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COUNCIL OF STATE DEBATES

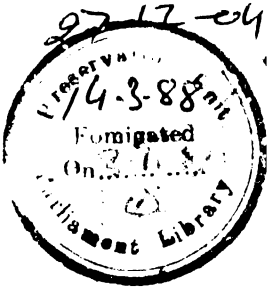
VOLUME II, 1939

(11th September to 27th September, 1939)

SIXTH SESSION

OF THE

FOURTH COUNCIL OF STATE, 1939



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CORRIGENDA

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Date.	Page.	Question No.	Corrections.
18-9-39	51	3	In line 5 from the bottom, *for* " granted " *read* " recruited for ".
18-9-39	51	3	In line 4 from the bottom, *delete* the semi-colon and the words " have been recruited ".
18-9-39	51	3	In line 3 from the bottom, *delete* " yet ".
18-9-39	51	3	In last line of the page, *for* " s " *read* " is ".
18-9-39	112	..	In line 18 from the top, *for* " thought " *read* " though ".
20-9-39	138	..	In line 14 from the bottom, *for* " rom " *read* " from ".
20-9-39	141	..	In line 19 from the top, *insert* " of " *after* " both ".
20-9-39	149	..	In line 15 from the top, *for* " carreer " *read* " career ".
20-9-39	155	..	In line 12 from the top, *for* " them " *read* " then ".

COUNCIL OF STATE.

Wednesday, 27th September, 1939.

The Council met in the Council Chamber at Viceregal Lodge at Eleven of the Clock, the Honourable the President in the Chair.

DEFENCE OF INDIA BILL—*concluded.*

THE HONOURABLE THE PRESIDENT : We will now proceed with the second stage of the Defence of India Bill.

Clause 2.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan) : Sir, I move :

" That in part (*ii*) of sub-clause (*2*) of clause 2 of the Bill for the word ' prejudice ' the word ' affect ' be substituted. "

The clause reads thus :

" Without prejudice to the generality of the powers conferred by sub-section (*1*), the rules may provide for, or may empower any authority to make orders providing for, all or any of the following matters, namely :—"

and then you come to clause (*ii*) :

" prohibiting anything likely to prejudice the training, discipline or health of His Majesty's forces ; "

I should have thought that the word " affect " was more definite and more precise. I do not understand the word " prejudice ". Even if you made a *bona fide* pacifist speech, you might come under this word " prejudice ", and therefore with a view to eliminating all possibility as to what is meant by this clause I am suggesting the word " affect " for the word " prejudice ".

THE HONOURABLE MR. A. DEC. WILLIAMS (Nominated Official) : Sir, on the contrary, I would suggest that the substitution of the word " affect " for the word " prejudice " makes the clause vaguer and wider. I do not know if that is the intention of the Honourable Member, but Government are quite satisfied with the wording as it is ; they consider it is quite enough for their purpose.

Question put and amendment negatived.

THE HONOURABLE MR. P. N. SAPRU : Sir, I move :

" That in part (*v*) of sub-clause (*2*) of clause 2 of the Bill, after the word ' reports' the words ' knowing the same to be false ' be inserted."

[Mr. P. N. Sapru.]

The clause reads as follows. I have already invited the attention of the House to sub-clause (*2*) which governs all these parts. This part reads as follows :

" preventing the spreading without lawful authority or excuse of false reports or the prosecution of any purpose likely to cause disaffection or alarm, or to prejudice His Majesty's relations with foreign powers, or to promote feelings of enmity and hatred between different classes of His Majesty's subjects ".

I would like the words " knowing the same to be false " to be inserted after the words " false reports " because a man may have unwittingly repeated what he has heard and then he would come within the mischief of this clause. We must penalize deliberately dishonest reports. You must show that the report is intentionally dishonest. That is why I think my words will improve the section.

THE HONOURABLE MR. A. DEC. WILLIAMS : Sir, I suggest that the words inserted in this clause by the Select Committee, namely, " without lawful authority or excuse " fully meet the intention of the Honourable Member of limiting the offence to the spreading of a report knowing the same to be false. The fact that the accused does not know that the report is false is covered by the word " excuse ". I submit, Sir, that the amendment is unnecessary.

Question put and amendment negatived.

THE HONOURABLE MR. P. N. SAPRU : Sir, I move :

" That to part (*vii*) of sub-clause (*3*) of clause 2 of the Bill the following proviso be added, namely :

' provided that the prohibition shall not apply to persons who stand in near relationship to each other '."

The governing clause here is sub-clause (*3*) of clause 2 ; and then we come to paragraph (*vii*) which says :

" prohibit attempts by any person to screen from punishment anyone, other than the husband or wife of such person, contravening any of the rules ";

My Honourable friend Mr. Williams knows the joint Hindu family system and though there is no joint family system among Muhammadans in law, in fact there is a joint family among the Muhammadans also. We know that the relationship between the mother and the son is a very sacred relationship in this country. There may be a mother who has got, as was pointed out by the Honourable Mr. Padshah, an only son and I suppose an only son is loved by a mother more than the wife loves her husband. If the husband is dead, well in certain communities the wife can find another husband for herself or she can satisfy herself in some other manner. So far as the mother is concerned, the son means everything to her. That is the case with the father also and therefore, Sir, I would suggest that we should take cognizance of the instinct of family relationship in this country and not only go by the English law in this matter. The conditions in England are different. Here the mother and the father stand in a very peculiar relationship to their children and we should make some exemption for the mother and the father. That is really why I am pressing this amendment, Sir.

THE HONOURABLE MR. A. DEC. WILLIAMS : Sir, if we proceed on the generally accepted principle that a proviso introduces some modification in the substantive part of a legal provision, the effect that the suggested amendment would have would be somewhat unfortunate ; because, if we take paragraph (*vii*) to provide certain exemptions for husbands and wives, it would appear that the Honourable Mr. Sapru does not regard husband and wife as standing in near relationship with each other. The provision in question was added in the other place. It is based on existing provisions in the Indian Penal Code and it is also based on the common law principle which affords protection to married couples. I suggest, Sir, that this amendment is not necessary.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern : Non-Muhammadan) : Sir, my Honourable friend Mr. Williams has given a very technical reply. Undoubtedly if the clause stands as it is and only the words proposed by my Honourable friend Mr. Sapru are added to it, the amended clause will be open to the objection raised by Mr. Williams. But surely my Honourable friend understands the purpose of the amendment moved by Mr. Sapru and if he wishes to be helpful he can easily draft an amendment which would bring out what Mr. Sapru has in view without being open to any legal objection. The main point made by Mr. Sapru was that in the special social circumstances of India it was not enough to consider the relationship existing between a wife and a husband in connection with the giving of information regarding the commission of offences. It was necessary also to consider other relationships—for instance that of children to their parents. I personally think that this is a very reasonable point of view. I have not the legal knowledge to draft an amendment which would satisfy the legal pandits on the other side but I am sure that they can themselves put forward an amended clause which will be more in consonance with Indian conditions than the present clause is.

THE HONOURABLE THE PRESIDENT : Amendment moved :

"That to part (*vii*) of sub-clause (*3*) of clause 2 of the Bill the following proviso be added, namely :

'provided that the prohibition shall not apply to persons who stand in near relationship to each other'."

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD (Leader of the House) : I think, Sir, Mr. Williams has not replied.

THE HONOURABLE THE PRESIDENT : He has not the right to reply on an amendment. Neither the Mover nor the Government Member is entitled to reply.

Question put and amendment negatived.

THE HONOURABLE THE PRESIDENT : The Question is :

"That clause 2 stand part of the Bill."

The Motion was adopted.

Clause 2 was added to the Bill.

Clauses 3 and 4 were added to the Bill.

Clause 5.

THE HONOURABLE MR. P. N. SAPRU : Sir, I move :

" That in sub-clause (*3*) of clause 5 of the Bill the words ' or attempts to abet ' be omitted. "

Well, Sir, I would invite the attention of the House to this sub-section 5 (*3*), which says that—

" for the purposes of this section, any person who attempts to contravene, or abets or attempts to abet, a provision of any law, rule or order ", etc.

Now, Sir, I understand the word " contravene " and I understand the word " abet " but I do not understand the words " attempts to abet ". That is, you punish a man for committing an offence or abetting an offence. But, I do not know, Sir, what this phrase " attempts to abet " means. Anything done directly or indirectly might amount to an attempt to abet. I think, Sir, the words " attempts to abet " are very wide and therefore are liable to be misunderstood and misinterpreted and therefore I think we should restrict ourselves to using language which we can understand. " Attempts to abet " does not convey any meaning.

THE HONOURABLE MR. A. DEC. WILLIAMS : I think, Sir, the statutory meaning of the word " attempt " as set out, for instance, in the Indian Penal Code, is sufficiently well understood. I will not myself attempt at this moment to give an exhaustive definition of it ; but, for instance, if a person takes action with a view to abetting, that I imagine constitutes an attempt to abet. The object of including this provision is to provide a somewhat severer penalty than flows from the relevant provision in the Indian Penal Code. It was inserted deliberately and we would not be prepared to see it deleted.

Question put and amendment negatived.

THE HONOURABLE THE PRESIDENT : The Question is :

" That clause 5 stand part of the Bill. "

The Motion was adopted.

Clause 5 was added to the Bill.

Clauses 6 and 7 were added to the Bill.

Clause 8.

THE HONOURABLE MR. P. N. SAPRU : Sir, I move :

" That in part (*i*) of sub-clause (*2*) (*b*) of clause 8 all the words after the words ' Additional Sessions Judge ' be omitted. "

This, Sir, I confess is a rather important amendment from our point of view. Clause 8 deals with Special Tribunals and their constitution. I am not in this amendment raising any question of principle so far as the Special Tribunals are concerned. I concede that Special Tribunals may be necessary for the purpose of expeditious justice in a war such as we have today in the

world. But it is necessary for us to consider what the constitution of this Special Tribunal may be. You must remember that there will be a finality attaching to the judgments of these Special Tribunals so far as imprisonment up to 10 years is concerned. That is to say, if a man has been convicted for a term of imprisonment, shall we say, of 9 years 11 months and 30 days or 29 days, he cannot get any right of appeal. Therefore, the powers of these Special Tribunals are very, very great indeed. We are giving a finality to their decisions and therefore it is necessary to see that these Tribunals are properly constituted. I would not care for a right of appeal if I got a Special Tribunal of three High Court judges. Then I would feel that I was getting a fair chance and that an appeal would not be of much value to me. But here, if I were the accused, I would not be getting a Tribunal of that character. I would be getting a Tribunal of this character, *viz.*, a man who is qualified to be a High Court judge. Well, a man who is qualified to be a High Court judge does not necessarily become a High Court judge. I am qualified to be a High Court judge. I have practised for more than 15 years. But I do not find myself on the Bench of my Court, or, for the matter of that, of any Court. There are others who have practised for 15 years at the Bar and who have the technical qualifications for a High Court judgship, but I am sure are not likely to be ever fit to be High Court judges. The other members of the Special Tribunal may be sessions judges, additional sessions judges, chief presidency magistrates, additional chief presidency magistrates, district magistrates or additional district magistrates. The sessions judges and additional sessions judges, I confess, stand on a different footing from chief presidency magistrates, additional chief presidency magistrates, district magistrates and additional district magistrates. The sessions judge himself is a judicial officer. When he tries cases, he tries to approach them from a judicial point of view. He is not interested directly or indirectly in the maintenance of public order in his district. He has no executive bias. He generally is a man with a larger experience of judicial work. In our province, before you become a sessions judge, you must have been a sessions and subordinate judge. Therefore, he has that much training and he is able to get rid of the executive bias to some extent. At all events, he has been able to get rid of the executive bias which he acquired in his early days, as an assistant magistrate or as a joint magistrate. If he happens to be a Provincial Service man, when he is a man who has never had any executive experience, he starts as a munsif in our province and then he becomes a civil judge and then he is invested with sessions powers and becomes a sessions judge. Therefore, he is essentially a lawyer and therefore in trying these cases he will approach the questions raised before the Tribunal from a lawyer's point of view. So far as the district magistrate is concerned, apart from district administration—and district administration takes a good deal of the time of the district magistrates—and apart from revenue administration—and revenue administration is getting more and more complicated in these days of landlord and tenant problems—apart from the district and revenue experience, his judicial experience is confined to trying ordinary simple cases which involve a maximum imprisonment of two years. He also hears appeals from subordinate magistrates. He has not that command and that knowledge of criminal procedure and the law of evidence which the sessions judge has and he is not—I am not blaming him ; I am blaming

[Mr. P. N. Sapru.]

the constitution of his mind and the subconscious bias which he has imbibed—he has not that judicial experience which fits a man to be a good judge. You may have a Tribunal where you may have a man who was qualified to be a High Court judge. He may have one view of the guilt or otherwise of the accused. You may have two district magistrates and they may take a different view of the guilt or otherwise of the accused. As the majority view is to prevail, the result will be that the man will be convicted by two men of—shall I say without giving any offence—inferior judicial qualifications and inferior judicial equipment. Now, Sir, it is essential that justice should be done ; but it is also further essential that the accused should have a feeling that he has had a fair trial and that justice has been done. Our whole jurisprudence is based upon this principle that the accused should have no reasonable apprehension that justice is not being done to him. You have the transfer provisions in the Criminal Procedure Code. Most of the applications that are filed in the High Court for transfer of this case or that case from this magistrate or that magistrate are of a frivolous nature. I am sure that the magistrate, in most of these cases, has no prejudice either for or against the accused. But the High Court very often interferes on this ground that there is a reasonable apprehension in the mind of the accused that he is not likely to have a fair trial before a particular magistrate. You get applications making the sort of allegation that the magistrate is friendly with the complainant or that he has been dining with him at the United Service Club or at the Allahabad Club. You get these kinds of frivolous applications before the High Court. But these applications sometimes succeed because the judges say, " Well, there is a reasonable apprehension in the mind of the accused that he is not going to have a fair trial and therefore it is necessary for us to see that the accused feels that he is having a fair trial ". You ought to engender this feeling by constituting your Tribunal in this manner.

