saving effected on account of (2).	No. of inferior posts abolished or devalued.	Annual saving effected on account of (4).
1	2	3	4	5
		Rs.		Rs.
1938	4	5,730	4	1,260
1939	41	40,078	257	36,300
1940	13	11,688	50	11,213
1941	1	630	29	6,636

Statement showing the number of accidents which occurred on Karachi Division during 1938, 1939, 1940 and 9 months of 1941 (upto 30th September).

Description of accident.	1938.	1939.	1940.	1941 (for 9 months upto 30-9-41.
1	2	3	4	5
Railway servants injured	440	565	667	653
Public passengers and trespassers injured	147	114	95	94
Collisions	9	2	3	2
Side collisions	7	6	7	1
Trains parting between stations	18	30	37	41
Cattle run over	173	156	153	118
Derailments	325	291	316	293
Trains running without line clear	1	3	3
Trains put on wrong line	2	1	2	2
Fires in trains or vehicles	13	1	..	5
Points burst	68	44	63	62
Miscellaneous	52	79	86	57
Fire in Railway premises	5	3	8	1
Averted collisions	2	3	2	1
Breaches	2	2	3	..
Total	1,263	1,298	1,445	1,333

MONTHLY ONE-DAY REST FOR THE INTERMITTENT WORKERS ON NORTH WESTERN RAILWAY.

63. Mr. Lalchand Navalrai: (a) Will the Honourable Member for Railways be pleased to state whether intermittent workers on the North Western Railway are given a day's rest in a month? If so, which categories, and in which divisions of the North Western Railway?

(b) Is it proposed to introduce one day's rest for all intermittent workers on the North Western Railway? If not, what is the reason for this differentiation?

The Honourable Sir Andrew Olow: (a) The answer to the first part is in the negative; the second part does not arise.

(b) The answer to the first part is in the negative; as regards the second part, I am not clear what differentiation the Honourable Member has in mind.

DOUBLE DUTY IMPOSED ON WATERMEN AND SWEEPERS AT ROADSIDE STATIONS ON NORTH WESTERN RAILWAY.

64. Mr. Lalchand Navalrai: (a) Will the Honourable Member for Railways be pleased to state whether watermen and sweepers at a large number of roadside stations on the North Western Railway are exempted from the operation of the Hours of Employment Regulations?

(b) Is it a fact that these employees are rostered on watch and station duty for 8 to 12 hours a day as "continuous" or "intermittent" workers, in addition to their legitimate duty of supplying water or doing the sweeper's job?

(c) Under what provision of the Hours of Employment Regulations are these men given double duties and for longer periods than that which they would be required to do, either as exempted workers or rostered as continuous or intermittent workers on watch and station duty?

(d) If there is no such provision, is the Honourable Member prepared to issue instructions that no infringement of the Hours of Employment Regulations be permitted by the administration in this manner? If not, why not?

The Honourable Sir Andrew Clow: (a) Yes.

(b) Government understand that the Watermen and Sweepers are required to keep a watch at the station for not more than four to six hours each in rotation. Such duties, however, do not alter the general character of their work which continues to be essentially intermittent and of a specially light character. They are not classified as "Continuous" or "Essentially intermittent" workers.

(c) The railway servants under consideration are excluded from the scope of the Hours of Employment Regulations as they fall under rule 3 (2) (b) of the Railway Servants Hours of Employment Rule, 1931, which is reproduced in Appendix XI to the State Railway General Code, a copy of which is in the Library of the House.

(d) Does not arise in view of the reply to part (c).

ISSUING OF INSTRUCTIONS TO THE NORTH WESTERN RAILWAY ADMINISTRATION FOR HOLDING ONLY ONE SELECTION IN THE DIVISIONS FOR RECRUITMENT TO POSTS CONTROLLED BY THE DIVISIONAL SUPERINTENDENTS.

65. Mr. Lalchand Navalrai: (a) With reference to the Honourable the Railway Member's reply to part (b) of my starred question No. 473, asked on the 24th March, 1941, regarding two selections for appointment to the lower grade subordinate service on the North Western Railway, will he be pleased to state whether, since there are no double Selection Boards on other State-managed Railways for lower grade subordinate posts, it is proposed to hold only one Selection Board on the various divisions of the North Western Railway for such posts? If not, why not?

(b) Is it a fact that the Note to Rule 74 in Appendix II of the State Railway Establishment Code, Volume I, to which the Honourable Member

referred to in his reply, allows double selections only in cases where recruitment is made for posts controlled by the Headquarters Office?

(c) Is it a fact that the posts of:

- (i) Goods, Booking and Parcel Clerks,
- (ii) Signallers,
- (iii) Relief Train Clerks and Ticket Collectors, and
- (iv) Guards, grade I and II,

are controlled throughout their service in that grade by the respective Divisional Superintendent? If so, how do the provisions of the State Railway Establishment Code referred to in part (b) above, apply in this case?

(d) Is it a fact that the Note to Rule 74 in Appendix II of the State Railway Establishment Code, Volume I, refers only to recruitment to such posts as Inspectors of Works or Permanent Way Inspectors which are controlled by the Headquarters Office of the North Western Railway for which a preliminary selection is also held in Divisions? If so, why is a second selection for posts controlled by Divisions referred to in part (c) above made in the North Western Railway Headquarters Office?

(e) With reference to the Honourable Member's reply to the supplementary question on this point, will he please now definitely state whether Commercial Group employees recruited by the North Western Railway Headquarters Office can be discharged or dismissed by the Divisional Officers? • If so, how does he reconcile his reply with provisions of Rule 1705 (c) of the State Railway Establishment Code, Volume I, to the effect that no railway servant shall be removed or dismissed by an authority lower than that by which he was appointed to the post held by him substantively?

(f) Does the Honourable Member, in view of these definite provisions of rules, propose to issue instructions to the North Western Railway administration to hold only one selection in the Divisions for recruitment to posts, incumbents of which are in that grade controlled by the Divisional Superintendents or his assistant officers? If not, why not?

The Honourable Sir Andrew Clow: (a) No, there is no reason to alter a system which has proved satisfactory in practice.

(b) The answer is in the negative.

(c) The answer to the first part is in the affirmative except as regards recruitment. The second part does not arise in view of the reply to part (b).

(d) The answer to the first part is in the negative, the second part does not arise.

(e) The Headquarters Office select only candidates for training, the actual appointment to working posts are, I understand, made by Divisional Superintendents or authorities subordinate to them.

(f) Government do not propose to take the action suggested for the reason given in the reply to part (a).

MANUAL AND NON-MANUAL WORKERS IN THE DEPARTMENTS OF THE RAILWAYS.

66. Mr. N. M. Joshi: Will the Honourable Member for Communications be pleased to place on the table of the House a statement in the following tabular form, or in a form as similar to it as possible?

Railway servants in various Departments.

Name of the Department.	Number of Manual Workers.		Number of non-manual Workers.	
	Employed Directly.	Employed through Contractors.	Employed Directly.	Employed through Contractors.
(1) Workshops				
(2) Locomotive Sheds				
(3) Maintenance of the Permanent way				
(4) Stations				
(5) Collieries and Mines etc. etc.				

The Honourable Sir Andrew Clow: I regret that as the statistical returns made in respect of employees is not compiled on the basis suggested in the Honourable Member's table it is not possible to furnish these particulars without elaborate statistical enquiries which we cannot undertake. The latest statistics compiled are reproduced in sections V and VI of Appendix CIII to Volume II of the Railway Board's report for 1939-40. These relate only to railway employees and do not include persons finding employment under contractors. The number of men employed in State-owned railway workshops is over 83,000 and the number of railway servants employed in the Coal Department is over 6,000.

WAGE-GROUPS ON THE RAILWAYS.

67. Mr. N. M. Joshi: Will the Honourable Member for Communications be pleased to place on the table of the House a statement in the following tabular form, or in a form as similar to it as possible?

*Different Wage-groups on the Railways.**

Name of the Railway.	Total number of Railway workers earning on an average per month.						
	Not more than Rs. 10.	Between Rs. 10 and Rs. 15.	Between Rs. 15 and Rs. 25.	Between Rs. 25 and Rs. 40.	Between Rs. 40 and Rs. 100.	Between Rs. 100 and Rs. 250.	More than Rs. 250.

*War allowance is excluded from these figures.

The Honourable Sir Andrew Glow: The latest information available with Government is contained in Appendix CIII in Vol. II of the Report by the Railway Board on Indian Railways for the year 1939-40, a copy of which is in the Library of the House. As statistics are not maintained in the form desired by the Honourable Member their collection will involve a great deal of labour which I regret I cannot authorise under present conditions.

PROVISION OF HOUSING ACCOMMODATION TO RAILWAY SERVANTS.

68. Mr. N. M. Joshi: Will the Honourable Member for Communications be pleased to place on the table of the House a statement in the following tabular form, or in a form as similar to it as possible?

Provision of Housing accommodation to Railway Servants.

Name of the Railway.	Total number of employees.	Number of non-manual workers provided with quarters.	Number of manual workers provided with quarters.

The Honourable Sir Andrew Glow: The numbers of persons employed on the different railways are given in Appendix C-III of Volume II of the Annual Report on Indian Railways. I regret that I am unable to undertake the investigations which would be necessary to secure the statistics relating to the occupancy of quarters desired by the Honourable Member. I understand that the headquarters of Railway Administrations maintain no lists of occupants of quarters and even the lists maintained locally do not classify the occupants under the manual and non-manual categories.

MOTION FOR ADJOURNMENT.

CONDITION OF ALLAMAH MASHRIQUI, KHAKSAR LEADER, AT THE VELLORE JAIL.

Mr. President (The Honourable Sir Abdur Rahim): I have received notice of a motion for adjourning the business of the House from Mr. Kazmi. He wants to discuss a definite matter of urgent public importance, namely, the condition of Allamah Mashriqui, Khaksar leader who is imprisoned in Vellore Jail by the Government of India and who is reported to be fasting since 16th October and losing weight and whose condition is reported to be critical as reported in the *Hindustan Times*, dated the 13th November, page 6.

Is it a religious fast?

Qazi Muhammad Ahmad Kazmi (Meerut Division: Muhammadan Rural): No, Sir.

Mr. President (The Honourable Sir Abdur Rahim): Why did he fast?

Qazi Muhammad Ahmad Kazmi: As a protest against the treatment that is being meted out to him.

Mr. President (The Honourable Sir Abdur Rahim): He is fasting, even though he suffers in health. What is the sort of treatment meted out to him?

Qazi Muhammad Ahmad Kazmi: That is exactly for the Government of India to tell us, whether it is a fact or not that on account of the treatment meted out to him he is fasting.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member ought to tell the House what is the nature of the treatment.

Qazi Muhammad Ahmad Kazmi: There were certain demands put forward by Allamah Mashriqui and the Government of India has not conceded those demands. That is what is appearing in the Press.

Mr. President (The Honourable Sir Abdur Rahim): What are the demands?

Qazi Muhammad Ahmad Kazmi: It is for the Government of India to show to the House that the demands were unreasonable. They are within the knowledge of the Government of India. I have heard that the demands are contained in a letter to the Government of India covering 19 pages.

Mr. President (The Honourable Sir Abdur Rahim): I am not surprised that he is fasting. The Honourable Member has failed to make out any case for adjourning the business of the House. The motion is disallowed.

THE EXCESS PROFITS TAX (SECOND AMENDMENT) BILL.

Mr. President (The Honourable Sir Abdur Rahim): The House will now resume consideration of the motion:

"That the Bill further to amend the Excess Profits Tax Act, 1940 (*Second Amendment*), as reported by the Select Committee, be taken into consideration."

Clause 6 has been adopted by the House.

Clause 7 was added to the Bill.

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

"That clause 8 stand part of the Bill."

Sir Cawasji Jehangir (Bombay City: Non-Muhammadan Urban): Mr. President, I move:

"That part (b) of clause 8 of the Bill be omitted."

This part of clause 8 seeks to insert a new rule in Schedule I after Rule 11. We contend that the rule is not necessary and it will be my business to prove to the House what we have asserted in our minute of dissent. If the House will carefully examine this rule, they will find that it gives authority to the Income-tax Officers in three directions. Firstly, it provides that no deduction shall be allowed in respect of expenses, in excess of the amount which the Excess Profits Tax Officer considers reasonable and necessary, having regard to the requirements of the business. That is the first provision of this rule. The second is with regard to Directors' fees, and the third provision is with regard to services rendered by the officers of a company or of a person or firm. These are the three parts into which this rule is divided and I propose to deal with them separately.

Now, I will take the first provision. It is extraordinarily wide. Any expense incurred by the assessee can be ruled out by the income-tax authorities as an expenditure which should not have been incurred, as it was not necessary and not within the requirements of the assessee. I claim that, to a great extent, the income-tax authorities have already got that power. I claim that section 10 (2) (xii) of the Income-tax Act which applies to the Excess Profits Tax Act gives sufficient power to the authorities to deal with such cases. I am not relying on my own judgment. I am going to place before this House the opinion of Government themselves. On the 27th November, 1940, Dr. Sir Ziauddin Ahmad moved an amendment to this very Act which reads as follows. He wanted the following to be inserted in the Act in part (a) of clause 9 of the Bill:

"Provided further that any expenditure of extravagant nature intended to reduce the profit shall not be excluded in the calculation of Excess Profits Tax."

This, in fact, is very much the same as the first part of Rule 12. If any Honourable Members would like to compare the two, they can by all means do so just now. I contend that this amendment sought to be moved by Dr. Ziauddin Ahmad and the first part of the proposed Rule 12 are very much the same. Now, with what fate did that amendment meet in this House? Government opposed it and I am going to place before the House the reasons given by them for rejecting it. I am going to quote from the speech of Mr. C. W. Ayers. Now, Sir, I have great confidence in Mr. Ayer's judgment and opinion, and I say so conscientiously. I believe that he is an officer of Government who will not interpret a rule deliberately against the assessee. I believe it conscientiously. At least today I believe it, and I trust I shall continue to believe that for all time. Now, I am going to quote to the House his opinion which he expressed on behalf of the Government in opposing the amendment of Dr. Ziauddin Ahmad. He started his speech by saying this:

"It might be of use to the House if I were to explain what the position is at the present time without the acceptance of this amendment."

Then he went on to explain section 10 (2) (xii) and I will now read to the House his final words:

"I will suggest to the House that in so far as it is humanly possible to tackle that sort of a case, we can tackle it in two ways. In the first place, we have to find out whether it is incurred for the purpose of business. If the answer is 'Yes', then you fall back on Rule 11 which has just been added to the Bill and in the second place, we have to find out whether it is appropriate to that particular period. Are you

[Sir Cowasji Jehangir.]

going to put the assessee at the mercy of the Excess Profits Tax Officer to say that it is extravagant, and that he will not allow it? But if you establish as a fact that it is extravagant and not necessary for the business, then I do suggest to the House that the existing provisions, properly carried out, should give all that the Mover of this amendment desires."

I could not have put it more clearly to the House than Mr. Ayers has done, that the amendment moved by Dr. Ziauddin Ahmad is not necessary to the Department and that it is more or less the same as the first part of Rule 12. I, therefore, in conclusion about this portion of the Rule strongly contend that by Rule 11 and by section 10 (2) (xiii) of the Income-tax Act the authorities have got ample power already with regard to the first part of Rule 12.

Now, Sir, I come to the question of services and bonuses. Here I would refer to another section of the Income-tax Act which is section 10(2) (x). This section deals with the services of employees and their bonuses. In short, it provides that no salary or bonus should be given to an employee of an assessee in excess of what is, in the opinion of the authorities, adequate remuneration and it gives power to the authorities to disregard anything in excess of what they consider reasonable and equitable. The language of the section is perfectly clear. It says:

"Provided that the amount of the bonus or commission is of a reasonable amount with reference to:

- (a) the pay of the employee and the conditions of his service;
- (b) the profits of the business, profession or vocation for the year in question; and
- (c) the general practice in similar businesses, professions or vocations;"

I claim that this section of the Income-tax Act, which applies to the Excess Profits Tax Act, gives wider powers to the Government than are provided in the proposed Rule 12. And that is not my opinion alone. I find that it is also the opinion of Government which they expressed in no uncertain terms. The Federation of the Indian Chambers of Commerce and Industry heard that Government proposed to make some amendment in the Act or wanted to pass some executive orders with regard to bonuses and salaries, and they wrote to Government inquiring whether they had any such intention; and, if they had, they desired to approach Government on this important point. I will now read to the House the reply which the Government sent. It is dated the 8th of May and we are now in November. Government said:

"With reference to your letter No. F-974-461, dated the 19th of April, 1941, I am directed to inform you that no proposal of the nature referred to therein is under consideration. The law on the subject [section 10 (2) (xii) of the Indian Income-tax Act] sufficiently safeguards the revenue against attempts to avoid taxation by the payment of excesses in salaries and bonuses."

