

24th February, 1923

**THE  
LEGISLATIVE ASSEMBLY DEBATES**

**(Official Report)**

**VOL. III.**

*(21st February, 1923 to 14th March, 1923.)*

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**THIRD SESSION**

**OF THE**

**LEGISLATIVE ASSEMBLY, 1923.**



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1923.**

# Legislative Assembly.

## *The President :*

THE HONOURABLE SIR FREDERICK WHYTE, KT.

## *Deputy President :*

SIR JAMSETJEE JEEJEEBHAY, BART., K.C.S.I., M.L.A.

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MAULVI ABUL KASEM, M.L.A.

SIR CAMPBELL RHODES, KT., C.B.E., M.L.A.

SARDAR BAHADUR GAJJAN SINGH, M.L.A.

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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.

*Saturday, 24th February, 1923.*

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

## MEMBERS SWORN:

Mr. Ashruff Osman Jamall, M.L.A. (Bengal: Nominated Non-Official.)

Mr. Lancelot Graham, M.L.A. (Legislative Department: Nominated Official.)

## QUESTIONS AND ANSWERS.

### LATRINES IN AGRA.

408. **\*Mr. Pyari Lal:** 1. Will the Government be pleased to state if the construction of latrines in private houses is prohibited in Agra Cantonment?

2. If so, will the Government kindly state the reasons for the prohibition?

3. If not, on what grounds has the cantonment authorities of Agra rejected the application of Mr. G. P. Dube, Head Clerk, Sarda Canal, Pilibhit, and a resident of Agra Cantonment, for the construction of such a latrine in his house in that cantonment?

4. Is it a fact that Mr. Dube's appeal against this prohibition has been rejected by the District Commander?

5. In view of the above, will the Government be pleased to direct that permission be given to Mr. Dube, to construct a latrine of an approved design, as may be required under the Cantonment rules?

**Sir Henry Moncrieff Smith:** As the Army Secretary is unable to be in his place to-day, I have been asked to give the reply to this and a few other questions.

1—5. The Government of India have no information on the matters referred to in the Honourable Member's question. If Mr. Dube is dissatisfied with any orders passed by the Cantonment authorities or the District Commander, it is open to him to represent his case to higher authority in the usual way.

### CONTRACT FOR CARRIAGE OF COAL.

409. **\*Rao Bahadur T. Rangachariar:** 1. Whether it is a fact that a contract for the carriage of coal from Calcutta to Rangoon required by the Burma Railways has been entered into with the British India Steam Navigation Company for a period of ten years?

2. Whether it is a fact that the said contract was negotiated and completed through the Mining Engineer to the Railway Board?

3. What is the exact date when the negotiation with the British India Steam Navigation Company began and when was the contract finally settled?

4. Did the Mining Engineer act on his own responsibility in the matter or under the instructions of the Railway Board?

5. Were any tenders called for either in India or elsewhere by open advertisement or otherwise in reference thereto?

6. Whether the Mining Engineer and the Railway Board have instructions to adhere to the declared policy of the Government of India that when the rates of the Indian and Foreign Companies were the same—the Indian Companies should be given preference?

7. What steps did the Mining Engineer take to ascertain the rates of Indian Companies before fixing up the contract and if he took no steps, will the Government be pleased to ascertain and state why he did not do so?

8. Whether it is a fact that from August 1921, the Scindia Steam Navigation Company were asking the Mining Engineer and the Agent, Burma Railways, to give them an opportunity to quote for the said contract?

9. Whether the rate accepted from the British India Steam Navigation Company is lower than that quoted by the Scindia Company?

10. What are the rates originally proposed by the British India Steam Navigation Company and finally accepted or settled?

11. What was the necessity for entering into such long term contracts and will the Government be pleased to define their policy as regards long term contracts?

**Mr. A. H. Ley:** 1. Yes.

2. The contract was approved by the Board of Directors of the Burma Railways on the recommendation of the Mining Engineer to the Railway Board.

3. The exact date is not known. But the information on record shows that the negotiations were well advanced in March, 1921. The exact date when the contract was settled is not known. It was either at the end of 1921 or in the beginning of 1922.

4. The Mining Engineer acted as adviser to the Board of Directors of the Railway Company. He did not act under the instructions of the Railway Board.

5. Tenders were not called for.

6. The Railway Board were informed that the Government of India had accepted the Resolution adopted by the Council of State on 15th March, 1922, subject to the strict observance of the principle that the lowest satisfactory tender must be accepted and these orders were passed on to the Mining Engineer.

7. No steps. There were special reasons why, with the approval of the Directors of the Company, the Mining Engineer preferred to negotiate a contract with the British India Steam Navigation Company instead of calling for tenders in the open market. One reason was that the coal position was very difficult in 1920-21 and at one time the Burma Railways were reduced to only 10 days' supply. In placing the freight contract, therefore, the primary consideration was proved ability to supply enough tonnage to deal with heavy rushes at uncertain intervals. The Indian Company referred to in the Honourable Member's question did not fulfil this condition since its total fleet comprised 6 steamers.

8. According to the information on record the Company asked to be allowed to quote in August and September, 1921.

9, 10 and 11. The contract was a contract concluded by the Directors of the Burma Railway Company and the Government of India have no information on these points. Government's policy does not arise. The Company no doubt regarded the matter simply as a business proposition.

**Rao Bahadur T. Rangachariar:** May I ask whether the Government of India do not control the policy of the Railway Companies in this matter?

**Mr. A. H. Ley:** I think the matter is entirely within the competence of the Railway Company and the Government of India are not concerned.

**RAILWAY CLAIMS.**

410. **\*Rai Bahadur Lachmi Prasad Sinha:** Will the Government be pleased to state:

- (a) The number of claims put forward during the years 1920-21 and 1921-22 by consignees or consignors of goods, parcels and luggage despatched either at owner's risk or Railway risk against the East Indian and the Great Indian Peninsula Railway Companies and the North-Western Railway?
- (b) The number of such cases in which compensations have been granted either in part or in full for the same period?
- (c) The sums in each of the cases for which claims were made and the amount of compensations awarded in each of such cases?
- (d) The total sum for which claims were put forward but no compensation granted by the Companies during the years 1920-21 and 1921-22?

**Mr. A. H. Ley:** (a) The number of claims preferred against each of the railways named was in 1920: East Indian Railway 86,073, Great Indian Peninsula Railway 31,222 and North-Western Railway, 55,608 and in 1921, 113,684, 32,103 and 42,371 respectively. Information regarding 1922 has not yet been received by Government.

(b), (c) and (d). This information is not available and in view of the time and labour that would be involved in its collection Government do not propose to call for it.

**REGISTERS OF RAILWAY CLAIMS.**

411. **\*Rai Bahadur Lachmi Prasad Sinha:** Will the Government be pleased to state:

- (a) Whether the claims office of the Railway Companies maintain a register showing all claims made against them for losses of goods, parcels and luggages?
- (b) If so, for what period are Registers available?
- (c) If not, will the Government be pleased to state the reasons?

**Mr. A. H. Ley:** Government understand that such registers are maintained by railways, but Government are not aware for how long they are preserved.

**Rai Bahadur Lachmi Prasad Sinha:** Does Government propose to take steps to publish them in the form of statements?

**Mr. A. H. Ley:** The suggestion will be considered.

## SETTLEMENT OF RAILWAY CLAIMS.

412. \***Rai Bahadur Lachmi Prasad Sinha**: (a) Will the Government be pleased to state whether any statement of such claims made by consignees or consignors and compensations awarded to them against such claims are prepared by the Companies and submitted periodically to the Railway Board?

(b) If so, for what period are they available?

(c) If not, will the Government be pleased to state whether the Companies have unrestricted powers to deal with and refuse such claims from the public?

**Mr. A. H. Ley**: (a) and (b). The reply is in the negative.

(c) The Agents of the railways have full power to deal with claims preferred against their administrations.

## I. M. S. OFFICERS IN N.-W. FRONTIER PROVINCE.

413. \***Mr. K. C. Neogy**: Will Government be pleased to state the number of I. M. S. officers in military employ—permanent and temporary—who served in the North-West Frontier Province during the years 1921 and 1922; and how many of them were Indians?

**Sir Henry Moncrieff Smith**: A statement giving the information asked for by the Honourable Member in this and in the next question No. 414 is laid on the table.

*Statement showing the number of I.M.S. officers, permanent and temporary, who served or are still serving, in the N.-W. Frontier and with the Razmak Force.*

|                    | Permanent.   |            |          | Temporary. |            |          |     |
|--------------------|--------------|------------|----------|------------|------------|----------|-----|
|                    | No.          | Europeans. | Indians. | No.        | Europeans. | Indians. |     |
| 1921.              |              |            |          |            |            |          |     |
| N. W. F. Province. | Waziristan . | 37         | 25       | 12         | 151        | 7        | 144 |
|                    | Kohat .      | 25         | 13       | 12         | 34         | 3        | 31  |
|                    | Peshawar .   | 32         | 21       | 11         | 49         | 2        | 47  |
|                    | Total .      | 94         | 59       | 35         | 234        | 12       | 222 |
| 1922.              |              |            |          |            |            |          |     |
| N.-W. F. Province. | Waziristan . | 30         | 20       | 10         | 63         | 2        | 61  |
|                    | Kohat .      | 46         | 24       | 22         | 49         | 2        | 47  |
|                    | Peshawar .   | 25         | 17       | 8          | 30         | 2        | 23  |
|                    | Total .      | 101        | 61       | 40         | 142        | 6        | 136 |
| Razmak Force .     |              | 25         | 9        | 16         | 16         | ...      | 16  |

## I. M. S. OFFICERS WITH RAZMAK FIELD FORCE.

414. \***Mr. K. C. Neogy**: What is the total number of I. M. S. officers who served with the Razmak Field Force, and how many of them were Indians?

MILITARY MEDICAL SERVICES.

415. \***Mr. K. O. Neogy**: (a) What is the number of Staff appointments in the Military Medical Services in India; and how many of them are held by Indians?

(b) What steps have been taken upto now to train and appoint Indians to Staff appointments?

