

5th March 1941

THE
LEGISLATIVE ASSEMBLY DEBATES

Official Report

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THIRTEENTH SESSION
OF THE
FIFTH LEGISLATIVE ASSEMBLY,
1941



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Legislative Assembly

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LEGISLATIVE ASSEMBLY.

Wednesday, 5th March, 1941.

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

STARRED QUESTIONS AND ANSWERS.

(a) ORAL ANSWERS.

PARCELS, GOODS AND PASSENGER CHARGES FROM BOMBAY TO HOSHANGABAD.

253. *Mr. Govind V. Deshmukh: Will the Honourable Member for Railways please state:

- (a) if it is a fact that there is in front of the Station Master's Office at Hoshangabad Railway Station, a milestone bearing No. 474 indicating the distance from Bombay;
- (b) the rates charged by the railway for parcels, goods and passengers (i) up to 475 miles, and (ii) from 475 miles to 500 miles; and
- (c) if it is a fact that the railway administration charge for all parcels, goods and passengers from Bombay to Hoshangabad as for 476 miles; if so, why?

The Honourable Sir Andrew Clow: (a) I understand there is such a milestone near the Parcels Office.

(b) I would refer the Honourable Member to the Indian Railway Conference Association Goods and Coaching Tariffs and to the Great Indian Peninsula Railway Time Table and Guide, copies of which are in the Library of the House.

(c) Yes, presumably because this is the correct mileage. But the Great Indian Peninsula Railway are looking into the matter.

Mr. Govind V. Deshmukh: Are there any other instances on this railway where fares or freights are charged for services not rendered? Here the distance is only 474 miles, but the Hoshangabad people are being charged for 476 miles—in other words, for services not rendered.

The Honourable Sir Andrew Clow: I am not prepared to accept the Honourable Member's assumption that we are not carrying the goods for the distances for which we charge.

Mr. Lalchand Navalrai: May I know if the Honourable Member knows that on other railways also they do not charge according to the actual distances, but according to what they put down as the distance?

The Honourable Sir Andrew Clow: They often charge much less.

**"SPEAKERS' NOTES BY MINISTRY OF INFORMATION" IN BRITAIN AND ALLEGED
LIBEL ON INDIA.**

254. *Dr. P. N. Banerjee: Will the Foreign Secretary please state whether the attention of Government has been drawn to the news published in the *Hindustan Times* of the 16th February, 1941, under the heading "India being libelled" in which it is said that certain "Talking points on India" were issued in Britain as speakers' notes by the Ministry of Information in connection with the British Empire Publicity campaign, in which phrases occur concerning Indian people's ignorance and religious superstitions and the "difficulty of fitting democracy into indigenous social systems" and further in which it is stated that the army is being recruited only from certain martial races and the difficulty is emphasised of getting Indian officers? If so, will Government be pleased to state what action has been taken in the matter? If none, are Government now prepared to consider the desirability of taking suitable action?

Mr. J. D. Tyson: Sir, my Honourable friend, the External Affairs Secretary, is unavoidably detained, and he has asked me to answer on his behalf.

The question should have been addressed to the Honourable the Home Member.

ACCOUNTANTS ON NORTH WESTERN RAILWAY.

255. *Mr. H. M. Abdullah: (a) Will the Honourable Member for Railways please refer to his reply to parts (b) and (c) of my starred question No. 3 on the 6th February, 1940, regarding accountants on the North Western Railway, and state on what date the last man was recruited direct in this cadre?

(b) Were the qualified clerks not available for promotion at the time when one Muslim and five non-Muslim accountants were recruited direct?

(c) Were no qualified hands available at the time when exemption for two Muslims and three non-Muslims from passing Appendix D examination was allowed?

(d) What circumstances required the direct appointment of exemption from Appendix D of eleven men for the posts of Accountants?

(e) What is the number of permanent and temporary Muslim Accountants at present, and what is the total number of accountants?

(f) Will Government please take notice of the paucity of Muslims in this cadre and evolve a formula to increase their number?

(g) When and how do Government propose to increase the number of Muslim Accountants?

The Honourable Sir Andrew Olow: (a) 3rd August, 1928.

(b) and (c). Qualified men were available but not in large numbers as is the case at present.

(d) The majority of these direct appointments, or exemptions were made with reference to the impending separation of Audit from Accounts in 1929, when it was uncertain how many accountants would be spared by the Auditor General from the audit side, and it was considered advisable

to take special steps to ensure an adequate supply of accountants on the Accounts side.

(e) Three permanent and two officiating out of 38 accountants.

(f) and (g). I invite the attention of the Honourable Member to my reply to part (d) of his question No. 3 asked on the 6th February, 1940.

Mr. Muhammad Nauman: With reference to the reply to part (e), may I know what effort is being made to see that, out of 38 Accountants, our number does not remain at five, as has been mentioned?

The Honourable Sir Andrew Olow: These appointments are made by promotion, so that no special effort is being made.

Mr. Muhammad Nauman: There is no direct recruitment in that Accounts Department?

The Honourable Sir Andrew Olow: Not of Accountants at present, I believe.

NON-RECOGNITION OF THE ALL-INDIA RAILWAY MUSLIM 'EMPLOYEES ASSOCIATION.

256. ***Mr. H. M. Abdullah:** (a) Will the Honourable Member for Railways please state whether it is a fact that Railway administrations have not accorded official recognition to the All-India Railway Muslim Employees Association, or its branches?

(b) If the reply to part (a) be in the affirmative, will the Honourable Member please state which other Muslim organization or organizations have been given official recognition, through which the Muslim employees may bring their grievances to the notice of the authorities concerned?

The Honourable Sir Andrew Olow: (a) Yes.

(b) No communal unions have been recognized.

OPINION OF ALL-INDIA RAILWAYMEN'S FEDERATION ON THE D'SOUZA REPORT.

257. ***Mr. H. M. Abdullah:** (a) Will the Honourable Member for Railways please state whether it is a fact that the opinion of All-India Railwaymen's Federation has been invited on the recommendations made in the D'Souza Report?

(b) Is it a fact that Muslims as such are not represented on this Federation?

(c) What other organizations have been asked to submit their opinions on this Report?

(d) How many of these organizations represent Muslims and how many non-Muslims?

(e) If none of the Muslim organizations has been asked to send its opinion, is the Honourable Member now prepared to refer to some Muslim organizations to send their views on the subject?

(f) Is it a fact that the Muslims' Rights Protection Board, Lahore, asked the Railway Board for a copy of the D'Souza Report? If so, what reply, if any, was given to them?

The Honourable Sir Andrew Olow: (a) No.

(b) Individuals are not represented by this Federation as it is a Federation of Unions and not a Union of employees, but I understand that the Unions affiliated to it have Muslims among their members, and Muslims are generally represented on the deputations which periodically discuss staff matters with the Railway Board.

(c) None.

(d) Does not arise.

(e) No.

(f) Yes. At the time when the report was received it was a departmental document, and no reply was then sent. It has since been decided to place it on sale and the organization is being so informed.

Mr. Muhammad Nauman: Is the Honourable Member aware, which are the unions affiliated to this organisation?

The Honourable Sir Andrew Olow: I have not the list with me here.

Mr. Muhammad Nauman: Is it not necessary for that organisation to submit a list to the Railway Board before they were recognised?

The Honourable Sir Andrew Olow: These meetings began, I think, more than ten or twelve years ago at least: I do not know whether a list was then submitted or not.

Mr. Muhammad Nauman: Has the Honourable Member made any inquiries about it, that it is not a communal union as we have been asserting that it is a Hindu organisation?

The Honourable Sir Andrew Olow: It is not a communal union, because it is not a union at all: it is a federation of unions; and, so far as I know, the unions' ranks are open to all unions of railway servants.

Mr. Muhammad Nauman: I was submitting that all these bodies, which are affiliated to this federation, are unions absolutely of the Hindu majority, and that fact was known to the Honourable Member.

The Honourable Sir Andrew Olow: In referring to a communal union, I did not mean a union which must obviously have a majority of some community, and I would not regard a union as communal, because the majority of employees were Muslims. So long as its ranks are open to all employees and it has no communal objects, we do not regard it as communal.

Mr. Muhammad Nauman: Is the Honourable Member assured that there are Muslims in these organisations which the federation represents?

The Honourable Sir Andrew Olow: Yes.

Mr. Lalchand Navalrai: Is it not a fact that there are a larger number of Muhammadans in these unions than Hindus?

The Honourable Sir Andrew Olow: I should be surprised if that is so, seeing that Hindus are in a large majority in these railways.

Mr. Lalchand Navalrai: The point is that this union in Lahore, I know, has got more Muhammadans in it than Hindus; therefore, I am asking whether the Honourable Member knows it.

Mr. Muhammad Nauman: Is it affiliated to this federation?

Mr. Lalchand Navalrai: Yes.

The Honourable Sir Andrew Olow: Unions in this federation are not confined to the Punjab.

RECOGNITION OF THE ANGLO-INDIAN AND DOMICILED EUROPEAN ASSOCIATION.

258. *Mr. H. M. Abdullah: (a) Will the Honourable Member for Railways please state whether the membership of Anglo-Indian and Domiciled European Association is open to all communities, or is restricted to any particular community?

(b) Is this a service association or a political association?

(c) Is this Association recognized by Government or Railway administrations?

(d) Is this Association allowed the use of Railway institutes to hold meetings, etc.?

(e) Are the General Managers of Railways allowed to lend Railway stores to these Associations free of hire charges?

(f) Can similar concessions be allowed to the Muslim Employees' Associations, or any other political organizations of the Muslims? If not, why not?

The Honourable Sir Andrew Olow: (a) I understand it is restricted to members of the community.

(b) It is not a Service Association.

(c) It is not recognised in the sense in which a union of railway workers is recognised.

(d) I have received no information of any such concession.

(e) No orders have been issued on the subject and I have received no information of any such concession.

(f) Does not arise.

Mr. Muhammad Nauman: With reference to the reply to part (c), what is the particular sense in which a union is recognised when all facilities are being afforded to this organisation?

The Honourable Sir Andrew Olow: Recognition involves a formal recognition, by the General Manager, of a railway union and a willingness to correspond and discuss certain matters with it.

Mr. Muhammad Nauman: Is it not a fact that correspondence is carried on with this organisation?

The Honourable Sir Andrew Clow: That may be so, but this is not a service organisation. There is no objection, for example, to the head of a department corresponding with an organisation like the Muslim League if it wishes to raise some relevant matter. But this is not a service organisation.

Sardar Sant Singh: Will Government recognise even such societies as the Sikh Protection Society, and do they reply to questions or information sought by this society from the managers of railways?

The Honourable Sir Andrew Clow: That is not a matter really concerning the railways directly: they would not reply on service matters but if it raises some other matter of interest to the community, then I take it the general manager would reply to it.

Mr. Muhammad Nauman: I understand that it is an organisation on the same footing as the Honourable Member has just put the Muslim League—*vis.*, if the Muslim League wishes to correspond on any particular matter with the railways, then the Railway Agents will correspond with them?

The Honourable Sir Andrew Clow: So long as it was not acting in service matters. If the Muslim League wanted to have certain facilities for a conference and addressed the Railway Administration regarding those facilities, say for travelling or anything of that sort, they would certainly correspond.

FIREMEN, SHUNTERS AND DRIVERS ON NORTH WESTERN RAILWAY.

259. *Mr. M. Ghiasuddin: (a) Will the Honourable the Railway Member be pleased to state the number of Firemen, Shunters and Drivers of each grade employed on the North Western Railway?

(b) On what grounds have they been classified into four grades?

(c) Is there any allotment fixed by the Administration in each Division and Shed?

(d) Is it a fact that many posts of Firemen grade 3 are lying vacant? If so, what procedure does he propose to adopt to fill up the said vacancies?

The Honourable Sir Andrew Clow: (a) The number of Firemen, Shunters and Drivers is as follows:

	Grades IV & III.	Grades I & II.
Firemen	95	2,046
Shunters	60	513
Drivers	200	564

(b) The classification is based on the nature of the work.

(c) Yes.

(d) There are 17 vacancies which will be filled by Boy Firemen on completion of their training.

PROMOTIONS AMONG THE LOCO. RUNNING STAFF ON NORTH WESTERN RAILWAY.

260. *Mr. M. Ghiasuddin: (a) Will the Honourable the Railway Member please state whether it is a fact that the Loco. Running Staff on the North Western Railway is being promoted from grade 1 to grade 2?

(b) If so, the reasons for not promoting to grade 3?

(c) Is the Administration prepared to fix a ratio for cleaners grade 2 to be promoted as Boy Firemen, which are at present being recruited only from outside?

The Honourable Sir Andrew Olow: (a) Yes, when grade I staff pass the literacy test.

(b) It is not in the interest of the Administration to do so.

(c) No, but a cleaner who satisfies the conditions can apply along with outsiders for posts of Boy Firemen.

ILLITERATE DRIVERS WORKING ON PASSENGER TRAINS ON NORTH WESTERN RAILWAY.

261. *Mr. M. Ghiasuddin: (a) Will the Honourable the Railway Member please state whether it is a fact that there is sufficient number of literate staff with the North Western Railway to work the passenger trains?

(b) If so, why are illiterate men being given the responsibility of driving on which depends the public safety?

(c) If not, is the Administration prepared to make an endeavour to get a good number of literate drivers, by fixing some reasonable ratio in the promotion which is beneficial to the Administration with a view to public safety, fuel economy and loco. repairs?

The Honourable Sir Andrew Olow: (a) Yes.

(b) No staff are appointed as drivers without being tested by a superior officer and adequate arrangements exist to inform illiterate staff of instructions connected with the working of trains. Such staff are not, therefore, a danger to the travelling public.

(c) Does not arise.

Mr. Lalchand Navalrai: Is it not a fact that illiterate firemen are also appointed as drivers and they drive the engines?

The Honourable Sir Andrew Olow: On the less important trains it may be so.

HINDI AND URDU POEMS RECORDED BY THE ALL-INDIA RADIO.

262. *Mr. Govind V. Deshmukh: Will the Honourable Member for Communications please state the number and the names of poets whose poems have been recorded at various stations of the All-India Radio for Hindustani programmes during the last six months? How much remuneration was paid for Hindi poems thus recorded, and how much for Urdu poems?

The Honourable Sir Andrew Clow: A statement giving the names of the poets is laid on the table.

The total amount paid for Hindi and Urdu poems was Rs. 60 and Rs. 70 respectively, but no remuneration was paid to five out of the nine poets.

Statement showing the Names of Poets whose poems were recorded by All-India Radio for inclusion in the Hindustani programmes during the six months ending the 19th February, 1941.

1. Hafeez Jullunduri, Khan Sahib Abul Aar.
2. Iqbal, the late Sir Mohammad.
3. Jigar Moradabadi.
4. Josh Malihabadi.
5. Nirala, Mr. Surya Kanth Tripathi.
6. "Pradeep", Mr. Ram Chandra Trivedi.
7. Saghar Nizami.
8. Sumon, Mr. Shiv Mangal Singh.
9. Wahshat, Khan Bahadur Raza Ali.

SPEAKERS BROADCASTING IN HINDUSTANI FROM THE ALL-INDIA RADIO BROADCASTING STATIONS.

263. *Mr. Govind V. Deshmukh: (a) Will the Honourable Member for Communications please lay on the table of this House a statement showing the names of the persons called upon during the last six months to make recorded speeches which are incorporated in the Hindustani News Bulletins of the All-India Radio?

(b) How many of them were Urdu scholars or journalists and how many Hindi scholars or journalists?

(c) How much remuneration was paid in each case?

The Honourable Sir Andrew Clow: (a) A statement giving the names is laid on the table.

(b) One is a Hindi journalist and six are Urdu journalists. Most of the others are authors or University lecturers. I cannot undertake to make any pronouncement on their scholarship.

(c) No payment was made to the Premier of the Punjab. I cannot give information regarding the others as particulars of the remuneration paid to individual speakers is confidential.

Statement showing the names of persons called upon during the six months ending the 19th February, 1941, to make recorded speeches which are incorporated in the Hindustani News Bulletins of the All-India Radio.

1. Abdul Bari, Mr.
2. Chaube, Mr. S. K.
3. Firaq, Mr. Raghupati Sahai.
4. Gulshan Rai, Mr.
5. Gupta, Mr. Dharampal.
6. Khan, Sir Sikandar Hayat.
7. Mulla, Mr. Anand Narain.
8. Niaz Fatehpuri.
9. Qureshi, Mr. Mohd. Zubair.
10. Ram Singh, Professor.
11. Salik, Mr. Abdul Majid.

12. Saksena, Dr. S. K.
13. Saxena, Dr. R. U.
14. Srivastava, Mr. Hargovind Dayal.
15. Sultan, Chaudhri Mohd.
16. Zahidie, Mr. Mushtaq Ahmed.

HINDUSTANI DRAMAS BROADCAST FROM ALL-INDIA RADIO BROADCASTING STATIONS.

264. *Mr. Govind V. Deshmukh: (a) Will the Honourable Member for Communications please state how many Hindustani dramas have been broadcast from the various stations of the All-India Radio during the last six months?

(b) What are the names of the dramas so broadcast and the names of their authors? What was the remuneration given to each author?

The Honourable Sir Andrew Olow: (a) 84.