Can there be anything more clear? This statement of the Government was made only a few months ago that they were not going to bring in legislation, as they thought they had sufficient powers, and I have quoted to you the powers they have got. Surely, Government cannot suggest now a rule for this purpose having regard to the contents of their own letter. Now, I have dealt with the second point in this rule and I hope I have shown conclusively to this House that the Government have got powers in both directions.

The third is with regard to Directors' fees. Now, Sir, in a public company as everybody knows in this House the shareholders are fairly wide awake to see that the Directors do not get fees more than they deserve and, in the majority of cases in India, the Directors' fees even in very big companies—companies which are concerned with crores of money—are ridiculously low and, on more than one occasion, the shareholders have refused to increase the Directors' fees. But with regard to private companies where the shares are held by the management, they can naturally put up their own fees without any opposition. But the Excess Profits Tax Act of 1940 provides for this. In Schedule I, Rule 7 provides as follows: that no deduction shall be made in respect of Directors' remuneration in excess of the amount paid for Directors' remuneration in respect of the standard period. Therefore, for the purpose of the Excess Profits Tax Act the Directors' fees in private companies, that is to say, companies where the Directors have a controlling interest, cannot be put up more than it was before the war in the standard period, and still my Honourable friend is seeking powers with regard to the Directors. I cannot for one minute understand, Mr. President, how this rule came to be inserted. I can make a guess. This Rule appears in the British Statute. I have got it here, word for word. It is Rule 32. It is word for word in the British Statute. It is possible that, when going through the British Statute, they found that a similar Rule did not exist in the Indian Act and they promptly put it in. But they seem to have lost sight of the fact that they had ample powers already with regard to all the provisions made in this Rule. But there is a reason why the British Statute should have such a provision, because the British Income-tax Statute does not contain any such rule or section such as section 10(2) (x) of the Indian Income-tax Act. There is some sort of reason for inserting it in the British Statute, there cannot be any reason for inserting it in the Indian Statute. I strongly object on behalf of the assesseees and, I make bold to say, on behalf of this House, at this sort of blind legislation. Mr. President, I trust I have conclusively proved that with regard to all the three provisions contained in this Rule, the Government have ample powers. I trust I shall be able to convince the House, but I have no hope of convincing the Government, and if they refuse to accept this amendment, I can only say that it is obstinacy which does not add to their prestige.

The Honourable Sir Jeremy Raisman (Finance Member): Would you like the Bill to be withdrawn in that case?

Sir Gomasji Jehangir: All right, withdraw the Bill. What is the use of always threatening the House that you will withdraw the Bill? You bring in a Bill with a certain number of concessions, you stick into the Bill the most objectionable provisions, and you call it a Bill giving concessions. If it was a Bill merely to give concessions, why do you put in Rule 12? Why do you put in section 10-A? You wanted to make a clean sweep and you thought that with the concessions these other provisions might go through. No, Sir; where there are provisions which are objectionable, it is our duty to point them out. It is our duty to draw the attention of the House to these objectionable provisions. The Government have ample powers. I have pointed them out in the words of the Government themselves in the authoritative letter which I just read out. It is signed by Mr. K. K. Chettur, M.A., First Secretary to the

[Sir Cowasji Jehangir]

Central Board of Revenue. I have not had the pleasure of meeting this gentleman. I have quoted portions from a speech of an Honourable Member who sits in this House. I trust, Sir, that this provision will be omitted, for one reason, particularly, that the insertion of it makes the assessee and those who have to deal with Income-tax and Excess Profits Tax Acts most suspicious. They cannot make out, they cannot understand the insertion of this Rule at such a time as this. I trust that I have made out a case and I hope I will have the full support of this Honourable House for the deletion of this part (b) of clause 8. Sir, I move.

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

"That part (b) of clause 8 of the Bill be omitted."

Mr. Husenbhai Abdullabhai Laljee (Bombay Central Division: Muhammadan Rural): Sir, I rise to support the amendment which has been moved by my Honourable friend, Sir Cowasji Jehangir. I must say, Sir, that the way in which my Honourable friend, Sir Cowasji Jehangir, has placed this amendment and explained the reasons thereof are so very clear and lucid and so very logical and fair that very few more words are required to convince anybody who is prepared to be convinced. He has placed it in such a way that I do not think the Honourable the Finance Member can say that what he has said is anything but the truth and the fact, unless, Sir, as the proverb goes:

"Jae koi jagtoe sootoe hoae tenai jagadvoon mushkel che."

that is to say, "one who pretends to sleep while he is awake, you cannot wake him up". My Honourable friend, Sir Cowasji Jehangir, has made it quite clear that this was not the intention of the Government when Dr. Sir Ziauddin Ahmad asked the Government to go into this matter and it was so stated very clearly by the Government spokesman, a very responsible gentleman and certainly with the consent of the Honourable the Finance Member, that the existing provisions were enough and that there was no necessity for an amendment of the kind by Dr. Sir Ziauddin Ahmad. Then, again, Sir, so late as May last, the Government had no intention whatsoever to bring this in. The only reason that appears as to why the Finance Member has put this in is that because he has to bring forward the amending Bill which gives justice and fairness and which he believes and rightly too, meets the demand of the people and he must have some more checks. If he had confined himself only to the necessary things, I would have certainly congratulated him and told him that that is the spirit in which all concerns which have to deal with Government expect of Government Members. If Government do want more revenue it is open to them to frankly come forward and say so. But to try to make up a little more by indirect methods is, with all deference to the Finance Member, very much like the game played by those income-tax dodgers who try to dodge the authorities. Do Government desire to place themselves in that category?

The Honourable Sir Jeremy Raisman: They desire to place themselves in a position to catch those dodgers. That is the point.

Mr. Husenbhai Abdullabhai Laljee: Then you should lay your cards on the table. You are a Government and not an individual and, therefore, it is only fair that you should honestly and sincerely say what is wanted.

The Honourable Sir Jeremy Raisman: That is what is wanted.

Mr. Husenbhai Abdullabhai Laljee: You have got certain powers and now you want more powers which are not necessary but merely with the intention of giving some loophole to your officers. They will say, "Here are the provisions of section 10(2), but something more is required to be looked into",—although that is redundant. It creates suspicion not in the minds of the assessee only but even in the minds of your officers who will feel that because further sections are added they are required to go deeper into it and something more.

Sir, I do not know how an Income-tax Officer would expect an assessee to show what is "reasonable and necessary". I remember very well that many a time eminent lawyers have said that if you really want some trouble to be created with regard to any clauses or any facts in a contract, put in the word "reasonable", and that word will leave sufficient room for not only going up to the High Court but even to the Privy Council. I hope the Honourable the Finance Member was not advised to put in this word at the instance of some very acute and clever lawyer, to help his officers to go into matters as they like. Then, who is to judge about the various industries? Your officers may be very clever and most of them have got large experience; but surely they have not so much experience of every industry as to be experts in every one of them.

Then, you have to consider that expenses in excess of the usual amount in most of the limited concerns will not be tolerated by a large number of shareholders. Only when we may put in expenses into the capital account, that may benefit the general shareholder, and for that there is sufficient safeguard. But certainly the public at large, who comprise a large number of shareholders, cannot allow the other excess expenses to go into their accounts. The next thing, Sir, is the Directors' fee. My friend, Sir Cowasji Jehangir, has explained this point very lucidly, but let me tell the Honourable the Finance Member that the fees paid in India for services in public companies are very negligible compared to what is paid in England and elsewhere. I do not make a grievance of that for the simple reason that very little work is done in this country by many of the Directors. On many boards it has been a complaint of the shareholders, and rightly too, that in most companies a coterie of gentlemen are always found to be Directors, and sometimes they are Directors of 30 or 40 concerns; and that is why the fee is less. But never have I found an instance where the shareholders have come forward and said that the Directors' fee should be increased. They will never do it and on principle they will not do it, because once they do it they cannot bring it down. This is a care of the shareholders and a care which in principle they cannot divest themselves of. This is a matter which will continue throughout and not only during the war and therefore also the fees are so negligible and there will be no question of thousands but on the whole year it may be a few hundreds; and it will not materially affect the excess profits tax at all. But after all if the fees and bonuses are given then you do collect at least income-tax out of them, and then

[Mr. Husenbhai A. Laljee.]

you have got good reasons to believe that those who once got these bonuses and high fees must keep on a higher standard and they will always demand better pay and bonuses and incidentally go on paying income-tax. It is not a question of a year or two and it will not satisfy the people to set up a principle for a year or two. I do not think any one believes that the war can go on for more than three or four years now. Then why do you do all this?

Then, Sir, with regard to the provision that no disallowance under this rule shall be made by the Excess Profits Tax Officer unless he has obtained the prior authority of the Excess Profits Tax Commissioner, is it intended that every company to be on the safe side should have to make representations to the Commissioner if they have got to make a little increase? Is the Finance Member going to provide a big court or a big staff?

The Honourable Sir Jeremy Raisman: The meaning of the rule is that the Excess Profits Tax Officer if he wishes to take the initiative and apply this section, must first go to the Commissioner of Excess Profits Tax. There is no need for the assessee to do it.

Mr. Husenbhai Abdullahbhai Laljee But to be on the safe side I have to take sanction, and how can I take sanction?

The Honourable Sir Jeremy Raisman: The Excess Profits Tax Officer cannot exercise the powers which this would give him unless he has obtained the prior authority of the Commissioner of Excess Profits Tax. That means that he has to go to the Commissioner and explain the case to him and get his prior sanction before he can disallow under this section.

Mr. Husenbhai Abdullahbhai Laljee I stand corrected. But I say with all the emphasis at my command that this is absolutely redundant, that in fact it will not only create suspicion in the minds of the assessee but will force your own officers to look into matters more than they rightly ought to. It will not only take more of their time but it will also create bitterness between the parties and give cause to go to the appellate court, and what not. When you have got, as Sir Cowasji Jehangir said, all the authority to cover these things, when you yourselves say and admit that there is no need for it, why bring it up at all? Why in this thin House do you put in something which is not necessary? Even if there was a little need for it, why bring it up now? Bring it when the House is full and give us time to consider it. Why do you want to make this radical change within a couple of months? In the circumstances in which we are placed, the House being very thin, I appeal to the Finance Member to give us a fair deal. Say frankly what you want and we will give you, or you can take it because you have got the power. But do not try to create difficulties in our way; do not try to catch people in some insidious ways which are not clear to you or to me. Do not take more powers only on account of some suspicion which you may have, which you may not want but which will only provide safety for yourselves. If all these things are going to be provided for in legislation, I do not see where we can end. Sir, I want fairness and frankness.

Babu Baijnath Bajoria (Marwari Association: Indian Commerce):

12 Noon. Sir, I rise to support this amendment so ably moved by my Honourable friend, Sir Cowasji Jehangir. He has already explained his objections to this rule as it stands and I will say a few words in support of the deletion of this rule. This rule gives power to the Excess Profits Tax Officer 'not to deduct any sum in respect of expenses in excess of the amount which he considers is reasonable and necessary having regard to the requirements of the business'. Sir, I would like to know from the Honourable the Finance Member whether he thinks that the Excess Profits Tax Officer will be such a superhuman person as to know the requirements of expenses in every kind of business or industry. As a matter of fact, I think, Sir, his brain is already too full with the Excess Profits Tax book itself. As I have explained previously, he has not been able to digest this small book so far. He makes mistakes every now and then. He himself does not know what is to be allowed and what is not to be allowed, how it is to be assessed and so on. He runs with his file every now and then for inspiration to the Assistant Commissioner of Excess Profits Tax. If he would first and foremost apply his brain and understand this Act then he may apply his brain to something else. In my opinion, Sir, he cannot have any knowledge, whatsoever, of the requirements of expenses in a business. After all, so far as expenses are concerned, it is those who have to run businesses who know exactly what expenses have to be incurred. You say that if the expenses are unduly heavy then he must have the right to deduct. I repeat the words the Honourable the Finance Member used yesterday that "nobody wants that the money should go down the drain". What probably is in the Honourable the Finance Member's mind is that it is only a got-up expense; the expense has not been actually incurred but it has only been shown in the books of accounts. Is that the idea for having this rule, Sir? I do not think that is a very fair proposition. Well, you must give latitude to the managements of industry and business to run the business in the best way they like. Just as my Honourable friend, Mr. Jamnadas Mehta, criticised the Honourable the Finance Member for the cost of repatriation after that had taken place long ago and he said "why did you not buy the bonds when they were at £82? Why did you allow them to go up to £99?". Similarly, the Excess Profits Tax Officer may say when the accounts books go into his hands after twelve months or eighteen months "why did you incur so much expenditure? This was not worth your while".

Mr. Husenbhai Abdullahhai Laljee: That is exactly what happens.

Babu Baijnath Bajoria: In my opinion this is a power which is wanted for a person who does not deserve it at all. In this war time expenses have all gone up, dearness allowances have already been given by the Government, workers and the staff may have to work very long hours. As a matter of fact, the Honourable the Finance Member said these will be taken into account and there will be no trouble on this score, but if on each and every point you have so much power then you can use it in any way you like. You say of course "let us have this power and this will be very judiciously and very generously used and administered", but we have got some knowledge now of how the Income-tax Act and the Excess Profits Tax Act are being administered at the present moment. If

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it had been administered properly, there would not have been so much resentment both in Calcutta and in Bombay, of which I think, the sounds must have reached the ears of the Finance Member and his two stalwarts sitting behind him. Then there is another point which will create difficulty about this matter. First of all, an assessee is assessed tax on his income by a separate Income-tax Officer, then the same case goes to the Excess Profits Tax Officer

The Honourable Sir Jeremy Raisman: I am told that it would be the same officer.

Babu Baijnath Bajoria: Not the same officer. Do you mean to say that the Income-tax Officer and the Excess Profits Tax Officer are the same in all cases?

The Honourable Sir Jeremy Raisman: Yes, generally speaking the Excess Profits Tax Officer is also the Income-tax Officer for that assessment.

Babu Baijnath Bajoria: This is a news to me. As a matter of fact, the Excess Profits Tax Officers are much less in number than the Income-tax Officers.

The Honourable Sir Jeremy Raisman: Yes, because the number of cases in which there is Excess Profits Tax to be assessed as well as Income-tax is so few compared with the total number of Income-tax cases.

Babu Baijnath Bajoria: Then I will not go further into this question when I am assured that when excess profits tax is assessed the Income-tax Officer and the Excess Profits Tax Officer will be the same person in most cases. My Honourable friend, Sir Cowasji Jehangir, has explained that Government have already got the powers which they want to seek in this rule in other sections of the Excess Profits Tax Act and Income-tax Act. Well, when we wanted day before yesterday to add an Explanation of what was meant by the main purpose of a transaction, the Honourable the Finance Member said "Well, the main purpose of the transaction is very clear. No explanation is necessary. It is redundant in an Act to put anything that is not necessary". Well, if the same principle is applied here, I will say that this section is either absolutely redundant or it is mischievous. It is either of the two. If it is the former, then we do not want it. If it is the latter then we certainly do not want it. Sir, for all these reasons I would request the Honourable the Finance Member to give a second thought to this amendment and to change his views—hopeless though I am in this respect, but still I must appeal again to him to see if he can accept this amendment. Sir, I support this amendment.

Mr. O. W. Ayers (Government of India: Nominated Official): Sir, it has been said on a previous occasion, I believe, that the existing powers in the Income-tax Act and the Excess Profits Tax Act taken together are sufficient to meet all possibilities. I have, however, had some

months' experience since then. I have examined a number of cases and I must confess that my education is still going on . . .

Sir Cowasji Jehangir: If your education is going on still, how many more are you going to propose?

Mr. C. W. Ayers: I must freely confess that I see circumstances and cases which I had never thought of. I believe the same position prevails in the United Kingdom where they came forward with this belated amendment.

I would like to say here, before I go further, with reference to what fell from Mr. Husenbhai Laljee, that there was no question of trying to make up deficiencies in the tax—improperly, I suppose, is the implication—by getting from some assesses tax that we fail to get from others. Nor is there any intention of giving drastic powers to the Excess Profits Tax Officer which he can exercise as he likes and which will not be challenged as long as he gets in more revenue. It was promised some time ago by the Honourable the Finance Member that the administration of this Act, in which administration I am taking part myself, would be equitable and reasonable and sympathetic. I believe I am right in saying that in the course of this Session it has been stated that the administration, as far as it has gone, of this Act, has been sympathetic and reasonable. But now we are invited to believe that we are no longer going to be sympathetic, that we are not going any longer to be reasonable but that we are going to be harsh, autocratic and everything that we should not be. That just is not so and the proof of our desire that it shall not be so is that in the Act is put a provision that no Excess Profits Tax Officer shall seek to disallow any expense, under this proposed new rule, unless he has obtained the prior authority of the highest officer whom he can approach, that is, the Commissioner of Excess Profits Tax of the Province in which he works. It is moreover intended, although there is no need to put it in the Act, that where the Commissioner is of opinion that this rule shall be put into operation, he shall inform the Central Board of Revenue of the facts and of his intended action, the whole idea of that being that the rule shall not be misused and shall not be used in the class of cases to which it is not intended to apply, and also that we shall be getting consistent treatment throughout India

Sir F. E. James (Madras: European): May I ask my Honourable friend one question? Would the Commissioner of the Excess Profits Tax normally be the Commissioner of Income-tax in every case?