Then, Sir, it is said that we have popular Governments in the provinces and therefore we must trust them because it will be the duty of those popular Governments to constitute these Tribunals. Now, Sir, I do not want to say anything against those popular Governments. I think they have a very hard task before them and I am sure we all wish them success in the task, but the answer to this line of criticism is, why have any qualifications at all, why do you have a qualification for High Court judges in the Government of India Act, why not trust the Secretary of State who is responsible to Parliament for appointing the right kind of men as High Court judges, why prescribe the qualifications that a man must be a barrister of 10 years' standing, or an advocate of 10 years' standing or a civilian who has exercised judicial powers of some years' standing before he can be appointed ? Why have any statutory qualification at all ? Why not leave everything in the hands of the responsible Government ? You have these qualifications because you think that some statutory safeguards are necessary to ensure confidence in the administration of justice so far as the public is concerned. Therefore, I say that this clause ought to be revised. It is desirable that those who are going to be tried by the Special Tribunal should have confidence in the impartiality of these Special Tribunals. Sir, I strongly urge my Honourble friend Mr. Williams even at

this late hour to agree to this amendment. It will make a vast difference so far as we are concerned in our attitude towards this Bill if this amendment is accepted.

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN (United Provinces West : Muhammadan) : Sir, I am very glad that my Honourable colleague has brought an amendment like this before the House. There is considerable force in what he has said and I think that this amendment ought to be accepted by the Honourable Mr. Williams. The most unfortunate thing is that the Bill has come very late to this House, though it could not be helped, and if an amendment is carried here it will have to go before the Assembly, which has dispersed. As I said the other day these emergency powers are necessary and they must at once be given. The effect of the amendment, if carried, would be that the Bill will have to be postponed till the next session. (*An Honourable Member* : " There is an Ordinance in existence ".) Yes, I want to draw the attention of the Honourable Mover to the fact that although the emergency powers are necessary, yet the authority to which the powers are given should be properly constituted, and there is no emergency as regards the constitution of these Tribunals. They are not going to be set up at once. Probably the Provincial Governments will see whether the ordinary judicial machinery is not sufficient to cope with the situation, and it will be after that that the Tribunals may be constituted. Therefore, there is plenty of time for consideration.

I hope it will be realized and appreciated that the ordinary Criminal Procedure Code does not give any power to any magistrate of any standing for the trial of serious cases which are exclusively triable by a Court of sessions, unless the magistrate is given power under section 30, which is given after a good deal of consideration. You will see, Sir, that when in ordinary cases triable by a Court of sessions a magistrate is not empowered to try the case, there must be some reason and that must have been considered when that legislation was passed. In these cases the Tribunal has been given jurisdiction over very, very serious offences and the procedure is what one might call a summary procedure, or a procedure very similar to that adopted in courts-martial. Therefore, I would request the Honourable Mr. Williams to consider that in cases where a Tribunal is set up it should be such as will have the confidence of everybody and nobody should have any complaint about it at all. I had experience of a Special Tribunal in normal days, when the Government of India set up a Tribunal to try the Kartarpur riot cases. I was appearing for the Crown at that time, and the Tribunal was composed of Sir Charles Ross Alston, Mr. Justice Dalal, who was then a Sessions Judge, and a High Court Judge Mr. Justice Tudball. In that case nobody could say anything as to the constitution of that Tribunal. There was no appeal from that Tribunal as here. There was no inquiry before the commitment. And therefore the Tribunal which should try cases like these ought to be such that it should have the confidence of the accused that he will have as impartial trial.

Now, there is another thing which I would like to draw the attention of the Honourable Mover to, that in cases like these, when a Tribunal has power to try cases which are not appealable, cases in which the procedure is very, very summary, a magistrate is not needed. Why should he be there at all ?

[Haji Syed Muhammad Husain.]

It is because this is a summary trial and there is a final judgment? What is the necessity of keeping a magistrate also there when the Tribunal could be constituted of persons who have higher qualifications. Therefore, it is entirely unnecessary to have a magistrate as one of the members of the Tribunal. I would have certainly supported this amendment and voted for it had this not been a time when it is not advisable to support it because of the delay it would cause. At the same time I would say that a supplementary Bill should be brought in the next session, and we should wait to see what the constitution of the Tribunal is if any is set up. Although you have taken the power and can appoint a magistrate, yet in practice it is not necessary that you must appoint one. You have power to appoint such persons as are qualified for judgship of a High Court or is a person of sufficient judicial standing or is a sessions judge.

With these words, Sir, while I support the reasonings advanced by my colleague in support of his amendment, I am exceedingly sorry to say, owing to the necessities of the time, I would ask the Honourable Mover of the amendment to withdraw his amendment and content himself with what we have said here and see whether the principle of the amendment is accepted by the Government or not.

THE HONOURABLE SIR DAVID DEVADOSS (Nominated Non-Official): Sir, the Bill provides for a Tribunal of three persons. It is not one magistrate or one judge that is going to try any of the cases coming under any of these clauses, but three judges. The Honourable Mr. Sapru said he would be satisfied if three High Court judges would try the case. I have some experience of criminal cases and I am yet to know of an accused person who was satisfied with a judgment against him.

THE HONOURABLE MR. P. N. SAPRU: Then abolish the High Courts!

THE HONOURABLE SIR DAVID DEVADOSS: I will come to that. If I might take up the time of Council, I would say this. There is a well known case called the Ashe murder case. It was tried by three High Court judges, the learned Chief Justice, the late Sir Sankaran Nair and a Civilian Judge. The case was tried by the High Court and all the persons who were accused in the case were convicted; they were not satisfied with the judgment. A certificate was obtained from the Advocate General and the case came before five or seven judges. You will find it reported in 30 or 31 Madras. It is impossible to say whether any accused person who after conviction could be said to be satisfied with a judgment given against him. I can mention half a dozen other cases from Madras. There was the well known case of Subramania Ayyar. He was tried in sessions on the Original Side of the High Court sessions and he was convicted. Then he was not satisfied and he obtained a certificate and went before the whole Bench of the High Court—I believe of seven Judges. He was not satisfied with that either and he went up to the Privy Council. I can mention other cases. Therefore, it is no question of the number, of three High Court judges trying the case. It is a question of the mentality of the accused. As I said, is there any single accused person who after conviction feels that he is satisfied with the correctness of the judgment? It has been

said that you must have at least a sessions judge. We know that the sessions judges of today become High Court judges tomorrow; and chief presidency magistrates become judges as well. If you will pardon a personal allusion, Sir, Sir Abdur Rahim, who now occupies such an important place in the Legislature today, was appointed a Judge of the Madras High Court in the year 1908 or 1909. He was one of the most excellent and most independent judges. I believe before that he was a Presidency Magistrate in Calcutta. Therefore it is a question of personality. I have known men whom we call submagistrates in the Madras Presidency, men who are getting only Rs. 100 and who exercise what are known as second class powers, to be thoroughly independent of the executive and there are persons who occupy very high positions who cannot be said to be so independent. It is not therefore a question of sessions judge or magistrate or presidency magistrate. Then it is said why should we have qualifications, why don't you leave it to the Government to appoint anybody as a High Court judge? There must be some minimum qualification for a place? Otherwise anybody may apply for it; a chaprassi may apply for it. Therefore, we have a minimum qualification. But in the making of appointments it is not the minimum qualification that is taken into consideration; it is the maximum qualification that is taken into consideration. Therefore, Sir, I fail to see the objection to the appointment of a chief presidency magistrate or additional district magistrate. In Madras, so far as my experience goes civilians are made district judges and also Provincial Service men who begin life as district munsiffs rising to be sub-judges and being promoted as sessions judges and from the Sessions Court coming up to the High Court. I know two or three eminent Judges of the Madras High Court who rose from the Provincial Service. They were first taken on as district munsiffs, then they became sub-judges and then they became district judges and then they got into the High Court. It is not a question of a district magistrate not being eligible to sit on this Tribunal, but a proper person being appointed. It is for the Local Government to choose a thoroughly independent person and a person who will do justice without fear or favour.

With these words, Sir, I strongly object to the amendment.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Mr. President, I am sure that when my Honourable friend Sir David Devadoss was speaking Mr. Williams was saying to himself, "Save me from my friends!" If all that Sir David Devadoss said is true, there is no reason for prescribing the constitution of the courts or for providing for appeals. The accused is never satisfied; people who have served as executive officers may in reality have a more judicial frame of mind than judicial officers and so on. I am sure that the Honourable Mr. Williams has carefully noted these points and when the amendment of the relevant laws is under the consideration of the Government of India he will try to benefit by the advice given to him by Sir David Devadoss.

Sir, the proposition put forward by Mr. Sapru is a very simple one. At present the constitution of the Special Tribunal is such that only one of the three persons composing the Tribunal may be a person possessing judicial experience or experience as a lawyer.

THE HONOURABLE SIR RAMASWAMI MUDALIAR (Commerce Member): Two.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: It is not so. The remaining two can be persons who have served all their lives as executive officers only. My Honourable friend Sir Ramaswami Mudaliar interrupted me and said that two members of the Tribunal must be persons having judicial experience. That view, I submit, is not correct. It is stated in sub-clause (*3*) of clause 8 that where only one of the members of the Tribunal is qualified under part (*a*) of sub-clause (*2*) at least one other member of the Tribunal shall be qualified for appointment under clause (*b*) of that sub-section exclusive of those specified in sub-clause (*ii*) of the said clause (*b*), that is, one of the persons must belong to sub-clause (*i*) of clause (*b*). Who are the persons mentioned in sub-clause (*i*)? Sessions judges, additional sessions judges, chief presidency magistrates and additional chief presidency magistrates. It depends on the Local Government concerned whether it would select a sessions judge or a chief presidency magistrate. It is perfectly possible therefore for two members of the Tribunal to be men with no previous judicial experience at all. I would draw the attention of Government to the constitution provided for the Special Tribunal under the Defence of India Act, 1915. Sub-section (*3*) of section 4 of the Defence of India Act says:

"(*3*) All trials under this Act shall be held by three Commissioners, of whom at least two shall be persons who have served as sessions judges or additional sessions judges for a period of not less than three years, or are persons qualified under section 2 of the Indian High Courts Act, 1861, for appointment as judges of a High Court or are advocates of a Chief Court or pleaders of ten years' standing".

The Defence of India Act, 1915, thus required that at least two members of the Special Tribunal must possess judicial experience and it was not necessary under the Act to have any executive officer at all on the Tribunal. All the three persons might be men who had served as judicial officers or were judicial officers and lawyers. In the present case, however, it is quite possible that two members of the Tribunal may have never served as judicial officers. The amendment is a very simple one and ought to have the sympathy of Government. My Honourable friend Mr. Williams, who has served as a judicial officer, cannot but sympathise with our point of view. He may, however, say that, whatever the merits of the amendment, he is precluded from accepting it as the Assembly has adjourned. The acceptance of the amendment will only mean the continuance of an Ordinance which admittedly is more drastic than the Bill before us. Well, I am sure that my Honourable friend Mr. Sapru will be satisfied if he assures the House that the amendment has the sympathy of Government, that the Local Governments will be requested to see that at least two members of the Tribunal are persons who have had previous judicial experience and then he would have the law modified in the direction suggested by Mr. Sapru's amendment as soon as the Assembly meets. If this is done, I am sure the purpose that Mr. Sapru has in view will be satisfied.

*THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa: Muhammadan): Mr. President, the amendment which has just been moved is a very necessary amendment and one on which there is not much ground for difference of opinion. Sir, I cannot deal with the speech of the Honourable Sir David Devadoss because I was not present to listen to his full

*Not corrected by the Honourable Member.

speech, but I learn that he indicated that people have not full confidence either in the magistracy or in the judiciary. Well, that opinion no one will be prepared to endorse. I personally think, Sir, that there is some misapprehension about the provisions of section 8. Out of the 11 provinces of India, in eight provinces there are no chief presidency magistrates, so in those provinces you will have necessarily a man qualified to be a High Court judge and another an additional or sessions judge only. There will be no presidency magistrate because they do not exist. In the three presidencies of Madras, Bombay and Calcutta, where you have chief presidency magistrates only in the towns of Calcutta, Madras and Bombay, you will have chief presidency magistrates. As we know, in fact, there is already a provision to have two judicial officers or persons qualified to be judicial officers under the Act itself. Now, we come to the third provision. Where is the necessity of having a district magistrate ? There is going to be no commitment proceedings. The decision of the Tribunal, except in cases specified, would be final. It would be better, Sir, if the Government would circulate to the provinces the opinions of the Legislature that they prefer that it should be composed entirely of the judicial officers. It is not incumbent to include a district magistrate and as the Provincial Governments have the confidence of Mr. Sapru and Pandit Kunzru, there need be no doubt that they will not include a district magistrate !

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I am sure the Punjab and Bengal have your support !

THE HONOURABLE MR. HOSSAIN IMAM : Well, I have not defended them here.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : You only attack some ; you don't defend the others.

THE HONOURABLE MR. HOSSAIN IMAM : I may mention, Sir, that under the provisions of this Act, it is incumbent to have someone qualified under clause (*a*) and also to have another person qualified under sub-clause (*i*) of clause (*b*). But there is no necessity of having anyone qualified under item (*ii*) of clause (*b*). So it is perfectly in the hands of the Provincial Government either to include a district magistrate or not to include a district magistrate altogether. If the Provincial Governments are the representatives of the people and have regard for their interests and if public opinion is strong against the inclusion of district magistrates, then it stands to reason that they will not include district magistrates in the Tribunal. But to be on the safe side, I would request the Honourable Mr. Williams, if he finds it possible, to intimate the opinion of this House that it prefers not to have district magistrates in this Tribunal. But there is one question, Sir, that where the Central Government is the authority and where the Chief Commissioners are regarded as the Provincial Governments, there the Central Government can give us an assurance that it will consider this matter. The action required by this amendment can be taken by means of executive orders and executive advice and so there is no necessity of pressing this Motion to a vote of this House if the Government is prepared to consider sympathetically the idea behind this amendment.

*THE HONOURABLE SIR A. P. PATRO (Nominated Non-Official): Sir, the amendment relates to the deletion of the chief presidency magistrate and the additional chief presidency magistrate. It does not relate to district magistrates. The clause reads thus:

"(2) No person shall be appointed as a member of a Special Tribunal unless he is—

(b) (i) a sessions judge, additional sessions judge, chief presidency magistrate, additional chief presidency magistrate".

There is no reference whatever to district magistrates. Sir, whatever may be the constitution or the organization of judicial matters in the United Provinces, the experience of other provinces is entirely different. The presidency magistrates or chief presidency magistrates are appointed as judicial officers. They act under the Criminal Procedure Code and they apply all the sections of the Defence Act. Are they not judicial officers? If they are judicial officers, where is the objection to the section itself? That is the whole misunderstanding or misreading of this clause. They admit the arguments relating to sessions judges or High Court judges. All that is beside the point. The only point is whether chief presidency magistrates and joint presidency magistrates are judicial officers or not. They administer the law. They are not outside the law, and being judicial officers, where is the objection to them? As a matter of practice, these presidency magistrates take cognizance of the highest criminal cases. After all, this Tribunal is a Criminal Tribunal to try criminal cases—offences committed under this Act. The offences committed under this Act are triable by these magistrates who have had experience in trying criminal cases. They are therefore best qualified for this purpose—better than a sessions judge or district judge who has been appointed from the Bar. There are district judges and sessions judges who are appointed straight from the Bar. What is their experience? These magistrates have experience of trial of very extreme cases, especially in presidency towns. They have been exercising judicial powers under the Criminal Procedure Code. Therefore, they are most qualified to take cognizance of cases under this criminal law. Several High Court judges have been appointed straight from the Bar. It may happen that the Honourable the Mover of this amendment may be appointed a High Court judge. I ask, What criminal experience has he got in order to try these very important cases and to weigh the evidence? What is the experience of members of the Bar, appointed straight as High Court or sessions judges, in the administration of criminal law and in the weighing of evidence? Therefore, it is absurd to say that these chief presidency magistrates and additional chief presidency magistrates, who have life-long experience of administering criminal law in presidency towns, are not judicial officers and are not competent to sit on a panel of judges constituted to administer this law.

12 NOON.

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR (Madras: Muhammadan): Sir, so much has been said on this amendment that it is not necessary for me to adduce any further arguments about the justifiability of the demand which my Honourable friend Mr. Sapru has made. I should only like to draw the attention of the House to one point which

*Not corrected by the Honourable Member.

cannot be denied by anybody. My Honourable friend who has just sat down was also one of the eminent lawyers in our presidency and my Honourable friend Sir David Devadoss was one of the most distinguished Judges of the Madras High Court. But both of them cannot say that the chief presidency magistrates and district magistrates are empowered under the existing criminal law to try cases and give judgments in cases where the offence is punishable with death or transportation for life. These magistrates are under the present law debarred from passing a judgment in the case of offences punishable with death or transportation for life. All that these people—first class magistrates and chief presidency magistrates—are allowed to do is to hold a preliminary inquiry. These people are not trusted to do the right thing, and to take a proper view of the law where complicated questions of law and evidence are involved. It is for this reason that they are not now allowed to pass a judgment in these matters.

THE HONOURABLE MR. P. N. SAPRU : Can they try such cases ?

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR : They cannot try. They can only hold a preliminary inquiry. That is why I say that these people are not competent to deal with cases of serious offences. Even today they are not supposed to be competent to pass judgment over these offences. Why should these people now be given that power under this law, where the procedure is thoroughly summary, where there is no appeal from the lower Courts and where there has been no preliminary inquiry and where the evidence recorded would mostly be not *in extenso* but only the substance of it ?

THE HONOURABLE SIR A. P. PATRO : There are appeals from sessions judges to the High Court.

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR : Sessions judges are today empowered to try cases and pass judgments even though there might be an appeal. That is another matter. But magistrates have not the power to try cases punishable with death or transportation for life. All that they can do is simply to conduct a preliminary inquiry and send the records to the sessions judges. They are considered incompetent to pass any judgment in cases in which the punishment is death or transportation for life. They do not pass judgment. They simply pass an order, committal order. My Honourable friend Sir David Devadoss may, with his breadth of view, consider that the district magistrate or any magistrate for the matter of that—even an ordinary second class magistrate of the Bench Court—could be expected to be quite as discreet and as correct in his view of law as the High Court judge. But this is a proposition which none of us will be prepared to accept. My Honourable friend Sir David Devadoss thinks that there might be people who could have this kind of capacity. But they are not to be found everywhere. After all, we have got to deal with people of ordinary ability, and we have got to go only by what ordinarily happens. It cannot be denied that the sessions judge will be able to bring a much more judicial mind to the case before him than a district magistrate, and the sessions judge will be able to take a more accurate and proper view of the law of evidence than the district magistrate who is not at all used to give himself much pains in understanding complicated questions of law. As has been observed by most of our friends, it may not be

[Saiyed Mohamed Padshah Sahib Bahadur]

possible for Government to accept this amendment at this moment, but it is still possible even under this law to give effect to the suggestions made. This law may not be altered, but it gives full power to the Government to give instructions to the Local Government to see that the constitution of this Tribunal is set up in such a way as to satisfy the demand of the Honourable Mr. Sapru.

THE HONOURABLE MR. A. DEC. WILLIAMS: Sir, the discussions on this amendment constitute as much an indictment of those provisions of the Criminal Procedure Code and other parts of the criminal law of this country which confer jurisdiction on magistrates as of the provisions of this Bill. If certain Honourable Members opposite are to be believed, magistrates are not fit to try cases punishable even with two years' imprisonment. If there is anything regrettable in the course of the discussions on this Bill it is, I submit, the constant and prolonged attacks of certain Members of this House on a magistracy which, I am convinced, does substantial justice in the courts. The Honourable Mover of this amendment, if he is to be included amongst those holding these views, has certainly adopted a somewhat peculiar method of giving effect to it. If he will carefully look at his amendment, he will see that he is excluding chief presidency magistrates and additional chief presidency magistrates from the Special Tribunals but is retaining district magistrates and additional district magistrates.

THE HONOURABLE MR. P. N. SAPRU: How?

THE HONOURABLE MR. A. DEC. WILLIAMS: I do not wish to be accused again of making capital out of a drafting point, but still the fact remains that that is the way in which——

THE HONOURABLE MR. P. N. SAPRU: I have said, "all the words after "additional sessions judges, ."

THE HONOURABLE MR. A. DEC. WILLIAMS: In part (*i*).

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Even if the words "district magistrates" and "additional district magistrates" remain, it will be certain that the Tribunal shall contain two persons of judicial experience.

THE HONOURABLE THE PRESIDENT: Is it a personal explanation? You are not entitled to make a second speech.

THE HONOURABLE MR. P. N. SAPRU: On a point of personal explanation, Sir. I say that "all the words after the words 'additional sessions judge' be omitted".

AN HONOURABLE MEMBER: But that is only in part (*i*) of sub-clause (*2*).

THE HONOURABLE MR. A. DEC. WILLIAMS: I am afraid the Honourable Member will find that he is in the wrong. However, as I say, I have no desire to make capital of this point. Indeed, I have a suggestion to make and an undertaking to give which I hope will go a long way to meet the difficulties experienced by Honourable Members opposite. We have just been told that a convicted accused is never satisfied, and I have often been inclined to wonder

whether the same dictum does not apply to my Honourable friend Pandit Kunzru. However, I hope on this occasion to be able to please him. As I said before, in the Assembly the Government accepted an amendment of the commencement clause of the Bill which enables them to bring various provisions of the Bill into force at various times, and I can say straightaway that it is not the intention of the Central Government to bring Chapter III of the Act into force until it is definitely called for and then only in the area for which it is called for. (Applause.) Further, so far as this particular amendment is concerned, the Central Government are quite prepared to address Provincial Governments and to suggest to them—they cannot go further than that—to suggest to them that so far as possible all the members of a Special Tribunal should be either qualified for a High Court judgship or be judges. (Applause.) I take this opportunity to make this statement because I see that all the remaining amendments relate to Chapter III and this undertaking may have some relevance to them.

I hope, Sir, that the Honourable Member will now not wish to press his amendment.

THE HONOURABLE THE PRESIDENT : Does the Honourable Member wish to press his amendment ?

THE HONOURABLE MR. P. N. SAPRU : No, Sir.

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

THE HONOURABLE THE PRESIDENT : The Question is :

"That clause 8 stand part of the Bill."

The Motion was adopted.

Clause 8 was added to the Bill.

Clause 9 was added to the Bill.

Clause 10.

THE HONOURABLE MR. P. N. SAPRU : Sir, I move :

"That sub-clause (2) of clause 10 of the Bill be omitted and the subsequent sub-clauses be renumberedd."

THE HONOURABLE MR. A. DEC. WILLIAMS : Sir, I oppose the amendment.

Question put and amendment negatived.

THE HONOURABLE MR. P. N. SAPRU : Sir, I move :

"That for sub-clause (2) of clause 10 of the Bill the following be substituted, namely :

'In trial before the Special Tribunal the evidence shall be taken down at length in writing in the English language and the record of such evidence shall be signed by all the members of the Tribunal'."

Sir, as will be seen from another amendment which is against my name, I am providing for an appeal where there is a conflict of opinion among the members of the Special Tribunal. I am providing that where there is a dissentient judgment the accused shall have a right of appeal. Then, Sir, if the accused is to have a right of appeal, the appellate Court ought to have the

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proper material for giving its decision ; and therefore it follows that the procedure in regard to the taking down of evidence needs revision. In fact, Sir, under sub-clause (2) of section 10 the procedure for the taking down of evidence in cases punishable with death or transportation for life is different from the procedure prescribed for cases which do not involve a sentence of death or transportation for life. As I envisage the possibility of an appeal in all cases the procedure for the taking down of evidence has also got to be revised. It is for this reason that I have suggested this amendment ; in order that the appellate Court might be able to do full justice ; it should have a proper record of the case before it. For this reason it would seem necessary that evidence should be recorded in full. It may be said that if you record evidence in full it will take a long time, but then you can give your Special Tribunal special facilities for having the evidence recorded in full.

