

15th February 1940

THE
LEGISLATIVE ASSEMBLY DEBATES

Official Report

Volume I, 1940

(6th February to 5th March, 1940)

ELEVENTH SESSION
OF THE
FIFTH LEGISLATIVE ASSEMBLY,
1940



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M2LAD

Legislative Assembly.

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LEGISLATIVE ASSEMBLY.

Thursday, 15th February, 1940.

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.

PERSONS KIDNAPPED AND KILLED FROM BRITISH TERRITORY BY TRIBAL GANGS.

84. *Sardar Sant Singh: (a) Will the Secretary for External Affairs be pleased to lay on the table of the House a statement containing the following information:

- (i) names of persons kidnapped from British territory by tribal gangs since 1st April, 1939;
- (ii) names of persons killed;
- (iii) the community to which they belonged;
- (iv) ransom demanded in each case;
- (v) ransom paid;
- (vi) whether any of them was a public servant; if so, his position and whether on official duty at the time of his abduction;
- (vii) steps taken by Government in each case; and
- (viii) whether any compensation was paid by Government to those who were forced to secure release by payment of ransom?

(b) Will Government be pleased to state their policy with regard to prevention of these raids?

Mr. O. K. Caroe: (a). (i), (ii), (iii), (vi) and (vii). Two statements are laid on the table giving all the details available with Government for the period from the 1st April, 1939, to 31st January, 1940.

(iv), (v) and (viii). Information is being collected and will be laid on the table in due course.

(b) Government's policy is naturally to prevent these raids and punish the offenders by all possible means at their disposal, and further special measures to deal with the trouble are now being taken. An unfortunate feature of the situation is that the raiders are almost invariably assisted by residents in the settled districts, and it is very difficult to deal with these accomplices under the ordinary law. As the Honourable Member is no doubt aware, the Deputy Commissioner, Bannu, has recently been given special powers under the Frontier Crimes Regulation which it is hoped may remedy this defect to some extent.

List of persons kidnapped from British Territory by tribal gangs since 1st April, 1939.

Serial No.	Names.	Community to which they belonged.	Whether any of them was a public servant, if so, his position, and whether on official duty at the time of his abduction.	Steps taken by Government in each case.	Remarks.
1	2	3	4	5	6
1	L. Chhabil Lal	Hindu	Sub-Inspector of police. Was not on official duty	Political pressure was brought to bear on the tribes concerned.	
2	Major A. N. Duggal	Do.	Major, I. M. S. Was on official duty	Do.	
3	Nasrullah	Muslim	Foot constable of police. Was on official duty	Do.	
4	Muhammad Khan	Do.	Foot constable of Bannu police. Was on official duty	Do.	
5	Shah Din	Do.	L/N Frontier Constabulary. Was on official duty	Do.	
6	Alli Bagh	Do.	Ditto	Do.	
7	Sher Jan	Do.	Sepoy, Frontier Constabulary. Was on official duty	Do.	
8	Shinak	Do.	Ditto	Do.	
9	Sahib	Do.	Ditto	Do.	
10	Nura Jan	Do.	Ditto	Do.	
11	Sher Gul	Do.	Ditto	Do.	
12	Sahib Jan	Do.	Ditto	Do.	
13	Shakim	Do.	Ditto	Do.	
14	Muhammad Salim	Do.	Customs Officer, Thall. Was on official duty	Do.	
15	Fateh Jang	Do.	Foot constable of police. Was on official duty	Do.	
16	Abdul Khaliq	Do.	Sub-Inspector, Telephone Department. Was not on official duty	Do.	
17	Muhammad Akbar	Do.	They were not public servants	Do.	
18	Khan Shirin	Do.	Ditto	Do.	
19	Haq Niwaz	Do.	Ditto	Do.	
20	Muhammad Jan	Do.	Ditto	Do.	
21	Ghulam Hussain	Do.	Ditto	Do.	
22	Allah Wasaya	Do.	Ditto	Do.	
23	Imam Bakhsh	Do.	Ditto	Do.	
24	Ahmad	Do.	Ditto	Do.	
25	Sao	Do.	Ditto	Do.	
26	Namdar	Do.	Ditto	Do.	
27	Rab Niwaz	Do.	Ditto	Do.	
28	Shahbaz	Do.	Ditto	Do.	
29	Allah Dad	Do.	Ditto	Do.	
30	Bahara	Do.	Ditto	Do.	
31	Wasiro	Do.	Ditto	Do.	
32	Gul Khan	Do.	Ditto	Do.	
33	Sumdad	Do.	Ditto	Do.	
34	Shahbaz	Do.	Ditto	Do.	
35	Rahim Dad	Do.	Ditto	Do.	
36	Muhammad Qasim	Do.	Ditto	Do.	
37	Mst. Shahzadi	Do.	Ditto	Do.	
38	Mst. Bahima	Do.	Ditto	Do.	
39	Sakhab-ud-Din	Do.	Ditto	Do.	
40	Rahmatullah	Do.	Ditto	Do.	
41	Abdul Majid	Do.	Ditto	Do.	
42	Mukhtas Din	Do.	Ditto	Do.	
43	Akram Khan	Do.	Ditto	Do.	
44	Badshah Khan	Do.	Ditto	Do.	
45	Mahal Gul Khan	Do.	Ditto	Do.	
46	Khan	Do.	Ditto	Do.	
47	Datshah Gul	Do.	Ditto	Do.	
48	Mst. Khadima	Do.	Ditto	Do.	
49	Guldar Shah	Do.	Ditto	Do.	
50	Qasim	Do.	Ditto	Do.	
51	Ibrahim	Do.	Ditto	Do.	
52	Baid Akbar	Do.	Ditto	Do.	
53	Akbar Khan	Do.	Ditto	Do.	
54	Noor Khan	Do.	Ditto	Do.	
55	Ayaz Khan	Do.	Ditto	Do.	
56	Gul Matin	Do.	Ditto	Do.	
57	Sher Gul	Do.	Ditto	Do.	
58	Gul Khan	Do.	Ditto	Do.	
59	Tola Ram	Hindu	Ditto	Do.	
60	Jawa Ram	Do.	Ditto	Do.	
61	Walu Ram	Do.	Ditto	Do.	
62	Gora Ram	Do.	Ditto	Do.	
63	Mool Chand	Do.	Ditto	Do.	
64	Sohan Lal	Do.	Ditto	Do.	

Serial No.	Names.	Community to which they belonged.	Whether any of them was a public servant, if so, his position, and whether on official duty at the time of his abduction.	Steps taken by Government in each case.	Remarks.
1	2	3	4	5	6
65	Karam Chand	Hindu	They were not public servants	Political pressure was brought to bear on the tribes concerned.	
66	Hem Raj	Do.	Ditto	Do.	
67	Chiman Lal	Do.	Ditto	Do.	
68	Ganshan Dass	Do.	Ditto	Do.	
69	Jangi Ram	Do.	Ditto	Do.	
70	Mst. Sheila Bai	Do.	Ditto	Do.	
71	Mst. Tikan Bai	Do.	Ditto	Do.	
72	Godha Ram	Do.	Ditto	Do.	
73	Mst. Niki Bai	Do.	Ditto	Do.	
74	Ganesh Das	Do.	Ditto	Do.	
75	Mst. Diyal Bai	Do.	Ditto	Do.	
76	Mst. Bona Bai	Do.	Ditto	Do.	
77	Mst. Chiman Bai	Do.	Ditto	Do.	
78	Utam Chand	Do.	Ditto	Do.	
79	Mst. Vishni Bai	Do.	Ditto	Do.	
80	Topan Ram	Do.	Ditto	Do.	
81	Shiva Ram	Do.	Ditto	Do.	
82	Sham Dass	Do.	Ditto	Do.	
83	Tej Bhan	Do.	Ditto	Do.	
84	Rup Chand	Do.	Ditto	Do.	
85	Gulab (Sweeper)	Do.	Ditto	Do.	
86	Tara	Do.	Ditto	Do.	
87	Udho Dass	Do.	Ditto	Do.	
88	Rudh Bai	Do.	Ditto	Do.	
89	Ganesh Dass	Do.	Ditto	Do.	
90	Palra Ram	Do.	Ditto	Do.	
91	Devi Dass's mother.	Do.	Ditto	Do.	
92	Bell Ram	Do.	Ditto	Do.	
93	Kanhiya Lal	Do.	Ditto	Do.	
94	Daulat Ram	Do.	Ditto	Do.	
95	Sadhu Ram	Do.	Ditto	Do.	
96	Wisman Dass	Do.	Ditto	Do.	
97	Ram Chand	Do.	Ditto	Do.	
98	Bhoja Ram	Do.	Ditto	Do.	
99	Shiv Lal	Do.	Ditto	Do.	
100	Nanak Chand	Do.	Ditto	Do.	
101	Lakhmi Chand	Do.	Ditto	Do.	
102	Thana Ram	Do.	Ditto	Do.	
103	Bihari Lal	Do.	Ditto	Do.	
104	Phokar Dass	Do.	Ditto	Do.	
105	Gopal Dass	Do.	Ditto	Do.	
106	Rochi Ram	Do.	Ditto	Do.	
107	Naunit Ram	Do.	Ditto	Do.	
108	Mst. Asi Bai	Do.	Ditto	Do.	
109	Mst. Amri Bai	Do.	Ditto	Do.	
110	Mst. Ramji Bai	Do.	Ditto	Do.	
111	Mst. Miran Bai	Do.	Ditto	Do.	
112	Mst. Lakhmi Bai	Do.	Ditto	Do.	
113	Mst. Manoj Bai	Do.	Ditto	Do.	
114	Mst. Bhagan Bai	Do.	Ditto	Do.	
115	Chiman Lal	Do.	Ditto	Do.	
116	Chauta Ram	Do.	Ditto	Do.	
117	Mst. Gulebi	Do.	Ditto	Do.	
118	Mst. Kiran Bai	Do.	Ditto	Do.	
119	Mehar Chand	Do.	Ditto	Do.	
120	Lakhmir Chand	Do.	Ditto	Do.	
121	Mst. Keshri Bai	Do.	Ditto	Do.	
122	Mst. Chakti Bai	Do.	Ditto	Do.	
123	Mst. Himi Bai	Do.	Ditto	Do.	
124	Sahib Ram	Do.	Ditto	Do.	
125	Chiman Lal	Do.	Ditto	Do.	
126	Khem Chand	Do.	Ditto	Do.	
127	Lachman Dass	Do.	Ditto	Do.	
128	Radha Krishan	Do.	Ditto	Do.	
129	Ram Chand	Do.	Ditto	Do.	
130	Wasu Ram	Do.	Ditto	Do.	
131	Ganesh Ram	Do.	Ditto	Do.	
132	Murli Ram	Do.	Ditto	Do.	
133	Bhole Ram	Do.	Ditto	Do.	
134	Nam Chand	Do.	Ditto	Do.	
135	Lal Chand	Do.	Ditto	Do.	
136	Nand Lal	Do.	Ditto	Do.	
137	Lal Chand	Do.	Ditto	Do.	
138	Hari Chand	Do.	Ditto	Do.	
139	Mst. Manghal Bai	Do.	Ditto	Do.	
140	Nota Ram	Do.	Ditto	Do.	

Serial No.	Names.	Community to which they belonged.	Whether any of them was a public servant, if so, his position, and whether on official duty at the time of his abduction.	Steps taken by Government in each case.	Remarks
1	2	3	4	5	6
141	Khan Chand . . .	Hindu . . .	They were not public servants.	Political pressure was brought to bear on the tribes concerned.	
142	Sahib Chand . . .	Do. . .	Ditto . . .	Do. . .	
143	Daulat Ram . . .	Do. . .	Ditto . . .	Do. . .	
144	Bal Chand . . .	Do. . .	Ditto . . .	Do. . .	
145	Mst. Kumari Bai . . .	Do. . .	Ditto . . .	Do. . .	
146	Mst. Sundri Bai . . .	Do. . .	Ditto . . .	Do. . .	
147	Rup Chand . . .	Do. . .	Ditto . . .	Do. . .	
148	Rup Chand's wife . . .	Do. . .	Ditto . . .	Do. . .	
149	Rup Chand's son . . .	Do. . .	Ditto . . .	Do. . .	
150	Rup Chand's daughter . . .	Do. . .	Ditto . . .	Do. . .	
151	Mst. Bhagwan . . .	Do. . .	Ditto . . .	Do. . .	
152	Bishan Dass . . .	Do. . .	Ditto . . .	Do. . .	
153	Tikan Lal . . .	Do. . .	Ditto . . .	Do. . .	
154	Jodha Ram . . .	Do. . .	Ditto . . .	Do. . .	
155	Mst. Bhagudbi . . .	Do. . .	Ditto . . .	Do. . .	
156	Bhola Ram . . .	Do. . .	Ditto . . .	Do. . .	
157	Kewal Ram . . .	Do. . .	Ditto . . .	Do. . .	
158	Dewa Ram . . .	Do. . .	Ditto . . .	Do. . .	
159	Hari Singh . . .	Sikh . . .	Ditto . . .	Do. . .	
160	Bahadur Singh . . .	Do. . .	Ditto . . .	Do. . .	
161	Indir Singh . . .	Do. . .	Ditto . . .	Do. . .	

II

List of persons killed by tribal gangs in the North-West Frontier Province since 1st April, 1939.

Serial No.	Names.	Community to which they belonged.
1	Duni Chand	Hindu.
2	Naina Ram	Do.
3	Dass Ram	Do.
4	Jiwan Dass I.	Do.
5	Jiwan Dass II.	Do.
6	Radha Kishan	Do.
7	Ishar Dass	Do.
8	Saidu Ram	Do.
9	Bosa Ram	Do.
10	Khan Chand	Do.
11	Mst. Himat Bai	Do.
12	Mst. Kesari Bai	Do.
13	Vithal Dass	Do.
14	Jaman Dass	Do.
15	Mst. Bagwanti's child	Do.
16	Hukam Chand	Do.
17	Khan Chand	Do.
18	Bhagwan Dass	Do.
19	Sohan Singh	Sikh.
20	Jagat Singh	Do.
21	Gurdhan Singh	Do.
22	Sahib Singh	Do.
23	Mian Khan	Muslim
24	Sher Ali	Do.
25	Lutfullah	Do.
26	Muhammad	Do.
27	Sardar	Do.
28	Mst. Mir Sardara	Do.
29	Sakhi Jan	Do.

Serial No.	Names.	Community to which they belonged.
30	Muhammad Qasim	Muslim.
31	Ghazi Muhammad.	Do.
32	Badshah Khan	Do.
33	Kala Khan	Do.
34	Ghaffar Shah	Do.
35	Lal Din	Do.
36	Rab Niwaz	Do.
37	Juma Khan	Do.
38	Azim's wife	Do.
39	Ghulam Qasim	Do.
40	Abdur Rahman	Do.
41	Mir Bashir	Do.
42	Majid Khan	Do.
43	Mir Qalam	Do.
44	Namadar	Do.
45	Khan Mir	Do.
46	Ghulam Muhammad	Do.
47	Maliko	Do.
48	Noor Din	Do.

Sardar Sant Singh: Since when has the treatment of the residents of the settled districts become lax so as to make them help the tribal people to come and make these raids?

Mr. O. K. Caroe: I should say in the course of the last two or three years, partly owing to the disuse of the powers under the Frontier Crimes Regulation.

ALLEGED UNDER-REPRESENTATION OF MUSLIMS IN SERVICES ON THE NORTH WESTERN RAILWAY.

†85. *Seth Haji Sir Abdoola Haroon: Will the Honourable Member for Railways be pleased to state:

- (a) whether his attention has been drawn to an article, which appeared in the *Eastern Times* of Lahore, dated the 17th November, 1939, under the heading "North Western Railway Services and Muslims. II—Gross Under-Representation in Responsible Posts";
- (b) if the answer to part (a) above be in the affirmative,
 - (i) whether allegations made in the said article regarding injustice to Muslims, so far as the question of their appointments and promotions are concerned, are true;
 - (ii) how many appointments were made from the lower gazetted services to the superior posts during the last three years, and how many of them were allotted to Muslims;

† Answer to this question laid on the table, the questioner being absent.