Mr. C. W. Ayers: Yes, the same person. I think that some of the statements that have been made on this proposed rule rather tend to cancel out. In one case we are told that the Rule is entirely redundant and that it is entirely covered by existing provisions—section 10 or section 12, of the Income-tax Act, rule 7 and the first schedule of the Excess Profits Tax Act and so on, and, therefore, this is entirely unnecessary. On the other hand, we are told: "You are giving drastic new powers to the Excess Profits Tax Officer and life will not be worth living." The two things cannot subsist together. But the fact is, that when Sir Cowasji Jehangir shows, as he does show, that a very large number of

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cases indeed, which at first sight you may think this rule is intended to meet and deal with, are already covered by existing provisions, and that is often true, it shows what is the claim made for this rule, that it is intended to meet the exceptional, the quite exceptional case, of extravagant and exceptional expenditure. Now, I would like to say this: it is exceptional and one does not expect to have to apply the rule very often. I should be very surprised if it is applied in more than a very few cases; but I must say this; that the result of my further education—which has already been going on for some 14 or 15 months—is that I do realise that there are and there can be a certain number of cases which are not covered by any of the existing provisions. They are few, but they are cases which ought to be met. If you have 99 per cent. of the excess profit tax assesses fully covered by existing provisions and the odd one, the other one is some one with a very acute range of vision, and one with very good advice behind him, and he finds that in the circumstances of his business he can do what the other 99 cannot. I think in justice, not to the Government only but to the other 99 per cent. of taxpayers, we should have powers to see that such an avoidance, which is just possible, does not succeed.

Now, Sir Cowasji Jehangir went into some further details. He spoke about companies and he spoke too as though the contrast was between a public company which wears the emblem of purity and good intention all the time because the shareholders will not allow anything else, and the private company. The contrast is not that. There is the contrast between the director-controlled companies and the company which is not director-controlled; and you may have a company—and I must say that I have seen a case of this type and I know the intention—the intention is to avoid practically all the excess profits tax that can be calculated as payable. The shareholders are all relations but the directors do not hold the majority of the shares. these directors do not hold 50 per cent. of the shares and so it is not director-controlled and rule 7 does not apply to that company

Sir Cowasji Jehangir: When were the transfers made in the particular case you are quoting?

Mr. C. W. Ayers: No transfers were made. This is a case that is existing. These were the circumstances of a particular case where the directors have not and did not control.

Mr. Husenbhai Abdullahhai Laljee: Have you had such a case as that?

Mr. C. W. Ayers: Yes. You can very readily see—I need not labour the point—that if rule 7 does not apply, the directors who may have been drawing quite moderate sums, intending to take the rest in dividends in the family group, now say “My service is not the same as when it was a mere paltry few hundred rupees a year. If you are going to apply the ordinary rule, I intend adding a few 0’s to my previous salary,” and I do not think that the Excess Profits Tax Officer can challenge that claim as not being reasonable, and he can get away with it.

Sir Cowasji Jehangir: You forget that there is new Section 10A.

Mr. C. W. Ayers: I am speaking of rule 12. . . .

Sir Cowasji Jehangir: When you argue that he can put on so many more 0's to his director's fees, you forget 10A—the new section.

Mr. C. W. Ayers: No; this is not a transaction or operation. It is payment of a remuneration. My suggestion is this; that remembering that the excess profits tax is essentially a matter of comparisons and that if remuneration in the standard period was 500 rupees and it is 5,000 for the chargeable accounting period we should either have the tax upon the difference of 4,500 or we should not. If it is a family concern we say we should; and if it is a director-controlled company, in fact we do. But this is not a director-controlled company. Without this rule we do not get anything, unless we say that this man is not worth 5,000 rupees a year—he may have been worth it all the time, but the point is that he did not get it in the early years and we should act on the basis of comparison.

Now, that is the sort of exceptional, very exceptional case—although I expect my education still to go on and I expect still to be surprised at some of the astute sets of circumstances that will be presented to me with the implication that we cannot do anything in those circumstances. Now, I do suggest that these powers are not a matter of just following the United Kingdom hoping that they will be of some use, but the matter has been very carefully considered. There are a few cases, to deal with which, the House itself will agree, this rule is necessary, and if you pass this rule, the Excess Profits Tax Officers under proper control will be empowered to meet such cases.

Sir Cowasji Jehangir: What about the first part of Rule 12? What about bonuses? The Honourable Member has only dealt with Directors. May I point out that the Honourable Member who just spoke only dealt with Directors. I dealt with three points, and I quoted actually the words of the Government Members themselves.

The Honourable Sir Jeremy Raisman: Sir, I had not intended to speak on this amendment. I was going to reserve my remarks for the stage of the Third Reading, but my friend, Sir Cowasji Jehangir, does not consider that he has had a complete answer. It is not for me to go over the technical ground which Mr. Ayers, who is a great expert not only according to Indian standards, but even according to the standards in the United Kingdom, has covered. But I will take up the point which my friend, Sir Cowasji Jehangir, thinks has not been dealt with. His argument is that the provisions of the rules in so far as they deal with the question of what is reasonable and necessary having regard to the requirements of the business are already covered by the existing provision in the Income-tax Act, 10 (2) (xii), under which the only expenditure which can be allowed is expenditure laid out or expended wholly and exclusively for the purpose of such business, profession or vocation. Well, there is a slight difference of criterion. For the purposes of the Income-tax Act, all that the assessee has to prove is that the expenditure, whatever the scale of it might be, was genuinely laid out wholly and exclusively for the purpose of the

[Sir Jeremy Raisman.]

business. Now, at the present moment, we the Treasury are in the position of having something like four-fifths interest in the profits of the business, so we are going a stage further. This is not a matter of tautology or redundancy. We go a stage further and we say—it is true the expenditure may be laid out wholly and exclusively for the purpose of the business. It may, however, also have the effect of entirely doing away with the excess profits tax liability, and what we want to be satisfied is that it was reasonable and necessary having regard to the requirements of the business. Now, that is a slight advance on the position. It is not a matter of redundancy, and we realise that to put such a power quite simply at the disposal of the Excess Profits Tax Officer for him to use every day in every assessment would be unjustifiable, would be dangerous, and that is why we have not only provided in the rule that he must first get the prior authority of the Commissioner of Excess Profits Tax, but as Mr. Ayers pointed out, we also intend that applications in respect of these cases shall come to headquarters,—in other words, we are asking for an entirely exceptional provision in order to meet entirely exceptional cases, and our justification is that our own experience has shown us that it is necessary to have this power. The proof of our *bona fide* attitude in this matter is that we ourselves resisted an amendment of this type only a few months ago

Sir Cowasji Jehangir: You do not take into consideration the reasons given at that time.

The Honourable Sir Jeremy Raisman: I am taking into consideration the reasons given. We genuinely believed that we were sufficiently provided to deal with the type of situation which Dr. Sir Ziauddin Ahmad wanted to arm us against, but since that time we have dealt with a number of cases; since that time we have had further practical experience of the working of this Act, and we now come to you,—we admit that we did not think it was necessary, but we have got more experience,—we ask you to assist us,—and I would again appeal to the House to assist us in dealing with the exceptional type, the very wealthy type of assessee who can pay, who has no difficulty in engaging the highest, the most expensive legal and accounting talent in order to dodge his liabilities. This is a Bill in which we are prepared to give a very valuable concession to 99 per cent. of assesseees who are affected by it, but we do at the same time ask the House to give us a little more power to deal with the exceptional case of the man who is spending all his time and a good deal of his resources in thinking out methods of defeating our object. That is the reason for the new rule which we seek to introduce. There is nothing, I assure Mr. Husenbhai Laljee, there is no *arriere pense*, there is no subtle or hidden motive. The meaning of this section is quite clear. The words used are ordinary words, and the authority under whose sanction alone the initiative can be taken is clearly indicated here, and we have gone further and pointed out that cases of this type will come to headquarters

Mr. Husenbhai Abdullahbhai Laljee: Is that the assurance which the Honourable Member gives us? May we take it as an assurance?

The Honourable Sir Jeremy Raisman: Yes, I am prepared to give that assurance. I gave an assurance in connection with the original Bill that

cases under section 126 (1) which come to headquarters or the Central Board of Revenue would be dealt with under my personal attention and supervision, and that, I may say, has been carried out, and cases of any importance have come to me, and I may say that I have myself interviewed assesses and allowed them to argue their case before me personally. And when I say that when cases come to headquarters, I mean they receive careful personal attention of the highest authorities in the Department, and even of myself. Therefore, there is no question here of handing a power lightly to every Income-tax Officer in the land to use as a weapon of harassment and oppression.

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

"That part (b) of clause 8 of the Bill be omitted."

The motion was negatived.

Mr. President (The Honourable Sir Abdur Rahim): There is another amendment.

Sir Cowasji Jehangir: Sir, I have got another amendment. I beg to move:

"That in part (b) of clause 8 of the Bill, to sub-rule (2) of the proposed rule 12, the following be added at the end:

'and, if dissatisfied with the decision of the Appellate Tribunal, may appeal in the prescribed time and manner to the High Court'."

Sir, I think the best arguments for my amendment have been furnished by the Treasury Benches. They have shown the extent of the wide powers they are taking under this rule, they have shown the precautions they have already taken, and an assurance has been given that any cases under this rule will come up before the highest authorities. I desire that the matter should go up to the High Court. If a man feels that justice has not been done under these wide powers by all officers right up to the top, let him go the High Court. I do not see how, after the speeches made by Honourable Members on the Treasury Benches, they can resist this amendment. It may be that it is exceptional, but they have also proved that the new rule is exceptional. They have shown by their own words that they thought it necessary to take considerable precautions, they thought it necessary to take all the precautions that were in their power. Now, I ask that further precautions should be taken, that the assessee should be allowed to go to the High Court. If that is done, then the assessee will feel that he has some tribunal to go to, which at least in India today is considered the highest, the fairest and the most impartial in the land. We have heard a good deal about the power that is given to the higher authorities in the Income-tax Department to revise the decisions of officers below them. I must admit that I personally have no great experience of how those powers of supervision are exercised. But let me tell the Government Benches that I have heard a good deal—I am not in a position to prove it, but I do say this, that there are serious misgivings in the public mind, specially amongst those experts who have to advise the assessee that, more often than not, you find that the superior officers uphold the decisions of those below them. As I say, I have no personal experience, but I must echo this fear, this apprehension which is

[Sir Cowasji Jehangir.]

in the mind of the assessee. And there are many perhaps in this House who, if they desire to speak, will tell you that this apprehension does exist. It does exist, rightly or wrongly, specially about the Income-tax Department. We have more experience of the Income-tax Department than of the Excess Profits Tax Department. We have very little experience of the Excess Profits Tax Department because it is very new, but with regard to the Income-tax Department I say this apprehension does exist, and it is my duty to bring it to the attention of the House. The only way in which you can allay that apprehension is to allow an appeal to the High Court even on facts, because this clause will deal mostly with facts. If it is the opinion of Government that in one case out of 100 will come within the mischief of this new rule,—I state that case has a right to go to the highest authority in the land. If you are out to catch that one man, by all means catch him.

The Honourable Sir Jeremy Raisman: It will get to the High Court.

Sir Cowasji Jehangir: No. You will jolly well see that it does not. You will jolly well put up a fight in the High Court, because the High Court will not hear appeals where it is a question of fact and not of law. (Interruption.) You will fight in the High Court not on the merits of the case but on a technical point, that it is a question of fact and not of law. And I contend that even if it is a question of fact it must go to the High Court, and you on your own confession have shown how wide the powers are, what precautions you yourself have had to take, and will take further, over and above what is in the provision. Then, surely, there is a case made out that the assessee should be allowed to go to the High Court in the one case out of 100. If that one case out of 100 has within its power to take the best legal advice, the best technical advice, and still he contests it, then surely he has some reason for doing it; and if you contest it, you have every right to do so and we shall give you every help to contest it,—but you shall not be the final judges. The Department shall not be the final judges. The final judges shall be the High Court, and that is what I desire that the House should do, and I ask the House to consider the amendment favourably.

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

“That in part (b) of clause 8 of the Bill, to sub-rule (2) of the proposed rule 12, the following be added at the end:

‘and, if dissatisfied with the decision of the Appellate Tribunal, may appeal in the prescribed time and manner to the High Court.’”

The Honourable Sir Jeremy Raisman: I oppose this amendment and the argument is almost exactly the same as the arguments which were adduced in the case of clause 6, of the new section 10A which is being inserted in the Act. What I would like to emphasise is that the assessee in this type of case will not be a poor or resourceless individual. The kind of assessee in whose case a disallowance will have been made will be well provided with the means and the advice to pursue his claim to the highest authority which is open to him, and I have very little doubt that, if it is at all possible, he will bring his case before the High Court. But the fact remains that in the scheme of income-tax the High Court's function as conceived by this Legislature hitherto has been to

deal with points of law and I can see no reason why we should depart from that in this case. I have very little doubt myself, contrary to my Honourable friend, Sir Cowasji Jehangir, that, somehow or other, the type of case which would arise under this section would find its way to the High Court.

Sir Cowasji Jehangir: Will it be heard on its merits?

The Honourable Sir Jeremy Raisman: I say in certain types of cases we ourselves shall endeavour to take our stand on the basis that these are questions of fact and not of law but we are by no means always successful in that contention. (Interruption.) When the assessee is in a position to brief eminent counsel they are usually able to find a point of law lurking about somewhere or other which brings the case within the purview of the High Court. Sir, I oppose the amendment.

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): This is a law question, besides, it is a question of giving confidence to those who are going to be assessed, and to that extent it is necessary that the matter should be finally decided by the High Court. At present the High Courts do not interfere unless the question is purely one of law. The Honourable the Finance Member has been hinting, as he did last time, that the cases, though decided on facts, could in some manner be turned into a question of law. I may inform the House that there is only one kind of case where a question of fact may be construed into a question of law, and that is when a decision has been arrived at without any evidence at all. If there are no reasons given for deciding a question of fact and there are no materials on which the question of fact can stand, the High Court has decided that such cases will be considered to be cases in which there arises a law question. Besides that the High Courts are always jealous of seeing that no question of fact is taken to the High Court. Therefore, Sir, it is very necessary. This is a new kind of tax and the tax is of large amounts and, therefore, the final word should be with the High Court and thus this amendment has been put forward. Cogent reasons have already been shown why this amendment should be adopted.

We know how these questions under the Income-tax law are decided by the Income-tax Officers. We in practice know that many intricate and complicated questions arise and the Income-tax Officers who are not so very competent decide them as they like. Even before the tribunal, the questions of fact are so intricate that different interpretations are put on them. It is therefore very necessary that the final authority to decide those intricate cases even on facts, should be the High Court.

Babu Baijnath Bajoria (Marwari Association: Indian Commerce): I rise to support this amendment. The Government have agreed that they are taking these powers under Rule 12, which will be exercised only in very exceptional cases. When they take powers from this House, they always say that they will use it only very very rarely but, Sir, after they have got the powers, who is to check them if they use it whenever they like.

The Honourable Sir Jeremy Raisman: Does the Honourable Member think that the Commissioner of Income-tax can possibly review all the cases at the initial stage?

Babu Baijnath Bajoria: As I have already said before, the excess profits tax assessments are being made, not by the Excess Profits Tax Officers but by guidance and inspiration from the superior officers. I would like to know from the Honourable the Finance Member how many cases have been decided by the Income-tax officers without any reference to the Inspecting Assistant Commissioners. If these powers are to be used only in exceptional cases, then the chance of such cases going to the High Court are still more remote. Suppose only one case out of a thousand goes to the High Court. Then what objection have the Government got to face the High Court in that one case out of a thousand? People do not go to the High Court only for the sake of seeing those lofty buildings. They have to pay for every minute when they are there and they would not spend money, unless they were sure that every rupee they will spend will also bring another rupee back with it. Then and then only will they go to the High Court.

Sir Cowasji Jehangir: They will think a thousand times before they make lawyers partners in their business.

Babu Baijnath Bajoria: The Finance Member is taking all these powers to put them in the Reserve Bank. He is banking all his powers. Then, Sir, about this Appellate Tribunal. I do not mean to cast any reflection on the Honourable Members of that Tribunal. They are all very esteemable men but, after all, by whom are they appointed? As far as I know, they are appointed by the Central Board of Revenue and by the Finance Member himself.

The Honourable Sir Jeremy Raisman: The Finance Member is not the same thing as the Central Board of Revenue.

Babu Baijnath Bajoria: I think he is over the Central Board of Revenue.

The Honourable Sir Jeremy Raisman: The appointments are made either by the Governor General or by the Governor General in Council.

Mr. Husenbhai Abdullahai Laljee: On whose advice may I ask?