(b) As regards the first part of the question, I would refer the Honourable Member to the *Indian Listener*, which is available in the Library of the House. Information about remuneration paid to individual authors is confidential.

Mr. Govind V. Deshmukh: May I know, Sir, when the people who broadcast and receive remuneration, why that information relating to their remuneration should be treated as confidential?

The Honourable Sir Andrew Olow: As a rule I furnish statements of aggregate particulars, but the ordinary rule in respect of payments to non-officials is that they are confidential.

Mr. Lalchand Navalrai: Are there any instructions or rules as to the amount of remuneration to be paid?

The Honourable Sir Andrew Olow: No, there are no rigid rules; it is a matter of judgment.

Mr. Lalchand Navalrai: To whom is the matter left to decide? In whose discretion does that matter lie?

The Honourable Sir Andrew Olow: I imagine normally the Station Director, but he is, of course, subject to the control of the Controller of Broadcasting.

HINDUSTANI PROGRAMME STAFF OF THE ALL-INDIA RADIO BROADCASTING STATIONS.

265. *Mr. Govind V. Deshmukh: (a) Will the Honourable Member for Communications please lay on the table of this House a list showing the names, salaries and allowances, if any, of the Hindustani Programme staff of the All-India Radio Stations?

(b) What was the salary of the members of this staff immediately before joining the All-India Radio?

(c) How many of them have Hindi as their mother tongue?

The Honourable Sir Andrew Olow: (a) A statement is laid on the table. The names given are of those who are directly concerned at present either in the supervision, preparation or announcing of Hindustani programmes,

but the personnel employed might vary according to the exigencies of the service.

(b) The bulk of the men were not previously employed and in respect of the remainder I do not propose to lay the particulars on the table. The remuneration given in All-India Radio is not based on previous emoluments but on sanctioned rates.

(c) No member of the staff has declared Hindi as his mother tongue but 17 know Hindi.

Statement showing the names, salaries, allowances, etc., of the Hindustani Programme Staff of All-India Radio Stations.

Name. 1	Designation. 2	Salary. 3 Rs.
DELHI STATION.		
Mr. A. A. Advani	Station Director	800
Mr. J. K. Mehra	Assistant Station Director	410
Mr. S. Arif	Director of Programmes	260
Mr. A. Qutb	Programme Assistant	180
Mr. Mohd. Iqbal	Do.	180
Mr. Hafeez Javed	Do.	170
Mr. Feroze Nizami	Do.	160
Mr. N. M. Rashid	Do.	160
Mr. Krishen Chandra	Do.	160
Mr. A. Qudus	Do.	160
Mr. Tajuddin	Do.	160
Mr. S. N. Chopra	Do.	150
Mr. Ilyasullah	Announcer	105
Mr. Ghulam Mohiuddin	Do.	100
Mr. R. N. Mehra	Do.	100
BOMBAY STATION.		
Mr. N. A. S. Lakshmanan	Station Director	800
Mr. M. A. Latif	Programme Assistant	150
Mr. Shakeel Ahmad	Announcer	100
Mr. B. S. Bhatnager	Do.	100
LUCKNOW STATION.		
Mr. A. K. Sen	Station Director	500
Mr. K. S. Mullick	Assistant Station Director	390
Mr. Malik Hasib Ahmad	Director of Programmes	270
Mr. N. R. Bhattacharya	Programme Assistant	180
Mr. O. K. Farid	Do.	180
Mr. Ishrat Rahmani	Do.	160
Mr. Latifur Rahman	Do.	160
Mr. Ansar Ali Nasri	Do.	160
Mr. Madan Mohan Aga	Do.	160
Mr. Hamid Ali	Announcer	105
Mr. Ayaz Ahmad	Do.	105
LAHORE STATION.		
Mr. Rashid Ahmad	Station Director	575
Mr. S. S. Niazi	Assistant Station Director	410
Mr. Hans Raj Luthra	Director of Programmes	250
Mr. Agha Bashir Ahmad	Programme Assistant	170
Mr. S. A. Hafeez	Do.	160
Mr. Ghulam Ali Butt	Do.	150
Mr. Mahmud Nizami	Do.	160
Mr. Masud Hafeez	Do.	150
Mr. Iqbal Singh	Do.	150
Mr. Abdul Hamid Sheikh	Announcer	105
Mr. M. A. Hamadani	Do.	100

NOTE.—Station Directors also draw Rs. 50 per mensem as conveyance allowance.

Sardar Sant Singh: May I know, Sir, in view of the large number of complaints that we receive about the various Radio Stations, whether the Honourable Member is prepared to appoint a Committee of this House to go into the whole question and report on the matter?

The Honourable Sir Andrew Olow: I submit, Sir, that does not arise out of this question.

Sardar Sant Singh: Will the Honourable Member be prepared to appoint a Committee of his Department to go into this question and make a report to this House?

The Honourable Sir Andrew Olow: I submit that that does not arise.

STEPS FOR PROTECTION OF PROPERTY OF INDIAN NATIONALS IN SAIGON, INDO-CHINA.

266. *Raja T. Manavedan: (a) Will the Secretary for External Affairs please state the latest position with regard to properties, movable and immovable, owned by Indian nationals in Saigon and other parts of Indo-China?

(b) Is it a fact that the British Consul General at Saigon has been instructed by His Majesty's Government to take all necessary and possible steps to protect Indian property there in view of the present unsettled condition prevailing there, and if so, what those steps are?

(c) Have Government received any representation from Mr. Nadimuthu Pillay, M.L.A., or other Indian nationals, either directly or through the Madras Government in this behalf?

(d) Have Government taken any steps on those representations to protect their property in Saigon and, if not, why not?

Mr. J. D. Tyson: With your permission, Sir, I propose to reply to questions Nos. 266 and 267 together.

I would invite the Honourable Member's attention to the replies given on the 25th February to Mr. Aney's starred questions Nos. 146, 147 and 148.

EMBARGO ON TRANSMISSION OF MONEY BY INDIAN NATIONALS FROM SAIGON TO INDIA.

†267. *Raja T. Manavedan: (a) Will the Secretary for External Affairs please state whether the Government are aware of any embargo placed by the British Government on remittances of money in Saigon through bankers to Indian nationals in Madras and elsewhere?

(b) Is it a fact that the branches of the Chartered Bank and the National Bank of India in Saigon have refused to accept during the past six months or more, remittances to India of money from Saigon and belonging to Indian Nationals, though such remittances are allowed by the Government of Indo-China?

(c) Are Government prepared to take steps to inquire into this matter and arrange for prompt remittances to India by these banks in the interests of Indian nationals?

†For answer to this question, see answer to question No. 266.

EXTENSIONS OF SERVICE AFTER SUPERANNUATION ON STATE RAILWAYS.

268. *Mr. H. M. Abdullah: (a) Will the Honourable Member for Railways please state whether Government have agreed to give extensions after attaining the age of superannuation, i.e., 55 years, on the State Railways?

(b) What are the fundamental bases on which extensions are granted, and in whom is vested the powers of granting extensions?

(c) If the reply to part (a) be in the affirmative, will the Honourable Member please state, community-wise, how many people have been given extensions up to date among the following categories :

(1) permanent officers of the lower gazetted service; and

(2) officiating officers of the lower gazetted service?

(d) How many cases of extension are under consideration of the Railway Board at present community-wise?

(e) Is the Honourable Member prepared to consider the appointment of a board on each State Railway to look into each case and recommend extensions to the Board in very rare cases?

(f) Is the Honourable Member prepared to consider this question and issue orders for stoppage of extensions?

The Honourable Sir Andrew Clow: (a) Government do not agree to grant extensions beyond the age of superannuation except in very special circumstances. Superannuation does not depend on the length of service but on the age of the officer.

(b) Extensions are only granted when it is in the public interest to do so. Extensions to gazetted staff may only be sanctioned by the Railway Board. In the case of non-gazetted staff, that power is vested in Heads of Departments.

(c) Although extensions are not generally granted, they were in the following cases during 1940 and 1941 :

(i) Two Anglo-Indian or European Lower Gazetted Service officers were granted extensions.

(ii) One European and one Parsee.

(d) One, European.

(e) No, as there is no necessity for it.

(f) No. Exceptional circumstances arise from time to time which make extensions desirable.

Mr. Lalchand Navalrai: May I know, Sir, what are the exceptional circumstances under which extensions are granted?

The Honourable Sir Andrew Clow: They cannot be defined. There are a great many circumstances; for instance, at present, which is war time, we are likely to have a shortage of officers in some cadres owing to borrowing for other Departments.

Mr. Lalchand Navalrai: Why should not these people make way for younger people to come in?

The Honourable Sir Andrew Olow: Very often an officer is engaged on a particular kind of work, and it is not in the public interest that he should go just at the moment when he is 55.

Mr. Lalchand Navalrai: In those cases, is only one extension given or many extensions are given?

The Honourable Sir Andrew Olow: There is no provision against giving more than one, but normally extensions are given for one year at a time; generally they don't extend very long.

ACCIDENTS ON RAILWAY LINE RUNNING ALONG BABAR ROAD, NEW DELHI.

269. *Sardar Sant Singh: (a) Has the attention of the Honourable the Railway Member been drawn to a letter published in the *Statesman* of the 31st December, 1940, on page 6, column (4), regarding many accidents that have resulted on the Great Indian Peninsula and the Bombay, Baroda and Central India Railway lines, which run along Babar Road, New Delhi? If so, what steps have been taken to remove this danger? If none, why not?

(b) Is he aware that the demand for an overbridge and barricade has been ventilated in other papers, like *Hindustan Times*? If so, has the Honourable Member's attention been invited by the Chief Commissioner, Delhi, as well? When does the Honourable Member propose to remove this grievance of the public?

The Honourable Sir Andrew Olow: (a) and (b). I have seen the articles in question in the papers, but have not received any communication from the Chief Commissioner, Delhi. The facts reported do not establish a case for an overbridge or a level crossing, but raise the question of the advisability of providing a more efficient type of fencing than the 'wire' fencing now in existence. I propose to refer this matter to the Railway Administration for consideration.

APPLICABILITY OF THE TRADE DISPUTES ACT TO POSTS AND TELEGRAPHS EMPLOYEES' UNIONS.

270. *Pandit Lakshmi Kanta Maitra: (a) Will the Honourable Member in Charge for Communications please state if the employees of the Posts and Telegraphs Department come under the Trade Disputes Act of 1929?

(b) If so, will he please state what objection, if any, he has for the recognised service unions of the employees approaching the Government of India with the request to appoint a court of enquiry under the provisions of the Act?

The Honourable Sir Andrew Olow: (a) This question, depending as it does on the interpretation of the definition of "workmen" in the Act mentioned, is one which could not be authoritatively determined save by the courts.

(b) Does not arise.

UNSTARRED QUESTIONS AND ANSWERS.

STAFF OF THE LATE OUDH AND ROHILKHAND RAILWAY DENIED RENT-FREE ACCOMMODATION.

96. Mr. Muhammad Azhar Ali: Will the Honourable Member in charge of Railways be pleased to enquire and state:

(a) how many of the staff of the late Oudh and Rohilkhand Railway who enjoyed the privilege of free accommodation before 1931 are not allowed to get the concession now, contrary to the assurance given in this House in reply to starred question No. 34 (b) and (d) on the 16th March, 1939;

(b) whether it is a fact that an employee of the late Oudh and Rohilkhand Railway who enjoyed the privilege of rent free accommodation before 1931, irrespective of category, is entitled to enjoy the same under the rules; and

(c) whether it is a fact that many of such staff working as Guards, Ticket Collectors and Ticket Examiners in Moradabad Division are denied this concession, which they enjoyed before 1931 and when the late Oudh and Rohilkhand Railway existed; if so, under what rules they are denied this privilege?

The Honourable Sir Andrew Clow: (a) Government have no particulars of any such case and no assurance appears to have been given in the answer cited that the privilege of rent-free accommodation was permanent. Part (b) of the answer referred to permission to occupy rent-free quarters only so long as such quarters were available.

(b) and (c). The attention of the Honourable Member is invited to the replies given to unstarred questions Nos. 161 and 34 asked in this House on the 8th April, 1938 and 16th March, 1939, respectively, to which I have nothing to add.

ASSISTANT STATION MASTERS ON EAST INDIAN RAILWAY.

97. Mr. Muhammad Azhar Ali: (a) Will the Honourable the Railway Member please state whether it is a fact that there are the following existing grades of Assistant Station Masters on the East Indian Railway:

1. Rs. 40—4—68,
2. Rs. 70—5—95, and
3. Rs. 100—10—140?

(b) What are the sanctioned posts in the above grades in the Moradabad Division of the East Indian Railway?

(c) Is it a fact that 'A' class Station Masters are amalgamated with Assistant Station Masters for the purpose of seniority and promotion? If so, why?

(d) When the scales of pay of 'A' class Station Masters and Assistant Station Masters (old scales and co-ordinated) are not identical in respect of maximum, why are they amalgamated for the purposes of seniority and promotions?

(e) Is it a fact that in the new scale of Rs. 30—3—45—5—60 the scales of 'A' class Station Masters and Assistant Station Masters are identical?

(f) What are the reasons for not separating the cadres of Assistant Station Masters and 'A' class Station Masters?

(g) What are the degrees of responsibilities entrusted to 'A' class Station Masters and Assistant Station Masters on the same scale of pay?

(h) How many Assistant Station Masters in the grade of Rs. 40—4—68 are blocked on the maximum and since how long in Moradabad Division of the East Indian Railway?

(i) What are the necessary qualifications for Assistant Station Masters and 'A' class Station Masters?

The Honourable Sir Andrew Clow: (a) Yes, except that the grade is Rs. 100—5—140 not Rs. 100—10—140.

(b) The information available with Government is at page 109 of the East Indian Railway Establishment Rolls for the year 1939-40, a copy of which is in the Library of the House.

(c), (d), (f) to (i). Government have no information but have called for it and I will lay a reply on the table of the House in due course.

(e) Station Masters grade VIII and Assistant Station Masters grade V are both in that scale.

MEMORIALS, ETC., FROM ASSISTANT STATION MASTERS IN MORADABAD DIVISION.

98. Mr. Muhammad Azhar Ali: Will the Honourable the Railway Member be pleased to state whether it is a fact that Assistant Station Masters of Moradabad Division have submitted various memorials, appeals and representations concerning their prospects and limited chances of promotions and higher responsibilities as compared with the wages paid to them? If so, what action, if any, has been taken by the Railway Board?

The Honourable Sir Andrew Clow: As regards the first part of the question, the Railway Board have not received any memorial from the Assistant Station Masters of the Moradabad Division of the East Indian Railway; the latter part does not arise.

GUARDS NOT QUALIFIED IN THE FIRST AID ON EAST INDIAN RAILWAY.

99. Mr. Muhammad Azhar Ali: Will the Honourable the Railway Member please state how many Guards not qualified in the First Aid (to the injured) course are employed in higher grades and posted on passenger carrying services on the East Indian Railway?

The Honourable Sir Andrew Clow: 101.

GUARDS NOT QUALIFIED IN THE FIRST AID ON EAST INDIAN RAILWAY.

100. Mr. Muhammad Azhar Ali: Will the Honourable the Railway Member please state how many Guards not qualified in the First Aid course have been allowed annual increments and grade promotions on the East Indian Railway?

The Honourable Sir Andrew Clow: Government do not receive information on these matters of detail, but if particulars for the year 1940 can be readily collected, they will be furnished at a later date.

RULES REGARDING RESIGNATION BY STATE RAILWAY SUBORDINATE STAFF.

101. Mr. Muhammad Azhar Ali: Will the Honourable the Railway Member please state the rules regarding resignation by State Railway subordinate staff?

The Honourable Sir Andrew Olow: There are no rules concerning the resignation of staff from service; but staff are entitled to resign from service in terms of their service agreements. These generally stipulate for one month's notice.

PRICES OF RAILWAY TRAINING SCHOOL CALENDARS.

102. Mr. Muhammad Azhar Ali: Will the Honourable Member for Railways please refer to the reply given to unstarred question No. 8, asked in this House on the 5th November, 1940, and state the sale prices of the Training School Calendars referred to in the reply at which the public as well as the Railway servants can have them?

The Honourable Sir Andrew Olow: Each of the Calendars is priced at one rupee.

PRIOR SANCTION OF RAILWAY BOARD FOR REVISION IN SCALE OF PAY AFFECTING CLASS OR GRADE OF EMPLOYEES.

103. Mr. Muhammad Azhar Ali: Will the Honourable Member for Railways please refer to:

- (a) Paragraph 307 of East Indian Railway Gazette No. 13 of 1925, dated 1st April, 1925, *viz.*, 'Pay and allowances under the existing rules and conditions of the East Indian Railway Company';
- (b) Chief Operating Superintendent, East Indian Railway, Circular No. OPE-270/Pt. 1, dated the 14th May, 1928, on the subject of grading of Train Examiners and Assistant Train Examiners; and
- (c) Rule 168 of the State Railway Establishment Code; and to state:
 - (i) the number and date of the prior sanction of the Railway Board on the revision in the scale of pay affecting the class or grade of employees;
 - (ii) whether the employees affected were given the option of election; if not, why not; and
 - (iii) whether the revision in the scale of pay affected the seniority of the employees in service on and before the 14th May, 1928?

The Honourable Sir Andrew Olow: (i) The prior sanction of the Railway Board was not necessary.