Sir, I move.

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN : Sir, the only thing which appears to me about this clause is that in cases which are not appealable this procedure will give a sort of immunity to perjurers. If the evidence is not taken down and a record kept there cannot be any prosecution for perjury. Therefore, people will think they have a license to speak lies, either for the prosecution or for the defence. There should be some sort of record of their evidence to which they should be pinned down. It is not only the judgment which we should see to in the end but also the procedure during the trial. That should give some sort of protection to the person who makes a statement, and care should be exercised about his statement. I cannot understand the force of " at length ", either in the amendment or in the sub-clause. Either the evidence is taken down by the Tribunal as given, or the Tribunal has power to take down only as much as it pleases. I cannot see how evidence which is given can be taken down at length——

THE HONOURABLE THE PRESIDENT : That principle is observed in all summary trials.

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN : That is so, but in summary trials we know that hardly once in a blue moon can a case of perjury succeed, because there is no proper record of the evidence. It is open to the accused person always to say, " I did not make this statement, or that it was not my intention to say that ".

In fact there was a time when instructions were issued at least in our High Court that a single record in English should be kept in civil cases. That was one of the criticism that was put forward—that we are feeling that difficulty in prosecuting people for perjury on account of the absence of double record. So I think there is a good deal of force in this amendment that a record of the evidence of witnesses should be kept.

THE HONOURABLE MR. A. DEC. WILLIAMS : Sir, I suggest that the balance of convenience and profit to Government in the conduct of the war is that Special Tribunals should be permitted to get on quickly with their work, not that the courts should be burdened with the trial of perjury cases.

agree with the Honourable Mover of this amendment that this amendment is the logical consequence of the amendment to clause 13 if accepted. But as I regret to say I shall have to oppose that amendment, I must oppose this one also.

THE HONOURABLE THE PRESIDENT : Amendment moved :

"That for sub-clause (*2*) of clause 10 of the Bill the following be substituted, namely :

'In trial before the Special Tribunal the evidence shall be taken down at length in writing in the English language and the record of such evidence shall be signed by all the members of the Tribunal '."

Question put and amendment negatived.

THE HONOURABLE MR. P. N. SAPRU : Sir, I move :

"That in sub-clause (*5*) of clause 10 of the Bill after the word 'opinion' (where it occurs for the first time) the words 'for reasons to be recorded fully in writing' be inserted."

Sub-clause (*5*) of clause 10 reads :

"After an accused person has once appeared before it, a Special Tribunal may try him in his absence if, in its opinion, his absence has been brought about by the accused himself for the purpose of impeding the course of justice, or if the behaviour of the accused in Court has been such as, in the opinion of the Special Tribunal, to impede the course of justice".

The ordinary rule of law is that you may not ordinarily try an accused in his absence. That rule has been to a certain extent reversed in this sub-clause and as in certain cases we are providing for an appeal it would seem desirable that the appellate Court should have before it the reasons of the trial court for proceeding with the case against the accused in his absence. I am not suggesting any change of substance. What I suggest is that the opinion should be recorded in writing so that the appellate Courts may have before them proper material for deciding as to whether the Special Tribunal was or was not justified in trying the accused in his absence.

THE HONOURABLE MR. A. DEC. WILLIAMS : I am afraid, Sir, that I must question the intention, as drafted in the amendment of the Honourable Member again. He wants the opinion of the Tribunal recorded when the absence of the accused has been brought about by himself, for the purpose, in their opinion, of impeding the course of justice ; but he does not apparently want the opinion of the Tribunal recorded if the behaviour of the accused in court has been such as, in their opinion, to impede the course of justice. I do submit that this amendment is wholly unnecessary. I cannot conceive of any responsible court or tribunal taking action of this character without recording the grounds for its opinion on the order sheet of the case.

Question put and amendment negatived.

THE HONOURABLE MR. P. N. SAPRU : Sir, I move :

"That part (*ii*) of sub-clause (*7*) of clause 10 of the Bill be omitted."

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The sub-clause reads :

"The Provincial Government may, by notification in the official Gazette, make rules providing for—

(i) .....

(ii) the procedure to be adopted in the event of any member of a Special Tribunal being prevented from attending throughout the trial of any accused person".

I would like more light to be thrown upon what is intended by these words—

"the procedure to be adopted in the event of any member of a Special Tribunal being prevented from attending throughout the trial of any accused person".

How can any member of the Special Tribunal say whether an accused is guilty or not if he is absent and if he has not a full record of the evidence before him and if he has not had the opportunity of watching the demeanour of the witnesses before him. We attach importance in law to the opinion of the trial court because the trial court has the opportunity of watching the demeanour of witnesses. Here the member of the Special Tribunal will have to give his verdict even without having before him the evidence in full of the witnesses who were examined in his absence. That is something which is not humanly possible for any member of the Special Tribunal to do. He is not going to have before him a record of evidence in full except in cases which involve a sentence of death or imprisonment for life ; and as the Honourable Syed Muhammad Husain pointed out, we cannot convict a man for perjury on the substance of the evidence given by him. You have got to have the precise words used by him. How can you reasonably expect a member of a Special Tribunal who happens to be absent for three or four days to give any verdict on the seventh or eighth day of his attendance on evidence which has not been recorded in full and which was recorded in his absence. Perhaps the Honourable Mr. Williams will be able to enlighten us as to what this clause really means ?

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN : Sir, I agree with what the Honourable Mover of the amendment has said. There is only one thing to which I want to draw the attention of the Government in connection with the framing of rules. I only want to mention that in drafting rules the Provincial Government or the Central Government should take non-officials into confidence for the sake of mutual trust and confidence.

THE HONOURABLE MR. A. DEC. WILLIAMS : Sir, I do not think that this Chapter contemplates the carrying on of a trial before a Special Tribunal with one of its members absent. I myself interpret sub-clause (*1*) of clause 8 as requiring that the Court shall consist of three members who shall be there throughout, subject to the special provision in sub-clause (*4*) of clause 10, which says :

"A Special Tribunal shall not, merely by reason of a change in its members, be bound to recall and rehear any witness who has given evidence",

and the provision which paragraph (*ii*) of sub-clause (*7*) makes is really ancillary to sub-clause (*4*). I do not think it is contemplated that, when you have a Tribunal of three, two shall constitute a quorum. But it might be necessary to

arrange, owing to the death, serious illness or transfer of a member, to replace him by somebody else. The substantive provision governing this sort of case is sub-clause (4) of this clause, not the provision sought to be amended by the amendment.

THE HONOURABLE THE PRESIDENT : Amendment moved :

" That part (*ii*) of sub-clause (7) of clause 10 of the Bill be omitted."

Question put and amendment negatived.

THE HONOURABLE THE PRESIDENT : The Question is :

" That clause 10 stand part of the Bill ".

The Motion was adopted.

Clause 10 was added to the Bill.

Clauses 11 and 12 were added to the Bill.

THE HONOURABLE MR. P. N. SAPRU : Sir, I move :

" That after part (*b*) of sub-clause (*2*) of clause 13 of the Bill the following be inserted, namely :

'(*c*) to a term of imprisonment or fine by a majority of the Special Tribunal'."

I confess, Sir, I look upon this amendment as a rather important one from our point of view. As the position stands it is like this. There is a right of appeal provided in cases of sentence of death. There is a right of appeal provided in cases of sentence of transportation. There is an appeal provided in cases of 10 years' imprisonment and over. Now, Sir, what about cases in which the sentence passed is less than 10 years ? Frankly, Sir, I should have given a right of appeal in all cases but I am not asking Government to go as far as that. What I say is that it is possible that there may be a difference of opinion in the Tribunal itself. Two may be of the opinion that a particular accused is guilty. One may be of opinion that a particular accused is not guilty. And where there is such a difference of opinion it stands to reason that there is some reasonable doubt as to the guilt or innocence of the accused. If of three qualified persons, one thinks that a man is not guilty, well you cannot say that the guilt of the accused is beyond all doubt.

THE HONOURABLE SIR DAVID DEVADOSS : Reasonable doubt.

THE HONOURABLE MR. P. N. SAPRU : I suppose Sir David Devadoss has such implicit confidence in the executive that he would condemn everybody without trial. If they were given full authority to convict us all, he would have the completest confidence in them. Well, I have the greatest regard for the Honourable the Leader of the House and my distinguished friend the Honourable Sir Ramaswami Mudaliar, but I am not prepared to place my liberty at his disposal ! I think that he is human and therefore he is liable to err. Well, Sir, it sometimes happens—I do not know whether Sir David Devadoss has had that experience—but it sometimes happens that even High Court judges have in cases gone wrong and had to be corrected by the

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Privy Council. I remember, Sir, a case in which the Privy Council came down rather severely upon a distinguished Judge of the Madras High Court—I think it was Sir Sankaran Nair—and they said that the Madras High Court had in that particular case disregarded the principles of natural justice. We cannot entirely eliminate the possibility of human error and where we are dealing with human life we ought to see that, as far as possible, we eliminate the possibility of human error. The whole law of evidence, the whole law of procedure, our whole system of criminal jurisprudence, is based upon this principle. Now, Sir, what is the procedure that you adopt in cases of difference of opinion in criminal cases in the High Court itself? It is laid down in section 429 of the Criminal Procedure Code. I would just invite the attention of the House of it :

> " When the judges composing a Court of Appeal are equally divided in opinion, the case, with their opinions, shall be laid before another judge of the same Court, and such judge, after such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion ".

That is to say, where there is a difference between two judges, the opinion of the judge who agrees with the trial court does not prevail. The matter has got to be laid before a third judge. (*An Honourable Member* : " But there is a third judge here ".) Well, Sir, here a man may be sentenced to 9 years, 11 months and 29 days, even though one of the members of the Tribunal thinks that that man is not guilty and the High Court will have no appellate jurisdiction in this case. The High Court will have no revisionary jurisdiction in this case either. I do not think, Sir, it will be open to the High Court under this Act to inquire whether there has been any material irregularity vitiating the trial. I do not think, Sir, it would be open to the High Court to say whether the Tribunal has or has not exceeded the jurisdiction vested in it. Therefore, Sir, the position from the point of view of the accused is very unsatisfactory. And if we can get even one member of the Tribunal to say that his guilt is not beyond reasonable doubt, well he ought to be given a chance. That member may come to the conclusion that the man is absolutely innocent. It may be a very decisive opinion in that case. Very often it happens, Sir, that dissentient judgments prevail. Sometimes the High Court convicts a man and the Home Secretary reverses the judgment in the exercise of his prerogative of mercy. Why ? Because it appears that the High Court has gone wrong. (*Honourable Members* : " No no ".) Certainly, the prerogative of mercy is exercised on certain judicial grounds. It is never said that there has been a miscarriage of justice. But, as I know the constitutional position in England, the Home Secretary when he wants to interfere with a judgment of the High Court consults the Judge of the High Court concerned. He always fortifies himself with legal opinion.

THE HONOURABLE SIR A. P. PATRO : Party considerations.

THE HONOURABLE MR. P. N. SAPRU : I don't know anything about the Justice Party of which Sir A. P. Patro was a very distinguished member, but I know this that party considerations do not prevail with the Home Secretary so far as the administration of justice in England is concerned. And I would like, Sir, in these matters the English convention to be followed. Sir,

I would therefore suggest in all seriousness, in all earnestness, that the amendment that I am proposing is not an unreasonable amendment. It does not provide for an appeal in all cases. I am only providing for finality so far as Tribunal verdicts are concerned in a number of cases. It is only where there is a dissentient judgment that I want a right of appeal to the High Court to be given. That, I submit, Sir, is not an unreasonable request, having regard to our experience as men and as lawyers.

Sir, I move.

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN (United Provinces West : Muhammadan) : Sir, this is a very important amendment and should be given effect to. My reason is, shortly, that in criminal cases we have to judge an accused keeping in view the principle that his guilt should be proved without reasonable doubt. I am quite certain that if one judge differs from the other two judges of a High Court, my Honourable friend himself will not say that that does not throw a reasonable doubt on the guilt of the accused. It does happen in the Hight Court that if a Bench hears an appeal in which two judges differ, it is referred to a third judge and the opinion of the third judge prevails. I have also seen cases in which the third judge merely says, " By virtue of the difference between the two judges I think there is a reasonable doubt and I acquit the person ". So, my submission is, that when two of the members of the Tribunal hold one view and the third holds another view, it is practically judgment by one judge and therefore, in such cases at least, the accused should have an opportunity of preferring an appeal.