The Honourable Sir Jeremy Raisman: In these cases, on the recommendation of the Public Services Commission.

Babu Baijnath Bajoria: I have not followed exactly . . .

Mr. J. F. Sheehy (Government of India: Nominated Official): The Accountant Members were appointed on the recommendation of the Federal Public Service Commission and the Judicial Members were appointed on the recommendation of the High Courts.

Mr. Husenbhai Abdullahai Laljee: Has the Finance Department or the Central Board of Revenue any voice in that?

The Honourable Sir Jeremy Raisman: The appointments are actually made by the Governor General in Council.

Mr. Husenbhai Abdullabhai Laljee: Have they any voice?

The Honourable Sir Jeremy Raisman: Well, of course. In reply to the insinuation of my friend's question, I can tell him that the recommendations as made by the Public Service Commission and by the High Courts were adopted.

Sir Cowasji Jehangir: What about the re-appointments when their term of office is over.

Babu Baijnath Bajoria: The procedure is more or less what we find in connection with adjournment motions. When you yourself are pleased to allow an adjournment motion

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member had better leave that alone.

Babu Baijnath Bajoria: I am mentioning it only by way of analogy

Mr. President (The Honourable Sir Abdur Rahim): No, no. We do not want any analogy. The Governor General ought not to be discussed here.

Babu Baijnath Bajoria: I bow to your ruling but still we have got this in our mind that these appointments by whomsoever made the Finance Department has still got a dominating voice over them. I mean in the appointment of the members of this Tribunal. In these circumstances it is just possible that we should go to the higher judicial authorities than the Appellate Tribunal in difficult cases involving large sums of money and Sir, the reason why the Honourable the Finance Member does not want to accept such amendments gives rise to an apprehension in our minds. Why are they so shy to face the High Court

The Honourable Sir Jeremy Raisman: Why not take them to the Privy Council? Why not put the Privy Council in the Act?

Sir Cowasji Jehangir: It is bound to go to the Privy Council, if it is a big case.

Babu Baijnath Bajoria: On these grounds I will support this amendment.

Mr. President (The Honourable Sir Abdur Rahim): The question is: "That in part (b) of clause 8 of the Bill, to sub-rule (2) of the proposed rule 12, the following be added at the end:

and, if dissatisfied with the decision of the Appellate Tribunal, may appeal in the prescribed time and manner to the High Court'."

The Assembly divided:

AYES—20.

Abdur Rasheed Chaudhury, Maulvi.
 Bajoria, Babu Baijnath.
 Banerjee, Dr. P. N.
 Bhagchand Soni, Rai Bahadur Seth.
 Chattopadhyaya, Mr. Amarendra Nath.
 Dam, Mr. Ananga Mohan.
 Datta, Mr. Akhil Chandra.
 Deshmukh, Mr. Govind V.
 Ghiasuddin, Mr. M.
 Gidney, Lieut.-Colonel Sir Henry.

Jehangir, Sir Cowasji.
 Kushalpal Singh, Raja Bahadur.
 Lalchand Navalrai, Mr.
 Laljee, Mr. Husenbhai Abdullabhai.
 Maitra, Pandit Lakshmi Kanta.
 Manavedan, Raja T.
 Mehta, Mr. Jamnadas M.
 Parma Nand, Bhai.
 Sant Singh, Sardar.
 Sivaraj, Rao Sahib N.

NOES—36.

Abdul Hamid, Khan Bahadur Sir.
 Ahmad Nawaz Khan, Major Nawab Sir.
 Aiyar, Mr. T. S. Sankara.
 Aney, The Honourable Mr. M. S.
 Ayers, Mr. C. W.
 Bewoor, Sir Gurunath.
 Boyle, Mr. J. D.
 Buss, Mr. L. C.
 Caroe, Mr. O. K.
 Chapman-Mortimer, Mr. T.
 Clow, The Honourable Sir Andrew.
 Daga, Seth Sunderlal.
 Dalal, Dr. R. D.
 Dalpat Singh, Sardar Bahadur Captain.
 Dehejia, Mr. V. T.
 Gopalaswami, Mr. B. A.
 Gwilt, Mr. E. L. C.
 Ikramullah, Mr. Muhammad.
 Ismael Ali Khan, Kunwar Hajee.

Jawahar Singh, Sardar Bahadur Sardar Sir.
 Kamaluddin Ahmed, Shams-ul-Ulema.
 Lawson, Mr. C. P.
 Maxwell, The Honourable Sir Reginald.
 Miller, Mr. C. C.
 Mody, The Honourable Sir H. P.
 Muazzam Sahib Bahadur, Mr. Muhammad.
 Mudaliar, The Honourable Diwan Bahadur Sir A. Ramaswami.
 Pillay, Mr. T. S. S.
 Prior, Mr. H. C.
 Rahman, Lieut.-Colonel M. A.
 Raisman, The Honourable Sir Jeremy.
 Scott, Mr. J. Ramsay.
 Sheehy, Mr. J. F.
 Spence, Sir George.
 Sultan Ahmad, The Honourable Sir.
 Thakur Singh, Captain.

The motion was negatived.

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

"That clause 8 stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

Clause 9 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Sir Jeremy Raisman: Sir, I move:

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

I would only add a word of advice to my friends who have brought forward various amendments and also to the commercial bodies who stand behind them. The main object of this Bill is known to those bodies and to the Members here and I would remind them that whenever Members seek to obtain amendments of the existing law in order to ease certain hardships and to improve the administration of the tax from their point of view or to give certain concessions, they must realise that we also on our side are continuously reviewing the administration of the tax and the loopholes in the existing system. They cannot expect that we shall

come forward with jam and no pill. There are two sides to every picture. While we are anxious to be fair to the assesseees, we must also be fair to the general interests of the country.

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

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

Sir Cowasji Jehangir: Sir, on the third reading of this Bill, I only
1 P. M. desire to refer to one point and that is with regard to the exact position of assesseees under the Excess Profits Tax Act, *vis-a-vis* the Government. We were told that the assesseees are the trustees on behalf of the Government, that since the Government share in the profits to the extent of three-fourths and one-fourth—three-fourths being the Government's share and one-fourth being the assessee's share—the assesseees are the trustees on behalf of the Government. Well, Sir, I contest that expression of 'trustee'. The assessee is not a trustee on behalf of the Government. The assessee, if a company, is a trustee on behalf of the shareholders. This phrase, that the assessee is a 'trustee' on behalf of the Government, savours very much of national socialism and of communism. We have not yet reached that stage in our history when Government can claim that all the business of all the peoples in India should be nationalised and belong to the Government. The Government are the Collectors of taxes which this House levies. It is their duty to see that they get the proper tax. Beyond that they have no further functions with regard to the business of the assesseees. The masters of those businessees are the assesseees; it is for the assesseees to see that the business is managed in the interests of those who own them. This expression that fell from the Honourable the Finance Member has received very wide attention in India.

The Honourable Sir Jeremy Raisman: May I interrupt the Honourable Member for one moment to say that in the circles in which this expression may have received wide currency or wide attention, the saying that "the Finance Member is now a senior partner" had already gained previous currency.

Sir Cowasji Jehangir: Yes; that was to show that the Honourable the Finance Member was taking more than his dues.

The Honourable Sir Jeremy Raisman: That may be, it is a matter of opinion.

Sir Cowasji Jehangir: If the Honourable the Finance Member claims that he can put his finger in the pie, he is much mistaken. He cannot, and under no section of this Act can the authorities claim to interfere with the discretion of the owners of business. The point I desire to emphasise is this. Since it has been alluded to by the Honourable the Finance Member, and I repeat that his words have been, shall I say, radioed far and wide, I think that such a protest as I make today on this occasion is one that is necessary and should be taken note of.

Babu Baijnath Bajoria: Sir, I should like to make a few remarks only. Firstly, I must tell the Honourable the Finance Member that the amendments which were moved by us were made only with this idea that Government should also know the other side of the thing. The House even as it is at the present moment, if we do not say anything of the other side, however bitter it may be to the Honourable the Finance

[Babu Baijnath Bajoria.]

Member, will not properly function and we will be lacking in our duty as Members of this House. There is another good result which we achieve from the moving of these amendments. Even if we are not in a position to carry the amendments, the discussion of those amendments in the House gives some assurance and remarks which fall from the lips of the Honourable the Finance Member and these act as a guidance to the Members of the Income-tax Department in assessing cases.

Sir, I should like to say that the function of the Income-tax Department in making assessment should always be such as to make the assessee feel satisfied that a fair assessment has been made. It should not be that the assessee should go away dissatisfied, thinking that a great deal more has been squeezed out of him and that whatever he had to say had not been given due and proper consideration. It is no use telling this House as the Honourable the Finance Member did the other day, 'you have the right of appeal'. Is it the intention of the Honourable the Finance Member that the number of appeals should increase. I think not. Justice should be administered in such a way that there should be fewer and fewer appeals. That will give confidence to the assessee in the working of the department and not in the other way round. Sir, as a matter of fact as far as my knowledge goes, the number of appeals are going up and this shows that the assessee is not satisfied with the assessments which are made. With your kind permission, Sir, I will read a few lines from a telegram which has been received by me yesterday.

Mr. President (The Honourable Sir Abdur Rahim): It is rather late now. That telegram must relate to clauses of the Bill which have already been passed.

Babu Baijnath Bajoria: If you permit me to read one or two sentences from this telegram, it will show that this is the proper occasion to quote from this telegram.

Mr. President (The Honourable Sir Abdur Rahim): He cannot quote now. He can make it part of his own speech.

Babu Baijnath Bajoria: All right, Sir. Then these are my own views. The Honourable the Finance Member's remarks in this House have increased the panic of the Indian mercantile community. His reference to provision of appeals is considered by the people at large as indicative of his approval of unwarranted harassment of the Indian mercantile community and it has caused great surprise. I do hope, Sir, that the Finance Member will still put matters right. Reasonable administration should not rely on numerous appeals. The merchants should not be forced to spend considerable time and energy and money in appeals to the detriment of their business, they should not be subject to prolonged and harassing enquiry by the Income-tax Officer to start with and, subsequently, appeal after appeal. The confidence in appeals has been greatly shaken owing to the conscience of the assessing officers being controlled from above. Well, Sir, this is the general impression in the country. What is going on in the great cities which after all give the greatest amount of money to the Finance Department? The Finance Department should not act in such a way as to kill the goose that lays golden eggs. The administration

of this very complicated and difficult Act should be done generously and with equity and justice and satisfaction should be given to the assesseees so that they may think that unfair tactics have not been adopted against them.

Mr. Huseebhai Abdullahai Laljee: Sir, I admit that the Bill before the House introduced by the Honourable the Finance Member is in the interests of the assesseees. I wish, Sir, that the Honourable the Finance Member would have taken our suggestions as coming from those interested in the assessment. In that case the Honourable the Finance Member could have taken much pride in piloting this Bill as that would have given more satisfaction to all and would have done the right thing, without any reserve.

Sir, a lot has been said about appeals and other things, and the only object that the businessman has in asking for appeals is that he wants to have a check over the activities of officers. No businessman really wants to go to court and he cannot afford to go to court, at least nowadays when he has to keep an important person in his office to attend to income-tax affairs. So I can give the assurance that the only object in asking for appeals is to have a check on over-zealous officers.

With regard to the remark of the Finance Member that he is a senior partner on behalf of the Government who have a large share in it, I have never taken it seriously. Having known all along the policy and practice that prevails in Great Britain and of this Government and still more of the people of Great Britain which is a guide to us, I never think that the time has or will come soon when Government would look into private affairs as national affairs or affairs of their own. It is only to support his argument that he says he is a senior partner or he is interested in large property or that we are trustees on his behalf. Here is a wonderful partner or a senior partner who claims to be much more interested than others who will not contribute a farthing towards the losses or when there is an attack on the industries or commerce from outside. Here is the wonderful partner who claims to be a senior partner and an interested partner, but when the concern is in trouble or has some losses to meet, he shall not contribute a farthing from his purse, far less will he be a party to give the protection which other civilised governments give. His only argument was that he had a right and he wants to justify it; but at the same time he will not contribute to maintain the prosperity of the firm in case of difficulty.

I congratulate the Finance Member once again on bringing up this Bill in the interest of the assesseees. And I hope that when he brings forward such Bills next time he will try to avoid some of the things to which we have taken objection on behalf of the people who are being assessed.

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

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

The motion was adopted.

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

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

THE RAILWAYS (LOCAL AUTHORITIES' TAXATION) BILL.

The Honourable Sir Andrew Clow (Member for Railways and Communications): Sir I move:

"That the Bill to regulate the extent to which railway property shall be liable to taxation imposed by an authority within a Province, as reported by the Select Committee, be taken into consideration."

This is a difficult and can be a controversial subject. But the House will observe, I hope with gratification, that the Report of the Select Committee is unanimous. That unanimity, however, was only achieved by cutting out certain portions of the Bill and what we have done in effect is to restore, both in letter and in spirit, the position as it subsisted prior to 1937. The portions that were cut out were put in by us to clear up certain doubts and make the position more satisfactory, but Professor Banerjee and others pointed out that whatever their intention they could be used so as to produce an essentially different position from that which was in force prior to the passing of the Government of India Act. In view of that and of my own professed intention, I felt that though I could easily suggest improvements on the old position, I should concur in what appeared to be the general view of the Select Committee and permit the improvements, which we had attempted to effect, to disappear.

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

"That the Bill to regulate the extent to which railway property shall be liable to taxation imposed by an authority within a Province, as reported by the Select Committee, be taken into consideration."

Dr. P. N. Banerjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, the Bill, as it was originally introduced in this House, was of a very unsatisfactory character and contained many provisions of a retrograde nature. In the course of my speech at the second reading stage, I pointed out these, and I am glad to find that the Select Committee have eliminated those provisions from the Bill. This would not have been possible had it not been for the assistance which was given by the Honourable Member in charge of Communications. Sir, the Bill, as it has emerged from the Select Committee, as has been just pointed out by my Honourable friend, Sir Andrew Clow, restores the position to that which existed from 1890 to 1937. But, Sir, can we be satisfied with this situation? The Railways Act was passed in 1890, and, during this period of half a century, revolutionary changes have taken place in almost all the countries of the world. Is India expected to remain stationary in respect even of matters of comparatively small importance? The emphatic answer to this question should be "no". Sir, apart from the intellectual progress of the country during this period, many changes have occurred in respect of the position of local bodies *vis-a-vis* the railway administration. In the first place, in 1890, most of the railways were Company-managed, whereas, at the present moment, almost all the railways—there are only a few exceptions—are State-managed and State-owned. In 1890, the Government was a disinterested arbitrator in disputes between local bodies and the railway administration. But, at the present moment, the Central Government is an interested party. Secondly, in olden days, the officers of Government, very often the Commissioners of Divisions, to whom the adjudication of disputes was entrusted, were men of knowledge and with practical experience of the working of local bodies. Now, however, the situation

has changed in this respect. Thirdly, local self-government has made considerable progress during this period of half a century and local bodies are now more assertive and more independent. In view of this altered state of things, the attitude of the Government and of this House should also change. What we want at the present moment is that the Bill should be substantially improved. In the course of my last speech, I made detailed suggestions with regard to the improvement of the Bill. I spoke at considerable length and at the present moment I shall be very brief.

Now, what should be done to improve this Bill at the present stage may be summarised under three heads. In the first place, the provisions relating to notifications and so forth by the Central Government should be deleted. Secondly, a proper basis of assessment should be determined and provided in the Bill. Thirdly, a proper procedure should be adopted for the adjudication of disputes as between the local bodies and the railway administration. Now, as regards the first point, I understand the Government are unable to accept the suggestion made by me. I will, therefore, wait for a better opportunity instead of pressing my demand at the present moment. As regards the second, namely, a proper basis of assessment, I urged that question at some length in the course of my last speech and suggested that the principles laid down in the Taxation Enquiry Committee's Report might well be adopted. It is a matter of great regret to me that the Select Committee did not go into this question. There is not enough time for this House to consider this question, because, it is a somewhat complex one, and, therefore, I shall not press this demand of mine at the present moment. I will wait for a better opportunity in the future. As regards the third point, namely, the proper adjudication of disputes as between local bodies and the railway administration, I have given notice of two amendments, one is No. 6 on the original list, and the second is No. 1 on the supplementary list. I would myself prefer the amendment on the original list, but I understand that it is not acceptable to Government; therefore, I will move the amendment on the supplementary list. If these amendments are accepted by the Government and by this House, they will go some way, a considerable way, towards improving this Bill. I support the motion which has been moved by my Honourable friend, Sir Andrew Clow.

Maulvi Abdur Rasheed Chaudhury (Assam: Muhammadan): Sir, I was a member of the Select Committee and we had two sittings. In the first sitting, we could not compose our differences.

An Honourable Member: You cannot disclose it.