**Sir Henry Moncrieff Smith**: (a) There are altogether 56 administrative appointments in the Medical Services in India. Of these appointments, 20 are at present held by officers of the Indian Medical Service, one of whom is an Indian holding the appointment of Assistant Director, Medical Services.

(b) Indian officers of the Indian Medical Service receive exactly the same training as British officers of that Service and are equally eligible, subject to their possessing the necessary seniority and qualifications for appointment to administrative posts.

NEWSPAPERS SUBSCRIBED FOR BY GOVERNMENT.

416. \***Mr. K. O. Neogy**: (a) Will the Government be pleased to place in the Assembly Library a statement showing the names and number of copies of newspapers and periodicals—Indian and foreign—subscribed for by the different departments of Government, and the annual expenditure entailed thereby?

(b) Is it a fact that the Central Bureau of Information supplies to the different departments cuttings from Indian newspapers on subjects concerning the respective departments? If so, what is the justification for the departments to subscribe for the Indian newspapers independently?

**The Honourable Sir Malcolm Hailey**: The information asked for is being collected and will be placed in the Assembly library when ready.

STATE OWNED RAILWAYS—FUTURE MANAGEMENT.

417. \***Mr. K. O. Neogy**: (a) Will the Government be pleased to state what recommendation has been made by the Central Railway Advisory Council on the question of the future management of State-owned railways now managed by private companies?

(b) Will Government be pleased to lay on the table a copy of any resolutions or minutes recorded by the said Council in this matter?

(c) Is it a fact that Local Governments and commercial bodies were invited to express their opinion on this question? If so, will Government be pleased to circulate their opinions among members of this House?

**Mr. A. H. Ley**: The Central Advisory Council by a majority advised in favour of State management. It is regretted that a copy of the minutes cannot be placed on the table. A collection of opinions received from Local Governments and commercial bodies has been placed in the Library.

**Mr. T. V. Seshagiri Ayyar**: May I ask why it has not been considered advisable to place a copy of the minutes of the Central Advisory Committee appointed by this House on the table?

**Mr. A. H. Ley**: I should like notice of that question.



**Dr. H. S. Gour:** What was the majority in the Advisory Committee who favoured State management?

**Mr. A. H. Ley:** I have no information but will inquire.

**Sir Deva Prasad Sarvadhikary:** Will the Honourable Member indicate how the Members of the Assembly are to have the information contained in the proceedings of the Advisory Committee if they want to use it?

**Mr. A. H. Ley:** I will have the suggestion considered.

#### VOTING AT LANDHOLDERS' CONSTITUENCIES.

418. **\*Baba Ujagar Singh Bedi:** (a) Will the Government be pleased to state whether they have given effect to my resolution regarding removing of the restrictions for the voters of the landholders' constituencies to appear in person at the polling stations for the ballot, which was accepted by the Honourable the Law Member on behalf of the Government (*vide* Legislative Assembly Debates, Volume 3, for September, 1922, page 200) and will it be enforced for the ensuing election?

(b) If not, why not?

(c) If it is not to be enforced in the next election, when will it be enforced?

**The Honourable Sir Malcolm Hailey:** The recommendation in the Resolution referred to was accepted by the Government of India, so far as they were concerned, but as the Honourable Member is aware, it requires an amendment of the electoral rules which cannot be effected by a mere stroke of the pen. Government at present are unable to say more than that they hope that the change in question will have been made before the next General Elections.

#### TENDERS FOR IMPERIAL DELHI WORKS.

419. **\*Mr. Muhammad Faiyaz Khan:** (a) Will Government be pleased to lay on the table a brief statement showing the rates of various tenders called for from the 1st April, 1922, up to date for execution of works in the 6th and 8th Divisions of the Imperial Delhi Works, respectively, together with the name of each tenderer and with an indication of the names of successful tenderers?

(b) Is it a fact that the lowest tenders are not generally accepted in these two Divisions? If so, on what basis is the acceptance of tenders decided upon?

**Colonel Sir Sydney Crookshank:** (a) The 6th Division of the Imperial Delhi Works deals with Government House, and a certain number of small works; the 8th Division comprises the residential quarters in Raisina, and the number of works large and small, including repairs estimates, for which tenders have to be called during the course of a year is very considerable. The information asked for could not therefore be compressed into a brief statement. Nor is it usual to make public the names of tenderers for contracts, and the rates at which they tender. Such a disclosure would be much resented by the contractors themselves and Government does not therefore propose to lay any such statement on the table.

(b) Government has no reason to suppose that in the two Divisions mentioned the general principle followed in giving out contracts is not

observed. This general principle is that, subject to the sanctioned estimate not being exceeded, the contract is given to the lowest tenderers considered capable of properly carrying out each particular work.

MOSQUES IN DELHI.

420. **\*Mr. W. M. Hussanally:** With reference to the answer given by the Honourable the Home Member to the question by Mr. Seshagiri Ayyar on the subject of mosques in Raisina, will Government be pleased to state:

- (a) How many mosques are there in the New Imperial town; and how many in Pahargunj?
- (b) How many of each are frequented by Muhammadans; and how many of each are in ruins and consequently not frequented?

**The Honourable Sir Malcolm Hailey:** It would take a considerable time to collect the information in detail asked for, as the number of mosques now in use and of the ruins which may at one time have been mosques in the areas specified is probably very large. Incidentally the greater part of Paharganj is not affected at all by the New Delhi Project. Government does not consider that the expenditure of time and labour in collecting this information would be justified, nor would it be reliable, for many cases have arisen in which mosques or mosque ruins which appeared to be entirely abandoned, are subsequently frequented for a time, and then again abandoned.

**Mr. K. Ahmed:** Is it a fact that many of the mosques are not mentioned in the Imperial Delhi map available in the Eastern and Western Hostels at Raisina, and that they were left outside that map?

**Mr. President:** The Honourable Member can state from his own study of the map whether that is a fact or not.

**Mr. K. Ahmed:** Is it a fact that all the buildings, including mosques and temples are given in the Imperial map?

**The Honourable Sir Malcolm Hailey:** For the information of the Honourable Member I may say that the best map to go to for information on this subject is, of course, the Survey map. Any map prepared by our Public Works Department and placed in the hostels for the information of Honourable Members as a guide to Raisina and the surroundings is not, of course, prepared primarily with the object of showing every topographical detail in that area. Such a map would show only the protected monuments, as being of chief interest.

**Mr. K. Ahmed:** Then, Sir, do I understand that the survey map will not contain the buildings that are still standing?

**The Honourable Sir Malcolm Hailey:** I am afraid, Sir, I do not understand the question. You will find in the Survey Map, which is very complete, a very large number of religious buildings mentioned, both those which are in use and those which are abandoned. If the Honourable Member desires any further information regarding our maps, I shall be quite glad to supply it to him.

**Mr. K. Ahmed:** Were the mosques and their location surveyed at all? Was the position of any of these buildings surveyed before these maps were prepared?

**Mr. President:** Order, order.

## CUSTODY OF RAISINA MOSQUES.

421 **\*Mr. W. M. Hussanally:** 1. Is Government aware in whose custody or trusteeship, are the frequented mosques in Raisina?

2. How many of them have been repaired at the cost of Muhammadans themselves and how many at the cost of Government, if any?

3. Are the Muhammadans required to have permission of Government to enable them to repair these mosques? If so, under what law?

4. (a) Has permission been asked for in any case?

(b) If so, in how many cases has the permission been granted; and in how many cases refused? If the permission has been refused in any case, why?

(c) Will Government place on the table any such applications refused?

**The Honourable Sir Malcolm Hailey:** The answer to (1) is in the negative.

(2) Government are not aware how many mosques have been repaired by private individuals, but as will be seen from the reply to question No. 426, Government carries out repairs on 9 mosques in the New Delhi area.

(3) The mosques in the New Capital area having been acquired by Government during the land acquisition proceedings, in that area, permission to carry out repairs by private individuals is required to be obtained in order that the repairs may conform to the architectural features of the surroundings of the buildings.

(4) (a) Yes, in several cases.

(b) Permission to repair according to sanctioned plans is not refused to persons able to show that they are entitled to exercise rights of user in the buildings.

(c) Does not arise.

**Mr. K. Ahmed:** Is it not a fact that the Khadims of those mosques and some of the priests asked that those mosques and shrines should be repaired at their cost and that the Government did not allow them to do so? There were petitions to the Chief Commissioner of Delhi regarding that matter.

**The Honourable Sir Malcolm Hailey:** I can inquire whether any such applications have been made and have been refused. The general rule, as I have already explained to the Honourable Member, is that, where a person shows that he has any right of user in a mosque, he is allowed to repair it.

## ACQUISITION OF LAND ATTACHED TO MOSQUES, DELHI.

422. **\*Mr. W. M. Hussanally:** (a) While acquiring land for the new town in Raisina, was any land belonging to any mosque also acquired? If so, in how many cases?

(b) From whom was such land acquired?

(c) Was any compensation paid? If so, to whom; and what amount? (Names and addresses may kindly be given.)

**The Honourable Sir Malcolm Hailey:** No separate record was kept of the acquisition of land surrounding mosques and tombs, or of the payees

to whom the compensation awarded by the Land Acquisition Officer was paid. These proceedings were amicably concluded in the years 1913-14, and Government do not consider that any useful purpose would be served by re-opening such proceedings at this time of day. Suitable plots of public land are being attached to some of the existing mosques where the general lay out permits of this being done.

**Mr. K. Ahmed:** Is it not a fact that a public notice was issued by the Khadims of the mosques in Delhi saying that they are not allowed to repair the mosques, nor are they allowed to say their prayers . . . .

**Mr. President:** Order, order.

**Mr. K. Ahmed:** I have not finished yet, Sir, completing the sentence even.

**Mr. President:** Order, order. The question of the repair of mosques does not arise out of this question.

LAND ATTACHED TO MOSQUES, DELHI.

423. **\*Mr. W. M. Hussanally:** Will Government place on the table a statement showing how much land belonged to each mosque in Raisina before the new town was built and how much now?

**The Honourable Sir Malcolm Halley:** For the reasons given in answer to the previous question it is doubtful whether any accurate statement of this nature could be prepared. It might be added that most, if not all, of these buildings were small village mosques situated in bazars and narrow lanes and had therefore no land attached to them.