(ii) There was no necessity to give an option, since no employee's pay was reduced.

(iii) No one lost seniority which he already held, but the revised scales formed a basis for combining the seniority of the East Indian and Oudh and Rohilkhand Railway staff.

MOTION FOR ADJOURNMENT.

NON-RELEASE OF MR. S. SATYAMURTI.

Mr. President (The Honourable Sir Abdur Rahim): I have received a notice for the adjournment of the House from Mr. Kazmi. He wishes to discuss a definite matter of urgent public importance, namely, the failure of the Government of India in not getting the release of Mr. Satyamurti, a Member of this House, who is ill, and who had to be brought to the General Hospital, Madras, due to his illness as reported in the *Hindustan Times*, dated today.

Under whose order was Mr. Satyamurti arrested?

Qazi Muhammad Ahmad Kazmi (Meerut Division: Muhammadan Rural): Under the Defence of India Rules.

Mr. President (The Honourable Sir Abdur Rahim): Under whose order?

The Honourable Sir Reginald Maxwell (Home Member): He has been sentenced to imprisonment by a Court.

Mr. President (The Honourable Sir Abdur Rahim): By a Court?

Qazi Muhammad Ahmad Kazmi: Yes.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member knows that this House cannot interfere in a matter like that. Where a Member has been sentenced by a Court in the ordinary administration of the law, this House cannot interfere. The Honourable Member knows it, and it has been repeatedly laid down here.

Qazi Muhammad Ahmad Kazmi: I bow to your ruling, Sir, but my submission is—I am not complaining of the conviction or of Mr. Satyamurti's detention, but I am complaining of his detention at a time when he is seriously ill.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member cannot make a speech. If it is a Court that has sentenced Mr. Satyamurti, I suppose there is an appeal, or at any rate it is the Appellate Court or the local authority that can direct his release. The motion is disallowed.

THE INDIAN RAILWAYS (AMENDMENT) BILL.

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

"That clause 5 stand part of the Bill."

There is an amendment in the name of Dr. Sir Ziauddin Ahmad, No. 22.

(Amendment No. 22 was not moved.)

Mr. President (The Honourable Sir Abdur Rahim): No. 25.

Pandit Lakshmi Kanta Maitra (Presidency Division: Non-Muhammadan Rural): Before amendment No. 25 is moved, Sir, I would like to draw your attention to the other amendments which are of a more general character and of wider application. If they are not moved now, and if this particular amendment is carried, the chance of moving the others will not arise.

Mr. President (The Honourable Sir Abdur Rahim): Which amendments?

Pandit Lakshmi Kanta Maitra: For instance, my amendments Nos. 27 and 28.

Mr. President (The Honourable Sir Abdur Rahim): If the Honourable Member thinks that his amendments are more useful, he can persuade the House to reject this particular amendment.

Pandit Lakshmi Kanta Maitra: May I move my amendments first, Sir?

Mr. President (The Honourable Sir Abdur Rahim): No.

Pandit Lakshmi Kanta Maitra: My amendment was given notice of earlier.

Mr. President (The Honourable Sir Abdur Rahim): But it comes lower in the list.

Pandit Lakshmi Kanta Maitra: It was not my fault; but it was tabled much earlier.

Mr. President (The Honourable Sir Abdur Rahim): It is in the discretion of the Chair to put the amendments in such order as it thinks best. Is amendment No. 25 going to be moved or not?

Mr. H. A. Sathar H. Essak Salt (West Coast and Nilgiris: Muhammadan): I am not moving it.

Dr. P. N. Banerjee (Calcutta Suburbs: Non-Muhammadan Urban): I have an amendment—Supplementary List No. 2.

Mr. President (The Honourable Sir Abdur Rahim): Is amendment No. 26 being moved or not?

Mr. H. A. Sathar H. Essak Salt: I am not moving.

Mr. President (The Honourable Sir Abdur Rahim): Next.

Pandit Lakshmi Kanta Maitra: I thought I must be called, Sir.

Mr. President (The Honourable Sir Abdur Rahim): It is not necessary.

Pandit Lakshmi Kanta Maitra: I beg to move amendment No. 27. It runs as follows:

"That in clause 5 of the Bill, to the proposed section 113A, the following proviso be added:

"Provided that a person detected travelling in a carriage of a higher class than that for which he has obtained a pass or purchased a ticket, shall not be prevented from travelling in the carriage of the class for which he holds the pass or the ticket."

Sir, the purpose of this amendment is to clarify the position that may arise when a person is found travelling in a higher class for which he does not hold a ticket or a pass, but not travelling without a ticket, but holding a ticket for a lower class—if such a person is detected in the train, he may be set down from that compartment, the compartment for which he does not hold a proper pass or ticket. For instance, if a passenger, holding a ticket for the intermediate class, is found travelling in a second class, it is open to the railway employee to take him down from the higher class. I want to make it clear that such a person shall not be prevented from travelling by the same train in the compartment, for which he holds a ticket. This should be made clear. If it is provided in very general terms that a passenger may be set down for not holding a proper pass or ticket, but it may be interpreted by the ticket checkers to mean that the man should not be permitted to proceed by the train at all even though he holds a ticket for the lower class. I do not suggest for a moment that a man who is travelling in a higher class than that for which he holds a ticket should not be penalised for it by payment of excess fare. Let the excess fare be realised from him by all means, but if he wants to go back to the class of carriage for which he holds a ticket, he should not be prevented. If a man travels by the Frontier Mail holding an inter class ticket, and he is found travelling in a second class, if he is detected somewhere on the way, say, at Rutlam, he may be removed from the second class compartment as he does not hold a ticket for the second class, but he should not be prevented from proceeding to his destination by the same train if he goes to the class of carriage, namely, the intermediate class, for which he holds a ticket. This will not prevent Government from realising the excess fare for the length of journey travelled by the man in the higher class, but it should not prevent him from proceeding to his destination by the same train on payment of the excess fare, when he holds a ticket for the lower class. This is a very simple amendment. As the position has not been made clear by the amending provision, I think it should be made clear by the adoption of this amendment.

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

"That in clause 5 of the Bill, to the proposed section 113A, the following proviso be added:

'Provided that a person detected travelling in a carriage of a higher class than that for which he has obtained a pass or purchased a ticket, shall not be prevented from travelling in the carriage of the class for which he holds the pass or the ticket.'

The Honourable Sir Andrew Glow (Member for Railways and Communications): This amendment is in most cases unnecessary and in some objectionable. As regards the ordinary, *bona fide* passenger who has been travelling in a higher class, the section only gives power to remove him from the carriage, there is no other power. There is no power to detain him and there is nothing whatever, if he holds a ticket, to prevent him from proceeding on his journey in the proper carriage. But the case of a man who, for example, might have been detected in cheating the railway or some other offence, or travelling with a definite intent to defraud, who has been put up for trial before a magistrate.....

Pandit Lakshmi Kanta Maitra: I am not referring to those persons.

The Honourable Sir Andrew Olow: I pointed out that it is quite unnecessary in that case because we have only power to remove the man from the compartment under the section, but in the case of the man being detained for trial for cheating or something of that kind, this clause would be interpreted as giving him a right to proceed on his journey.

Pandit Lakshmi Kanta Maitra: On a point of explanation, Sir. I quite see that from the reading of the provision it is open to any one to understand the section in the sense the Honourable the Railway Member has understood it, but at the same it cannot be denied that there is room for considerable misunderstanding. A travelling ticket checker may be misled into thinking that this is a provision

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

Pandit Lakshmi Kanta Maitra: . . . which empowers him to drive the passenger out of the train, or to prevent him from travelling by the same train.

The Honourable Sir Andrew Olow: If the ticket collector were to do anything of the kind, the passenger would have a remedy against him, because the ticket collector has no power to do so.

Dr. Sir Ziauddin Ahmad (United Provinces Southern Divisions: Muhammadan Rural): Clause 5 is entirely a new clause to be added to the Indian Railways Act. It is not an amendment to any particular clause but it is addition of a new clause altogether and as I read this particular clause there is no question of fraud there. It is not mentioned in that clause at all. I am giving you a case which happened actually. Certain villagers who could not read whether it is inter or third entered an inter compartment with third class tickets. When they found that it was an inter compartment with cushions, they shoved the cushions on one side and sat on the wood. The T. T. I. went there and told them: 'You have got third class tickets. Don't you see this is inter class?' The passengers said: 'We are not travelling in the inter class. We have shoved the inter (pointing to cushions) on one side and this has now become a third class compartment. We are sitting on the wood'. Mr. Maitra's amendment covers the case of those *bona fide* persons who travel in a higher class compartment by mistake. According to the new clause, those persons can be removed from the carriage altogether and debarred from

The Honourable Sir Andrew Olow: Not debarred.

Dr. Sir Ziauddin Ahmad: Only removed from the carriage?

The Honourable Sir Andrew Olow: That is all.

Dr. Sir Ziauddin Ahmad: This brings me to a still bigger issue. Now, suppose you remove a person. What will happen to him? Will he go back to another compartment in the same train, or will he be ejected and detained there at way side station or will he be taken to the magistrate or he will be allowed to walk to the next station and get into train there?

This particular clause is absolutely silent about it. I should like to visualise what would happen to the traveller who is thus ejected. If he has got no ticket, then he can be dealt with under some other clause of the Railway Act. He cannot travel but can get down, purchase a ticket and travel again in the same train. Therefore, this is the point on which we would like to have a very clear idea when we pass this clause 5. When a person is removed from the carriage, can he travel in the same carriage again? That is my first point. It should not be left to understanding but should form part of legislation.

Then, the second point is this. Suppose a person is a mendicant or a person who is unable to pay. Then will he be turned out from the station altogether. The result will be that he will walk to the next station and will try to get into the train again and go further on, so that if you turn him out he will come back again. The third point is this. Will he be taken to the magistrate to be tried for travelling without a ticket? If he is taken to the magistrate, then he must be taken in the same train. There is no point in taking him out at a wayside station. The trying magistrates will only be at junction stations or at headquarters stations. I could not visualise what is the object in removing him from the carriage altogether and what would happen subsequently. The Honourable Member has not mentioned anything about this. In one particular case, when a person is travelling in a higher class, we were given to understand that he can travel in the same carriage but in the proper compartment, for which he holds a ticket. That is all right. What would happen in the second class of cases I have mentioned where people have got no money or have got no money at that particular moment? We are not clear in our minds about this and I do not think the Railway authorities are very clear in their minds about this, as to what would happen to the passengers. We want to be sure as to what would happen in the three types of cases I have mentioned. Mr. Maitra's amendment only tries to put down explicitly the assurance which the Honourable Member has just given on the floor of the House. With these words, I support the motion.

Mr. Lalchand Navalrai (Sind: Non-Muhammadian Rural): So far as the amendment is concerned, I feel that there is no difficulty in accepting it. When a man is travelling in a higher class and he has a ticket of the lower class, there is no power or authority in the railway officers to deter him from going in the proper class for which he has got a ticket. The Honourable the Railway Member has admitted that the railway authorities have got no power to stop him from travelling with the ticket he has. The Honourable Member has made that clear. To prevent him from travelling would be unreasonable and illegal. Therefore, the Honourable Member is correct in saying that he will certainly be allowed to go to the proper carriage and travel further on but the question arises with regard to the second point that the Honourable Member took. He said that if he is travelling fraudulently, then the man would not be allowed to proceed. This makes it a cognisable offence.

The Honourable Sir Andrew Olow: I said that he might be wanted before a magistrate.

Mr. Lalchand Navalrai: I say that the Railway authorities have no power to arrest him or take him to a magistrate. They have only got the power to lodge a complaint and that being so, why should he be debarred from proceeding further.

The Honourable Sir Andrew Olow: The magistrate might detain him.

Mr. Lalchand Navalrai: That means that the man will be detained and he will be told, 'Don't go. We are going to the court. We will get out summons or a warrant for you'.

The Honourable Sir Andrew Olow: I was not thinking of a case like that at all. I was contemplating a case where the magistrate has issued an order. This proviso, in the amendment, is perfectly general in its terms. It does not say—prevented by whom. It applies equally to the railway official and to the magistrate.

Mr. Lalchand Navalrai: In practice, there will be no magistrates in these wayside stations.

The Honourable Sir Andrew Olow: There are in some cases.

Mr. Lalchand Navalrai: In some cases there may be but generally we do not find them in wayside stations or even on bigger stations. In the Sind Circle they have not got magistrates at the stations. Therefore, I am submitting there will be no authority to remove altogether the traveller and not to allow him to go into the proper class for which he has got a ticket. The point is that under clause 5, in the new section 113A, general authority is being given to the subordinate of the railway for the removal of the man. The amendment is that it should be made more clear that they will have no power to detain a man and prevent him from proceeding further with his proper ticket. In the case of the penalty also, we note what has been laid down in clause 4.

In clause 4 we find that it is said that any railway servant appointed by the Railway Administration in this behalf may apply to any magistrate for the recovery of the sum payable as if it were a fine. In that case also, ordinarily, as we find, if he is not able to pay there and then,—for instance, the man may not have money with him at that time but he would be willing to pay, even in that case he should not be deterred from proceeding further, as the procedure has been laid down that the penalty will be recovered by making an application to the magistrate, and that would certainly take time; and I hope the Honourable Member will realize that the clause should provide that there will be no obstruction put in the way of the man travelling on the Railway by the right class, so that in the case of a man who has fraudulently done this, or who has not been able to pay any penalty, or the person who has travelled by a higher class, in all these three cases, some distinct provision should be made, otherwise the offence will become cognizable,—and in that cognizable offence the police also can arrest a person, but not that any other subordinate railway officer will be given the power to act as a police officer and arrest him without warrant: in all these three cases it is only clear that the subordinate who exercises his power under this clause to remove him from there will be acting wrongly. In the case in which a man holds a ticket of a lower class, he should be allowed to go over to his destination. There is a section also in the Railways Act to the effect that in the case of a man who is known, his address might be taken and in the other case also, inquiries be made, and if he gives a proper address, then he is certainly allowed to go on, but then the fact is that there is no law or any rule under which he can be detained, therefore this amendment that has been proposed is only to make the clause clear.

The Honourable Sir Andrew Clow: It is, therefore, unnecessary.

Mr. Lalchand Navalrai: Even if it is unnecessary, what is the harm?

Dr. P. N. Banerjee: Yes, even if it is unnecessary, what is the harm?

Mr. Lalchand Navalrai: The Honourable Member has made it more complicated. If the Honourable Member had not said that, he can be removed altogether if he travelled fraudulently, it would have been all right if he had said that the amendment was not necessary, but the view given expression to by the Honourable Member will be taken note of and may be acted upon by the subordinates and they may say, "well, the Honourable Member has that view; we also are going to have that view and detain the man". Therefore, if the Honourable Member does not mean that,—that except through the magistrate, when an order has been recovered from the magistrate for bringing him there he can be detained, then it would be a different question . . .

The Honourable Sir Andrew Clow: That is the position.

Mr. Lalchand Navalrai: The point is that, in practice, it is not so; in practice it is certainly not possible. Supposing the magistrate is at the station; then too it is not possible. I say the magistrate may be in his room and the train might start in only two or three minutes, how is the order going to be secured from the magistrate to have this man detained? These are the difficulties which have to be considered. The Honourable Member seems to be under the impression that at every station there is a magistrate ready at the station, ready standing, to see whether any man is going to travel wrongly. If it is not so, I think what the Honourable Member has said is not correct and I hope the Honourable Member will make it clear that he does not mean that at all. Supposing that a man is travelling with a proper ticket, but he has done some wrong for which there is a person standing at the station with a warrant or summons, well, that will be a different question; it will not be a railway question at all, it will be a question between the magistrate and that person and that summons may be served on him. Therefore, I am submitting that that question does not arise, and I think this amendment, which would make it more clear, may be accepted.

Sir Muhammad Yamin Khan (Agra Division: Muhammadan Rural): Sir, according to my reading of the clause, I think it is very badly drafted,—and the speeches show that neither the Government side has understood properly what is the significance of this nor some of the Honourable Members on this side. Four matters are being mixed up in one clause which really ought to have been split up into different clauses. Here we take, one, the case of a man without a ticket, the second is 'with ticket but of a lower class', the third category is 'people travelling beyond the place authorised by the ticket', and the fourth is 'if he refuses to deliver the ticket immediately'. If a man is found to be falling under any of these heads, what will be done by the railway employee? The railway employee may take him out of the carriage unless he there and then pays the fare and the excess fare which he is liable to pay. Now, where does the question come in, if a man is found to be one who is not able to

[Sir Muhammad Yamin Khan.]

deliver the ticket? Where is the excess fare coming in there? You say that there and then he must pay the excess fare. I cannot understand how this will be relevant here and how this clause will be interpreted by any court that there arises any question of excess fare. The man may say, "all right, I cannot deliver the ticket just now, I will search up", and by the time the train is just going to start and when one minute remains, this man is dragged out of the carriage. How is this relevant,—how this will fall under this category I cannot understand. Probably the Honourable Member was not listening and he was talking, and, therefore, for his benefit I will repeat. If a man refuses to deliver the ticket immediately, then he will be taken out of the carriage, unless he there and then pays the fare. Now, how does it apply? Tell me how this clause is to be read in this case. A man may not deliver the ticket immediately, he may take two minutes or three minutes in delivering the ticket, or in showing the ticket; therefore, he is to be taken out of the carriage unless he pays the fare. He has paid the fare, he has got the ticket but he did not show it immediately; then you say that he will be taken out.....