- (iii) whether the table of figures shown in the aforesaid article regarding representation of Muslims in the ranks of gazetted officers and senior subordinates is correct;
- (iv) if the reply to (b) (iii) above be in the negative, whether the Honourable Member proposes to lay on the table a statement showing the accurate figures of the posts filled up; and
- (v) what steps the authorities concerned have taken from time to time to carry out the instructions contained in the Government of India, Home Department Resolution, dated the 4th July, 1934, regarding the representation of Muslims and other minority communities in the subordinate railway services?

The Honourable Sir Andrew Clow: (a) Yes.

(b) (i) I have made no specific inquiries into instances of alleged injustice; it is open to any official who considers that he has received inequitable treatment to make a representation to the proper authority. I would add, however, that an Officer has been appointed on Special Duty to look into certain matters affecting communal representation.

(ii) I would refer the Honourable Member to the reply to parts (a) and (b) of starred question No. 1651 asked by Mr. H. M. Abdullah on the 12th April, 1939. Since April, 1939, eight subordinates have been permanently promoted to the Lower Gazetted Service, of whom three are Europeans or Anglo-Indians, four Hindus and one Muslim.

(iii) Yes, except the total number of senior subordinates and the number of Muslim senior subordinates on 1st April, 1928, was 1,349 and 162 respectively.

(iv) Does not arise.

(v) I would refer the Honourable Member to the Government of India, Railway Department (Railway Board), letters No. E.-34-C.M.-113, dated 12th December, 1934, and E.-35-C.M.-120, dated 9th August, 1935, copies of which are in the Library of the House. I would also refer the Honourable Member to the printed returns published by the Home Department of the Government of India in accordance with paragraph 5 of the Home Department Resolution No. F.-14/17-B./33, dated 4th July, 1934, copies of which are also in the Library of the House.

MUSLIMS AND NON-MUSLIMS IN CERTAIN POSTS ON THE NORTH WESTERN RAILWAY.

†86. *Seth Haji Sir Abdool Karim: Will the Honourable Member for Railways be pleased to lay on the table a detailed statement showing separate figures for Muslims and non-Muslims working at present in the following posts on the North Western Railway:

- (i) Personnel Officers,
- (ii) Office Superintendents,
- (iii) Assistant Superintendents,

† Answer to this question laid on the table, the questioner being absent.

- (iv) Assistant Staff Wardens,
 (v) Head Clerks, and
 (vi) Station-Masters?

The Honourable Sir Andrew Olw: I lay on the table of the House a statement giving the information required in respect of all categories except Head Clerks. Information with regard to this category will be laid on the table of the House in due course.

Statement showing figures for Muslims and Non-Muslims working at present in certain Posts on the North Western Railway.

Category.	Muslim.	Non-Muslim.
Personnel Officers	4	16
Office Superintendents	1	16
Assistant Superintendents	1	5
Assistant Staff Wardens	7	8
Station Masters	141	892

ALLEGED UNDER-REPRESENTATION OF MUSLIMS IN SERVICES ON THE NORTH WESTERN RAILWAY.

†87. *Seth Haji Sir Abdoola Haroon: Will the Honourable Member for Railways be pleased to state whether he is prepared to make inquiries from Railway Administrations as to the reasons for discrimination made by them during the last three years in filling various posts as alleged in an article published in the *Eastern Times*, dated the 17th November, 1930, under the heading "North Western Railway Services and Muslims II—Gross Under-Representation in Responsible Posts"?

The Honourable Sir Andrew Olw: I would refer the Honourable Member to the reply I have just given to part (b) (i) of his question No. 85.

ALLEGED UNDER-REPRESENTATION OF MUSLIMS IN SERVICES ON THE NORTH WESTERN RAILWAY.

†88. *Seth Haji Sir Abdoola Haroon: Will the Honourable Member for Railways be pleased to state:

- (a) whether he has received any representation from any of the various organisations for giving adequate representation to Mussalmans in the North Western Railway services in virtue of the Government of India, Home Department Resolution of the 4th July, 1934, and
- (b) if the answer to part (a) be in the affirmative, what steps the authorities concerned have taken for redressing the long standing grievances of Mussalmans and allotting them their rights?

† Answer to this question laid on the table, the questioner being absent.

The Honourable Sir Andrew Olow: (a) Yes.

(b) I would refer the Honourable Member to the reply I have just given to parts (b) (i) and b(v) of his question No. 85.

ALLEGED UNDER-REPRESENTATION OF MUSLIMS IN SERVICES ON THE NORTH WESTERN RAILWAY.

+89. ***Seth Haji Sir Abdoola Haroon:** Will the Honourable Member for Railways be pleased to state whether it is proposed to appoint a committee consisting of both official and non-official members, to go through the various allegations regarding discrimination made by the railway authorities in order to ensure justice and fairplay to Muslims in the matter of railway services?

The Honourable Sir Andrew Olow: No. I would, however, refer the Honourable Member to the terms of reference published in the Government of India Press Communique, dated 5th December, 1939, appointing an Officer on Special Duty to review the working of the rules and orders relating to the representation of minority communities in the services of State-managed Railways.

REDUCTION OF POSTS IN THE SUPERIOR SERVICES AND INCREASE OF POSTS IN THE LOWER GAZETTED SERVICES ON THE NORTH WESTERN RAILWAY.

90. ***Mr. H. M. Abdullah:** (a) Will the Honourable Member for Railways refer to his reply to part (a) of Khan Bahadur Shaikh Fazl-i-Haq Piracha's starred question No. 278, dated the 22nd September, 1939, and state whether the total number of posts in the junior scale of the superior services was reduced and the total number of posts in the lower gazetted services increased?

(b) If so, when?

(c) If not, how was the excess in the Junior Scale of superior services caused which is being counted against the lower gazetted services?

(d) If the answer to part (a) be in the affirmative, will the Honourable Member please state the numbers reduced and increased in each service, respectively?

(e) Is it a fact that the duties to be performed by officers in the junior scale of the superior services are the same as those performed by officers of the lower gazetted services?

(f) Is it a fact that appointment to the junior scale of the superior services is made mostly by direct recruitment and to the lower gazetted services mostly by promotion?

(g) Is it a fact that Muslims have at present greater chances of being appointed to the superior services than to the lower gazetted services?

(h) Is it a fact that persons appointed to the lower gazetted services will have to draw pay in the old scale for a long time to come and is it also a fact that officers recruited to the superior services through the Public Service Commission get pay in the new scale which is lower?

(i) Is it not in the financial interests of Government to have officers in the superior services rather than in the lower gazetted services?

(j) Is the Honourable Member aware that the restrictions of direct recruitment in subordinate services mostly to the lowest rungs on Rs. 90 or less, results in the number of men fit for promotion to the lower gazetted services becoming smaller and smaller?

(k) Are Government prepared to consider the question of increasing the number of posts in the superior services by making a reduction in the number of posts in the lower gazetted services, and if not, why not?

The Honourable Sir Andrew Clow: (a), (b), (c) and (d). There were reductions in the sanctioned strength of both services in 1931-32, and since then the sanctioned strength of both has increased. On 1st March, 1931, there were 391 junior scale posts and 191 lower gazetted service posts. On 3rd February, 1932, there were 312 junior scale posts and 176 lower gazetted service posts. Today, there are 321 junior scale posts and 205 lower gazetted service posts. All these figures relate to sanctioned posts, not to officers serving. The main cause of the excess of officers in the junior scale has been the keeping of posts in abeyance or their abolition for reasons of economy.

(e) The duties assigned to officers of the lower gazetted service are generally of the same kind as those allotted to junior scale officers.

(f) and (g). Yes.

(h) The old scale of pay for the lower gazetted services is more favourable than the new junior scale in the superior services and, as officers promoted to the former, now and for some time to come, are likely to have been recruited before 1931, they will, on promotion, receive higher pay than officers newly recruited in the junior scale of the superior services.

(i) I am not clear as to the meaning of the question. If the Honourable Member wishes me to draw a comparison between the present costs of officers recruited in the junior scales and officers promoted to the lower gazetted services, I would refer him to the answer I have just given to part (h). If, on the other hand, he is referring to the wider financial interests of Government, the answer involves the assessment of so many considerations that it must largely be a matter of opinion.

(j) I am not clear what restrictions the Honourable Member has in mind. The only change made recently was in the direction of permitting General Managers to recruit up to a certain proportion directly.

(k) The answer to the first part is in the negative. As regards the latter part, memoranda placed before the Central Advisory Council for Railways in July, 1930, and July, 1934, set out the principles on which the re-organisation of the cadres of the superior services on State-managed Railways was carried out and the reasons for the creation of a lower gazetted service. These principles and reasons still hold good.

Dr. Sir Ziauddin Ahmad: With regard to clause (j), has not efficiency suffered on account of the stoppage of direct recruitment to the upper subordinate grade?

The Honourable Sir Andrew Clow: The lower gazetted service, so far as I am aware, has not been ordinarily open to direct recruitment at any time; and we are still recruiting junior scale officers in the superior services.

Dr. Sir Ziauddin Ahmad: May I make my meaning clear? The Government of India have stopped recruitment in the upper subordinate grade and they recruit every person on a salary of Rs. 30. Will this not result in the dearth of men fit for promotion to the officers' grade? Also men of sufficient intelligence are not recruited. Will not these two factors result in loss of efficiency?

The Honourable Sir Andrew Clow: I am not aware of that, but in my answer to part (j) of the question I have referred to the authority given to the General Managers fairly recently to recruit a certain proportion directly.

Dr. Sir Ziauddin Ahmad: What is the proportion?

The Honourable Sir Andrew Clow: I think the maximum is 20 per cent.

FILLING UP OF UNRESERVED VACANCIES ON RAILWAYS.

91. *Mr. H. M. Abdullah: (a) Will the Honourable Member for Railways please refer to the Government of India, Home Department Resolution of July, 1934, as amended by supplementary instructions issued from time to time, and state whether it is a fact that unreserved vacancies are open to the members of all communities on merit and they are not to be treated as reserved for Hindus?

(b) If the reply to part (a) above be in the affirmative, will Government please state what is implied by the term "the vacancy to be filled by a candidate belonging to unreserved class" used in the letter of the Divisional Superintendent, Lahore, No. 220E/182, dated the 13th September, 1938?

(c) Is it a fact that the vacancy referred to in the letter of the Divisional Superintendent, Lahore, mentioned in part (b) above was offered to a Hindu candidate, the son of an Assistant Accounts Officer?

The Honourable Sir Andrew Clow: (a) Yes.

(b) The vacancy was open to a member of any community on merit.

(c) Yes.

APPOINTMENT OF MUSLIMS AS PERSONNEL OFFICERS, ETC., ON THE NORTH WESTERN RAILWAY.

92. *Mr. H. M. Abdullah: (a) Will the Honourable Member for Railways please refer to Railway Board's letter No. 917-EG, dated the 6th August, 1931, and state whether it is a fact that orders were issued in August, 1931, to the Agent (now General Manager), North Western Railway, that in making appointments to the posts of Personnel Officers, Office Superintendents and Head Clerks, the employment of an adequate number of Muslims in such posts should be borne in mind?

(b) If the reply to part (a) above be in the affirmative, will Government please give particulars of the progress made on the North Western Railway in this direction during the last eight years and quote separately the number of Muslims who held these posts prior to 6th August, 1931, comparing it with the existing position? If no progress has been made

since August, 1931, will Government please state what action they propose to take to carry out the orders of the Railway Board issued in 1931? If not, why not?

The Honourable Sir Andrew Clow: (a) The letter in question asked that the desire expressed in speeches made by Sir George Rainy and Mr. Hayman for the employment of an adequate number of Muslims as staff or establishment or employment officers and as office superintendents or head clerks should be borne in mind in making appointments to such posts.

(b) I lay on the table of the House a statement showing the number of Muslims employed as Personnel Officers, Office Superintendents and Head Clerks, grade IV and above, on the North Western Railway in March, 1931, and January, 1940. As regards the second part, I am not prepared to assume from the fact that representation has not increased that the desire expressed was not borne in mind. But this is one of the matters which is likely to receive attention during the inquiry now being conducted into the recruitment of members of minority communities, and I am forwarding a copy of this question and answer to the officer in charge of the inquiry.

Statement showing the number of Muslims employed as Personnel Officers, Office Superintendents and Head Clerks, grade IV and above, on the North Western Railway in March 1931, and January, 1940.

	March, 1931.	January, 1940.
Personnel Officers	5	4
*Office Superintendents	3	1
Head Clerks	36	35

*Includes posts of Superintendents of the various branches of the Headquarters office.

FILLING UP OF CERTAIN VACANCIES ON THE NORTH WESTERN RAILWAY.

93. ***Mr. H. M. Abdullah:** Will the Honourable Member for Railways please state:

- (a) the number of vacancies of chargemen and journeymen occurring on Divisions on and after 1st April, 1938, which have been filled by transfer of staff (chargemen and journeymen) from the Mechanical Workshops and the number of Muslims appointed against the resultant vacancies of journeymen in the Workshops; and
- (b) the number of permanent, including Leave Preparatory to Retirement, vacancies, in clerical grade II or its equivalent new scale, which have occurred since July, 1938, on the Mechanical Workshop Division separately by each office, viz., Superintendent, Mechanical Workshops, Loco. Shops, Carriage and Wagon Shops, Sukkur Shops and Kalka Shops

and how these vacancies were filled? The number of vacancies should be inclusive of the figures of shop clerks and timekeepers and verified by the Workshop Accounts Officer?

The Honourable Sir Andrew Olow: (a) I presume that this part of the question, like part (b), relates to the North Western Railway. If so, the answer is that eight vacancies on Divisions have been filled by transfer of one permanent chergeman, three permanent journeymen and four temporary journeymen from the Mechanical Workshops. The four permanent posts have not yet been filled. The four temporary posts lapsed.

(b) I lay on the table a statement giving the information required.

Statement showing the number of permanent including leave preparatory to retirement vacancies in clerical grade II or its equivalent new scale, including Shop Clerks and Time Keepers, which have occurred since July, 1938, in the Mechanical Workshops of the North Western Railway.

Office.	Vacancies.	How filled.
Superintendent, Mechanical Workshops Office.	2	1 by direct recruitment. 1 by promotion.
Loco. Shops, Moghalpura . . .	2	by promotion.
Carriage and Wagon Shops, Moghalpura.	2	1 by direct recruitment. 1 by promotion.
Sukkur Shops	3	1 by absorption of a surplus clerk. 2 by promotion.

VACANCIES NOT FILLED BY MUSLIMS IN THE SIGNAL SHOP, NORTH WESTERN RAILWAY.

94. ***Mr. H. M. Abdullah:** (a) Will the Honourable Member for Railways please state whether it is a fact that on the North Western Railway sixty per cent. of the vacancies in each service of the subordinate grades filled either by direct recruitment or by promotion of staff in inferior services are to be given to Muslims by reservation regardless of the duration of vacancies?

(b) Is it a fact that vacancies, including short term leave vacancies, occurring amongst the technical subordinate staff in the Signal Shop, North Western Railway, during the years 1937-38 and 1938-39, were not filled according to the prescribed communal percentages by treating each vacancy in each class as a separate entity as laid down in "Instructions 2" of the Supplementary Instructions connected with the Government of India (Home Department) resolution of July, 1934?

(c) If the reply to parts (a) and (b) be in the affirmative, will Government please state what action they propose to take to rectify the percentage of Muslims and to take action against the staff responsible for not carrying out the instructions of the Government of India?

The Honourable Sir Andrew Clow: (a) No. The reservation of 60 per cent. for Muslims on the North Western Railway of all vacancies in subordinate posts to be filled by direct recruitment, including promotion from inferior services, applies to the Railway as a whole.

(b) I am unable to follow the Honourable Member's question as Instruction II of the Supplementary Instructions deals with the application of the orders regarding communal representation to inferior posts. I would, however, point out that the communal percentages laid down for Muslims do not apply to particular shops as such.

(c) Does not arise.

NON-OBSERVANCE OF THE HOME DEPARTMENT RESOLUTION FOR RECRUITMENT OF MINORITIES IN THE RAWALPINDI DIVISION OF THE NORTH WESTERN RAILWAY.