“ BUNDARYA WALI ” MOSQUE.

424. **\*Mr. W. M. Hussanally:** (a) Is it a fact that the yard of “ Bundarya Wali ” Mosque in Paharganj or any part of it was thrown into a road or thoroughfare?

(b) If so, when was that done and under what circumstances?

(This question to be answered on reference to settlement and survey maps and registers.)

**The Honourable Sir Malcolm Halley:** (a) and (b). Neither the yard nor any part of the yard of the “ Bundarya Wali ” mosque in Paharganj has been thrown into a road or thoroughfare.

**Mr. K. Ahmed:** May I, Sir, hand over to the Honourable the Home Member a printed circular inviting the attention of the public to this matter? He will find from it that his answer is quite the other way. May I have the honour to hand it over to be placed on the table?

**The Honourable Sir Malcolm Halley:** I shall be very glad to receive the statement and make any further investigation that is required.

“ CHAHAR BUNJ ” MOSQUE.

425. **\*Mr. W. M. Hussanally:** (a) Will the Government be pleased to state in whose possession is the mosque known as “ Chahar Bunj ” Mosque?

(b) Are Mahomedans allowed to say prayers therein? If not, why not?

**The Honourable Sir Malcolm Hailey:** (a) There are several four-domed mosques round Delhi, and it is not quite clear to which of these the question refers. If the Honourable Member will be more explicit the information required will be obtained.

#### REPAIRS OF PLACES OF WORSHIP, RAISINA.

426. **\*Mr. W. M. Hussanally:** (a) Will the Government be pleased to lay on the table correspondence if any relating to the repairs of all places of worship in Raisina, such as mosques, temples, Gurdwaras and the like?

(b) Have any mosques in Raisina been taken up as archæological monuments and repaired at the cost of Government? If so, which?

**The Honourable Sir Malcolm Hailey:** (a) Government are not prepared to lay the correspondence referred to on the table.

(b) The following mosques in the New Capital are archæological monuments and are repaired at the cost of Government:

1. Khair-ul-Manzil.
2. Masjid Kila Kohna, that is the mosque in Purana Killa.
3. Mosque near tomb of Sikandar Shah Lodi.
4. Mosque near tomb of Safdarjang.
5. Mosque near tomb of Isa Khan.
6. Afsarwali mosque near Humayun's tomb.
7. Mosque of Mahabat Khan.
8. Mosque of Abdul Nabi.
9. The mosque in Ferozshah Kotla.

#### MOSQUES IN RAILWAY AREAS.

427. **\*Mr. W. M. Hussanally:** 1. (a) How many mosques come within the area of the Imperial Railway; and how many more within the area of the new railway station?

(b) Have any areas attached to these mosques been appropriated? If so, why?

2. (a) Are such mosques allowed to be frequented by Mahomedans? If so, will that permission be continued for always?

(b) Is any part of any such mosque being demolished?

3. Has any passage been left for Mussalmans to use such mosques; and do Government propose to leave such passage?

**Mr. A. H. Ley:** Inquiries are being made and information will be furnished shortly.

#### MOSQUES NEAR KOTHI No. 27.

428. **\*Mr. W. M. Hussanally:** (a) Is it a fact that a part of a mosque has been appropriated for Kothi No. 27, near the Police Station? If so, under what circumstances and with whose permission?

(b) If it be a fact, do Government propose to consider the question of restoring the same?

**Mr. A. H. Ley:** Inquiries are being made and information will be furnished shortly.

MILITARY SCHOOLS FOR SONS OF OFFICERS.

429. \***Mr. B. S. Kamat:** (i) Will Government be pleased to state at what places in the Provinces it is contemplated to start Military Schools for giving educational facilities to the sons of Indian Officers and soldiers?

(ii) Are these schools intended to be feeders to H. R. H. the Prince of Wales' Military College at Dehra Dun?

(iii) Have Government considered the desirability of establishing such a Military School in the Cantonment of Poona?

**Sir Henry Moncrieff Smith:** (1) Three schools of the kind are contemplated, *vis.*, the Kitchener College, and the King George's Royal Indian Military Schools, Jullundur and Aurangabad Serai.

(2) Some if not all of the Schools are intended to be feeders to the Dehra Dun College.

(3) Poona was considered but was not finally selected.

**Mr. Sambanda Mudaliar:** Will the Government be pleased to consider the advisability of starting one in any of the conspicuous places in Southern India?

**Mr. President:** I think the Honourable Member had better wait, till the Army Secretary is in his place, to ask that question.

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THE WORKMEN'S COMPENSATION BILL.

**Secretary of the Assembly:** Sir, I lay on the table the Bill to provide for payment by certain classes of employers to their workmen of compensation for injury by accident as passed by the Legislative Assembly and amended by the Council of State.

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THE INDIAN INCOME-TAX (AMENDMENT) BILL.

**The Honourable Sir Basil Blackett** (Finance Member): Sir, I ask for leave to introduce a Bill to amend the Indian Income-tax Act, 1922.

This is a very short Bill the object of which is to give effect to the intention of the Legislature as intended to be expressed in the Income-tax Act of last year but unfortunately not quite so expressed. There are two clauses and there is no doubt in either case what the intention of the Legislature was. But it has been found that the words of the new Act do not quite convey that intention. I do not think it is necessary for me to enter into the details of the two clauses which I can explain when the Bill comes up for discussion. I confine myself to-day therefore to the request for leave to introduce the Bill.

The motion was adopted.

**The Honourable Sir Basil Blackett:** Sir, I introduce the Bill.

## THE INDIAN COTTON CESS BILL.

**Mr. President:** The Assembly will now resume consideration of the Report of the Joint Committee on the Bill to provide for the creation of a fund for the improvement and development of the growing, marketing and manufacture of cotton in India.

**Mr. T. V. Seshagiri Ayyar** (Madras: Nominated Non-Official): Sir, I move that:

“ For clause 4 substitute the following :

4. (a) As soon as may be after the commencement of this Act, the Governor General in Council shall cause to be constituted a Committee consisting of twelve members, to be selected by the Government of India in consultation with the Local Governments.

(b) The said Committee shall have power to co-opt members of Local Committees which may be appointed by the Local Governments in this behalf.

(c) In the selection of the said Committees regard shall be had to commercial, agricultural and other interests affected by the cess to be imposed under this Act’.”

On the last occasion when this matter came up I think Mr. Hullah rightly complained that the matter of which I had given notice was not discussed in the Committee. The Committee sat, Sir, for a very short time, and I had not given as much attention to the Bill as I have since given it. But immediately afterwards, the day following, I intimated to the Honourable the Agricultural Member that I thought the Committee was too unwieldy and that something should be done to make the Committee smaller. And I also in my minute of dissent informed the Member that I should like to have this matter again discussed, but I was told that as the report had been sent in already, it was too late to summon another meeting of the Committee. That is my explanation for not having fully discussed this matter when the Select Committee was sitting.

Sir, under the constitution as now framed, section 4 would necessitate the appointment of a Committee consisting of about 36 people. The cess to be levied, as I pointed out the other day, is a very objectionable one, but if the whole of the cess is to be utilised for some useful purpose one might feel reconciled to the position created by the Bill. What happens now is this—that these 36 people, who will have to come to Delhi at least twice in a year, will consume a large portion of the fund collected from those cotton growers. It has been said the money will be collected from cotton growers and millowners. It does not matter from whom you collect the money. There can be no doubt—I take it that to the extent of at least Rs. 50,000, the fund will be spent in defraying the travelling and subsistence allowance of the members. The position which I ask the House to consider is this. Is it right to collect money from the cotton-growers or the millowners and spend it in the way in which this Bill suggests, namely, in paying the travelling and the subsistence allowance of members? No doubt there will be enough left for the purpose of carrying on the investigations indicated in the Bill, but I submit, Sir, this Committee should not consume so much. A Committee of 36 can never be a satisfactory Committee; and why is it necessary to bring in such a large number as 36 from various parts of India to Delhi for the consideration of any matter? My suggestion is this. If you have a small Committee, say of 12 members—I for one would be satisfied with a smaller number; however, I have put it at 12—if you have a small Committee, that Committee can go down to Calcutta if it is a question of lightening

the cess in Calcutta, or to Bombay or Madras, and there co-opt members on the Committee who might be appointed locally; and in that way a great deal of expense to the tax-payer and to the Government will be spared. I do not see the necessity for having such a huge, unwieldy Committee consisting of 36 members.

Sir, if the House will look into section 4, they will find who are the persons who are to be thus invited as the guests of Government to Delhi. You will find the Agricultural Adviser to the Government of India, six persons representing the Agricultural Departments of Madras, Bombay and so on; the Director General of Commercial Intelligence; 9 persons nominated by various departments, 4 persons representing the Cotton ginning industry, one person nominated by the Local Government of Bengal; one person having knowledge of co-operative banking; 10 persons representing the cotton growing industry in Madras, Bombay and so on; 3 persons nominated by His Exalted Highness the Nizam, the Durbar of Gwalior and of Baroda; one gentleman to represent the other Indian States. As if we have not had already enough, there are to be such additional persons as the Governor General in Council may, by notification in the Gazette of India, appoint. I say, Sir, that this is altogether an unnecessary number and it is sure to involve the Government in large expenditure, which is unnecessary for the purpose for which this cess has been created. As I said, it is desirable to have a small committee, and there should be local committees appointed by the Local Governments; they would not cost any money by way of travelling allowances and subsistence allowances. Under these circumstances, Sir, I move that instead of the present clause 4 the one which I have already read be substituted.

**Mr. J. Hullah** (Revenue and Agriculture Secretary): Sir, I may assure my Honourable friend, Mr. Seshagiri Ayyar, that I have not complained against any amendment on the ground that it was not discussed in the Joint Committee, or that it is brought forward by a member of that committee.

I wish to emphasise that in framing our provisions regarding the Central Cotton Committee we are not writing on a new slate. We have already a Central Cotton Committee which has been in existence for two years, and has not been found to be too large or too unwieldy. The size of the Committee up to the present has been 32; the Joint Committee has raised it to 37 in a way that I shall explain afterwards. But the amendment asks us to substitute for a very useful Committee of which we have already two years' experience a much smaller Committee constituted in a way of which we have no experience at all.