The Honourable Sir Andrew Clow: The Honourable Member does not seem to be speaking on the amendment.

Sir Muhammad Yamin Khan: You have mixed up four things in one section, and therefore, it is causing all this misunderstanding. Now, Sir, if the man is to be taken out, take the other case, if the man is without a ticket, well, the man is to be taken out of the carriage unless he pays there and then the fare, of course that section does come in, and the man will be taken out of the carriage but there is no question of the magistrate here. Here is a man to be removed by a railway servant authorised by the Railway Administration in this behalf or by any other person whom such railway servant may call to his aid. The magistrate won't come up to his aid. It may be a police servant, but where is the magistrate coming in—that he may be taken before the magistrate? It may be a railway porter who comes to the aid of the railway employee. You take out this man but what about his luggage? What will happen to this man if he is taken out of the carriage but his luggage is allowed to go in the train? So, this is a great flaw in this section. Then, take the other case, the third category. If a man is found to be travelling in a higher class, then he will also be taken out of the carriage unless there and then he pays the excess fare. Of course, the excess fare will be leviable from him and he can be reasonably asked to pay it. But why should he be taken out of the carriage? The wording of this section should have been that such a man will be removed to the compartment to which he is entitled and will be liable at the same time to pay the excess fare. If he refuses to pay the excess fare, then he may be stopped from travelling any further. In fact, this section ought to have been a separate section in the Bill. Then, I come to the fourth category when a man is travelling beyond the place authorised by his ticket. In this case the Railway Administration can certainly ask the man to get out of the compartment because his ticket has expired unless he pays the fare there and then for the remaining distance he wishes to travel. So, this section has really been mixed up so badly and has been drafted so badly that all these various categories do not fit in. As this section cannot now be split up into two or three sections, the best course for the Government to adopt is to accept

the amendment of Mr. Maitra. His amendment is only explanatory so that the railway staff may not be confused in arriving at a decision. If his amendment is accepted, the railway staff will be able to understand the clause properly. When the Honourable Member himself did not understand the clause and he mixed up the question of the magistrates here, I do not know how a railway employee drawing Rs. 20 or Rs. 30 a month will be able to administer it.

The Honourable Sir Andrew Olow: It was not the clause that I did not understand: it was the amendment.

Sir Muhammad Yamin Khan: The amendment is meant to clarify the section.

The Honourable Sir Andrew Olow: But it does not.

Sir Muhammad Yamin Khan: If the Honourable Member will read the amendment carefully, he will find that it does clarify the position. It would have been better if the last words of the amendment were: "shall not be prevented from travelling in the compartment of the class for which he holds the pass of the ticket".

He has used the word 'carriage'. The idea may be that the man may be stopped from travelling in a higher class when he is holding the ticket of a lower class, but the word 'carriage' is causing confusion.

The Honourable Sir Muhammad Zafrullah Khan (Leader of the House): That is all the section says.

Sir Muhammad Yamin Khan: But if he is removed from the carriage at a time when there is only half a minute for the train to start, how can he get into another compartment? You should give him time also to get into the other compartment. It is all right in the case of a man who is travelling without a ticket.....

Mr. President (The Honourable Sir Abdur Rahim): That does not really arise.

Sir Muhammad Yamin Khan: I was replying to the objection taken by the Honourable the Leader of the House.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member had better confine himself to the amendment.

Sir Muhammad Yamin Khan: The amendment seeks to clarify one position only and that is that in a particular class, the man shall not be prevented from travelling further. And that, I think, is very necessary. It would not have been necessary if this clause had been split up and put down in several sections. But as the section stands at present, I think the amendment is necessary for its proper understanding. Sir, I support the amendment.

Mr. Muhammad Ashar Ali (Lucknow and Fyzabad Divisions: Muhammadan Rural): Sir, this may not be the experience of the Honourable the Railway Member or of the very high railway officials, but it is the

[Mr. Muhammad Azhar Ali.]

general experience of all those who represent their constituencies in this House. As many Honourable Members on this side have taken a serious objection to the wording of this clause, I think it but meet and proper that proper attention should be paid to it and care should be taken to see that no loophole is left for the harassment of the people who travel by the railway. Sir, the railways are a commercial concern and, as such, every facility should be given to the passengers to travel by them. I can say from my own experience, and, I am sure, this must be the experience of many other Honourable Members that a man, who is travelling in, say, first class, calls his servant to his class to arrange his luggage or to look after his things if he is going to the refreshment room. In such a case, the result will be that as there is no lack of mischief-makers amongst the railway employees, they can easily ask this servant as to why he is in that higher class. If he does not make over his ticket immediately and says that his master is in the bathroom or some other place.....

Mr. President (The Honourable Sir Abdur Rahim): That does not really arise on this amendment. The amendment relates to travelling in a higher class.

Mr. Muhammad Azhar Ali: If the servant goes from third class to the first class to serve his master, then he is travelling in a higher class. If you take that as an illustration and if a family is travelling, the same result will ensue, because, generally, amongst the Indian families the male members of the family keep their tickets, and not the females. If the female member is asked to produce the ticket immediately and she is unable to do that, the same result will follow. The amendment that has been moved by Pandit Maitra removes the sting which has been detected by the Members on this side of the House and we all consider that the objection is very reasonable. Therefore, I support the amendment.

Dr. P. N. Banerjee: Sir, the Honourable Member for Railways says that this amendment is unnecessary, but it has been pointed out by several Honourable Members that the amendment is necessary in view of the fact that this clause has been very badly worded. When there is such difference of opinion among Members of this Assembly would it not be better for the Honourable Member for Railways to accept the amendment in order that the whole position may be made clear? If we are unable to understand this clause properly, how can we expect a railway servant drawing a salary of Rs. 30 or Rs. 40 a month to understand it clearly? It would lead to harassment and, therefore, in order to prevent the harassment, I would ask the Honourable Member for Railways to accept this amendment although it may seem redundant.

The Honourable Sir Muhammad Zafrullah Khan: Sir, the apprehension that Honourable Members have, so far as one can judge from the speeches, is that when a passenger is found travelling in a higher class of carriage than the one for which he possesses a ticket or a pass and he is ejected under the provisions of this new clause, this clause might be construed by railway servants as investing them with authority not only to eject such a passenger from the carriage in which he is travelling and in which

he is not entitled to travel, but also that he might be detained and not permitted to continue his journey even in the class of carriage for which he is holding a pass or ticket.

Pandit Lakshmi Kanta Maitra: By the same train.

The Honourable Sir Muhammad Zafrullah Khan: Of course, that is what I mean. In my opinion the apprehension is not justified for the reason that there is nothing in the section which purports to invest any railway servant with that authority. All that the section says and has in view is that such a passenger can be removed and would be removed from the carriage in which he has no business to travel inasmuch as he does not possess a pass or ticket authorising him to travel in that class of carriage. But assuming that there is something to justify the apprehension to which Honourable Members have given expression, I do not think that this particular amendment is quite apt for achieving that which they have in mind.

Sir Muhammad Yamin Khan: You can bring your own amendment, which may be a better one.

The Honourable Sir Muhammad Zafrullah Khan: Honourable Members are approaching every one of these questions with a good deal of suspicion in their minds. One is trying to do what one can to meet them and if that is all they desire, we on this side are quite willing to consider something which would meet that apprehension and move an amendment to that effect at some later stage. This is the kind of thing we have been thinking of:

"Provided that nothing in this section shall be deemed to preclude a person removed from a carriage of a higher class from continuing his journey in a carriage of a class for which he holds a pass or ticket."

If this is acceptable, then with the permission of the Honourable the President, we might move this amendment. Sir, I beg to move:

"That in clause 5 of the Bill, to the proposed section 113A, the following proviso be added:

'Provided that nothing in this section shall be deemed to preclude a person removed from a carriage of a higher class from continuing his journey in a carriage of a class for which he holds a pass or ticket.'

Sir, I hope this will meet the apprehension of Honourable Members.

Mr. President (The Honourable Sir Abdur Rahim): The Chair takes it that there is no objection to this amendment on the ground that copies of the same have not been circulated.

Honourable Members: No, no.

Pandit Lakshmi Kanta Maitra: I beg leave of the House to withdraw my amendment. The amendment was, by leave of the Assembly, withdrawn.

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

"That in clause 5 of the Bill, to the proposed section 113A, the following proviso be added:

'Provided that nothing in this section shall be deemed to preclude a person removed from a carriage of a higher class from continuing his journey in a carriage of a class for which he holds a pass or ticket.'

The motion was adopted.

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

"That in clause 5 of the Bill, to the proposed section 113A, the following proviso be added:

'Provided that no passenger shall under any circumstances be so removed at any station which is not either a railway junction station or the administrative headquarters of a district.'

Sir, this amendment is designed to place a delinquent in a somewhat better position than that in which he otherwise might be as a result of the clauses adopted by the House. Sir, for the first time by this provision of eviction, we give railway servants power to eject a passenger travelling without ticket. My point is that in the interests of the passengers travelling without ticket as also in the interests of the railway administration itself, it is desirable that the delinquent shall not be placed in an utterly helpless position.

Mr. Lalchand Navalrai: Defaulter and not delinquent.

Pandit Lakshmi Kanta Maitra: Yes, if the defaulter is set down at any wayside station at odd hours, he may be placed in a position in which he cannot either pay the fares to the railway administration or the excess that may be due from him, besides being in a very inconvenient and an uncomfortable position. If he is set down at a railway junction for instance, it may be possible for him to find money from his friends or relations who may be there, and to pay up the dues and he may thereby be saved from further harassment and trouble. I am not unmindful of the fact that in the Railways Act of 1890 there are certain provisions which authorise eviction of passengers; but they stand under different categories altogether. There are, for instance, provisions contained in sections 118, 119, 120 and 122. In none of these cases, from the point of view of the travelling public, can any body have any objection, as in such cases, a passenger who is sought to be removed has behaved in such a way as to make himself a nuisance to the travelling public or that his travelling becomes dangerous to his fellow passengers and so on and so forth. But the present provision goes a long way to widen the scope of the power of ejection; and accordingly I think we should provide that he should be ejected, if necessary, either at a junction station or at some administrative headquarters of a district. I dilated on this point at considerable length in connection with the general consideration of the Select Committee's Report, and I commend this amendment to the acceptance of the House. Sir, I move.

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

"That in clause 5 of the Bill, to the proposed section 113A, the following proviso be added:

'Provided that no passenger shall under any circumstances be so removed at any station which is not either a railway junction station or the administrative headquarters of a district.'

The Honourable Sir Andrew Olow: Sir, I oppose this amendment. It seems to me to go further than any reasonable person can claim. It means, for example, that if any one should get into the train at Delhi he is entitled to a free trip as far as Muttra—90 miles away. . .

Pandit Lakshmi Kanta Maitra: Charge him.

The Honourable Sir Andrew Olow: But he may not have any money. The very type of people whom we are trying to get at are the people—

mendicants and people posing as religious gentlemen who keep on jumping on our trains. If removed, they slip away and get in at a station where the station master is not so vigilant or the staff is not so vigilant and then they get another little ride for a few miles till somebody takes them and pulls them out. Under this proviso their religious pilgrimage will be greatly facilitated; they would have an opportunity of getting longer jumps and in addition would be provided with free accommodation at the end of journey because we are not even given the power to evict them at a terminal station.

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

“That in clause 5 of the Bill, to the proposed section 113A, the following proviso be added:

‘Provided that no passenger shall under any circumstances be so removed at any station which is not either a railway junction station or the administrative headquarters of a district.’”

The motion was negatived.

Dr. P. N. Banerjee: Sir, the next amendment is mine on the Supplementary List No. 2.

The Honourable Sir Andrew Olow: I suggest for your consideration, Sir, that the amendment at the end of the Supplementary List No. 3—amendment No. 6—is likely to command more support in the House and it would facilitate our discussion. . . .

Dr. P. N. Banerjee: No. Mine is of somewhat wider import.

The Honourable Sir Andrew Olow: But I think the other one will command wider support.

Dr. P. N. Banerjee: Mine is a little wider.

Mr. President (The Honourable Sir Abdur Rahim): There is an amendment in the name of Mr. Essak Sait on Supplementary List No. 3.

Mr. H. A. Sathar H. Essak Sait: Sir, I move my amendment with a little change because of the proviso that has already been accepted. Therefore, my amendment will read like this. . . .

Dr. P. N. Banerjee: On a point of order, Sir; my amendment is somewhat wider than this: it is more comprehensive, and if this one is accepted, my amendment cannot be moved.

Mr. President (The Honourable Sir Abdur Rahim): Which amendment is that?

Dr. P. N. Banerjee: Supplementary List No. 2: it is the only amendment in that list.

Mr. President (The Honourable Sir Abdur Rahim): It is practically the same subject.

Dr. P. N. Banerjee: No, Sir. It is more comprehensive; therefore, I want to move it.

Mr. President (The Honourable Sir Abdur Rahim): One is not inconsistent with the other. Mr. Essak Sait can move his amendment, and after the result of that is known, Mr. Banerjee can move his amendment unless it is barred. The objection is practically the same. Mr. Essak Sait.

Dr. P. N. Banerjæa: Allow me to submit, Sir, that this motion will not be covered: Mr. Essak's amendment is more restricted than mine.

Mr. President (The Honourable Sir Abdur Rahim): If it is not barred, then the Honourable Member can move it. He cannot move it now. Mr. Essak Sait will move his amendment.

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

"That in clause 5 of the Bill, to the proposed section 113A, the following further proviso be added:

'Provided further that women and children, if unaccompanied by male passengers shall not be so removed except either at the station at which they first enter the train or at a junction or terminal station or station at the headquarters of a civil district and only between the hours of 6 A.M. and 6 P.M.'"

Sir, I think the purport of my amendment will be quite clear to Honourable Members. We have been discussing this clause 5 for a long time now. But my point is this. We are now granting powers to the railway executive for the first time to remove passengers from railway compartments if they are found to travel without ticket and if they come within the mischief mentioned in this clause. I would very much wish that this clause had been omitted. I had a motion to the effect, but our position in this House being what it is today, we can only get our points settled by compromises, and not by the force of our votes, and therefore we had to hold very prolonged conferences with the Government Members, and this is the best that I could get. In order to make my position quite clear to the House and to my constituency outside, I must point out that I am not accepting the principle underlying this clause 5 at all, but as I said, situated as we are, I could only get what I have now got, and so I am proposing this amendment. By this amendment I want to restrict as much as possible, the power given to the railway executive to remove any passenger at any time of the day or night and to get the help of any person for such removal, particularly with regard to the removal, of ladies and children. Sir, all over the world feelings with regard to ladies and children are very delicate, and if we do not restrict these powers in respect of the removal of women and children, it may lead to very great difficulties later on, and therefore I suggest,—and I hope the House will accept it,—that the powers given to the railway authority for the removal of women and children travelling without a male relative or friend should be restricted in the following manner. First of all, they should not be removed from the railway compartment at any hour of the night; that is to say, no lady or child, who is not accompanied by a male passenger, can be removed from the carriage between the hours of 6 P.M. and 6 A.M. Then if in the day time they are to be removed, they can be removed only at the stations mentioned in this amendment, that is to say, they can be removed either at the station at which they first enter the train, or at a junction or terminal station or at a station at the headquarters of a civil district. Supposing they are detected at the station they first entered the train, then the railway authority will have the right to remove them then and there. But if the train leaves with such passengers, then those people can be removed only at the next junction station, or at any junction after they are detected, but not at any wayside or roadside station. Then these people can also be removed at the terminus station, that is to say, the station at which the journey ends. And further more, they can also be removed at stations which are the headquarters of a civil district. They will be big stations, and that is why they are permitted to be removed at such big stations. The idea underlying

this is that there should be as little harassment as possible when ladies and children are removed. If they are to be removed at wayside stations, in the middle of the night one can imagine the trouble and the inconvenience that will be caused to them. It is to prevent all these things that I am moving this amendment, and I commend it to the House.

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

"That in clause 5 of the Bill, to the proposed section 113A, the following further proviso be added :

'Provided further that women and children, if unaccompanied by male passengers, shall not be so removed except either at the station at which they first enter the train or at a junction or terminal station or station at the headquarters of a civil district and only between the hours of 6 A.M. and 6 P.M.'"

As regards the amendment which stands in the name of Dr. Banerjea, that also is designed to meet the same contingency. The proper course for him and those who support his amendment will be to argue that instead of this remedy the other remedy is preferable. If he can persuade the House to reject this motion then he can move his motion.

Dr. P. N. Banerjea: May I speak to this amendment, Sir?

Mr. President (The Honourable Sir Abdur Rahim): Yes.