Maulvi Abdur Rasheed Chaudhury: In the second sitting, we were in a compromising mood and we effected a compromise, and all of us are very happy that all the contentious portions of the Bill have been omitted. I remarked then that I would have been glad if the Government would have got a little more power and the local bodies had got the advantages of a judicial officer for the assessment of taxation on railway property. I find that Dr. Banerjea has brought an amendment to that effect. It may be said that the amendment is uncalled for, as the Bill which was in existence before has not been altered in any way. But I may say, as I said then, that even if the Government take over a little more power, it

[Maulvi Abdur Rasheed Chaudhury.]

will be of advantage to the local bodies if they can get the advantage of a judicial officer for the purpose. I think this aspect of the question will be considered by the Government when the amendment is moved, and the House will also consider whether that amendment should be supported. Sir, I support the motion.

Mr. C. P. Lawson (Bengal European): Mr. Deputy President, like my Honourable friend, Dr. Banerjea, I shall not delay the House very long over the few remarks I have to make. The criticism of this Bill, as far as I remember it, was to the effect that the Honourable the Communications Member was, so to speak, leading us up the garden path. I, personally, acquit the Honourable Member of any such horticultural intentions; but, however, that may be, the report of the Select Committee makes it abundantly clear that if the charge that, while purporting to return to the *status quo*, he was in effect attempting to get more powers for himself, that charge has now been disposed of by the report of the Select Committee. The Report of the Select Committee makes it clear that the Bill now merely restores the *status quo*. This being the case, it does appear that in moving further amendments this *status quo* is once again to be altered the other way; and it may be argued that Government having agreed to restore the *status quo* in the first instance might now insist that it remains entirely at the *status quo* and that such amendments as have been tabled could be opposed from this point of view. But I have, in the meantime, investigated a number of representations from my own part of the world and I am convinced that certain inequalities in the administration of the old Act have undoubtedly occurred. These inconsistencies rather than inequalities have, I think, arisen from two causes. The first, I think, was that in these questions of assessment by an officer under the present clause 8 of the Bill, the officer in question sometimes made his assessments from different points of view and also the officer in question varied in status; and I am inclined to agree too that it would be as well to circumscribe these two particular items, so that a greater degree of consistency would be achieved. This being so, we on this side are to that extent prepared to support Dr. Banerjea in the supplementary amendments that he has put forward. But I think, Sir, that over and above this, Government have already gone so far to meet the criticism that has been advanced that it would be reasonable to expect them to rest there, and from the point of view of saving time, it might be judicious on the part of people moving the other amendments not to move them and rest on the two amendments put forward by Dr. Banerjea. Sir, our general attitude regarding this Bill may possibly save time in the later stage I having made this clear now.

Mr. Jamnadas M. Mehta (Bombay Central Division : Non-Muhammadan Rural): Sir, I rise to support the motion made by the Honourable the Member for Communications. My friend, Mr. Lawson, said, that there was already a charge against Government that they were trying to use this section for increasing their power. It was not merely a charge, but it was a fact. The Select Committee's Report, to which my friend's own signature is appended, makes it quite clear that that was the original object of the Bill, and though it was not intended, at least the results would have

been there. I shall read from the Report of the Select Committee itself. In paragraph 2 the Committee says:

"We have omitted the words 'and to such an extent as' in sub-clause (1) and the whole of sub-clause (2) of clause 3 of the Bill. The omissions represent additions to the wording of section 135 of the Indian Railways Act, 1890, which are in our opinion more than merely clarificatory and definitely increase the powers given by that section."

The Select Committee realised that the Bill was not merely intended to restore the position as it existed before 1937

The Honourable Sir Andrew Clow: I do not think the Select Committee was dealing with the intention. They were dealing with the effect.

Mr. Jamnadas M. Mehta: What the effect of an act is always intended in law; I accept that the motive was not there and yet the Bill had the effect of arming Government with powers more than merely clarificatory and definitely of increasing the powers that they now have. That was the opinion of the Select Committee, to which the signatures of my friend, the Mover of the Bill, and my friend, Mr. Lawson, are attached. It is an admission. It cannot be denied that if the Bill had emerged out of the Select Committee with those two additions, it would have extended or increased the powers of the Government far beyond the powers they possessed before this Bill was brought forward. I entirely acquit Government of any motive, but the effect was certainly as stated in the Bill. These two blemishes in the Bill have been removed, and for that we are thankful to the Honourable Member in charge of the Bill, as also for extending the powers of the Municipalities to impose taxation on the properties which are acquired after the 1st of April, 1937, and also for bringing under taxation the properties which were acquired before 1937, but about which no notifications had been issued. So, at present, the defects are two,—that properties acquired by the Railways after 1937 are not subject to municipal taxation, and properties which might be subject to municipal taxation but about which no notification had been issued, though they were acquired before 1937, will now become subject to municipal taxation and a notification to that effect will be permissible. These two are the clear advantages of the Bill as it has emerged from the Select Committee, and we have escaped two misfortunes. One is that, to the extent the words which are now omitted from the Bill as it originally was, it restricts the power of the officers concerned, and sub-section (2) of clause 3 of the Bill,—the whole of that clause,—has widened the powers of Government to such an extent that the municipal taxation would have been a subject matter of extreme speculation as to whether any power in the Municipality really rested at all if that clause had passed. Therefore, the omission of that clause and the omission of the words 'and to such extent as' are the two evils we have escaped; and the two advantages that I mentioned earlier are obtained, and on that footing a compromise was effected in the Select Committee in the rest of the Bill that the powers that remained with the Government should be allowed to be continued. But every compromise means some sacrifice on each side, and we were not without a feeling of uneasiness that some of the existing powers are also in need of revision.

The Honourable Member in charge of the Bill himself was fair enough to recognise that these points were rather ticklish and on some future date a Committee might be appointed to find out a solution about them. But for

[Mr. Jamnadas M. Mehta.]

the present the Select Committee is unanimous that having gained two advantages, however small they may be, having escaped two major disasters, the rest of the Bill as a compromise might be allowed to go through. But there are some amendments which are quite good as they are, but not other amendments. If these latter are adopted, I would suffer. So far as Bombay is concerned, these amendments are not to my taste at all. But I realise that my friends from the Calcutta Corporation are justified in having some of those amendments. It will be a question, therefore, for the various Municipalities, to decide as to whether the Bill as it now stands is better, or whether the Bill as it will be amended by my friend, Dr. Banerjee's amendments, will be better. I think the Municipalities will benefit or suffer according as the system prevails in their part of the country about adjudication of disputes. I am fully satisfied that my Calcutta friends are at a great disadvantage in this matter, because the way in which disputes between the Municipalities and Railways are adjudicated there is very unsatisfactory. And I would have been the first to support it if an amendment had been made which had the effect of improving the condition in that part of the country without worsening it in other parts of the country. Even in Bengal, outside Calcutta these innovations will be harmful; they are definitely harmful. I would then suggest to the Honourable Member in charge of the Bill that if my Calcutta friends' need is to be satisfied, I am a hundred per cent. in favour of them. But then the option to adopt one of the methods which is now proposed by my friend, Dr. Banerjee, and the one which is now provided in the Bill or which existed in the old Act, that option should be left to the municipality concerned to decide as to which of the two methods it would prefer. If my friends from Calcutta think that the amendments of Dr. Banerjee are to their advantage, let them have them, and I shall support my friends. I consider that my part of the country is better under the existing state of things, and I should have, therefore, the option of retaining them at present. No part of the Bill should be forced upon any part of the country, because the circumstances under which I approve of the Bill as it now stands, and the circumstances under which the Bill will stand if my friend, Dr. Banerjee's amendment, is accepted, are different, and, therefore, a different method of avoiding the difficulty should be open to all. There is no difference about the object in view. I shall, therefore, not quarrel with my friend, Dr. Banerjee, or my other friends from Calcutta including my friend, Mr. Lawson, if they wish that these amendments should be carried. I for my part would prefer an Accountant General to settle my disputes to a Sub-judge. I will prefer an Accountant General to a Sub-Judge so long as the Sub-Judge

Dr. P. N. Banerjee: In my amendment there is no provision for a Sub-Judge.

Mr. Jamnadas M. Mehta: Because, so long as the Sub-Judge or the High Court Judge is not subject to an appeal, that poor fellow
 3 P.M. is not quite happy. When he is dealing with this matter, he knows that he is an officer of the Government; that if he did not behave, he might be transferred to a place where malaria will eat him. He might be sent away to some part of Bengal, for instance, where malaria will be his chief companion. Apart from malaria, his promotion, his prospects,

will depend upon the pleasure of the official world. Therefore, a Sub-Judge by himself is not to my taste, but if he is made subject to an appeal to the High Court, a Sub-Judge I shall accept. Let my Bengal friends make up their minds whom they want. In my part of the country, so far as the Bombay city is concerned, I say that, although in cases of disputes we are not altogether quite satisfied, an Accountant General who mediates between us and the railways is better, far more to my taste.

Mr. Deputy President (Mr. Akhil Chandra Datta): Are there any amendments to that effect?

Mr. Jamnadas M. Mehta: No. Accountant-General has been given to us in the past and Bombay public opinion will see to it that no Sub-Judge is foisted upon us. Not because I would not have liked it specifically, but being a compromise and having entered into a compromise in order to escape the two fundamental evils, I am not anxious to move any amendment, although I realise that the position today is not yet quite satisfactory.

In England there are three ways in which disputes between municipalities and the railways are adjudicated, and I would prefer those three methods if the Government were willing to adopt them. As the Honourable the Communications Member knows, in the matter of municipal taxation on railways, there is a Railway Rating Authority. If you are not satisfied with that, there is an appeal to the Railways and Canal Commission. If you are not still satisfied, there is an appeal to the House of Lords on a point of Law. Thus, the municipalities are adequately protected there against any attempt on the part of the railways to evade municipal taxation. If that condition of things is brought into existence in this country, I shall be the first to accept it. But that is not being effected by any of these amendments.

Babu Baijnath Bajoria (Marwari Association : Indian Commerce): Are they also tax-dodgers?

Mr. Jamnadas M. Mehta: That you might enquire into. But sufficient protection is given to the municipality by the law. I quite agree that here my Honourable friend, Mr. Bajoria, did not get that protection from the Finance Member. (Interruption.) These are my submissions to the House. I do realise that the present state of things is not altogether satisfactory, that the compromise is convenient to me, but it is not convenient to them, my friends from Bengal, and to that extent any amendment which improves their position without worsening mine will be most acceptable to me. Sir, I support the motion.

Babu Baijnath Bajoria: This Bill has been considerably improved in the Select Committee and I have got objection only to sub-section (2) of section 8. Here also the same remarks apply as I had made on the Excess Profits Tax Bill. In this Bill also the Government have reserved to themselves the power to appoint an executive officer to adjudge any difference between the municipalities and the railways in the matter of taxation. In my opinion, a judicial officer is essential. With reference to what my Honourable friend, Mr. Mehta, has said, that what may be good for us from Calcutta is not good for Bombay, I might mention that the amendment which Dr. Banerjee proposes to move says that the person to whom

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such matters should be referred for adjudication will be a Judge of the High Court or a Judge of a District Court.

Mr. Jammadas M. Mehta: But his reference is limited under the amendment.

Babu Baijnath Bajoria: I do not think there is any question of limitation of reference. My Honourable friend has already said that he has got absolute confidence in the High Court and there is no reason why he should not accept a Judge of the High Court. The reason of having the option of a High Court Judge or a District Judge is very obvious. In Calcutta or Bombay or any Presidency town, the matter will be referred ordinarily to a High Court Judge, but in the case of municipalities in the interior of the districts, a High Court Judge will not be available and the best course then is to refer to the judicial head of the district, and that is the District Judge. At the present moment—I am speaking of Calcutta again, of which I have got some knowledge,—the railways employ an agent, an European agent to get reduction of taxation on their property. This agent is not a paid servant of the railways. If he were a paid servant, that would have been quite different. But he is an agent who gets fees on the amount of tax which he can induce the authority whoever is appointed—generally it is now the Commissioner of the Division—he gets a fee in proportion to the reduction made. (Interruption). It is a fact that the railway has got an agent who is paid a fee at certain percentage in proportion to the reduction which he is able to get in tax from the Calcutta Corporation. The effect has been that this agent has been instrumental in taking a case to the Commissioner twice or thrice in six years. Six years is the period for which the assessment is made or revised in Calcutta, but this agent has been instrumental in asking the railway authority, "Refer the matter again and make objection to the assessment. Let us go to the Commissioner and we will get something". The railways will get something and the agent will get something. In this way during the period of one assessment they get reduction, and they have got reduction more than twice or thrice. This is not fair. I would suggest that an assessment which is once made must exist for at least six years, which is the rule for all other residents in the locality.

An Honourable Member: What about increase in value of property?

Babu Baijnath Bajoria: About that, there is a provision in Calcutta. Supposing there is a vacant plot of land and a building is put up during the course of these six years, then an interim assessment is made. That we have got. That has got to be done, but if there are no additions and no improvements, then the original assessment must remain for six years.

Then, there are a few words in this sub-section, namely—the Railway Administration shall be liable to pay to the local authority either the tax mentioned in the notification or in lieu thereof such sum, etc. I do not understand the meaning of the words 'in lieu thereof'. The municipalities are entitled to taxes on their own merits. These words 'in lieu thereof' give the impression as if something *gratis* or some lump sum in the way of settlement is to be given to these municipalities in lieu of their just claims to tax the property fairly and equitably. I would much prefer if

these words are deleted. Otherwise, if the amendments of Dr. Banerjee are accepted, they will further improve the Bill and it will be more satisfactory to all concerned.

Mr. Husenbhai Abdullahhai Laljee (Bombay Central Division: Muhammadan Rural): The question of appointing a judicial officer to judge in any dispute between the municipality and the railway is, I think, a very sound principle. In fact, Sir, I have always considered . . .

Mr. Deputy President (Mr. Akhil Chandra Datta): I think these things could be more appropriately discussed when the amendments are moved.

Mr. Husenbhai Abdullahhai Laljee: I will make a few general remarks. The whole controversy in this Bill is as to who shall be the judge in any dispute between the municipality and the railway. I have always believed that so far as the municipalities are concerned, Government ought to acknowledge that they are bodies which belong to the people and as such they have no personal interest, being corporations but the interest of the people at large is in the same way that the Government and the Railways can claim for themselves. The municipality is in a better position in this way that while the Railway Department has been considered to be a strictly commercial department, the municipality is a department for the social welfare of the people. Therefore, it is absolutely necessary that the disputes between them should be decided by a judicial officer. Even in labour disputes between Government and labour and capital and labour, it has now been conceded and rightly that all these disputes should be referred to a High Court Judge. Mostly when important questions have to be referred for decision, they are always referred to a High Court Judge as an authority.

Now, Sir, I was very much surprised to hear from Mr. Bajoria that railway companies in Bengal employ agents to fight their case. I never thought that railway companies would consider themselves like ordinary persons as if their personal interests were involved. Furthermore, the beauty of the whole show is that on the basis of reduction obtained in the assessment value the gentleman has to be paid. May I ask the Honourable the Communications Member in all seriousness as a member of the Government, would he like it if his agent succeeds in hoodwinking any public department in paying the right taxation. Will he be doing the right thing? I do not think he will get an applause from my Honourable friend, the Finance Member. He always wants fairness and justice and he wants to punish dodgers. I do not know whether he would like the Department of Railway behaving like dodgers.

Then, Sir, with regard to the remarks that fell from my friend, Mr. Jamnadas Mehta, I agree with most of them. In fact, so far as the Bombay municipality is concerned, we have not had much trouble but times are changing and I do not think we should be worse off if we had a high judicial authority instead of the Accountant General to look into this matter. If the reference is not wide enough to be placed for reference before the judicial officer and if the reference contains much less than that is expected to be referred to the judicial officer, then in that case there is a lot to be said for what Mr. Jamnadas said. I do not see any reason why that reference should be limited. If it is so good in the case of the Calcutta Municipality, it would be good for the Bombay

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municipality also and other municipalities; therefore honestly and in all fairness the Calcutta Municipality must endeavour to get the reference widened as in the case of Bombay . . .

Mr. Deputy President (Mr. Akhil Chandra Datta): There is a specific amendment on that point.

Mr. Husenbhai Abdullabhai Laljee: Very well. I have finished.

Pandit Lakshmi Kanta Maitra (Presidency Division: Non-Muhammadian Rural): Mr. Deputy President, I cannot congratulate either the Honourable Member for Communications who has produced this Bill or the members of the Select Committee who have made the Report that has been placed before the House. The Bill is apparently a very deceptive one. It looks like the innocent grass but there is really a serpent behind it and though the Select Committee could scotch it, it could not kill it altogether. I am prepared to admit that some of the fangs of the venomous snake have been clipped but what is left will be enough to work havoc with the finances of the local self-governing institutions in this country. I did not particularly apply my mind to this until I heard Mr. Lawson just now. Mr. Lawson seemed to think that the Report of the Select Committee had the effect of restoring the *status quo* and he sounded a note of caution to the Honourable the Communications Member to call a halt at this stage. I am, however, grateful to him that he was prepared to concede a step further and go so far as the amendment of Dr. Banerjee. Sir, in my opinion, there are two very important points which should have been very carefully borne in mind not only by the sponsor of this Bill but also by the Members of the Select Committee.