**Dr. H. S. Gour** (Nagpur Division: Non-Muhammadan): What has been the cost of this Committee?

**Mr. J. Hullah**: I shall come to that later. Mr. Seshagiri Ayyar is also under a misapprehension when he speaks of the Committee coming to Delhi for its meetings. The Committee sits only at Bombay and will continue to do so. Owing to the importance of the Bombay Presidency in regard to the cotton industry a very fair number of the members of the Committee belong to that Presidency and therefore, the travelling and subsistence allowances are considerably smaller than they would be if the Committee met at Delhi. Mr. Seshagiri Ayyar estimates that the cost of these travelling and subsistence allowances will be Rs. 50,000. We have experience to go upon; we know almost exactly what the cost will be. The cost on



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this account for a Committee of 32 members is Rs. 9,000 a year, not a very large sum to take out of a total income of Rs. 9 lakhs in the first three years and Rs. 4½ lakhs in subsequent years.

**Mr. T. V. Seshagiri Ayyar:** How many times did that Committee meet in a year?

**Mr. J. Hullah:** Ordinarily they have met twice a year. We estimate that the cost of the enlarged Committee will be at the most Rs. 13,000 a year.

**Mr. T. V. Seshagiri Ayyar:** Are they to meet only twice a year?

**Mr. J. Hullah:** There is no statutory obligation to that effect, but we expect that ordinarily they will meet twice a year as they do at present.

The Committee is a large one, but it is representative of a very big industry and wide trade representation is required for the complexity of the commercial questions which the Government of India put to the Committee. It has already given us most valuable advice on important questions, such as the Cotton Transport Bill which the House recently passed and on the vexed question of the licensing of gins and presses. At the cost of taking up a little time, I may explain the various parts of its personnel. It is obvious that the Agricultural Adviser to the Government of India should be a member and it is convenient that he should be President. It is equally obvious, I think, that the Directors of Agriculture of the six major cotton-growing provinces should be members. The Director-General of Commercial Intelligence is responsible for all Indian statistics and the importance of cotton statistics is a matter on which the trade has laid very great emphasis. The East India Cotton Association is a body which controls the marketing of cotton in Bombay, and Bombay handles three-fourths of the total crop in India. The Bombay Millowners Association and the Ahmedabad Millowners Association together represent practically 70 per cent. of the cotton spinning in India. The Bombay Chamber of Commerce represents the cotton export interests. The Indian Merchants Chamber is largely representative of the merchants concerned with the handling of cotton as middlemen between upcountry markets and the mills or exporters. The Karachi Chamber of Commerce represents the firms concerned with the exports not only of Sind cotton but also of the very valuable cotton crop of the Punjab. The Tuticorin Chamber of Commerce represents the mills in the extreme south of India and exporters and merchants handling what is probably the most valuable long staple crop in India. The Upper India Chamber of Commerce represents the mills of northern India. The Committee also includes a representative of the Empire Cotton Growing Corporation. That is a reciprocal arrangement. India has on the Council of the Empire Cotton Growing Corporation four members and one member on the Executive Committee of that body. Next we have two representatives nominated by the Central Provinces Government, one being a Central Provinces spinner and the other a representative of the ginning industry in Berar. There is a representative of Bengal; for although very little cotton and still less of any value is grown in that province, the local Department of Agriculture has recently taken up the matter and hopes to restore the old cottons of Bengal. It is but fair, we think, that Bengal should have a representative.

Now, Sir, on the different occasions on which I have spoken on this Bill I have laid emphasis almost, I am afraid, to the extent of being wearisome, on the fact that we in framing the Bill have had all along in the forefront of our proposals the interests of the agriculturist, the interests of the grower. The Standing Finance Committee some time ago, when I happened to bring up a proposal for a small item of expenditure, asked that the Central Cotton Committee might have more agricultural representation. We then put on four agricultural representatives. The Joint Committee on the Bill has gone further and said that agricultural representation must be even greater. They have added six new members. That would have brought the number of the Committee from 32 to 38, but by striking out one official representative we have brought the size of the Committee to 37. It is a large Committee, we admit, but we do not think it is too large for the greatness of the industry which it is intended to represent and to foster. It works largely in Sub-Committees. Lastly, I would suggest that a Committee nominated by the Governor General in Council is not as satisfactory as the present Committee or the Committee which we propose, which is drawn, as Honourable Members will see, from a very wide field of representation. I have, therefore, to oppose this amendment.

**Sir Montagu Webb** (Bombay: European): May I appeal, Sir, to my Honourable friend Mr. Seshagiri Ayyar, in view of the information that has now been placed before the House, to withdraw his amendment?

**Mr. T. V. Seshagiri Ayyar**: I don't think it will affect the Honourable Member much whether I withdraw the amendment or not. I had all the information before.

**Sir Montagu Webb**: The ground upon which the amendment has been put forward was the heavy expense which would be involved in the maintenance of this admittedly somewhat large Committee. But inasmuch as this argument is now found to have very little foundation, that is to say, that the additional cost involved is only about Rs. 4,000 and not Rs. 50,000 as Mr. Seshagiri Ayyar anticipated. In these circumstances, and looking to the fact that the existing Committee of 32 is working quite satisfactorily, I would appeal to him to withdraw his amendment.

**Sir Deva Prasad Sarvadhikary** (Calcutta: Non-Muhammadan Urban): Sir, I beg to oppose the amendment for another reason. Mr. Hullah has been good enough to concede that Bengal, which is trying to have its old cotton industry and cotton-growing capacity, restored, has been allowed a modicum of representation, namely, one. I am informed by my Honourable friend behind me, Mr. Mukherjee, that it was pressed by him in the Select Committee that Bengal should have at least two representatives, one of whom . . . .

**Mr. T. V. Seshagiri Ayyar**: There is no cotton at all there.

**Sir Deva Prasad Sarvadhikary**: My Honourable friend says that there is no cotton at all there. There is not much when compared to Bombay, but that is not the question.

**Mr. T. V. Seshagiri Ayyar**: You have no idea.

**Sir Deva Prasad Sarvadhikary**: The Statement of Objects and Reasons as well as the Preamble make it appear that this Committee is not only to regulate the cess but also to spend money for the improvement, and

[Sir Deva Prasad Sarvadhikary.]

development of the growing—the most important from the point of view of Bengal—and marketing and manufacture of cotton. The last sub-clause, sub-clause (xi) of clause 4, gives the Governor General in Council authority to add some persons. From the Bengal point of view I say this is of importance, because, when Bengal can show better results, it will want more representation.

**The Honourable Mr. B. N. Sarma** (Revenue and Agriculture Member): There is one consideration which I shall place before Mr. Seshagiri Ayyar to see whether he need press his amendment any further. The Government have proceeded substantially on the lines which have been recommended to them by the Indian Cotton Committee. They have recommended that the Central Cotton Committee should be a large representative Committee consisting of officials as well as non-officials and representatives of Indian States. The Indian States ordinarily produce nearly one-third of the cotton grown in India. The amendment which the Honourable Member has tabled does not make any provision for the representation of Indian States. At present there are 3 or 4 representatives of Indian States and it may be that on further representation being made to us, we shall have to increase that number. One other observation I would like to make and that is this. Throughout the discussion doubts have been impliedly cast on the adequacy of representation of agriculturists as to whether we can accept the recommendation of the Central Cotton Committee inasmuch as the elements composing it were largely official and commercial and that the cotton-growing interests were not so largely represented as might be desirable. In deference to the wishes, therefore, that have been expressed from time to time, both inside the House and outside, we have agreed to an increase in the number of agricultural representatives, and it would be therefore absolutely impossible to reduce the Committee to the size or anything approximating the size which has been suggested by Mr. Seshagiri Ayyar. The Local Governments do at present pay the travelling charges of the official Members and the Government of India pays the travelling charges of their officers and it is only the Non-official Members that are paid for and many of them live in and about Bombay, the Central Provinces, and so on at no considerable distance from Bombay. They meet only twice a year and I think, therefore, that in order that any representations which may be made by this Committee may carry weight with the Government as well as with the people at large, it is absolutely necessary that it should be a large one.

**Mr. T. V. Seshagiri Ayyar:** May I say a word, Sir? In view of the discussion, I do not think it necessary to press the amendment.

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

**Mr. President:** The question is that clause 4 stand part of the Bill.

**Lala Girdharilal Agarwala** (Agra Division: Non-Muhammadan Rural): Sir, may I be permitted to move a very small amendment to clause 4, sub-clause (v)? After my amendment, it will read thus:

“Four persons representing the cotton manufacturing or cotton ginning industry, of whom one shall be nominated by each of the Local Governments of Madras, the Punjab, the United Provinces of Agra and Oudh and the Central Provinces.”

Sir, the only change I have made is that instead of two representatives from the Central Provinces, I have divided it into one for the United Provinces and one for the Central Provinces. Now, Sir, this Honourable

House is aware that the United Provinces produces cotton in large quantities. There is a large number of . . . .

**Mr. J. Hullah:** Sir, I think I may fairly object to the moving of this amendment, of which we have had no notice. I know that amendments are sometimes allowed to be moved at short notice or even without notice, but this Bill has been in the hands of Honourable Members for a long time, and I therefore object, Sir, to the moving of this amendment.

**Mr. President:** The objection is reasonable, especially in view of the fact that the Honourable Member proposes to disturb the equilibrium of the Committee as appointed by the Joint Committee. If the Honourable Member's amendment was the fruit of mature thought, no doubt he would have given due notice.

**Lala Girdharilal Agarwala:** The objection is quite right but I simply appeal to you to allow me to move it, as the amendment is very small, although the Government are within their rights in objecting.

**Mr. President:** If the amendment had been very small I should have over-ridden the objection raised by Mr. Hullah.

**Mr. B. N. Misra** (Orissa Division: Non-Muhammadan): May I, with your permission, make one suggestion? Throughout this long constitution I see that Bihar and Orissa has been altogether neglected. It is not represented at all either by the Local Government or through anybody else. May I make a suggestion that the Central Government be pleased to take at least two Members from the Province of Bihar and Orissa on the Committee? The Province of Bihar and Orissa is altogether neglected whereas even States like Baroda and other small States are represented on this Committee. The Province of Bihar and Orissa grows cotton and I do not know why she has been altogether neglected.

