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THIRD SESSION

OF THE

LEGISLATIVE ASSEMBLY, 1923.

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Legislative Assembly.

The President :

THE HONOURABLE SIR FREDERICK WHYTE, KT.

Deputy President :

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Assistants of the Secretary:

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MR. L. GRAHAM, I.C.S.

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

MR. G. H. SPENCE, I.C.S.

Marshal :

CAPTAIN SURAJ SINGH, BAHADUR, I.O.M.

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LEGISLATIVE ASSEMBLY.

Monday, 26th February, 1923.

The Assembly met in the Assembly Chamber at Eleven of the Clock. Mr. President was in the Chair.

MEMBER SWORN:

Mr. A. V. V. Aiyar, C.I.E., M.L.A. (Finance Department: Nominated Official).

QUESTIONS AND ANSWERS.

ELLAHAYA, SHEDMAN, N.-W. RAILWAY.

430. ***Dr. H. S. Gour:** (*a*) Will Government be pleased to state whether it is a fact that while the late Ellahaya, Shedman of the Locomotive shed at Kundian, North-Western Railway, who put in 38 years' service, was given a bonus on his Provident Fund, the gratuity due to him was withheld on the report of the District Locomotive Officer, Kundian, who personally vouched for the bad and disloyal conduct of Ellahaya towards the Railway administration during the Punjab disturbances in 1919?

(*b*) If the reply is in the affirmative, will Government be pleased to state why the *ex parte* report of a District Officer was allowed to over-rule the decision of a special tribunal composed of Judicial Officers of ripe experience who honourably acquitted Ellahaya of his alleged complicity in the disturbance that took place at the Kundian Railway station in April 1919?

Mr. C. D. M. Hindley: (*a*) and (*b*) It is a fact that the late Ellahaya, Shedman, Locomotive Shed, Kundian, North-Western Railway, was allowed Provident Fund bonus, but not gratuity. The rules governing the grant of Provident Fund bonus and gratuity are different. One of the conditions for the grant of a gratuity is faithful service, and it was found that the late Ellahaya's service to the Railway Administration could not be held to have fulfilled this condition.

PURCHASE OF STORES.

431. ***Mr. J. P. Cotelingam:** Will the Government be pleased to state:

(*a*) What action has been taken on the recommendations of the Stores Purchase Committee?

(*b*) To what extent has the creation of the Central Stores Department enabled purchases, which were formerly made in England, to be made in India on behalf of indenting departments of the Central and Provincial Governments?

(*c*) What reduction, if any, in the establishment (permanent and temporary) of the Stores Department under the High Commissioner has been made possible thereby?

(*d*) Whether the operations of the Indian Central Stores Department have resulted in economic purchase and, if so, the approximate amount of savings effected?

Mr. A. H. Ley: (*a*) The attention of the Honourable Member is invited to the reply given by Mr. Chatterjee on the 6th September, 1922, to a similar question asked by Sir Deva Prasad Sarvadhikary. The report of the Railway Industries Committee, which also considered the revision of the Stores Purchase Rules, is now being published. Apart from this no further developments have taken place pending the report of the Retrenchment Committee.

(*b*) Owing to financial stringency the development of the Indian Stores Department has been retarded, and the Department has not yet been permitted to recruit the staff necessary to enable it to undertake any purchasing beyond that of Textile stores for the Army. Since the Stores Department came into being, it has made contracts for the purchase in India of a number of items of textile stores which were previously imported from England, notably khaki drill and pugri cloth. Orders have been placed in India for approximately 4¼ million yards of these two items at a cost of 28 lakhs of rupees, the price paid being more favourable than the lowest quotation from England. In addition to the above items of textiles, stores to the value of about 65 lakhs of rupees have been bought in India since 1st of April 1922, which, before the war, were imported from England. In some cases the specifications have been modified at the instance of the Textiles Purchase Branch to enable Indian mills to supply.

(*c*) No reduction in the establishment of the London Store Department has yet been possible pending determination of the policy to be pursued in the matter of the Indian Stores Department.

(*d*) Government are satisfied that the operations of the Textiles Purchasing Branch, which, as explained in the answer to (*b*), is the only purchasing branch of the Indian Stores Department at present in existence, have resulted in substantial savings. The Honourable Member will appreciate the difficulty of suggesting even an approximate figure, since it is obviously impossible to gauge what prices would have been paid had the purchases been made under the system previously in force, while owing to the widely fluctuating values which have obtained over the past few years, it is impossible to arrive at an accurate basis for comparison. There is no doubt, however, that the savings effected have been considerable.

Mr. J. P. Cotelingam: In view of the answer given to question (*d*), I would like to know what proposals Government have with regard to the further expansion of the Indian Stores Department as recommended by the Stores Purchase Committee.

Mr. A. H. Ley: That will have to be considered when the Retrenchment Committee's Report comes under consideration.

Sir Deva Prasad Sarvadhikary: Is it a fact that the Stores Department has now attached to it some inspecting agencies of certain class of articles, purchases in respect of which are not made by the Purchase Department? If so, would the Government consider the desirability of either abolishing those inspecting departments or of arranging that stores with which they are connected should be purchased through the Stores Department?

Mr. A. H. Ley: I think the only inspecting departments at present attached to the Stores Department are the Metallurgical Inspectorate and the Government Test House, Alipur, which do some inspecting work. Stores inspected by them are not always purchased by the Stores Department, as far as I am aware. I do not think the Government have any idea of abolishing either the Metallurgical Inspectorate or the Government Test House.

Sir Deva Prasad Sarvadhikary: Or that in the alternative, the purchases should be made through the Stores Purchase Department?

Mr. A. H. Ley: That also is a matter which will be considered when the Retrenchment Committee's Report is considered.

HINDU TEMPLES AT RAISINA.

432. ***Mr. W. M. Hussanally:** (*a*) Is it a fact that some Hindu temples have been dismantled in Raisina or are to be dismantled in Raisina in the area now being appropriated for the new railway station?

(*b*) If so, has the permission of the Hindu Community or of any one on their behalf been obtained?

(*c*) If so, on what terms and from whom?

Mr. C. D. M. Hindley: (*a*) No. Apart from consultations with those immediately interested in the temples nothing has been done nor is it proposed to do anything at present.

(*b*) and (*c*) Do not arise.

Mr. K. Ahmed: Was there any permission taken in regard to any mosque being dismantled in Raisina from the community of Muhammadans?

Mr. President: This question refers to Hindu temples.

SECOND QUTAB ROAD.

433. ***Mr. W. M. Hussanally:** (*a*) Is it a fact that a new road is under construction parallel to the Qutab Road, within the area of the new railway premises?

(*b*) If so, does a part of the road pass through a Mohammadan burial ground?

(*c*) If so, how has that Wakf estate been encroached upon?

Mr. C. D. M. Hindley: (*a*) Yes.

(*b*) No, the road just skirts the graveyard.

(*c*) Does not arise.

Mr. K. Ahmed: Is it a fact that some mosque land has been enclosed for the building of a compound at Raisina?

Mr. President: This question refers to the making of a road, not to the building of a compound.

Mr. K. Ahmed: In constructing a building or a compound for a building, Sir, which belongs to Government—a new one—there should be a road or path to it.

Is there no answer to my question?

VOTING IN LANDHOLDERS' CONSTITUENCIES.

434. ***Rai Bahadur Bakshi Sohan Lal:** 1. Will Government be pleased to state if they have given any effect to the Resolution (accepted by Government) of Baba Ujagar Singh Bedi given on page 196 of the Legislative Assembly Debates, Volume III, Part I of 1922, regarding the removal of restrictions for the Landholders' constituencies as to their personal attendance at the Polling station?

2. Will Government be pleased to state whether this change in the election rules will be enforced in the ensuing election to be held in the end of this year?

3. If not, why?

The Honourable Sir Malcolm Hailey: The Honourable Member is referred to my reply to Baba Ujagar Singh Bedi's question No. 418, dated the 24th February 1923.

LEASES IN CANTONMENTS.

435. ***Mr. Pyari Lal:** 1. Is the Government aware that the Cantonment Reform Committee has declared the enforcing of a lease for a whole site when it is extended by a House-owner in a cantonment to be illegal?

2. Is it a fact that the Committee has recommended that in such cases "lease" be taken only for the extended portion?

3. Is it a fact that in spite of the Reform Committee's recommendation the practice of demanding and enforcing a new lease for the whole site is still prevalent in cantonments?

4. If so, will the Government be pleased to issue orders in the spirit of the recommendation of the Reform Committee?

Mr. E. Burdon: 1, 2 and 4. The attention of the Honourable Member is invited to the reply given on the 11th September last to question No. 285, asked by another Honourable Member of this Assembly. I will furnish him with a copy of the orders therein mentioned, if he so desires.

3. No, not so far as the Government of India are aware. But if the Honourable Member can give me particulars of any case in which he considers an irregularity has taken place, I shall be glad to have it inquired into.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

The Honourable Sir Malcolm Hailey (Home Member): Sir, I beg to move:

"That the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, as passed by the Council of State and amended by the Legislative Assembly, be passed."

As Honourable Members will see there are certain formal amendments to be taken into consideration and I make this motion therefore in the terms of Standing Order 49. The amendments which have been tabled are formal and consequential, consequential partly to the passing of various amendments on the Code of Criminal Procedure itself and consequential also on action taken by us in regard to the Racial Distinctions Bill. As

they are of a formal and consequential nature only, I do not propose to speak further on this particular motion in order that with the permission of the House these amendments may now be put.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I beg to move that for clause 5 the following be substituted, namely:

"5. In sub-section (2) of section 29 of the said Code, after the words 'High Court or' the words 'subject as aforesaid' shall be inserted."

Sir, this proposal is due to the passing of the Racial Distinctions Bill. It is doubtful as to when the present Bill and the Racial Distinctions Bill will come into operation; but we have thought it desirable that all amendments which are consequential on the Racial Distinctions Bill should be included in that Bill. It will be seen of course that the effect of this motion is to restrict the operation of clause 5 of the Bill before Honourable Members to the final portion beginning with the words 'in sub-section (2) of the same section.'

The amendment was adopted.

Mr. H. Tonkinson: I move, Sir:

"That in clause 6:

(*a*) for the words and figures 'after section 29' the words and figures 'before section 30' be substituted;

(*b*) for the figures and letter. '29A' the figures and letter '29B' be substituted;

(*c*) in the proposed new section 29B, as so renumbered, the words 'notwithstanding anything in the last two preceding sections' be omitted."

This amendment, again, is consequential upon the passing of the Racial Distinctions Bill. Honourable Members will remember that by clause 5 of that Bill we have inserted a section 29A in the Code of Criminal Procedure. Clause 6 of the Bill before Honourable Members includes another section 29A. We think that that section should come after the section 29A in the Racial Distinctions Bill; that is the reason for the first two parts of the amendment. As regards the third part it will be seen of course that the words "notwithstanding anything in the last two preceding sections" in the proposed section 29A, when we took this clause into consideration, referred to sections 28 and 29 of the Code. When 29A is inserted in the Code by the Racial Distinctions Bill, sections 28 and 29 will of course not be the last two preceding sections. Further, these words will now no longer be necessary, because both sections 28 and 29 will begin with the words "subject to the other provisions of this Code."

The amendment was adopted.

Mr. H. Tonkinson: Sir, I move that in sub-clause (2) of clause 16 as re-numbered, for the words and figures "section 107 of the said Code" the words "the same section" be substituted. This is a formal amendment, proposed in order to please the draftsman. If Honourable Members will refer to sub-clause (2) of clause 16 it will be seen that in it the words "of section 107 of the said Code" are repeated, notwithstanding the fact that they are already cited at length in sub-clause (1). In other clauses of the Bill it will be seen that when in the first sub-clause a section of the Code is quoted at length, in the second sub-clause we only say "the same section."

The amendment was adopted.

Mr. H. Tonkinson: Sir, I move:

"That in clause 29 (2), as renumbered, for the words 'subject-matter in dispute' in both places where they occur, the words 'subject of dispute' be substituted."

This again, Sir, is a formal amendment. Honourable Members may remember that on the 26th of January on the motion of my Honourable friend, Mr. Seshagiri Ayyar, we inserted certain words in sub-section (2) of section 146 of the Code. Those words were "and if no receiver of the property, the subject-matter in dispute, has been appointed by any Civil Court." An examination of those words has indicated what we consider to be a drafting defect in the proviso which Sir George Lowndes' Committee proposed to add to sub-section (2) of section 146. If Honourable Members will look at section 145 of the Code, they will find that throughout the words used are "subject of dispute," and the same applies to section 146, sub-section (1). We therefore wish to bring the words in sub-section (2), as it will be amended, into conformity with the words in the corresponding provisions in sections 145 and 146.

The amendment was adopted.

Mr. H. Tonkinson: Sir, I move:

"That in clause 50, as renumbered, in sub-clause (ii) the words 'for the word "Government" the word "authority" shall be substituted and' be omitted."

This amendment is consequential upon the amendment moved by my friend, Mr. Agnihotri, to this clause (then clause 49) on the 1st of February. By that amendment of Mr. Agnihotri the words "the Local Government" were substituted in sub-section (1) of section 197 for the words "the authority having power to order or, as the case may be, to sanction the removal from his office of such Judge, Magistrate or public servant." This being so, it is now no longer necessary to substitute the word 'authority' for the word 'Government' in sub-section (2) of section 197. The correct word is Government.

The amendment was adopted.

Mr. H. Tonkinson: Sir, I move:

"That clause 84, as renumbered, be omitted and the subsequent clauses be renumbered accordingly."

This amendment is due again to the passing of the Racial Distinctions Bill. It will be remembered that clause 17 of that Bill proposes to substitute another section for section 312 of the Code. That section follows exactly the words of the section inserted by this clause with the exception that it also includes a proviso "Provided that no definite number of Europeans or of Americans or of Indians shall be so prescribed." In these circumstances, Sir, it is clearly desirable that this clause should be omitted from this Bill.

The amendment was adopted.

Mr. H. Tonkinson: Sir, I move:

"That in clause 90, as renumbered, for the words and figures 'under section 107' the words and figures 'under section 107 or under' be substituted."

Of course, in the amendment I have moved I have referred to clause 90 as in the Bill before Honourable Members and not to clause 89 as it will be after effect has been given to the amendment last accepted. I do not think, Sir, it is necessary for me to explain further as it is merely a drafting amendment.

The amendment was adopted.

Mr. H. Tonkinson: Sir, I move:

"That in clause 113, as renumbered, for the word 'sentenced' the word 'convicted' be substituted."

The clause 113 will be 112 when effect has been given to the last part of the amendment dealing with clause 84. This is a formal amendment intended to give effect to the intention of sub-clause (2) of clause 113. Honourable Members are no doubt aware that, generally speaking, the right of appeal is given to persons convicted and not to persons sentenced. The only case in section 408 in which a right of appeal is given to persons sentenced is in the case of persons sentenced under section 349 which cannot apply to proviso (*b*) to section 408. Well, the intention of the words which we propose to insert in proviso (*b*) is to secure that in cases where several persons are tried together the Appellate Court should be the same for all persons. If we do not change the word from 'sentenced' to 'convicted,' there are one or two cases,—for example, a case under section 562 where a person is convicted but not sentenced,—in which the intention of the sub-clause would not be given effect to.

The amendment was adopted.

Mr. H. Tonkinson: Sir, I move:

"That in clause 120, as renumbered, for the words 'To sub-section (2) of the same section the following shall be added, namely: 'And the accused person shall be entitled to establish his innocence and ask for acquittal in showing cause against enhancement,' the following be substituted, namely:

'and after sub-section (5) of the same section the following sub-section shall be added namely:

'(6) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under sub-section (2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction'."

The clause will be 119 of course when effect is given to the latter part of the amendment dealing with clause 84. It is clause 120 in the Bill before Honourable Members. This is really a re-draft of the amendment moved by my Honourable friend, Mr. Rangachariar, and I hope that he will agree that it gives effect to the intention of his amendment, namely, that a convicted person who has been given an opportunity of being heard under sub-section (2) against the enhancement of his sentence shall be able to adduce arguments to show that he should never have been convicted.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, may I draw the attention of Mr. Tonkinson to the phraseology of the concluding portion of the amendment 'also to show cause against his conviction.' I understand, Sir, that in such cases a rule is issued calling upon the person convicted to show cause why his sentence should not be enhanced, and in response to that rule he appears and shews cause. If I understand the object of the amendment rightly, it means that while he is showing cause, he can draw the attention of the Judge concerned to the fact that he is entitled to an acquittal, that is to say, he can show cause against his conviction. But the amendment as worded might go to show that another rule has to be issued, that is to say, there is only one rule against the man and he shows cause why his sentence should not be enhanced. If the wording is allowed to remain however as it is, it may

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necessitate the issue of another rule upon him. Evidently that is not what is intended. (*Dr. H. S. Gour*: "It is not required.") To show cause against his conviction. (*Dr. Nand Lal*: "One rule will cover them both.") (*Rao Bahadur T. Rangachariar*: "A rule to show cause against a sentence implies both against the sentence and against the conviction.") (*Dr. H. S. Gour*: "It is obvious.") Well, if that is the sense I have nothing to say.

Mr. President: The question is that that amendment be made.