†95. ***Mr. H. M. Abdullah:** (a) Has the attention of the Honourable Member for Railways been drawn to the articles appearing in the issues of the following papers on the dates specified against each about the non-observance of the Home Department Resolution for the recruitment of minorities on the North Western Railway, Rawalpindi Division:

1. *The Eastern Times*, Lahore, dated 2nd June, 1939.
2. *Shahbaz*, Daily, Lahore, dated 14th June, 1939.
3. *Inqilab*, Daily, Lahore, dated 7th June, 1939.

(b) If so, will the Honourable Member please state what action has been taken by the Divisional Superintendent, Rawalpindi, and General Manager, Lahore?

(c) If the facts stated are correct, do Government propose to ask the General Manager, North Western Railway, Lahore, to take action in accordance with paragraph 10 of supplementary instructions issued by the Government of India, Home Department Resolution No. F. 14/17-13/33-Ests., dated 4th July, 1934?

The Honourable Sir Andrew Clow: (a) I have seen the articles referred to.

(b) I am not aware of any action having been taken.

(c) No. The information in the hands of Government indicates that the North Western Railway have complied with the terms of the Home Department Resolution regarding the representation of Muslims and other minority communities in the railway subordinate services, and even if the facts as stated were correct, they would not appear to show the contrary.

†Answer to this question laid on the table, the questioner having exhausted his quota.

NON-CONFIRMATION OF CERTAIN ASSISTANT STATION MASTERS AND LOCO. INSPECTORS, ETC., ON THE NORTH WESTERN RAILWAY.

96. *Mr. Lalchand Navalrai: (a) With reference to part (c) of my starred question No. 544, asked on the 20th February, 1939, to which a reply was laid on the table of the House in September, 1939, will the Honourable Member for Railways be pleased to state whether there are any Loco. Inspectors, Loco. Foremen and Assistant Station Masters, grades IV and V, on the North Western Railway, who are still officiating in these posts?

(b) If the reply to part (a) be in the affirmative, how many of them are officiating in each category and the maximum and the minimum periods of such officiating service?

(c) Is it a fact that employees are confirmed on the North Western Railway after twelve months' officiating service if the vacancy against which they are to be confirmed is a permanent vacancy? If not, what are the rules?

(d) Is it a fact that the employees referred to in paragraph (a) above, are officiating for more than the usual periods? If so, do Government propose to direct their confirmation? If not, why not?

The Honourable Sir Andrew Clow: (a) Yes, except in grade V of Assistant Station Masters which no longer exists.

(b) I lay on the table of the House a statement giving the information required.

(c) The answer to the first part is in the negative. As regards the latter part, confirmation is considered on expiry of 12 months' probation which may include officiating service, provided this is continuous with the probationary period. Confirmations are made from dates from which staff started working against a permanent vacancy or from a subsequent date considered suitable.

(d) As regards the first part of the question, I understand that this is not the case. As regards the second part, of the 37 men covered by the statement laid on the table only 11 are officiating against permanent vacancies. The question of the confirmation of those who have completed 12 months' probation is being considered.

Statement.

Category.	No. of men officiating.	Maximum period of officiating service.	Minimum period of officiating service.
Loco. Inspectors . . .	9	4 years	9½ months.
Loco. Foremen	8	2 years, 5 months . .	6½ months.
Assistant Station Masters Grade IV.	20	4 years, 8 months including short interruptions on account of leave.	5 months.

Mr. Lalchand Navarai: Are these persons not confirmed even though permanent posts are available?

The Honourable Sir Andrew Olow: I have said at the conclusion of my reply that the question of confirmation of those who are serving against permanent posts and have completed their probationary period is being considered.

DISCHARGE OF THE BRIDGE DEPARTMENT STAFF ON THE NORTH WESTERN RAILWAY.

97. *Mr. Lalchand Navarai: (a) Will the Honourable Member for Railways be pleased to state whether it is a fact that temporary staff is employed in the subordinate, clerical and draftsmen's service in the Bridge Department of the North Western Railway? If so, what is their number in each category?

(b) Is it a fact that these men have put in long terms of service ranging from ten to fourteen years?

(c) Are these men likely to be discharged from service in the financial year 1940-41, owing to stoppage of bridge construction programme due to the present war?

(d) Is it a fact that under the orders of the General Manager, North Western Railway, Lahore, as circulated in circular No. 107/P., dated the 1st November, 1939, of the Divisional Superintendent, North Western Railway, Karachi, the practice of discharging and demoting surplus staff has been stopped and that endeavours will be made to absorb all surplus staff on the railway? If so, what endeavours have been made to absorb the Bridge Department staff on the North Western Railway?

(e) Is it a fact that in the case of the Bridge Department staff, the Personnel section of the General Manager's office insist on age, academic and Selection Board qualifications for the staff having long terms of service? Did the administration lay down any such restrictions for construction staff when absorbed in 1933 and after? If not, do Government propose to treat this staff similarly? If not, why not?

The Honourable Sir Andrew Olow: (a) Yes: there are 12 clerks, a time-keeper and 16 draughtsmen.

(b) The service of nearly all of these men lies within the limits named.

(c) I understand that no decision has yet been reached on this point.

(d) The orders issued by the General Manager restraining the discharge of surplus staff, to which the Honourable Member refers, do not apply to staff engaged for purely temporary purposes or special work who are discharged on the cessation of the work for which they are engaged.

(e) As regards the first part of the question, staff engaged for purely temporary work or special jobs, who are normally discharged on the cessation of the work for which they are employed, are required to fulfil all conditions laid down before being considered for appointment to permanent posts. I would add, however, that the restriction regarding the maximum age limit has not been insisted upon in the case of temporary clerks of the Bridge Department for appointment to permanent posts in that Department. As regards the second part of the question, the answer is in the affirmative. The remainder of the question does not arise.

Mr. Lalchand Navalrai: Has the Honourable Member satisfied himself that this circular really does provide that it will not apply to temporary people?

The Honourable Sir Andrew Clow: I am not clear what distinction the Honourable Member is referring to.

Mr. Lalchand Navalrai: I am referring to the circular No. 107/P referred to in part (d) of my question which the Honourable Member says does not apply to temporary people. If not, I would request the Honourable Member to satisfy himself and then instruct the Agents accordingly.

The Honourable Sir Andrew Clow: What I said was that those orders did not apply to staff engaged for purely temporary purposes. The fact that those orders do not apply does not mean necessarily that the reverse must apply to them.

Mr. Lalchand Navalrai: The former answer was that this circular came in the way of these people. My request now is that, if there is no other reason, no distinction should be made.

The Honourable Sir Andrew Clow: I said in reply to the second last question in part (e) that I understood the answer was in the affirmative. The Honourable Member asked whether Government proposed to treat this staff similarly. On my information the answer is in the affirmative.

INCONVENIENCES TO THIRD CLASS PASSENGERS ON THE EAST INDIAN AND NORTH WESTERN RAILWAYS.

98. ***Mr. Lalchand Navalrai:** (a) Has the attention of the Honourable the Railway Member been drawn to the contribution in the *Roy's Weekly*, dated the 31st December, 1939, under the caption "Pity the poor third class-wallas"?

(b) Is it a fact that the gates on the Howrah Station on the East Indian Railway and several other stations on the other Railways are opened after the arrival of trains or a few minutes before their arrival? Why in spite of such overcrowding an increase in the number of gates is not considered necessary?

(c) Is it a fact that there is generally a squeezing of the crowd of both men and women through the same gates and why separate entrances for women are not provided?

(d) Is there any arrangement on the East Indian Railway and the North Western Railway for deputing the railway staff to stand by the compartments, on the arrival of trains, for offering help to passengers and distributing them evenly in various compartments; if the answer be in the affirmative, at what stations on the above two railways such an arrangement has been made; if not, why not?

(e) Has the Honourable Member considered the feasibility of the formation of queues to facilitate the purchase of tickets? Has such a system been tried on any of the above two railways; if so, with what effect?

(f) Is it a fact, as stated in the contribution mentioned in part (a), a gentleman holding a ticket for Raxoule desired to purchase two more tickets for relatives, who wanted to accompany him, was refused; if so, is the Honourable Member prepared to issue orders to facilitate such a convenience?

(g) Is the Honourable Member aware that there is a general complaint regarding the want of supervision over the purity and the preparation of food-stuffs on the aforesaid two Railway lines and that the present arrangement is not sufficient to improve the situation; if so, what further arrangements are being made for the purpose?

(h) Have the authorities on the aforesaid two railway lines received complaints of unsympathetic treatment by the Railway staff and the use of derisive language by them towards third class passengers during the last year; if so, how were they dealt with?

The Honourable Sir Andrew Olow: (a) I have seen this article.

(b) At Howrah station, the three exit gates from each platform are opened before the arrival of trains. At other stations, generally speaking gates are also opened before the arrival of trains. In the interests of safety, there are occasions, however, at stations other than termini, when gates are opened after a train has come to a stand still. Sufficient exit gates are provided to allow reasonably free passage.

(c) It is a fact that separate gates for men and women are not provided. The reasons are that women prefer to remain with their men-folk and confusion would result from an attempt to segregate women passengers from men.

(d) Staff are not specially deputed on either of the two railways to stand by each compartment on the arrival of trains. At large stations, however, ticket collectors and station staff are always present to assist passengers experiencing difficulty in finding accommodation. At smaller stations, this duty devolves on travelling ticket examiners and guards of trains. Endeavours made to distribute passengers evenly are often resented owing to parties desiring to travel together.

(e) Yes. The Railway Board deputed the Central Publicity Officer to organise a publicity campaign, in collaboration with State Railways, to instil the queue habit in the travelling public. Experiments have been carried out on the East Indian Railway who report that results are satisfactory. The North Western Railway are still experimenting and a final report is awaited.

(f) The article referred to in part (a) does not state that tickets were refused. I understand the East Indian Railway have received no complaint in this connection.

(g) No.

(h) Every large Railway Administration is liable to receive complaints, not all of which are justified. Railway Administrations do not tolerate discourtesy to any class of passenger on the part of their staff.

Mr. Lalchand Navalrai: With reference to clause (h), have any complaints in regard to unsympathetic treatment of passengers been received and have General Managers taken notice of them and done something in that respect? It cannot be said that no complaints have been made.

The Honourable Sir Andrew Olow: To the best of my recollection on the N. W. R. it is reported that no such complaints have been made.

Mr. Lalchand Navalrai: What about the E. I. R.?

The Honourable Sir Andrew Olow: I cannot recollect at the moment.

Mr. Lalchand Navalrai: As regards separate gates for women, will the Honourable Member say if it would not be suitable that there should be separate gates for women, while giving them the option to go along with their men-folk? Since there are complaints, why should not separate gates be provided where required?

The Honourable Sir Andrew Olow: Because it would mean re-construction of an enormous number of stations and it is not really worth while.

Mr. Lalchand Navalrai: Since there have been complaints, why should it not be done?

The Honourable Sir Andrew Olow: I have seen the gates at Howrah: any attempt to provide separate entrances would mean that the gates would become extremely narrow and fail to give admission to large number of members of the public.

Mr. Lalchand Navalrai: As regards this queue system, why should it not be established everywhere so that disorder may not occur?

The Honourable Sir Andrew Olow: My experience at Howrah is not that there is normally a large amount of overcrowding at the gates.

FIXATION OF PAY OF RETRENCHED STAFF RE-APPOINTED IN THE COMPILATION SECTION OF THE CHIEF ACCOUNTS OFFICE, NORTH WESTERN RAILWAY.

99. *Bhai Parma Nand: (a) Will the Honourable Member for Railways please state whether certain retrenched hands of the Compilation Section of the North Western Railway were offered appointments by the Chief Accounts Officer on old scales of pay?

(b) Is it a fact that they were appointed in the Compilation Section, Chief Accounts Officer's office, North Western Railway, Lahore, on the old scales of pay and were subsequently confirmed in old grade of pay?

(c) Is it a fact that though they were originally given the initial pay of the grade, they, on subsequent representation to the Controller of Railway Accounts, New Delhi, were given the benefit of the previous service in the fixation of pay in old scales of pay?

(d) Is it also a fact that in 1936 on receipt of the Agent's letter No. 220/E./O., dated April, 1936, they were given the new scales of pay? If the reply be in the affirmative is the Honourable Member prepared to reconsider their case?

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

(d) Yes. I am having the question examined.

Mr. Lalchand Havakrat: May I know, Sir, whether it is a fact or not that these people were really given to understand in writing that they would get the old scales, and yet that has not been acted upon?

The Honourable Sir Andrew Olow: The Honourable Member appears to be repeating part (a) of the question, to which my answer is "Yes".

PURCHASE OF THE BENGAL AND NORTH WESTERN RAILWAY.

100. *Khan Bahadur Shaikh Fazl-i-Haq Piracha: (a) Will the Honourable the Railway Member please state whether Government are contemplating to purchase the Bengal and North Western Railway when their present contract expires?

(b) When do they propose to give notice of the termination of contract?

The Honourable Sir Andrew Olow: (a) The contract does not expire by the efflux of time till 1981, but I take it that the Honourable Member wishes to know whether Government propose to exercise the option they have of purchasing at the end of 1942. No decision has been reached on this question.

(b) This question has not yet arisen; if a decision to purchase were taken, notice would have to be given not later than 31st December, 1941.

LOSS IN THE WORKING OF THE INDIAN COLLIERIES.

101. *Khan Bahadur Shaikh Fazl-i-Haq Piracha: (a) Will the Honourable the Railway Member please state what was the total loss in the working of the Indian collieries in the year 1938-39?

(b) What is the estimated loss for the year 1939-40?

The Honourable Sir Andrew Olow: (a) and (b), I am not clear what the Honourable Member means by "the total loss". The railways raise coal only for the railways and any payments made by one railway are receipts by another, so that there is no net loss. Railways buying coal from railway collieries which they do not own are debited with prices fixed on the basis of accepted tenders for coal of equivalent quality and the differences between that and the estimated cost of raising is shown as a loss or profit as the case may be. The latest available figures of these will be found in the pink book relating to collieries which the Honourable Member will receive tomorrow. In practice it is impossible to estimate accurately the financial gains and losses accruing from the retention of collieries as such an estimate would have to take account of the effect on tendered prices of that retention.

Dr. Sir Ziauddin Ahmad: As regards last year, may I know, Sir, what was the total loss incurred by the Railway Department on the Railway collieries?

The Honourable Sir Andrew Olow: If the Honourable Member will define what he means by 'total loss', I will endeavour to give him an answer, but there are no figures.

Dr. Sir Ziauddin Ahmad: I think you write off the profit against the loss, and the resultant is taken as the total loss?

The Honourable Sir Andrew Olow: I have explained that the figures we provide in the pink book are *pro forma* loss or profit and relate only to coals purchased by a Railway from a colliery which it does not own. Where a Railway owns a colliery, there is no figure at all, and so it is impossible to give a correct figure which would show the total loss or gain.

Dr. Sir Ziauddin Ahmad: I thought the figures relate only to collieries owned by the Railways.

The Honourable Sir Andrew Olow: As I have said the figures relate only to coal raised by Railways from collieries which they do not own, I mean railway collieries. For instance, if the North Western Railway buys coal from the East Indian Railway, then a figure appears in this pink book showing whether the price debited to the North Western Railway exceeded or was short of the hypothetical figure of the cost of coal raisings, but these are the only figures, I understand, that are given.

Mr. M. S. Aney: Is it not a fact that figures for the State collieries are published when the coal is used by another Railway, and don't they give separate figures of profits and losses for each colliery owned by the Railways?

The Honourable Sir Andrew Olow: The pink book which the Honourable Member will receive tomorrow shows separate figures for each colliery, but it does not attempt to give the figures of losses or profits except in the special cases of collieries of which the Railway is not the owner.

Mr. M. S. Aney: So far as the collieries which are owned by the Railways themselves are concerned, I take it that the figures of profits and losses are not available, but as regards certain special collieries owned by the Railways the figures are available, is that the case?

The Honourable Sir Andrew Olow: That is the position.

Mr. M. S. Aney: Will the Honourable Member please see that some arrangement is made to see that these figures are also made available?

The Honourable Sir Andrew Olow: The whole matter is so hypothetical that I am not very clear what we will gain by so doing.

Mr. M. S. Aney: We shall know the state of each colliery separately.

The Honourable Sir Andrew Olow: The Honourable Member will find all the figures shown separately in the pink book to which I have referred. What he will not find is a hypothetical figure showing the possible gain or loss on the retention of a colliery. He will find a balance sheet for each colliery in that book.