**Mr. President:** If that is intended to be an amendment I cannot accept it. I may suggest to the Honourable Member that he should use his influence with the Governor General in Council (Laughter) to get him to use sub-clause (xi) in the interests of his own province.

Clauses 4, 5, 6, 7 and 8 were added to the Bill.

**Mr. J. Hullah:** Sir, I move:

"After clause 9 (1) insert the following, and re-number sub-clause (2) of clause 9 as sub-clause (3) :

'(2) Any owner of a mill who is aggrieved by an assessment made under section 7 may, within three months of service of the notice referred to in sub-section (1) of that section, apply to the Local Government for the cancellation or modification of the assessment and, on such application, the Local Government may cancel or modify the assessment and order the refund to such owner of the whole or part, as the case may be, of any amount paid thereunder.'

The reason for this amendment is that the Bill provides no kind of appeal for a mill-owner against an assessment. By virtue of the terms of clause 8 the exporter will have the same right of appeal as he has under the Sea-Customs Act. We do not anticipate that in actual practice there will be any appeals of mill-owners against the assessments made by the Collectors. I believe the usual practice under the Cotton Duties Act is for the Collector to accept without question the returns which they submit. But we think that there should be a right of appeal and we have therefore borrowed from

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the provision which exists in section 33 of the Cotton Duties Act. I move my amendment.

The motion was adopted.

Clause 9, as amended, and clauses 10 to 17, were added to the Bill.

The Title and the Preamble to the Bill were added to the Bill.

**Mr. J. Hullah:** I move that the Bill, as amended, be passed.

The motion was adopted.

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### THE INDIAN OFFICIAL SECRETS BILL.

**Mr. President:** The Assembly will now proceed to the further consideration of the Report of the Select Committee on the Bill to assimilate the law in British India relating to official secrets to the law in force in the United Kingdom.

**Mr. K. B. L. Agnihotri** (Central Provinces Hindi Divisions: Non-Muhammadian): Sir, I move:

“In clause 4 add the following at the end of sub-clause (a) (ii):

‘and it appears that the person in possession of such address or information had reasonable grounds to believe that the address was of, or the information related to, a foreign agent.’”

Sir, I need not adduce any further arguments in support of my amendment as this point was more or less discussed on the last occasion and the arguments were very well advanced by Dr. Gouss and certain other speakers on that occasion. When I had moved an amendment for the deletion of clause 4, the Honourable Mr. Graham was pleased to say in reply:

“It might be reasonable to require the prosecution to prove that an accused should have known anything which a person of reasonable intelligence would have known, but it is not fair to put on the prosecution the burden which this amendment would put on it.”

Sir, I would rather like to quote Mr. Graham's arguments in support of my this amendment. I submit that the man should not be presumed to have communicated with a foreign agent if he is in mere possession of an address or information relating to a foreign agent without knowing or without suspecting or without himself having any reasonable belief that such person was a foreign agent. I can very well understand that where a man knows, suspects or has reason to believe any other person to be a foreign agent and if such man is proved to be in possession of such address or information, there could be a presumption that he may have had communication with a foreign agent, but in the case of a man who has no knowledge about it, or who has no reasons to believe that a particular person was suspected to be a foreign agent by the Government or by any other person, such a man should not be deemed to be guilty simply because he happens to have in his possession the address of a foreign agent. I need not in support recapitulate to the House the arguments that were advanced in this connection in the House of Commons by Commander Kenworthy that there may be some unscrupulous man who might for some motive of his own send the address of a foreign agent or a suspected foreign agent to any other person, and that other person might easily be deemed to have communication with a foreign agent. There may be cases in this country where such

a thing might be possible and innocent men might suffer. But apart from all this, it does not stand to reason that a man who happens innocently to go to the place of business of any other person who may have been suspected by the Government or by some other higher authority to be a foreign agent or that a man who visits be absolutely ignorant of the antecedents of such person should still be treated to have had communication with a foreign agent. It will be safeguarding the interests of the poor and innocent people if they could be made liable only in cases where they have reasonable grounds to believe that such a person was a foreign agent. It may be said that a particular man may not believe it, while another having reasonable intelligence would so believe; but what I mean to refer to is a man having reasonable intelligence. If such a man has known him or has believed him to be a foreign agent, it would be quite sufficient. Therefore, it will not be in any way against the interests of justice and it would not afford the spies any loophole to escape in any way. My amendment is only meant to safeguard the interests of poor and innocent people. It is no use glossing over the pitfalls and dangers that actually exist in the wide and elastic wording of the clause, but it is our duty that we as good legislators should also look to the probable effect of the clause in ordinary every day practice and to see that it may so far as possible be not liable to be abused by the executive. With these few words I suggest that a person who merely is in possession of the address of a suspected foreign agent may not be presumed to have had communication with him unless he has reason to believe or reason to suspect that person to be a foreign agent. I therefore move this amendment.

**Mr. L. Graham** (Legislative Department: Nominated Official): Sir, had this debate been continued on Wednesday, the 14th instant, I do honestly think that my Honourable friend, Mr. Agnihotri, would not have pressed this amendment; in fact he would not have risen to move it. The words which he now proposes to add at the end of clause 4 (a) (ii) are precisely of the same nature as the words which he proposed to add at the end of clause 4 (a) (i). Now, the House will agree with me that had those words been added to clause 4 (a) (i) an impossible burden would have been placed upon the prosecution. This new amendment which has been moved by my Honourable friend, Mr. Agnihotri, is precisely the same as the amendment which the House rejected on that occasion. Therefore I hardly think it necessary to deal with this amendment at any length and really but for the fact that some days have intervened I should certainly have said nothing at all and left the House to exercise its discretion. Now I only wish to remind the House that under this section which according to my friend is going to work such damage on poor and innocent people no offence is constituted at all. There is no prosecution under this section. It must be remembered that before this section can be used a prosecution must be in operation under section 3 of the Act and section 3 of the Act covers some of the gravest offences imaginable against the State. The prosecution is required, in order to get conviction under that section to prove that extremely difficult and abstract thing, a purpose prejudicial to the interests or safety of the State and this section provides that extremely suspicious circumstances may be referred to and may be used in evidence and one of those is that the accused has been in communication with a foreign agent and it is also laid down that in certain circumstances, those circumstances of course must be proved, that he shall be presumed to have been in communication with a foreign agent, that is to say, the burden will be placed upon him to prove that he was not in communication with a foreign agent. That provision my Honourable friend, Mr. Agnihotri, considers to be a poisonous provision

[Mr. L. Graham.]

and he proposes to sterilise it. The House agreed last week that this was not a poisonous provision. It declined to allow that provision to be omitted. I suggest, Sir, that the House will agree with me that to make that provision absolutely inoperative and to render it quite impossible for the prosecution to use it will have precisely the same effect as taking it out altogether and therefore as the House refused to take it out, I think the House will agree that these words should not be added.

**Mr. K. C. Neogy** (Dacca Division: Non-Muhammadan Rural): When on the last occasion we discussed another amendment to this clause, Mr. Rangachariar took the unnecessary trouble of reminding the House that this clause did not create any offence but merely laid down a mode of proof. He on that occasion defended the vague and sweeping character of the provisions on the ground that but for these provisions there was no guarantee that the Act would be successfully administered. In his new born statesmanship and sobriety, Mr. Rangachariar also sneered at those who happened to differ with him, and he even went to the length of hinting that they were merely trying to catch popular applause. In reply to Mr. Rangachariar and Mr. Graham I am going to cite to this House the opinion of the highest judicial officer in a province in India on this particular point, an officer belonging to the I. C. S., who is an Englishman to boot. I do not think Mr. Rangachariar will sneer at him or his authority to speak on this matter, because if he has read his papers carefully he must have seen that he is perhaps the only official in India consulted by Government who has any practical experience of the administration of the laws of espionage in England and France. His name is Mr. Pison, Judicial Commissioner of the North-West Frontier Province. He says as follows:

“The presumption arising from the presence in an accused person's note book of the name and address of a person believed to be a spy is one which, if pressed, might result in the conviction of innocent persons, and it seems doubtful whether there is sufficient justification for retaining it in a Statute which applies to peace conditions.”

I hope, Sir, that Mr. Rangachariar will revise his judgment in view of this expression of opinion on the part of a High Judicial Authority.

**Mr. Pyari Lal** (Meerut Division: Non-Muhammadan Rural): Both my Honourable friends Mr. Neogy and Mr. Agnihotri are lawyers by profession, and as such they ought to know what is exactly meant by the particular provision to which they took exception. The possession of an address does not *per se* constitute an offence. It is merely treated as a relevant fact when all other circumstances in the case are against a man. This fact may be taken into consideration, only when other things are against him.

**Mr. K. B. L. Agnihotri**: On a point of personal explanation. If my friend has taken the trouble to read clause 8 . . .

**Mr. President**: That is not a point of personal explanation.

**Mr. Pyari Lal**: My friend must know that by this law which this House is trying to enact they are going to take note of certain exceptional circumstances and its object is to provide not for the safety or protection of one life or of one man or of one man's life or one man's property only but of the whole country and therefore to meet exceptional cases exceptional laws have to be provided. If my friend will take the trouble to go through the various provisions of this Act, he will find that the Legislature is very

scrupulously anxious that no possible loophole for escape should be allowed to a man who is really guilty, and under those circumstances I strongly deprecate any such petty amendments to the provisions of this Act, as proposed by the Mover of this amendment.

**Rao Bahadur T. Rangachariar** (Madras City: Non-Muhammadan Urban): Sir, as an appeal has been made to me by my Honourable friend, Mr. Neogy, I have reconsidered the position. I had the honour of sitting with him on the Select Committee when we discussed the provisions of this Bill. The eagle eye of my Honourable friend did not notice the great enormity which this section contains. He had not then a word to say in the Select Committee against any portion of this clause, nor in the long Minute of Dissent which he has appended. My Honourable friend has not said a word in his minute about amending section 4. If he will refer me to any particular portion of his minute relating to section 4 I shall gladly be corrected. I have read it carefully and I do not find any reference to amendments to section 4 at all. That is the clause we are now concerned with. I do not really know whether he has discovered anything later. He uses section 4 to condemn section 3. In his minute he says:

"Lt.-Commander Kenworthy, while criticising in the House of Commons the corresponding provision in the Statute of 1920 said 'What is to prevent some unscrupulous secret service officer,' etc."