The amendment was adopted.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): I rise to support the motion that the Criminal Procedure Code as amended be passed. I am sure, Sir, the House will realise that, having regard to the magnitude of the task which lay before it, the number of provisions which had to be amended and accepted, the time taken by the Members cannot be regarded as unnecessarily long. A great deal of learning and a great deal of scrutiny have been brought to bear upon the examination of the Bill, and the Bill, as it emerges, is certainly a far more satisfactory one than the one presented to us. Sir, if I may be permitted to do so, I should like to pay a word of tribute to my friends on this side of the House for the great care and energy displayed by them in making the law conformable to the wishes of the people. It is not possible to mention all the names, and it would be rather impertinent on my part to say much about the two veterans on this side of the House, namely, Mr. Rangachariar and Dr. Gour, who have shown such a remarkable aptitude for looking into this question so ably and so fully. Sir, I may mention, however, some younger friends who have shown great capacity in the matter. I must specially refer to my friend, Mr. Agnihotri, and to Bhai Man Singh, who tabled a large number of amendments and who have shown that they can be trusted to withdraw some of them which they knew would be unacceptable and to press only such amendments as they considered involved a great principle of law. Sir, I may also say that the two official Members who have been assisting the Leader of the House, namely, the Honourable Sir Henry Moncrieff Smith and Mr. Tonkinson, have shown considerable ability; they have shown towards us great consideration in discussing these provisions. Sir, as I said, there has not been too much time taken in considering the Bill. At times, Sir, it looked as if there would be a breeze in the Chamber, at times it looked as if there would be a break-down. It seems to me that these occasional differences were due to not recognising the two standpoints from which this Code was viewed by the Government Bench on the one hand and by the non-official Members on the other. Sir, the point of view of myself and my friends was that we should enlarge the liberties of the people; I hope it will be conceded that it is a natural desire on our part who represent the people, that we should see that the law that is passed does not curtail the liberties of the subjects; naturally we were therefore anxious that our liberties should be enlarged without endangering the safety of Government. From the point of view of the Government, they were most concerned with seeing that the enforcement of law and order was in no way jeopardised. These were the two ordinary standards, one on behalf of the Government and the other on behalf of the non-official Members. It is not possible, Sir, to have in the same persons these two considerations in an equal degree. If that ever existed, there

would be no necessity for a Legislative Assembly, there would be no necessity for law. Naturally one side would look at the question from the point of view of law and order and the other side from the point of view of the liberty of the subject. If this had been recognised, a great many apparent divergencies of opinion could have been tolerated; I believe, ultimately these considerations were recognised and that was the reason why we have in this measure a more liberal Bill than the one we had before—one which will be regarded as satisfactory by the people. Before leaving this part of the subject, I may refer to the assistance which has been very willingly given by a gentleman who has had considerable judicial experience, who has, as he himself said, 37 years' experience in judicial matters—I am referring to Sir Henry Stanyon. His contribution to the discussion of the Criminal Procedure Code has been most valuable both from the point of view of the Government and also from the point of view of our side. As for myself, Sir, I think the Government found me the most vulnerable of all the persons who sent in amendments. They found it very easy to throw out my amendments, they found me so pliable that they easily got me to withdraw any amendment which they did not want me to press, and, so far as I am concerned, I do not think I added much to the discussion. Sir, as I said, this Bill has emerged from the discussion in a form which would be regarded as more satisfactory to the people, and in every way a more liberalised measure than the Criminal Procedure Code which we had before. Sir, when I said that the Government Benches considered the question from the point of view of law and order, I was thinking of what I read only two or three days back, namely the life of Mr. Parnell by Mrs. Parnell. She there points out that Parnell was of opinion if there is anything which is worshipped in England, it is law and order. They regard the worship of law and order as greater than that of religion even; some one else has pointed out that a Scotchman worships his county before his religion; Parnell is reported to have said that it is only an Irishman that really worships God. Sir, in this country, whether he be a Scotchman or an Irishman or an Englishman, when he crosses the seas and comes over here, he gives up his peculiarities and is for crying out—" Order, order order "! That is the position, Sir, in India, and, when we find that such an idol has been set up, before a people who have got a large number of other idols, when we find that this idol is likely to overshadow all the other idols, we begin our little attempts to pull it down. Still, Sir, I think it will be recognised by the House that we have done something to make this Bill acceptable to the country and to advance justice. I must point out one thing. It is not the perfection of the law which comes out of this Assembly that will really matter. It is the spirit in which the Magistracy and those interested in the administration of this law work it that would really matter, and I hope Magistrates all over the country and Judges may recognise the desire on the part of both the Government and the people is that they should work the law in a fair-minded and impartial spirit and solely with a view to mete out justice. And I hope that when this movement for the separation of judicial and executive functions bears fruit a further attempt may be made to make the law more easily accessible to the people and to make justice better administered than it is at present. For at present the law is very costly in consequence of the combination of judicial and executive functions in the same persons. Sir, there is one word more I would like to say and then I will sit down. This child of ours which is emerging from this House is going to what one may call the rich aunt's house, and in that rich aunt's house attempts will be made to clothe it with a great deal of finery; I wish to

[Mr. T. V. Seshagiri Ayyar.]

sound a note of warning. If on the pretext of clothing this child with finery, any attempt is made to mutilate it, we would regard it with very great disfavour. We would disown it, if I may say so. You may do anything as regards grammar, as regards language here and there, but if you are going to mutilate this Bill in the other House, you may take it that we shall not have anything to do with it afterwards. Sir, in this connection I may ask what the Honourable the Home Member means to do with regard to clause 162. It has given the House a deal of trouble. It has taken a great deal of time, and I am inclined to think that the Government is not satisfied with it; I should like to have some indication of the intentions of the Government in regard to that clause. There is one other section also to which I might refer and that is section 526. An amendment to that section was carried at the instance of my friend Mr. Jayanti Ramayya Pantulu Garu when a large number of non-official Members were away taking part in some other matter. Sir, it was not properly discussed. It is a section in which we are much interested and unless the section is restored to what it was when it came out of the Council of State, it would be wholly unacceptable to us; and I should like to ask the Leader of the House what his intentions are regarding it. Subject to these two reservations I give my hearty support to the passing of this Bill. As I said, it has become a more liberal measure, and the country will regard it as fairly satisfactory. With these words, Sir, I support the motion that the Bill be passed.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, when during the last days of Sir William Vincent's association with the Government we felt it our duty to press for postponement of the consideration of this large and important measure we were more than tacitly told that after his departure and that of Dr. (as he was then) Tej Bahadur Sapru, there will be great difficulty in piloting this measure through the Assembly. It does not come upon me as a surprise, agreeable or otherwise, that that apprehension has been falsified and that there are in the Government the makings of good lawyers, though they take all possible and impossible opportunity of disowning anything like association with that reprehensible body. That a lawyer is nothing more than a gentleman with common sense has been amply demonstrated by some Members of the Government Bench and they have given as good fight to the professional lawyer as any professional lawyer might have done. That is an outstanding feature of the way in which the work of this Bill has been done in the Assembly. When the Bill came out of the other House—the more reasonable House as I am told it was described to be during my day's absence from the Assembly—it was supposed to be absolutely the last word and this House was considered to be extremely unreasonable for wanting to look into it more in detail and to try to tinker it, if not to tamper with it. Well, experience has shown otherwise.

The Honourable Sir Malcolm Hailey: Is the Honourable Member quoting from any speech on this Bill?

Sir Deva Prasad Sarvadhikary: I am giving what was left as a matter of general impression upon very impressionable minds like mine.

The Honourable Sir Malcolm Hailey: I am afraid that the Honourable Member is too impressionable.

Sir Deva Prasad Sarvadhikary: Well, I accept that, and without demur. Experience has shown otherwise, and we tremble to think what would have happened if the Act had gone forth to the country without the tinkering that this Assembly has attempted. We were not satisfied with it. One great complaint was that the Racial Distinctions Bill had not yet come. Its appearance was insistently demanded and it came. I should like to express my appreciation, if I may, of the way in which the Racial Distinctions Bill was brought in while this other Bill was in its progress. If some Members had not failed to do their duty, according to some newspapers, and gone away to attend a meeting where they were supposed to have no business to be, the passage of the Bill would probably have been slower, the Racial Distinctions Bill and the Criminal Procedure Code (Amendment) Bill would have been a good tandem to drive. Where that would have been better or not I do not propose to examine. But the Racial Distinctions Bill has come and has been passed and the Criminal Procedure Code (Amendment) Bill in the original shape that was given to it has also come and passed and the two will find a place now in the criminal statute of the country. The work of consolidation will soon have to be taken up after large amendments like those that have been made. This morning we had an illustration of what may have been unavoidably overlooked and what may have to be put right. Probably in the course of the working of the twin measures that will now find a place on the Statute Book, difficulties will be found and a consolidating measure may soon be necessary. Sir, I quite agree with those that have voiced that sentiment that it is a mistake to weaken the Magistracy, and it is a mistake to unduly restrict the police. Because some Magistrates are bad and some policemen are worse, that is no reason why we should legislate down to their level. We must try and bring them up to the level of that which is ideal law having regard to existing exigencies. Separation of judicial and executive functions of the Magistracy will certainly be a step forward in that achievement. But that is not yet wholly to be. Financial or other difficulties will stand in the way and so long as the present system continues, work of administration will have to be made acceptable to the people and helpful to the Government. Sir, often enough have we heard it pleaded in this House in favour of retention of a particular section that it has been in existence for over half a century and that the Select Committee had examined it. Neither acid test has however in many cases prevailed and it shows that the test of time is not always the best. We are progressing. We are marching forward, and liberalising influences in criminal as also in civil law have to be put in operation, slowly it may be, but surely. That has been demonstrated in this case and improvements were possible here though the Bill had been examined and improved elsewhere. Mr. Seshagiri Ayyar has referred to the achievements of many on his side of the House. I, Sir, should like to mention not the achievements, but the silent doings of our friend, Mr. Samarth, who is not here unfortunately owing to domestic reasons. He has been a great staying power throughout, the brake power, which is no less necessary than the motive power. Oftener than not his wise counsel has prevailed and in conjunction with him it was my privilege to appeal to this House as well as privately to Members for concentration of our attention upon the things that matter and to give the go-by to things about which a great deal might be said by one or half a dozen but which would not find acceptance with the House. I think I may fairly congratulate those who are responsible for the amendments that wise counsels ultimately prevailed; and Sir, if I may do so, I should like to thank the Chair for the assistance that it gave in the matter of making a conference possible between those who were

[Sir Deva Prasad Sarvadhikary.]

responsible for the amendments and those who were fighting them. Round table conferences, or square table for the matter of that, are at times apt to be very helpful and it was helpful in this case in cutting down the length of debate and also to a certain extent its acrimony. Nothing like coming face to face with one another across a table and talking things over and that is how your differences ought to be brought to a minimum. That is a lesson that you ought not to forget in the new system of Government that is now coming on. Mutual understanding will often help in removing difficulties that at times may have appeared colossal. I join with my friend in hoping that when the Bill makes its second (or I do not know whether it will be the third) appearance in this House, the threat about the " reasonable Chamber " will not influence it to any appreciable extent, at least to an extent that will make this Assembly stand out for its right. Sir, I give this measure my support and congratulate both the House and the Government on its easy and satisfactory passage.

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, this Bill which has just now emerged from this Assembly is a piece of legislation of considerable importance to the country. The one point on which I should like to congratulate ourselves and the country on its passing is not a point connected with individuals who had given time and bestowed their labour on the shape and form which it has now attained, but it is a point of great constitutional importance. It is now nearly 50 years roughly since Sir James Fitz James Stephen said that the Criminal Procedure Code and the Indian Penal Code were two grim presents from one nation to another. He said it with considerable pride—legitimate pride; but I say now to-day that this Bill as passed by this Assembly is not a present in the sense in which Sir James Fitz James Stephen wrote then, but it is a measure which the representatives of the people assembled in this Hall have shaped and given to the country at large. That is the point of view from which I would congratulate everyone here and the country. As for the details which have been modified in this Assembly, I for my part do not consider them to be of any great importance, and I do not think that a Procedure Code like this, technical and to be worked under the safeguards provided by the law by several branches of law, is one which could really and usefully be altered in a large Assembly like this. It must always be the work of experts, men who are acquainted with the theory and practice of law. As for the general ideas people may have in regard to particular aspects of Criminal Law, no doubt that will be taken note of by experts and I may say that certain changes made in the verbiage of some of the sections of the Code remain to be tested in the Courts when they are worked in future. Well, there are three or four points on which there has been a substantial advance or substantial liberalisation of the stringent provisions of the Code as it stands to-day. First is the question of bail. The present provisions work a great deal of hardship. The division of bailable and non-bailable offences is not based as far as I can judge on any logical ground. It is not on the ground that if an offence is heinous it is non-bailable. Some ground which it is difficult to understand has been at the bottom of the distinction. Now, under the changes which we have introduced in this Code, we have made it possible to lessen the hardship which the present law has worked. Another point on which we have altered this Bill is what is called the sanction to prosecute, that is the prosecution of a perjurer and the forger or a man who had put in

false evidence in a Court of Justice. The present procedure is the Court that tries the case gives the permission, which is called the sanction, and then with the sanction on hand the person goes about threatening the other or sometimes levying even blackmail; especially in civil litigation when some Judges grant sanctions more readily these sanctions have been used to blackmail, to coerce the opponent. That has been obliterated and I believe the present law is in line with the English law. The Court itself has to take action in regard to a man who has put before it false evidence. That will minimise the blackmailing and coercing by private individuals. The third point is the much debated one and the point about which reference has already been made, that is about the copies of police diaries. I do not think that there was really any threat, nor is it likely that the alteration which the Assembly has made is so dangerous to the investigations by the police that any unnecessary trouble need be taken about it. In regard to the security sections a few slight changes have been made, but after all the security sections are worked more or less on the executive side of the administration and it is a matter of considerable doubt whether executive action should be really hampered by unnecessary restrictions. The whole trouble has arisen owing to some Magistrates having used these powers under these executive sections in a manner not contemplated by the ordinary man. Except for that, I personally cannot say that that executive action should be very much controlled, because the object is to prevent a sudden disturbance, and there any amount of restriction will not have the desired effect. There is one word, Sir, with which I would conclude. After all in whatever form we may put a law, especially a processual law, it must always depend for its due administration on the character, intelligence and the sense of justice of the men who administer it.

12 NOON.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): Sir, I did not intend to enter into the discussion on this subject to-day, but as my Honourable friend, Mr. Seshagiri Ayyar, has mentioned my name in connection with an amendment which has been made in this Bill, to which he takes objection, I think a word or two is necessary from me. He refers to the amendment which I proposed to section 5 of the Code. One would suppose from what he said that this amendment was carried in a more or less surreptitious way . . . .

Mr. T. V. Seshagiri Ayyar: No, I did not say it was carried in a surreptitious way, all I said was there was no opportunity for discussing it, as the amendment was passed when we were all away.

Mr. J. Ramayya Pantulu: This amendment was sent up by me so far back as September last, and my friends might have taken objection to it when it came up for consideration. Probably they would have vetoed it. Then, Sir, coming to the merits of the amendment. What is the amendment? The clause of the Bill, before it was amended at my instance, gave to the accused power to ask the Magistrate to adjourn the case at any time during the trial on the ground that he was going to move the High Court for a transfer of the case. It gives the accused power to compel the court to adjourn the case at any stage before the accused is actually convicted. My amendment was to the effect that this power should be given only up to the moment the accused enters upon his defence. Even as it is, it is a great improvement upon the old law. According to the old law, that is the Code that is now in force, an accused person is

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entitled to make his application for an adjournment only before the commencement of the hearing and even then, the Court is not bound to stop the proceedings. It can go on with the inquiry, only it must not frame a charge until the accused's application for transfer has been disposed of, or the time given for making the application has expired. According to the section as amended, the Magistrate is bound to stop all proceedings until the application for transfer is disposed of, provided the application is made at any time before the accused enters upon his defence . . . . .

Mr. President: Order, order, I cannot allow the Honourable Member to go into details of that kind, for the very reason that other Honourable Members may wish to do the same, and we should be here as long as we have taken to discuss the Code already.

Mr. J. Ramayya Pantulu: All I can say in regard to what Mr. Seshagiri Ayyar said so far as this amendment was concerned, is that he views the matter from the point of view of the accused, and I have tried to view it from the point of view of the Court and the administration of justice.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): To-day, Sir, is the day of great rejoicing, since 1916 when the amendment of the criminal law was started. Thereafter, Sir, for the last six years before this Bill was brought to this Assembly, there has been amendment after amendment and they had to change the original Bill of 1916. After that, opinion was invited by the Government of India from the Local Governments and the High Courts of the Provinces in India, and there have been additional alterations. Sir, we congratulated the Government of India from the first day when these amendments were placed before this Assembly. I think it was in 1916, when this crowded Assembly had no existence, but the Reforms were contemplated and the Secretary of State was about to start from England to investigate the matter and to introduce the Reforms. After that, the Government of India placed before the Council of State the amendments which we were considering from the 15th of January this year, as it is stated on the Bill " as passed by the Council of State." The Council of State made very little, or no amendments in the Bill which was presented to them. Those elder politicians did not take any trouble to change or amend the Bill. However the Bill was brought in here for our consideration on the 15th of January. On that day, Sir, I think I was the first to put forward the objection that this Bill could not be considered because the Report of the Racial Distinctions Committee had not been placed before us. In my own Province they were considering how to give effect to the separation of the judicial and executive functions, and I can assure this House that my own Province is still contemplating this separation, and the question of how to give effect to it. Sir, therefore the baby of our Honourable friend, Mr. Seshagiri Ayyar, which now is going to become a Member of the big family, has got to be dismantled. A new tailor will have to cut its cloth to fit its body. It has got to be altered and it has got to be changed.

The second point on which I wish to touch relates to my friend Mr. Pantulu's amendment under section 526 with regard to the transfer of a case from one Magistrate's Court to another Magistrate's Court. I suppose, Sir, it was a very thin House on the afternoon of the 12th or 13th February last when Dr. Annie Besant's Conference of moderate sections was held at the

Eastern Hostel at Raisina. Many of our able and energetic Members of this Assembly including my Honourable friend, Sir Deva Prasad Sarvadhikary (*Cries of* "He was not here then.") He was not here nor was he in the House—Mr. Seshagiri Ayyar and many other friends, whose names have been so eloquently mentioned by himself the President of the Democratic Party, were not in the House at the time and Mr. Pantulu's amendment was brought in and agreed to. Great dissatisfaction was felt on this side of the House that the non-official Benches were all empty. Sir, the transfer of a case from a Magistrate's Court at this stage, that is to say, after the charge has been framed, when the Magistrate comes to the conclusion that a *primâ facie* case has been established against a particular accused whom he is going to convict shows the true intention of the Magistrate and his attitude is felt by the accused who does not expect to get fair justice at the hands of the Magistrate.

Mr. President: Order, order. I told the Honourable Member on my left that he had better not go into detail, and I must give the same warning to the Honourable Member himself.

Mr. K. Ahmed: Sir, I quite realise that position. That being so, the poor accused gets no justice and the poor country appreciates very little the baby that is now crawling in the courtyard of India.

Now, Sir, as I have already said, the Criminal Law Amendment Bill has got to come again after a short time before this Assembly, and I do not think the time is far off when the Honourable the Home Member with the great assistance of the Honourable Mr. Tonkinson and the Honourable Sir Henry Moncrieff Smith, the Secretary of the Legislative Department, who piloted the Bill will have to labour under the same old thing, and I am afraid the public, the foster parents and the many uncles, who have assisted in lifting up the baby and introducing it to the country, will find there are many difficulties in it. At all events, Sir, when the birth of a baby takes place, it is really a source of great pleasure to many, and I congratulate from the bottom of my heart the Honourable the Home Member and his lieutenant, the Honourable Mr. Tonkinson, who have taken so much trouble to bring in this Bill to amend the Code of Criminal Procedure.