OPENING OF COLLIERIES BY GOVERNMENT.

102. *Khan Bahadur Shaikh Fazl-i-Haq Piracha: (a) Will the Honourable the Railway Member please state the circumstances which led the Government of India to open their own collieries?

(b) What is the total amount of losses which the Indian tax-payers sustained till 1939-40?

The Honourable Sir Andrew Clow: (a) The acquisition of collieries by certain Railway Administrations was sanctioned on account of:

(i) Inability of the coal companies always to meet the demands of railways.

(ii) Fluctuation in the price of coal obtained from the coal companies.

(b) I would refer the Honourable Member to the answer given to his preceding question.

Dr. Sir Ziauddin Ahmad: With reference to part (a), my Honourable friend has omitted to mention the chief reason that there was a combine of all the collieries in 1921, and so the Government decided to open their own collieries. Is this a fact or not?

The Honourable Sir Andrew Clow: I think that reason for certain Railway Administrations acquiring the collieries would be included in the second consideration which I have mentioned, namely the fluctuation in the price of coal obtained from the coal companies.

Dr. Sir Ziauddin Ahmad: Fluctuation is different from the fact that all the collieries combined together in 1921, and the Railways had to buy coal from them at a price which the Railways considered highly uneconomical. Is this a fact or not?

The Honourable Sir Andrew Clow: The fluctuations which worry us naturally are fluctuations upwards, and I believe at that time there was an attempt made to put up the prices of coal so as not to bring it in the open market, and that was the consideration.

Dr. Sir Ziauddin Ahmad: My point is when there was a combine of all these collieries, the Government got over this trouble by having their own collieries, and they left other people to their fate; but the real thing which the Government should have done was to prohibit the system of combines.

The Honourable Sir Andrew Clow: The Honourable Member is asking me what combines were formed in the year 1921. I am afraid he should address the question to Members sitting on the non-official benches in the House.

CERTAIN REMARKS OF THE GENERAL MANAGER OF THE NORTH WESTERN RAILWAY ABOUT QUESTIONS PUT BY MEMBERS OF THE LEGISLATIVE ASSEMBLY.

103. *Dr. Sir Ziauddin Ahmad: (a) Will the Honourable Member for Railways be pleased to state whether it is a fact that the General Manager of the North Western Railway wrote in an open letter to the Railway

Board which purported to mean that some kind of brake should be put on the Members of the Legislative Assembly to stop them from asking stupid questions?

(b) Is it not a fact that the letter mentioned above was circulated among officers in the Bengal Nagpur Railway Headquarters office?

(c) Has any subordinate of the Government of India got a right to call officially an Assembly question admitted by the President, to be a stupid one?

(d) What action did the Railway Board take against the General Manager of the North Western Railway when they received these remarks? If not, why not?

Sir, in part (b) of this question, there is a mistake. It is not the Bengal Nagpur Railway, but it should be the North Western Railway.

The Honourable Sir Andrew Clow: It is rather a big difference. I can only give the answer in relation to the North Western Railway which is a railway that we own and manage. The other railway mentioned is neither owned nor managed by Government. The answer on the basis of the North Western Railway is as follows:

(a) and (b). I have been unable to trace any such letter. If the Honourable Member has any particulars of such a letter and will supply me with them, I shall make inquiries.

(c) and (d). Do not arise.

Mr. Lalchand Navalrai: If the Honourable Member really finds after inquiries that the General Manager has used such words, will he take the wind out of his head?

The Honourable Sir Andrew Clow: That is purely hypothetical, and the Honourable Member asking the question has already made it clear himself that the General Manager issued no such circular.

Mr. Lalchand Navalrai: May I rise to a point of order. When questions are put in this House, they are first approved by the Chair

The Honourable Sir Muhammad Zafrullah Khan: How does that point of order arise?

Mr. Lalchand Navalrai: I am explaining it

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member need not make such a long preface.

Mr. Lalchand Navalrai: My point is, when these questions are admitted by the Chair, does it lie in the mouth of these officers to tell their headquarter offices to say that these questions are stupid

Mr. President (The Honourable Sir Abdur Rahim): The Chair understands what the Honourable Member (Sir Andrew Clow) said was that the supplementary question was a hypothetical question, and the Chair does not think he need answer that question.

The Honourable Sir Muhammad Zafrullah Khan: They must not be described as stupid, but you cannot stop them from thinking.

Dr. Sir Ziauddin Ahmad: Did the Honourable Member make inquiries from the Secretary of the Railway Board whether he did or did not receive such a letter and whether he (the Secretary) made inquiries from the Agent as to whether he circulated such remarks among the officers?

The Honourable Sir Andrew Olow: The Honourable Member, as I understood him at the beginning, referred to a different Railway altogether, and I have no reason to suppose that the General Manager of the North Western Railway issued anything of the kind. I have seen nothing about it anywhere, although it is described as "an open letter". I have not the least doubt that if it was an open letter, I would have seen it.

Mr. Lalchand Navalrai: The Honourable Member has not seen it with regard to the North Western Railway?

The Honourable Sir Andrew Olow: No.

INSPECTORS OF WORKS ON THE EAST INDIAN RAILWAY.

104. ***Dr. Sir Ziauddin Ahmad:** (a) Will the Honourable the Railway Member please state how many Inspectors of Works are there on the East Indian Railway and how many of them are Muslims?

- (b) What are the conditions of their appointments?
(c) How is the selection made?

The Honourable Sir Andrew Olow: I have called for information and will lay a reply on the table of the House in due course.

RULES FOR OUT-STATION INDIAN APPRENTICES OF WORKSHOPS ON THE NORTH WESTERN RAILWAY.

105. ***Kunwar Hajee Ismail Ali Khan** (on behalf of Mian Ghulam Kadir Muhammad Shahban): (a) With reference to the answer to parts (b), (d) and (f) of starred question No. 176, asked on 14th September, 1930, will the Honourable Member for Railways be pleased to state whether there is anything definite, excepting a presumption to which a reference was made by the Honourable Member in his reply, to establish that the Outstation Workshop Apprentices on the North Western Railway, recruited on 1st April, 1926, accepted the rules issued in September, 1926? If so, what are the rules or orders under which the Apprentices were deprived of their privileges?

(b) Is it a fact that the Apprentices referred to in this question were not at all aware of any revision, modification or abrogation of 1921 rules under which they were recruited; and as such they could not protest, the lack of which is considered as justification for the presumption that they accepted the revised rules?

(c) Is it a fact that before September 1926, the North Western Railway administration paid different rates of stipend to Indian and Anglo-Indian or European Workshop Apprentices? Is it also a fact that in pursuance

of the policy of the Government of India to eliminate traces of racial discrimination on the railways Indian Apprentices were given monthly rates of stipends as were being paid to Anglo-Indians and European Apprentices? If so, under what rules the Indian Apprentices were deprived of other privileges guaranteed to them under paragraph 6 of 1921 rules, of retention in service after their indenture?

(d) If the reply to first portion of part (c) above be in the negative, does the Honourable Member propose to place on the table of the House copies of correspondence in regard to elimination of racial discrimination in the matter of stipends for Outstation Workshop Apprentices employed on the North Western Railway, specially the Railway Board's letter No. 8247-E., dated the 10th May, 1926, and the letter of the Agent, North Western Railway, Lahore, No. 786-F./O., dated the 15th/17th September, 1926? If not, why not?

(e) In view of the Honourable Member's reply to the first portion of part (f) of starred question No. 176, that the Workshop Apprentices were discharged due to reduction in staff in 1931, is it proposed to treat these men as retrenched hands and, therefore, eligible for old scales of pay, *vide* paragraph No. 3 of the General Manager's letter No. 561-E./67, dated the 17th September, 1934, published in an extraordinary issue of the North Western Railway Gazette, dated the 24th September, 1934? If not, why not?

The Honourable Sir Andrew Olow: (a) Yes, the fact that they continued as apprentices and accepted the financial benefit accruing under the revised rules applied to them from 1st September, 1926, for a further 4½ years. As regards the latter part, I am not aware of the privileges to which the Honourable Member refers, but the rules issued on 1st September, 1926, a copy of which was laid on the table of the House on 30th August, 1939, in connection with the answer to part (b) of Mr. Lalchand Navalrai's question No. 1451 asked on 31st March, 1939, applied to all apprentices then in service.

(b) No.

(c) The answer to the first and second parts is in the affirmative. As regards the last part, rule 6 of the 1921 rules gives no guarantee of retention in service and I would refer the Honourable Member to the reply I have just given to the latter part of part (a) above.

(d) Does not arise.

(e) The answer to the first part is in the negative, but I think the Honourable Member has misunderstood my reply to part (f) of question No. 176. These apprentices were not employed on the conclusion of their apprenticeship. As regards the latter part, I would refer the Honourable Member to the reply laid on the table of the House on 30th August, 1939, in answer to parts (e) and (f) of Mr. Lalchand Navalrai's question referred to in part (a) above.

Mr. Lalchand Navalrai: May I know from the Honourable Member this? There was tenure of guarantee under the old rules and under the new rules there is no such guarantee, and they have not admitted that they will forego the tenure of guarantee. May I know from my Honourable friend if the tenure of guarantee will be given to these people even under the new rules; if not, why not?

The Honourable Sir Andrew Clow: In reply to part (c) of the question I said that rule 6 of the 1921 rules gives no guarantee of retention in service.

Mr. Lalchand Navarai: It was in 1926 that the new rules were made. Do I understand that under the former rules also they had no tenure of guarantee?

The Honourable Sir Andrew Clow: That is what I have said.

Mr. N. M. Joshi: May I ask whether the practice of paying differential rates of stipends to Indian, Anglo-Indian and European apprentices still continues?

The Honourable Sir Andrew Clow: I submit that that hardly arises on this question.

Mr. N. M. Joshi: May I ask whether the Honourable Member can give a reply to this even if it does not arise out of this question?

The Honourable Sir Andrew Clow: I should not be entitled to answer.

PROMOTION OF GOODS MARKERS ON THE NORTH WESTERN RAILWAY.

106. ***Kunwar Hajee Ismail Ali Khan** (on behalf of Mian Ghulam Kadir Muhammad Shahban): (a) With reference to the answer to my starred question No. 22 asked in August 1939, will the Honourable Member for Railways be pleased to state whether it is proposed to enquire from the General Manager, North Western Railway, Lahore, and lay a statement on the table of the House showing the number of markers holding the requisite educational qualifications of Matriculation standard, for promotion to subordinate service?

(b) With reference to the answer to parts (c) and (f) of my starred question No. 22, is it proposed to state the reasons as to why no channel of promotion is normally provided for Markers on the North Western Railway, since members of the staff in the inferior service are eligible for promotion to subordinate services, if they satisfy certain conditions?

(c) With reference to the answer to the latter portion of part (f) of starred question No. 22, how and under what circumstances are Markers considered for formation as Goods Clerks?

(d) Have any instructions been issued in regard to the channel of promotion of Markers as promised in answer to part (j) of my starred question No. 22?

(e) With reference to the statement made by the Railway Board to the All-India Railwaymen's Federation at their meeting in January, 1939, and laid on the table in answer to part (e) of my starred question No. 22, is it a fact that no age restriction for promotion from inferior to subordinate service posts had been laid down?

(f) Do Government propose to bring the rules for promotion of Markers in line with the Railway Board's reply to the Federation eliminating age restriction for Markers already in service? If not, why not?

The Honourable Sir Andrew Clow: (a) No.

(b) No channel of promotion is provided from inferior service to subordinate service except in the categories which I have detailed in my reply to part (c) of the Honourable Member's question to which he refers, as certain minimum qualifications and conditions are laid down by the Railway Board for recruitment to the subordinate services. Inferior servants in other categories possessing the necessary qualifications and satisfying the conditions as regards age limit laid down for recruitment to the subordinate services may be considered for promotion, but this is not a normal channel of promotion.

(c) Minimum educational qualifications for recruitment to the subordinate services were laid down by the North Western Railway in April, 1926. Inferior servants, including goods markers, recruited after that date in those categories in which there is no direct avenue of promotion are considered for promotion to the subordinate service only if they satisfy the conditions both as regards educational qualifications and age limit. Goods markers recruited before April, 1926, were considered for promotion to goods clerks provided they were below 30 years of age on 26th November, 1935.

(d) No promise was given to issue instructions. The matter was examined and it was decided to make no change.

(e) Yes, but this applies only to categories in which there is a regular avenue of promotion from inferior posts to subordinate posts.

(f) No. The Railway Board made no reference to age limit in their statement to the Federation, to which the Honourable Member refers, and they do not propose to interfere with the existing instructions regarding goods markers on the North Western Railway.

Mr. Lalchand Navalrai: May I know with reference to the answer to part (e) of the question whether age restriction exists for promotion?

The Honourable Sir Andrew Clow: I had better read my answer to part (e) of the question once again. "Yes, but this applies only to categories in which there is a regular avenue of promotion from inferior posts to subordinate posts".

Mr. Lalchand Navalrai: When the rules say that inferior service people are eligible for promotion to subordinate service—I am referring to part (b) of the question — may I know why these markers who have remained for years together are not given the same treatment and may I request the Honourable Member to consider their case sympathetically?

The Honourable Sir Andrew Clow: The reason is that for promotion to the grade to which reference is made certain minimum qualifications are laid down. These markers presumably do not possess them, for if they had possessed them they could have entered that grade when they were below age in the ordinary way.

Mr. Lalchand Navalrai: Is there any discretion in the General Manager to condone age and see that, if suitable people are available, they are given promotion?

The Honourable Sir Andrew Olow: I am not aware if any discretion is given. I should be myself rather against it.

PENALTIES TO RAILWAY EMPLOYEES FOUND TRAVELLING WITHOUT TICKETS.

107. *Kunwar Hajee Ismail Ali Khan (on behalf of Mian Ghulam Kadir Muhammad Shahban): Will the Honourable Member for Railways be pleased to state:

- (a) whether rules exist on the North Western Railway to the effect that an employee found travelling without ticket for three times, is to be dismissed from service;
- (b) whether it is a fact that an employee travelling without ticket is liable to pay fare and penalty as per Railway Act, like any other member of public; if so, if it is proposed to state which officers have power to forego Government dues and the circumstances under which such powers could be exercised;
- (c) whether it is a fact that under the Payment of Wages Act, IV of 1936, no deduction could be made from the employee's wages towards payment of fares, etc., referred to in part (b) above; whether these dues are recovered under section 112 of the Railway Act just as they are recovered from the public;
- (d) when no recoveries of fares are made for alleged travelling without ticket, whether the rules provide that the charge of travelling without ticket, is not established; if not, why not;
- (e) if it is a fact that watermen have made a representation from Rohri to the General Manager, North Western Railway, on a point of principle referred to in part (a) that dismissal without recovery of fares would not be in order; if so, how the representation was disposed of; if the Honourable Member has no information, whether he proposes to call for information and lay it on the table of the House, as to how such representations touching upon the rules are disposed of on the North Western Railway; and
- (f) whether it is proposed to clarify departmental rules so as to provide for establishment of offence of travelling without ticket by an employee, by recovery of fares, etc., before disciplinary action of dismissal is taken against him; if not, why not?

The Honourable Sir Andrew Olow: I have called for information and will lay a reply on the table of the House in due course.

EXTENSIONS OF SERVICE GRANTED TO OFFICERS IN THE TELEGRAPH BRANCH OF THE NORTH WESTERN RAILWAY.

108. *Kunwar Hajee Ismail Ali Khan (on behalf of Mian Ghulam Kadir Muhammad Shahban): (a) Will the Honourable Member for Railways be pleased to state whether it is a fact that the Railway Board have issued instructions that ordinary extension of service beyond the age of 55 should not be sanctioned? If so, are there any officers in the Telegraph Branch of

the North Western Railway who have received extension beyond the age of 55 to continue in service? If so, is it proposed to lay on the table of the House a statement of their names and reasons under which extension of service has been granted to them?

(b) Is it a fact that almost all employees who are likely to be promoted in places of persons referred to in part (a) above, are Muslims? If so, what steps do Government propose to take to ensure promotion of Muslims to appointments which they are now deprived of by extensions of service? If not, why not?