This is all in reference to section 3. We are now concerned only with clause 4. It is a minor matter whether my Honourable friend wished to amend it or not. But I am sure he did not draw the attention of the Committee when we were sitting there to any enormity in this respect . . .

**Mr. President:** I must remind the Honourable Member that, as we are not seized of what happened in the Committee, we cannot judge of the matter. It is not proper to refer to the proceedings of the Select Committee except in so far as they are referred to in the Report itself.

**Rao Bahadur T. Rangachariar:** I only refer to the fact that there is no reference to it,—but that is a matter which is beside the question as he is perfectly entitled to raise it now. What is it that exception is taken to in clause 4? The first part of clause 4 says that a certain fact shall be relevant for the purpose of proving a particular fact which is to be proved: it does not prove it one way or the other, it only says that a particular fact shall be relevant, because it may not come exactly under the definition of relevancy in the Evidence Act; so, on account of the experience gained in England, Statutes X and XI, George the 5th, enacted this clause, and that is reproduced here; here we use the language of the Evidence Act—"shall be relevant for the purpose of proving a particular fact,—not that it is proof of that fact, not that it is conclusive proof, not even presumptive proof, but merely 'shall be relevant.'" Now if something is shown it says that the fact shall be relevant that he has been in communication. In order to prove that he has been in communication with a foreign agent, clause (2) enacts that, in order to be relevant, in order to prove that fact, if a connection is shown that he had either within or without British India visited the address of a foreign agent, then it is proof, or it shall be presumptive proof, that he has been in communication with a foreign agent. Does my learned friend object to that? The question to be proved is 'having been in communication with a foreign agent.' You are shown that you visited the address of a foreign agent or



[Rao Bahadur T. Rangachariar.]

consorted or associated with a foreign agent. From that, let us ask, is it wrong to draw the inference that he has been in communication with a foreign agent, in order to make it merely evidence, not to convict him of the offence. Then the second portion is that he has either within or without British India the name or address or that any other information regarding a foreign agent has been found in his possession,—then, it shall be presumptive proof that he has been in communication with a foreign agent. The only difficulty which my Honourable friend, Mr. Agnihotri, pointed out is that the address might have been foisted on him. Well, that is rather an exception, isn't it? My Honourable friend will admit that it will be an exceptional case where an address of another is foisted on him,—and it is an ordinary rule of evidence that the person who relies on an exception has to prove it. Ordinarily, we are in possession of the name or address of another person simply because either we desire to be in communication with him or we are in communication with him already. Ordinarily, does it not follow, if we have the address of someone else in our pocket, that it must be for a purpose,—isn't that so, ordinarily? It is human nature. If I had the address of my friend, Mr. Chaudhuri, in my pocket, I should have it for some purpose,—unless Mr. Neogy puts it into my pocket; then, of course, it will have come there without my knowing it; but that is an exceptional case. Therefore, being an exceptional case, the law makes here this presumption. I do not think there is any enormity in this; if there is, I should be glad to be corrected. What does it say? All that it says is that the person shall be 'presumed.' It means, 'unless the contrary is proved.' What is there to prevent my proving the contrary if I am honestly in possession of the address of a foreign agent? 'Now take the definition of 'foreign agent.' A 'foreign agent' is a person who does something inimical to the State, and includes any person who is or has been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power either directly or indirectly, for the purpose of committing an act, either within or without British India, prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without British India, committed, or attempted to commit, such an act in the interests of a foreign power.' Therefore, that is a person who is inimical to the State. Now you have his address in your pocket. Now, Sir, are we guilty of any enormity in saying that we will draw the inference that you have been in communication with him? Not to convict you at once, but, if you are in communication with him, it is relevant for the purpose of proving that you had a sinister purpose, merely relevant under clause (1). If Mr. Seshagiri Ayyar will carefully read it, under clause (1), being in communication with a foreign agent is relevant merely for the purpose of proving the intention: not that it is conclusive proof, no, it shall be presumed. What is the objection to that? Do you want to shut it out? Is it not a relevant fact? Is it not a reasonable circumstance to take into consideration in order to come to a conclusion on the question of the innocence or guilt of the accused? Therefore, for the purpose of proving that he has done something for a purpose prejudicial to the safety of the State, it is relevant,—and would any lawyer or would any ordinary human being deny the relevancy of the fact? A person shall be presumed to have been in communication with a foreign agent if he has his address in his pocket. All that I am saying is that there is really nothing

wrong in it. It is not so bad as it is painted; that is all I say. Don't paint it darker than it need be painted. Let us see it as it is, and see whether it is necessary that we should enact that law or not. Let us appeal to reason, not to passion or prejudice, and it is only a rebuttable presumption; it is presumed from a certain fact. You can prove the contrary. Therefore, I do not see why all this fuss is made; and why my Honourable friend Dr. Gour should wax so eloquent, I fail to see. I have dealt with the merits of this question at some length and I hope the House sees, and I hope the public outside will also see and not be led away by such sort of comments as have been made here to think that really this section contains anything unusual or anything that should not be accepted by this Legislature. (*Some Honourable Members*: "I move that the question be now put.") (*Other Honourable Members*: "No, no.")

**Mr. President:** The question is that the question be put.

The Assembly divided:

AYES—46.

Abdul Rahim Khan, Mr.  
Allen, Mr. B. C.  
Barua, Mr. D. C.  
Bijlikhan, Sardar G.  
Blackett, Sir Basil.  
Bradley-Birt, Mr. F. B.  
Bray, Mr. Denys.  
Cabell, Mr. W. H. L.  
Chatterjee, Mr. A. C.  
Chaudhuri, Mr. J.  
Cotelingam, Mr. J. P.  
Crookshank, Sir Sydney.  
Dalal, Sardar B. A.  
Faridoonji, Mr. R.  
Fraser, Sir Gordon.  
Graham, Mr. L.  
Haigh, Mr. P. B.  
Hailey, the Honourable Sir Malcolm.  
Holme, Mr. H. E.  
Hullah, Mr. J.  
Ikramullah Khan, Raja Mohd.  
Jamall, Mr. A. O.  
Jamnadas Dwarkadas, Mr.

Jejeehoy, Sir Jamsetjee.  
Kamat, Mr. B. S.  
Ley, Mr. A. H.  
Lindsay, Mr. Darcy.  
Mitter, Mr. K. N.  
Moncrieff Smith, Sir Henry.  
Muhammad Hussain, Mr. T.  
Mukherjee, Mr. J. N.  
Mukherjee, Mr. T. P.  
Nayar, Mr. K. M.  
Percival, Mr. P. E.  
Pyari Lal, Mr.  
Ramayya Pantulu, Mr. J.  
Rhodes, Sir Campbell.  
Sams, Mr. H. A.  
Sarfaraz Hussain Khan, Mr.  
Singh, Mr. S. N.  
Stanyon, Col. Sir Henry.  
Subrahmanayam, Mr. C. S.  
Tonkinson, Mr. H.  
Townsend, Mr. C. A. H.  
Tulshan, Mr. Sheopershad.  
Webb, Sir Montagu.

NOES—36.

Abdul Rahman, Munshi.  
Abul Kasem, Maulvi.  
Agarwala, Lala Girdharilal.  
Agnihotri, Mr. K. B. L.  
Ahmed, Mr. K.  
Ahsan Khan, Mr. M.  
Akram Hussain, Prince A. M. M.  
Asjad-ul-lah, Maulvi Miyan.  
Ayyangar, Mr. M. G. M.  
Ayyar, Mr. T. V. Seshagiri.  
Bagde, Mr. K. G.  
Basu, Mr. J. N.  
Bhargava, Pandit J. L.  
Bishambhar Nath, Mr.  
Faiyaz Khan, Mr. M.  
Ginwala, Mr. P. P.  
Girdhardas, Mr. N.  
Gour, Dr. H. S.

Gulab Singh, Sardar.  
Iswar Saran, Munshi.  
Jatkar, Mr. B. H. R.  
Joshi, Mr. N. M.  
Mahadeo Prasad, Munshi.  
Man Singh, Bhai.  
Misra, Mr. B. N.  
Mudaliar, Mr. S.  
Nag, Mr. G. C.  
Nand Lal, Dr.  
Neogy, Mr. K. C.  
Rajan Baksh Shah, Mukhdum S.  
Reddi, Mr. M. K.  
Saravadhikary, Sir Deva Prasad.  
Schamnad, Mr. Mahmood.  
Singh, Babu B. P.  
Sinha, Babu L. P.  
Venkatapatiraju, Mr. B.

The motion was adopted:

**Mr. President:** The question is:

“ At the end of sub-clause (2)(a)(ii) of clause 4, add the following :

‘ and it appears that the person in possession of such address or information had reasonable grounds to believe that the address was of or the information related to a foreign agent ’.”

The motion was negatived.

**Mr. K. B. L. Agnihotri:** I move, Sir:

“ That in sub-clause (2)(b) of clause 4, for the words ‘ is reasonably suspected of ’ substitute the words ‘ where there is reason to believe of his ’.”