The Honourable Sir Malcolm Hailey: I see some signs of, I will not say of impatience, but of a desire on the part of the House to see this discussion brought to an end. And I know that there are many Members in the House who feel that, to use a term which I have heard to-day, a series of complimentary speeches occupies unduly the time of a House which has other and urgent business before it. If, therefore, I make a few remarks, they shall be as brief as possible. I should regret if we on the Government Benches had ever really given Sir Deva Prasad Sarvadhikary reason for his impression that we resented any attempt "to tinker or to tamper" with this Bill. In some years to come, Sir Deva Prasad Sarvadhikary will be almost as old as I am and, when he reaches that mature age, he will rejoice to find that he has put behind him the tendency to yield too quickly to impressions. But when we put this Bill forward, we felt that it had a long history of careful and conscientious work behind it. The original framing of the Bill occupied many years of investigation and discussion; then followed the long and pious labour of the Lowndes Committee, succeeded again by long noting in the Secretariat, and finally it must not be forgotten that many important amendments were also made by the Joint Select Committee of this and the other House. We put the Bill before the House on the basis of all that previous work. Many

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of us foresaw that this was exactly the type of measure in which the House was likely to take great interest, not only because the Assembly contained so large an amount of legal talent, but because there is possibly no one measure which is of more general interest throughout the length and breadth of the country. I have been told to-day that in England we make a fetish of law and order. If so, there are good reasons for it; for we know that no State can be stable, we know that it can make no steady progress, political, material, or moral save in an atmosphere of law and order. Those who reflect on the state of India a short hundred years ago, will realize that India should have cause to congratulate itself that it was brought into association with a people which had as its ideal the establishment of order under the sanction of law; and if we have attached great importance to this development in the past, it is because it constituted a primary necessity for the ordered advance of India. I do not say that the people of India are, as compared with other people, of a criminal tendency or nature; but there is no doubt that the spirit of law and order as we understand it does not prevail over very large parts and among very many classes of India; and the consequence is that large classes of people are brought into continual contact with the Criminal Courts. It is essential therefore that our Procedure Code should be in a form which will at once secure justice to the accused person and the preservation of the ordinary standards of order in the community. It is easy to recognize the great importance that this Bill presents to the House, and I do not think that we have ever shown impatience at the time occupied in discussing it or can have given any impression that in our opinion the time devoted to it has been wasted. That the time has been long, the House itself recognises; but whatever one may have thought when sitting here in the course of debate and controversy on the subject, when that controversy is over, we must all admit that the Bill constitutes a measure on which the House was justified in spending long and anxious days. (Hear, hear).

My friends have stated, and with some pride, that the House effected many important amendments. I will not for a minute depreciate the value of the work done by the House, nor the care and industry of those whose names were mentioned by Mr. Seshagiri Ayyar; but I must in justice once again recall to the House that much of the improvement effected in the law has been the work of those who laboured on the Bill before it came to the House. Let me take, for instance, such items as the extension of bail provision; the substitution—I refer to an item which Mr. Subrahmanayam also mentioned—the substitution of complaint for sanction; the enhanced power to release on probation, or again the provisions regarding juvenile courts. If the House finds reason to congratulate itself in regard to its own efforts, I say these are substantive improvements in the Act for which the House must also thank others.

And now I come to the substance of what I have to say. I have been warned that if I attempt to have this Bill mutilated in another House—I did not quite catch the somewhat ornate *alias* which Mr. Seshagiri Ayyar applied to that House, but Sir Deva Prasad spoke of a more reasonable House, or as Mr. Kabeer-ud-din Ahmed said, drawing on a still richer fount of metaphor, if I attempt to dismember . . . . (*Mr. J. P. Cotelingam*: "Dismantle.") dismantle this baby, then this House will resent it. I wish to deal with that question with that candour which I have always tried to exhibit in approaching this House. There are clauses in this Bill—few in number but still important—which we feel

to be unsound. Let me take the most important of those—I mean the amendment to section 162. That has been referred to to-day both by Mr. Seshagiri Ayyar and by others. We are not, I think, alone in holding that the clause cannot stand as the House has left it. Indeed I have been shown amendments drafted in the last few days from more than one quarter of the House which demonstrate clearly that there are others besides ourselves who think that some further amendment of the clause as left by the House will be necessary. Let me say at once that if we had not put forward our Criminal Procedure Amendment Bill, and if a Bill had been put forward and passed by this House giving to that section the form in which it has now emerged from this Chamber, I myself should have felt it my duty to advise the Governor General not to assent to that Bill. The reason is simple. Government can be no enemy to placing in the hands of the accused every material which will secure justice; but equally the Executive Government has a primary duty to see that the course of investigation and detection of crime is not impaired. Great as our obligation may be in respect of securing justice to the accused person, one cannot at the same time forget the necessity of protecting the ordinary public from criminal attack on person, life or property. Now we hold, and hold strongly, that in its present form this clause would impair the detection of crime, and to that extent would be a source of real injury to the ordinary public. We hold further that in its present form it will have further undesirable result, in that it might drive the police to adopt methods in recording statements which would in the end make those statements less useful for the Courts and therefore impair the course of justice. Holding those views, I do not think that any Executive Government would be acting within its duty if it recommended to the Governor General that he should assent to a Bill containing the provisions as they have emerged from this Assembly. We must therefore attempt to get some amendment of this clause, for if we do not, and if my representations to the Governor General in regard to the Bill are approved by him, then the whole of the labour which the various Committees have lavished on this Bill, and the time that the House itself has spent on it, the whole of that labour will be wasted, for the Bill will not come into operation at all.

There are other clauses of somewhat less importance. They will be found in clause 47 and clause 110 of this Bill as renumbered in the copy now before the House. Mr. Seshagiri Ayyar has referred to clause 146 (8) of the Bill—I mean Mr. Pantulu's amendment in regard to transfers. Did I hear from Mr. Seshagiri Ayyar or was it from some other Member of the House, that it might perhaps be advisable to amend that section in another place?

Mr. T. V. Seshagiri Ayyar: Yes, I suggested that to the House.

The Honourable Sir Malcolm Hailey: The Honourable Member has suggested it. He will remember, I hope, when I take action in regard to another section that it is possible to improve the wording of the Bill as it leaves this House without in any way impinging on the dignity, or the privileges or the prestige of this House.

Rao Bahadur T. Rangachariar: Without impairing the substance.

The Honourable Sir Malcolm Hailey: Well, Sir, as regards the transfer clause, 146 (8), I have only to say this that if Mr. Seshagiri Ayyar's friends in another place do propose an amendment, we shall deal with that amendment with all the delicacy and circumspection that the case requires.

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I have little more to say. I believe that as the joint result of much labour and much care this Code is a substantial improvement on its predecessor. Our Code is a matter of primary interest to the people of India; I might indeed say it is of primary interest to a large number of people in the Far East, for this present of ours to India (as it has been described to-day) has been copied largely in many other countries, a fact of which I think we may be not a little proud. I can only hope that the final fate of this Bill, when all our discussions on it have closed, will be such as will be equally satisfactory to Government and to this House. Let me repeat that we do not wish to make over much of a fetish of law and order; we must, however, preserve our responsibilities in regard to the maintenance of proper safeguards for the protection of people against crime. The sense of law and order is not created or indeed maintained only by legislation, it is fostered by a growing sense of the necessity of civilised and social methods among the population itself; but if your legislation is satisfactory, then it is a powerful adjunct to the growth of such feelings. Their growth is thwarted unless the population at large has confidence in the power of the administration to protect them from crime: if it has no such confidence, it has a contempt for the law and seeks its own methods to protect its property, its life or its honour. All that we can hope to do here is to hand on as perfect an instrument as possible to our courts and to our investigating agency.

My final word is this. I have heard in the course of these debates much criticism both of our courts and of our investigating and prosecuting agency. I wonder if it is really necessary after all for me to speak a word on their behalf. I wonder if it is really necessary for me to repeat here the tale of the great work that is done by the police, their loyalty to the State and to the public, a loyalty so great that even if you can occasionally point to some untoward incidents, yet the benefit on the whole far outweighs any defect that has brought them under criticism. (Hear, hear.) Again, is it not really necessary to speak here on behalf of our Magistrates? They are no importation into India; nine-tenths of our Magistrates are Indians themselves, officers of our provincial services, men whom we look upon not only as the backbone of our administration, but as the backbone of justice itself. I think it should be far from any of us to speak any word which will go out from here and convey to them the impression that we mistrust either their capacity or their integrity, or that we do not value the enormous work which they do for the country. That is my final word, and in that word, whatever differences we may have about any detail of legislation, I am confident that the House will agree.

The motion, that the Bill, as amended, be passed, was adopted.

THE INDIAN PENAL CODE (AMENDMENT) BILL.

(AMENDMENT OF SECTIONS 362 AND 366.)

The Honourable Sir Malcolm Hailey (Home Member): Sir, I beg to move that the Report of the Select Committee on the Bill to amend sections 362 and 366 of the Indian Penal Code be taken into consideration.

I need not perhaps remind the House of the circumstances in which this piece of legislation came to be placed before it. It was of course necessary in order to implement the Resolution of the House by which it agreed to adhere to the Convention on what is known (inaccurately though I retain the term for the present) as the White Slave traffic. We accepted

an obligation to legislate on two points, first, to make it penal to procure a minor girl for illicit intercourse by any means whatever and not only by force or compulsion or otherwise; and secondly, to make it penal to procure for illicit intercourse a woman of any age by force, compulsion, intimidation or abuse of authority. When the Select Committee came to examine the Bill, it thought that it was capable of amendment in two respects. They considered firstly that one of the clauses went somewhat further than was required, and secondly, that it was possible to comply somewhat more nearly to the terms of the Convention than the original draft had done. We have explained clearly in the Report of the Select Committee the exact points, to which I am referring. We therefore re-drafted the Bill, but the re-draft in itself has made no change in substance. I see from the amendments which we have before us that the only one point of principle in the Bill (which it has been previously debated in the House) will again come for discussion on the floor of the House. I therefore do not refer to it at this stage; we shall have ample opportunity of discussing it subsequently. At this stage I only move that the report of the Select Committee be taken into consideration.

The motion was adopted.

Clause 1 was added to the Bill.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, I move that in clause 2 the words " or of abuse of authority " be omitted.

These words are rather vague. There may be authority of many kinds, such as natural authority, official authority and other kinds of authority; natural authority would mean the authority of the parents, of the father or mother or other natural guardian; and if that kind of authority is meant I think it will be very difficult to ascertain where the abuse lies. Take the case of a girl who is reading in a particular school and the school mistress sends the girl to attend some meeting or a tennis party or to some church to attend prayers, and there she meets some young men and somehow or other gets into bad company and is seduced for the purpose mentioned in the Bill. There is this difficulty. It may be said that the girl went to such a place, and having gone to such a place, was seduced. It may be wrongly construed against the school mistress for abuse of authority. Probably it may be said that no body accompanied the girl, and the girl having gone alone, such an occasion arose. It will be very difficult to put a proper interpretation on the words " or abuse of authority ". It is liable to be abused in other ways as well. If you put a strict interpretation on these words, you may say that the natural authority did not exercise proper care or caution and so there is an abuse of authority. We know that in some societies girls are allowed to go out, there may be abuse, there may not be abuse of such a system. But it will be very difficult to fix the guilt of a person in authority. I suggest the omission of the words ' or of abuse of authority ' in clause 2.

The Honourable Sir Malcolm Hailey: I would explain very briefly why the words ' or abuse of authority ' were placed in the Bill. They are necessary in order to meet our obligations under the Convention. Its Article II runs as follows:

" Whoever in order to gratify the passions of another person attempts by fraud, by means of violence, threat, abuse of authority or any other method of compulsion, to procure, entice, etc."

I cannot agree with my Honourable friend that these words constitute any sort of danger. I do not indeed think that the cases put by him are in any

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way relevant to the section as drafted. Abuse of authority could not be argued against any person who had merely been guilty of carelessness or omission to provide proper precautions, for this possibility was evidently at the back of Mr. Misra's apprehension. He will see that it is necessary not only that a person should be guilty of abuse of authority, but that by so doing he should induce any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced, etc.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, I have only a very few words to say. I have considered this amendment carefully, and I do not think it can be supported. 'Abuse of authority' might be necessary in this country to cover a case which could not easily be covered by anything else in this section. One illustration is,—I am sorry to take it after all that has been said here about the police,—that a police constable might abuse his authority to induce a woman to go for some such purposes. The only word on which I wish to say anything in connection with this clause is the word 'induces'. When you *cause* a person to move by force or by criminal intimidation you do not *induce* that person to go; because, to my mind, the word 'induces' involves some form of persuasion, and therefore it seems inconsistent with criminal intimidation and compulsion. When you *compel* a person, it seems to me that you do not *induce*. But so far as the amendment before the House goes, I think my friend will be well advised to drop it.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I venture to add a word or two to what has fallen from my Honourable friend on my left (Sir Henry Stanyon). The word 'induces' to which attention has been drawn by him is qualified by what follows 'with intent that she may be, or knowing that it is likely that she will be forced or seduced' etc. Now what was intended to be suppressed by the Convention was that any body should exercise his or her will on the mind of the girl concerned in order that she might be seduced or forced to have illicit intercourse; the words "abuse of authority or any other method of compulsion" supply another qualification to the words "forced or reduced to illicit intercourse, it may be, with another person". Such compulsion when brought about by the abuse of authority, official authority or parental authority or any other kind of authority is within the meaning of the Convention, and has been made punishable by the section, that is to say, if he or she acts in the particular way contemplated by the section. Clause (2) of the Bill suggests a form of criminality which ought to be suppressed, and which it is the intention of the Convention to suppress. My submission to the House is that the word 'induces' when it is coupled with what follows does not imply any innocent act of inducement on the part of the person who induces. As a member of the Select Committee, I venture to say that these words were carefully considered, and from the point of view I now place before the House, there does not seem to be any cause for apprehension with regard to the drafting of this section.

Mr. B. N. Misra: Sir, with your permission, I beg to withdraw the amendment.

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

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Sir, I move that in clause 2, in the proposed paragraph of section 366 after the words " method of compulsion " insert the words " direct or indirect ".

So the section will read in this way if my amendment is accepted, namely: " And, whoever by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, direct or indirect, induces any woman ", etc. To meet certain cases I have proposed the addition of these words ' direct or indirect '. For instance, in a house there is a girl, and a man outside takes a fancy to her. Somehow or other he gets her dismissed from that house by some other man. Then she goes to another place, and there too he does something else of the kind till that girl comes into his clutches out of sheer helplessness. So, to avoid all these things, I think it is necessary that the words ' direct or indirect ' should be added.

The Honourable Sir Malcolm Hailey: These words " or any other method of compulsion " seem sufficiently wide, and if they are not in themselves sufficiently wide, we think such cases as Mr. Sarfaraz Hussain Khan has in view could be sufficiently met under the definition of ' abetment '.

The motion was negatived.

Clause 2 was added to the Bill.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I beg to move the following amendment which stands in my name:

" In clause 3, in the proposed section 366A, for the word ' sixteen ' substitute the word ' eighteen '."

Sir, as the Honourable the Home Member has said in his speech, the principle of the amendment which I have moved was discussed in this House last year. The Members will remember that, in the Conventions of the League of Nations on this subject, there are two important articles. The first article is intended to prevent traffic in minor girls even though the girl may have consented to sell herself. The second article is intended to prevent traffic in women when there is fraudulent means or violence employed in order to seduce the woman. Now, the difference between the two articles is this. In the case of the first article, even when the girl gives her consent, it is an offence to traffic in such a girl if she is a minor. Therefore, the chief point of importance between the two sections is the consent of the girl. It clearly shows that, in order that the girl should be able to give her consent to sell her body, it is necessary not only that her body or physical functions should have been developed or matured, but it is necessary that her judgment should be also matured in order that she should be able to give her consent for selling her body. Not only that, but it is also necessary that her character is fully developed before she is given the right to consent to sell her body. It is on this ground that I want the House to support my amendment. Now, Sir, when this question was discussed last year, several arguments were brought forward in favour of retaining the age of 16 instead of the 18, or 21 which I proposed at that time and which is also accepted by European countries. The first argument used is that in India girls attain to maturity early. Sir, that may be true or it may not be true as regards physical maturity. It may be true in the case of physical maturity, but what we are considering in this section is not physical maturity, we are considering maturity of judgment and development of character. We are considering here whether a girl of 16 will be able to defend herself against

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fraudulent attempts of other people or not. Whether she is in a position to give her consent to sell her body or not. Therefore, the chief point of importance is not physical maturity at all. The point of importance is maturity of judgment and development of character, and I do not think anyone here will say that in India girls attain maturity of judgment and maturity of character earlier than in Europe. Therefore, I do not know why we should make that difference. Sir, the second argument used was that our social customs differ. Sir, as regards this argument, I know that in India girls and boys marry early. But we have to remember that in this section we are not touching the marital relations between girls and their husbands at all. We are here dealing with the relations of a girl who is being seduced by a person in order that her body may be sold to a third man. Therefore, social customs are not touched here at all. I do not know of any customs here in this country where any people will allow or tolerate the selling of girls on account of social usages. Therefore we need not take into consideration the argument about social customs. We are not violating any social customs even if we increase the age from 16 to 18. Sir, the third argument used at that time by the then Home Member was that in India public opinion may not be in favour of raising that age from 16 to 18. Sir, Government since that time has collected the public opinion in different provinces as expressed by different bodies interested in this question. And, if Government and the Select Committee had given effect to the opinion expressed by the people consulted, Government and the Select Committee would have accepted the amendment which I am proposing. (*The Honourable Sir Malcolm Hailey*: "No, no.") The Honourable the Home Member says "No, no!" I am prepared to prove that I am quite accurate in my statement. Sir, out of the Governments consulted, the North-West Frontier Province, the Punjab, Bihar and Orissa, Assam, Bombay and the Central Provinces have either proposed the age of 18 or 21. All of these 6 Governments have found that the age of 16 is not the proper age and either the age of 18 or even 21 is the proper age. (*Dr. Nand Lal*: "Not the Punjab.") Even the Punjab. The only major provinces that have consented to retaining the age at 16 are Bengal, Madras and the United Provinces. Sir, in order to convince the House, the House will excuse me if I read to them a few quotations:

North-West Frontier Province.—"The majority of Indian opinion consulted in this Province would appear to favour an age-limit of 18 years, but in most cases the suggestion is offered with diffidence and I am satisfied that a higher age-limit would receive wide support. I consider that in this matter conformity with the practice of other countries is desirable for many reasons and I recommend therefore that the limit be fixed at 21 years."

Burma.—"Subject to anything which other Local Governments may have to urge, the Lieutenant-Governor would be disposed to support Dr. Gour's proposal to compromise by fixing the age at 18—as a first step, if the Government of India are not prepared to sign the Convention as it stands."

Bihar and Orissa.—"The Governor in Council considers that the age of 18 years is the most suitable limit for India to adopt, in view of the fact that puberty is attained in this country at an earlier age than in Europe or America. Under the India Majority Act, 1878, 18 years is the age of majority, except when a guardian has been appointed by the Court."

Assam.—"His Excellency the Governor in Council feels that the matter is one on which Indian opinion should prevail, and the Indian Members of this Government including the Honourable Minister, consider that the Convention of 1921 may be accepted as it stands and the age fixed at 21."

Central Provinces.—"For these purposes the Judicial Commissioner considers that there is no possibility of objection to the raising of the 'age of consent' to 21 years."

Punjab.—"On the whole, the Governor in Council considers an age-limit of 18 years a reasonable compromise, since it has the advantage of conforming with the age of majority as fixed by the Indian Majority Act, 1875 (Act IX of 1875)."

(*The Honourable Sir Malcolm Hailey*: "Do they refer to this section?" *Mr. N. M. Joshi*: "Yes".)

Bombay.—"Opinions elicited indicate strong preponderance in favour of accepting for India age twenty-one adopted by European parties to Convention. Governor in Council concurs and recommends adhesion to Convention without reservation as to a special age-limit for India."