The Honourable Sir Andrew Clow: (a) It is presumed that the Honourable Member refers to officers in the Superior Revenue Establishment which includes the post of Telegraph Superintendent on the North Western Railway. If so, the answer to the first two parts is in the affirmative. As regards the last part one officer, Mr. R. J. Duncan, has been granted an extension of service. This post is ordinarily filled by the loan of an officer from the Posts and Telegraphs Department, and the extension of Mr. Duncan's service was considered to be in the public interest.

(b) The answer to the first part is in the negative and the last two parts do not arise, but I would point out that as I have stated in my reply to part (a), the post is not necessarily filled by promotion within the Department.

BLOCK MAINTAINERS ON THE NORTH WESTERN RAILWAY.

109. *Kunwar Hajee Ismail Ali Khan (on behalf of Mian Ghulam Kadir Muhammad Shahban): (a) Will the Honourable Member for Railways be pleased to state whether Block Maintainers on the North Western Railway were first appointed with effect from 1st May, 1931?

(b) Is it a fact that these men were confirmed in 1936 with effect from 1st May, 1931, or subsequent dates on which they came to this branch of service?

(c) Is it a fact that these men were also treated as members of the subordinate service and therefore were entitled to "Leave Rules" applicable to the subordinate service employees under the Revised State Railways Leave Rules issued by the Railway Board in 1930?

(d) Is it a fact that these 'subordinate leave rules' have been made applicable to the Block Maintainers on the North Western Railway with effect from May, 1935, and not from the date of their confirmation as such, during which period they were treated as inferior servants?

(e) Will the Honourable Member please refer to the Director of Establishment, Railway Board, letter No. 1651-E.G., dated 24th December, 1934, to the Agents of State-managed Railways communicating the sanction of the Governor General in Council to the staff of Block Maintainers being given the privilege of 'Subordinate Leave Rules' as they were members of literary staff, monthly-paid and were to rise to the maximum salary of about Rs. 150?

(f) Why have the leave rules not been made applicable to the Block Maintainers with effect from the date of their appointment?

(g) Is it a fact that the Provident Fund deduction of these Block Maintainers have been made with retrospective effect from May, 1931, or the dates of their appointment as such, and not from the date when their confirmation orders were issued in 1936?

(h) Does the Honourable Member propose to refer to the Governor General's sanction and the Director, Railway Board's letter referred to in part (e) above, and direct the North Western Railway Administration to make necessary adjustments in the leave accounts of the Block Maintainers to enable them to be treated as members of subordinate service from the date of their promotion? If not, why not?

The Honourable Sir Andrew Clow: I have called for information and will lay a reply on the table of the House in due course.

UNSTARRED QUESTIONS AND ANSWERS.

WORKINGS OF THE TRAINS BETWEEN HARDWAR AND RIKHIKESH ON THE EAST INDIAN RAILWAY.

18. **Mr. Muhammad Azhar Ali:** Will the Honourable Member for Railways please lay on the table a statement on the workings of the trains between Hardwar and Rikhikesh on the East Indian Railway showing *inter alia*:

- (a) the number of trains before and after the reduction in fares;
- (b) the average number of passengers travelling before and after the reduction in fares;
- (c) the revenue derived per year before and after the reduction in fares; and
- (d) the maintenance expenses incurred per year before and after the reduction in fares?

The Honourable Sir Andrew Clow: I am calling for such information as is readily available and will lay a statement on the table in due course.

WORKING OF THE TRANSPORTATION SCHOOL AT CHANDAUSI ON THE EAST INDIAN RAILWAY.

19. **Mr. Muhammad Azhar Ali:** Will the Honourable Member for Railways please lay a statement on the table on the working of the Transportation School at Chandausi on the East Indian Railway showing *inter alia*:

- (a) the number of staff in each category;
- (b) the average number of students in a year;
- (c) the average number of staff given refresher courses in a year;
- (d) the average number of staff given promotion courses in a year;
- (e) the expenditure on school staff;
- (f) the expenditure on students;
- (g) the expenditure on staff attending the school;
- (h) the maintenance charges for buildings, gardens, hostels, etc.; and

- (i) the yearly average paid to catering contractor per head, and compare the same with the schools on the North Western and the Great Indian Peninsula Railways?

The Honourable Sir Andrew Clow: Such information as is readily available with regard to the East Indian Railway School of Transportation at Chandausi and the Walton Training School at Lahore is contained in paragraph 105 relating to the training of staff in Chapter VIII, Volume I of the Report by the Railway Board on Indian Railways for 1938-39. There are no area schools on the Great Indian Peninsula Railway. I should, however, add that it is not possible to draw comparisons between expenditure at the two schools mentioned as they do not deal with the same classes of students and the courses are consequently different. The Chandausi school is purely a school for traffic staff. The Lahore school run courses for all railway staff except apprentice mechanics and some of the courses it provides are given on the East Indian Railway at Jamalpur and not at Chandausi.

WORKING OF THE REGULATIONS REGARDING DISCIPLINARY ACTIONS AGAINST NON-GAZETTED STAFF ON STATE RAILWAYS.

20. Mr. Muhammad Azhar Ali: Will the Honourable Member for Railways please lay a statement on the working of the Regulations regarding disciplinary actions against non-gazetted staff on the Eastern Bengal, the East Indian, the Great Indian Peninsula and the North Western Railways, since 22nd June, 1935, showing *inter alia*:

- (a) the total number of staff affected under those regulations;
- (b) the number of staff awarded penalties under each head of regulation No. 2 of those regulations;
- (c) the number of appeals received against each penalty; and
- (d) the number of successful appeals against orders of penalty?

The Honourable Sir Andrew Clow: (a) 3,66,858 on 31st March, 1939. (b), (c) and (d). Government have no information except in the case of appeals against original orders imposed by the General Managers or the Controller of Railway Accounts, and it would be impracticable to compile particulars of all disciplinary proceedings. In 1939, the number of appeals lying to the Railway Board from non-gazetted staff was five. In two of these cases the penalty was remitted, and in one it was reduced.

MONOPOLY FOR CATERING CONTRACTS ON THE EAST INDIAN RAILWAY.

21. Mr. Muhammad Azhar Ali: Will the Honourable Member for Railways please state if it is a fact that the East Indian Railway Administration gives the monopoly of catering for the travelling public to Messrs. Ballabdas Eshwardass, with permission to sublet the contracts to existing contractors or to others?

The Honourable Sir Andrew Clow: Every catering contract is, in effect, a monopoly, for it gives to the contractor, as a general rule, the sole right to cater to the travelling public in a certain style at a particular station or in a specified area. Messrs. Ballabdas Eshwardass hold certain of such contracts on the East Indian Railway but not all. Their agreements with the Administration make provision against sub-letting.

HIGHER PRICES CHARGED FOR ARTICLES SOLD BY MAJOR KUNWAR DEEP CHAND AT DELHI RAILWAY STATION.

22. Mr. Muhammad Azhar Ali: Will the Honourable Member for Railways please state whether it is a fact that prices charged for articles sold by Major Kunwar Deep Chand at Delhi station on the North Western Railway are higher than the selling prices prevalent in Delhi market?

The Honourable Sir Andrew Clow: I have no reason for supposing that the prices charged show any unreasonable variations from those prevailing in the market. All prices are subject to the control of the Divisional Superintendent. The rates for all commodities are based on information supplied by the Superintendent of Industries and are adjusted when necessary: those for fruit are considered every week.

WITHDRAWAL OF BED COACHES FROM CERTAIN WAITING ROOMS ON THE EAST INDIAN RAILWAY.

23. Mr. Muhammad Azhar Ali: Will the Honourable Member for Railways please state:

(a) the reasons for withdrawing "Bed couches" from the Waiting Rooms on the East Indian Railway where retiring rooms are not provided; and

(b) the extent of comforts provided for the night at those Waiting Rooms?

The Honourable Sir Andrew Clow: (a) Enquiries are being made from the Railway Administration and a reply will be laid on the table in due course.

(b) The amenities provided vary, but no waiting room is designed to provide for those desiring sleeping accommodation for the whole night.

DUTIES OF ASSISTANT OFFICERS AND TRANSPORTATION INSPECTORS ON STATE RAILWAYS.

24. Mr. Muhammad Azhar Ali: Will the Honourable Member for Railways please lay a comparative statement of the duties of the Assistant Officers and of the Inspectors (Transportations) on the Eastern Bengal, the East Indian, the Great Indian Peninsula and the North Western Railways and state if there is any scope for effecting economy on the maintenance of officers or of Inspectors; if so, to what extent?

The Honourable Sir Andrew Clow: I have called for information and will lay a reply on the table of the House in due course.

INSPECTORS ON STATE RAILWAYS.

25. Mr. Muhammad Azhar Ali: Will the Honourable Member for Railways please state the actual strength, Division by Division, of the Inspectors in each class, grade or category on the Eastern Bengal, the East Indian, the Great Indian Peninsula and the North Western Railways?

The Honourable Sir Andrew Clow: Government have no information and regret that they cannot undertake the researches necessary for the compilation of a statement of this character.

ELECTION OF MEMBERS TO THE PUBLIC ACCOUNTS COMMITTEE.

The Honourable Sir Jeremy Raisman (Finance Member): Sir, I move:

"That the non-official members of the Assembly do proceed to elect, in the manner required by rule 51 of the Indian Legislative Rules, four members to be members of the Committee on Public accounts in place of Mr. B. Das, Mr. S. Satyamurti, Bhai Parma Nand and Mr. J. Ramsay Scott, who retire on the 25th February, 1940, in accordance with the provisions contained in sub-rule (4) of the same rule."

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

"That the non-official members of the Assembly do proceed to elect, in the manner required by rule 51 of the Indian Legislative Rules, four members to be members of the Committee on Public accounts in place of Mr. B. Das, Mr. S. Satyamurti, Bhai Parma Nand and Mr. J. Ramsay Scott, who retire on the 25th February, 1940, in accordance with the provisions contained in sub-rule (4) of the same rule."

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): The Chair may inform Honourable Members that for the purpose of election of members to the Public Accounts Committee the Notice Office will be open to receive nominations upto 12 Noon on Thursday, the 22nd February, and that the election, if necessary, will, as usual, take place on Tuesday, the 27th February, 1940, in the Assistant Secretary's Room in the Council House, New Delhi, between the hours of 10-30 a. m. and 1 p. m. The election will be conducted in accordance with the principle of proportional representation by means of the single transferable vote.

THE RESERVE BANK OF INDIA (CLOSING OF ANNUAL ACCOUNTS) BILL.

The Honourable Sir Jeremy Raisman (Finance Member): Sir, I move for leave to introduce a Bill to facilitate the changing of the date on which the annual accounts of the Reserve Bank of India are closed.

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

"That leave be granted to introduce a Bill to facilitate the changing of the date on which the annual accounts of the Reserve Bank of India are closed."

The motion was adopted.

The Honourable Sir Jeremy Raisman: Sir, I introduce the Bill.

THE INDIAN ARBITRATION BILL.

The Honourable Sir Muhammad Zafrullah Khan (Law Member): Sir, I move:

"That the Bill to consolidate and amend the law relating to Arbitration, as reported by the Select Committee, be taken into consideration."

Sir, Honourable Members are aware that this Bill was referred to a Select Committee in the last Simla Session. When moving for reference to a Select Committee I briefly explained the scope and purpose of the Bill. In the meantime, the Bill had been circulated by executive order for the purpose of eliciting opinion thereon and as a result of this circulation a volume of opinion was received which was carefully considered by the department. Several very useful suggestions had been made and these the Select Committee have incorporated in the body of the Bill. It is most gratifying that very little controversy arose with regard to the provisions of the Bill in the Select Committee and with regard to the greater part of the Bill there was complete unanimity. I consider, and I am sure the House will agree with me, that this is a great tribute to the labours of the special officer, Mr. Chatterjee, who studied the whole subject of arbitration and framed a Bill based upon the principles of the report that he submitted in this connection. It is also a tribute to the labours of the Draftsman and the Solicitor to the Government of India and the Members of the Select Committee that they were able to improve the Bill in so many particulars in the course of a very few number of sittings. The Bill, therefore, comes back to the House considerably improved and in a state which has elicited very few notices of amendment. I, therefore, venture to hope that it will not take the House very long to consider the provisions of the Bill and to pass them into law. Sir, I move.

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

"That the Bill to consolidate and amend the law relating to Arbitration, as reported by the Select Committee, be taken into consideration."

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): I took some interest in this Bill when it was being referred to the Select Committee. I made some suggestions which are contained in my speech of the 5th September, 1939. Out of those suggestions, I must say to the credit of the Select Committee, some of them have been accepted. The use of the expression 'legal representative' instead of 'personal representative' has been accepted and that removes a great difficulty which would have arisen in the courts. Then I referred to awards which pertain to movable as well as immovable property and I enquired whether Small Cause Courts would accept the award regarding the immovable as well as movable property jointly, whether that would be accepted by the Small Cause Court or not. Now, I see a provision is made in clause 2(c) which says:

"Court means a Civil Court having jurisdiction to decide the questions forming the subject matter of the reference if the same had been the subject matter of a suit, but does not, except for the purpose of arbitration proceedings under section 21, include a Small Cause Court."

Now, this applies to suits which are in courts. Clause 40 refers to this but it is not very clear. I would request the Honourable the Leader of the House to enlighten the House clearly on that point. The instance I am giving relates to awards both in respect of movable and immovable property. It is an award out of court, that is to say, by agreement and the first portion of the Bill applies to them. Therefore, it should be made clear.

The Honourable Sir Muhammed Zafrullah Khan: I can give a reply to the Honourable Member on that point immediately. A Small Cause Court

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will have no jurisdiction with regard to any of the matters contained in the Bill except with reference to suits actually pending before the Small Cause Court.

Mr. Lalchand Navalrai: I am thankful to the Honourable Member. Then I raised another point in regard to the Bill as originally drafted. In clause 9 of the Bill it is provided:

"Where an arbitration agreement provides that a reference shall be to two arbitrators, one to be appointed by each party, then, unless a different intention is expressed in the agreement" and so on.

Then it is said that either party who has appointed his own arbitrator will have authority to ask the other party to appoint other arbitrator.

The Honourable Sir Muhammad Zafrullah Khan: The Honourable Member is confusing the two provisions. He has read out (a) and he is now discussing (b).

Mr. Lalchand Navalrai: It refers to (b), about the neglect of the arbitrator and then clause (b) will arise. My objection is to clause (b) and the reason why I am against it is that if another arbitrator is to be appointed and if another arbitrator has not been appointed by him, then this would be a very drastic measure to give authority to the other party to get an award given by one sole arbitrator and he shall have that option after giving notice. My submission is that this is a drastic power put in the hands of the party. Many things would arise and the neglect of appointment or the appointment itself may be due to a *bona fide* intention

The Honourable Sir Muhammad Zafrullah Khan: May I suggest that as there are three amendments down with regard to that, the Honourable Member might reserve his comments for that occasion?

Mr. President (The Honourable Sir Abdur Rahim): That will be far more convenient.

Mr. Lalchand Navalrai: I only wanted to give an idea of what it is. I did not want to go into details. What I am submitting is that power should be left to the court instead of giving it to the party.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member will have an opportunity to discuss the clauses later on.

Mr. Lalchand Navalrai: I know that, Sir. Then, Sir, so far as my previous objections are concerned, I have already sent in some amendments and I hope to send in one more amendment which, I trust, will be in time. In the meantime, I think it must be plain to the House that before this amending Bill there were two enactments with regard to the arbitration. One was under the Schedule of the Civil Procedure Code and the other was with respect to Act IX of 1899. Now, the difference between these two enactments was this that one which was not of a stricter nature was under the Civil Procedure Code and it applied to the whole of India, including the *Mofussil* areas. Even in the case of the districts, Act IX of 1899 did not apply. It was applied only in the case

of urban areas or in places like Karachi, Bombay, Calcutta and Madras. Now, it has been mentioned in the opinions that we have received to which the attention of the Honourable the Leader of the House must have been drawn that these stricter provisions should not apply to the mofussil areas. That will create complications because people have not yet become so much enlightened that that Act should not apply to them. It may be said that that is only my individual opinion, but that is not the case. I would like to quote the opinion of the Judge of the Judicial Commissioner's Court, which is to be found on page 65 of the opinions received. This is what the Honourable Mr. E. Weston, Judge, Court of the Judicial Commissioner of Sind, says:

"I am not in favour of extension of the principles of the Arbitration Act to the mofussil. The Civil Justice Committee considered it doubtful whether mofussil India was ready for or required a system more elaborate than is provided by Schedule 2 Civil Procedure Code. Mr. Chatterjee disposes of this view on the grounds that 14 years have elapsed and conditions in this country have changed. With respect I differ entirely. The type of mofussil litigation and the mentality of mofussil litigants are as they were in the days of the Committee. I am in favour of amendment of the Arbitration Act and of its extension to places where commercial litigation is appreciable."