The last amendment that I moved related to “ address;” the amendment which I now put before the House relates to “ suspecting a foreign agent.” I would not have taken the time of the House by moving this amendment if I had thought that the last amendment was properly discussed. Some of my Honourable friends wanted to give a reply to Mr. Rangachariar but did not get an opportunity to do so, and I have therefore to move this amendment. My Honourable friend, Mr. Rangachariar, did not take the trouble of replying to Mr. Neogy’s argument with reference to the opinion of the Judicial Commissioner of the North-West Frontier Province who had had some experience of the working of such laws during the war. My Honourable friend, Mr. Rangachariar, was also pleased to point out that the evidence under this section was only a relevant piece of evidence and that the presumption that might arise is likely to be rebutted. May I ask him how a man who is suspected or accused of having associated with a person who was suspected to be a foreign agent would be able to rebut the presumption which will arise under this clause, particularly when he himself had no knowledge about it or had no reason to believe that man to be a foreign agent. On this point also my friend had not the courage to reply. I think that the clause as it stands is a very hard one. Under the existing law of criminal procedure and of evidence, we do not allow the accused to come forward into the witness-box as a witness to give evidence on oath. How can then the man accused of the offences enumerated in clause 3 come forward in the Courts of Law and prove his innocence? It may be that he had only gone to purchase tea from a tea grocer’s shop. He may not have suspected that the tea grocer was suspected of being a foreign agent; he may not have had all the information which the Government had in regard to that person who was known to them as a foreign agent; he would look upon such a man as a grocer and nothing else and for that reason he may have had the address of such a man or go to that man’s shop to purchase tea. In such circumstances the executive officers of the Government may think that this is a man who is dangerous to the safety of the State, and if he happens to possess some information or some statistics that might be of some use even indirectly, at some future time to a foreign power this man is likely to be hauled up for being in communication with a foreign agent. How can that man go before a Court of Law and say in his defence that he never knew that the grocer was a foreign agent and it was simply to purchase some tea that he went to him. The omission to provide a suitable safeguard against such probabilities will be terrible in cases where it enters into the head of the executive to abuse the powers given to them or to use them against innocent persons who may not hold the same opinion as Government officials in regard to political matters. Therefore, Sir, I move this amendment of mine which does not provide any loophole to any

spy or foreign agent, but which simply puts a safeguard for the innocent persons against the high-handed and oppressive acts of the executive. I put my amendment before this House for consideration and I hope the House will accept it.

**Mr. President:** Amendment moved:

"In clause 4, sub-clause (2) (b) for the words 'is reasonably suspected of' substitute the words 'where there is reason to believe of his'."

In spite of the slightly disorderly remarks made by the Mover of the amendment at the beginning, I must draw his attention to the fact that this matter has been debated already more than once and the discussion must now be strictly confined to the terms of this amendment.

**Mr. L. Graham:** Sir, I understand from my Honourable friend, Mr. Agnihotri, that his primary object in moving his amendment is to enable his friends to make an attack on my Honourable friend, Mr. Rangachariar.

**Mr. K. B. L. Agnihotri:** Sir, may I be permitted to interrupt on a point of personal explanation? The Chair has been pleased to say "in spite of the disorderly remarks made by the Mover." May I know what remarks of mine were disorderly, so that I may be more careful in future.

**Mr. L. Graham:** I would not object to this amendment on this account as my Honourable friend, Mr. Rangachariar, is perfectly able to look after himself. But I have certain grounds for objecting to this amendment and they are as follows. In the first place, this amendment No. (iii), on my reading of the clause, is a consequential amendment, which Mr. Agnihotri would move if he had succeeded in persuading the House to accept his first amendment, *viz.*, the proposal to substitute the word "believing" for the word "suspecting" earlier in the same sub-clause. This sub-clause is the definition which runs as follows:

"The expression 'foreign agent' includes any person who is or has been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power : . . ."

My Honourable friend, Mr. Agnihotri, is quite willing to leave the word 'suspecting' there, but he wishes to substitute the words "where there is reason to believe of his" for the words "is reasonably suspected of" later on. I object to that, in the first place, because it does not make any sense at all, and in the second place, I say you have retained the word 'suspecting' occurring earlier in the sub-clause and that is the place where it matters.

**Lala Girdharilal Agarwala** (Agra Division: Non-Muhammadan Rural): Is it proposed, Sir, to print the names of foreign agents in any publication for the guidance of the public?

**The Honourable Sir Malcolm Hailey** (Home Member): I am sorry the Honourable Member should think that we are so deficient in humour that we should even answer that question.

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

The amendment was negatived.

**Mr. K. B. L. Agnihotri:** Sir, I beg to move:

“Omit sub-clause (c) in sub-clause (2).”

Sub-clause (c) gives the definition of the word “address” used in clause (4). I should not ordinarily move this amendment also, but I again attempt to convince the House of the elasticity of the words used in this clause. I attempted to re-draft the sub-clause but regret to say that I could not find proper words to amend it and as the Bill is not re-committed to the Select Committee I have no other alternative but to propose the omission of this clause, so that the Government may, subsequently, bring in a properly worded sub-clause defining the word “address”. Every argument that I have used in connection with the other amendments of clause 4 will be equally applicable in the case of this amendment; but, I should draw particular attention of the House at least to one sentence in this clause (c), the 5th line from the bottom, “or at which he carries on any business”, and to the fact that no safeguard has been provided against the possible harassment of innocent persons. I therefore suggest to the House to please re-consider this sub-clause.

Sir, I very much regret to have to say that I have not been able to know the remarks that the Chair was pleased to remark as disorderly. If, therefore, any of my remarks on this amendment also be disorderly, I would rather claim indulgence from the Chair and would hope to be excused. I am not aware what remarks of mine were disorderly.

**Dr. H. S. Gour** (Nagpur Division: Non-Muhammadan): Sir, as I happen to be also the author of a similar amendment, I may be allowed to explain my own amendment as well as that of the Honourable Mr. Agnihotri. Honourable Members will see that clause 4 which is sought to be inserted in this Bill was for the first time enacted in England in 1920. Consequently, it is not one of those clauses which have been tested by the experience of time. In the second place, it is one of those clauses which has not been extended so far as we know by any of the British Colonies. A question was put the other day I believe to the Honourable Mr. Graham as to whether this clause had been incorporated by any of the Colonial Legislatures in the measures which they introduced for their own Colonies, and we were told that information on that point was not available. If any of the Colonies have extended the drastic provisions of this clause we shall have at any rate the precedent of one Colony to go upon. Now, Sir, so much for the previous history of this clause. My friend Mr. Rangachariar who is a foster-father of this clause and of the Bill resents any intrusion on the part of a Member to make any improvement upon that Bill. He will not possess his soul in patience, but up he jumps and defends every clause of this Bill as a clause calculated . . .

**Mr. President:** Order, order. Which clause is the Honourable Member discussing?

**Dr. H. S. Gour:** I am afraid I cannot discuss the clause without Mr. Rangachariar.

**Mr. President:** I asked the Honourable Member to say which clause he is discussing.

**Dr. H. S. Gour:** Clause 4 (c).

**Mr. President:** Clause 4 (c) is merely concerned with the question of what an address is. I would remind the Honourable Member that the matter has already been raised in a speech on the question that clause 4 be omitted. He must confine his remarks to the substance of sub-section (c).

**Dr. H. S. Gour:** Now, Sir, we are therefore concerned here with a particularly novel clause, and I would ask the Honourable Members of this House to canvass it carefully and see whether that clause is necessary for the administration of criminal justice in this country. That is clause (c). There are three expressions of any importance in the whole of this section. One is "an address", the second is "a foreign agent" and the third is "communications with a foreign agent." Now Honourable Members will see that clause (c) does not deal with the exclusive address of a foreign agent. It may be an address which is the address of a hundred or two hundred or a thousand people. As I pointed out the other day, the suspected foreign agent may have taken up his lodgings in a hotel in which there are five hundred or a thousand residents. That address will be treated as the address of the foreign agent. It is not necessary that it should be the sole and exclusive address of that foreign agent. Now that is a point, which I hope the Honourable Members will realise when voting upon this clause. The whole of clause 4 deals with evidence, and it says, if a person has the address of a foreign agent, he shall be presumed to be in communication with him. Now reduce this clause to a concrete case. A person is in possession of the address of a hotel called A. It is suspected that a man B lives in that address and that is also his address. You shall be presumed to have been in communication with a foreign agent. A presumption shall be made that the person who had a common address of a particular hotel was in communication with a foreign agent. What is the meaning of the words "shall be presumed?" The Evidence Act, section 4, defines what is the meaning of the words "shall be presumed." It says, whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved. The meaning of the words "shall be presumed" then comes to this, that the man is liable to be convicted from the mere fact of his being found in possession of that address unless he is able to disprove that fact.

**Mr. J. Chaudhuri** (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Unless it is disproved.

**Dr. H. S. Gour:** My friend says, unless it is disproved. How is he going to disprove it? What disproof has he got? The other day when I said that the accused should have a chance of going into the witness box to disprove a fact exclusively in his possession, this House said: 'Oh, no, we shall not place the accused in that unfortunate predicament' and my amendment was rejected. Suppose now, for the sake of argument, that the only person who is able to disprove that fact, as it invariably would be, is the suspected foreign agent himself, how is he to disprove it? On the one hand you would not allow him to go into the witness box to disprove a fact. On the other hand you place upon him the burden of disproving a fact which you have presumed against him. This is the situation in which you place the suspected foreign agent. It is in all conscience a very unenviable position, and, if it happens that my friends who were so ready to vote with the Government with all the haste and hurry they command, if they were one of these days to be laid by their heels under this clause, they will cut a very sorry figure in the dock. Everything will be presumed against them and they will have a forlorn hope by way of defence to go upon. I

[Dr. H. S. Gour.]

suggested, Sir, that the least that the Government might do in connection with this clause is to alter, at any rate, one word, which will make the clause a little more acceptable to this House, if not entirely acceptable to it. For the purpose of improving this clause, if the Government will substitute the word "may" for the word "shall", I submit this clause will become more acceptable to all parts of this House. The clause will then read thus:

"A person may be presumed to have been in communication with a foreign agent if he does."

**Mr. President:** That amendment is not before the House.

**Dr. H. S. Gour:** I know that, Sir, I am only suggesting it as a peace-offering to the Government. If they do not accept it, then we shall of course move our amendments of which my friend, Mr. Agnihotri and myself have given notice. (*Mr. J. Chaudhuri:* "Mark the words 'reasonable grounds'".) I am simply pointing out how easy it is for the Government to accept the suggestion I have made, whereupon we shall all withdraw the amendments of which we have given notice.

Now, Sir, if this is accepted, it will make really no difference in the sense except in one particular. Honourable Members will observe that there are two degrees of presumption. Section 4 of the Evidence Act lays down:

"Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it."