So, these 6 Governments are in favour of the amendment proposed by me and there are only 3 major provinces who are against it. Therefore, on the whole public opinion in India is in favour of raising that age from 16 to 18 and in some cases there is public opinion in favour of raising the age-limit even to 21. Sir, there is moreover an advantage in this. By putting the age at 16 we are only reducing the age of majority by 2. The Act of Majority in India, which is really an Act setting down the age at which the consent of a party becomes valid, lays down the age of 18 and I do not know why in this case we should reduce that age from 18 to 16. I, therefore, hope that, as there is great support for the amendment which I have moved and strong reasons in its favour, the House will accept my amendment.

1 P.M.

Mr. J. P. Cotelingam (Nominated: Indian Christians): Sir, I am strongly in favour of the amendment moved by the Honourable Mr. Joshi. It is in conformity with the law as regards the age of majority. As Honourable Members know, at the age of 16, a girl's mind is not mature enough to enable her to form an independent judgment especially in the critical position in which she may find herself. If the age cannot be raised to 21 according to the International Convention I trust that the compromise arrived at by the amendment of Mr. Joshi will be accepted and that instead of 16 being the age-limit the House will agree to its being raised to 18.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, this clause gave considerable trouble to the Select Committee. This question was very carefully considered. There are certain aspects of the question which weighed with the Committee in keeping the age at 16. Honourable Members will notice that this clause runs:

"Whoever, by any means whatsoever, induces any minor girl under the age of sixteen years to go from any place (for the purpose).....shall be guilty of the offence."

It would apply even to the parent making an arrangement for the future happiness of his or her daughter. (Laughter.) Honourable Members may laugh, but they do not realise the unfortunate difficulties which a certain class of people in this country labour under. I mean the *Devadasis*. Daughters of those unfortunate people cannot find suitable marriage. That is, people in caste would not marry those girls. I know, Sir, many a case where suitable alliances have been effected in the case of these unfortunate people in the Southern Presidency, and I am sure it is also common in other parts of the country. (*Honourable Members*: "No, no.") If it is not, I will confine myself to the case of the South. What happens is, as these girls cannot find wedlock, the mothers of these girls arrange with a certain class of Zemindars—big landlords—that they should

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be taken into alliance with the Zemindar, and they often lead honourable lives. That is to say, they are husband and wife and the issues of such an alliance have been recognised to have heritable rights in property.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): Are they non-Brahmans?

Rao Bahadur T. Rangachariar: I said that this is among a large class of landowners in the South. There are reported cases—Ramamani case is one such—where the issues of such an alliance have been given rights of inheritance to property. Although this is not strictly called marriage, it is still a low form of marriage which is recognised in that community and by increasing the age to 18, you will be preventing these alliances taking place. Honourable Members will remember that under the Hindu Law and under the Muhammadan Law, the age of majority is not 18. The age of majority as 18 has been introduced by the Age of Majority Act only for certain purposes. Act IX of 1875 says:

"Whereas, in the case of persons domiciled in British India, it is expedient to prolong the period of non-age . . . ."

The period of non-age under the Hindu law is 16. Honourable Members apparently have forgotten their Hindu law. They have forgotten that under their own system of law under which they are living, but for the Majority Act the age of majority would be 16, and therefore, the Legislature thought fit for certain purposes to extend the period of non-age. So the period of non-age is 16 and it is extended by the Age of Majority Act only for certain purposes. That Act also says:

"Nothing herein contained shall affect the capacity of any person to act in the following matters (namely), Marriage, Dower, Divorce, and Adoption."

So that, for purposes of marriage, the age of consent is 16 under the law as it stands, and under the Muhammadan law it is even less. Under the Muhammadan law, as soon as a girl attains puberty, she is considered an adult. (*Mr. Mahmood Schamnad Sahib Bahadur*: "Their age of puberty may be even 18.") That is absolutely rare. The priod of non-age is still less. (*An Honourable Member*: "For marriage, not traffic.") For the purpose of marriage, for the purpose of dower, for the purpose of adoption, even now the age of majority is 16. Does my Honourable friend contend that if in the case of adoption you attribute sound judgment to a person of the age of 16, and for the purpose of marriage you attribute sound judgment to a person of 16, and for the purpose of divorce also you attribute sound judgment to a person of 16, that in a case like this, a girl of 16 should not be presumed to be able to take care of herself? I know modern ideas no doubt. But you have to take circumstances as they are in this country Can you deny that girls of 16 in this country are able to take care of themselves and that they have got judgment? In fact, does not the law as it stands now trust them with judgment?

Mr. N. M. Joshi: For marriage.

Rao Bahadur T. Rangachariar: Very well. Also for divorce. Please remember that. And also for the purpose of adoption.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Not for " alliance."

(*An Honourable Member*: " Not for mis-alliance.")

Rao Bahadur T. Rangachariar: The Act further says:

" Nothing herein contained shall affect the religion or religious rites and usages of any class of Her Majesty's subjects in India, or the capacity of any person who before this Act came into force has attained majority under the law applicable to him."

Therefore, it certainly applies to certain cases. Why should my Honourable friend stick to 18? He might as well have proposed 21. Does he think that there is such a difference between a girl of 16 and a girl of 18 in this matter?

Mr. N. M. Joshi: Oh, yes.

Rao Bahadur T. Rangachariar: Sir, on the other hand, the danger will be, as we all know in this country, that whereas a girl of 16 or after she has attained the age of 16 may be able to find an honourable alliance, she loses all chance of finding that alliance after she has passed a certain age. I need not mention the details here. It is well-known that girls in this country at the age of 16 are mothers oftentimes of two babies. It is a very common factor to be taken into account; and, on the other hand, if you enact the section with the age 18 there, even parents cannot (*Mr. N. M. Joshi*: " Sell.") . . . . You are not going to provide their livelihood. You may rest perfectly assured that you are not going to improve society by these ideals. It will all look very well on paper. As a matter of fact, you know the impossibility, the difficulties, the practical difficulties, which poor mothers will experience in keeping their girls in their houses. It will all very well no doubt look nice to the outside world. But it will be a dead letter. If you make it impossible for persons to abide by the law, there is no use in creating a law, which must be disobeyed, which will be disobeyed, human nature being what it is. Joshis will not be available in every household to guard the household. Let us remember that. You have to recognise practical difficulties as they exist; and if you raise the age from 16 to 18, you will be violating your Hindu Law and the Muhammadan Law as to the age of majority. (*Voices*: " No, no.") You may cry ' No ' ' no.' I have said what I had to say. If it does not commend itself, by all means do as you please. This is the difficulty which I felt when I yielded not to raising the age from 16 to 18; but if that is your will, you can impose your will on the law and you cannot impose your will on the household. But that is the danger which you have to guard yourself against.

Sir Deva Prasad Sarvadhikary: Sir, I was waiting for Mr. Rangachariar to bring out what, I am told, was in the Select Committee a legal difficulty, and that is the fact that the age of 16 appears in other portions of our penal law and that there would be difficulty in introducing the somewhat unfamiliar figure of 18 only in this particular place. But here again I say, we are attempting to level up things. When Mr. Joshi's amendment is carried—as I sincerely trust it will be—the next time we take up the amendment of our penal law, the same figure 18 will find place where the figure 16 now obtains. Sir, amiable landlords in some parts of the country, I am told, would probably prefer a lower age than 16. Criminal jurisprudence is replete with cases where such desires have been borne

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eloquent testimony to, and I do not know whether because of that there should not be a movement towards lowering the age. If what Mr. Rangachariar has referred to amounts to marriage, let it be declared to be so, and marriage is protected. We are having liberalising influences all along the line and if these "honourable" alliances . . . . (*Rao Bahadur T. Rangachariar*: "Not honourable, but alliance.") I am glad my friend has drawn the distinction now, for I was listening to his speech with care and the word "honourable" does find place there, as the official report will no doubt show. Sir, reference has been made to the Bengal opinion. I am sorry if I cannot support the Government of Bengal there. Without that opinion in my hand, I was almost becoming a little nervous about my Government. But having looked at it again, what do I find there? The Bengal Government says that six bodies were consulted; four never cared to reply and two, I believe, including the Indian Association, with which I happen to be connected, plead for raising the age to 18. I miss my friend, Colonel Gidney, here; he would be interested to know that the Anglo-Indian and Domiciled European Association in supporting the Resolution adopted by the Legislative Assembly on the 7th of February, 1922, suggests the limit of 16 years. What can the Government of Bengal under those circumstances do? They had only to voice public opinion as it appeared to them to be on the papers before them, and that is why "the Government of Bengal consider it important that the Government of India should not appear to be forcing the pace or insisting on a standard age in advance of general opinion; and accordingly they advise that in the legislation the age of sixteen should be taken, and that it should be left to the Legislative Assembly to consider the raising of that age." That is exactly what we are doing now. Therefore, Sir, I am no longer nervous about my Government. As a good Government, it has simply placed before the Government of India what appeared to be the case on the *nathi*. Reference has been made by Mr. Rangachariar to the question of violating the Hindu Law. Not many years ago I heard a Maharaja Kumar in Bengal, taking some interest in public affairs and a very loyal gentleman, saying that it is absolutely disloyal for Hindus not to marry widows. What was the basis for that assertion? He said, "Why, the Widow Re-marriage Act has been passed. Widow marriage is legal and it is illegal not to do that which is legal." In the same way Mr. Rangachariar says the Hindu Law would be violated if we enact 18 as the age for the purposes we are considering because for certain purposes Hindu law declares 16 to be the age of majority. (*Dr. H. S. Gour*: "It does not do that.") Anyway, British Law for lesser purposes has declared 18 to be the age, for purposes of bartering away property. Does my Honourable friend say that for purposes of bartering away virtues, the Hindu Law declares the legitimate age to be 16 and that we would be violating the Hindu Law by raising the age for these purposes from 16 to 18? I am sure he will not go as far as that. Then, Sir, with regard to age in the case of marriage, that is and has always been a moot point. Hindu society is interested in that question and we have recently agreed to say nothing further about it here for the present. But in the matter of marriage, there are protections which do not exist in the present case; is it not common knowledge all over the country that although people are married young, marital functions are suspended to as late in life as possible? There are cases of abuse. There are infant mothers; and there are other abuses. But anyone who knows society, as we know Bengal society, knows that the Bengal

mother and the Bengal grandmother take care that abuses shall be as few as possible. Well, Sir, where is the mother, the grandmother and the father and the others who form our marital bureau to take care of the daughter whose virtue is being bartered away at a tender age for the purpose of happiness, as Mr. Rangachariar has called it, for the purpose of establishing an alliance that may be too late after sixteen? I am sorry, Sir, the question of *Devadasis* has been at all introduced here. It has been claimed that the *Devadasi* system is a religious institution which shall not be interfered with and if abuses have grown there, those abuses must be got rid of with a ruthless hand. If what we have heard to-day is the concomitant of the *Devadasi* system, I am afraid Dr. Gour will find more support when he moves in the matter again. The *Devadasi* system is there and if alliances of the kind suggested have to be formed, they will have to be formed at 18 and not at 16 unless marital appearance can be given to that sort of alliance. It has been pointed out by Mr. Joshi that when we are dealing with section 366B, the age is 21. For this purpose, I say what is good enough for outside India is good enough for India also. The present motion however is not for raising the age to 21, it is a compromise at 18, and I think we ought to accept that amendment, if possible unanimously, or at any rate by a majority.

The Honourable Sir Malcolm Hailey: As I am not a malign Madras landlord, and as I do not think I have ever in my life seen a *Devadasi*, and am certainly not in any way interested in the class, I hope I may be permitted to give my opinion on this amendment without incurring a charge of interest or partiality. I wish to explain to the House why I, as a member of the Select Committee, thought that we should retain the age of 16 years instead of raising it to 18. I do not wish to use any arguments based on what I may call a high moral plane; I merely wish to put certain common-sense views before the Assembly. The exact offence which is hereby created is procuration. Now, procuration is not necessarily a continuing offence, nor does it necessarily refer to a trade. I call the attention of the House to the fact that one single act is sufficient to bring a man within the scope of this section. That is to say, if a servant, at the request of a master, calls in a woman to a man's house, for illicit intercourse, then if that prostitute turns out to be under 16 or under 18, as the case may be according as you decide the law, he is guilty under this Act. Now it seemed to me, as I think to some others, that where you are giving so wide an extension to your law, you should proceed with some caution. You are creating a new crime. You are bringing thereby a large number of people not only under the criminal law, but under police action, and prudence dictates that when you do this you should exercise the greatest care. You have to deal again, not necessarily with a cultivated society, but with a law which is to apply all over India, to backward people, even to aboriginals. That is to say, if I may frame concrete instances, if a man were to act as a go-between between a Bhil girl and a man who wanted her to go and live with him, and if he was successful in persuading that girl to go and live with that man, then, according to Mr. Joshi, if the girl was under 18, he would fall within the clutches of this law.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Quite right.

The Honourable Sir Malcolm Hailey: That girl if under 18 might be a mother, might be a widow, and could by no means be described as not having arrived at years of discretion; nevertheless the go-between, it might be the

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village barber, following the practice in the Punjab, or it might be a woman who was acting as go-between following the practice elsewhere, could be prosecuted under this section if the girl or the widow were under 18 years of age. Then again I was very much influenced by what was said by Burma. Now the Judicial Commissioner of Burma very rightly pointed out that what we were proposing to punish here was not the man who engaged in illicit intercourse with the girl, but the go-between.

Mr. N. M. Joshi: Not if he is innocent.

The Honourable Sir Malcolm Hailey: My Honourable friend may judge between the innocent parties as he likes; I am putting the practical and common-sense view. There are many cases in which a go-between is employed to induce a girl to go away and live with a man whom she may subsequently marry. The immediate purpose, however, is not marriage, and yet that go-between, if the girl is under 18 years of age, will become a criminal and subject to 10 years' imprisonment. This is an immense extension of the possible scope of prosecution and even blackmail. Those instances struck one as indicating a great need of caution in this legislation. Again, when we look at the Indian Penal Code, we find that our law for what seem to be very much graver offences, indicates the age of 16 years as the age of judgment for penal purposes. Take section 372:

"Whoever sells, lets to hire, or otherwise disposes of any minor under the age of sixteen years with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Now that is a very much graver offence than what is contemplated here; in this case a man is actually selling a minor for purposes of prostitution. In the case contemplated by our Bill all that the man does is to act as a go-between between a girl of 16 or, 18 as the case may be, and the man she is going to live with. Or again, take section 373. There again it is a question of buying a minor for the purposes of prostitution, or for any unlawful or immoral purpose. In all these cases the age of 16 years is laid down as the period at which a girl is assumed to arrive at years of discretion. I say that in view of the existing proscriptions of our Penal Code, it seemed to me illogical for the purpose of this offence only to raise the age to 18 years, and particularly when this offence in itself was being created for the first time with the result that we should be bringing a very large number of persons for the first time under the criminal law and under police action. We in the Select Committee referred, as Mr. Joshi has done, to the opinions of Local Governments in the matter. Now I was rude enough to put to Mr. Joshi a question whether the opinions of Local Governments which he was quoting referred to this section as drafted or not. He thought they did. I think they do not. What we put to the Local Governments was the question of complying with the Convention generally; and I think that the opinions will show that they viewed the Convention generally as intended to prevent a traffic in girls between different countries. Here we are considering a specific offence, namely, acting as a go-between or procurer between a girl and a man. I firmly believe myself that if this section were put to the Local Governments and they were asked whether, for the purpose not of preventing a general traffic in girls, but of penalising isolated acts of procuring, whether for that purpose

the age of 16 or 18 might be taken, then I think their opinion would not be so enthusiastic for the age of 18 or 21 as Mr. Joshi would have us believe. Even as it is, I may point out that in numerous cases, and, particularly I may note in regard to judicial officers, a note of caution has been struck. They obviously felt that the country is not yet ripe for an advance so great as that, and that is my own opinion. I put it that in all social legislation you must make your beginning, but your beginning should be a modest one, because, if legislation is to be effective, you must carry the common feeling of the country with you. Your legislature is nugatory unless you can do so. Your social laws must always be a little in advance of retrograde or uninformed opinion, but do not go so far in advance of it that public opinion generally will not follow you in giving effect to your Code. If you do that you are legislating in vain. Make your beginning; when you have established that beginning, build upon it as the public conscience increases and the public demand grows. That is the true path of social legislation, the one we have followed in Europe, and the one which I commend to this House.

Munshi Iswar Saran: I was rather surprised that the Honourable the Home Member should have uttered a word of caution and warning, because, if we accepted Mr. Joshi's amendment, we would be bringing in a lot of people not only under the criminal law of the land but would also be making them liable to police action. When I found this distrust or mistrust of the police, I wondered to myself if it was the Honourable the Home Member who was making that remark or whether it was some firebrand who, as usual according to some of my Honourable friends was repeating his attack on the police. Sir, the Honourable the Home Member has been very frank. He has told us that he is looking at the question not from the point of view of high morality but from the point of view of common-sense. May I say, Sir, at once with equal frankness that I shall try to look at it more from the point of view of morality than of common-sense, if there be any conflict between morality and common sense as the Honourable the Home Member implied that there was. Now, the Honourable the Home Member says: " you have to be careful, the country is not ripe." Ripe for what? Where is the evidence that the country is not ripe? Is not the country ripe for the law that a procurer, a go-between, who tries to induce a girl under 18, should be prosecuted and should be severely dealt with? I would like to know the evidence on which this statement is based. The Honourable the Home Member or some other Honourable speaker said, there might be " a widow or a mother " under 18 years of age. Yes, there may be a widow of 15; there may be a mother of 15. Why not reduce the age from 18 to 15? There is no logic, I submit, in support of this view. Then, we are told that in some sections of the Penal Code the age is 16 and it would be illogical to make it 18 here. Might I repeat the observation made by my Honourable friend, Sir Deva Prasad Sarvadhikary, that if we introduce 18 here, it will lead to a change in the other provisions of the Penal Code. Sir, we have been told in very pathetic language, far too pathetic than the occasion demanded, of the unhappiness, of the calamity, that would overtake a particular section in the south of India. Sir, we are not legislating only for that section in the south of India; we have to remember that we are legislating for the whole of India. We are told of alliances that are formed in that particular section of the community. It is, Sir, nothing but concubinage shameful and bare-faced. Are we going to have any sympathy with this so-called alliance? It is said you are violating Hindu law and you are violating Muhammadan law. Sir, the Honourable gentleman is a distinguished lawyer and to that he adds the very

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unique qualification of being a Brahmin Pandit. I dare not contradict him on a point of Hindu law, but I shall only complain that he has not enlightened an unenlightened lawyer like myself as to how you would be violating the Hindu law by making procurers and go-betweens liable to be prosecuted if they induced a girl under 18 to cruelties of this kind. (*The Honourable Sir Malcolm Hailey*: "Cruelty?") I call it cruelty advisedly and I hope the House will agree with me when I say that a girl who, either by force or fraud or inducement, is made to live a life of shame, is subjected to cruelty unspeakable and horrible.

The Honourable Sir Malcolm Hailey: As the Honourable Member is referring to an interruption of mine, I may remind him that there is no question of fraud or force in the matter; the clause refers to inducing by any means. The Honourable Member is referring to the wrong clause.