Dr. P. N. Banerjea: Sir, at the time when the second reading of this Bill was being considered, I made my position perfectly clear. I said that I had no sympathy with the ticketless traveller who wishes to defraud the railway administration. At the same time, I urged that the provisions of this Bill should not be so worded that it might lead to harassment and oppression of people. It is absolutely necessary that some protection should be given to women and children. The women of this country suffer under two handicaps,—90 or 95 per cent., of them suffer under two handicaps, namely, illiteracy and *pardah*. Therefore, special protection should be given to them. If a *pardanashin* illiterate woman is asked to vacate a compartment and get down at a station somewhere between a starting station and station of destination,—at a wayside or roadside station, what will be her condition? Who will help her? Even if it be a junction station or the headquarters of a district, how can she receive help? She may have no relations or friends there; in such a case she will not receive any protection. Similarly, in the case of children, there will be great difficulties. And in the case of both women and children it may happen that they are unable to produce their tickets. The clause has been read by several speakers before, and one part of the clause says that he or she may be removed unless the ticket is immediately shown. Now, a *pardanashin* lady may travel on the train in a compartment different from the compartment in which her male relative or friend travels, or it may happen that she has lost the ticket. These *pardanashin* ladies are not very careful about their tickets, and you may understand the plight of a woman when she is removed at a roadside station. You cannot say that this lady was travelling in order to defraud the company. If she does so, you may arrest her either at the station of destination or at the starting station, and then if you are satisfied that she is not innocent, you may inflict on her adequate punishment. You may realise a fine, you may bring her before a Magistrate and have her convicted; but to

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remove her at a roadside station will be very unfair and very unjust. I admit that the amendment moved by my Honourable friend, Mr. Essak Sait, goes some distance towards removing my objection, but it does not go the whole length. I, therefore, urge, that my amendment which is more comprehensive should be accepted in order that there may not be any harassment or oppression of women and children.

I do not wish to vote against this amendment because I may not get the other amendment through. Our voting strength is not so great as it would have been if the Congress Party had been here, but I would request the Honourable the Railway Member to consider this aspect of the question. It is from no desire to oppose him that I make this suggestion, but it is from a desire to give adequate protection to women and children that I make this suggestion. Women and children do require protection. The Act is likely to be administered in a very stringent manner,—it ought to be administered in a very stringent manner. Fraudulent ticketless travel ought to be stopped by all means. But whilst stringency should be shown in preventing ticketless travel, *bona fide* cases of difficulty should not be lost sight of. We should not ignore the possibility of innocent people being harassed, particularly women and children.

The Honourable Sir Andrew Olow: If my Honourable friend, Mr. Essak Sait, has misgivings about this amendment

Dr. P. N. Banerjea: He moved it in a half-hearted manner.

The Honourable Sir Andrew Olow: I assure him that I also have misgivings about it. It seems to me to leave dangerous openings for abuse and I must warn him that if it is abused I may have to approach the House again with a stiffer provision. It gives a very dangerous latitude to children, for example, jumping trains. The House knows what boys are. Boys can jump on to the footboards of trains after 6 o'clock and travel for about 12 hours at night free of charge. The boy has no money at the other end and no magistrate is likely to put him into prison. Dr. Banerjea, of course, says it does not go the whole length. It does not go the whole length of India. Under his amendment, a boy can get into the train at Peshawar and say that his destination is Tuticorin, and he will be entitled to travel three or four days till he gets to his place of destination. He says his place of destination is Tuticorin.

Dr. P. N. Banerjea: That would be dishonesty. I never said that and I never wanted to encourage dishonesty. Why should you put things into my mouth which I did not say? I did not expect this from you.

The Honourable Sir Andrew Olow: I appeal to your protection, Sir.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member (Dr. Banerjea) is not justified in interrupting in that manner.

The Honourable Sir Andrew Olow: I never put a single word in Dr. Banerjea's mouth. What he said was that this does not go the whole length. I say it does not go the whole length of India.

Dr. P. N. Banerjea: It ought to be reasonably interpreted.

The Honourable Sir Andrew Olow: If the amendment were adopted, any child, any boy who had got into the train at Peshawar and said that his destination was Tuticorin would be entitled to travel and nobody could disprove it.

Dr. P. N. Banerjee: It is absurd.

The Honourable Sir Andrew Olow: I quite agree with him that that is absurd.

Dr. P. N. Banerjee: Your statement is absurd.

The Honourable Sir Andrew Olow: As a matter of fact, I gather that the Burma Legislature has passed an Act to deal with children under which, if they fail to pay a fine, they are liable to whipping. But the Burma Legislature is possibly made of sterner stuff

Dr. P. N. Banerjee: Imitate that Legislature!

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member must not interrupt.

The Honourable Sir Andrew Olow: than this Assembly, and I have not followed their example in trying to persuade this Assembly to take that course. As I said, the amendment proposed by Mr. Essak Sait, goes as far, perhaps farther, than any one can reasonably claim, and while I view it with considerable misgivings I am always anxious to try and meet the House as far as I can and I will not oppose the amendment.

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

"That in clause 5 of the Bill, to the proposed section 113-A, the following further proviso be added :

'Provided further that women and children, if unaccompanied by male passengers, shall not be so removed except either at the station at which they first enter the train or at a junction or terminal station or station at the headquarters of a civil district and only between the hours of 6 A.M. and 6 P.M.'"

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): Dr. Banerjee's amendment is barred. The question is :

"That clause 5, as amended, stand part of the Bill."

The motion was adopted.

Clause 5, as amended, was added to the Bill.

Mr. President (The Honourable Sir Abdur Rahim): Clause 3 has stood over. The question is :

"That clause 3 stand part of the Bill."

The Chair finds there are a number of amendments for substitution.

Mr. Lalchand Navalrai: There is one amendment which is in the main List, No. 8, that clause (b) be omitted.

The Honourable Sir Andrew Olow: There are several amendments which are for complete substitution, and I suggest that they be disposed of first.

Mr. President (The Honourable Sir Abdur Rahim): The amendments for substitution will be dealt with first. There are three of them. The best course will be that all the three amendments be moved and then there will be a discussion.

Mr. M. S. Aney (Berar : Non-Muhammadan): May I suggest one thing? All amendments should be moved, and those amendments which seek to amend certain portions of the existing clause of the Bill may be put to vote first and those which seek to substitute the whole clause may be put to vote last.

Mr. President (The Honourable Sir Abdur Rahim): What would be the good of that? That will be of no use.

Mr. J. H. F. Raper (Government of India: Nominated Official): Sir, I move:

"That for clause 3 of the Bill the following be substituted :

'3 (1) Section 112 of the said Act shall be re-numbered as sub-section (1) of that section and in the sub-section as so re-numbered,

- (a) in clause (a) for the words and figures 'in contravention of section 68 any carriage on a railway' the words and figures 'or remains in any carriage on a railway in contravention of section 68' shall be substituted; and
- (b) after the words 'shall be punished' the words 'with imprisonment for a term which may extend to three months or' shall be inserted.

(2) To the said section as so re-numbered and amended the following sub-section shall be added, namely :

- '(2) Notwithstanding anything contained in section 65 of the Indian Penal Code, the Court convicting an offender under this section may direct that the offender in default of payment of any fine inflicted by the Court, shall suffer imprisonment for a term which may extend to three months.'

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

"That for clause 3 of the Bill the following be substituted :

'3 (1) Section 112 of the said Act shall be re-numbered as sub-section (1) of that section and in the sub-section as so re-numbered,

- (a) in clause (a) for the words and figures 'in contravention of section 68 any carriage on a railway' the words and figures 'or remains in any carriage on a railway in contravention of section 68' shall be substituted; and
- (b) after the words 'shall be punished' the words 'with imprisonment for a term which may extend to three months or' shall be inserted.

(2) To the said section as so re-numbered and amended the following sub-section shall be added, namely :

- '(2) Notwithstanding anything contained in section 65 of the Indian Penal Code, the Court convicting an offender under this section may direct that the offender in default of payment of any fine inflicted by the Court, shall suffer imprisonment for a term which may extend to three months.'

Pandit Lakshmi Kanta Maitra: Sir, I move :

"That for clause 3 of the Bill the following be substituted :

'3. For section 112 of the said Act the following shall be substituted, namely :

- '112. (1) If a person, with intent to defraud a railway administration, enters or remains in any carriage on a railway in contravention of section 68, he shall be punished with fine which may extend to one hundred rupees in addition to the amount of the single fare for any distance which he may have travelled.

- (2) If a person, with intent to defraud a railway administration, uses a single pass or a single ticket which has already been used on a previous journey, or in the case of a return ticket, a half thereof which has already been so used, he shall be punished with imprisonment for a term which may extend to four months or with fine which may extend to one hundred rupees in addition to the amount of the single fare for any distance which he may have travelled."

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

"That for clause 3 of the Bill the following be substituted :

'3. For section 112 of the said Act the following shall be substituted, namely :

'112. (1) If a person, with intent to defraud a railway administration, enters or remains in any carriage on a railway in contravention of section 68, he shall be punished with fine which may extend to one hundred rupees in addition to the amount of the single fare for any distance which he may have travelled.

(2) If a person, with intent to defraud a railway administration, uses a single pass or a single ticket which has already been used on a previous journey, or in the case of a return ticket, a half thereof which has already been so used, he shall be punished with imprisonment for a term which may extend to four months or with fine which may extend to one hundred rupees in addition to the amount of the single fare for any distance which he may have travelled."

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

"That for clause 3 of the Bill the following be substituted :

Fraudulently travelling or attempting to travel without proper pass or ticket.

'3. For section 112 of the said Act, the following shall be substituted, namely :

'112. (1) If a person, with intent to defraud a railway administration, enters or remains in any carriage on a railway in contravention of section 68, he shall be

punished with fine which may extend to one hundred rupees in addition to the amount of the single fare for any distance which he may have travelled.

(2) If a person accused of an offence punishable under sub-section (1) has been previously convicted of an offence punishable under sub-section (1), he shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees in addition to the amount of the single fare for any distance which he may have travelled.

(3) If a person, with intent to defraud a railway administration, uses or attempts to use a single pass or single ticket which has already been used on a previous journey or, in the case of a return ticket, a half thereof which has already been so used, he shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to one hundred rupees in addition to the amount of the single fare for any distance which he may have travelled.

(4) Notwithstanding anything contained in section 65 or section 67 of the Indian Penal Code, the Court convicting an offender under this section may direct that the offender in default of payment of any fine inflicted by the Court, shall suffer imprisonment for a term which may extend to three months."

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

"That for clause 3 of the Bill the following be substituted :

Fraudulently travelling or attempting to travel without proper pass or ticket.

'3. For section 112 of the said Act, the following shall be substituted, namely :

'112. (1) If a person, with intent to defraud a railway administration, enters or remains in any carriage on a railway in contravention of section 68, he shall be

punished with fine which may extend to one hundred rupees in addition to the amount of the single fare for any distance which he may have travelled.

[Mr. President.]

(2) If a person accused of an offence punishable under sub-section (1) has been previously convicted of an offence punishable under sub-section (1), he shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees in addition to the amount of the single fare for any distance which he may have travelled.

(3) If a person, with intent to defraud a railway administration, uses or attempts to use a single pass or single ticket which has already been used on a previous journey or, in the case of a return ticket, a half thereof which has already been so used, he shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to one hundred rupees in addition to the amount of the single fare for any distance which he may have travelled.

(4) Notwithstanding anything contained in section 65 or section 67 of the Indian Penal Code, the Court convicting an offender under this section may direct that the offender in default of payment of any fine inflicted by the Court, shall suffer imprisonment for a term which may extend to three months'."

Now, these three amendments are before the House.

Mr. J. H. F. Raper: During the course of the debate on other clauses of the Bill, Government have been made aware that in the opinion of many Honourable Members the maximum penalty under this section was unnecessarily severe. We cannot, however, refrain from taking a grave view of fraud, especially of fraud on the community but we are anxious to meet as far as practicable the view held by a number of Members of this Honourable House. My amendment, therefore, proposes to reduce the maximum period of imprisonment to three months which is, I notice, the term suggested in the amendments by my Honourable friends, Pandit Maitra and Mr. Essak Sait. We consider it however very important to retain the period of imprisonment in default of payment which would result from the original section and the proposed sub-section (2) has this effect. The objection to Mr. Essak Sait's amendment lies chiefly in the fact that for fraud it provides that there shall only be a fine for the first offence.

Pandit Lakshmi Kanta Maitra: Mr. President, the amendment which I have moved seeks to lay down two distinct classes of offences that might be committed under the section. The first part deals with the class of cases where there is travelling without a ticket. There is no doubt the governing clause that, in order to sustain a conviction under section 112, sub-clause (1), the intent to defraud the Railway Administration has got to be proved. Sir, men in the legal profession know very well how difficult it is for the prosecution to prove intent to defraud, and how equally difficult it is for the defence to prove innocence when he is charged with intent to defraud the Railway; that is to say, the proof of a clear intent to defraud in many cases cannot be established to the satisfaction of the court, and also the accused whenever so charged with intent to defraud cannot in most cases successfully prove it otherwise. I have, therefore, provided that in such cases there should be only a sentence of fine in addition to the single fare for any distance which the defaulter may have travelled. Under the law as it stands at the present moment, the punishment for such offence, *vide* section 112 of the Railways Act, is only a fine of one hundred rupees. I do not see any reason why we should change this standard punishment in this Bill.

But the other class of cases stands on an entirely different footing. There, besides the intent to cheat or defraud the Railway Administration, is the further element of moral turpitude as disclosed in the overt act of using or trying to use a ticket which has already been used on a previous

journey and in the case of a return ticket one-half thereof which has already been so used. I do not think it will be fair to lump together these two distinct classes of offences and provide one common form of punishment for both. As I have shown, a clear distinction may be drawn and I think ought to be drawn between these two classes of cases and separate forms of punishment ought to be provided. That I look upon the latter category of cases as more serious than the former is clear from my amendment wherein I provide for it four months' imprisonment in place of three as proposed by Mr. Raper; but I want to leave it at that. The amendment proposed by my Honourable friend, Mr. Raper, makes another addition by a sub-clause which disturbs the existing law as provided by the Indian Penal Code in the matter of awarding the punishment. Sir, sub-clause (2), I submit, takes away the salutary provision made in the Indian Penal Code by section 65. That section clearly provides that :

"the term for which the court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence if the offence be punishable with imprisonment as well as fine."

This provision has been holding the field since, I believe 1862, and it has not been disturbed by any other measure so far. The judiciary in this country has been giving effect to it, as they have found it a very salutary provision restricting the power of certain classes of magistrates in certain classes of cases where certain specific forms of punishment are laid down. I do not quite understand why this provision of the Indian Penal Code, which still holds the field and against which there has not been any criticism by any High Court in India, should come in for a sort of virtual repeal in connection with the trial of offences under the Indian Railways Act. Now, let us see what it comes to. Section 65 of the Indian Penal Code has been interpreted by the judicial courts in India in a certain manner. The different High Courts, for instance, the Burma High Court and the Patna High Court, have laid down a special procedure in connection with this section. But, Sir, the effect, in general, may be briefly stated as follows. In any case decided by magistrates where imprisonment has been awarded as part of the substantive sentence, the period of imprisonment awarded in default of payment of fine shall not exceed one-fourth of the period of imprisonment which such magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of the payment of fine. That has been the established practice. One has to read along with it the provisions of section 33 of the Criminal Procedure Code. That section does not authorise the magistrate to pass a sentence in default of the payment of fine in excess of the term prescribed by this section. Now, what would this additional provision sought to be made by my Honourable friend, Mr. Raper, come to mean? It means this. According to Mr. Raper's amendment, the maximum penalty which may be inflicted on a person travelling without a ticket or travelling with a used ticket is a substantive punishment of three months imprisonment or fine. But in default of the payment of fine, the magistrate cannot according to Section 65 of the Penal Code award more than three weeks' imprisonment, i.e., one-fourth of the maximum term which the magistrate can inflict under the section.

Now, this Statutory restriction of the Magistrate's power is sought to be removed by the sub-clause proposed by my Honourable friend, Mr. Raper. If there is a sentence of fine and, if, in case of its non-payment, a sentence of imprisonment is to be awarded,

1 P.M.

[Pandit Lakshmi Kanta Maitra.]

then, according to this proviso, it may go up to three months. So, I say that it makes a violent departure from the Indian Penal Code which can by no means be justified. I know it will be said: Well, it is taking away the severity which we want to impose in the sentence and that the term awarded by the trying Magistrate in default of fine would not be sufficiently deterrent as the maximum term would not exceed, in any case, three weeks. Let me tell them at once that I join issue with them on that question. I do not think that depriving a man of three weeks' liberty is such a small matter as they think and we should not, therefore, provide for the maximum of three months. I have pointed out several times in my speeches on this Bill that this penal provision which seeks to give protection to the Indian Railway Administrations is not applicable to any other alternative system of transport. I say it is highly unfair that while other competitive systems of transport do not enjoy any kind of protection they propose to give additional protection to the Railways by this provision. I do not understand why the railways should claim this special privilege in the shape of this stringent provision. I am one of those who do not believe that heavy sentences by themselves will eradicate an evil. There must be other factors which must be in operation to wipe it out. Member after Member in this part of the House has said that the Indian railway systems do not provide sufficient facilities for the purchase of tickets at many railway stations. I do not think this part of our case has at all been carefully considered by the Railway Department. They do not seem to attach any importance to our grievance against them in this respect. I have not heard up till now one sentence from the Members who are sponsoring this Bill to assure us that such facilities would be given. They seem either to ignore it or not to believe in our allegations. It is palpable to every Indian who travels in lower classes that the facilities generally afforded by the railway systems are very meagre. There are many important stations where though the notice indicates that the counters are open for continuous booking they are not attended to as such. I do not say that the railway employees are to blame always. In many cases they are so over-worked that one or two counters cannot meet the needs of the vast masses of people that go in for tickets. That is a fact which has been ignored completely and we have failed so far to drive home this point to my friends on the Treasury Bench. What have they done? What steps have they proposed? We have just passed through the railway budget. Have they provided any additional facilities for the purchase of tickets? You do not care to meet this elementary necessity and yet you come forward with stringent provisions by which many innocent persons may be victimised. I am against that. Unless and until you exhaust all these possibilities of checking ticketless travelling, you cannot come forward with clean hands and demand these additional powers.