THE HONOURABLE MR. A. DEC. WILLIAMS : Sir, one of the chief difficulties in adopting this amendment is that there is judicial authority for the proposition that, where there is legal provision that in the event of a difference of opinion amongst the members of a Special Tribunal the opinion of the majority should prevail, it is improper to record a dissentient judgment. In my own personal experience, the procedure has been adopted, in pursuance of this decision of a High Court, of not recording upon the order sheet the fact that there was a difference of opinion. In the face of a judicial decision of that kind from the High Court, the amendment of the Honourable Member might be completely stultified. But apart from that, Sir, I must now state categorically that I have gone as far as I can in the direction of giving undertakings, on behalf of Government in order to meet the views of Honourable Members opposite. There is no intention of making the procedure of Special Tribunals conform to the general principles of the ordinary law. Otherwise, why have them ? Even the ordinary law draws the line somewhere as regards the right of appeal. Here we have drawn it somewhat higher than under the ordinary law in view of the fact that these Special Tribunals are constituted of three members. I am afraid that I must oppose the amendment.

THE HONOURABLE SIR DAVID DEVADOSS : Sir, my Honourable friend Mr. Sapru thinks that this is going to be on the Statute-book for all time. This is only a temporary measure, designed for the purpose of meeting an emergency which faces us, and therefore I do not think that his criticism of the constitution of the Tribunal is just. Moreover, when three persons are appointed, if two of them take one view and the third another view, why should

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it be said that the view of the minority is the correct one ? It is said that because one member differs from the two others, there should be a right of appeal, as if that view is the correct one. I may mention that in the Madras High Court, in very important cases, both civil and criminal, instead of two judges trying them, three judges are made to try them in order to avoid the necessity of referring to a third judge in case of difference of opinion. That sets at rest once for all the matter in dispute. Here, following that principle we have got three members in the Tribunal. If two of them hold a view against the accused, then that must be taken for all purposes as the correct view. There may be cases where they go wrong. But what I objected to at the time when Mr. Sapru was speaking was to the use of the word " doubt ". There can be a doubt in any case. You can doubt anything. You can doubt the rising of the sun tomorrow. But is it a reasonable doubt ? The law says that if there is reasonable doubt, the benefit of the reasonable doubt should go to the accused, not any doubt. You may doubt anything. That is the reason why in this Bill it is said that the majority opinion should prevail. Of course, there is appeal provided in serious cases. As the Honourable Mr. Williams said, you must draw the line somewhere. Supposing this Bill had said four or five years' imprisonment. You will then ask, " Why can't you make it three years ? " These cases are not likely to happen every day. This Bill when passed into an Act will be in force only during the time of the war and for six months thereafter. I therefore do not see any substance in the objection.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : My Honourable friend Sir David Devadoss must have been a source of great strength to his brother judges when he sat on the Bench of the Madras High Court.

THE HONOURABLE THE PRESIDENT : Ironical remarks and suggestions ought to be avoided. That is the Standing Order. The Standing Order says, " that no Member should speak ironically or in disparagement of any other Member ".

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I only appreciate the Honourable Member's capacity for persistently misunderstanding other Honourable Members. He attributed certain things to Mr. Sapru. He said he saw no reason why, when there were three judges, the view of the minority should prevail. He conveyed the suggestion that Mr. Sapru asked that in all cases the view of the dissentient judge should be held to be the correct one. This is not what Mr. Sapru said. All that he said was that considering the large powers that the Special Tribunals are going to be vested with, it was necessary to take special care to see that there was no miscarriage of justice. It was necessary, since the ordinary procedure had been departed from in a large number of cases that there should be a departure in another matter also. So far as the ordinary law functions, it may be correct to say that the judgment of the majority should prevail. But, in the exceptional circumstances created by this Bill, it is necessary to provide, in order that innocent men may not suffer, that where there is a reasonable doubt about the guilt of the accused, he should have an opportunity of appealing to a higher

authority. How my Honourable friend Mr. Sapru, in putting forward this view, pleaded for the acceptance of the view of the dissenting judge, I cannot understand.

Another argument put forward by Sir David Devadoss was that it was not necessary to scrutinize the measure very carefully, for although drastic, it was only temporary, and was not going to remain in force for ever. Is that any argument really in favour of either any law or executive order? The orders passed under section 144 are never of a permanent character. They are always temporary. Two meetings or processions are prohibited for a week or two or a month or two months. Yet, such orders may be regarded as an unnecessary hardship by the public at large and the complaint against them may be perfectly justified. Now, this Bill certainly affects the liberties of the people to a far greater extent than any order under section 144 of the Criminal Procedure Code can. We have every right, therefore, to scrutinize, in fact on us is cast the duty of scrutinizing carefully every provision of the Bill so as to see that the citizens of the country are not made to part with more than is necessary of the liberties that they are entitled to.

THE HONOURABLE THE PRESIDENT: Amendment moved:

"That after part (*b*) of sub-clause (*2*) of clause 13 of the Bill the following be inserted, namely:

'(*c*) to a term of imprisonment or fine by a majority of the Special Tribunal'."

Question put and amendment negatived.

THE HONOURABLE THE PRESIDENT: The Question is:

"That clause 13 stand part of the Bill."

The Motion was adopted.

Clause 13 was added to the Bill.

Clauses 14 to 21 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. A. DEC. WILLIAMS: Sir, I move:

"That the Bill, as passed by the Legislative Assembly, be passed."

All that I have to say at this stage is that I am most grateful to Honourable Members on all sides of the House for the part they have taken in these discussions, which I trust—though no actual amendment has been made to the Bill in its passage through the Council—have not been wholly unprofitable.

THE HONOURABLE MR. P. N. SAPRU: Sir, the Bill came to us in this House after the Legislative Assembly had been adjourned. The procedure—if I may be allowed to dilate on it for a second—was not fair, for it deprived us of the opportunity of having our amendments considered on their merits. Sir, I cannot help feeling that the Council should have been more intimately and actively associated with the formulation of this measure and I regret that this has not been done. To a certain extent I am grateful to Mr. Williams for the assurance that he has given, but I am sure that if we had been associated more effectively with the formulation of this measure we should have been

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able to contribute something to it. I honestly feel that some of the amendments that I had the honour to move had reason behind them. I think the Honourable Mr. Williams, who is a very reasonable man, will perhaps agree in private that they had some reason behind them.

THE HONOURABLE MR. A. DEC. WILLIAMS: I will agree in public.

THE HONOURABLE MR. P. N. SAPRU: In public his mouth is shut, but I credit him with much greater humanity and sense than his supporters. I am sure that if Mr. Williams was a free man we could have persuaded him to accept some of our amendments. But he was not a free man. The Legislative Assembly had been adjourned; the Bill had been passed, and therefore it is unfortunate that there could be no real discussion of the amendments on their merits.

Sir, the Bill is admittedly one of extreme severity and only extreme necessity can justify the severity of its provisions. I should like once again to say that it is most essential that the powers with which the Legislature is vesting the executive should be used with great care, caution, wisdom, humanity and judgment. They should not be used to stifle legitimate, peaceful, constitutional, political agitation or *bona fide* trade union activity. I should like the trade unions to co-operate with the Government, but I should like also the employers and Government to co-operate with trade unions in what I believe is going to be a period of rising prices. Further, as the Act will be administered by Provincial Governments, I hope that care will be taken by Provincial Governments to see that its provisions are not used to strengthen their respective party organizations or to deal effectively with those who happen to be in constitutional opposition to them.

I should like also to express the hope that if and when the necessity arises for the appointment of Special Tribunals Mr. Williams' good advice will be remembered by the Provincial Governments and that great care will be taken in selecting those who are appointed to sit on these Special Tribunals. As I have said, I consider judicial experience essential for membership of these Tribunals. We have heard a great deal about district magistrates; I am not going to subject them to criticism again. So far as we are concerned we have always been opposed to the combination of functions and therefore our trust in district magistrates has never been pathetic. I hope that district magistrates will not be put on these Tribunals, and I make no distinction between district magistrates and chief presidency magistrates. The latter have no larger powers than district magistrates. As far as I know that is the position so far as the Criminal Procedure Code is concerned. Sir, separation of functions, as I have said, has not been effected in all the provinces. Some do not in fact want to effect the separation of functions. They are as much in love with this combination of functions as the old bureaucracy was. It is most undesirable that men who are executive officers should have seats on these Tribunals. I am quite sure that our good friend the Honourable Mr. Williams will convey our sentiments in regard to these matters to the Provincial Governments. The cases dealt with by the Tribunals will be of a serious nature, involving heavy punishment. There will be finality

attaching to the judgments of the Tribunal, and their judgments, as far as I have been able to understand the legal position, will not be even revisable by the High Courts on the ground of material irregularity or excess of jurisdiction. Therefore, I want once again to say that the constitution of these Special Tribunals is a matter of importance, and I am glad that Mr. Williams realized that it was a matter of importance and that he made the statement that he did on the floor of the House today.

Sir, I will come to another part of the Bill. Under section 2 the executive Government will have power to intern people. This is a vast power to which we should, in ordinary times, have taken severe objection; we should in normal and ordinary times have been justified in offering strenuous opposition to this proposal, because it places an individual's liberty at the mercy of the executive, an executive which I regret to say has not in all cases exercised this power in the past with judgment and care. Sir, I would plead for an assurance that care will be taken in taking action under this sub-clause, that such judicial assistance as may be available will be taken by Government, before orders of internment are passed, that orders will be revisable at successive periods, at periods of six months or three months, and that in no case will such orders of internment be passed against politicians who may hold views which may appear to Government to be advanced, but who are not in association with the enemy. Ordinary pacifist propaganda, whatever you may think of it, should not come within the mischief of this clause. Sir, if Mr. Ramsay Macdonald and Mr. Philip Snowden could carry on a pacifist propaganda, during the last war, if Lord Lansdowne who was once the Viceroy in this country and was Foreign Secretary for a number of years under a Conservative Government, could advocate peace without victory, I see no reason why Indian politicians who hold similar views should be treated differently? If it is permissible for Sir Arthur Salter to write Security and discuss the war aims of Britain or if it is permissible for Mr. Ramsay Muir to tell his Liberal summer school colleagues that there should be a new orientation in regard to colonial policy, I see no reason why politicians who talk of war aims or who talk the language of advanced political thought should be treated differently in this country? I should like to have a satisfactory assurance on this point.

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I will repeat again that I am most unhappy, despite all the arguments that I have heard from that most eminent Judge, Sir David Devadoss, who adorned the Bench of the Madras High Court for a number of years, I am most unhappy about the clause which denies appeal in cases where there is a difference of opinion among judges. I do not think that the majority is always right. I do not think that Sir David Devadoss would say with his experience in the Madras High Court that the majority is always right. He knows what the tyranny of the majority can be. I do not share his views in regard to the Madras Government entirely, but he knows that political majorities can go wrong, judicial majorities also can go wrong. As a Judge he must have come across cases where he was in a minority of one and he was upheld by the Privy Council and his majority colleagues were not upheld by the Privy Council. As my amendment has not been accepted by the Government, there is another course open to the Honourable Mr. Williams. I hope in cases where

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there is a conflict of opinion between the majority and the minority of the Tribunal care will be taken by the executive Government to see that justice is done; in the exercise of its right of prerogative it can review cases and I hope that where there is a difference of opinion in the Tribunal, the executive Government will go through the records carefully, seek the assistance of qualified and permanent High Court judges for this purpose and not deny justice to the accused, just because a majority of the Tribunal has come to a different conclusion. I hope Mr. Williams will be able to reassure us on this point.

Sir, it is inevitable, constituted as this House is and having regard to the peculiar constitutional position in India that we should view this legislation with hesitation, doubts and misgivings, but whatever be our hesitation in lending active support to this measure—and I confess that there is hesitation on our part in lending active support to this measure—let there be no mistake about our attitude towards the conflagration that is now in progress in large parts of Europe. We, Sir, value human freedom and we realize that if Nazism wins, all is lost. Our ideology—I am rather fond of that word ideology—our ideology determines our attitude and sympathies and we look upon this war as a war of human liberation. We do not look upon it as a war for the freedom of this country or that country, the rectification of this frontier or that frontier. We look upon this war as essentially one for the freedom of the human spirit. We desire that India should pull her full weight in this fight for human freedom, but as realists we apprehend that we will never be able to pull our full weight unless there is a visible change in the attitude of those who control the destinies of this country, who have the destinies of this country in their hand. It is, therefore, most essential to bring about an improvement in the relations between Europeans and Indians, between Hindus and Mussalmans, between the Congress and other political organizations if we are to prosecute this war successfully. I hold it to be essential for this purpose that the machinery of the Central Government should be so modified as to give to the representatives of the people a chance of controlling their destinies. Advisory Boards, Indianization of the Secretariat ranks, having Indians on committees, will not suffice to arouse that enthusiasm which we want to see in this country for this fight for human freedom. A provisional Government working a provisional constitution based on a wider basis than the present constitution is essential in my opinion if we are to achieve this big result. Sir, I would have all the communities, I would have Europeans and Indians, I would have Government and people, I would have Hindus and Mussalmans, look at this question from this broad point of view. Pirpur reports may be useful for purposes of party propaganda; while they may be useful for purposes of winning seats, they are not going to carry us far at this juncture. Can we show to the world—and that, I think, Sir, is the fundamental question before us—can we show to the world that we are capable of rising equal to the occasion? I do not despair, Sir. I have faith in the common sense of my people. I have faith in the sense of fairness of the British people. And I have faith in the destiny of my people. And I think, Sir, that united we can achieve miracles. I think, Sir, that our pursuit of democracy is not a mirage. I

think, Sir, that democracy, whatever we might think, is not a dead creed. Democracy, Sir, with us is a real living thing and for democracy we are prepared to make big sacrifices. It may be that India's interpretation of democracy will perhaps in some respects be different from the western interpretation of democracy but to democracy we pay our homage and democracy remains our ideal and our goal.