The enabling provision, if I may say so, which empowers the Government to levy taxation on the railway property situated in any jurisdiction of a local body is clearly silent as to the procedure according to which assessment will be proceeded with. The clause is couched in the widest possible terms and are so vague that far from clarifying the position, they have made confusion worst confounded. I think it will be generally conceded by every part of the House that all taxing measures should be so carefully worded as to leave no possible loophole for anybody either to dodge taxation or to impose taxation when that is not justified. This grabbing of tax is as much a vice as the dodging of taxes. It must be borne in mind that it is a well-established principle of law, a principle which is acted upon in all judicial courts that all taxing statutes are to be very strictly construed.

Now, let us examine the provision of this Bill, as it has emerged from the Select Committee. It simply lays down that while a certain notification is in force, the Railway administration will be liable to pay certain taxes. Now, let us stop at that. It says "liable to pay certain taxes". Is it specified what kind of taxes the railway administration will be called upon to pay? In municipalities, in Corporations and in District Boards there are various types of taxes, such as, the holding rates, water rates, lighting rate, conservancy rates and so on and so forth. Now, what particular types of taxes will the railway administration be called upon to pay? It is not definitely provided. Again, if such rates are not levied, there is a provision that a consolidated amount may be paid

to the local bodies concerned in lieu of such rates. On what basis is that consolidated sum going to be fixed?

Mr. Jamnadas M. Mehta: It will be fixed having regard to all the circumstances of the case.

Pandit Lakshmi Kanta Maitra: But how is that lump sum figure to be arrived at? The answer would be that it would depend upon the consideration of the circumstances of the case. That carries you nowhere. What are the factors that are going to be considered? This is exactly what was in the old Act. We are out here to clarify the provisions of the Act so that those who would be called upon to administer this Act will not be left in any doubt as to what the Legislature had in mind. It could have been definitely prescribed, that the basis of taxation should be so and so. Why don't you provide that in this Bill? There is no indication anywhere as to the basis on which the taxation would be imposed. That, in my opinion, is a fatal blunder and, instead of solving difficulties, it will be evolving complications which can not always be satisfactorily solved.

Then, my Honourable friend, Dr. Banejra, has referred to the procedure. All that we have got in the Select Committee's report is that there will be an officer appointed by the Government who will discharge certain duties in connection with this Bill. He will impose taxes, he will fix rates and so on and so forth. It would have been much better if the Bill had provided the definite stages in that procedure. This is not done. There is another serious lacuna which requires to be filled up. It is this. If it is complained that the railways are paying less taxes than they are legally bound to pay, or if there is a complaint that the railways are made to pay more taxes than they ought to pay, who is going to decide that. In other words, there ought to have been a provision for appeal so that the aggrieved party might approach the appellate authority for redress. I fail to understand why in a taxing measure of this character that most important consideration was lost sight of both by the sponsors of the Bill and by the Members of the Select Committee. Take, for instance, the Department of Income-tax. While my Honourable friend, the Finance Member, is always exacting his pound of flesh from the country, he has at the same time been careful to see that something in the nature of a Tribunal is set up where people may have at least the farce of a trial. Still, it can convince some people

The Honourable Sir Jeremy Raisman (Finance Member): Is it in order, Sir, to make such remarks about Tribunals?

Pandit Lakshmi Kanta Maitra: I have not mentioned any particular court.

The Honourable Sir Jeremy Raisman: In any case, I protest against the language used about a quasi-judicial Tribunal.

Pandit Lakshmi Kanta Maitra: I am glad, my friend admits that it is a quasi-judicial Tribunal.

The Honourable Sir Jeremy Raisman: It may not be technically judicial but it is judicial in character.

Pandit Lakshmi Kanta Maitra: It is not at all judicial. It is not provided anywhere in the Act that the Income-tax Tribunal is a court of justice. My Honourable friend had better consult the Honourable the Law Member sitting close to him. In any case, my Honourable friend need not have taken any objection to my remarks. I was rather paying him a compliment when I said that, while he was enacting a stringent measure, he was careful to see that at least some misgivings and misapprehensions were removed by the appellate authority which he set up. I think my Honourable friend will concede that I am at perfect liberty to hold my own opinion about the Tribunal he set up. He might be making a fetish of his own Tribunal but we may have an entirely different view of it.

Sir, in congratulating my Honourable friend, I rubbed him the other way. That is my misfortune. Anyway, I expected that the Honourable Member for Communications should have, at least, made some provision by which a chance of an appeal could be provided. If there was a provision for appeal, then I am sure my friend, Mr. Jamnadas Mehta, would have little or no grievance. My friend, Mr. Jamnadas Mehta, seems to think that the proposed change might be benefiting the Calcutta Corporation and not Bombay. I do not know the conditions in Bombay. Probably it is so. But may I assure him that this is a Bill which will satisfy nobody. It might be satisfying to some extent the needs of the Calcutta Corporation or, even of the Bombay Corporation, but so far as the rural and urban municipalities are concerned, it will be disastrous in its operation. That is my honest view. You may have an excellent authority for administering the law, an excellent agency, an agency which like Caesar's wife would be above suspicion, an agency well trained, with judicial make-up and mind, but if its hands are fettered in the administration of it, how much can you get out of it? Not much. So my grievance is that this Bill is a halting measure, a half-hearted measure, a Bill which does not satisfy the requirements of the situation, a Bill which far from clarifying and simplifying the position is complicating it and I am sure in its operation it will not be found satisfactory, I quite see that in the circumstances, one has got to choose between the two alternatives. At least I feel like that. But it is a terrible choice: I am between the devil and the deep sea. I do not want to say who is who. The position is, that on the one hand you give a judicial officer but circumscribe his functions or terms of reference to such an extent as to leave him as the administering authority no free scope, no discretion to go into all the relevant factors in arriving at a proper assessment. On the other, you are given an executive officer, with all his executive bureaucratic bias to function in a vast and a uncharted field. This being the position, Sir, we have got to make up our minds. I recognize the fact that the Honourable Member for Communications is agreeable at least to the appointment of an authority who will have judicial training and judicial make-up of mind, and I am really grateful to him for this small mercy. I wish he could go one step further and make the terms of reference for such an authority much wider. If he could do that, probably he would have been able to round off some of the rough corners of the Bill which really grate on us.

The Honourable Sir Andrew Clow: Sir, I have only one word to say. I am grateful to those Honourable Members who have supported me though they will not expect me to subscribe to the view that the passages which have been omitted from the Bill are reactionary, are blemishes or anything of the kind. I regarded them and still regard them as improvements. I think they would have gone, for example, quite a long way to meet the defect mentioned by the last speaker regarding the basis of the assessment. I hope that in using the word 'clarificatory' which I borrowed from the Select Committee's Report, I did not give the impression that I thought they were put in the Bill merely as drafting changes. They were intended to improve the Bill and to enable us to apply what I believe was done in practice, but which I have since learned is of somewhat doubtful legality, under the old Act. Most of the other remarks made relate to the amendments and I prefer to reserve my remarks till we come to those amendments.

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

"That the Bill to regulate the extent to which railway property shall be liable to taxation imposed by an authority within a Province, as reported by the Select Committee, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

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

"That clause 3 stand part of the Bill."

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

"That in sub-clause (2) of clause 3 of the Bill, the word 'either' and the words 'or in lieu thereof such sum, if any' be omitted."

Sir, these words do not seem to convey to me any real meaning at the present moment. Perhaps when the Railway Act was first passed, that is to say, in the year 1890, these words carried some meaning. Perhaps at that time it was felt that when the procedure of rule of thumb was adopted instead of a tax, a lump sum payment may be made. Or, perhaps it was thought that instead of a tax, a gift might be made by the Railway Administration to a local body. I do not know what is the exact condition of this. In view of the ambiguity, I want these words to be omitted.

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

"That in sub-clause (2) of clause 3 of the Bill, the word 'either' and the words 'or in lieu thereof such sum, if any' be omitted."

Babu Baijnath Bajoria: Sir, I support the amendment. I have already given my reasons in my previous speech.

The Honourable Sir Andrew Clow: May I point out, Sir, that this amendment if adopted would reduce the clause to something almost meaningless. I do not understand the force even of the objections in substance to the clause. The clause would read:

"... the railway administration shall be liable to pay to the local authority the tax mentioned in the notification as an officer appointed in this behalf by the Central Government may, having regard to all the circumstances of the case, from time to time determine. . . ."

Dr. P. N. Banerjea: Perhaps a slight verbal change would make it all right. "The amount of which might be determined", that would be a slight verbal change.

The Honourable Sir Andrew Clow: I am not going to lay stress on the words. But the point is that it misconceives the whole intention of the clause. The intention is that you should either pay the tax or you should have this type of reference. If the railways are perfectly ready to pay the tax

Dr. P. N. Banerjea: Is that the meaning?

The Honourable Sir Andrew Clow: Obviously no need will arise for any dispute or for any reference to an Officer. The words, "in lieu thereof such sum" merely provide for the two alternatives. We make extraordinary confusion by combining them into one. Sir, I oppose the amendment.

Mr. Jamnadas M. Mehta: Sir, if my Honourable friend, Dr. Banerjea, had removed the rest of the clause also I would have supported him. But what he has done is that the officer is still there. After that if this officer has to remain

Dr. P. N. Banerjea: That amendment has to come later on.

Mr. Jamnadas M. Mehta: If that officer remains and discretion is left to him, we are no better than where we were. I know that my Honourable friend, Dr. Banerjea, is later on to move an amendment that this officer should be a High Court Judge. But this High Court Judge will be met by a phrase which is more dangerous than "in lieu of", namely, "according to the services rendered." Today the tax is not always calculated with reference to a service. The taxpayer has to pay the general tax and other taxes as laid down in the Act. What my friend does is that he removes the obnoxious words "in lieu of" and is willing to substitute the words "having regard to the services rendered", and those words will limit the power of that Judge to those services which are actually rendered. I do not want, while I go to gather wool, to come out shorn. I want to be quite clear that if a High Court Judge is to be appointed his powers must be unfettered.

The Honourable Sir Andrew Clow: I think this relates to another amendment.

Mr. Jamnadas M. Mehta: I quite agree. But I am not enamoured of a High Court Judge who is fettered hand and foot; I like my Accountant-General better. The High Court Judge who is thus bound is worse than a Subordinate Judge. I may run further and fare worse. And the High Court Judge is at present controlled by the words "having regard to the circumstances of the case". The circumstances of the case are among others the valuation of the property. The officer who now appointed is not going to be allowed to give us any amount, but he is to give something in lieu of that tax, "having regard to the circumstances of the case", namely, the valuation of the property, what the other taxpayers are paying, etc. If that goes away, as in a subsequent amendment, the High Court Judge or whoever he may be, is going to be told that he should allow only such payment as he considered enough for the services rendered deserve, then

I say I am in no better position, and until I know I have got a gift I shall render no thanks to the person giving it.

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

"That in sub-clause (2) of clause 3 of the Bill, the word 'either' and the words 'or in lieu thereof such sum, if any' be omitted."

The motion was negatived.

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

"That in sub-clause (2) of clause 3 of the Bill, for the words 'an officer' the words 'a person' be substituted, and the following be added at the end of the sub-clause:

"The person so appointed shall be a person who is or has been a Judge of a High Court or a District Judge."

I gave notice of another amendment in which I suggested that the adjudication of disputes should be entrusted to a High Court Judge or a retired High Court Judge. But it was pointed out to me that while a High Court Judge would be very good for deciding cases in which large municipalities were concerned, the services of a High Court Judge need not be requisitioned for a small municipality in some distant part of a province where the amount in dispute would be very small. Therefore, I amended my original amendment and have put it in this form. Now, what is the real meaning of this amendment? What I mean is that when a dispute occurs in which there are parties like the Calcutta Corporation, the Madras Corporation, the Bombay Corporation, or the Allahabad or Lahore Municipalities or even municipalities like Howrah, then the services of a High Court Judge or a person who has retired from the position of a High Court Judge should be requisitioned. In this connection I may say that the President of the Railway Rates Tribunal who is more often than not a retired High Court Judge may be appointed for the purpose. He possesses knowledge of railway matters and the appointment of such a person would give satisfaction. Why I urge the appointment of a High Court Judge is that such a person would be able to give full satisfaction to all the parties concerned. My Honourable friend, Mr. Mehta, said, a few minutes ago, that he would not entrust the adjudication of disputes to a Subordinate Judge. Nor would I. In my amendment, the words "Subordinate Judge" do not occur. Then I take it that ordinarily when a large municipality is concerned, a High Court Judge or a retired High Court Judge will be appointed to determine the dispute. But in cases, where smaller municipalities are concerned, and where the amount in dispute is also very small, a District Judge will be able to do justice. Well, we all know that High Courts are above all influences from any side. A District Judge also is an experienced officer and he knows how to weigh evidence on both sides of the case. Therefore, I hope, there would be no objection from any part of this House to the acceptance of this amendment.

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

"That in sub-clause (2) of clause 3 of the Bill, for the words 'an officer' the words 'a person' be substituted, and the following be added at the end of the sub-clause:

"The person so appointed shall be a person who is or has been a Judge of a High Court or a District Judge."

Mr. Jamnadas M. Mehta: Sir, I would beg of my Honourable friend, Professor Banerjea, to make it clear to me as to whether he is going to

[Mr. Jamnadas M. Mehta.]

follow this up by a subsequent amendment, that is for the words "all the circumstances of the case" the words "the services rendered to the Railways" be substituted.

Dr. P. N. Banerjee: Shall I give a reply?

An Honourable Member: Wait on.

Mr. Jamnadas M. Mehta: As my attitude will depend upon the answer given by my friend, Prof. Banerjee, I am entitled to know whether he is going to follow up with that amendment.

Dr. P. N. Banerjee: I frankly confess that when I gave notice of my earlier amendments, I knew they were not acceptable to Government

Mr. Deputy President (Mr. Akhil Chandra Datta): The Honourable Member may simply say whether he proposes to move his other amendment or not—in yes or no.

Dr. P. N. Banerjee: Yes.

Mr. Jamnadas M. Mehta: And are Government going to accept that? Then it means that a Select Committee sat after the Select Committee had reported! I cannot allow these changes to be made by agreement behind the back of the Select Committee. I would have gone much further in the Select Committee if I knew that Government had entered into an agreement in which they thought that they were gaining while my friend thought he was gaining. I think that he is losing. So I want to know whether Government are going to back up the compromise into which they have entered.

The Honourable Sir Andrew Clow: I propose to accept this amendment. The Government are entitled to express their view. If any Member of this House approaches me with an amendment and asks me whether and under what conditions I am prepared to support his amendment, I am just as much entitled as he is to give a reply.

Mr. Jamnadas M. Mehta: I am very sorry to say that that is the view of the Honourable Member. That means that the Select Committee is left out in the cold and the Government have gone to another Member to

The Honourable Sir Andrew Clow: I did not go to another Member. Other Members came to me and made various suggestions.

Mr. Jamnadas M. Mehta: That makes no difference. But are Government prepared to accept this amendment?

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

Mr. Jamnadas M. Mehta: And also the subsequent amendment?

The Honourable Sir Andrew Glow: Yes.

Mr. Jamnadas M. Mehta: Under these circumstances I consider it my duty to oppose both these amendments.

Mr. Deputy President (Mr. Akhil Chandra Datta): The Honourable Member is only concerned with this amendment.

Mr. Jamnadas M. Mehta: Sir, I want to make it quite clear that there is no greater well-wisher of the Calcutta Corporation than I am in this House. I am going to oppose this because Government are going to accept them. If they accept this and do not accept the second, I am with them.

Mr. Deputy President (Mr. Akhil Chandra Datta): I take it, you are speaking on this amendment moved by Dr. Banerjee.

Mr. Jamnadas M. Mehta: Sir, I am speaking on the amendment moved. I want to make it clear that I am in favour of a High Court Judge, but his powers should not be circumscribed under this Bill and he should remain a real High Court Judge after this Bill is passed and, I may say, that I am not making any insinuation. I beg of the Honourable Member for Communications to remember the terms on which the compromise was accepted by the Select Committee. The warning is sounded to me that in place of the words "having regard to all the circumstances of the case" the House is now going to be asked to accept "having regard to the services rendered to the Railways". The High Court Judge will, thereafter, be limited to giving his judgment on the "services rendered" only. Today the officer who may be appointed will be "having regard to all the circumstances of the case" which, in my opinion, is a far wider and more comprehensive term than "having regard to the services rendered to the Railways". I shall give you one example. Supposing a municipality is introducing water works, the Railways will be bound to pay the water tax. The Railways say "No; we shall not take water from you. We shall make our own arrangement. We do not accept your services". And the municipality being too poor will not have water works at all for the rest of the city simply because the Railway is not becoming a part of the municipality for these water works. For the convenience of the Railway, therefore, the whole of the city will have to forego a water works arrangement which will give clean water to the city, because if the Railways do not pay the tax the water works scheme will be uneconomic. I am asking the House whether you want to fetter the judgment of the High Court Judge at that time when the municipality wants to start water works because of this provision—"having regard to the services rendered to the Railways". The Railways will argue "you don't render the services, therefore we cannot pay the tax". The judge can only say "thank you for coming to me, but the Act being what it is, I cannot help". On the other hand the present position is that whosoever is appointed will have to decide the issue regard being had to "all the circumstances of the case". If that is retained the High Court Judge can do some good to the municipality. But if that is not retained the High Court Judge is no good. The next amendment will limit the liability of the Railways and, therefore, the High Court Judge will be powerless to do any good to the municipality, and, therefore, I oppose. I hope that it will not be misunderstood.