Now, Sir, it has been argued, time and again, by the sponsors of this Bill that deterrent sentence of imprisonment should be inflicted so that people may be deterred from taking to this mode of travelling. But I think we have to view this question, as I said once before, from the point of view of the public exchequer. If you cannot realise your fees and fines from people, you can certainly sentence them to jail. You cannot sentence a man to jail for a long travel unless you accept that your checking

staff is hopelessly inefficient. So, in the nature of things the travel must be a short one and for this short travel you are in a position to inflict three weeks' rigorous imprisonment in default of payment of fine. Is it a joke, I ask? If a man has incurred a liability of one rupee or 8 annas for a journey and is unable to pay that amount and assuming that he is sentenced to a fine of Rs. 100 or in default to undergo imprisonment for three weeks, then for these three weeks the public exchequer will have to spend money to feed him in the jail. It may be Rs. 10 for the sake of annas eight. Our public jails and His Majesty's penitentiaries should not be so hospitable and if those who are in charge of them are so disposed, then it is our duty to tell them that they should not be permitted to try the offences in that fashion. From the point of view of the public exchequer, we cannot support sending numerous people to jail when you cannot realise your dues from them, though, at the same time, I concede that you may sentence them to some terms of imprisonment. You have made a provision which is unique, if I may say so, in the annals of penal legislation that an alternative sentence for fine will be a deterrent-sentence. That is ridiculous and no lawyer can approve of it. Therefore, by my amendment I have gone a step further than the Government has proposed to go, that is to say, instead of awarding three months' imprisonment, I have provided four months' imprisonment in case of those people who intend to deprive the railways of their dues. But I am not going to give the Government by this Bill the power to scrap up the provisions of section 65 of the Indian Penal Code and give the Magistrates power to award in lieu of fine, an alternative sentence of three months' imprisonment which is the maximum laid down as a substantive punishment for the offence. Sir, I have made my position clear to the House. The sub-section which has been proposed by my Honourable friend, Mr. Raper, is a provision which nobody should support. That is an absurd position and I hope my Honourable friends over here will give my amendment the serious consideration it deserves.

Mr. H. A. Sathar H. Essak Salt: Sir, the difference between my amendment and the amendment of Mr. Raper has been explained by Mr. Raper himself. The difference is very small though it is material. What my amendment seeks to provide is that first offenders should not be punished with imprisonment at all, but that they should only be fined. But then if an offender commits the same offence for a second or a third time, then he will be liable to imprisonment. That is what I want to provide, while Mr. Raper wants to send even the first offender, the second offender and everybody to jail. He does not discriminate between the first offender and the second offender. I think, Sir, my amendment should stand to reason after all the tall talk that Mr. Raper had that he wants to meet the wishes of the House and that sort of thing. If you look at Mr. Raper's amendment, rather closely, you will find out what is the concession shown by him. The clause in the Bill provided a substantive punishment of one year, now he says he has reduced it to three months. My Honourable friend, Pandit Lakshmi Kanta Maitra, explained what these three months come to. Actually it comes to nothing, because he has removed the effect of sections 65 and 67 of the Indian Penal Code from the administration of this Act, that is to say sections 65 and 67 of the Indian Penal Code are not to be enforced so far as these imprisonments or fines are concerned. If

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

Mr. Raper were willing to give up his sub-clause (2) of clause 2, then his concession will certainly be substantial, but actually with sub-clause (2) of clause 2 remaining, his concession means nothing because even otherwise when the Bill provided one year as substantive punishment the actual punishment would have been only three months under sections 65 and 67 of the Indian Penal Code. Actually, Mr. Raper's concession comes to nothing. What I am asking of the Honourable Member in charge is a very small matter. I also agree that the punishment should be three months and not less or at least that this restriction under the Indian Penal Code should not apply so far as these concessions are concerned, provided first offenders are let off with a fine only. That is the gist of my amendment and I hope the House will accord its support to it and also that the Honourable Member in charge will be willing to give his support to it.

Mr. M. S. Aney: Sir, may I ask one question? May I know whether the Honourable Member for Railways is willing to provide or not in his amendment that the provisions governing first offenders in the Criminal Procedure Code, section 562, shall apply to these offenders also?

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.

Dr. P. N. Banerjee: Sir, there are three amendments before us at the present moment. I believe that each of these amendments has its merits and defects. The amendment moved by the Honourable Mr. Raper looks somewhat simpler than the other two amendments. Pandit Maitra's amendment provides for certain matters which Mr. Raper's amendment does not include. Mr. Essak Sait's amendment is somewhat longer and a bit more complex. Personally speaking, I would have preferred the amendment moved by my friend, Pandit Maitra. But I do not think that there is much chance of its being accepted in its present form. I am prepared to support the amendment which has been moved by Mr. Raper if he modifies his amendment to some extent and includes the spirit of the other two amendments. What are these? The main respect in which Mr. Raper's amendment appears to me to be defective is that he places substantial punishment on the same footing as a punishment in lieu of fine. That is not quite correct; and if Sir Andrew Clow is prepared to accept the spirit of Pandit Maitra's amendment in this regard, namely, to allow the fundamental proposition laid down in the criminal law to stand, then he may suitably modify his amendment.

There is another matter which was raised by my Leader in the question relating to first offenders which he asked a short while ago, and I think he would be prepared to accept that in the amendment or embody its spirit in the amendment. Lastly, I would suggest a slight verbal alteration—not an alteration in the words used in this amendment but an alteration in the order of the words used. He places imprisonment first and fine afterwards: but the usual order adopted in the Penal Code and the Criminal

Procedure Code is that fine is placed first and imprisonment next. If the Honourable Sir Andrew Clow is prepared to make these modifications in the amendment moved by the Honourable Mr. Raper, I think he will be able to meet the wishes of the House to the full extent. In this connection I am glad to find that Sir Andrew Clow has shown a great deal of courage. When I spoke at the consideration stage about punishment, I said that the science of penology had now made much progress, at which the Honourable Mr. Raper and his entourage laughed. I also heard some whispers among his entourage to the effect, 'What is penology'? Now, I believe

The Honourable Sir Andrew Clow: There were no such whispers.

Dr. P. N. Banerjea: Not from you; "Your entourage" I said. Now, perhaps his friends and favourites have had time to look up the dictionary in order to find out the meaning of that term. However, as regards the substance of that part of my speech, I am glad that it has been accepted by Sir Andrew Clow. I said on that occasion that the punishment to be awarded should be of a deterrent character but not too severe; and Mr. Raper in moving his amendment has practically expressed the same view. He said that it should not be unnecessarily severe. That was my point of view; and I am glad the maximum punishment has now been reduced from one year to three months. So far so good. I congratulate the Honourable Sir Andrew Clow on his change of view and in his confession of a change of view. I hope now that he will go a little further and meet the wishes of the Opposition so that this Bill may be deprived of all its defective features. If he accepts my suggestions, there will be no difficulty in placing before the House an amendment which will include all the suggestions made by me and which will be acceptable to all the sections of this House.

Maulvi Muhammad Abdul Ghani (Tirhut Division: Muhammadan): Sir, it appears to me that the Honourable Member in charge of the Bill is very fond of sending people to jail, as is evident even from the latest offer which has been made in the amendment moved by Mr. Raper on behalf of the Government. We are deadly opposed to sending to jail any man for a wrong committed to a business concern. If we are going to yield on this point, then other business concerns also will come forward with similar measures. We are afraid of that. However, I see that two of my colleagues here have also tabled two amendments which also include provision for imprisonment, but I think they have done so in utter helplessness or hopelessness, because they have recognised the strength and position of the Government in this House. Therefore, they considered it best to take as much as they could get, but I do not think the Honourable the Railway Member could be moved even by an inch. If he moves, well and good . . .

The Honourable Sir Andrew Clow: Moved by yards.

Maulvi Muhammad Abdul Ghani: Out of the two amendments proposed,—one by my friend, Mr. Essak Sait, and the other by my friend, Pandit Lakshmi Kanta Maitra, I think the amendment of my friend, Mr. Essak Sait, will be acceptable to the Railway Member, because imprisonment is also provided in it, but that provision will apply only to those who are out to defy the railway authorities or those who are habitual offenders. At the very outset I said that we cannot commit ourselves to this principle,

[Maulvi Muhammad Abdul Ghani.]

that is, to give sanction to previous conviction. You know, Sir, that after great trial and experience the provision in the Indian Penal Code was made for previous conviction, and that too only in certain cases,—for instance, offences against property; whereas in this case my friend gives the right of previous conviction to the railway authorities. Although the public outside the House are deadly against imprisonment, I hope the Honourable the Railway Member will reconsider this provision, and will accept the amendment of my friend, Mr. Essak Sait.

Mr. Lalchand Navalrai: Sir, this is the most drastic and difficult provision that has been included in this Bill

Dr. P. N. Banerjea: It is less drastic than the provision in the original Bill.

Mr. Lalchand Navalrai: I will come to that presently and you will see whether the admiration you expressed to the Railway Member is justified or not.

Sir, I am of the opinion that there should be no provision for imprisonment in this Bill. At the time of the general discussion at the consideration stage of this Bill, there was some unanimity on this side of the House on the point that there should be no imprisonment provision. We do see our own position here. We see that in this House any Bill of any nature, however heinous and serious it may be, can be passed. But I am not so pessimistic as some of my friends on this side are to come to a compromise with the Government on the question of imprisonment. They may feel helpless, but it is their duty to come forward in the interests of the travelling public and save them, and not be a party to an amendment only to lessen or curtail the period of imprisonment. My learned friend, Dr. Banerjea, said, that the Honourable the Railway Member had moved to such an extent that he, Dr. Banerjea, expressed great admiration for him. I think the Railway Member then said, if I heard him correctly, he had moved yards off. But, Sir, what do we find now? We have in the Act itself only fine as punishment, and that, since the year 1890, and if you will go through the other section of the Railway Act, you will see that the intention of the Legislature was that this Railway Act should be worked in a very lenient manner. From that point of view, they have provided imprisonment in only one or two serious cases, otherwise you will find that the punishment provided for is fine.

As regards the improvement that the Railway Member has made with respect to punishment, it is this. When the predecessor of the present Railway Member had presented a Bill, he had provided for two months imprisonment, and now—this is moving further by yards,—the imprisonment concession provided is three months. This is how the Railway Member is moving. Sir, as I said, there should be no imprisonment at all. This is the most objectionable feature that appears in this Bill. If the Honourable the Railway Member cannot remove this objectionable feature, then my submission is that he should consider and provide such punishment as will be consistent with the other laws. If he cannot do even that much, then he should try and minimise the rigour or the intensity of the punishment.

Now, coming to that question, it has been suggested that at least the Railway Member should agree that if there is going to be punishment of imprisonment at all, then the first offender should not be given

imprisonment. In practice when the law is applied by courts we always find that it is considered that there should be leniency in respect of the first offence. Here I would submit that the traveller is not an offender at all, I would call him a defaulter. It is not a criminal offence that the man commits. After all, this is a commercial concern and the travelling public should be dealt with in such a manner that people may go and use the railway and not go to the motor buses and other conveyances. The railways should see that they do not lose the custom of the public. If nothing more can be done on the question of imprisonment, then it should at least be restricted to the second offence. I said that he is a defaulter. He has not purchased a ticket and if you are going to impute to him fraud, in the first place, it will be very difficult to prove, and there will be cases on the border line in which the magistrate may think that the wrong committed by the man comes under section 112. In that case the first offence should not be visited with imprisonment. As regards the second point, I say that there ought to have been some consultation with the legal advisers of the Treasury Benches. Under no law does the imprisonment for default exceed one-fourth of the maximum imprisonment. Now, the Honourable the Railway Member is enacting a law which will be inconsistent with all other laws, and instead of 22 days or three weeks imprisonment, he says that the imprisonment will be for three months. Why does he depart from the law as it is at present? It applies even to criminal offences, and as such, why should a peculiar provision be enacted and the sanction of this House got—a House which on this side is only an empty House—at this stage to take advantage of an empty House to make an inconsistent law, a law which I submit would be a revolution in the general law which is being administered since 1860. The Indian Penal Code was enacted in 1860, and since then it has been administered. My Honourable friend is laying down not only one standard, but two standards even in this Bill. Clause 4 says:

“ The Magistrate. . . . may order that the person liable for the payment shall in default of payment suffer imprisonment of either description for a term which may extend to one month.”

It is one month there in default, and here in the amendment it is three months. It is also against the general law. I should like to know why it is that the law under section 65 of the Indian Penal Code which is in force now and is being applied in the case of even serious offences, should not be applied in the case of a wrong that is done under a Railway Act. I, therefore, submit that there is neither consistency nor justice in providing punishment to the extent of three months for all offences, whether first or second, and also as regards default I have said that he is making a new law which should not be made at all. If nothing further can be expected from the Honourable Member, I hope at least that these two provisions will be amended.

Mr. J. Ramsay Scott (United Provinces: European): Mr. Deputy President, we are not enamoured with any of the three amendments, but as we are being given a choice of three evils, we do not oppose the amendment moved by my Honourable friend, Mr. Raper. We feel that the Bill, as originally introduced, has been so emasculated in the course of its passage, as to be of little or no use to the railways to prevent the growing, I might perhaps say, evil that seems to have come to stay. As the Bill will probably become an Act by the 1st April, I hope that we shall be supplied with the latest up to date statistics for the year 1940-41 and with those statistics which are available after the passing of this Bill, at the

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time of the next railway budget, in order that we may see the effect of this legislation, I do not want to have to face another amending Bill at an early date. I would, therefore, like an assurance from the Railway Department or the Railway Member that he considers that this Bill would be effective.

Sir, I support Mr. Raper's amendment.

Mr. M. S. Aney: I take it that the main principle of the Bill that was introduced in this House was to provide punishment of imprisonment for those who are known as ticketless travellers. So, any amendment that is considered at this stage must not lose sight of that principle in my opinion. If that principle is to be ignored for any reason, then I would tell the Honourable Member that instead of dealing with amendments this way or that way, it would be better for him to withdraw the Bill and leave the law as it is. It is not after all a bad law. It was at least their contention that the law as it stood was not sufficient for them to cope with the growing evil of ticketless travelling, and some drastic provision ought to be made to bring offenders to book and award them serious punishment, and that is why they have to come in with a piece of legislation of this kind. So, I would not quarrel with him on the ground that a provision of imprisonment has been laid down there. So far as that point is concerned, I want to make my position clear.

Having done that, I would not like the Government to take undue liberty with the principles or legislation itself. I do not want to yield to my friend, Dr. Banerjea, in expressing my appreciation of the spirit of conciliation shown by the Honourable Member in charge, Sir Andrew Clow. I think there is a good deal of difference in providing a substantive punishment of imprisonment for one year and a substantive punishment for three months only. In these two periods of imprisonment there is a good deal of difference, and to say that to reduce the period of punishment from one year to three months is no concession at all is doing violence to the language in my opinion. Therefore, I admit that there is that concession. But, having expressed myself unreservedly, about the conciliatory attitude which the Honourable Member has taken, I would at the same time see that in giving one concession he does not unduly encroach upon certain protective provisions which all offenders enjoy under the existing laws, and which restrict magistrate's discretion in the matter of punishment.