Munshi Iswar Saran: That strengthens my case, Sir. So, I submit, Sir, that taking all these facts into consideration, it is very necessary that the age should be raised from 16 to 18. Anybody who tries to trifle with the virtue and chastity of girls under that age should clearly understand that that person, be he a man or a women, is making himself or herself liable to be prosecuted under the provisions of this Bill which we are considering. I submit, Sir, that, in spite of my friend's dictum, there is nothing in the Hindu law which will be violated by the acceptance of the amendment which has been moved by my friend Mr. Joshi.

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I shall very briefly answer my Honourable friends, Sir Malcolm Hailey and Mr. Rangachariar, and in doing so I shall not appeal to morality or common sense, though I have a very high opinion of both. I shall merely point out the error they have fallen into, from a legal point of view. The case that the Honourable Sir Malcolm Hailey cited before us is that of prostitution. Such cases do not come in under this clause. (*The Honourable Sir Malcolm Hailey*: "Why not?") Because here it is said "a person knowing that she will be forced or seduced to illicit intercourse." When a prostitute is procured she knows for what purpose she is going; therefore, prostitutes are excluded. (*The Honourable Sir Malcolm Hailey*: "Why?") Because a prostitute knows that is her occupation, she is not forced or seduced. Whom are we going to punish? We are going to punish the procurer. With regard to these fallen women, it is their ordinary occupation. With regard to that, the man who procures, no Court will punish him if the prostitute is taken for immoral purposes.

The Honourable Sir Malcolm Hailey: Why not?

Mr. J. Chaudhuri: Not, because, she goes over of her own will and is not forced or seduced to illicit intercourse. That is why clause 3 does not apply to such cases. Here it is where common sense comes in, and I suppose our Judges are not devoid of common sense. Now a woman who has lost all sense of shame and plies that infamous trade, with regard to her no Court will hold that taking such a woman for intercourse will be punishable under this law. With regard to *Devadasis*, the Hindu law recognizes the custom, at least in Southern India—a class who may take to licensed concubinage and who may live with men. Now I need not

remind my Honourable friend, Mr. Rangachariar, that the Hindu law is considerate in that respect. He himself admits that the offspring of concubines are also entitled to maintenance, and that it is not for purposes of common prostitution that these girls are taken. Hindu law, as I have often said is in many respects the most rational law on the face of the earth. Under English law polygamy is prohibited, but some people break that law. Hindu law on the other hand recognizes facts as they are, that people though they have wives sometimes keep concubines, and if a woman has lived with a man then Hindu law recognizes that and provides for the maintenance of their children. It is quite reasonable also that if these cases come under concubinage and if that is the custom in any part of the country, the *Devadasis* should not come under this particular section.

Rao Bahadur T. Rangachariar: Why not?

Mr. J. Chaudhuri: Because that is the custom. There is a custom connected with the temples that exists in Southern India, though so far as Bengal and other parts are concerned there is no such institution. Of course in the neighbouring province of Orissa there is something of the kind. But that Presidency and that Province have that institution peculiar to themselves. We need not be apprehensive with regard to them. But for them the helpless women-kind of the rest of India cannot be left unprotected. The Honourable Sir Malcolm Hailey mentioned the case of widows. It is particularly widows and poor women we wish to protect, and we wish to protect them in this way. We want to punish the procurer. Of course if a woman is forced to illicit intercourse, the Penal Code punishes that. Seduction also the Penal Code punishes. Here we are not considering the provisions of that Act. Such individual acts are punishable under the Penal Code. Adultery is punishable. If a married woman is taken and taken for the purpose of illicit intercourse, then the law will punish the person who breaks the law, who commits the offence. We must keep here in view the fact that these specific acts are punished under the Penal Code irrespective of age; adultery is punishable irrespective of age; these acts are made punishable by the Penal Code. What we want to do by this legislation is only this, that the man who seduces an innocent woman from her house and leads her into a life of prostitution, a life of shame, we want to punish him and in this way we want to give protection to ignorant, indigent, uneducated and helpless women. That is the object of the Bill. We want to discourage the nefarious trade of procuration. This section provides that and it is in the highest degree to the interests of the State that those men who want to take advantage of poverty, of helplessness, should be punished under this Act. We know there are numerous widows in this country who cannot marry. We would prefer the State to make some provision for them in a home, to provide for their general, industrial or vocational education, by which they can earn an honest living; and when the State is not doing that I think we should adopt by every means the suggestion of Mr. Joshi that up to the age of eighteen we should give them protection in this way against procurers. We should punish the procurer and thereby make the homes of many a poor people safe against these human harpies. I have nothing more to say and I ask the Members of the Assembly to support the amendment.

The Assembly then adjourned for Lunch till Ten Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Ten Minutes to Three of the Clock. Mr. President was in the Chair.

Mr. Pyari Lal (Meerut Division: Non-Muhammadan Rural): Sir, I must confess that Sir Malcolm Hailey's observations have made me a complete convert to his views. The point, Sir, for our consideration is whether the age of the girl ought to be 16 or 18 when the offence is committed. The material point in this connection is her consent—that is, in one case her consent, that is, the consent of the girl, is immaterial, and in the other case her consent after 18 years of age is material. Now, Sir, I appeal to my Honourable friends who belong to this country and who are conversant with the climatic conditions of this country to tell me whether after 13 or 14 years a girl can or cannot consider as to what is right and what is wrong for her. What girl is there in this country who at the age of 14 or 15 is not able to say that she is straying from the path of rectitude when she goes wrong? That being so, it is perfectly immaterial whether the age is 16 or 18. As Sir Malcolm Hailey observed, we are taking our stand here on a very high moral ground, especially those friends of mine who suggest the age of 18. Surely, Sir, nobody in the world has yet succeeded in improving the morals of a society by a stroke of the pen or by a Statute of Parliament. These changes will, of course, come in their due time; but let us not force the pace. Let us face facts as we find them; the personal experience of Honourable Members of this Council may not be enough on this point, but let us see things as we find them in all the big cities in India, as well as all over the world. I have travelled all round the world, Sir, and I am of opinion that, do what you will, this sexual immorality is impossible to be stopped as long as human nature is what it is. That being so, Sir, as far as we Indians are concerned, let us take note of the facts as they exist at the present day in the city of Bombay, in the city of Benares, in the city of Calcutta, in the city of Delhi and in all important places. How many of our young men who are rich and in well-to-do circumstances go wrong? Or even men of 30 and 40 years of age? They are in a position to procure girls, and the poor servants or dependants of theirs who have to act as procurers are to suffer, if we are to pass this legislation. What is the reason? It is the established practice that servants everywhere have to obey their masters, and they do not consider it as an offence. This vice will exist as long as people are not educated enough. Under the proposed section you are going to punish the procurers; but the persons for whom the girls are procured will be the abettors. Are you going to punish them also? They are a very large body. Then again the police comes in for a lot of abuse. They are said to be corrupt but by raising the age to 18 we will be throwing temptations in their way. What policeman in the lower grades is there who will not succumb to a bribe of Rs. 100 or Rs. 200 when a big man is involved in the case? And the number of such wealthy men is very large, who will be committing this offence. That will be an additional temptation in the way of the police. It has been observed that this is a piece of social legislation. Let us be very careful that we do not go far in advance of the requirements of the country. Otherwise we will be impractical politicians, impractical legislators; we will make laws only to be evaded. What has happened in America? They went dry and enacted total prohibition. Have they stopped drink in that country? No, Sir. Just read the number of prosecutions that are launched there and the amount of consumption of liquor. In this way you will simply be increasing the amount of crime and nothing

more. Therefore, Sir, I entirely oppose the amendment moved by my friend, Mr. Joshi.

Mr. Jamnadas Dwarkadas: Sir, my Honourable friend, Sir Malcolm Hailey, expressed a doubt that if this question was put directly to the Local Governments, probably none of them would be prepared to express the opinion which they have expressed on the general question of traffic in girls. With all due deference to my Honourable friend, I beg leave to differ from him. I feel certain that if the matter was referred to the Bombay Government, at any rate that Government's opinion would be in favour of Mr. Joshi's amendment. For I do not know whether the House is aware that only recently in Bombay, at the instance of a Member of the Bombay Council, who happens to be my own brother, a committee was appointed, with our Honourable colleague, Sir Jamsetjee Jejeebhoy as Chairman, to go into the whole question of prostitution and other similar questions in Bombay, and that committee has submitted a report which I commend for reading not only to the Honourable Members of this House but also to the Treasury Benches. One thing seems to have prominently come out in that report and it is this. That the people most responsible for these heinous offences are that class of people who are known as procurers or go-betweens, for whom we have heard so much sympathy expressed. If it was sympathy expressed for this reason, that you have among human beings men who do not know what it is to be men and who believe in going wrong and who believe in treading the downward path, if it is sympathy of that kind, then certainly we have our sympathy with the class; but if it is sympathy of the kind which aims at giving protection of one kind or another to that class of beings, then I dare say that that sympathy is misplaced. It is this class that has no claim for sympathy whatsoever from any decent society of human beings. But, Sir, I was emphasising the fact that even in the opinion of that Committee, the class of procurers is the class who are the most to blame. One of the Members of the Committee, I know, took upon himself the duty of investigating with the help of the police the question, and he came across many girls of 18, 19 or 20 who complained to him that at the immature age of 16 all kinds of temptations were placed in their way by those who are called procurers, and once having gone into that line, they could not see any way whatever to extricate themselves from the position in which they were placed. If therefore you could raise the age to 18 years you would be saving a large number of girls from falling victims to the devices of those who live on playing up to the vices of that class of zemindars, landlords and wealthy people for whom also we have unfortunately heard sympathy expressed in this House. Well, Sir, this class of procurers deserves absolutely no sympathy at our hands. If the whole purport of my Honourable friend, Sir Malcolm Hailey's arguments was that, after all, the procurer does not do anything wrong, he only does what he is asked to do, then I think I have made out a case against that argument, because here we have the opinion of a Committee which went into the whole question which found that it is this class of procurers which is the most to blame and which ought to be dealt with most severely . . . . .

3 P.M.

The Honourable Sir Malcolm Hailey: I do not wish to interrupt my Honourable friend, but could he quote anything in which either I expressed sympathy with the procurer or suggested that he should be protected because he did only what he was asked to do? I have taxed my memory, and I cannot remember having said anything expressing sympathy with the procurer.

Mr. Jamnadas Dwarkadas: I hope my Honourable friend will not misunderstand me . . . .

The Honourable Sir Malcolm Hailey: I don't think I said anything showing the slightest sympathy with the procurer.

Mr. Jamnadas Dwarkadas: Being a young man, I was prepared to hear from my own countrymen who are advanced in age in this House what they said, I was not at all surprised to hear what my Honourable friends, Mr. Rangachariar or Mr. Pyari Lal said, but believe me, Sir, what fell from my Honourable friend, Sir Malcolm Hailey, caused a good deal of surprise to me, because he said that we are going too far and we are taking jumps so far as social legislation is concerned before the country is ready for it. That is an argument which I am not prepared to accept, nor do I hope for the very self-respect of Indians this House will be prepared to accept. Are we taking a jump in the matter of social reform when we are doing a thing which is being effected none too soon? This reform is overdue. That in this country girls below the age of 18 should be seduced for immoral purposes by that hated class of procurers and that we should connive at it, is a thing which seems to me to be absolutely indescribable; I mean we are not legislating too soon in this matter, and we shall be doing only that which is right if we carry Mr. Joshi's amendment. Now though the arguments of Mr. Pyari Lal have not surprised me, they have caused me pain; so also have the arguments of my Honourable friend, Mr. Rangachariar. They said that we shall be placing an obstacle in the way of these zemindars. What an argument to use in a House like this, that by trying to prevent girls of tender age from being seduced by people who live on that kind of thing, you are placing an obstacle in the way of the zemindars. Well, if you are going to place an obstacle by this amendment in the way of zemindars, I wish we could have done much more than that. and if the effect of passing this amendment was that some day or other,—I hope it will be very soon indeed,—we shall pass further legislation which would also deal severely with those who are guilty of having intercourse with girls of tender age, I think we shall have taken a great step forward of which the House should feel very proud indeed. But to use the argument that we have not done anything to provide against illicit intercourse and only now we are trying to deal severely with procurers, to use that argument for putting off this legislation seems to me to be an absurd argument. I hope therefore that this House will accept the amendment of Mr. Joshi.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, I intended to record my silent vote on this question which is agitating the House, but my friends would not let me do so and they press upon me the necessity of stating my own views on this subject. On the last occasion when this question came up before this House, the question was as to whether we should, in endorsing the International Convention, adhere to the age of 16 or go to 21, as was suggested by my Honourable friend Mr. Joshi. On that occasion I suggested a compromise, and I pointed out that it would be a fairly good compromise if we adopted the age of majority, the age of 18, as a fair working basis for this International Convention. I find that reference has been made by one Local Government, the Government of Burma, to this compromise. Now, Sir, what was passing in my mind on the last occasion when I addressed this House on this subject was this. I then pointed out that the Indian law of majority fixes the age of nonage up to 18, and on the completion of the 18th year, a boy or a girl was assumed to have reached the age of discretion. Consequently, I pointed out that that should

be the age for all purposes including the purpose we have in view at the present moment. I quite appreciate the very weighty objections which the Honourable the Home Member has pointed out to adopting such a course, but, on the other hand, the Honourable the Home Member could not be oblivious of the fact that in embarking upon this piece of legislation we are not merely protecting the girl but also her guardian and parents. In a celebrated English case Earl, Chief Justice, referring to a Statute on which our sections under discussion were modelled, pointed out as follows. He said: " The statute was passed for the protection of parents and for preventing unmarried girls from being taken out of the possession of their parents against their will, and it is clear that no deception or forwardness on the part of the girl in such cases can prevent the person taking her away from being guilty of the offence created by this section-". Consequently, as the Chief Justice of England pointed out, it is not merely the girl herself that we have to protect but we have also to protect the parents who have the lawful custody and guardianship of the girl concerned. Now let me illustrate by way of example a situation that might be created by the case pointed out by the Honourable Mr. Rangachariar. I will not deal with the light side of the picture he has drawn that zemindars in Southern India are in the habit of taking girls into their custody before they are 16 and it will be a very great hardship to the parents if they are not able to dispose of their girls before they attain that age. That is an argument to which I do not wish to invite the serious attention of this House for a single moment. But I will assume for the sake of argument that in Southern India such a practice exists. [*A Voice (from some of the Madras Members)*: 'No.'] Well, I am glad to hear that it is not a universal practice. But assume for the sake of argument that in isolated cases parents and guardians are tempted to dispose of their minor girls to rich zemindars with whom they contract alliances. Now, take a very simple example. A girl of 17 is taken out of the lawful guardianship of her father or her mother and is sold to a rich zemindar. He either has illicit intercourse with her or keeps her for the purpose of having such illicit intercourse. Reference has been made to the action of the police and the possible abuse of power of a member thereof. Assume, for the sake of argument, that the parents prosecute the zemindar for wrongful restraint and wrongful confinement, offences both punishable under the Indian Penal Code. The case goes before the Court and the girl is examined and she says she was a consenting party to her own abduction. Now, the age of majority being 18, no person is said to be *sui juris* or capable of giving her consent before she attains that age. Therefore, her consent goes for nothing. A girl of 17, if she is found in possession of a zemindar, would therefore expose the zemindar to the punishment of either wrongful restraint or wrongful confinement, her consent being regarded as absolutely immaterial. Now, then, Sir, if she was considered unable to contract for legal or illegal purposes—the law takes no note of the illegality of the purpose—if she was unable to contract under the statutory law, which is the law of the land, before she attains the age of 18, the zemindar stands to be convicted of either wrongful restraint or wrongful confinement despite her consent, despite the fact that she was sold or disposed of by her guardian. That is the position. Now, my submission therefore was and it still is that we cannot fix arbitrary ages for one purpose when the law of majority in this country has fixed the age at 18. The Honourable the Home Member has pertinently pointed out that in these cases we must not go in advance of the times. That is perfectly true. Under the present statutory law or at any rate under the law which existed when the case I have referred to was decided, the age of

[Dr. H. S. Gour.]

consent for the purpose of illicit intercourse under the English statute was 16 years and the framers of the Indian Penal Code copied the English statute and fixed the age at 16 which is the age beyond which the woman was free to contract. But the International Convention to which reference has been made has fixed the age of minority as the age requiring protection and, in consequence of the English age of majority being 21, it follows that England, as a signatory to this Convention, would very soon raise the age from 16 to 21. Now, so far as we are concerned, we have taken upon ourselves the liberty of modifying that Convention by fixing any age between 16 and 21. On the last occasion, when this question was debated in this House, I refer to the discussions in Council, Sir William Vincent pointed out that, whether it is to be 16 or 18 or any other age must largely depend upon the opinions collected from the Local Governments. These opinions have been collected and the Honourable Mr. Joshi has pointed out that these opinions largely subscribe to the amendment which he has moved before this House. Consequently, the one condition which was laid down on the last occasion when this question was discussed by this House has been fulfilled. All the opinions of Local Governments have been collected. The Calcutta High Court—a very important body—have stated that they abstain from making any comments on the question of age. It is a question of public policy. The other High Courts have more or less expressed themselves on the same lines. The question being then one of public policy we have to consider as to what is in consonance with public policy in fixing the age for consent and inferentially in fixing the age for the protection of minor girls. I think we must not forget the fact that in cases where immorality is concerned, and immorality after all is a thing which we have to guard against, a girl of 16 is too immature to form an independent judgment as to what would be her ultimate fate if she is disposed of, it may be, to a gilded zemindar. When she attains the age of discretion and acquires maturer judgment, she may regret the life of infamy and shame to which she has been consigned by her guardian in a moment of distress or in a moment perhaps of cupidity. I therefore suggest that this House would not be going wrong and would not be unduly forcing the pace of social legislation if it fixed the age at 18. I have no doubt that there are objections to fixing the age at 18 and some of them have been stated very cogently by the Honourable the Home Member in opposing this amendment. I shall very briefly advert to his arguments. The first point was that we must go with a certain degree of caution. But I ask, Sir, what is the measure of caution required for fixing the age at 18 as against 16? After all, it is a matter of 2 years and a girl would not gain very much in judgment and discretion within those 2 years, though there can be no doubt that there would be a material gain if we fixed the age at 18. Then, it has been said that there are certain backward people and an example was given of the Bhils in certain parts of India—who would be very prejudicially affected by it. But we know as a matter of fact that, when the Penal Code prescribes a certain age, it rapidly filters down not merely to the common populace but even to the backward classes. One such case presented in the Courts will immediately set the Bhils and the Gonds to think for themselves that the age of majority which is the age of 18 is the age below which it would not be right to tamper with either the girl or the girl's parents. Then, it has been said that the police in a case of this kind would be exposed to the additional temptation of prosecuting cases which might lead to failure of justice, and which might also lead in some cases to

false prosecutions. Now, Sir, I was not impressed by that argument. If the police are to prosecute cases there is as much danger of their prosecuting cases when we fix the age at 16 as when we fix it at 18. After all, it is a matter, as I have said before, of 2 years and that certainly should not make much difference. We must not forget also in this connection that what was fixed by the Conventions is the age of minority, and it was distinctly then pointed out that the age of majority in all countries differs. My first point therefore is, how can we go back upon the Statute law which has been in existence for a long number of years which fixes the age of majority as 18 and how can we make a distinction between the age of majority in the case of civil consent and reduce that age of majority in the case of consent to do what after all would be a criminal act? Then it has been said by certain speakers including my friend, Mr. Pyari Lal, that we cannot stamp out immorality by legislation. That is perfectly true. We cannot also stamp out crime by legislation. But is that any reason why we should not legislate against immorality any more than we should not legislate against thieves and robbers, dacoits and murderers? The fact that crime will persist in spite of legislation is no reason why we should not legislate against it. All we can hope for is that there will be a reduction in crime and it will be a warning to would-be criminals that if they offend against the majesty of law they stand to be prosecuted and convicted. That is all that this House is called upon to look at. We may in some cases defeat the very purpose we have in view. How often do not criminals escape? How often would not procurers escape under our legislation? But all human institutions are imperfect. The legislation that we propose in this House is not professedly perfect. All we can hope for is that if we fix the standard of age which is proposed in this amendment, we shall be able to purge society of a large number of people who profit by the act of immorality of immature girls and it will tend to social purity and to the levelling up of a condition of things against which Members of this House should certainly raise their voice. Well, Sir, I am not an optimist in this matter. I do not suggest, and let no one ever feel that any Member of this House suggests, that we shall be stamping out prostitution from this land by merely legislating against the procurers. Those who have read ancient history will remember what drastic provisions were then made against the growing immorality of that day and yet immorality has survived all legislation. That it will survive our legislation is a matter upon which I entertain no doubt. All we can hope for is that we shall reduce the chances of seduction of the character we are providing against and that should be our sole reward if we push through this amendment and place it upon the Statute Book. On these grounds, Sir, I support the amendment.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I wish to refer briefly to some of the arguments that have been used by several Honourable Members during the course of this debate. In the first place my Honourable friend, Dr. Gour, suggested that because the age of majority under the Indian law was 18, so if a girl of 17 even with her consent was taken away by a Zemindar, the question of her consent was immaterial. I think, Sir, that my Honourable friend is mistaken in that respect. The offence which he described to us would have come within the provisions of section 366 read with section 361 of the Code, and the age in that case under which the consent of the girl would be immaterial is under the present law 16. Further, my Honourable friend suggested that the age of majority for civil purposes was 18 and he asked