Sir, whatever you may think of the Provincial Governments, each and all of them—and I make no distinction between one Provincial Government and another—they all deserve our support and I hope it may never become necessary for the Government of India to step in under the provisions of the new Government of India Act. Sir, it is true that we have been critical of the Bill. It is true that we have not been able to lend our support to the Bill but our speeches must have shown that there is no difference so far as the main objective—namely, the freeing of the human spirit from the thraldom of Nazism is concerned—is concerned, and there, Sir, we all stand together. Sir, these are all the observations I have to make.

The Council then adjourned for Lunch till a Quarter to Three of the Clock.

The Council reassembled after Lunch at a Quarter to Three of the Clock, the Honourable the President in the Chair.

THE HONOURABLE THE PRESIDENT: I wish to point out to Honourable Members that both the Honourable Mr. Williams and the Honourable Mr. Tyson have to attend a very important and urgent meeting at a Quarter to Four of the Clock in connection with the war and that they would like to be relieved of their duties here, if possible, before that time. I do not desire to stifle the debate, but in the circumstances, as many Honourable Members have spoken at considerable length during the Consideration stage of the Bill, I would request them to be as brief as possible and touch only on very important matters, if any.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Mr. President, although we have criticized several features of the Bill, we have approached its consideration with a full recognition of the gravity of the existing situation. Every one here has admitted that we find ourselves in special circumstances and that such special circumstances may require legislation of a special character. It is not unreasonable that in a situation like this, Government should ask to be invested with powers beyond those which are conferred on them by the ordinary law. We have, nevertheless, to ask ourselves whether the Bill takes away from the citizens only the minimum of their liberties or goes beyond the necessities of the case. The features of the Bill that require consideration in this respect are the offences that it creates, the new or enhanced penalties that it provides, the constitution of the Special Tribunals and the provisions regarding appeals against their judgments. Attention this morning has been concentrated on the two latter aspects of the Bill. I am glad that my Honourable friend Mr. Williams has given an assurance with regard to the composition of the Tribunal which is of an important character. In other respects, however, the Bill remains as it was. In regard to the provisions which make the judgment of the Special Tribunal final, there has been no change in the Bill. Severe sentences may be inflicted, valuable property may be forfeited, and yet the

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accused will have no right to appeal to a higher authority. In this respect, the Bill remains as unsatisfactory as before, and this to me is its most disquieting feature. Everything will depend on the spirit in which the Government of India administer the law.

This brings me naturally to the speech delivered by my Honourable friend Sir Ramaswami Mudaliar the other day. His unexpected intervention in the debate was to me the most important event connected with the discussion of this Bill. The remarks that he made were, frankly speaking, of such a character that I forgot the Defence of India Bill and thought only of him and his views. He saw nothing wrong in the policy of or the spirit animating the Government of India. He assured us that during the four months that he had been a Member of the Viceroy's Executive Council, he had found nothing to object to in the policies of the Government of India. Dealing at length with some of the criticisms that I had urged, he referred to the constitution of the War Supply Board and said that although there were no Indians on it, it must be remembered that the Member-in-charge was an Indian, that it functioned under the Defence Council of four members, of whom two were Indians and that it worked in close touch with departments containing Indians. What my Honourable friend said is perfectly true. But if that defence was valid, we should be debarred from asking for the Indianization of any Service or for the inclusion of Indians in any important body——

THE HONOURABLE THE PRESIDENT : He did not go to that length. That is your inference.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I believe I have quoted him aright.

THE HONOURABLE THE PRESIDENT: He did not go to the length of saying that you would be debarred from asking for further Indianization.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : If his view were accepted, if it were taken to its logical conclusion, this would be the inevitable result. We have three Indian Members. There are many Services connected with their departments. Should it be enough for us that these Services function under the supervision of those Indian Members, or are we entitled to ask that, no matter to which Department they belong, they should be Indianized ? The Government of India is carried on in India. It must naturally come into contact with Indians, and all its work must in the last resort be carried on through Indians. To say therefore that the Supply Board is functioning under an Indian Member and that all its activities are carried on through Indian organizations is to offer no defence whatsoever of the policy pursued by the Government of India, whether in respect of the War Supply Board or the Defence Co-ordination Department.

Proceeding further, Sir, my Honourable friend dealt with the character of the Government of India and said it was an advantage to us that at this moment the Government of India was of an irresponsible character. And

irresponsible Government at the Centre—and I am now quoting his own words—

"in these times of anxiety, strife and struggle has..... particularly in India, to adjust itself to public opinion".

After four months experience of the working of the Government, he could say that—

"it was this very irresponsibility that made it more attentive to public opinion".

Sir, I was startled when these words fell from the lips of my Honourable friend. We are living in very difficult times. No one is more alive to the extraordinary character of the situation than His Excellency the Viceroy. We all understand that he is earnestly trying to find out some means of removing the tension that exists and creating an atmosphere in which the full co-operation of the country may be secured for the purpose of prosecuting the war to a successful issue. If His Excellency were to turn to Sir Ramaswami Mudaliar for advice, will he say to him, "Sir, it is a great advantage to India that the Centre is irresponsible in these times of anxiety, strife and struggle. Tell the people that it should be maintained so long as the war lasts".

THE HONOURABLE SIR RAMASWAMI MUDALIAR: May I intervene just for a moment. Surely my Honourable friend is not doing justice to himself, apart from his doing justice to me, in his remarks. It was my Honourable friend who did not feel quite happy with responsible Governments in the provinces, and I think, my whole speech was a protest against that attitude of my Honourable friend. Incidentally I said in the present circumstances of strife, when you are accusing the Government of India of being irresponsible I could only say from my experience and knowledge that its very irresponsibility is casting an additional burden on that Government and on its members to see to it that they as far as possible tried to adjust themselves to public opinion. That was all that I said, and I was not entering a plea—my Honourable friend knows me well enough to be assured about it—for an irresponsible Government either in the Centre or anywhere else at the present time or at any other time.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: I will certainly accept the Honourable Member's explanation. It gives me special pleasure to do so because I could not understand any Indian, whatever his position, putting in a plea for the continuance of the present form of Government at the Centre. So far as the words however that he used are concerned, I would ask him to believe that I was doing him no injustice intentionally or unintentionally. If he has any suspicions on that score I would ask him to turn to the report of his speech which must have been sent to him. I am glad, however, to know that the Honourable Member did not exactly mean what his words unfortunately tended to convey. I have known my Honourable friend for many years and it is precisely because I have heard him, before he assumed his present exalted office, express entirely different views that I was startled by what I believed to be the character of his observations. Frankly speaking, it seemed to me the other day that he was only a larger aspect of that illusion of which my Honourable friend Mr. Williams is a lesser manifestation.

As regards responsible Provincial Governments undoubtedly dissatisfaction was expressed in this House with regard to the character of some of their

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measures. I do not know whether we can ever have a Government which will not give some cause for complaint. Take England itself, where Party Government prevails. Has the Government of the day ever been able to obtain the full support of members of the other Parties ? My Honourable friend knows very well that during the last 25 years Parliament has passed far-reaching financial and social measures which during their passage through Parliament have aroused acute controversies. The voice of criticism is undoubtedly hushed at present, but that is due to the fact that Mr. Chamberlain is now taking into confidence the members of the Opposition. What is happening in India need not therefore alarm those who desire the early establishment of democratic Government in this country. We would certainly like to see greater concord among all sections of the population, but the mere fact that controversies exist need not disturb us unduly. That is my reply to the observations made by my Honourable friend Sir Ramaswami Mudaliar. The criticism of the Provincial Governments to which expression was given the other day ought not to be taken in a tragic spirit. I have no doubt whatsoever that when the enthusiasm of those in power has subsided and the need for the co-operation of persons holding views different from theirs is a little more fully recognized, the situation will alter and we shall find that harmony which we would all like to characterize the working of democratic government in this land.

Sir, it is a pleasure to me to pass on from these observations to what my Honourable friend Sir Ramaswami Mudaliar said with regard to his desire to protect the interests of labour. I have no doubt that he was absolutely sincere in what he said on this subject. I hope, however, that he will permit me to say that it is not enough that he should earnestly try to see that the rights of the workers are not unnecessarily taken away from them even in this emergency. It is necessary that some machinery should be devised which will concern itself with the special problems that may arise in connection with the Bill itself. If he can set up such a machinery to ensure contact with the representatives of labour in the various Legislatures or outside them, I am sure that the apprehensions that exist in the minds of persons who are deeply concerned with the welfare of labour will be largely allayed. I have no doubt that my Honourable friend recognizes that this matter is one of the utmost importance and urgency and I trust that he will give it soon the attention that its importance demands.

3-5 P.M.

*THE HONOURABLE CHAUDHRI ATAULLAH KHAN TARAR (East and West Punjab : Muhammadan) : Mr. President, I rise to support the Bill presented by Government. In doing so, I have to point out that perhaps the only point for the House to consider is whether such Bills are presented in normal or abnormal times. I am inclined to think that there would hardly be two opinions about it. The only answer to the query would perhaps be that such Bills are and should be necessitated by abnormal times. Once having accepted this position, the matter becomes rather easier to decide, as the present time comes within the term "abnormal ".

*The Honourable Member spoke in Urdu and submitted the translation here produced.

India, like all other countries in the world, admits that His Majesty's Government have been forced to participate in the present war. I can hardly be expected to dwell on the circumstances that have resulted in the commencement of the strife or to recapitulate the efforts of the representatives of this great Empire to maintain peace. But I must say that Great Britain has had to come in for the sake of maintaining peace. War has always two aspects—it is fought for aggression and for defence. The former aspect thereof is decidedly condemnable but the latter should, I maintain, be considered a bliss. The old adage, "If you want to live in peace, be prepared for war" is self-explanatory, and I can safely say that the House will support me if I say that the present war is being fought, in so far as we are concerned, to live in peace. Aggression on the part of the enemy and their attempts to trample the liberty of smaller nations has necessitated our going into the fight. Unless this was done, the liberty of all nations and the peace of the whole world would have been threatened. This being so, the times are abnormal and we are forced to take the protection of Bills similar to or even stronger than the present one. Unless this is done, we shall be failing in our duty to our King and Country as we shall be leaving agitators to do mischief and then to undergo the ordinary provisions of the law which doubtless take a very long course and do not fit in with the requirements of the present times.

You will admit, Sir, that India has promised unconditional support to those responsible for the prosecution of the war. You will also admit that this has been done without any difference of opinion, any considerations of caste or creed and without the least hesitation emanating from political party strife. Having offered such an unique support, I fail to understand how on earth we can refuse to lend our support to a Bill like the present one which is intended only to help in the prosecution of the war and the maintenance of peace in our own country

I am convinced, Sir, that we should not take into consideration the fact that the present Bill is intended to give very wide powers to Provincial Governments. These Governments are responsible bodies and we can all rely on their sense of justice. We are sure that they would administer the Bill, when it takes the shape of a law, in the best interests of the State and the population. I need hardly remind my Honourable colleagues, Sir, that in the provinces the Government is always composed of a majority, *i.e.*, the minority in the local Legislature is always in power. This being the case, it is obvious that the majority, having full support in the province and complete control in their hands, will be responsible for appointing the judges. They will certainly see that the ends of justice are adequately met and that the population of the country is not harassed without justifiable reasons.

I submit, Sir, that India's traditions of loyalty and her relations with the Empire demand that the Bill should receive our whole-hearted support and I accordingly stand to offer the same with all the force at my command. I must add, however, that it is my earnest appeal to all Government officials—Europeans and Indians, whoever they be—that they will do their best to administer the Bill in due course with all possible caution and honesty, so that the public at large may not suffer through the provisions of a law which it is proposed to enforce for their good. Should the officials responsible for its

[Chaudhri Ataullah Khan Tarar.]

administration fail to act in accordance with this my appeal, I will be most reluctantly compelled to say that they share the lot of the aggressors who are responsible for the present war.