Now, what is being done by this amendment is to provide a punishment of three months imprisonment or certain amount of fine, not exceeding Rs. 100, for the offence under section 112 of the Indian Railways Act. Now, it has been the policy and a recognised principle that the law has to provide the maximum punishment either in the form of imprisonment or in the form of fine. What should be the punishment to be given to any offender is a matter on which the law leaves complete discretion to the magistrate himself upto the limit of the maximum provided. That is the first principle. The legislature can only do this. It can provide punishment, so many months imprisonment, rigorous or simple whatever it may be and with fine or without fine—either the one or the other or both. In this case the punishment is in the alternative imprisonment or fine. That will be the position in section

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112 after it is amended by this Bill. Now, the principle which is recognised and has been found to be salutary for all these years is that it is for the magistrate to use his discretion as to which are the two punishments to be given. If he chooses to give the punishment of fine, instead of imprisonment, it means that he does not think it is an offence fit for awarding the man the punishment of imprisonment at all. That is what it means. But it is also true that the magistrate has a right to recover the fine from that man and the inability or unwillingness of a man to pay the fine has never been considered by the legislature as a proper excuse for giving him the exemption from fine imposed. In lieu of the fine he has to undergo imprisonment but bearing in mind the fact that the magistrate chooses the lesser punishment and not the bigger punishment, Penal Code has made salutary provisions for enabling the magistrate to see what shall be the proper period of imprisonment for the man to undergo in lieu of the fine. That is an important point and when there are two punishments provided and the magistrate does not give the first punishment but chooses the latter, then the Indian Penal Code has laid down certain definite principles. In case the punishment of fine is provided and the fine is not paid, how is the defaulter to be dealt with. In that case the magistrate can only give him punishment which does not exceed one-fourth of the maximum punishment provided for the offence under the law. It is laid down in section 65-I. P. C. Section 67 has no application to the present case, as it applies to a case of imprisonment with fine. It has no application in a case of offences for which the punishment is imprisonment or fine and not both. Section 67 contemplates cases where the punishment provided by the law is both imprisonment and fine, while section 65 deals with those cases where the punishment is imprisonment or fine. Now, the discretion that is prescribed for the offence left to the magistrate to impose imprisonment in case of default only upto $\frac{1}{4}$ th period is taken away by the proposed amendment. Even if the magistrate instead of awarding the punishment of imprisonment gives a fine, it may be Rs. 100 or 50, it is laid down here in that case. The magistrate can award imprisonment in default of the payment of fine for the maximum period prescribed for the offence itself, viz., three months. Now it is certainly contrary to prevailing ideas of criminology and punishment that the maximum punishment provided for the offence itself as a substantive punishment is also to be the measure of the maximum period of imprisonment to be awarded in default. That is certainly a departure of a very serious nature in my opinion. There are many special and local laws. There are many laws such as excise laws, forest laws in which provisions have been made for the sake of penalising certain breaches of the rules and the provisions of the law. But at no time has it been thought necessary that they should also simultaneously enact that in case a fine under the law is not paid, the punishment should be such as to override the salutary provisions of sections 65 and 67 of Indian Penal Code. Why is it that the Railway Department wants to make an exception in this Bill? Why is it that it should depart from this salutary principle of legislation and restrict the discretion of the magistrate to such an extent. I believe it would be wrong for this House to give its consent to clause 3 as it stands here. I do not think the Honourable the Railway Member will lose much. They must really leave some discretion to the magistrate in this matter. If they think that the case is such that the man ought to be sent to jail, the magistrates will certainly send the man to jail. It may be for one month or two months or the full period. If not, the man will

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be fined and it must be left to the magistrate to find out what shall be the period for which the man can be sent to jail in default of payment of fine, the period of which will, in the absence of the special proviso in this clause, evidently be governed by the provisions of section 65 of the Indian Penal Code. I think the matter must stand at that and for that reason I cannot accept the amendment tabled by my Honourable friend, Mr. Raper. In actual administration he will lose nothing. The magistrate will use his discretion properly in this matter. He should rest content with that and not insist upon asking for something which is against the prevailing notions of criminal jurisprudence. As lawyers and citizens, we regard the provisions laid down in sections 65 and 67 as very salutary provisions in the matter of enabling the magistrate to award punishments in lieu of fine. Those salutary principles are being violated by this clause.

Having said that, my second point is this. I made a casual suggestion to my Honourable friend, Sir Andrew Clow, whether it would be possible for him to consider the extension of the provisions laid down in section 562 of the Criminal Procedure Code for first offenders in this section also. Now, he probably was doubtful, and I was myself not quite sure till I looked into the provisions myself whether those provisions would apply. But the position is not like this. Section 562 deals with two cases. In the case of certain offenders below the age of 21, the court is given the power of releasing them on probation of good conduct instead of sentencing them to punishment. That is one part of it. The second part of it is this. There is no question of age there. But for certain kinds of offences which are mentioned there and which are not punishable with more than two years imprisonment under the Indian Penal Code, the accused can also be dealt with merely by administering admonition to the accused and nothing more is to be done. The law restricts the exercise of this power in cases of offences punishable under the Penal Code only. What I wanted to suggest is whether the Honourable Member will make some provision here in this law itself that the provisions of section 562 can be applied by the magistrate in dealing with offenders under this law in suitable cases. I want something like that. That was the meaning of my suggestion. I know that I have not tabled any amendment of that kind and not having thought over the matter before I cannot give off hand any amendment also.

Dr. P. N. Banerjea: An amendment can be drafted immediately.

Mr. M. S. Aney: There may be difficulties in giving off-hand amendments. They may have repercussions elsewhere. The real object of my friend's suggestion was that first offenders should be dealt with leniently. So, if he thinks that this concession, which is generally given to all first offenders, under proper conditions and when extenuating circumstances exist under the Penal Code and under the Criminal Procedure Code, should also be extended to first offenders under this law, he will be making a concession which will be very much appreciated and which will make the position of Members on this side of the House much more easy in my opinion, in supporting the amendment which he has brought forward. I only want him to give me an assurance to this effect that he will do something like that, in the other House and if so, I shall have no objection for the present to proceeding with the amendment as it is.

Maulana Zafar Ali Khan (East Central Punjab: Muhammadan): Sir, so far as the charming personality of Sir Andrew Clow is concerned, I love him for his great qualities of head and heart, but as soon as he assumes the role of a legislator, all my love for him oozes out of the palm of my hand. I wish I could, like my friends, Dr. Banerjea and Mr. Aney, express my appreciation of the mercy that he has shown to us by changing the substantive punishment from one year's imprisonment to three months, but as I am definitely opposed to the idea of any imprisonment being inflicted upon first offenders under the Railways Act, I cannot extend my admiration to him like my other friends. Sir, the human race, according to Eastern philosophers, is divided into three groups,—group I, those who are virtuous by nature, and the prophets and sages are made of this stuff, and they do not require the guidance of mundane law. They will do good, whatever the conditions may be. If Jesus Christ came to this world in the year of grace 1941 and happened to travel on a railway and unwittingly travelled in the second class having a ticket of the third class, he might be hauled up before a magistrate and given a sentence of three months. Then, in the other extreme there is another group of men, vicious by temperament, disciples of the devil and no one, however resourceful he may be, could prevent them from indulging in their vile practices. These two groups are small groups of men. The middle group of the human race constitutes the overwhelming majority of mankind—the ordinary individuals, amenable to guidance and susceptible to persuasion, and laws are made for them. So, the object of every right-thinking law-giver should be to deal with this middle group in such a manner as to inspire confidence in them. They can be led by advice, and it will be very foolish, when they come to grips with law, to inflict upon them vindictive punishment in the first instance. Now, under the present measure, three months' imprisonment would be inflicted upon a man who committed his first offence. I am against it and the majority of Members on this side are against it. Although they know perfectly well, situated as we are today, that it would be impossible for us to carry our decision with the strength of our votes. We know that perfectly well, and these empty Congress Benches with their gaping mouths confirm that. But may I appeal to the good-sense of the railway authorities, especially Sir Andrew Clow, to consider calmly whether it is advisable to retain in the Bill three months' substantive imprisonment as a punishment in the first instance? I am not against placing a deterrent restraint upon the activities of those who are habitual offenders but I am against men being imprisoned for having committed an offence under this Bill for the first time. How do we stand to lose if, instead of giving three months to the first offender, you punish him with a fine? That is a sufficiently deterrent penalty. A fine up to one hundred rupees for an offence in the first instance is a sufficient deterrent. If you go beyond that, it becomes vindictive and I would ask you to reconsider this clause and re-draft the Bill and take away this imprisonment provision altogether. If you did this, all the travelling public in this country would be grateful to you and the House would admire you, and then I would be in the same position as Dr. Banerjea to extend my appreciation to Sir Andrew Clow.

The Honourable Sir Andrew Clow: Sir, I had hoped, and like other Members of the House worked, to secure complete agreement on this clause. If that has not proved possible, the amendments on the table show that we are a little nearer agreement than we once were. Even the light has dawned on my Honourable friend, Mr. Lalchand Navalrai, for I see he has

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tabled an amendment which he may not have the chance of moving, to enhance the fine from one hundred rupees to three hundred rupees.

Mr. Lalchand Navalrai: But not imprisonment; I am against that.

The Honourable Sir Andrew Clow: Now, let me deal first with the preliminary objection which I heard once more from my friend, Mr. Abdul Ghani, that it is unreasonable that a business concern like the Railways should ask for special legislation in this matter. All I can say is that in every country in the world, including Great Britain, it has been recognized that special legislation is necessary to deal with a gentleman who commits a fraud on the Railways or tries to travel without a ticket.

Dr. P. N. Banerjee: Gentleman?

The Honourable Sir Andrew Clow: He calls himself a gentleman! Then, Mr. Aney made an eloquent appeal for the first offender. Well, the man convicted of cheating under this clause is not always the first offender; it may be his first offence under the law but, of course, there are other cases of his having contravened section 118. However, I do not attach much importance to that point. I would like to point out that there is nothing in this clause requiring the magistrate to treat the man severely; he can impose an absolutely nominal fine if he thinks that the case requires such leniency. I do not think there is any need to bring in the special provision for first offenders of section 562 of the Criminal Procedure Code.

Where I am afraid I do differ from Honourable Members opposite is this that I do sincerely believe that a fine of Rs. 100 is not an adequate maximum for an offence which involves fraud, and fraud on the community, even if that is the first offence. I doubt if a fine in all circumstances can be adequate. I would ask the House to keep constantly in mind the fact that we cannot expect and I sincerely do not want that every person convicted under this section should go to jail. I do not believe they will, but you have to retain a more severe punishment for the more aggravated cases. Mr. Maitra's amendment really leaves the law substantially where it is because the extra punishment he is willing to provide only covers an extremely rare case, and that is really one of my objections to Mr. Essak Sait's amendment. Let me take one of the aggravated cases which I am thinking and that is a case where a number of men, not previously convicted, travel in a large body on a train. When I was speaking the other day, I mentioned a petition that I had received from an Association. I was sorry that I led some Honourable Members to think that I was merely speaking derisively. I was not at all and I am going to read the petition to the House. It is addressed to A. G. Clow, Esq., General Manager, Bombay, Baroda and Central India Railway, Bombay. I do not know why I was elevated to that position; possibly it was because these gentlemen from whom the petition emanates particularly resort to that railway. The petition reads thus:

"Dear Sir, while thanking you for your taking so much trouble about the ticketless travellers, I, on behalf of Mendicant Society and Ticketless Passengers Association, beg to point out that you will kindly arrange to have in your administration jail for ticketless travellers. We do not like to be associated with ordinary criminals in ordinary jails. We are determined, as we have no other alternative, but to travel without ticket in all railways whenever necessary. Further in my next."

The Association professes to have its headquarters in Howrah. In the next petition I received from this gentleman I was invited to preside over a Conference of ticketless travellers. Most unfortunately, my duties in this House prevented me from doing that. Now, I have since heard that this Association or Party intend to travel for a particular pilgrimage in numbers of 30 and 40 without ticket and I have sent a gentle warning to the gentleman that the action he proposes to take is illegal and we will do our best to prevent it.

Sir Muhammad Yamin Khan: Has he given his address?

The Honourable Sir Andrew Clow: Yes, it is in Calcutta, where there are many strange Associations.

Maulana Zafar Ali Khan: Do you still think that it is not a joke?

The Honourable Sir Andrew Clow: I thought at first that it was an endeavour to indulge in a gentle leg-pull but the letters bear the mark of being genuine. Obviously, the author did not know where I was and what post I held.

Now I come to Mr. Raper's amendment. I think two objections were made to this amendment. The first is a minor one by Dr. Banerjea. He said that we were putting imprisonment first and he asked me to look up the Indian Penal Code where I would find that fine was put first. I have looked up the Indian Penal Code. That is not the case. The imprisonment is, I think, invariably mentioned first and fine second. I do not think the point is of any particular significance. I come to the more important objection which was voiced by Mr. Maitra, Mr. Aney and some others regarding the relation of imprisonment in default to the substantive term of imprisonment. However suitable the provisions in the Indian Penal Code may be for the ordinary case, I hope to show the House that they are not suitable here. The position at present, with a hundred rupee fine, is that imprisonment in default under the provisions of the Indian Penal Code can extend to four months, but when we add, as we propose to do here, a substantive sentence of three months' imprisonment, in other words, when we make the maximum penalty much more severe, that has the effect, if we do not interfere with the Indian Penal Code provisions, of reducing the maximum term of imprisonment for default from four months to three weeks.

Pandit Lakshmi Kanta Maitra: From three months to three weeks and from four months to one month.

The Honourable Sir Andrew Clow: No, we put in here three months' imprisonment, so that, it is reduced to three weeks. In other words, though we take a much more serious view of the offence, we reduce the imprisonment in default from four months to three weeks.

Now, Dr. Banerjea has referred to the careful individual study and appreciation of penology since 1860 and one of the things that has been impressed upon me almost since I came to this country is that a very short term of imprisonment is generally a mistake. You should not imprison at all unless you are going to give something which is a little longer than this trifling sentence. Although, therefore, to those who approach the question from the point of view of 1860, three months imprisonment in this case may seem to be excessive, actually we are reducing the maximum term

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of imprisonment that can be awarded in default of fine. I hope, Sir, that will convince the House that the proposals we have put forward are reasonable and I commend them to the House.

Mr. Deputy President (Mr. Akhil Chandra Datta): There are three amendments before the House, and the Chair proposes to put them in the order in which they have been moved.

Pandit Lakshmi Kanta Maitra: On a point of order, Sir. The amendment which stands in my name is of wider scope and therefore it should be put to the vote first. It does away with the proviso in the amendment of Mr. Raper. If my amendment falls through, then, of course, a more restricted amendment may be put to the vote. If my Honourable friend, Mr. Raper's amendment, is taken first and if it is carried, then our amendments will be practically barred. You will notice that in the amendment which is tabled in my name the proviso which disturbs section 65 of the Indian Penal Code does not occur at all.

Mr. Deputy President (Mr. Akhil Chandra Datta): The Chair does not feel justified in disturbing the order in which the amendments have been moved.

Pandit Lakshmi Kanta Maitra: You are not disturbing the order. It is a matter of voting. The question is whether the amendment of wider import should not be put to the vote first?

Mr. Deputy President (Mr. Akhil Chandra Datta): Will the Honourable Member please state his objection again?

Pandit Lakshmi Kanta Maitra: The point is this. In the amendment proposed by Mr. Raper you will notice that in the concluding portion of his amendment there is the following proviso:

"Notwithstanding anything contained in section 65 of the Indian Penal Code, the Court convicting an offender under this section may direct that the offender in default of payment of any fine inflicted by the Court, shall suffer imprisonment for a term which may extend to three months."

In my amendment on the other hand, this portion is done away with. In other words my amendment does not seek to disturb the existing law as provided by section 65 of the Indian Penal Code. If Mr. Raper's amendment is first put and carried, then it will bar my amendment as well as that of Mr. Essak Sait.

Mr. Deputy President (Mr. Akhil Chandra Datta): The Chair sees the point. The Chair will now put Pandit Lakshmi Kanta Maitra's amendment first. The question is:

"That for clause 3 of the Bill the following be substituted:

'3. For section 112 of the said Act the following shall be substituted, namely:

'112. (1) If a person, with intent to defraud a railway administration, enters or remains in any carriage on a railway in contravention of section 58, he shall be punished with fine which may extend to one hundred rupees in addition to the amount of the single fare for any distance which he may have travelled.

- (2) If a person, with intent to defraud a railway administration, uses a single pass or a single ticket which has already been used on a previous journey, or in the case of a return ticket, a half thereof which has already been so used, he shall be punished with imprisonment for a term which may extend to four months or with fine which may extend to one hundred rupees in addition to the amount of the single fare for any distance which he may have travelled."

The Assembly divided:

[During the course of the Division, Mr. President (The Honourable Sir Abdur Rahim) resumed the Chair]

AYES—26.

Abdul Ghani, Maulvi Muhammad.	Liaquat Ali Khan, Nawabzada Muhammad.
Aney, Mr. M. S.	Maitra, Pandit Lakshmi Kanta.
Azhar Ali, Mr. Muhammad.	Mehr Shah, Nawab Sabibzada Sir Sayad Muhammad.
Banerjee, Dr. P. N.	Muhammad Ahmad Kazmi, Qazi.
Chattopadhyaya, Mr. Amarendra Nath.	Murtuza Sahib Bahadur, Maulvi Syed.
Datta, Mr. Akhil Chandra.	Nauman, Mr. Muhammad.
Deshmukh, Mr. Govind V.	Parma Nand, Bhai.
Essak Sait, Mr. H. A. Sathar H.	Sant Singh, Sardar.
Fazl-i-Haq Piracha, Khan Bahadur Shaikh.	Siddique Ali Khan, Nawab.
Ghiasuddin, Mr. M.	Umar Aly Shah, Mr.
Ghulam Bhik Nairang, Syed.	Yamin Khan, Sir Muhammad.
Ismail Khan, Haji Chaudhury Muhammad.	Zafar Ali Khan, Maulana.
Lalchand Navalrai, Mr.	Ziauddin Ahmad, Dr. Sir.

NOES—38.