[Mr. H. Tonkinson.]

how can we reduce this for criminal purposes? Sir, 16 is the age throughout all these sections of the Code. It is the age in section 361, it is the age in section 372 and it is also the age in section 373. As was pointed out by the Honourable the Home Member, the offence which we constitute by this proposed section 366A is really, if I may say so, not such a serious offence as these other offences. Take the case of section 372—selling for prostitution and so on. The present section in fact does not refer merely to cases of procuring for becoming a prostitute. It refers to cases of single acts of sexual intercourse. Then my Honourable friend, Mr. Chaudhuri, suggested that in this section we were punishing a man who induces a girl to go to a place where she may be seduced to illicit intercourse with another person, and he went on to say that the person who seduces her can be punished under another section of the Code. I should like to know what that section is.

Mr. J. Chaudhuri: I did not say that.

Mr. H. Tonkinson: That is what I took down.

Mr. J. Chaudhuri: The object of this Bill is to punish the procurer. For the act itself, for seduction, the Penal Code provides punishment. I should like my Honourable friend to note the difference. It is the procurer who induces such crime, whom it is contemplated to punish.

Mr. H. Tonkinson: My Honourable friend, Mr. Chaudhuri, has now supported my impression of what he said. Section 366 does not deal with seduction nor with the seducer. That section deals with the abduction of a woman. Of course, the case of kidnapping from lawful guardianship with these intentions will also come within section 366. But, Sir, there is no section of the Indian Penal Code at present dealing with the simple offence of seduction. (*An Honourable Member*: "There is in the case of married women.") Of course, if it is a married woman, that is a different matter. Further, references have been made to the suggestion of the Leader of the House as regards the undesirability of increasing the scope of police action. Now, Sir, in making his remarks, I do not think there was ever any intention of suggesting that Government distrusted the police. What was meant was that they would prefer not to place them in positions where they would be subject to increased criticism. That would be the case by such an amendment of this clause as is now under consideration. There is one thing which I should like to read to the House and that is an extract from the report of the delegates of India to the Second Assembly of the League of Nations. The Indian representative at the Second Assembly of the League of Nations was the Right Honourable Srinivasa Sastri. In dealing with the discussion upon the particular Convention in connection with which we are now proposing legislation it is said in the report: "In the course of the discussion Mr. Sastri made it clear that India could not accept the age limit of 21 now proposed for the protection of girls. India's internal legislation fixed this age at 16, and having regard to early maturity in tropical countries, that age could not be expediently exceeded, while it would obviously be undesirable to have a special higher limit for the benefit of a very limited number of non-Indians." We are following in the Bill the suggestion which was made in the Assembly of the League of Nations by the Representative of India. My Honourable friend, Mr. Jamnadas Dwarkadas, suggests that we must not have any sympathy at all with the procurer. I hope no one assumes

that the occupants of these Benches have any sympathy with the procurer. (*Mr. Jamnadas Dwarkadas*: "I never assumed that.") This section, Sir, goes a long way beyond procuring for prostitution and that is the main reason why we think that it is undesirable to increase the age from 16 to 18. My Honourable friend, Dr. Gour, said that we cannot stamp out crime by legislation, but, Sir, we can in this House manufacture criminals and that is what we will be doing (*Voices*: 'No,' 'no.') to an extent which, in view of the conditions in India, gives cause, I think, for very grave concern if we increase the age from 16 to 18 for all the acts which are covered by this proposed section.

Mr. K. Muppil Nayar (West Coast and Nilgiris: Non-Muhammadan Rural): Mr. President, it is highly immaterial to me whether the age is fixed as 16 or 18. Even if the House prefers to have it raised to the modest age of 120, that is a matter for the Honourable Members and I do not care. But what I wish to say is to offer a word of protest against the attack on zamindars and landlords. I do not see any reason why they should be singled out to bear this calumny. I admit there may be black sheep in this class, but we find them in all classes, including lawyers.

Khan Bahadur Abdur Rahim Khan (North-West Frontier Province: Nominated Non-Official): Sir, I had no idea of speaking on this question, but when I heard some of the speakers here and spoke to many of them in the library, I made up my mind to speak on this question. I was surprised to hear learned men like Dr. Gour and other gentlemen say that they have not got protection for the minor boys. All these things are going on. We have got protection for minor girls. We know very well that unscrupulous elderly ladies also stoop to that. The same offence is committed by them as by men. I agree with Dr. Gour that the age should be raised to 18. It is strange that as far as property is concerned the law is very strict in stipulating the age as 18, while as far as her virtue is concerned, as far as her future is concerned, her age should be fixed at 16. Some gentlemen have said that girls in this country attain maturity earlier. I do not agree with them. Though girls become major, what about their education, their surroundings and other things? I think it will be a great slur and a standing blot on our administration if we do not raise the age to 18. We must sympathise with them. On them depends our future. They will be the future mothers of this country, and I deplore that the age is not raised from the political point of view and also from the point of view of the constitution of the future citizens. We know how far people have suffered from that. I do not know for certain what is the real condition in Bombay, but I have read in some paper that the death-rate of infants is very deplorable, and I think it must be due to this, namely, that girls get married very early. As administrators, as representatives of the people, I think it is the sacred duty of everybody to support this amendment that the age should be raised to 18, both from the point of view of politics and morality. As regards the remarks of some of my Honourable friends passed against zamindars, I think they did not mean those remarks against zamindars only; but if they did mean them, I say that the zamindars are not so bad. There are bad people all over the world. Zamindars are not so bad, because they have got much work to do. You will find a good many bad people among wealthy men who have no exercise for themselves. With these remarks, I strongly support Mr. Joshi's amendment that the age should be raised to 18 and I hope that even the official Members will agree to that.

Mr. President: Amendment moved:

"In clause 3 in the proposed section 366A, for the word 'sixteen' substitute the word 'eighteen'."

The question is that that amendment be made.

The Assembly divided:

AYES—43.

Abdul Rahim Khan, Mr.	Jejeebhoy, Sir Jamsetjee.
Abdulla, Mr. S. M.	Joshi, Mr. N. M.
Abul Kasem, Maulvi.	Lakshmi Narayan Lal, Mr.
Ahmed, Mr. K.	Lindsay, Mr. Darcy.
Asad Ali, Mir.	Mahadeo Prasad, Munshi.
Ayyangar, Mr. M. G. M.	Mudaliar, Mr. S.
Ayyar, Mr. T. V. Seshagiri.	Mukherjee, Mr. T. P.
Bagde, Mr. K. G.	Nabi Hadi, Mr. S. M.
Bishambhar Nath, Mr.	Nag, Mr. G. C.
Bhargava, Pandit J. L.	Neogy, Mr. K. C.
Chaudhuri, Mr. J.	Ramji, Mr. Manmohandas.
Cotelingam, Mr. J. P.	Rhodes, Sir Campbell.
Faiyaz Khan, Mr. M.	Sarfaraz Hussain Khan, Mr.
Ghulam Sarwar Khan, Chaudhuri.	Sarvadhikary, Sir Deva Prasad.
Ginwala, Mr. P. P.	Schamnad, Mr. Mahmood.
Gour, Dr. H. S.	Singh, Raja K. P.
Gulab Singh, Sardar.	Sinha, Babu L. P.
Ikramullah Khan, Raja Mohd.	Sircar, Mr. N. C.
Iswar Saran, Munshi.	Stanyon, Col. Sir Henry.
Jamall, Mr. A. O.	Venkatapatiraju, Mr. B.
Jamnadas Dwarkadas, Mr.	Webb, Sir Montagu.
Jatkar, Mr. B. H. R.	

NOES—40.

Agnihotri, Mr. K. B. L.	Latthe, Mr. A. B.
Aiyar, Mr. A. V. V.	Misra, Mr. B. N.
Allen, Mr. B. C.	Mitter, Mr. K. N.
Blackett, Sir Basil.	Moncrieff Smith, Sir Henry.
Bradley-Birt, Mr. F. B.	Muhammad Hussain, Mr. T.
Bray, Mr. Denys.	Muhammad Ismail, Mr. S.
Burdon, Mr. E.	Mukherjee, Mr. J. N.
Cabell, Mr. W. H. L.	Nand Lal, Dr.
Chatterjee, Mr. A. C.	Nayar, Mr. K. M.
Clark, Mr. G. S.	Percival, Mr. P. E.
Crookshank, Sir Sydney.	Pyari Lal, Mr.
Das, Babu B. S.	Rangachariar, Mr. T.
Faridoonji, Mr. R.	Reddi, Mr. M. K.
Fraser, Sir Gordon.	Sams, Mr. H. A.
Haigh, Mr. P. B.	Singh, Babu B. P.
Hailey, the Honourable Sir Malcolm.	Singh, Mr. S. N.
Holme, Mr. H. E.	Sinha, Babu Ambica Prasad.
Hullah, Mr. J.	Subrahmanayam, Mr. C. S.
Innes, the Honourable Mr. C. A.	Tonkinson, Mr. H.
Kamat, Mr. B. S.	Tulshan, Mr. Sheopershad.

The motion was adopted.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, I have got a very difficult task now before me. The amendment I have proposed is:

"In clause 3 in proposed section 366A for the words 'to do' substitute the word 'does' and in the same clause omit the words 'or seduced' wherever they occur in proposed sections 366A and 367B."

I do not move the first part to substitute "does" for "to do." I shall deal with the other part of my amendment, namely, to omit the words

" or seduced." I wish to make it clear to the Honourable House that I do not yield to anybody in this House in my desire to see that the procurer is punished. I do not wish to support such a heinous crime if it really is committed. Well, Sir, we are a body here sitting as legislators, and we should do what is practicable and what is workable, and this must be a reasonable and workable thing. Sir, it is laid down that whoever induces any minor girl to be seduced to illicit intercourse with another person shall be punished, it is also said that the procurer alone is to be punished and not others. Sir, the original object of this Bill was for the suppression of the white slave traffic, which meant that it wanted to stop trafficking in white slaves, *i.e.*, Europeans or white girls from a foreign country. The section as it appears in Penal Code has really lost that object and it applies now to India and becomes a part of the Indian Penal Code. I submit, Sir, if this is allowed, it will be really a hardship in India for reasons that I am going to place before the Honourable House. Sir, if it is taken that seduction is to be punished, or the procurer is to be punished, he is punishable under section 366 of the Indian Penal Code and I think there will be absolutely no necessity for having this amendment. Section 366 says:

" Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse . . . . ."

If that be the object, such person is convicted under section 366. We have got other sections, regarding enticing away married women and so on. Sir, the object is to punish a procurer so that he may not carry on his nefarious trade and it is for this purpose that this amendment is proposed. I submit really this does not affect India. I do not think in a country like India such actual trafficking in girls exists because Indian society, whether Hindu or Muhammadan, is such that it always takes care to get its girls married. Under the Hindu law it is a religious injunction that the girls must be given in marriage, and you will find in the higher societies such as Kshatrias, Brahmins and others that they get their girls married at a very early age, at an age which would be surprising to Europeans. The ninth year is described by Manu to be the best year when a girl should be given in marriage. Practically before 12, before a girl attains puberty, she must be given in marriage. That is the Hindu idea of marriage. Also we find among our Muhammadan friends, although some of them marry after the girls attain puberty, most of them marry their girls at an earlier age. I am speaking of the picked society of Muhammadans, where the marriage law is so much in vogue that there would be no such fear of any girl being seduced, and there would be no such traffic in girls as to be supplied for immoral purposes. But even assuming that there are societies and people of lower orders living in India, where seduction of girls is possible, I submit, Sir, that really if you do not punish the seduction or the illicit intercourse with a girl, I see no reason why the procurer should be so vehemently condemned in this House. Sir, I would point out that you, Sir, want meat, Honourable Members want meat and the country wants meat. That is why the butcher keeps a stall and sells meat. Sir, we all want meat to buy, we relish it and we never condemn ourselves for eating it. Because the butcher supplies it for our convenience and for our requirements, we want him to be punished, why? Is it not the same in this country with these women, whether you call them dancing girls, or *devadassis* or ordinary *dassis* or prostitutes. It is not an unknown thing. I think all Honourable Members have seen everywhere this kind

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of women. (*Cries of* "No, no.") You pass through any street and you will find them, you find them existing in very large numbers. They have existed from time immemorial; they have not come into existence under British rule or under Moghul rule; they have existed perhaps from the times spoken of in the *Puranas*. They are regarded as a necessity for religious sacrament, they are regarded as a necessity even for marriage and other parties and for singing songs in invocation of God. Perhaps every Member of this House might have heard of ceremonies in temples of . . .

Mr. President: The Honourable Member will discuss his amendment now.

Mr. B. N. Misra: I am only pointing out, Sir, that girls have been necessary for the purpose of certain religious ceremonies. (*Cries of* "Withdraw, withdraw.") I come, now, Sir, to (*Cries of* "Withdraw, withdraw.") Mr. Kinney the eminent English lawyer who in his Book on Criminal Law at page 143, says:

"Hence, a voluntary illicit intercourse of the sexes, even though it may take the form of mercenary prostitution or of an adulterous violation of marital legal rights, furnishes no ground for criminal indictment."

That is the state of things in England. Even in cases of divorce, we find that the seducer is not punished; he appears as the co-respondent and is liable civilly and not criminally. Much has been said about girls being disposed of to Zemindars and Rajas. I submit, Sir, it is not a fact. Neither Dr. Gour nor anybody else has really represented the true state of things.

Dr. H. S. Gour: I rise to a point of order. I never made any statement that girls were disposed of either to Zemindars or to Rajas.

Mr. B. N. Misra: Zemindars never get any girls from procurers, as has been said. What happens is this. When Zemindars or Rajas marry, their wives or Ranis bring with them some girls as maid servants; that is how they come to live in Raja's palaces. Such a thing as procuring of girls does not exist and no gentleman, whether he be a Zemindar or a Raja or any ordinary man, would ever adopt such a nefarious means to procure girls. (*Cries of* "Withdraw, withdraw.") I am sorry, Sir, my friends who have been staying in towns do not know what happens in the mufassil and in the country. I will just tell you, Sir. This Penal Code will apply all over India, and, as the Honourable Sir Malcolm Hailey pointed out to you, to many advanced tracts occupied by Bhils and Gonds, etc. I was Public Prosecutor in the Agency Tracts and I know among the Khonds they have a system whereby the grown-up men and women live in their houses and all the grown-up boys and girls from the same village or from three or four villages go to a particular house called *Dhangar* house. The unmarried boys are called *dhangars* and the unmarried girls are called *dhangris*. Supposing a *dhangari* says to a girl friend of hers "Let us go to a certain place and sing songs." Suppose she spends a night there and does what she likes, are you going to punish her because she called her friend to have a dance or sing a song? (*Cries of* "Shame, shame.") Surely you will not say that such a girl who has asked her girl friend to go to a *dhangar* house should be punished for illicit intercourse. Why should we think so much about these people who are able

to take care of themselves? Surely this House is not going to maintain all the people in the street or is not going to make provision for them. (*A Voice*: "You wait and see" and *cries of* "Withdraw, withdraw.")

Then, Sir, we find another point. Under section 366B the age is fixed at 21. I do not think really that girls from foreign countries are so dull or so low in intellect that they do not know what they are about. Why should the seducer be punished in such cases, and where is the element of seduction? The girl is quite intelligent and understands where she is going. Perhaps she goes for her best interests. So why should you protect and why should you punish the seducer of a girl who is, say, 20 years of age? Do you really think that the man has committed any offence when a girl of 20, with full deliberation, comes with him to any place? (*Loud cries of* "Withdraw, withdraw.") (*Sir Jamsetjee Jejeebhoy*: "Now you have made your speech, withdraw.") Sir, this House has not really realised where the shoe pinches. With these words I move my amendment.

The motion was negatived.

Khan Bahadur Sarfaraz Hussain Khan: Sir, the amendment which I move is that in clause 3 in the proposed section 366A for the words "and shall also be liable to fine" substitute the words "or with fine or with both."

It is simply giving an option to the Magistrate. I will give an example, say, of a rich man. He has a young son and, somehow or other, under the influence of some passion or through an act of indiscretion, he commits the act. Now if no option is given to the Magistrate in the case, this young man will be sent to jail. In that case simply for an indiscreet action of his, his whole life will be ruined. That is why I suggest that the punishment should be imprisonment or fine. We all know what India thinks about going to jail. For example, an educated man goes to England and when he comes back he does some indiscreet act of the kind and you send him to jail, his whole career will be ruined. If, on the other hand, you give the option to the Magistrate he may be let off by paying a fine. His father or somebody can pay that for him. So I move that this option may be given to the Magistrate so that one's career may not be ruined simply for an impulsive act of his. Sir, I move my amendment.