Sir Cowasji Jehangir: It applies to all cities—also Bombay and Calcutta. There is no distinction between the cities with regard to your argument.

Mr. Jamnadas M. Mehta: What my Calcutta friends are confronted with today is a genuine difficulty.

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

I understand them very well. I only beg of them to understand us. Their bitter experience is that the Commissioners of the Division appointed there for adjudicating the disputes have taken the most fanciful view of the tax to be paid by Railways. Therefore they wanted judicial authority, and very rightly so. But the Judicial Revenue Commissioner of the Division today is entitled, if he has the courage, to have regard to "all the circumstances of the case" before giving his award. The High Court Judge will not have that power.

Sir Cowasji Jehangir (Bombay City : Non-Muhammadan Urban): Why?

Mr. Jamnadas M. Mehta: The second amendment is coming. Under that the High Court Judge may be quite willing to help you but he says "I am powerless because the Act being what it is I can only give you such taxation for which you render services" and the Railways say we do not want those services. Therefore, the amount of taxation will be reduced instead of being increased, whereas the present arrangements are better. It may be increased in the case of the Calcutta Corporation if the High Court Judge is left the powers that are in the Act today but if the High Court Judge is also met with the *fait accompli* that he must award taxes only for which services are rendered, then the High Court Judge can also give you no relief. This is also the view of the representatives of other municipalities who have come here.

I may here speak on behalf of the Howrah Municipality. They do not want this thing—"for services rendered". They know that
 4 P.M. once you give that scope to the railways the railways may have services of their own and they may escape all the taxation, thereby depriving the rest of the citizens of that city of a proper income from municipal revenue. If the Government want that this should be accepted, I am quite willing to make a suggestion to the Honourable Member for Communications. Let the arrangements which my friend, Professor Banerjee, wants, be granted, and let the arrangements that are in force under the present Act also remain. The municipalities might then have the option of choosing the present arrangements or the new arrangements which my friend, Prof. Banerjee, proposes

The Honourable Sir Andrew Clow: I should say, why not at the option of the railways?

Mr. Jamnadas M. Mehta: That is exactly the position. You know very well that you are gaining under this Act and, therefore, you are not prepared to forego that advantage. I am willing to accept your High Court Judge, but not one without real powers. You have him if you like but give me the option of the Accountant General with the present section

Sir Cowasji Jehangir: According to the Honourable Member it is not so much whether it is the Accountant General or the High Court Judge, but the reference that will be made to him? That is the important point.

Mr. Jamnadas M. Mehta: Yes. If this amendment passes, the High Court Judge will come with restricted powers. I want to have the old powers, i.e., "having regard to the circumstances of the case". If I am given that, I want the High Court Judge. But if not, let it be left to my option.

Sir Cowasji Jehangir: The important point is the reference.

Mr. Jamnadas M. Mehta: Yes; the terms of reference which the High Court or the Commissioner of the Division will have are the real decisive test of the matter. In this House there are six *ex-Mayors* of the Bombay Corporation Sir Homi Mody, Sir Cowasji Jehangir, Mr. Husenbhai Laljee, Sir Narayan Chandavarkar, Dr. Deshmukh and myself who know our business and they will resent such gross injustice to the Bombay Municipality and other local bodies. If they want to accept Dr. Banerjea's amendment, let it be alternative at the choice of the municipality concerned; then I have no objection. That is my position. I will make it perfectly clear that I want my Calcutta friends to gain what they want and they should leave me what I have got; let them not by trying to arrange something which they think is better, land me into difficulties. Sir, I oppose.

Pandit Lakshmi Kanta Maitra: Sir, I fully appreciate the view point put forward by my Honourable friend, Mr. Jamnadas Mehta; but it seems to me that my Honourable friend, the *ex-Mayor*, and perhaps all the six *ex-Mayors* of Bombay, are haunted by the nightmare of an Accountant General

Mr. Jamnadas M. Mehta: I can also become ironical, and if you want me to be so, I am prepared to be ironical. I am quite capable of that. Do not try to be too clever.

Pandit Lakshmi Kanta Maitra: I am afraid Mr. Mehta has thoroughly missed the point of my humour. I did not know that he was in such a serious mood, but I am in no less a serious mood than he and if he had followed my speech

Mr. President (The Honourable Sir Abdur Rahim): I think the Honourable Member had better address the Chair.

Pandit Lakshmi Kanta Maitra: If he had followed the speeches I made before, he would have agreed with me in what I said. In fact I supported his contention. I said that you are to make a choice between two things: one is whether you are going to have an executive officer appointed by the Government for assessment of railway property, or a man with judicial training of the position of a High Court Judge or a District Judge, trained to sift evidence, trained to administer law and trained to administer justice between man and man. Is it seriously contended in connection with this that an Accountant General, however

[Pandit Lakshmi Kanta Maitra.]

gifted, however intelligent, is expected to discharge the duties of the administration of this particular law more effectively than a District Judge or a High Court Judge whose whole career has been one of administration of justice? This is a point which cannot be ignored. It cannot be gainsaid that it is an advantage—and it is an advantage which would accrue to both the parties, the Government and the local self-governing institutions.

Having disposed of that, I explained that I was not at all happy over the terms of reference. I expressed the opinion, as strongly as my Honourable friend did, that the discretion of such a judge would be circumscribed by the provision that we are going to make now. My Honourable friend seems to think that it is purely a question of dispute between the Calcutta Corporation and the Bombay Corporation. It is not

Mr. Jamnadas M. Mehta: I have never said that.

Pandit Lakshmi Kanta Maitra: I beseech him not to misunderstand me. I have explained to him that the interest of municipalities outside Calcutta is directly opposed to the view point of Calcutta

Mr. Jamnadas M. Mehta: Then support me.

Pandit Lakshmi Kanta Maitra: But I have said and explained that. You are in a huff, and what could I do? I explained how hundreds of municipalities would be adversely affected by this provision. It is quite possible that the Bombay Corporation would not be hit to the extent the rural and even the urban municipalities of the Bombay Presidency, would be hit. It is quite possible that the Calcutta Corporation also would not be so hard hit, but I have tried to explain very clearly the difficulties of corporations or municipalities other than those in the big cities of Calcutta, Bombay, Madras and Karachi. I explained that in these Mofussil municipalities there are different kinds of taxes and rates—such as, conservancy tax, holding tax, water tax, lighting rate and so on and so forth. A municipality in an urban or rural area is in a position to offer some facilities to the railway station there, to the railway colony there or to the railway property there; but it is quite conceivable that such a railway station in the country-side will engage one sweeper and say “that will be enough for my conservancy arrangements”. It may sink one well and keep a couple of pitchers of water on the platform and say to the municipality “I do not want to pay your water rate. I do not want water to be supplied to me”. And so on and so forth; and if we make “services rendered” as the criterion for the assessment of the amount of tax, then difficulties are bound to accrue, and the municipalities are bound to suffer loss in their revenues. I have made that clear, but as I have said you have to make a choice between the two alternatives.

Mr. Husenbhai Abdullahai Laljee: Why choice?

Pandit Lakshmi Kanta Maitra: Because I have suggested to my friend, the Honourable the Communications Member, who, perhaps due to pressure of business, could not attend to my point, to agree to the addition of two or three more words, “having regard to the services rendered and

to other relevant factors''. I don't understand why my suggestion should not be acceptable to him. I do not want that the High Court Judge should again be thrown into the region of speculation as to the kind of tax or taxes he would have to assess, but I narrowed down the field of enquiry by saying that he should take into consideration only the relevant factors, and in my opinion, "having regard to the services rendered and to all other relevant factors" is a much better formula than "having regard to all circumstances of the case,—and if my friend, Mr. Jamnadas Mehta, wants to differ from me, I at once join issue with him''. It is not a question of quarrelling. It is a question of making a choice. If the Honourable the Communications Member chooses to remain adamant, if he says: 'I have gone as far as I could and I cannot go any further; it will be for you to consider what kind of choice you are going to make,—we cannot help'. I know that if this piece of legislation is passed with these two amendments, big Corporations may not be affected,—with all respect to my friend, Mr. Jamnadas Mehta, even the Bombay Municipality will not be affected, but I know that hundreds of municipalities throughout India will be affected. Therefore, I am asking the Honourable the Communications Member to consider, if it is possible, even at this stage, to take one step forward and see that this bone of contention is removed.

I want once again to impress on him the fact that there is no provision in the Bill for an agency of appeal. You are setting up the agency of a District Judge or a High Court Judge to adjudicate the question of taxation. He will certainly be able to bring his judicial mind to bear on all these questions, but what kind of questions can such a Judge consider? Only services rendered? As I pointed out just now, it is quite conceivable that in most of the municipalities such services may not at all be rendered to the railway, and sometimes even if the services are offered, railways do not take advantage of them. In the case of municipal taxation of an ordinary person, what is the law? The law is that, even if there is a fallow piece of land with no building on it, the man is assessed house rate, water rate, conservancy rate and lighting rate in the municipalities where they have such rates. Even when a man has not got a latrine, he is assessed the latrine rate; even when there is no water tap in his house, the man will be charged a water rate. Now, if that is the position of an ordinary citizen in a municipality, what would be the position of the Railways if this measure is passed into law? The Judge will say that he has only to see what kind of services have been rendered and all that the municipality will be entitled to is perhaps a little house rate, and that also will be considered on the basis of a certain percentage. And there are generally two bases for taxation in such matters,—the cost of construction and the annual letting value. What rent is such a holding as a small wayside Railway Station expected to fetch? It may fetch Rs. 2 a month, for the surroundings may be bad, there may be jungles all round, and so one cannot expect such a house to fetch more than Rs. 2 a month, and so a railway property at a particular station may be assessed at Rs. 24 per annum. The Judge will say: "on a careful consideration of the services rendered by you I do come to the conclusion that you are entitled to Rs. 25 a year". So this is a real difficulty. I sympathise with my friend, Mr. Jamnadas Mehta. I am also sailing in the same boat with him; I come from the mofussil, and having had something to do with municipalities in the

[Pandit Lakshmi Kanta Maitra.]

mofofussil, I know how it will affect municipalities in all provinces. But if the attitude of the Government is unbending, you have to make your choice. But with regard to this part of the amendment which is now before the House, I think there cannot be any difference of opinion in any part of the House that a High Court Judge or a District Judge is infinitely a better person to be trusted with the administration of this law than an executive officer, however highly placed he may be. Sir, I support this amendment.

The Honourable Sir Andrew Clow: Sir, I think there is a good deal of misconception, not about the effect of this amendment, but about the effect of the second amendment that stands in the name of Dr. Banerjea which, to my mind, is intimately linked with this. In fact, I should not regard this amendment as suitable were the other amendment not there. As Dr. Banerjea has pointed out, the officers to whom cases have been referred, have produced very often rather inconsistent decisions. I am informed that that is not merely true of executive officers, but that it is not easy to find any consistent line from those cases which have been referred to judicial officers. Now, the reason for that is, I am quite sure that that Act gives them no guidance on the matter, but as Dr. Banerjea pointed out in an earlier speech, a good deal of guidance has been given by the Report of the Taxation Inquiry Committee. They devoted a long and careful study to this subject, and although Dr. Banerjea quotes parts of it earlier, I would like to refresh the memory of the House by a reference to the paragraph which I think he cited. They say:

"The principle which is most appropriate seems to be that local taxes are largely of the nature of payments for services rendered, and that the service rendered to a railway can best be gauged by the extent and value of the property used for the reception and despatch of goods and passengers."

They then go on to say that they have reviewed the various systems throughout India, and they proceed to commend the Bombay system and cite at length percentages on buildings of different types as a system which they think is suitable for adoption. In other words, I do not regard Dr. Banerjea's second amendment, and I am sure he does not regard it, as meaning that you simply pay so much for every gallon of water that is delivered to you. You must take a much broader view than that, and you must not exclude the possibility of assessment, as has been done recently in Bombay on lands generally, as a method of assessing the services rendered. In fact that is exactly what the Taxation Inquiry Committee recommended

Sr Cowasji Jehangir: What are the words in the Act?

The Honourable Sir Andrew Clow: The words in the Act merely are "all the circumstances of the case".

Sr Cowasji Jehangir: When you make that change, won't the Judge take that into account?

The Honourable Sir Andrew Clow: Certainly, but he has a criterion on which he has to work, and I have not the slightest doubt he would refer also to the Committee's Report

Mr. Husenbhai Abdullabhai Laljee: He cannot go beyond the Act.

The Honourable Sir Andrew Olow: He cannot go outside the Act, but he is perfectly entitled to take any guidance

Mr. Husenbhai Abdullabhai Laljee: Why don't you correct it in the Act itself?

The Honourable Sir Andrew Olow: That solution did occur to me, but it is not possible to put down in the Act itself a series of rules that will govern this procedure all over India. If the Select Committee had left us the power to prescribe the manner in which the tax would be assessed, then I should have been very glad to be guided by this Report.

Sir Cowasji Jehangir: Which Report?

The Honourable Sir Andrew Olow: By the Taxation Inquiry Committee's Report.

Mr. Husenbhai Abdullabhai Laljee: If I am the Judge

The Honourable Sir Andrew Olow: The Honourable Member must allow me to say what I have to say. What I am trying to say is this. The interpretation placed on 'services rendered' is not an interpretation which, I think, is in any way legitimate. Mr. Jamnadas Mehta raised the point and took a particular case of a municipality and said that the railways would not take water from it and, therefore, they won't pay for water. That may happen in some cases, but under the Act as it stands, the authorities need not declare the water tax; they need not notify.

I am afraid Mr. Jamnadas Mehta with his long experience of Bombay is looking at the matter largely from the point of major municipalities. I do not contemplate any substantial change in Bombay. If the Mayor, whosoever he may be, and we agreed to a reference to the Accountant General outside the Act, we would be perfectly able to arrange it. There is nothing, as far as I can see, in the Bill to prevent us from doing so. I was rather struck by his tribute to an officer, who is, after all, not even an officer of the Provincial Government, but an officer of the Government which has to pay the tax. We have also to bear in mind that there are cases, fairly numerous cases, of smaller areas where railways do provide services. They provide sanitation, they provide water, they provide roads, they provide other things in common, and, as I said earlier, I think this—the only sound principle which we can apply is where both payments are being made by taxpayers; because, after all, the Central Government is merely paying out the taxpayer's money, it is merely a question of which taxpayer is going to pay, the local taxpayer or the taxpayers of India as a whole. Where we have payments by taxpayers, the only proper principle to adopt is that neither should attempt to secure an advantage from the other. In other words, it is not so much a question of the method of taxation but, as the Taxation Enquiry Committee said, of services rendered—that we do not try to get anything from a municipality without paying for it.

[Sir Andrew Glow.]

and that it does not try to get anything from us when it is not rendering a service. That, I think, is a fair and equitable principle, and I am prepared to accept both the amendments.

Mr. Husenbhai Abdullabhai Laljee: After hearing the Honourable Member for Communications, I am not at all convinced by the arguments that he has placed before us. In the first place, my Honourable friend, Mr. Jamnadas Mehta, would like to have an Accountant General if the latter would take into consideration what is laid down in the Taxation Enquiry Committee's report. Mr. Mehta would certainly like to have a judicial officer in preference to an Accountant General if the scope of reference is as wide as that. But if there is not sufficient scope in the reference for a Judge to go into, then my Honourable friend would prefer to have an Accountant General as a case of necessity and because an Accountant General will have power to go into all matters which vitally affect a municipality. The Honourable the Communications Member thinks that the arbitrator or judge or referee, or whoever he may be, will look into what is contained in the Taxation Enquiry Committee's report. I have had some experience in this line and I am told that they will look into the Act itself, they are not bound to, they ought not to go into the objects and reasons, or with what object it was made, or the speeches that were made in connection with the provision. That is quite clear. No Taxation Committee's report will be looked into; only the words "services rendered" will be considered by the judicial officer and these he will strictly interpret as an Act. My Honourable friend does not say in the Bill what is the meaning of "services rendered", and that is the fear in the mind of my friend, Mr. Jamnadas Mehta. I see that the Honourable Member does not mean that "services rendered" only means services actually rendered.