With these words, Sir, I close.

THE HONOURABLE MR. V. V. KALIKAR (Central Provinces : General) : Sir, this Bill admittedly consists of many drastic provisions and whenever an emergency legislation comes before this House the representatives of the people have to scrutinize the provisions very carefully and see whether it goes beyond the necessity. Unfortunately, Sir, on account of circumstances beyond our power, we had not sufficient time in this session to discuss the Bill.

I now come to the remarks of my Honourable friend Sir Ramaswami Mudaliar regarding the provisions of the Bill in which powers have been delegated to Provincial Governments. Sir, certain remarks on this side of the House, I think, made him think that party government is not favourable to this side of the House. I submit, Sir, that we have full faith in democratic government. We want party government and responsible government not only in the provinces but we also want responsible government in the Centre. But what I submit is this, and what I said the other day was that, though these party governments are liable to make mistakes, there ought to be some check on those Governments and unfortunately this Bill takes away that check. Under the normal constitution, our High Courts have got the power of interpreting the Acts passed by the Provincial Legislatures as well as deciding whether the Acts passed by them are *ultra vires* or not. Also, Sir, under the normal procedure, if by any executive power the rights of any citizen are curtailed, that citizen has got the right of appealing to the High Court and getting his grievances redressed. I personally, Sir, do not like the provisions of this Bill about the establishment of a Special Tribunal. I also do not like that the Bill should have taken away the power of the High Court. I therefore submitted the other day that the check that exists under the normal constitution should not have been taken away. It is not that we do not desire party government but we desire that, if party governments misuse their power, there ought to be something to check them and the check that is provided by the High Court should not have been taken away. I do not think also, Sir, that my Honourable friend Sir A. P. Patro, who told us a long story that day, does not desire a party government in any province. But what I could infer from his speech was that he did not like the executive action of the party government that existed in his province. So, I should like my Honourable friend Sir Ramaswami Mudaliar to understand our position clearly.

Then, Sir, I know that the Bill is going to be passed in a very short time. We have had very bitter experience in the past of emergency legislation. Some officers of the Government in their over-enthusiasm misused the power delegated to them not only under the Defence of India Act, 1915, but under the other emergency legislations that were passed in 1931, 1932, and so on. I hope, Sir, that the assurance that has been given by my Honourable friend Mr. Williams this morning will be followed by the officials and also by the Provincial Governments in not abusing the power that has been entrusted to them

under this Bill and I hope there will not be any complaint on behalf of the public that the powers that have been entrusted to the executive are misused.

An appeal was made on the 12th of this month, when we discussed the Resolution of the Honourable the Leader of the House about showing sympathy to Poland, that there ought to be co-operation between the official and non-official sides in these times of emergency. I am afraid I do not find any signs of co-operation between the official and non-official sides in this House. Some very important amendments were moved by my Honourable friend Mr. Sapru. But, Sir, my Honourable friend Mr. Williams did not find it convenient to accept those amendments. That shows, Sir, that there is a feeling on the other side of the House not to take this side of the House into its confidence. I certainly, Sir, regret that attitude and I hope that at least in these abnormal times attempts will be made on behalf of the Government in power to take the non-official side into its confidence.

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR (Madras : Muhammadan) : Sir, the House heaves a sigh of relief at the conclusion of the task on which it has been engaged these three days. I say advisedly, Sir, a sigh of relief because the task on which the House has been engaged was not only arduous and difficult but it was also necessitated by circumstances which were of a very unpleasant nature—unpleasant because the enactment of this measure has been necessitated by the outbreak of the war in Europe which has caught up in its cruel grip a large part of that Continent and which (God forbid) is likely, if it is not stopped soon, to develop into a world war which will prove of more disastrous and serious consequences than the war of 1914. It is, Sir, to prevent this general conflagration, if possible, and also to save democracy and all it stands for and to save the cherished rights and liberties of humanity that the Legislative Assembly and this House have by the adoption of this measure submitted to a temporary curtailment of those rights and liberties. Therefore, Sir, it is but just and fair that the non-official Members who have co-operated with the Government in enacting this measure should expect that the Government will see to it that in the administration of the Act there is nothing done to cause misgiving to the non-officials who co-operated with the Government that in the ready and willing co-operation, they have given they have not acted advisedly. Therefore, Sir, it is necessary that those officers who will be empowered with these large powers and will be asked to carry into effect the provisions of this Act should be given clear instructions to see to it that they do not do anything which in the least will go to justify the many doubts and suspicions that have been expressed on the floor of this House and of the other House and that those officers will act with due care, caution and circumspection and that they will not be led away by their anxiety to make this Act effective and deterrent, losing sight of the bigger considerations of humanity, sympathy and justice. I am glad, Sir, that assurances have been given to this effect, both in this House and in the other, and I am also glad of the way in which the Honourable Mr. Williams, who has piloted this measure in this House, has conducted himself, in spite of the fact that there was no possibility of any amendments being carried, he was prepared to go as far as he could. He was prepared to give us assurances that in cases where it is possible to meet the wishes of the House

[Saiyed Mohamed Padshah Sahib Bahadur.]

by administrative action and by instructions to Provincial Governments and other officers, Government would be prepared to do so. We hope, Sir, that the spirit of accommodation and reasonableness which characterized the Honourable Mr. Williams' conduct in this House will also characterize the conduct of the officers who will be entrusted with these powers.

Just one word more and I have finished. I should like, in conclusion, to endorse and echo the view which was expressed by my Honourable friend Mr. Sapru a short while ago. He is perfectly right in saying that India will be able to pull its full weight and play its part properly only if it feels that it is also one of those free countries just like the other self-governing countries of the British Empire. And for this to be achieved by the country, as my Honourable friend Mr. Sparu said, it is necessary that there should be some sort of unanimity and understanding between the various communities which are not now pulling together. I hope, Sir, that at least in the face of this grave danger, we would realize the necessity of coming to some understanding and try and do what we can to save our birthright, freedom for the country.

THE HONOURABLE MR. A. DEC. WILLIAMS : Sir, in finally commending this Bill to the approval of this Council, I only wish to say a few words by way of supplementing what has just fallen from my Honourable friend the Commerce and Labour Member. A certain amount of anxiety was displayed by Honourable Members on the other side of the House that, in so far as Government did see some advantage in the proposals put forward by them, and in so far as it was for certain reasons impossible or inconvenient to accept those proposals by way of amendment, the Central Government should proceed by way of instruction—or, perhaps, I should rather say, of advice—to Provincial Governments. Of course, it has always been open for the Central Government to tender advice to Provincial Governments. As it happens, owing to the recent war-time amendment of the Constitution, the Central Government is in a position to give instructions to Provincial Governments. It is in this regard that I wish to supplement what the Honourable Sir Ramaswami Mudaliar said as regards the position of an irresponsible Central Government. The last thing they wish to do, if it can be avoided, is to interfere in any way with the freedom and discretion of Provincial Governments. But, Sir, if what is desired can be effected by way of advice, the Central Government is perfectly prepared to tender that advice.

THE HONOURABLE THE PRESIDENT : The Question is :

"That the Bill, as passed by the Legislative Assembly, be passed."

The Motion was adopted.

INDIAN AIR FORCE VOLUNTEER RESERVE (DISCIPLINE) BILL.

THE HONOURABLE MR. A. DEC. WILLIAMS : (Nominated Official) : Sir, I move :

"That the Bill to provide for the discipline of members of the Indian Air Force Volunteer Reserve raised in British India on behalf of His Majesty, as passed by the Legislative Assembly, be taken into consideration."

This Bill, Sir, is simply designed to bring the newly constituted Indian Air Force Volunteer Reserve under Air Force discipline. A precisely similar Act was passed by the Legislature for the Royal Indian Naval Reserve. This Bill exactly follows the terms of that Act, and unless Honourable Members have any detailed questions to ask, I feel that no further explanation is called for.

Sir, I move.

The Motion was adopted.

Clauses 2 to 7 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. A. DEC. WILLIAMS : Sir, I move :

"That the Bill, as passed by the Legislative Assembly, be passed."

The Motion was adopted.

INDIAN AIRCRAFT (AMENDMENT) BILL.

THE HONOURABLE MR. J. D. TYSON (Communications Secretary) : Sir, I move :

"That the Bill further to amend the Indian Aircraft Act, 1934, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

The main object of this short Bill is that dealt with in clause 4. I need hardly stress the danger that high buildings in the neighbourhood of aerodromes offer to aircraft landing and taking off for flight. With the increase of night flying this danger is greatly accentuated. For the greater safety of aircraft operating by night, it is proposed to confer on Government power—which they do not at present possess—to make rules providing for the installation and maintenance of lights on such buildings, both near aerodromes and near air routes. Honourable Members will observe that it is also contemplated that, where private persons are put to financial loss by such arrangements, they should receive compensation from Central Revenues. It is an important matter, and one of some urgency, that such powers should exist, and I would ask the Council to amend the Act accordingly.

Advantage is being taken of this legislative proposal to make two further small amendments in the same Act.

Clauses 2 and 5 enlarge somewhat the scope of the Act with a view to enabling us to fulfil certain international obligations. If these clauses are accepted, we shall be in a position to discharge these obligations in respect of all aircraft registered in British India and of persons thereon, wherever they may be.

The only other change proposed arises out of the present wording of section 3 of the Act which requires that exemptions, both from the provisions of the Act and from the provisions of Rules under the Act, shall be made by notification. So far as exemptions from the Rules go, this is an onerous and inconvenient requirement. Gazette notification is a quite unnecessary and cumbersome procedure for the minor, but sometimes urgent, exemptions from the

[Mr. J. D. Tyson.]

operation of the rules which generally arise. The amendment proposed will leave exemptions from the Act to be made by notification but exemptions from the Rules will be made by the Governor General in Council by general or special order in writing. I commend the Bill to the House.

Sir, I move.

The Motion was adopted.

Clauses 2 to 5 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. J. D. TYSON : Sir, I move :

"That the Bill, as passed by the Legislative Assembly, be passed."

The Motion was adopted.

PANTH PIPLODA COURTS (AMENDMENT) BILL.

THE HONOURABLE MR. E. CONRAN-SMITH (Home Secretary): Sir, I move :

"That the Bill to amend the Panth Piploda Courts Regulation, 1931, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

This Bill is designed to meet a contingency which has as a matter of fact not yet arisen but which might one day arise, namely, a difference of opinion occurring between the two members of the Chief Commissioner's Court in Panth Piploda in a case where in that event the law requires a reference to a third judge. The occasions on which the law requires such a reference are when the Court is sitting as a High Court to consider the confirmation of a death sentence or to hear cases in revision or on appeal and a difference of opinion arises between the two members comprising the Court. Since the requirement of the law is as I have stated it and since there is at present no third member of the Chief Commissioner's Court to whom the necessary reference could be made, the Bill now before the House proposes to take power to the Central Government to make an *ad hoc* appointment of a third judge if the need arises. The Bill, Sir, is deemed to be advisable because, although, as I have stated, hitherto such a case has not yet arisen, nevertheless we cannot be sure that on some future occasion there will not be a difference of opinion between the two members comprising the Chief Commissioner's Court.

Sir, I move.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern: Non-Muhammadan) : Where is Panth Piploda ?

THE HONOURABLE MR. E. CONRAN-SMITH: I believe a large number of people share the Honourable Member's ignorance. Panth Piploda is a small area in Central India entirely surrounded by States ; in extent it comprises ten villages.

THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhammadan) : Is it proposed to appoint a permanent judge ?

THE HONOURABLE MR. E. CONRAN-SMITH : No, Sir, merely an *ad hoc* appointment is contemplated.

The Motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. E. CONRAN-SMITH : Sir, I move :

"That the Bill, as passed by the Legislative Assembly, be passed."

The Motion was adopted.

INDIAN OATHS (AMENDMENT) BILL.

THE HONOURABLE MR. E. CONRAN-SMITH (Home Secretary) : Sir, I move :

"That the Bill further to amend the Indian Oaths Act, 1939, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

Sir, the intention of this Bill is to make admissible in civil and criminal cases the evidence of a child who, although in the opinion of the court competent to testify, that is to say, capable of understanding the meaning of questions put to him or her and of giving a rational answer, is nevertheless on account of his or her youth considered to be not competent to realize the obligation imposed by an oath or affirmation. At present,—under the law as it stands,—the evidence of a child is admissible,—provided the requirement of section 118 of the Indian Evidence Act is satisfied, that is to say, provided the court considers the child competent to testify,—only if he or she makes an oath or affirmation. If this Bill now before the House becomes law then a child who in the opinion of the court is possessed of sufficient intelligence to be a witness need not necessarily be required to make an oath or affirmation. This is the position at present under the English law and what we are now proposing to do is to bring the position in India approximately into line with that subsisting in England.