I know that the Bill has now emerged from the Select Committee but there is yet time to consider that the provisions such as those contained in Act IX of 1899 should not be incorporated in this Bill. What I submit is that stringent portions of the Bill should be lightened and smoothened in such a manner that all courts, even in the mofussil, would not think that they will be harmful or complicated to the general public. I have already sent in my amendments with regard to these stringent provisions. If all or some of these amendments are accepted by the House, then the difficulty pointed out by the Sind Judge would also disappear.

There is one more point that I would like to place before the House. In the third Schedule we find that certain enactments are being repealed but amongst them I find that there are two obsolete Acts in connection with the arbitration, one relates to Sind and the other to the Punjab. They should also be repealed under that Schedule.

Sir, I do not wish to take any more time of the House but I must submit, in conclusion, that as this Bill seeks to consolidate the whole law on arbitration, we should give it our full consideration. I do see the necessity of this measure which is overdue and from that point of view I welcome the Bill with certain modifications which I will suggest when my amendments are taken up.

The Honourable Sir Muhammad Zafrullah Khan: Sir, the real point that has been raised by Mr. Lalchand Navalrai, apart from the specific amendments to which he has referred, is that the result of this consolidation of the law relating to arbitration into one enactment may be that the stricter provisions of the Arbitration Act or some of them which have been incorporated in this Bill will also become applicable to the mofussil. That, of course, is so and that is one of the merits of the Bill. But I assure him, and when the time comes I will give instances, that we have had that in mind and we have made such changes in the Bill as to reduce any undue rigidity or harshness that might otherwise have resulted from this Bill. On the other hand, of course, he will be himself the first to admit that lawyers in the mofussil, at any rate, will consider it a

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reflection upon themselves if it is assumed that they would not be able to either understand or to advise upon the very simple provisions of this Bill.

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

"That the Bill to consolidate and amend the law relating to Arbitration, as reported by the Select Committee, be taken into consideration."

The motion was adopted.

Clauses 2 to 8 were added to the Bill.

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

12 NOON.

"That clause 9 stand part of the Bill."

There is an amendment in the name of Mr. Lalchand Navalrai.

The Honourable Sir Muhammad Zafrullah Khan: Sir, it is out of order; it was only given notice of yesterday. Maulvi Abdur Rasheed Chaudhury's amendment, of course, is in time.

Maulvi Abdur Rasheed Chaudhury (Assam: Muhammadan): Sir, I rise to move:

"That in sub-clause (b) of clause 9 of the Bill after the word 'may' occurring in the seventh line the words 'if the other party has no objection' be inserted."

Sir, in order to explain what I mean by this amendment, it is necessary to go through sub-clause (b) of clause 9 of the Bill. That sub-clause, as it has been drafted, provides that if the parties fail to appoint an arbitrator either originally or as a substitute after fifteen days' notice given by either party, then the party which has appointed the arbitrator and which has given fifteen days' notice is entitled to appoint his arbitrator as the sole arbitrator in the reference. Sir, first of all I will say that these fifteen days' notice is not in all cases sufficient for the purpose. It may be that between the arbitration agreement and the appointment of the arbitrator there may happen something which may give some reason to the party to think that he should get more time before he formally appoints his arbitrator. It is in the experience of many in this House that such things frequently happen. In that case fifteen days' notice is quite insufficient. Then, again, in case an arbitrator appointed dies and the party has got to select another arbitrator, in that case also fifteen days probably are not sufficient. Then, again, we know from our experience how interested parties may make use of this notice. So I consider that on the strength of this notice alone we should not empower the other party to appoint his arbitrator as the sole arbitrator in the reference. Sir, the importance attached to this sole arbitrator is very great. His award will have a binding force on the other party and his award cannot be revoked by the other parties without going to the court. Now, Sir, this is a very important measure which is going to be enacted and it should be our duty to see that the parties to the arbitration should not be involved in future litigation. With this end in view I have tabled this amendment. The object of my amendment is that if the other party has no objection, then the party which has given notice may appoint the arbitrator in the way given in the Bill; that is, if the other party has no objection, then the arbitration case may be ended out of court, as has

been provided in this Bill. If, however, there is any objection on the part of the other party, this procedure should not hold good. Now, it may be said that undue importance should not be attached to the appointment of the sole arbitrator, because the proviso provides that in case anything wrong is done, the court can revoke the award of the arbitrator. I agree to this, but we know how difficult it is for parties to go to court and to have an award of an arbitrator cancelled. It involves a lot of labour, and it involves a lot of huge cost on the part of the people to have the award of the arbitrator cancelled. So, in order to help people so that they may not have to go to court, my amendment provides that if the other party has no objection, then the arbitrator appointed may be appointed by the other party as the sole arbitrator. This is a simple amendment and I hope the Honourable the Leader of the House will accept my amendment.

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

"That in sub-clause (b) of clause 9 of the Bill after the word 'may' occurring in the seventh line the words 'if the other party has no objection' be inserted."

The Honourable Sir Muhammad Zafrullah Khan: Sir, in order to avoid repetition at any rate on my part I shall submit with your permission my reasons for not being able to accept any of the amendments of which notice has been given with reference to clause 9 at this stage. Thereafter if any specific point is made on any of the other amendments I shall reply to it when the occasion arises. Mr. Lalchand Navalrai's amendment as well as the two amendments of which notice has been given by Maulvi Abdur Rasheed Chaudhury relate to the same subject-matter. Maulvi Abdur Rasheed Chaudhury desires, briefly, that if, in the case dealt with in clause (b), one party has failed to appoint an arbitrator, the other party should first give notice and say, "do you agree that I should appoint this arbitrator for you?". If that party fails to agree or objects then they should come to court and ask the Court to appoint an arbitrator. Mr. Navalrai's amendment would ask them to go to court at the very first stage. That is the difference between the two proposals. The first amendment that has just now been moved by Maulvi Abdur Rasheed Chaudhury is really purposeless. If one party has failed to appoint his own arbitrator himself, he is not likely to agree to the other party appointing an arbitrator for him because, instead of agreeing to that, he might as well appoint one himself. I would draw the attention of the Honourable Member to the fact that we have not kept the provision as rigid in this respect as it was in the Arbitration Act. Under the Arbitration Act, only seven days were given for the appointment to be made. We have extended the period to 15 days. Also the proviso to which he has himself referred did not find a place in the Arbitration Act. We have added the proviso as a further safeguard that if any fraud has been committed, then the other party may move the court and may ask the court either to set aside the appointment or to make the appointment itself, so that really all reasonable cases have been met. May I point out that the provision in the original Act, with only seven days period of notice, has worked without any harshness having come to anybody's notice. This is one of those cases where we have taken care that we should adapt the new legislation to the needs of the mofussil. After all the object of

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going to arbitration is to obtain speedy and inexpensive decision of disputes and if we are going to cumber this procedure with all sorts of safeguards of the kind that are being suggested in the amendment the object of the legislation would be lost. Sir, I oppose the amendment.

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

"That in sub-clause (b) of clause 9 of the Bill after the word 'may' occurring in the seventh line the words 'if the other party has no objection' be inserted."

The motion was negatived.

Mr. Lalchand Navalrai: Sir, I beg to move:

"That in sub-clause (b) of clause 9 of the Bill for all the words occurring after the word 'may' occurring in the seventh line and the proviso the following be substituted:

'apply to the court to appoint as it thinks fit an arbitrator for the party which has failed to appoint an arbitrator'."

Sir, I should say at the very outset that there is a difference between the amendment which has just been moved and this amendment. The amendment moved by my Honourable friend was that if one arbitrator is not appointed by the party, then the other man with the consent of that very man should appoint a sole arbitrator.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member need not pursue the amendment which has just been rejected by the House.

Mr. Lalchand Navalrai: I am only pointing out the difference between the two. My amendment is to simplify the procedure. I understand that the Select Committee has taken notice of this objection and they have modified it to some extent. The arbitrator may be appointed by the other party. Then it is said that if the other party wants to get that set aside, then that party must go to court. There are difficulties in that, which I would ask the Honourable the Leader of the House to consider. If an arbitrator is appointed by the other party and if the award is got hold of and filed in court, then the second proviso that has been put in that the appointment can be cancelled goes off. If a man becomes clever and he wants to see that he excels the other party and then he appoints an arbitrator forthwith, because power is given to him after giving notice, then he will tell the arbitrator to give a decision just now and it may be that the arbitrator gives the decision just then. Then what is the course left to the other party? To go afterwards and apply for setting aside that award? But then it will not be set aside because the Judge will say, it is due to his negligence. Therefore, I am submitting that this procedure will be that which comes under the category of stricter provisions as referred to by me in my speech at the consideration stage. That is what I am requesting the Honourable Member to consider. It is no doubt he has modified it. He has provided a remedy, but that remedy is not the easiest remedy. The amendment that I am suggesting is the easiest remedy. As soon as a man fails and notice of 15 days is given to him, then what will be the loss if the other party asks the court to appoint an arbitrator in that man's place. That will remove

many of the difficulties. It will be easy for the litigants to carry on fairly and that is a safeguard for the other party. Instead of seven days, 15 days are now provided. But the difficulty is this. There are litigants who cannot take advantage of these technicalities. It is our duty at this stage to see that an easy procedure is laid down so that there may be no deception or fraud. The stronger will win over the weaker party. I hope the Honourable Member will see the substance in my amendment and accept the same thus relieving the difficulties of the litigants.

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

"That in sub-clause (b) of clause 9 of the Bill for all the words occurring after the word 'may' occurring in the seventh line and the proviso the following be substituted :

'apply to the court to appoint as it thinks fit an arbitrator for the party which has failed to appoint an arbitrator'."

Mr. Muhammad Azhar Ali (Lucknow and Fyzabad Divisions: Muhammadan Rural): Sir, I support the amendment. It seems to me that there is some sense in this amendment. The provision in the Act is :

"the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator....."

Sir, to leave it to the very party to appoint his own arbitrator whom he had once appointed, for himself to be the sole arbitrator on behalf of another will be rather hard in such cases. Experience in the courts shows that when arbitrators are appointed they ought to be such who may act not in any way favourably to either party. If the arbitrator appointed by one party acts for the other party also, it seems a hard case. My friend's suggestion to have the appointment made through court means that he will not be connected with the party which has already appointed him, and also he will not be the sole umpire or arbitrator. I, therefore, support the amendment, and experience also shows that the same person should not be the arbitrator for both parties.

Sardar Sant Singh (West Punjab: Sikh): Sir, I am afraid I must oppose this amendment. The point of the two previous speakers is that there should be no deception or fraud and no suffering to any of the parties on account of the technicalities of the law. My Honourable friend, Mr. Azhar Ali, says the better thing is to get an arbitrator appointed by court in the case mentioned in sub-clause (b). But sub-clause (b) lays down that if a person served with notice does not move in the matter or come to court to appoint another arbitrator within the period mentioned, it is clear that he acquiesces in the award being given by one arbitrator. So, there can be no question of fraud or deception. Even if fraud is practised on a party in the matter of giving notice he can come to court and place the facts before it, and under the proviso the court can allow further time to the defaulting party to appoint an arbitrator. So the court has got wide power in the case of fraud or deception. Similarly, in the case of illness or absence, the court can give relief if the case is shown to be just and equitable. Arbitration proceedings are speedy proceedings and any attempt to delay the proceedings before the arbitrator should not be encouraged.

Then my Honourable friend, Mr. Lalchand Navalrai, said that if the party which appoints an arbitrator is clever enough it can at once ask him

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to give the award. A safeguard against that is contained in clause 30 which provides for the setting aside of the award if the arbitrator has misconducted himself or the proceedings.

I, therefore, think the amendment goes against the principle of the Bill which requires speedy decision of the dispute between the parties. Sir, I oppose the amendment.

The Honourable Sir Muhammad Zafrullah Khan: Sir, it is not necessary for me to add very much to what Sardar Sant Singh has said but I may put these considerations to the Honourable the Mover of the amendment. First, the matter has already been very carefully considered and his appeals to me to reconsider it are now really rather late. Secondly, if there is fraud of the kind that he contemplates, that is to say, if an arbitrator is appointed after 15 days' notice and there is fraud in the service of the notice and the arbitrator is asked at once to give the award and proceeds to do so, the proceedings, of course, will be null and void. The Mover appears to be under the curious delusion that once you appoint your arbitrator as the sole arbitrator, that arbitrator will act without reference to the other party altogether. But even as sole arbitrator it is his business to call the parties before him and to hear them, take their evidence and to pronounce upon the matter after taking all necessary steps to acquaint himself with the merits of the dispute and the evidence that the parties may wish to produce before him in support of their respective cases. If he proceeds in the manner indicated by the Honourable the Mover the whole proceedings will be set aside; there is not the slightest doubt about that.

Mr. Lalchand Navalrai: I hope the judges will do it.

The Honourable Sir Muhammad Zafrullah Khan: That is a question of evidence; the law only provides remedies.

Mr. Muhammad Ashar Ali: Sir, may I ask a question? By adding this proviso have the proceedings not been made more cumbrous, whereas by the amendment they would not be so.

Mr. President (The Honourable Sir Abdur Rahim): That is not a question. The Honourable Member is only trying to argue.

The question is:

"That in sub-clause (b) of clause 9 of the Bill for all the words occurring after the word 'may' occurring in the seventh line and the proviso the following be substituted:

'apply to the court to appoint as it thinks fit an arbitrator for the party which has failed to appoint an arbitrator'."

The motion was negatived.

Clause 9 was added to the Bill.

Clause 10 was added to the Bill.

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

"That clause 11 stand part of the Bill."

Mr. Lalchand Navalrai: Sir, I move:

"That to sub-clause (g) of clause 11 of the Bill the following be added at the end: 'or is found to be interested in one party or the other and that fact was not known to the parties'."

Clause 11 provides for the removal of an arbitrator by court while the arbitration proceedings are pending. This is a very salutary provision as previously the courts would entertain these objections only when application was made for setting aside the award. But there is another consideration to which I will draw attention. There have been occasions when after a certain arbitrator had been appointed after both the parties had honestly believed that he was not interested, it turned out later on that one party had been cleverer than the other and that the arbitrator was very nearly related to one party. For instance, one party may not know at the time that the arbitrator was a very thick friend of the other party or very nearly related to him. If provision is made that the court shall have power to remove the arbitrator for other reasons, why not also for this reason? This sort of thing does not happen often. Provision is made in the Criminal Procedure Code that even magistrates who are interested should not decide certain cases. Why should not such a rule be made here also? Arbitrators can be removed for misconduct. But the point here is initial. Should such a man arbitrate at all? The reason I have given is a valid reason and I shall be very glad if the Honourable the Leader of the House can tell me that this can be done under some other provision or that the court has inherent powers in the matter. Personally, I do not find any such discretion given to the judge. If, therefore, there is no inherent power, it should be given specifically. I need not dilate further on the point and I appeal to the Honourable the Leader of the House not to say that it is too late now. When the Bill comes here from the Select Committee, there is time for amending or modifying its provisions.

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

"That to sub-clause (2) of clause 11 of the Bill the following be added at the end:-

'or is found to be interested in one party or the other and that fact was not known to the parties.'

The Honourable Sir Muhammad Zafrullah Khan: Sir, may I point out that I did not say any such obviously foolish thing as that it is too late now to amend any of the provisions of the Bill? Of course, it is not. All I said was that the particular point he raised had been very carefully considered and when he made an appeal to me to consider, I said it was rather late with regard to that particular point because I had already considered it. However, nothing turns much on that.