4 P.M.

The Honourable Sir Malcolm Hailey: The reason why we have adopted this form of words, namely, "and shall also be liable to fine" is because we desired to bring this section into line with all the parallel sections in the Indian Penal Code. If you take all the sections from 363 up to 376, you will find that a similar form of words is used. I think the only exception is section 374. For this reason we thought that the proper punishment for this offence was imprisonment and that the Magistrate should, in addition, have discretion to impose a fine.

As regards Mr. Sarfaraz Hussain's particular case, I would remark that under our revised Code of Criminal Procedure, if there is a young man under twenty-one years of age who falls into an error of this description, he could be placed on probation instead of being sent to prison.

The motion was negatived.

Mr. B. N. Misra: Sir, my next amendment is:

"In clause 3 at the end of the proposed section 366B add the following:

'in the case of compulsion or use of force for illicit intercourse and with fine only in the case of simple seduction for the same'."

My object in moving this amendment is the same as that of the Mover of the previous amendment—that in the case of simple seduction, where no force or violence is used, the punishment should not be so severe as 10 years but that it should be fine only. This is the object of my amendment. I think that in the case of consent there should not be such severe punishment and as we say in common parlance "do not place the same value on a diamond as on an ordinary stone." The punishment for stealing a rose from your table and Rs. 10,000 from your pocket, though they are both thefts, is not the same. You would not inflict the same punishment for both; and in this case I submit that for simple seduction without any force or violence the punishment should be fine only.

The motion was negatived.

Clause 3, as amended, was added to the Bill.

Mr. H. Tonkinson: Sir, I move:

"That in the title of the Bill for the words 'White Slave Traffic' the words 'Traffic in Women and Children' be substituted."

In this connection I think I might as well refer to the substance of the second amendment standing in my name. The second amendment—with your permission, Sir, I will move that also—is that in the Preamble to the Bill for the words "first, second and third articles of the International Convention for the suppression of the White Slave Traffic signed at Paris on the fourth day of May 1910", the following be substituted, namely,—"International Convention for the suppression of the Traffic in Women and Children signed at Geneva on behalf of the Governor General in Council on the twenty-eighth day of March, 1922."

If these two amendments are made, we shall, Sir, refer in the title and preamble to the International Convention which was adopted by the second Assembly of the League of Nations, instead of to the International Convention of 1910. I would remark that the International Convention adopted by the League of Nations really covers the Convention of 1910, because in the first article the contracting parties agreed to accede to the Convention of 1910. Further, I think that by the proposed section 366B in which we are making an offence with reference to the age of 21 years we are really following the International Convention of 1922 and not the Convention of 1910 where the age was 20 years. I therefore move the two amendments standing in my name.

The amendment in the Title was adopted.

The Title, as amended, was added to the Bill.

The amendment in the Preamble was adopted.

The Preamble, as amended, was added to the Bill.

The Honourable Sir Malcolm Hailey: I do not at present make a further motion, Sir.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I beg to move:

"That the Bill further to amend the Indian Stamp Act, 1899, be taken into consideration."

I explained fully, Sir, the facts of this little Bill when I introduced it some days ago, and those objects are also clearly stated in the Statement of Objects and Reasons appended to the Bill. In the circumstances, I beg to move that the Bill be taken into consideration.

Sir Campbell Rhodes (Bengal: European): Sir, I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon."

My reason for doing so, Sir, can be very briefly stated. In the early part of last year the Government consulted commercial bodies and Provincial Governments as to the need for this amending Bill. I believe it is a fact that from the commercial bodies we received the opinion that no change was necessary, and from the Provincial Governments, who naturally take the Scotchman's view that wherever there is six pence they should pick it up, we received the opinion that the amendment was necessary. Well, Sir, subsequently we had a debate in the Associated Chambers of Commerce in January at which the Honourable Mr. Chadwick was present, and I wish to read a few of his remarks to show that Government itself is not convinced as to the correct lines on which this Bill should be drafted. Mr. Chadwick said:

"I feel a little difficulty as to whether an increase from an anna to 4 or 8 annas, though light for the transactions of a big Presidency town, may not be heavy on the trader upcountry who uses these promissory notes. I do not know whether any Upcountry Chambers would be able to give us any advice on that point, and if so, whether in the opinion of Bengal and Bombay it is possible to make a rate of 4 or 8 annas."

Sir Montagu Webb speaking on behalf of the Karachi Chamber took up the challenge at once; he said:

"In brief they do not think it is worth it; the amount of income to be secured is problematical; they feel that if the stamp duty on Pro Notes were increased to any material extent the stamp duty would probably be evaded, and thereby would not be of any advantage as regards additional revenue."

Sir Thomas Smith representing the Upper India Chamber at Cawnpore said:

"One way of evading increase of duty on Demand Promissory Notes occurs to me, and that would be that instead of 'A' borrowing from the bank on a promissory note he would get the amount by having a credit opened and operate thereon with a cheque stamped with one anna. Assume he has an agreement to get an advance of one or two lakhs on piece-goods, all he has to do is to sign a cheque or cheques against that amount. That is one way it seems to me in which the borrower would be driven back on to the current account."

Well, Sir, this was a debate not on the principles of the Bill because the Bill was not before us, but on the question whether an inquiry should be instituted as to whether a Bill was needed. The result of that debate was that four Chambers of Commerce were against it and four were for it; and I as President exercised my right and gave my casting vote for the *status quo*, that is against any inquiry. I think, therefore, Sir, it is obvious that commercial opinion has not made up its mind as to whether, first, it is desirable, second, whether the provinces will get any revenue

[Sir Campbell Rhodes.]

from making this change. It is not desirable, I think, that we should have Statutes on the book which can be so easily evaded, and therefore I should like to move that the Bill be circulated for public opinion.

The Honourable Mr. C. A. Innes: Sir, these lights into the discussions of the Associated Chambers of Commerce are very interesting, but I do not think that the debate in the Associated Chambers of Commerce on one particular item in this Bill affords this House any reason why we should circulate this Bill. I may point out that in 1922 we circulated very full papers about this proposal to increase the duty on these instruments. We circulated to all Local Governments a letter we had received from the Bengal Government and attached to that letter was a report of the Committee appointed by the Bengal Government to consider the question of revising the duty on these instruments. All Local Governments were specially asked to consult Chambers of Commerce; they were asked to consult them on two points, one, whether the duty on these instruments should be raised, and, two, if so, to what extent. Now practically all Chambers of Commerce said "Oh, no; on general grounds we do not approve of the duty on these instruments being raised." Local Governments reported that they recognised that it was not altogether to the liking of the business community that the duty on these instruments should be raised; yet they pointed out that the financial needs and exigencies were very great and thought this was one of the least objectionable forms of getting the revenue which they required. Now, Sir, the Chambers of Commerce have already had an opportunity of expressing their opinions on these proposals, not in the exact form they are now, but on the proposals generally; and I submit at this stage the Chambers of Commerce have no right to demand that we should again circulate the Bill. Circulation means that the Bill will lapse, because there will not be time for replies to be received in time for the Bill to be passed into law during the life time of this Assembly.

The next point I have to make is that in practically all these proposals with the exception of that relating to demand promissory notes, we have followed the proposals of the Bengal Committee. and I would like to point out that a member of that committee was a very distinguished member of the Bengal business community, namely, Sir Campbell Rhodes' own predecessor in the Presidentship of the Bengal Chamber of Commerce.

The third thing I want to point out is that this Bill is a very small Bill indeed; it consists of only two clauses; it has been before the House for a week or ten days; every Chamber of Commerce has had ample opportunity to send up to its representatives here its criticisms on the Bill, and this is the proper place for considering them; it is proper that this Assembly should decide here and now whether our proposals are proper or not. I submit that there is no reason at all why we should delay the passing of the Bill for a further very unnecessary piece of circulation.

One more point and I have done. I think I am correct in saying that this debate which took place in the Associated Chambers of Commerce was merely a debate whether the duty on demand promissory notes should be raised. I do not think it was a debate on whether the duty should be raised on all the instruments dealt with in this Bill. Sir Campbell himself has given notice of an amendment in regard to demand promissory notes and I think that that is the main point which he has put to the House. Sir, I oppose this motion.

Rao Bahadur C. S. Subrahmanayam (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, I support the amendment moved by Sir Campbell Rhodes. It is not a question between the Bengal Chamber of Commerce and this House, or between the Bengal Government and this Assembly. It is a question of altering a piece of law which has been familiar to the people at large and every one even in the remotest corners of the country has come to associate the one anna stamp duty with promissory notes to any amount. Now, if you are going to alter the law without giving the country an opportunity of knowing it, without spreading this idea about the country and making it familiar with the idea that it is going to be raised to two annas, there will be very great danger. Men, who till now believed that one anna was quite enough for affixing on a document which covers the value of thousands of rupees, would not know the alteration; it is not as if every one in this country reads newspapers or knows the progress of the legislature from day to day. Therefore, on that point, without entering into the merits of the case, without entering into the question whether any substantial amount would be secured to the State in the way of additional revenue by virtue of this alteration, I think it is a very fair proposal, which is contained in the amendment, that the Bill should be circulated and by that means the country will come to know of it. I know, if it is sent out for circulation, it may not be possible to get this passed during the life time of this Assembly. It is possible it may not be passed. But if you are prompt and if you want to pass it before the end of the year, I think it can be done; I do not suppose this Assembly is going to die before the end of this year. But whether you are able to pass this during the life of this Assembly or not is not the question. The question is that this is a very substantial change in the every day life of the people, and I deprecate any haste in this matter. I would ask all Honourable Members to think what the villagers in the villages outside, who have relied on this one anna stamp as being able to secure a document of legal validity for thousands of rupees, would think of this suggested alteration.

Mr. K. B. L. Agnihotri (Central Provinces Hindi Divisions: Non-Muhammadan): I also rise, Sir, to support the amendment moved by Sir Campbell Rhodes. Everywhere in the country it is becoming a growing practice to have promissory notes executed instead of bonds. Under the law as it exists to-day, if the promissory note is not properly stamped, it cannot be validated in future, with the result that people being ignorant of the passing of this law in this House will suffer a lot and there will be much discontent among the commercial communities and the trading people in the country. The Honourable Mr. Innes has pointed out that the Bill has been lying in the House for about ten days and that there has been no condemnation of this Bill or any suggestions to this effect by any Chamber of Commerce.

(At this stage Mr. President left the Chair which was taken by the Deputy President, Sir Jamsetjee Jejeebhoy.)

We are not concerned, as my Honourable friend, Mr. Subrahmanayam, said, with the Chambers of Commerce, but we have also to look to the other people, to the various trading communities in the provinces which have no Chambers of Commerce. For instance, in the Central Provinces there is a vast trading community, but unfortunately they are not represented in any Chamber. Moreover, the period of 10 days cannot be regarded as sufficient for people all over the country to know about the

[Mr. K. B. L. Agnihotri.]

nature of such a Bill as this and therefore there will be no harm whatsoever if this Bill were circulated for public opinion.

Now as regards the other argument of the Honourable Mr. Innes that if this Bill were postponed it would not be possible to have it passed in the current Session or during the lifetime of this Assembly, I have not much to say about it, but I do not think it desirable that a Bill of such importance should be passed by this House before the public and the country have had an opportunity to know about it or to criticise it or to offer suggestions on it. With these few words, I have much pleasure in supporting the amendment of my Honcurable friend, Sir Campbell Rhodes.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, with regard to the argument that if this Bill is not taken into consideration here and now it runs the risk of lapsing and it is not likely to be passed during the lifetime of this Assembly, I do not feel much impressed. I do not see why the Honourable Mr. Innes is so enamoured of this Assembly. Our successors will be in office next year, and the Assembly will then be in Session and it does not matter what the personnel of the Assembly is. His Bill will be passed by the Assembly if he convinces the Assembly for the time being that it is a measure which must be placed on the Statute Book. Consequently, the question that it should be passed during the lifetime of the present Assembly and that its passage should not be postponed because this Assembly will come to an end is not an argument against its postponement.

The second argument which the Honourable Member for Commerce raised was that the Bill had been before this House for 10 days. Now, Sir, the Honourable Member will sympathise with the labours of the Members of this House which have of late been very arduous. He will at any rate feel that the Members of this House have not been idle during the last 10 days. The arduous work that the Members have been doing from day to day is the best argument why Members could not examine the details of the Bill of which the Honourable Mover now asks this House to go into consideration.

Then it has been said that the Bengal Chamber of Commerce, and the Karachi Chamber of Commerce of which my distinguished friend, Sir Montagu Webb, is a Member, have opposed this measure. I think there is a good deal of argument on the other side of the question. The Honourable Mr. Subrahmanayam, speaking for the public at large, and not for those associated with the various Chambers of Commerce has pointed out that the promissory note is associated with the stamp duty of one anna, and for a very long time past the public have come to regard this instrument as an extremely convenient mode of transacting commercial business. The graduated duty that the Bill seeks to introduce instead of the fixed duty of one anna is one upon which the public at large, as distinguished from the commercial community of Bengal, Bombay and elsewhere, are entitled to be consulted. The Honourable Mover has not vouchsafed any information as to how far the public at large, as distinguished from the various Chambers of Commerce, have been consulted upon this matter, and what is their view on the subject.

Lastly, I am also curious to know as to what would be the net gain by the proposed duty. I do know if it will run into

many millions of pounds; it may perhaps be such as the country may be able to suffer for a few months, and after that if the Honourable Mover moves that the Bill should be passed and has the support of the public at large, I have no doubt that the Assembly will endorse his motion. But as at present circumstanced, the Honourable Sir Campbell Rhodes appears to have made out a particularly strong case for the elucidation of further public opinion thereon, and so I support his motion.

The Honourable Sir Basil Blackett (Finance Member): I hope the House will not allow itself to be seduced by Dr. Gour's spacious pleadings. Dr. Gour got up to support a motion that the discussion of this Bill should be transferred from its natural place in which we ought to discuss it, namely, this House, in order that it might be referred to the Chambers of Commerce who have already been consulted. He very sensibly proceeded to discuss the merits of the Bill in the proper place. The whole matter was last year referred to the Chambers of Commerce and also to the Provincial Governments. As the Honourable Member for Commerce has said, the Chambers of Commerce were not on the whole in favour of it. I am not accustomed to hear that Chambers of Commerce are usually in favour of taxation which is going to fall upon their Members. The Provincial Governments who are the proper bodies to consult in regard to this matter are on the whole strongly in favour of it, if only because it is going to help them in a matter which they rightly regard as important, namely, to balance their budgets. They were consulted and I submit, Sir, that quite apart from the merits of the Bill, this House is the proper place in which a proposal supported by the Provincial Governments for imposing taxation for the benefit of the Provincial Governments as a whole should be discussed. Full opportunity has already been given to the commercial community to express its views, and they are known. I submit, therefore, that the amendment should be rejected and we should proceed to discuss the Bill on its merits.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, the measure which is now before the House is of far-reaching importance. It does not affect the interests of the Chambers of Commerce only, but it affects the men living in a village also, and I also feel strongly that this Bill has not been circulated adequately. In defence it has been urged " that the Chambers of Commerce are very much interested that the duty may not be raised, and, therefore, naturally if this Bill is placed before those Chambers they will be against it. But Local Governments have been addressed and their answer is that the duty should be enhanced." Well, may I tell the Honourable the Finance Member that the Local Governments are as much interested in enhancing the duty as the Chambers of Commerce in not enhancing the duty. Therefore, the opinions of the Local Governments can be neutralized by the opinions of the Chambers of Commerce. Now what about the public? This Bill is not of such a nature that this House may content itself with the opinions expressed by only the Local Governments. Supposing a number of men have got promissory notes in their possession, and all of them must have been stamped with one anna stamps, and when those promissory notes are adduced in the Court they will not be considered as admissible in evidence, unless it is clearly provided in the Bill that it will not have retrospective effect. The people at large are required to know that a Bill is going to be introduced which will affect them so materially. On those grounds I very strongly support this amendment which speaks for itself.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, seduction is so much in the "atmosphere" to-day that one does not know whether to allow oneself to be seduced by the arguments of Sir Basil Blackett or Dr. Gour. I think we should be striking a middle note by consenting to the circulation of the measure. We have been told that the Governments have been consulted. Dr. Nand Lal has given the reply that Governments naturally want more money and we know what their reply is bound to be. And the Chambers of Commerce we are further told have been consulted. I have a great estimation for Chambers of Commerce, but they do not represent all the trade and commerce and business in the country. There are other people who are entitled to be consulted and have not been. As has been pointed out, the Bill has not been long enough before the public and they do not realise its possibilities. Dr. Nand Lal was referring to these documents not being admissible in evidence if the Act was passed. But the Government will have a little pile in the shape of penalties. I do not know that this is a reason in favour of the Bill. Sir, the Government of Bengal tried a measure like this in the province and that is the Court Fees Enhancement Act. Has not that recoiled on the situation? Has not the expectation of the Government of Bengal been belied. We are warned by those who understand, by four Chambers of Commerce, that the enhanced payments will be evaded. Probably, we shall have this piece of legislation and yet not know how to enforce it. In a matter like this one always is inclined to support greater publicity. As regards the life of this Assembly, Sir, we are in the position of the condemned in a cell and should know how exactly we stand. Sir Malcolm Hailey, the Leader of the House, told us the other day that this is probably the last Session of the Assembly. Mr. Innes told us to-day that there may not be any time for this Bill being taken up during the life of this Assembly, if the Bill be circulated. Supposing there is a Simla Session I do not see why the Bill can not be taken up there and passed after proper publication.

Mr. Manmohandas Ramji (Indian Merchants' Chamber and Bureau: Indian Commerce): Sir, I rise to support Sir Campbell Rhodes' amendment and to say that the opinions which were asked for from the different Chambers of Commerce were in respect of the Report of a Committee which was appointed in Bengal to go into this question. But there was no definite proposal from Government to raise stamp duty. That Government proposed a certain measure for the increase of revenue and therefore it is but right that those who have expressed their opinion should know in definite form what the enhanced proposals are which this Government are making. Another point which is raised by several of my Honourable friends here in this House is that we have only the opinion of the Chambers of Commerce, but it is the public generally that borrows very largely. Of course, the traders have their own transactions but in this country there is money lending transaction going on everywhere, whether there is a Chamber of Commerce or not. Therefore, it is but right that the public should have some opportunity of expressing their views on this important question.

Mr. Darcy Lindsay (Bengal: European): Sir, having listened to the arguments for and against, it appears to me the whole issue rests on this question of promissory notes. On the other clauses of the Bill there seems to be no dispute. And I would suggest to the Honourable Mr. Innes the possibility of withdrawing for the present this proposed alteration as regards promissory notes and allowing the other items to stand.

The alteration No. 2 is to increase the stamp duty on share certificates, letters of allotment of shares, letters of credit and proxies, from one anna to two annas, and I am perfectly certain that the country at large would be with this measure. Nobody has the slightest objection to paying this extra anna. Then the proposed alteration in Article 47 which deals with insurance I can most heartily support. The present position, Sir, is that there is a duty fixed for fire insurance policies.