The Honourable Sir Andrew Glow: My Honourable friend is mistaken. Services rendered have still got to be assessed. What I pointed out was that the Taxation Enquiry Committee considered that this was a reasonable way of assessing those services.

Mr. Husenbhai Abdullabhai Laljee: The point made here is this. We have here got a Bill in which the Government have not provided all that. Government did not think it necessary, when the Bill was introduced; they did not think it necessary even in the stage of the Select Committee. Now that a very small section of the House, honestly, sincerely, believing that the appointment of a judicial officer though with a limited scope of reference is better than leaving it to the judgment of an executive person even with a wide scope of reference—that is the difference between me and my Honourable friends from Calcutta. I say that there is no doubt that a judicial officer is a better man than an executive officer without judicial knowledge, but as the scope of reference to the former is restricted it is of no good. After all is said and done, even the executive officer will see—as the Honourable Member has pointed out, it is not anybody's private concern, it is the concern of every taxpayer, whether local or of the whole of India. Therefore, I am not so much afraid of the executive officer if the whole thing could be gone into. Mr. Jamnadas Mehta has spoken about water. Mr. Lakshmi Kanta Maitra

has spoken and pointed out instances like lighting. There are also educational and maternity schemes. We are going to have compulsory education in every city, in every town, in every village. When everybody sends his children to those schools, you will have to pay for it because you would get better men in your service who will help you, and you have got to contribute to that.

The Honourable Sir Andrew Clow: We shall pay them better.

Mr. Husenbhai Abdullabhai Laljee: How will you? The scope of reference is limited. The words are "services rendered". Why did this not strike you before? It is only the persuasion or the little talking of my few friends that has made the Honourable Member change the whole thing? May we take it like that, or is it a bargaining? Please tell us frankly. You have got to consider the whole of India. Be frank with us.

My Honourable friends from Calcutta never objected to the suggestion of my friend, Mr. Jamnadas Mehta. They wanted a judicial officer. They have bargained for a judicial officer at the cost of having the reference out down. The reference should be wide, should be liberal, and even the executive officer knows that both parties are public bodies. I do appeal to the Honourable Member that it is the duty of the Government to be just and do what is fair and equitable. Why do you demur to give both things to the people? Do you think that the judicial officer will go against the Government or against the railway and will not appreciate that the railways are also a Government concern and as such the concern of the people? Why do you not want a judicial man? We have to admit that they have got much more experience. They know much more of equity and law. But all that does not mean that we should ever agree to cut down the scope of reference. Not until a minute or two before, did the Honourable the Communications Member think about this? It is surprising that the Government should have been so easily persuaded—I congratulate my Honourable friends here on this power of persuasion. In that case I do not think we are required here, only a few of them would be quite sufficient for the opposition to negotiate with the Government and have the things done. I am very much surprised at all this and I congratulate all concerned. I know there has got to be made some arrangement. I think my friend from Bengal had a Hobson's choice. It is not fair or equitable to act like this. I ask the Honourable Member to consider seriously what all this really means and not to forget the intention of the Bill, and why it has been brought. Is it not in the interests of public bodies? If it is so, be graceful.

The Honourable Sir Andrew Clow: It is not in the interests of either party. You ought to do justice between both.

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

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

"That the question be put."

The motion was adopted.

[Mr. President.]

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

"That in sub-clause (2) of clause 3 of the Bill, for the words 'an officer' the words 'a person' be substituted, and the following be added' at the end of of the sub-clause:

'The person so appointed shall be a person who is or has been a Judge of a High Court or a District Judge'."

The motion was adopted.

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

"That in sub-clause (2) of clause 3 of the Bill, for the words 'all the circumstances of the case' the words 'the services rendered to the Railway' be substituted."

The letter 's' in 'Railways' as printed in the amendment paper is a misprint.

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

"That in sub-clause (2) of clause 3 of the Bill, for the words 'all the circumstances of the case' the words 'the services rendered to the Railway' be substituted."

Mr. Amarendra Nath Chattopadhyaya (Burdwan Division: Non-Muhammadan Rural): Sir, I should like to move my amendment No. 9. Then both can be considered together.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member can move that also.

Mr. Amarendra Nath Chattopadhyaya: Sir, I move:

"That in sub-clause (2) of clause 3 of the Bill, after the words 'all the circumstances of the case', the words 'including the question of services rendered' be inserted."

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

"That in sub-clause (2) of clause 3 of the Bill, after the words 'all the circumstances of the case', the words 'including the question of services rendered' be inserted."

Both the amendments are now before the House.

Dr. P. N. Banerjee: This amendment of mine did not occur on the original list, and it was given notice of at a later stage. I should explain to the House as to how I came to give notice of this amendment. I found that in the original list two other amendments stood in the names of two friends of mine, and I was given to understand that a compromise had been arrived at between the Government and the would-be Movers of these two amendments. Now, I notice that these amendments were somewhat defective, and I gave notice of these two amendments, one of which has already been carried. The amendment which has already been carried is a great improvement on the amendment of which two friends of mine had given notice, namely, what they wanted was that the adjudication of disputes should be made by a District Judge or a Subordinate Judge, whereas the amendment which has just been carried says that the adjudication should be by a High Court Judge or a retired High Court Judge or a District Court Judge or a retired District Court Judge. To that extent it is a great improvement. Then, also, as regards the

second amendment, the wording was "services rendered to railway property". Now, my amendment refers to services rendered to railway. It is of much wider import. Services rendered to railway property is of much narrower import than services rendered to railway, that is to say, the railway system as a whole. Now, Sir, when I gave notice of these two amendments, I asked the Honourable Member in charge of Communications if he could go further and see his way to accept my amendment, and he agreed. Therefore, I am a party to this compromise, and, as a party to this compromise, I must stand by it, because the earlier amendment has been carried. But I should like, in this connection, to point out that the term "services" has a meaning much wider than the meaning which is being attached to it by my Honourable friend, Mr. Jamnadas Mehta, or by my Honourable friend, Mr. Laljee. Services may be of a general character. Services need not be specific, and services may be given directly or indirectly. Therefore, Sir, I do not think that the apprehensions of my Honourable friend are necessarily quite correct, but I do admit that there is considerable ground for apprehension.

Now, with regard to taxation, it is generally believed that the taxes levied by local bodies are in return for services rendered, whereas the general taxes of the country are not so. That, I maintained, is a mistake. I would ask this House to refer to page 279 of the Taxation Enquiry Committee report in which it is said: All taxes are in essence payments for services rendered directly or indirectly by the governing authority to the taxpayers. This feature is present in a much more conspicuous degree in the case of local taxation than in that of taxes levied for general purposes.

Therefore, I maintain that the principles which govern Central taxation are the same which govern local taxation, and the difference is in regard to degree and in regard to emphasis. Therefore, the word "services" need not be taken in the sense of specific services. There may be services given in an indirect manner.

Now, my Honourable friend, Mr. Husenbhai Laljee, who is not here now, referred to education. Yes, I think the service rendered by a municipality, by way of education to the community, will be considered in fixing the assessment. General sanitation will also be included in the word "services", although no specific services may be mentioned here. So far, as regards the meaning of this amendment.

Now, Sir, I must confess that there is some ground for apprehension which has been expressed in this House. The language is not so clear. The services may be interpreted in one way by one Judge, and in another way by another Judge. So, a difficulty may arise. That difficulty can be obviated by the insertion of a few more words as suggested by my Honourable friend, Pandit Lakshmi Kanta Maitra, or an alternative should be given as suggested by my Honourable friend, Mr. Jamnadas Mehta, or a combination of the two as suggested by my Honourable friend, Mr. Chattopadhyaya. I have no objection to either of these courses, but this will depend entirely on the attitude of the Honourable Member for Communications. I personally have no objection to any of these three suggestions made. But as I am a party to the compromise, I have to stand by that compromise. Having declared myself to be a party to a compromise, I cannot make one-sided arrangement. It is for the Honourable Member in charge of Communications to accept the language of the suggestions

[Dr. P. N. Banerjea.]

made by my friends or not. If he agrees to accept one of these suggestions, then the difficulty will be obviated, a great deal of dissatisfaction will be overcome, and the Bill will be considerably improved.

Mr. Amarendra Nath Chattopadhyaya: I thank you, Sir, for permitting me to move my amendment along with the amendment moved by my friend, Dr. Banerjea. The difficulty arose over the words "all the circumstances of the case" and it was suggested that for these words "the services rendered to the property" be substituted. This is a Bill of a peculiar nature. Government are the assesses and the assessor. Government nominates a certain officer to decide the assessment by notification. In case of a difference between the local authority and the Government, Government depute another man to decide the difficulty about the amount fixed. This is absolutely in contravention of all the laws of assessment and, therefore, the language of the Bill should be very clear. "Having regard to all the circumstances" are words which require amplification. Circumstances are not detailed here. The system of assessment is peculiar and the authorities all over the provinces, both in Mofussil municipalities and in big corporations, will all be suffering from certain difficulties with regard to the interpretation. Therefore, although the Honourable Member in charge of Communications has accepted a certain compromise with Dr. Banerjea, I believe the whole trouble will be solved if my amendment is accepted. It does not make any difference except that it amplifies the word 'circumstances', because 'circumstances' include the services rendered. The saving clause in clause 5 says:

"Nothing in this Act shall be construed as debarring any railway administration administering a railway from entering into a contract with any local authority for the supply of water or light, etc."

Here is a question of entering into a contract for certain services. That will make the difficulty more difficult. Really speaking, the words 'services' and 'circumstances' must be explicitly explained. The present Bill does not explain them.⁴ My amendment amplifies it and clears the whole thing and therefore it should be acceptable to the House without any difficulty. I, therefore, appeal to the Honourable the Communications Member to accept my amendment and solve the difficulty here and now. I hope he will accept my amendment. Sir, I move.

Maulvi Abdur Rasheed Chaudhury: Sir, I was surprised to hear the arguments of my friend, Dr. Banerjea, in support of his amendment. He admitted in so many words that his present amendment was defective inasmuch as it limited the power of reference to the Judge of the High Court. Still, he is dogmatically supporting his amendment, and the reason that he gives for doing that is that he is a party to the secret arrangement with the Government Member in charge of the Bill. Although his amendment is defective, he cannot amend it, simply because he is a party to that arrangement. We in the Select Committee did not know that the Government Member was feeling uncomfortable after the compromise was effected there. If he had told us that he was feeling uneasy on any point, we the Members of the Select Committee would have probably rendered him help. But instead of taking us into his confidence, he entered into a secret arrangement with some Members of Bengal and tried to bring in an amendment which in itself is defective.

Dr. P. N. Banerjea: That is not quite correct. We sent notice of amendments and then discussed with the Honourable Member. He did not enter into any secret arrangement.

Maulvi Abdur Rasheed Chaudhury: Why did you do it in our absence?

Now, Sir, the whole House has listened to the arguments put forward in support of the previous amendment, and I think all of us are glad that we have got an amendment already passed which provides, in place of a High Court Judge, an officer of judicial experience. So far as that is concerned, everybody is feeling comfortable, and nobody has got to speak a word on it. Even Mr. Jamnadas Mehta has expressed his satisfaction that so far it is good. Now, Sir, when we go to curtail the power of that Officer, the power of that High Court Judge by binding his hand and foot and circumscribing the power which he was going to exercise, I say, Sir, that we should cry halt, thus far and no further. I do not like to lend my support to a secret arrangement arrived at with Dr. Banerjea.

Dr. P. N. Banerjea: Where is the secrecy?

Maulvi Abdur Rasheed Chaudhury: He knows full well all the time that his amendment is defective. So far as Dr. Banerjea's amendment is concerned, I should say that I am opposed to it. But if Mr. Amarendra Nath Chattopadhyaya's amendment is taken into consideration, that brings in a solution. That does not circumscribe the powers of the High Court Judge or the Judicial Officer, and at the same time that gives him in addition to what is called "all the circumstances of the case", "including the question of services rendered". So, he has got full powers to take into consideration all the circumstances of the case including the services rendered by the railway. So that solves the question. If that position is going to be accepted by the Government, I think the major portion of the House will support it. But so far as Dr. Banerjea's amendment is concerned, I am opposed to it.

Sir Cowasji Jehangir: Mr. President, a good deal of heat has been imported into this discussion and, I should think, with some justification. So far as I have understood the facts, they are as follows. An Honourable Member of this House was very anxious to get a change made in this Bill in one particular direction. He was not satisfied with the personnel of the adjudicating officer provided in this Bill.

The Honourable Sir Andrew Glow: Is it necessary for all of us to go into all these? The facts as already stated are not correct. Various Members have felt the same difficulty.

Sir Cowasji Jehangir: Various Members felt rather uneasy about certain aspects of the case and approached the Honourable Member in charge of the Bill to change one aspect in the Bill, namely, the personnel of the adjudicating authority. Well, Sir, along with that change which was made to the satisfaction of those Honourable Members who went to the Honourable Member in charge of the Bill, a certain other change was made in the Bill of a very important character. The terms of reference to that adjudicating officer were also changed. Now, Sir, the terms of reference to that adjudicating officer were in the Act. There was no

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change made with regard to those terms of reference in the Bill, and in the Select Committee that point was not evidently discussed. As the Bill was presented to the House, it contained the old terms of reference as are specified in the Act. Therefore, this important matter of terms of reference was never before the House officially. It can come before the House officially only if it is in the Bill or it is suggested by the Select Committee and included in the Select Committee Report. It was in neither. It was not in the Bill, it was not in the Select Committee Report; and the first time the House heard about it was only by a notice given by a non-official Member of this House suggesting a material change in the terms of reference to the adjudicating authorities. Therefore, Sir, I do contend that a very material change has been made by this amendment to which, unfortunately, the Honourable Member in charge of the Bill has agreed. I do not think that this House has had a proper opportunity of discussing this very important change.

The Honourable Mr. M. S. Aney (Leader of the House): I wish to know what prevented the House from discussing the amendment now?

Sir Cowasji Jehangir: We are doing it now.

The Honourable Mr. M. S. Aney: So you have got an opportunity of discussing it now.

Sir Cowasji Jehangir: But the amendment makes a fundamental change in the Act which was not in the Bill and it was not before the Select Committee. These are two very important matters. It is brought before the House by way of an amendment. Considering how the House is at present constituted, the trouble lies in Government having accepted it. If the Government had not accepted it, then we could have put our point of view for the consideration of the Government. The Government are now committed to it. Committed to what? Committed to a main principle in the Act which was not mentioned in the Bill nor in the Select Committee and it came before the House for the first time by way of this amendment.

The Honourable Sir Andrew Clow: The Honourable Member has no authority to say that it was not mentioned in the Select Committee.

Mr. Jamnadas M. Mehta: If the Honourable Member wants to disclose it, I shall have something to say about what took place in the Select Committee.

The Honourable Sir Andrew Clow: I only replied in the negative that the Honourable Member had no authority to say what was mentioned in the Select Committee.

Sir Cowasji Jehangir: So far as we are concerned, we Members of this House who were not on the Select Committee are only concerned with the Bill and with the Select Committee Report, as placed before us. Under the circumstances, since the terms of reference are being changed, and since the changing of those terms of reference are very strongly opposed by certain Honourable Members of this House who have been and who

are connected with the civic life of this country in many parts of India, I do consider that it is rather hard on them and especially to Members of the Select Committee that a sudden change should be brought before this House for discussion in this manner and that Government should agree to it. My Honourable friend, Dr. Banerjea, very rightly approached the Honourable Member in charge of the Bill—I would have done the same thing and put my point of view to him—but at the same time I would have taken care to see, if I had been in the place of Dr. Banerjea, that the suggestions he got the Honourable Member in charge of the Bill to agree to had fairly substantial support from most of the Honourable Members of this House and especially those sitting behind him.

Mr. Husenbhai Abdullabhai Laljee: His own Party is not agreed on this point. Majority of them are against.

Sir Cowasji Jehangir: Yes, and those sitting behind him are not agreed. He got his point, he got that High Court Judge that he wanted, as if there was some magic in the expression 'High Court Judge', but the terms of reference to that High Court Judge are radically changed. So what happened was this, that my Honourable friend, Dr. Banerjea, got the shadow, and my Honourable friend, the Honourable Member in charge of the Bill, got the substance. He got a radical change in the terms of reference made which is entirely in his favour, and my Honourable friend, Dr. Banerjea, got the consolation of getting a High Court Judge, with his arms and legs, both tied and bound. I do say that this is not quite an equitable manner of discussing an important Bill.

Since it is now five o'clock and it is time to adjourn the House, and I have a lot more to say, I wish to make only one suggestion, that between now and tomorrow morning I think a little discussion might continue amongst the Members of the Select Committee and that some agreed formula might be arrived at whereby I will save my breath and the valuable time of the House. I do make this suggestion to the Honourable Members of the Select Committee and to the Honourable Member in charge of the Bill.

The Assembly then adjourned till Eleven of the Clock on Friday, the 14th November, 1941.