With regard to this particular amendment, my first objection is that it is an extremely vague amendment; and when the Honourable Member proceeded to say he would at once make it clear he merely indicated the difficulties which would arise rather than making the point clear. Suppose the arbitrator is a very great friend of one of the parties. How are you going to determine if objection is taken? Is the court to embark upon a detailed investigation as to the friendship existing between the two parties and if so, what is the degree of friendship, whether he is a very great friend, or only a great friend or only a friend? The same with regard to the degree of relationship. But I concede that there may be cases where there may be good reason to suspect that the arbitrator may be partial to one party, and in such cases where there is a genuine apprehension this is not the relevant clause under which the Honourable Member would have to proceed, supposing he was either a party to the arbitration or advising one.

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of the parties. This clause, it will be observed, deals with a case where the arbitration having been validly entered upon the arbitrator has done something or has failed to do something which necessitates that the court should be moved to obtain his removal. Where there is an inherent defect in the arbitrator himself, as the Honourable Member has in mind, the relevant clause would be clause 5, that is to say, an application to the court for revocation of the arbitration or the authority of the arbitrator on the ground that he is not likely to prove an impartial arbitrator, that one party had accepted him not knowing certain matters which had now come to light and which have destroyed that party's confidence in the arbitrator. Under that clause or a provision like that the courts have held that collusion or partiality would be a valid ground for the revocation of the arbitration; and as the Honourable Member wanted to be told where he could seek his remedy, that is the clause under which he would be able to go and seek revocation.

Mr. Lalchand Navalrai: Sir, I want to withdraw this amendment. The amendment was, by leave of the Assembly, withdrawn.

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

"That clause 11 stand part of the Bill."

The motion was adopted.

Clause 11 was added to the Bill.

Clause 12 was added to the Bill.

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

"That clause 13 stand part of the Bill."

Maulvi Abdur Rasheed Chaudhury: Sir, I beg to move:

"That after sub-clause (e) of clause 13 of the Bill the following new sub-clause be added:

'(f) take down all evidence in writing and have the evidence signed by witnesses as read and found correct.'

Sir, this is a very simple amendment. The object of this amendment is that the evidence of parties should be taken down in writing and they should sign such evidence in writing as having been read by them and found correct as is done in other cases. The object is if there is any reference or appeal to a higher court regarding the award made by the arbitrator, the party may not say that they did not say such and such thing before the arbitrator. Therefore, I think that all the evidence urged at the time of the arbitration should be taken down in writing and should be treated as evidence in court by the arbitrator and such recorded evidence should be signed by the witnesses. Sir, I move.

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

"That after sub-clause (e) of clause 13 of the Bill the following new sub-clause be added:

'(f) take down all evidence in writing * and have the evidence signed by witnesses as read and found correct.'

The Honourable Sir Muhammad Zafrullah Khan: Sir, may I point out very respectfully that for the purpose the Honourable Member has in mind this amendment is entirely misconceived. The clause reads like this: "The arbitrators or umpire shall, unless a different intention is expressed in the agreement, have power to (a) administer oath to the parties and witnesses appearing and all the other things mentioned in (b), (c), (d), and (e)", and the Honourable Member wants to add (f) so that they shall also have power to take down the evidence in writing. Of course, they have that power. This clause is not exhaustive, but if he means that they shall be compelled to do so in each case, they will not be compelled to do so by this amendment. They have power now to take down the evidence if they wish to. I may add, with regard to the intention of my Honourable friend, that it would be most undesirable to compel arbitrators to take everything down in writing. They must be left a certain amount of liberty in this matter, but when they do take anything down, then the next clause provides that when submitting their award, they shall also send to the court any depositions they may have taken down.

Mr. M. S. Aney (Berar: Non-Muhammadian): Sir, perhaps my Honourable friend, the Law Member, has not understood what the Mover has in mind. It is true that if the arbitrators want, they may take down the evidence in writing. That is another matter, but so far as this clause is concerned, it does not specify anywhere that they have the power to take down evidence and interpret it in the way he has mentioned in the amendment. All that is laid down here is, unless a different intention is expressed in the agreement, the arbitrator or umpire shall have power to do certain things mentioned here. He may administer the oath, he may hear the evidence, but he may only make a note of it. All that my friend wants is this. If a witness appears before an arbitrator and makes a statement, that statement should be duly recorded and it should be signed by the witnesses. The arbitrator should be in a position to ask the witness to put his signature to that statement as being correct. That the arbitrator cannot do under this clause. He may ask the witness to do so, but the witness can refuse to sign it, and there is nothing to compel the witness to sign the statement as required by my friend. The statement made by a witness before an arbitrator should have the same effect as any statement made before any other court. That is possible only if some such amendment as is suggested by my friend is made.

The Honourable Sir Muhammad Zafrullah Khan: In spite of this clause, the witness may refuse to sign it. After all, this amendment only empowers the arbitrator to do certain things.

Mr. M. S. Aney: When it empowers the arbitrator to ask the witness to sign the statement, and if the witness refuses to sign it, it will amount to disobedience of the order, and the consequence will be different. Therefore, I think there is some force in what my friend has said in support of his amendment.

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

"That after sub-clause (e) of clause 13 of the Bill the following new sub-clause be added:

'(f) take down all evidence in writing and have the evidence signed by witnesses as read and found correct'."

The motion was negatived.

Clause 13 was added to the Bill.

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

"That clause 14 stand part of the Bill."

Maulvi Abdur Rasheed Chaudhury: Sir, I have a small amendment to make. It reads thus:

"That to sub-clause (2) of clause 14 of the Bill the words 'if already settled with parties otherwise after settling a reasonable amount' be added at the end."

This clause, Sir, relates to the payment of fees to the arbitrators and the fees demanded by them. Perhaps rich representatives of the people in this House cannot understand the difficulties which we coming from the villages feel in this respect. It frequently happens that arbitrators in the beginning do not settle their fees and the parties agree to appoint their arbitrator under the belief that their charges would not be very prohibitive, but sometimes it happens that the charges of the arbitrators are so high that the parties consider that it would have been better for them to go to the court than to resort to arbitration. Therefore, I make this amendment that if the arbitrators have already settled the fees with the parties, it is all right, otherwise, they should first settle with the party and then demand the amount from them. This will clear the whole position, because unknowingly the parties will not sign the demands of the arbitrators, and in this way it will afford relief to the parties. Sir, I move.

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

"That to sub-clause (1) of clause 14 of the Bill the words 'if already settled with parties otherwise after settling a reasonable amount' be added at the end."

The Honourable Sir Muhammad Zafrullah Khan: Sir, this amendment is quite unnecessary. If the amount is already settled, there will be no dispute about it. But if there is a dispute, clause 38 provides that if an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the court may order that the arbitrator or umpire shall deliver the award to the applicant on payment into court by the applicant of the fees demanded, and shall, after such inquiry as it thinks fit, further order that out of the money so paid into court there shall be paid to the arbitrator or umpire by way of fees such sum as the court may consider reasonable and the balance of the money, if any, shall be refunded to the applicant, so that the provision is already there.

Maulvi Abdur Rasheed Chaudhury: In view of what the Honourable Member has said, I beg leave of the House to withdraw my amendment.

Mr. President (The Honourable Sir Abdur Rahim): Has the Honourable Member the leave of the House to withdraw his amendment?

Several Honourable Members: Yes, yes.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Lalchand Navalrai: I beg to move:

"That to sub-clause (2) of clause 14 of the Bill the following be added at the end:

'If the arbitrators or umpire so fail to file the award any party may apply to the court to make suitable orders as it deems fit to send for the award'."

I consider that there is a lacuna which has to be filled and I do not want to take the time of the House over it. I hope this amendment will be accepted by the Honourable Member as otherwise there is no other way of the award coming before the court.

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

"That to sub-clause (2) of clause 14 of the Bill the following be added at the end:

'If, the arbitrators or umpire so fail to file the award any party may apply to the court to make suitable orders as it deems fit to send for the award'."

The Honourable Sir Muhammad Zafrullah Khan: Sir, I have no quarrel with the object of the amendment. Obviously the Honourable Member means that if the arbitrator will not himself file the award or send it to the court there should be some means of compelling him to do so. On this, with your permission, somebody on our behalf will move an amendment which will achieve the same object, in its proper place in the clause. The amendment will run thus:

"That in sub-clause (2) of clause 14 of the Bill after the words 'or any person claiming under such party' the words 'or if so directed by the court' be inserted."

That will achieve the object.

Mr. Lalchand Navalrai: I will accept that amendment and beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Sir George Spence (Secretary, Legislative Department): Sir, I move:

"That in sub-clause (2) of clause 14 of the Bill after the words 'or any person claiming under such party' the words 'or if so directed by the court' be inserted"

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

"That in sub-clause (2) of clause 14 of the Bill after the words 'or any person claiming under such party' the words 'or if so directed by the court' be inserted."

The motion was adopted.

Clause 14, as amended, was added to the Bill.

Clauses 15 to 37 were added to the Bill.

Mr. President (The Honourable Sir Abdur Rahim): Clause 38:

Maulvi Abdur Rasheed Chaudhury: Sir, I beg to move:

"That in clause 38 of the Bill for the words 'the fees demanded' occurring in the sixth line the words 'an amount which the court deems reasonable' be substituted."

[Maulvi Abdur Rasheed Chaudhury.]

I moved an amendment in this connection but after hearing the Honourable the Leader of the House I begged leave of the House to withdraw. Let me read the clause before I explain what I want to be done :

"If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the court may, on an application in this behalf, order that the arbitrator or umpire shall deliver the award to the applicant on payment into court by the applicant of the fees demanded..."

What I submit is that the court should not order the parties to pay the fees demanded but the court should decide a reasonable amount which the parties are to pay to the arbitrator as his fees. I take a concrete example and show the difference. Take, for instance, an arbitrator demanding a fee of Rs. 2,000 in an arbitration case. If the court orders the parties to pay this amount and if after the case is heard it is found that the party has got to pay only Rs. 1,500, then he will get a refund of Rs. 500. What I say is that the court should decide at first that the parties should pay Rs. 1,500 and not deposit Rs. 2,000 in order that the difference may be refunded afterwards to the party. It makes a good deal of difference to the poor client, it is a difference of Rs. 500. So, I recommend that before the court orders the parties to pay the amount demanded by the arbitrator the amount should be settled first by the court and the party asked to deposit that amount only and not the amount demanded by the arbitrator. I think I am quite clear and I hope that in this case the Leader of the House will see his way to accepting my amendment.

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

"That in clause 38 of the Bill for the words 'the fees demanded' occurring in the sixth line the words 'an amount which the court deems reasonable' be substituted."

The Honourable Sir Muhammad Zafrullah Khan: There is really very little in the amendment but if it were accepted it would introduce a fresh complication because the scheme of the clause as it is at present is that at the very ancillary stage where an award has to be put into court before any of the other questions arise on it there may be a question of fees and the court will say, "You deposit this amount and I shall decide at the end when I am in possession of all the facts what is the actual amount that ought to be paid, and if the amount asked is exorbitant you will be paid back the balance". If the amendment of my Honourable friend is accepted, the party and the arbitrator might first start with a dispute over the fees and that must first of all be settled to the extent to which at that stage it appears to the court to be a reasonable amount, and later on the court will decide what would be the proper fee for the arbitrator, and then he will have to make an order either for the whole of that amount already deposited to be paid to the arbitrator or that something more should be paid or that something should be returned. That means two enquiries on the question of fees alone and I should think that it is entirely unnecessary. It is possible that in some particular case the arbitrator may demand such an exorbitant fee that the party may be unable to pay it. In that case there the remedy is that he can institute a suit to have the matter decided rather than proceed with an arbitration.

Mr. President (The Honourable Sir Abdur Rahim): The question is: "That in clause 38 of the Bill for the words 'the fees demanded' occurring in the sixth line the words 'an amount which the court deems reasonable' be substituted."

The motion was negatived.

Clause 38 was added to the Bill.

Mr. President (The Honourable Sir Abdur Rahim): As there are no amendments to clauses 39 to 49 the Chair shall put all those clauses together.

Mr. Lalchand Navalrai: I have given notice of an amendment which will come under clause 49.

Mr. President (The Honourable Sir Abdur Rahim): When was it given?

Mr. Lalchand Navalrai: Just now.

Mr. President (The Honourable Sir Abdur Rahim): Has it been circulated to all the Members?

Some Honourable Members: No.

Mr. President (The Honourable Sir Abdur Rahim): Then it cannot be moved. The question is:

"That clauses 39 to 49 stand part of the Bill."

The motion was adopted.

Clauses 39 to 49 were added to the Bill.

The First, the Second, the Third and the Fourth Schedules were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Sir Muhammad Zafrullah Khan: Sir, I move:

1 P.M.

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

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

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

The motion was adopted.

THE REGISTRATION OF TRADE MARKS BILL.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar (Member for Commerce and Labour): Sir, I move:

"That the Bill to provide for the registration and more effective protection of Trade Marks, as reported by the Select Committee, be taken into consideration."

This Bill was referred to a Select Committee in the Simla Session of the House and there was ample time for all those interested to make representations to the Select Committee. In fact, some of the more vigilant Chambers, and the Mill Owners Association in particular which is specially

[**Diwan Bahadur Sir A. Ramaswami Mudaliar.**]

concerned with cotton trade marks, have sent in some representations. The Select Committee has carefully considered them and made a few amendments in the Bill which are of a substantial nature. The original Bill provided that the validity of the registration of a trade mark would be for a period of ten years. Owing to various suggestions received from these commercial bodies, that period has been reduced to seven years, so that after a period of seven years nobody can question the validity of a trade mark which was registered. The second amendment is that more detailed and more specific powers are given to the Deputy Registrar who will be stationed at Bombay and will be in charge of the cotton trade marks section to a very large extent. That was to meet the desire of the textile interests in particular. Consultation of the Advisory Committees by the Registrar or Deputy Registrar has been made mandatory, where the question relates to the technical provisions of the Trade Marks Act with reference to the cotton trade, and finally we have suggested that a scale of costs to be awarded by the Registrar should be prescribed by the Central Government. I believe that the Bill as it has emerged from the Select Committee has still further met the views of the various commercial interests concerned. Sir, I move.

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

"That the Bill to provide for the registration and more effective protection of Trade Marks, as reported by the Select Committee, be taken into consideration."

Mr. Muhammad Azhar Ali (Lucknow and Fyzabad Divisions: Muhammadan Rural): As a member of the Select Committee on the Trade Marks Bill I found, there was a dispute mostly between Bombay and Calcutta. Their object was to exclude, to a great extent, all the other provinces of India and to divide the shares between themselves. It is very lucky that the Members from the other provinces stuck to their guns and the objects of the Bombayites and the Calcuttaites were not fully secured by them. I know that the Bombay commercial people do not like the idea of establishing the office of the Registrar in Calcutta but the Calcutta people tried their level best to keep the office there. Now, it has remained in Calcutta after all. The Delhi commercial people want the Registrar's office to come to Delhi but, unfortunately, the case of Delhi was not pressed very well and Calcutta won. The Bombay people wanted everything for themselves. I find there are still some objections from the Bombay people but the Report of the Select Committee is well suited to all parts of India. The Bill has been modified to the extent that is necessary. The minutes of dissent are not serious at all. The Bill is one which concerns people in commercial towns like Bombay, Calcutta and Karachi and to a certain extent my own Cawnpore where the trade is also flourishing. This Act is an improvement on the old one and I hope that much time of the House will not be taken on the amendments from the European Group. With these words I support the motion.

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

"That the Bill to provide for the registration and more effective protection of Trade Marks, as reported by the Select Committee, be taken into consideration."

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): The Chair finds that there are no amendments from clause 2 to clause 21.

Mr. J. D. Boyle (Bombay: European): We are not moving our amendment about the new clause after clause 21.

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

"That all the clauses from clause 2 to clause 37 stand part of the Bill."

The motion was adopted.

Clauses 2 to 37 were added to the Bill.

Mr. M. S. Aney (Berar: Non-Muhammadan): May I know what is the procedure if any Member wanted to oppose any particular clause?

Mr. President (The Honourable Sir Abdur Rahim): The Chair made it clear the other day that it was open to any Member to discuss or oppose any of the clauses.

Mr. M. S. Aney: I just wanted to know the procedure in a case like that.

Mr. President (The Honourable Sir Abdur Rahim): The Chair is not ordinarily in the habit of putting so many clauses together and it was made clear that if any Honourable Member wished to discuss any clause on the floor of the House, he might do so.