Abdul Hamid, Khan Sahib Shaikh.	Lawson, Mr. C. P.
Ahmad Nawaz Khan, Major Nawab Sir.	Manavedan, Raja T.
Bewoor, Sir Gurunath.	Maxwell, The Honourable Sir Reginald.
Boyle, Mr. J. D.	Mazharul Islam, Maulvi.
Buss, Mr. L. C.	Miller, Mr. C. C.
Caroe, Mr. O. K.	Muazzam Sahib Bahadur, Mr. Muhammad.
Chapman-Mortimer, Mr. T.	Mukharji, Mr. Basanta Kumer.
Clow, The Honourable Sir Andrew.	Oulsnam, Mr. S. H. Y.
Daga, Seth Sunderlal.	Pillay, Mr. T. S. S.
Dalal, Dr. R. D.	Raper Mr. J. H. F.
Dalpat Singh, Sardar Bahadur Captain.	Rau, Sir Raghavendra.
Griffiths, Mr. P. J.	Scott, Mr. J. Ramsay.
Gwilt, Mr. E. L. C.	Shahban, Khan Bahadur Mian Ghulam Kadir Muhammad.
Ikramullah, Mr. Muhammad.	Sheehy, Mr. J. F.
Imam, Mr. Saivid Haider.	Sivaraj, Rao Sahib N.
James, Sir F. E.	Snence, Sir George.
Jawahar Singh, Sardar Bahadur Sardar Sir.	Thomas, Mr. J. H.
Kamaluddin Ahmed, Shams-ul-Ulema.	Tyson, Mr. J. D.
Kushalpal Singh, Raja Bahadur.	Zafar Ali Khan, The Honourable Sir Muhammad.

The motion was negatived.

Mr. President (The Honourable Sir Abdur Rahim): The Chair will now put the amendment moved by Mr. Raper.

Some Honourable Members: No, no. Mr. Essak Sait's amendment has to be put next.

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

"That for clause 3 of the Bill the following be substituted."

Sir Muhammad Yamin Khan: Sir, may I point out that it was arranged

Mr. President (The Honourable Sir Abdur Rahim): Will the Honourable Member please not interrupt while the Chair is speaking? The question is:

"That for clause 3 of the Bill the following be substituted.

'3 (1) Section 112 of the said Act shall be re-numbered as sub-section (1) of that section and in the sub-section as so re-numbered,

(a) in clause (a) for the words and figures 'in contravention of section 68 any carriage on a railway' the words and figures 'or remains in any carriage a railway in contravention of section 68' shall be substituted; and

(b) after the words 'shall be punished' the words 'with imprisonment for a term which may extend to three months or' shall be inserted.

(2) To the said section as so re-numbered and amended the following sub-section shall be added, namely:

'(2) Notwithstanding anything contained in section 65 of the Indian Penal Code, the Court convicting an offender under this section may direct that the offender in default of payment of any fine inflicted by the Court, shall suffer imprisonment for a term which may extend to three months.'

Mr. M. S. Aney: Sir, before you put the question, may I bring it to your notice that the Deputy President had already ruled that the amendments are to be put in a particular order, and, accordingly, one amendment was put. The second amendment, according to that ruling, is the amendment of Mr. Essak Sait, and the third will be that of Mr. Raper. That is the order in which he has ruled that the amendments are to be put and we bring that fact to your notice. I believe that ruling can stand.

Mr. Akhil Chandra Datta (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): I should like to make one slight correction. All that I ruled from the Chair was that Pandit Maitra's amendment should be put first and, as regards the others, I did not rule which was to be put next. That was their submission, but I did not decide one way or the other.

Mr. M. S. Aney: If that is so, then I withdraw what I said.

Mr. President (The Honourable Sir Abdur Rahim): The Chair has put the question.

The motion was adopted..

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

"That clause 3, as amended, stand part of the Bill."

The motion was adopted.

Clause 3, as amended, 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 Andrew Olow: Sir, I move:

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

I have only one word to add, if I may be permitted to reply to a very awkward question on clause 3 from Mr. Ramsay Scott. He asked me to give him my assurance that I was satisfied that this Bill was sufficiently stringent. I am afraid that I should find it rather difficult to give him a complete assurance on that point, because it has undoubtedly been greatly weakened in its passage through the House. I feel, however, that perhaps we are right in erring in this matter on the side of leniency, and despite his objection to my suggestion that it may be necessary to approach the House again, perhaps that is the better way of doing it. In other words we shall try to use the material the House has given us to the best of our ability, to improve the administrative machinery so that the Bill may be sufficiently protective and so that there may be as little possibility of abuse to the public as we can secure, and to see if we cannot, with the powers now conferred on us, secure adequate protection against the ticketless traveller.

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

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

Dr. Sir Ziauddin Ahmad: Sir, there is a fundamental difference of opinion between the Honourable Member and ourselves on this side of the House. The Honourable gentleman believes that by enhancing the punishment he will minimise the ticketless travelling. We on this side believe that he can achieve the very same object much better by improving his system of ticket-checking. That is really the fundamental difference. Mr. Scott, who always supports the Treasury Benches, put his opposition in a very mild form: he did not believe also that by increasing this punishment the number of ticketless travellers will diminish—he attempted to convince the Honourable Member by asking: "Please take statistics for 1940-41 and also the statistics for 1941-42 and you will find no improvement; and if no improvement is made, probably the Honourable Member will come forward with punishment more intensive than at present." I can assure him that it is not the intensity of the punishment which will stop ticketless travelling. The only satisfactory remedy is what we suggested from this side of the House, namely, improvement in the system of checking tickets on the lines which I mentioned in my opening speech when the report of the Select Committee came up for consideration, and which I do not like to repeat now. But I do emphasise this particular fact that the real remedy, lies in improving the system of ticket-checking; and then and then alone the evil will be minimised. I was rather amused when he read the letter of the Ticketless Travellers Association: but I thought that the person who wrote it had some humour in him and so I do not take it in any spirit other than the spirit of humour. Though we are now enacting it as a law by the sheer force of the Government votes, in spite of the opposition of this side of the House, I hope that the Government will look into the matter and see that the provisions of this Bill are not abused by the servants belonging to the railway administration, that he will make early effort and see that the system of checking tickets is also improved. With these words I resume my seat.

Pandit Lakshmi Kanta Maitra: Mr. President, at long last the Honourable the Communications Member has been able to place on the Statute-book a Bill.....

Mr. Akhil Chandra Datta: Not yet.

Pandit Lakshmi Kanta Maitra: which has been hanging fire since 1936. Sir, I am not altogether happy over the Bill as it has been enacted into law by this House. From our point of view the Bill makes a serious departure from the principle of criminal law, and we could not persuade ourselves to accept the interpretation of the provisions as given by the Honourable Members of the Treasury Benches. Sir, as one who strenuously opposed this obnoxious Bill from the very beginning of its introduction in the year 1936 and as one who has tried to fight out all its mischievous provisions, I think I should not ignore the changes that have after all been effected by this House as a result of our criticism and also as a result of our conferences with the sponsors of this Bill. That the contention of this part of the House was not altogether without substance will be apparent from the fact that even the sponsors of the Bill who provided for one year's imprisonment for ticketless travelling had to come down to three months. I do not think, Sir, that it was conceded to purely from the point of view of pleasing us, but I believe that the arguments which we had been advancing from this side of the House on that most important part of the Bill, the darkest spot in the Bill, if I may say so, must have gone home to the other side, and they made the response they did. Sir, it is gratifying to note that my Honourable friend, Sir Andrew Clow, has been pleased to observe that he would try to make the machinery for the administration of its provisions as effective as he possibly could, eliminating thereby the chances of their abuse. For the present, Sir, we have to be content with that assurance. I believe that, whatever may be the value of such an assurance, in the actual administration of the law, there are bound to be difficulties, and unless the Railway Administrations in India carefully bear in mind some of the objections we have taken to this Bill, they would not be able even with the best of intentions, to remedy the defects in their administration.

Sir, I have pointed out, and I believe several other Honourable Members have also pointed out on the floor of this House during the stage of the general discussion, as also during the stage of consideration of the provisions, that we want greater and adequate facilities for issuing tickets as a first step. Let this not be lost on my friends there. Let them not think that by mere provisions of legislation, however stringent they may be, they will be able to achieve their object in completely checking ticketless travelling. Sir, I showed at an earlier stage that the so-called vice of ticketless travel is not of such a volume as to call for this measure. I pointed out from the figures that at the most the vice of ticketless travel amounted to .5 per cent of the total travelling population on the Indian Railways. My friend, Sir Andrew Clow, argued in reply that that was no reason why provision should not be made, and he brought forward the analogy of murder. He said that murders were not of common occurrence, but still there had to be a provision for murder. I am afraid, Sir, that that was an argument which cuts both ways. In spite of the provision for murder.....

Mr. President (The Honourable Sir Abdur Rahim): Is there any use arguing the whole thing over again?

Pandit Lakshmi Kanta Maitra: It is not a question of arguing the thing over again.....

Mr. President (The Honourable Sir Abdur Rahim): The House has adopted the clauses.

Pandit Lakshmi Kanta Maitra: The House has accepted it, no doubt, but there are not going to be very many speakers, and I am making general observations.....

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member must remember, it is Third Reading.

Pandit Lakshmi Kanta Maitra: Yes, Sir. That was a wrong analogy, I should say, which my friend, Sir Andrew Clow, gave. Be that
 4 P.M. as it may. I would now draw my Honourable friend's attention to one or two matters which still leave us in doubt, and I am afraid, may land people into difficulties while the Act is put into operation. We have passed the provisions of section 68 in an amended form. Section 68 of the Railways Act provides that no person shall, without the permission of a railway servant, enter any carriage and so on. There the Article is indefinite. Any railway servant may give permission to anybody to board a compartment or remain there. The amendment which we have carried also makes an additional provision that such a person shall, if so authorised, grant a certificate. But in clause 4 it will be found that in the first proviso it is said "where the passenger has immediately after incurring the charge and before leaving detected by a railway servant notified to the railway servant on duty with the train" and so on. There we come to another category of Railway people. It is then and then only that he will be entitled to the minimum excess charge. The position, therefore, comes to this that any railway servant may give permission, but not necessarily this certificate, unless he has got special authority for the purpose, and that the person so granting certificate may not be on duty in the train. Now, the passenger travelling without ticket but with permission of a Railway servant may be detected by any railway servant, and unless he notifies to the man on duty in the train the fact of his travelling without a ticket, he will have to pay the excess charge and all that. So, notwithstanding any permission obtained from any railway servant, a *bona fide* passenger travelling in the train without ticket may incur excess charge if he is not enabled to notify the fact of his so travelling, to the particular railway person on duty in the train. Thus, the fact of receiving permission does not help a *bona fide* passenger. I hope my Honourable friend will think over that, and I would suggest that when the Bill goes to the other House he may bring it into line with the general spirit of section 68. We have provided that ordinarily when permission is sought a certificate shall be given. It may be difficult in practice to issue that certificate. It will be extremely difficult as there may be want of time and also a variety of other circumstances which may make it absolutely impossible to get the certificate. I would suggest that in making rules the Honourable the Communications Member would see to it that grant of certificate becomes a very easy matter, that provision is made for printed certificates so that immediately on the mere asking the passenger may get one to arm himself against levy of excess charge.

[Pandit Lakshmi Kanta Maitra.]

Some arrangement should be made by which people who come at the last moment and who for a variety of reasons cannot face the ticket counter may straight off proceed on the journey armed with the certificate so that they may not be mulcted in excess fare. That is a point which should be very carefully borne in mind. Besides, as many railway servants as possible should be authorised to grant the permission and the certificate. Unless that is done, I think with the best of intentions in the world you cannot prevent hardship to *bona fide* honest passengers who may have to travel without ticket on many an occasion. Though the provisions of clause 5 have been adopted, I would ask the Honourable the Communications Member to carefully reconsider the position and see that needless harassment to passengers is not caused. It is not possible for any human organisation or human institution to evolve a perfect thing, we are perfectly aware of that. But I hope my Honourable friends would not rest on their oars and think that they have achieved everything by enacting the provisions of this Bill into law.

In conclusion, I would like to thank my Honourable friend, Sir Andrew Clow, and my Honourable friend, Mr. Raper, for showing some spirit of accommodation in connection with this Bill. Though on many occasions I had to differ from them and though there had been occasions for exchange of strong expressions—I hope my Honourable friends have become accustomed to the rough and tumble of ordinary parliamentary life,—I hope they would remember that my sole object was to make the provisions of the Bill as innocuous as possible, and I feel we have achieved some little measure of success in that direction.

Sir, I support the motion.

Qazi Muhammad Ahmad Kazmi (Meerut Division: Muhammadan Rural): Mr. President, I congratulate the Honourable the Railway Member for having done his best to justify a bad heritage that he got from the previous Railway Member. I know that he was not responsible for it, and at the same time I feel that the Opposition have also succeeded to a considerable extent in removing the undesirable features of this Bill. This Bill was drafted as early as the 18th March, 1936, and today it is the 5th March, 1941, when we have reached the stage of passing it and in this period the Bill has undergone sufficiently large changes. The first undesirable feature of the Bill was that it wanted to change the very principle of jurisprudence. It wanted to lay the onus of proving innocence on the accused. In the Statement of Objects and Reasons of the Bill as it was introduced, it was said:

“In cases in which action is taken under section 112 the onus of proving intent to defraud rests on the railway staff, the discharge of which is not always practicable. It is proposed, therefore, that the onus of proving that there was no intent to defraud should rest on the person found travelling without a proper ticket.”

I am very glad to find, and I think every one of us here will be glad to find that this principle has not been incorporated in the present measure.

Now, the question is, what have the Government achieved by enacting this Bill? One of the main purposes so far as section 112 is concerned, has been conceded by them as being not proper according to the principles of jurisprudence. The only question that remains is that some provisions have been made which will be deterrent so far as travellers without tickets

are concerned. In that connection also I would only just read out a sentence from the Statement of Objects and Reasons of this very Bill when it was introduced. It said:

"Where a distress warrant is issued against any person, the results are usually quite incommensurate with the time, trouble and expense involved in court proceedings, etc., as the amount payable is frequently not realized. To deal effectively with such cases, it is necessary that railway servants should be empowered to arrest such persons as refuse to pay the charges due if there is reason to believe that it will not be possible to get them to appear before a magistrate without undue delay, trouble or expense. Provision for this has been made in the proposed amendment to section 131 of the Act."

This provision also has not been included in this Act. This provision was to the effect that the railway servant would have the authority of arresting a man without warrant. So, as a matter of fact, the two chief things which were aimed at have not been achieved by this Bill at all. Now, what they have got is the old Act with a provision of a sentence of imprisonment added. We wish you must get the greatest amount of earnings from the railways but at the same time I hope that an attempt for it will not result in an additional burden on the pockets of the taxpayers, because old experience shows that most of the persons who are travelling without tickets are not in a position to pay their fares. Simply sending them to jail would be providing them with food and clothing at the expense and cost of the taxpayer himself. If this Bill is going to be of some use to the railways in so far as it brings some money its provisions must be utilised but it should not be used in such a way that it may add a greater burden on the taxpayers of India.

Now, Sir, in this connection I would just make one or two observations. Persons who travel without ticket and who are in a position to pay the fare are those who are somehow or other connected with the railway administration itself. The method of keeping the checking staff under the same administration as the other staff of the railway is, results in a certain amount of undue influence which can be exercised on the checking staff themselves. I know of a case where a constable was travelling with a train from Dehra Dun to Lashkar and taking a woman without a ticket. One of the T. T. Es. caught that constable travelling with the woman without a ticket. The constable at the Railway station of Lakhsar got one of the passengers to bring a complaint against the T. T. E. to the effect that he wanted to enter the female compartment. The result was that the T. T. E., who had the audacity of charging the woman who was travelling with the constable, was run in under the Railways Act. Fortunately for him he had taken sufficient care while he charged the woman and he was ultimately acquitted. No steps were taken against the complainant. This happened in 1936. Then some applications were made and ultimately the police chaled the complainant for making a false complaint under section 182-I. P. C. The complainant when he was summoned before the Court admitted that he had launched the charge against the T. T. E. at the instigation of the police constable. He was fined to pay a small sum of money but the constable was not touched and no action was taken against the constable himself. Later on, I have heard that the constable was transferred from the railway police to the district police, which is a more profitable job. It may be a compliment to the Railway Member that the police do not think service in the railways as profitable as the service in the district, and it is a fact that people in the police service like the district service more than the railway

[Qazi Muhammad Ahmad Kazmi.]

service. My point is that if you are not prepared to strengthen the hands of your checking staff, if you won't help them in the matter of checking, then this Act will be of absolutely no help as appears from the very Objects and Reasons which were put before this House at the time when this Bill was introduced. I again congratulate the Honourable the Railway Member and hope, as has been pointed out by other Members, that the provisions of this Act which are likely to be misused by the checking staff will not be allowed to be misused. With these words I support the motion.

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

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

"That the question be now put."

The motion was adopted.

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

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

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): With reference to the Demands for Grants, the Chair understands that an arrangement has been made by the Parties as to the particular demands and cut motions that will be discussed, and the Chair takes it that the Government have been notified of the numbers of the cut motions which are going to be moved tomorrow.

The Honourable Sir Andrew Olow: I believe so.

The President (The Honourable Sir Abdur Rahim): The Chair had better read this. The Muslim League Party will discuss the cut motions relating to the Supply Department. The next is Civil Aviation; third,—Baluchistan; fourth,—Census; and fifth,—Delhi Administration.

The Honourable Sir Andrew Olow: I should like to draw your attention to the fact that these subjects give nothing more than the grants.

Mr. President (The Honourable Sir Abdur Rahim): The Chair has got only one number—No. 4. As regards others, the Chair has not got the numbers. The Chair would, therefore, ask Honourable Members who are moving them to give particulars, the different Parties to give notice of the particular amendments which they wish to move. They must give them today.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 6th March, 1941.