Mr. Deputy President: I would draw the Honourable Member's attention to the fact that we are at present discussing whether the Bill should be circulated for the purpose of eliciting opinion thereon and ask him to confine his remarks to that.

Mr. Darcy Lindsay: Sir, I was opposing the amendment for circulation, and I was suggesting to the Honourable Mr. Innes to, if possible, withdraw the promissory note section so that the Bill might be gone on with and I was pointing out what were to my mind the advantages of the Bill. That is why I referred to this question of insurance. If I may be permitted to continue, I said the Act provides for fire insurance policies, accident policies and life policies. Now, there are many other forms of insurance that are not covered by fire insurance or life or accident insurance and the Bill makes provision for these other forms of insurance. I can only tell you, Sir, that Insurance Companies in Calcutta, where I come from, are in great difficulty to know what stamp duty they should pay on particular policies and I may say that the stamp office is unable frequently to give us information on the point. Now this Bill that is before us makes it perfectly clear and on these grounds I certainly give it my wholehearted support. (*Dr. H. S. Gour*: "Your half-hearted support: you don't approve of the promissory note section.") I therefore put it, Sir, to the Honourable Mr. Innes as to whether it would be possible for the present to omit this section dealing with promissory notes and allow the rest of the Bill to be taken up.

Mr. A. V. V. Aiyar (Finance Department: Nominated Official): Sir, I just wish to make a few remarks, which may be of assistance to the House in deciding whether the Bill should now be circulated for opinion. As the House knows, all the Local Governments are now presenting their Budgets to the Legislative Councils and we know for certain that most of them are counting on some increase from these stamp duties for the purposes of their Budget. (*Dr. H. S. Gour*: "How much? You don't know.") If the Bill is now circulated, and several months elapse before it is taken up for consideration, they will all be put to very serious inconvenience. As regards the question of promissory notes, I suppose the proper time for discussing that will be when we are considering that particular clause.

Munshi Mahadeo Prasad (Benares and Gorakhpur Divisions: Non-Muhammadan Rural): Sir, I associate myself entirely with what has fallen from Sir Campbell Rhodes. When I look to the Stamp Act of 1899, I find that in clause (1) it is said "It shall come into force on the 1st day of July 1899." The present Bill which is being to-day discussed by us, does not make any provision on this point. If we pass it as it is, it will affect all the existing promissory notes and if any person who may be a money-lender wants to sue upon those promissory notes, he will have to pay a penalty of Rupees five and one anna under section 35 of the Stamp

[Munshi Mahadeo Prasad.]

Act of 1899. Still, these are points to be considered in coming to a conclusion. Further, the public ought to know the effect of this amending Bill. Apart from the Chambers of Commerce and the money-lending centres, the whole country will be affected. There are some money-lenders in villages who lend money on promissory notes. It will take months and months to bring to their knowledge the amendments which we are going to pass to-day. It has been said that the Local Governments are busy with their Budgets and they are counting on the income which will be derived from this amendment of the Stamp Act. But, Sir, we do not know what will be the amount of income that will be derived from this. I submit that we should not be hasty in passing this law and that we should circulate the Bill for getting the opinion of all the persons interested and of all the money-lending centres in the country.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Sir, I just want to remind the House that my Honourable friend, Mr. Darcy Lindsay, has made a very good and important suggestion, which if we carry out, I think we shall be doing what is convenient from the practical point of view of the Government and we shall also be serving the purpose that we have in view. Mr. Aiyar, I think, has rightly pointed out that we may take the Bill into consideration. So far as the clauses relating to promissory notes are concerned, we may either postpone consideration of this or say that it will not be taken into consideration now when the stage of discussion comes. But so far as the other clauses are concerned on which there seems to be no disagreement and about which there seems to be no protest in the House, why should we allow ourselves not to give our consent to those clauses about which there does not seem to be any controversy? Mr. Aiyar has pointed out a difficulty which seems to me to be a very real difficulty. All Local Governments have based their Budgets on the assumption that the Stamp duty will be enhanced. Supposing you don't do it, the whole of the finances of the Local Governments will, I think to a certain extent, be upset and the only advantage that we shall have will be that we shall meet after a number of months to discuss and give our consent to those clauses about which at present even there is not the slightest controversy. Why not, therefore, either take Mr. Darcy Lindsay's suggestion of taking the whole Bill into consideration *minus* the clauses relating to the promissory notes or carry out Mr. Aiyar's suggestion of taking the whole Bill into consideration and drop out the clauses relating to the promissory notes? To me it seems that this is the best course to adopt and I appeal to the House to adopt that course.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, I stand in support of inviting the opinion of the majority of the people of India on this Bill. They, Sir, are the people affected and they have a right to know what law is going to be passed by the Government of India particularly in this Assembly. Ninetyseven persons of India, Sir, out of a 100 do not understand how to read this Bill. They are not persons who can read even newspapers in the English language and realise the situation of the Bill in this Assembly to-day. It is therefore absolutely necessary that the Government of India should take proper steps to see that this Bill is translated word for word in the vernacular and distributed not only through the Provincial Governments and the District Officers but it should

also be forwarded to each and every village through the Panchayats themselves. The Panchayats, Sir, should circulate it to the villagers. Otherwise, this is no law. People are not going to remain as hewers of wood and drawers of water. The Bill concerns them. It touches their pockets. It is not merely a question of the stamp on promissory notes being one anna or two annas. It touches also the question of the purchase of land. The agriculturists also have got a right to know about it. They must know the stamp which is necessary for purchasing lands, and if they have insured their lives, as my friend says, I think that my friend, Sir Campbell Rhodes, has made out a strong case that this Bill should be forwarded again for opinion and people must know and give their opinion on it. What is the use of hurrying an important Bill like this and finishing it in 10 days' time? My friend read an extract from the Court Fees Act and the Stamp Act, 1899. There is a date, Sir, put on the top of the Bill that it should come into operation next year. Here, Sir, my Honourable friend, Mr. Innes, is going to jump in an aeroplane, and get home in the twinkling of an eye. It is therefore necessary that the Bill should be translated into all the vernaculars of the country and distributed. I daresay in Madras there are many languages spoken and there are also many languages spoken in the other parts of India, but that does not matter. Anyhow, the Bill must be further circulated for obtaining the opinion of the country and then probably we shall be in a position to take it up and see how far it can be carried.

Mr. K. G. Bagde (Bombay Central Division: Non-Muhammadan Rural): I move, Sir, that the question be now put.

Mr. Deputy President: Amendment moved:

"That the Bill be circulated for the purpose of eliciting opinion thereon."

The question is that that amendment be made.

The Assembly divided:

AYES—47.

Abul Kasem, Maulvi.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Asad Ali, Mir.
Ayyangar, Mr. M. G. M.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Bhargava, Pandit J. L.
Clark, Mr. G. S.
Cotelingam, Mr. J. P.
Das, Babu B. S.
Faiyaz Khan, Mr. M.
Gour, Dr. H. S.
Gulab Singh, Sardar.
Ikramullah Khan, Raja Mohd.
Iswar Saran, Munshi.
Jamall, Mr. A. O.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.
Latthe, Mr. A. B.
Mahadeo Prasad, Munshi.
Mudaliar, Mr. S.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Nag, Mr. G. C.
Nand Lal, Dr.
Nayar, Mr. K. M.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Ramayya Pantulu, Mr. J.
Ramji, Mr. Manmohandas.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Rhodes, Sir Campbell.
Sarfaraz Hussain Khan, Mr.
Sarvadhikary, Sir Deva Prasad.
Singh, Raja K. P.
Sinha, Babu Ambica Prasad.
Sinha, Babu L. P.
Sircar, Mr. N. C.
Subrahmanayam, Mr. C. S.
Tulshan, Mr. Sheopershad.
Venkatapatiraju, Mr. B.

NOES—29.

Abdulla, Mr. S. M.	Hindley, Mr. C. D. M.
Aiyar, Mr. A. V. V.	Holme, Mr. H. E.
Akram Hussain, Prince A. M. M.	Hullah, Mr. J.
Allen, Mr. B. C.	Innes, the Honourable Mr. C. A.
Blackett, Sir Basil.	Jamnadas Dwarkadas, Mr.
Bradley-Birt, Mr. F. B.	Lindsay, Mr. Darcy.
Bray, Mr. Denys.	Misra, Mr. B. N.
Burdon, Mr. E.	Mitter, Mr. K. N.
Cabell, Mr. W. H. L.	Moncrieff Smith, Sir Henry.
Chatterjee, Mr. A. C.	Mukherjee, Mr. T. P.
Crookshank, Sir Sydney.	Percival, Mr. P. E.
Faridoonji, Mr. R.	Sams, Mr. H. A.
Ginwala, Mr. P. P.	Tonkinson, Mr. H.
Haigh, Mr. P. B.	Webb, Sir Montagu.
Hailey, the Honourable Sir Malcolm.	

The motion was adopted.

THE GOVERNMENT SAVINGS BANKS (AMENDMENT) BILL.

Colonel Sir Sydney Crookshank (Secretary, Public Works Department): 5 P.M. Sir, I beg to move:

"That the Bill further to amend the Government Savings Banks Act, 1873, be taken into consideration."

I have nothing further, in asking the House to take this small Bill into consideration, to add to the remarks which I made when I commended the Bill for introduction. As I pointed out then, the Bill is purely a beneficial measure which aims at expediting the payment of deposits of deceased depositors to persons entitled who may be in distressed and destitute circumstances. Moreover, it aims at facilitating departmental business in order to simplify the procedure which is followed, and it does this without taking any undue risk in so far as Government is concerned. I therefore commend this Bill to this House for consideration.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, I desire to give this Bill my entire support. I appreciate the further facility that is going to be accorded to the small investor. If I could, on this occasion, I should plead for more facilities for withdrawal of deposits and for a little more interest being added that would make Post Office deposits very popular with the small investor; but as it is not permitted for me to do so I leave the matters for future consideration. I welcome the facility that is being given now in the small measure.

Mr. Deputy President: The question is:

"That the Bill further to amend the Government Savings Banks Act, 1873, be taken into consideration."

The motion was adopted.

Colonel Sir Sydney Crookshank: Sir, before I move that the Bill be passed. May I be permitted to move the following amendment:

"That in clause 2 in the proposed definition of 'Secretary' in section 3 for the word 'province' substitute the word 'area'."

Sir, I have to point out to Honourable Members that the word "province" used in the drafting of this clause does not correctly satisfy the position. The administrative charge of a Postmaster-General is not confined

to a province, but is really, for departmental purposes, a circle, but for general purposes it will better be known as an area, since in certain cases the Postmasters-General administer areas which extend over more than one province.

Mr. Deputy President: Amendment moved:

"In clause 2 in the proposed definition of 'Secretary' in section 3 for the word 'province' substitute the word 'area'."

The question is that that amendment be made.

The motion was adopted.

The motion that clause 2, as amended, stand part of the Bill was adopted.

Mr. J. P. Cotelingam (Nominated: Indian Christian): I move that:

"In clause 3, proposed section 4(*b*) for the words 'one hundred' substitute the words 'five hundred'."

Under the Act in force the Secretary, who is the Postmaster General, is empowered to pay the amount standing to the credit of a deceased depositor to any person appearing to him to be entitled to receive it, or to administer the estate of the deceased. The amending Bill provides for persons other than the Postmaster General to make similar payments. The persons other than the Postmaster General empowered to make payments will do so in this behalf by a general or special order of the Governor General in Council, subject also to any general or special orders of the Secretary. While the Postmaster General will make payments up to Rs. 3,000, those others are to make payments to the extent of Rs. 100 only as proposed. I presume, Sir, that those who will be empowered to make payments will be first class Postmasters and Superintendents of Post Offices. They are responsible officers, they have a large amount of administrative work to do, and as they have a good deal of local knowledge, I think they may safely be entrusted to make payments up to Rs. 500. This will, I think, result in a great deal of convenience to the public. It would result also in economy being effected, and as mentioned by Colonel Sir Sydney Crookshank, it will expedite business a great deal and undoubtedly save the time of the Postmaster General, for I think that cases coming within Rs. 500 will be somewhere about 80 per cent. I do not think that by increasing the powers of these first class Postmasters and Superintendents of Post Offices, the Department will undergo any serious risks, for these officers have or are expected to have a great deal of local knowledge. Further the men who are appointed to discharge these onerous duties, as Honourable Members will see in the proposed clause 4 (*b*), will be empowered in this behalf by a general or special order of the Governor General in Council. Then there are other conditions laid down for their guidance. They will be subject to any general or special orders of the Secretary, that is the Postmaster General. These officers under the existing rules go into the cases that come up before them and send up their recommendations to the Postmaster General. I am sure they will guard against any losses, will take the necessary precautions, including an indemnity bond if necessary, and see to it that their payments are made duly to the party entitled to the amount that stands to the credit of a deceased depositor. I therefore think that, while there will be a great deal of time saved for the Postmaster General and while

[Mr. J. P. Cotelingam.]

he will be set free to attend to larger administrative work, the public will gain largely by such powers being entrusted to first class Postmasters and Superintendents of Post Offices. In the Statement of Objects and Reasons on page 3 of the Bill, Honourable Members will find that, by virtue of section 3 of the Post Office Cash Certificate Act, 1917, the provisions of the Bill will be applicable also in the case of payments due on 5 year Cash Certificates forming part of the estate of a deceased person. In the Gazette of India for February, 24, 1923, a revised scheme of Cash Certificates has been promulgated. Cash Certificates can be negotiated not only at the issuing post office as heretofore, but in any post office, and if the applicant satisfies the Postmaster or is identified by any clerk in the post office, payment of the money can be made to the applicant. There are two classes specified. Cash Certificates of the value of Rs. 100 and under will be encashable at any post office doing savings bank business, other than the one where they stand registered, up to an aggregate limit of Rs. 250 in each case on the satisfactory identification of the payee either by a member of the clerical staff of the post office of the locality, or by a responsible resident of the locality. The responsibility of payment in this case is taken by the Postmaster on satisfactory guarantee being obtained through any member of the post office clerical staff. So also in the case of Cash Certificates of the value of Rs. 500 . . . .

Mr. H. A. Sams (Director-General, Posts and Telegraphs): I rise to a point of order. We are discussing the question of deceased's deposits and not of Cash Certificates.

Mr. J. P. Cotelingam: I am mentioning cases of amounts standing to the credit of deceased depositors who may also be holders of Cash Certificates. In the case of these Cash Certificates any person who is entitled to the amount may make a claim according to the conditions laid down, and the Postmaster may make payment on sufficient safeguards being obtained. For these reasons I propose that Rs. 500 be substituted for Rs. 100 in the proposed clause 4 (*b*).

Rao Bahadur C. S. Subrahmanayam (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): Sir, I oppose this amendment for this reason. Postmasters of the first class and Superintendents of Post Offices are, I know, very capable and very efficient men at their work; but questions connected with the succession to the estate of a deaceased person, especially in this country, are not governed by one uniform law. There are Muhammadans; there are Hindus of various divisions and there are other communities. Oftentimes it occurs that on the death of a person, there are rival claimants and it is not easy for one who is not trained as a lawyer and is not familiar with the law to decide *primâ facie* who is the best claimant, and such questions you cannot leave to Postmasters and Superintendents of Post Offices. I must once more repeat that I know they are very able and efficient men but to expect of them also to be legal men capable of deciding complicated questions as to who is to succeed to the amount standing to the credit of a deceased is more than we can do. It is also risky and dangerous and it will lead to an unnecessary amount of litigation. The parties would not be satisfied and would resort to the Courts. It is better that a matter like this is taken over and dealt with in the Central Office, because at the Central Office, which is situated in a large city, there will always be an assistant in the office

who is familiar with disposing of such cases and there will also be legal advice available to the officers of Government. Therefore, it will minimise disputes and it will work for greater efficiency. Now, I know that in several cases very strange ideas prevail as to the Hindu law of succession. I know of a case where a man thought that the daughter-in-law of a deceased person should be given the money at his credit. The money was given and a lengthy correspondence took place. The danger is greater in these small cases. These small sums are ordinarily the property of poor people and apparently a wrong decision, though an enirely *bonâ fide* one, would drive these people to the Courts and would be the means of whittling away what little there is left. It is therefore very essential to put this matter in the hands of one competent authority, who would be above local knowledge, for, as it was said, local knowledge is also local influence, a dangerous thing in most cases. The best thing is to deal with these matters on the legal basis, calling upon the claimants to substantiate their claims, and that can only be done at the Central Office. I have thought over this matter and I have also talked it over with one or two of my friends, and, whether they agree with me or not, I think in these matters this Rs. 100 is quite enough. As for other matters, I quite sympathise with the feelings of my friend, Mr. Cotelingam, who thinks that by spreading all over the country a number of judges as it were to decide in cases of this sort, would help poor people and would put down litigation and disputes. Every such attempt has always failed and our experience is that attempts to mitigate litigation and to lesson troubles and disputes have always ended in increasing them. Therefore, I think the amendment proposed to increase the amount from Rs. 100 to Rs. 500 is not sound.

There is one other point. I would without in any way minimising the sincerity or the *bonâ fides* of my friend's amendment say that the clause is put before us by the Department, which it may be presumed, in this case at any rate, knows its own business. It is not a penal law about which we can condemn the Government. This is a matter entirely of a special kind and, when the Department itself introduces this Bill and says " Rs. 100 is enough for our officers," it is not for us to say " raise it to Rs. 500 " or a larger figure. Therefore, I would request my friend, Mr. Cotelingam, to leave it as it is, and trust the Department in this matter.

Sir Sydney Cookshank: Sir, while fully appreciating the good intentions which underlie the amendment which has been put forward by my Honourable friend, Mr. Cotelingam, I regret that on behalf of Government I must oppose this proposal. As my Honourable friend, Mr. Subrahmanayam, has just now so rightly pointed out, the measure which we have brought forward is really guided by administrative considerations, and we feel that in fixing the limit at Rs. 100 we are able to extend this concession widely and, therefore, to make it more beneficial to the community at large without taking any undue risks which Government would otherwise possibly feel not altogether justified in taking if we were to raise the amount to as much as Rs. 500, as proposed by Mr. Cotelingam.

There is one point in my Honourable friend, Mr. Cotelingam's remarks to which I should like to draw attention, and that is the one in which he referred to the decentralisation being extended to first class Postmasters only. That is not the intention at all. The idea is to extend it far afield to a large number of offices, so that the public should get the greatest possible value out of the concession. If, after the measure has been in the experimental stage for some time, it is found to work satisfactorily

[Sir Sydney Crookshank.]

and is also found not to lead to any loss to Government, it will then be time enough for the administrative department concerned to put forward proposals to raise the amount.

Mr. Deputy President: Amendment moved:

"That in clause 3, proposed section 4(*b*), for the words 'one hundred' substitute the words 'five hundred'."

The question I have to put is that that amendment be made.

The motion was negatived.

Clause 3 was added to the Bill.

Clause 4 was added to the Bill.

The Title and Preamble were added to the Bill.

Clause 1, containing the Short Title, was added to the Bill.

Sir Sydney Crookshank: Sir, I move that the Bill, as amended, be passed.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 27th February, 1923.