The question is:

"That clause 38 stand part of the Bill."

Mr. C. C. Miller (Bengal: European): Sir, I move:

"That in sub-clause (1) of clause 38 of the Bill after the word 'any' occurring in the first line the words 'name or' be inserted."

Sir, I must ask the forbearance of the House for a few minutes while I endeavour to explain this principle of defensive trade marks in relation to the amendment which I propose and to which we attach some importance. Turning first to the question of defensive trade marks, I would like to draw the attention of Honourable Members to the opening line of clause 38, viz., "where a trade mark consisting of any invented word has become so well-known". That is the most important point of the defensive trade mark system, viz., that, in order to be qualified for a defensive trade mark, the mark in question must have attained a considerable degree of popularity and publicity and indeed it must have attained something of the standard of what one might call a "household word"; otherwise it is not eligible at all; and, of course, the Registrar is the judge as to the eligibility of the trade mark or not,—that is to say, the standard of popularity and publicity which it has attained. Well, if the Registrar considers that it has attained that degree of popularity, and it is so well-known that it is entitled to be classed as a defensive trade mark, then the owner of that trade mark is permitted to take out his defensive mark, that is to say, to include in his trade mark goods of the same class as those which he is manufacturing but which he is not actually manufacturing. The stock-example given by Mr. Nehru in his draft report is "Johnnie Walker", a well-known brand of whisky. Johnnie Walker, for instance,

[Mr. C. C. Miller.]

might apply for a defensive trade mark, on let us say beer and ale. He it not brewing beer but if some other person were so to speak to jump his trade mark or to imitate him closely, the impression would be conveyed to the public that ale of the standard of Johnnie Walker and manufactured by that well-known firm was being supplied. Therefore, this seeks to afford protection to the public even more than protection to the manufacturer, that is, in order to save the public from being imposed upon by getting the impression that the goods are manufactured by a well-known manufacturer when in fact they are not so. It is quite a modern development in trade mark legislation and the total effect of our amendment is this, that we wish the principle to be extended from invented words to any name, because, there are many well-known manufacturers who do not use invented words but who use their own proper names. Let us take "Liptons". "Lipton" is not an invented word but Johnnie Walker being an inventive word, they can take out a defensive trade mark on ale and beer, while Lipton, is a proper name only. Why should they not be able to take out a defensive trade mark on let us say coffee, the whole principle being to save the public from imposition? Sir, we do attach some importance to this principle and we have so far failed to get it. But, I know the answer generally is, "no, it is a very debatable point but a Committee which sat and discussed the whole subject prior to the recent legislation in Great Britain finally decided against the inclusion of names with inventive words and that the principle of defensive trade marks should be limited to invented words". That is perfectly true and I am quite prepared to admit that the report of the Goschen Committee is a very valuable basis from which to start legislation of this sort which is new to India. But at the same time I would suggest that a little imagination might be employed on the subject; one might say, "well, would they have come to the same conclusion if they had been dealing with India?" They were dealing with the United Kingdom and the fact does remain that in Great Britain you have a much more informed public and a public which is much less easily imposed upon, and, therefore, I say, that, while it may be possible for good reasons not to include names so far as Great Britain is concerned, I do not suppose the same reasons exist in India and I say the time may come here when manufacturers in this country who might not adopt an inventive word but who preferred to use their own names might find this defensive trade mark principle of great use. Therefore, we should not be too narrow in our view, at the outset. The second objection

Mr. President (The Honourable Sir Abdur Rahim): I think the Honourable Member had better continue his speech after Lunch.

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

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

Mr. C. C. Miller: Sir, when the House adjourned I was referring to possible objections which might be raised to this amendment which I have

moved and I hope that the question of the Goschen Committee and their findings will not obtain undue prominence because it does seem to us that in this matter the Government of India might reach out and go beyond the findings of that Committee. There is, however, one objection which I think I may anticipate and it seems to me more practical. I have been told that if a defensive trade mark is permitted in the case of names as well as of invented words real hardship might arise because while the scope for invented words is more or less unlimited, that is not the case with names. Certain names are very common: that is to say, the name of Smith; a defensive trade mark may be taken out of the name of Smith, which would stop any other person of the same name who genuinely wished to manufacture goods from manufacturing. That objection actually does not obtain because of section 26 of this Bill in which it states that no registration of a trade mark shall interfere with any *bona fide* use of a person of his own name. So I hope that objection will not be quoted against me and I further hope that if this amendment is not acceptable to Government, at least, definite and cogent reasons will be given for its non-acceptance because to us it seems a very salutary measure. Sir, I move.

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

"That in sub-clause (1) of clause 38 of the Bill after the word 'any' occurring in the first line the words 'name or' be inserted."

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: Mr. Deputy President, this amendment was discussed at great length in the Select Committee and I tried to advance what I considered cogent reasons which satisfied most of the members of the Select Committee, so that the amendment was not adopted at that stage. I do not know how much more successful I shall be today in this House than I was at the Select Committee stage, but I shall try my best.

There has been a great deal of talk recently in this House about the slavish imitation of English statutes. But I must put this reluctance on my part to include the words named, not to any desire to slavishly imitate the English precedent, but to objections which I feel are quite serious, and which would detract considerably from a privilege which those who want to use trade marks have a right to expect and to enjoy. The Honourable the Mover has explained what is a defensive trade mark. I do not propose to amplify that explanation, but, I should like to state very shortly to the Members of this House what this defensive trade mark is. A trade mark can be registered normally if it is used in connection with any specific goods or if it is proposed to be used in connection with any specific goods which the proprietor of the trade mark wants to deal in. That is the general principle on which trade marks are registered. Now, for the first time somebody complained in England that there might be a case for a wider use of these trade marks. So far, the use of the trade mark and the bringing into existence of the goods with which the trade mark deals were inextricably connected. People suggested that a little latitude might be given and the proprietor may register that trade mark in reference to goods which he may not bring into existence but which possibly at some later stage he might bring into existence. The Goschen Committee examined this question very carefully and they felt that a case

[Diwan Bahadur Sir A. Ramaswami Mudaliar.]

was made out for some sort of relaxation; but they were obviously aware of the dangers to which this relaxation may lead, if it was not circumscribed within certain limits. The limit that they suggested was that this defensive trade mark should only be used with reference to invented words. Suppose a well-known name is taken. The names are so common both in England and in this country that it would be a hardship on a great many people if one name were taken and appropriated not merely with reference to one particular class of goods in regard to which that name has been used and has got a market established, but with reference to any kind of goods that may be brought into existence in any future time. Suppose, for instance, the name of a well-known Indian leader has been taken up with reference to some kind of goods and has been used for some years and the proprietor comes now before the Registrar, when this machinery is set in operation, and wants that name to be registered, he will be entitled to do so. But supposing in addition to that, with reference to some twenty other goods which may have no relation at all to these special goods which have been used in this country the same name is to be established, then there are two kinds of objections that I feel. One is that others who may have the same name cannot use it; the second is that that name of a well-known leader cannot be appropriated by any other person; and thirdly, from the consumers' point of view also it would mean that that name will be exploited for all kinds of other goods. It is well-known that in India a manufacturer often uses as his trade mark the names of well-known prominent Indians. Further, photographs are very often used, though we are not concerned with photographs in this matter. It seems to me from the consumers' point of view, it would not be fair to have that kind of exploitation made with reference to articles which have not been in the market and which might come into existence later. My Honourable friend quoted the case of Lipton. Lipton's tea is well-known, and he said that consumers would be misled if anybody else were to use Lipton's coffee. Take that very case. Supposing Lipton were to use that name with reference to his own coffee, from the consumers' point of view it may be that coffee having that trade mark is very bad; there is no guarantee that just because a well-known name has been used with reference to a particular brand of article, therefore, that name associated with any other commodity guarantees the same amount of excellence. Johnnie Walker's particular stuff may be very good but his ale may not be touched by my Honourable friend, much less by myself. Therefore, if we are thinking of the consumers' point of view, the argument cuts both ways. Sir, I oppose the amendment.

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

"That in sub-clause (f) of clause 38 of the Bill after the word 'any' occurring in the first line the words 'name or' be inserted."

The motion was negatived.

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

"That clause 38 stand part of the Bill."

The motion was adopted.

Clause 38 was added to the Bill.

Clauses 39 to 62 were added to the Bill.

Mr. Deputy President (Mr. Akhil Chandra Datta): Clause 63.

Mr. J. D. Boyle: Sir, I beg to move:

"That in sub-clause (1) of clause 63 of the Bill all the words occurring after the words 'Deputy Registrar' be omitted."

The words concerned were words put in by the Select Committee and they were designed to increase the statutory position of the Deputy Registrar who will be situated in Bombay. This amendment, which is consequential to the main amendment which I shall move under clause 65, is designed to give slightly greater powers still to the Deputy Registrar. Sir, I move.

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

"That in sub-clause (1) of clause 63 of the Bill all the words occurring after the words 'Deputy Registrar' be omitted."

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: The desire of the Select Committee was that the Deputy Registrar who will be in charge of the cotton trade marks should have much greater powers than was proposed in the original Bill. The Honourable Member's amendment seeks to carry out that object and I accept it.

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

"That in sub-clause (1) of clause 63 of the Bill all the words occurring after the words 'Deputy Registrar' be omitted."

The motion was adopted.

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

"That clause 63, as amended, stand part of the Bill."

The motion was adopted.

Clause 63, as amended, was added to the Bill.

Clause 64 was added to the Bill.

Mr. Deputy President (Mr. Akhil Chandra Datta): Clause 65.

Mr. J. D. Boyle: Sir, I move:

"That clause 65 of the Bill be re-numbered as sub-clause (1) of clause 65 and to the clause as so re-numbered the following new sub-clause be added:

"(2) In respect of all trade marks, applications for registration of which are duly made to the Deputy Registrar under this chapter, the Deputy Registrar shall exercise all the powers of the Registrar under this Act but shall be subject to the general superintendence of the Registrar."

This is the main clause, the consequential amendment to which we have already passed under clause 63. Sir, I move.

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

"That clause 65 of the Bill be re-numbered as sub-clause (1) of clause 65 and to the clause as so re-numbered the following new sub-clause be added:

'(2) In respect of all trade marks, applications for registration of which are duly made to the Deputy Registrar under this chapter, the Deputy Registrar shall exercise all the powers of the Registrar under this Act but shall be subject to the general superintendence of the Registrar.'

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: Sir, I accept the amendment.

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

"That clause 65 of the Bill be re-numbered as sub-clause (1) of clause 65 and to the clause as so re-numbered the following new sub-clause be added:

'(2) In respect of all trade marks, applications for registration of which are duly made to the Deputy Registrar under this chapter, the Deputy Registrar shall exercise all the powers of the Registrar under this Act but shall be subject to the general superintendence of the Registrar.'

The motion was adopted.

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

"That clause 65, as amended, stand part of the Bill."

The motion was adopted.

Clause 65, as amended, was added to the Bill.

Clauses 66 to 75, were added to the Bill.

Mr. Deputy President (Mr. Akhil Chandra Datta): Clause 76.

Mr. J. D. Boyle: Sir, I move:

"That in sub-clause (1) of clause 76 of the Bill after the word 'Registrar' the words 'or Deputy Registrar' be inserted."

This is consequential.

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

"That in sub-clause (1) of clause 76 of the Bill after the word 'Registrar' the words 'or Deputy Registrar' be inserted."

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: I accept the amendment.

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

"That in sub-clause (1) of clause 76 of the Bill after the word 'Registrar' the words 'or Deputy Registrar' be inserted."

The motion was adopted.

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

"That clause 76, as amended, stand part of the Bill."

The motion was adopted.

Clause 76, as amended, was added to the Bill.

Clauses 77 to 82 were added to the Bill.

Mr. Deputy President (Mr. Akhil Chandra Datta): Clause 83.

Mr. T. S. Pillay (Government of India: Nominated Official): Sir, I move:

"That for clause 83 of the Bill the following be substituted:

'83. If at any time after the expiry of six months from the commencement of this section it is made to appear to the Central Government that any Government outside British India has made satisfactory provision for the protection within its territories of trade marks in respect of which an application for registration has been made in British India, the Central Government may, by notification in the official Gazette, make provision with regard to trade marks in respect of which an application for registration has been made within the territories of that Government to enable any person who has applied within such territories for registration of a trade mark or his legal representative or assignee to obtain registration of the trade mark in British India under this Act on his making an application for registration in British India within such period as may be fixed in this behalf by the notification as if an application for registration under this Act had been made in respect of that trade mark at the date at which the application for registration was made within the territories of that Government.'

The purpose of this amendment is to make clear the intention of Government with regard to the provision required to enable India to become a party to the International Convention for the protection of industrial property. One condition required for this is that there should be provision in the Indian Statute relating to trade marks allowing reasonable time—six months in the case of trade marks—for a person who applies for the registration of a trade mark in a country to make arrangements, if he so desires, for the same trade mark to be registered in any other country so that his claims may not be adversely affected by a rival applying for the registration of the same trade mark earlier than he. The effect of the proposed provision is to enable the registering authority to consider the primary applicant for the trade mark as the one entitled to have his claims considered before that of another who may have applied not earlier than six months before he did. Such a provision is necessary to enable India to become a member of the Union of countries that have entered into a convention for the protection of industrial property. As there was some ambiguity about the exact import of the clause as it stood; I have the honour to commend the amendment I have moved for the acceptance of the House.

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

"That for clause 83 of the Bill the following be substituted:

'83. If at any time after the expiry of six months from the commencement of this section it is made to appear to the Central Government that any Government outside British India has made satisfactory provision for the protection within its territories of trade marks in respect of which an application for registration has been made in British India, the Central Government may, by notification in the official Gazette, make provision with regard to trade marks in respect of which an application for registration has been made within the territories of that Government to enable any person who has applied within such territories for registration of a trade mark or his legal representative or assignee to obtain registration of the trade mark in British India under this Act on his making an application for registration in British India within such period as may be fixed in this behalf by the notification as if an application for registration under this Act had been made in respect of that trade mark at the date at which the application for registration was made within the territories of that Government.'

Mr. M. S. Aney: What is the provision of the Convention to which you are referring?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: The International Convention for the protection of industrial property requires every country who wants to enter into that Convention to observe one rule. If in Canada an application is made by a person possessing a trade mark to have that trade mark registered on the first of January, 1940, and that person goes over to India and puts a similar application here at any time before the 1st July, 1940, supposing on the 1st of June, 1940, and if a second person in Canada hurries up on the 1st March, 1940, and has put in an application before the Registrar in India, the second person will not have a prior right, because the application of the first person is dated back to the day on which he applied in Canada. There have been persons who have been trying to steal a march over their rivals by going to a new country and rushing off with a trade mark application the moment they come to find out that in the original country such trade mark application has been made. This provision of six months protects the rights of the original applicant who is the legitimate user of the trade mark so that he cannot be anticipated in foreign countries, the world being very large and we cannot take simultaneously applications for trade marks in all the Convention countries. This is a convention which has been agreed to by almost all the civilised countries of the world and we are bringing this particular section in in a more clarified form, so that when India accedes to the Convention it may be treated on a reciprocal basis by all other countries who are parties to the Convention.

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

"That for clause 83 of the Bill the following be substituted:

'83. If at any time after the expiry of six months from the commencement of this section it is made to appear to the Central Government that any Government outside British India has made satisfactory provision for the protection within its territories of trade marks in respect of which an application for registration has been made in British India, the Central Government may, by notification in the official Gazette, make provision with regard to trade marks in respect of which an application for registration has been made within the territories of that Government to enable any person who has applied within such territories for registration of a trade mark or his legal representative or assignee to obtain registration of the trade mark in British India under this Act on his making an application for registration in British India within such period as may be fixed in this behalf by the notification as if an application for registration under this Act had been made in respect of that trade mark at the date at which the application for registration was made within the territories of that Government.'

The motion was adopted.

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

"That clause 83, as amended, stand part of the Bill."

The motion was adopted.

Clause 83, as amended was added to the Bill.

Clauses 84 and 85 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: Sir,
I move:

“That the Bill, as amended, be passed.”

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

“That the Bill, as amended, be passed.”

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Friday, the 16th February, 1940.