Honourable Members will observe that the age-limit fixed by the Bill is twelve years. I should perhaps explain that the age limit of twelve was adopted because a child over twelve years of age has no protection under section 83 of the Indian Penal Code, and it was held that if the law presumes sufficient maturity in a child over the age of twelve to make it liable for the consequences of the commission of an offence, then the law should also presume that a child over twelve will understand the nature of an oath or affirmation.

Sir, I move.

The Motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. E. CONRAN-SMITH : Sir, I move :

"That the Bill, as passed by the Legislative Assembly, be passed."

The Motion was adopted.

MOTOR VEHICLES (AMENDMENT) BILL.

THE HONOURABLE MR. J. D. TYSON (Communications Secretary) : Sir, I move :

"That the Bill to amend the Motor Vehicles Act, 1939, for certain purposes, as passed by the Legislative Assembly, be taken into consideration."

I must apologize for my temerity in asking Honourable Members so early to review their very recent handiwork, but the fact is, as was inevitable with so long and complicated a measure, that certain defects and difficulties have come to light now that the time has come to put the Act into operation. The first and most important of these concerns the change over from the old Act to the new. The new Act requires the making by Provincial Governments of some far-reaching sets of rules, and an attempt was made in sub-section (*2*) of section 134 of the new Act to maintain the old rules till the new rules could be got ready and adopted. That attempt, while it forestalled and obviated some difficulties, has unfortunately given rise to others unsuspected at the time. For example, the new Act renders it obligatory upon Provincial Governments to set up certain Transport Authorities forthwith—that is on the 1st of July. When the Act came into force—but until the new rules are adopted by Provincial Governments—the new rules under which these authorities are to function—the old rules which were designed to cover quite a different state of affairs have been maintained in force.

Clause 2 of the Bill aims at relieving the Provincial Governments of the necessity of setting up these Authorities till there are appropriate rules for them to administer. Again, fees in respect of driving licences are specified by statute under the new Act, but they were prescribed by rule under the old Act. Here we have an obvious clash. Two sets of fees are in operation at the same time. It is the aim of clause 3 (*a*) of the Bill to remedy this. A third difficulty arises out of the fact that the penal provisions under the old Act were contained in the Act itself. The old Act is expressly repealed by the new Act and it is doubtful therefore how far infringements of the old rules are punishable in any case which is not specifically provided for in the new Act. This difficulty will be remedied by clause 3 (*b*) of the Bill before the House. The amendments proposed in these two clauses (2 and 3) are purely transitory; they are urgently required for the removal of temporary difficulties but their force will be spent as soon as Provincial Governments adopt the new Rules, and in any case on the 1st April, 1940.

The opportunity has also been taken to include three very minor amendments in the Schedule.

Clauses 4 and 5 provide for a very simple test of the presence or absence of that degree of colour blindness which prevents a person from being able to distinguish red from green. This is on the analogy of the requirements for pilots under the Aircraft Rules, and, while it calls for no elaborate

apparatus or specialized training from the medical practitioner applying the test, it provides all that is required under the head of colour blindness for the purpose in view.

Clause 6 merely adds a registration mark for the Andaman and Nicoba Islands.

Clause 7 alters a traffic sign in the Ninth Schedule. The criticism has been made that the original sign, though intended to prohibit drivers from using their horns, might almost equally have been understood by them as an invitation to do so.

The more important of these matters were discussed with representatives of Provincial Governments at the meeting of the Transport Advisory Council in July. I commend the Bill to the House.

Sir, I move.

The Motion was adopted.

Clauses 2 to 7 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. J. D. TYSON: Sir, I move:

"That the Bill, as passed by the Legislative Assembly, be passed."

The Motion was adopted.

INSURANCE (SECOND AMENDMENT) BILL.

THE HONOURABLE MR. SHAVAX A. LAL (Nominated Official): Sir, I move:

"That the Bill further to amend the Insurance Act, 1938, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

This Bill merely seeks to correct an error in drafting and introduces no change of substance.

Sir, I move.

The Motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. SHAVAX A. LAL: Sir, I move:

"That the Bill, as passed by the Legislative Assembly, be passed."

The Motion was adopted.

WORKMEN'S COMPENSATION (SECOND AMENDMENT) BILL.

THE HONOURABLE MR. M. S. A. HYDARI (Labour Secretary): Sir, I move:

"That the Bill further to amend the Workmen's Compensation Act, 1923, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

[Mr. M. S. A. Hydari.]

Under section 15 of the Workmen's Compensation Act, a seaman can claim compensation for injuries received. All that this Bill proposes to do is that a seaman who obtains compensation under a scheme made under the Personal Injuries (Emergency Provisions) Act, 1939, cannot claim for the same injury compensation under section 15. It does not take away any right; it merely bars a man from claiming compensation twice over.

Sir, I move.

*THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa: Muhammadan): There was some discussion on this measure in the other House and a strained feeling developed. The Government, while not opposing the Motion for reference to Select Committee, preferred to remain neutral and by a most unexpected circumstance this Bill could not be referred to a Select Committee. We would have been justified in asking for reference of this Bill to Select Committee if we felt that we would receive better treatment from the Government Benches in this House than the other place received. But, being hopeless, I did not dare to bring forward a Motion for the purpose.

I find there is nothing much to criticize in the provisions as they exist. The only doubtful feature is that you have used the word " could " in the new sub-clause (5) which is proposed to be added to section 15. If it had been restricted to cases where payment had been obtained, there would have been no objection, but by providing where it might be obtainable, you have introduced an element of doubt. The wording is like this :

" No compensation shall be payable under this Act in respect of any personal injury for which a payment could be obtained under any scheme made under the Personal Injuries (Emergency Provisions) Act, 1939 ".

Usually the language of a statute is more strict. I would not have intervened in this debate, but I merely wished that Government should clarify the situation. If a man does not apply under the impression that he is not eligible, he would be deprived of both the rights. The question put in the Assembly was that if a man receives compensation from one place he should not be entitled to recover from another place as well. That is a good proposition, but merely on the supposition that he would have been entitled to obtain compensation if he applied under the Workmen's Compensation Act. But if that is rejected and the time for the application under the other Act does not remain, what happens then ? He is debarred from this. Because you hold that he could have applied under the British statute, while he might have been advised by his legal advisers that he could not. The result will be that he would be deprived of all his benefits. He could not get compensation either under the Workmen's Compensation Act or under the Personal Injuries (Emergency Provisions) Act. That point, Sir, should be elucidated by the Government, whether they are prepared to consider and provide some machinery for such an emergency.

Secondly, Sir, I would like the Government to give us an assurance that they will favourably consider the provisions of an Act on the same lines as

*Not corrected by the Honourable Member.

the British Act. Those ships which are registered in India, persons serving on them are not entitled to get compensation under the Personal Injuries (Emergency Provisions) Act.

THE HONOURABLE MR. SHAVAX A. LAL: They will get the compensation under the Workmen's Compensation Act.

THE HONOURABLE MR. HOSSAIN IMAM: But the Workmen's Compensation Act, Sir, is not as liberal as the British provision. Now, in times of war if there is a greater risk there should be a greater compensation. So I should like the Government to consider the possibility of introducing more liberal provisions for injuries received in vessels registered in British India if such case should arise.

THE HONOURABLE SIR RAMASWAMI MUDALIAR (Commerce and Labour Member): Sir, I will take the last point first. This Act applies to Indian seamen who are working in ships on the United Kingdom register. It does not apply to those who are working on ships on the Indian register. This Act is complementary to the legislation that has been passed by the House of Commons. Therefore, it applies only to those seamen who are on the United Kingdom register. The intention of the Government is to apply similar provisions to seamen who are on the Indian register also, provided they come under the same category—namely, war injury. For that purpose we are not certain that legislation is necessary at all. Probably by an amendment of the article of agreement which Indian seamen entered into, at the time when they registered on these ships, it may be possible to introduce similar provisions. Why it has not been so far done, why I am unable to say that it will be done immediately, is because we have yet to obtain the scheme which His Majesty's Government is drawing up with reference to Indian seamen on the United Kingdom register, and as far as I can see, it is our intention that the same terms will apply to those upon the Indian register. In that case my Honourable friend will realize that the compensation which they will get for such war injuries will be on a better scale than that provided in the Schedule of the Workmen's Compensation Act.

As regards the point that my Honourable friend has raised about payment which could be obtained as against payment which has been obtained, there are obviously two answers. The first is a rather technical answer. If a right is given to a person and if that right is not used, nobody can be blamed except the person himself. If under the Workmen's Compensation Act, the workman does not apply within the period of limitation, does not go to a court of law, nobody can help it. But in this case there is another answer also. When we speak of an application being made, I do not think we are contemplating any very technical and formidably formal form of application. The rules have to be framed by this Government. The scheme is going to be worked (at least that is the present intention) by the Government of India under powers delegated by His Majesty's Government. The Government of India have been asked to co-operate in the working of this scheme for the obvious reason that this Government have all the facts relating to Indian seamen and therefore it is the intention of the Government of India to work that scheme, the compensation under it, however, being given by His Majesty's Government

[Sir Ramaswami Mudaliar.]

from the British Treasury. Therefore, in the rules that may be framed by the Government of India it is our intention to make it as easy as possible for the Indian seamen to get this remedy and I can assure this House that we are not contemplating any hard and fast rule whereby, either through the fault of his legal advisers or anybody else, any seaman injured could easily miss a chance of getting compensation under this scheme.

THE HONOURABLE THE PRESIDENT: Motion made:

"That the Bill further to amend the Workmen's Compensation Act, 1923, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

Question put and Motion adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. M. S. A. HYDARI: Sir, I move:

"That the Bill, as passed by the Legislative Assembly, be passed."

The Motion was adopted.

RESOLUTION *RE* ROAD DEVELOPMENT.

THE HONOURABLE MR. J. D. TYSON (Communications Secretary): Sir, the Resolution which I wish to move runs as follows:

"That this Council recommends to the Governor General in Council that the Resolution on road development adopted by the Legislative Assembly on the 10th February and by the Council of State on the 5th March, 1937, be amended as follows:

"That for the words "for purposes of civil" in sub-paragraph (1) of paragraph 2 and for the words "for the purposes of civil" where they occur in two places in sub-paragraph (1) of paragraph 3, the word "in" be substituted in each place'."

Sir, Honourable Members who are fortunate enough to possess motor cars will have observed that, every time they buy a gallon of petrol, they are called upon to subscribe handsomely to general revenues by means of a customs or excise duty. It will also not have escaped the notice of Honourable Members that the same gallon of petrol bears an *extra* "duty of customs and excise", at present fixed at 2½ annas, levied under the Resolution on Road Development. A similar extra duty of 2½ annas is levied on motor spirit used "for purposes of civil aviation", and the proceeds of *this* duty levied on motor spirit used for the purposes of civil aviation are devoted to grants in aid of civil aviation. The objects to which such grants-in-aid can be devoted are prescribed in a Resolution of the year 1934 and I may add that the details of the actual expenditure are laid every year on the table of both Houses of the Legislature.

Now, Sir, the Defence Services have in the past enjoyed exemption from these duties, but from the 1st of April, 1938, that exemption has been withdrawn. The duty accruing, therefore, from petrol consumed by the Defence Services is automatically credited to the Road Fund. But Honourable Members will, I hope, agree that it would be appropriate that the proceeds arising

from petrol consumed by the Air Force *in the air* should be devoted to grants in aid of civil aviation rather than to roads and bridges. This would follow the analogy of the proceeds of motor spirit used in civil aviation. We are asking that the proceeds from military aviation should be devoted to civil aviation just as the proceeds of the duty on petrol consumed in civil aviation already are. As the Roads Resolution is worded at present, this happy result cannot be achieved without the slight amendment which I propose. The effect of the change proposed will also be that only petrol consumed *in the air* will contribute to civil aviation and not petrol consumed by Defence forces or even by civil aviation vehicles on the ground. Petrol consumed by Defence force vehicles on the roads will benefit the roads side of the Fund. This would also seem to be only fair.

Sir, I move.

The Motion was adopted.

THE HONOURABLE THE PRESIDENT: Honourable the Leader, I understand that this finishes our work for the session, both official and non-official ?

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD (Leader of the House): Yes, Sir. I regret to say that it does ! (Laughter.)

THE HONOURABLE THE PRESIDENT: The Council is now adjourned *sine die.*

The Council then adjourned *sine die.*

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