Now, Sir, by altering the word "shall" into "may" you vest the Court with a certain degree of judicial discretion, and the Court may then regard the fact as proved or may call for proof of it. That is the degree of elasticity that you introduce into this clause, and I submit the court will in that case have to consider all the circumstances of the case and then exercise its judicial discretion. That, I submit, Sir, would considerably improve the clause, it will not neutralise its effect, and the whole clause, as it stands, would then be acceptable to all parts of this House. Otherwise, we shall be under the necessity of having to fight all the amendments including the one moved by my Honourable friend Mr. Agnihotri.

I have pointed out, Sir, the great danger of the very wide terms in which this clause has been couched. I have pointed out that it is practically unworkable. It places the accused entirely at the mercy of the prosecution. Once a prosecution is launched, I think a conviction is certain. Is this a situation in which you should place a man of whom you know nothing, of whom you are not able to believe anything but whom you merely suspect, upon little or no grounds, of being a foreign agent? Further, remember, Sir, who is to be the judge of the reasonable grounds. My friend who interrupts me has not even read the sentences which lie before him. Who is to be the judge of the reasonable grounds for suspecting? I presume the prosecutor. It is the prosecutor who has reasonable grounds for suspecting that this man is a foreign agent; and that closes the doors of justice and the doors of mercy upon the accused. I submit this is a clause which is likely to be used to the detriment of the accused. It is a clause which is an exception to the general law of the land. It is a clause which is too widely worded. It is a clause, which I submit, this House must reject. But if the Government accept my suggestion, I have pointed out that they stand to lose very little, they place the

whole matter in the discretion of the Court and I have no doubt that the Court will exercise its discretion wisely. I submit, Sir, if this is acceptable to the occupants of the Treasury Benches we are prepared to make peace with them by allowing the whole of this clause to pass without further amendment.

**The Honourable Sir Malcolm Hailey:** I must be forgiven if I begin by deprecating certain suggestions made in connection with this debate. The Bill was submitted to a Select Committee. That Select Committee gave very careful consideration to its clauses. They satisfied themselves that these clauses, as amended by them, contained nothing dangerous to the liberty of the subject. Their report was submitted to this House; but in what position do the members of that Select Committee now find themselves after having done their conscientious duty to the House? They are told that they themselves were the foster-fathers of the Bill, which they certainly were not. They are told that in season and out of season they rise to support the Government. I ask that we should treat this question purely on its merits, and regret that the loyal support given, not to Government, but to the Report of the Committee by certain of its members should have brought on them what are little short of personal attacks.

Now the first advocate of the amendment was unfortunately able to say very little indeed in support of his motion. He merely desired that this sub-clause should be cut out in order that we might put a better one in. But the Select Committee has already done its best with the clause. Taking the original clause as we found it in the English Act, we improved the wording in order to make sure that no one should fall into the particular fallacy which has just been committed by Dr. Gour. He asks "Who is the person who is to be held to have suspected the foreign agent of being such?" He suggests that it is the prosecution. But it was just in order that no mistake of this kind should be committed that we altered the words as follows:

"In respect of which it appears there are reasonable grounds for suspecting "

which of course make it obvious that the suspicion must be in the mind of the Court itself. And if Dr. Gour desires higher authority for that statement, I quote to him the late Chief Justice of England. Precisely that question was raised when the Act was being passed, and precisely that answer was given by that authority. But, what are Dr. Gour's criticisms of this clause? For I may say that though he also proposes to omit the clause, he has not committed himself to any such re-draft as Mr. Agnihotri desired. He says "This has not stood the experience of time." No, it has not. But it was produced as a result of the experience of the war. He says it has not been reproduced by any colony; he states that as a fact; but we are only able to state so far that we have not as yet received the statutes of the colonies. But sometime ago when a question arose as to whether the Act of 1920 was to be extended to the colonies, we were told that it was not being extended to them because they themselves were legislating in a still more rigorous sense. If, however, he attaches that importance to the opinions of the colonies which he has frequently denied in the past, I can only ask him to wait until we do receive the statutes of the colonies.

His main criticism, however, is one of substance. He condemns this sub-clause because it raises a presumption against a man who is found in possession of an address, and the address does not have to be specially and solely the address of a foreign agent. It enables, he says, a post office



[Sir Malcolm Hailey.]

or hotel to be treated as the address of a foreign agent; and if you are found with that address on you, then all these dangerous presumptions arise against you. I quote his actual words. He goes on to argue that the Bill lays down that the Court shall presume that if you have this perfectly general address on you, you are in communication with a foreign agent, and you are, therefore, liable to be convicted unless you can prove the contrary. He asks "How can you prove the contrary?" I answer by the very simplest method. You do not need to go into the witness box. If the prosecution is so entirely lacking in common sense as to attempt to prove that a man is in communication with a foreign agent merely because he has in his pocket an address of a large hotel in which such foreign agent lives, or of a post office at which he receives his letters, it is merely necessary to point out to the Court the entire absurdity of any such attempt to raise a presumption against the accused. No proof, in other words, is necessary. Indeed, no prosecution would be so foolish as to lead evidence of that kind; but if it did, it would be absolutely unnecessary to bring any proof against it. In truth, you cannot hope to persuade people of the unwisdom of a particular clause or a provision of law by assuming such absurd uses of it as that. You can, if you choose, make equal ridicule of a very large number of clauses of our Indian Penal Code. Take for instance the possession of house-breaking implements. You can, if you choose, say that a spade is a house-breaking implement; it undoubtedly can be used as such. But who would be so foolish as to attempt to get a conviction on the ground that a man is in possession of a spade, and a spade can be used for house-breaking? You can multiply such ridiculous charges against the drafting of our Acts in a dozen ways. Really the only question is, whether this sub-clause is actually required as an additional link in our chain of presumptions or not. I know that it is unnecessary to point out to the House again that the possession of such an address is no kind of offence in itself. The accused must have

1 P.M. been found in those highly suspicious circumstances described in clause 3, and these circumstances will have to be amply proved against him. But in order to get a conviction the prosecution has not only to prove that he has been found in those highly suspicious circumstances described in clause 3, but it has also to prove that he is found there for a purpose prejudicial to the State. No one now questions that if he has been in communication with foreign agents, that ought to be admitted against him as evidence relevant to proving his motive; the House has agreed to that proposition on an earlier clause. But how are we to make it possible to show to the Court that he can reasonably be suspected of having been in communication with a foreign agent? Unless we can prove against him either that he has visited a presumed foreign agent, or that (as in this sub-clause) he was in possession of a presumed address of a foreign agent, then our chain of proof obviously will be incomplete. Nor is it unreasonable in any way that we should seek to establish that as a presumption against him. That point was narrowly examined when the Act was being argued. I have heard it quoted as against us on a previous clause that the Judicial Commissioner of the North-West Frontier Province thought that this part of our presumptive evidence might be misused. But even a higher authority than the Judicial Commissioner of the North-West Frontier Province, I mean the present Lord Chief Justice of England, argued that although this extra presumption that we attempt to set up here was drastic and unusual, yet the experience of the war had shown

that it was in itself essential, and the House of Commons recognised that it was in consequence reasonable to legislate in that sense. Dr. Gour, unable to suggest anything better for our clause, finally suggests to us a compromise. I would note that this compromise of course does not refer to this sub-clause at all but to an earlier part, namely, to the beginning of sub-clause (2).

**Dr. H. S. Gour:** It affects this clause also.

**The Honourable Sir Malcolm Hailey:** I agree that it affects this clause also. His compromise is that we should substitute the word " may " for the word " shall," thereby, he says, giving the Court discretion as if the Court already had no discretion in this matter. Of course, the Court has discretion. The mere fact that the man has the address in his pocket does not, as he would almost seem to agree, secure conviction. The Court has to see first of all that the circumstances referred to in clause 3 and which constitute the substance of the complaint, are established. It has, after giving due weight to the evidence for the substantive complaint, to judge whether there is proof that his motive in being found in highly suspicious circumstances was for reasons prejudicial to the State. In judging of this it is allowed to make certain presumptions, of which this is one, but before making the presumption, it has to be satisfied that the address found on the accused was one which could be reasonably suspected of being that of a foreign agent. It is wrong to suggest that the Court has not any discretion in the estimation of the value of those presumptions, and it seems to me unnecessary to legislate to give the Court further discretion in the matter.

**Sir Deva Prasad Sarvadhikary** (Calcutta: Non-Muhammadan Urban): Sir, to my mind, there is a real difficulty, if not downright danger, in the closing lines of sub-clause (c) which is the immediate object of the amendment, and I would ask the attention of the House as well as of the Government Benches to this. The closing lines of that sub-clause are to the following effect:

" that an address shall be presumed to be the address of a foreign agent . . . ."

There need be no quarrel with regard to that. But it goes on:

" and communications addressed to such an address to be communications with a foreign agent."

Communications to and for whom? It will be said no doubt that the intention is clear—communications for and to the foreign agent no doubt. When questions like this do arise in a trial wording of this kind is a real difficulty, and therefore, even if Government was not prepared to agree to the insertion of the word " may " for the word " shall " in (2) (a) covering the whole of the clause, it is worth while considering whether the language of the last 2 lines of clause (c) should not be changed to make it quite clear that a communication not overtly intended but a communication for or to a foreign agent is intended to be covered by this clause—unless something like that is done, the difficulty will continue. A man wanting to avoid suspicion would necessarily try to have his residence in a place where there are others with whom he may freely mix so that he may successfully avoid suspicion. It has often been the case that an address is given and to that address is addressed a letter not by name to the person for whom it is intended but in some way indicating that it is really intended for him (although the name does not appear on the cover of the communication). That class of cases

[Sir Deva Prasad Sarvadhikary.]

undoubtedly may have to be dealt with. But if you have an absolute blank card as in the terms of the last 2 lines of sub-clause (c) the difficulties to which I referred will continue. On the general question, Sir, I have not heard the Honourable Sir Malcolm Hailey yet as to whether he is prepared to assent to the suggestion of Dr. Gour that the word "may" shall take the place of "shall" in sub-clause (2) (a). He has generally indicated that the Court in these matters does not require any discretion. (*The Honourable Sir Malcolm Hailey*: "any further discretion.") I am afraid that that is not quite meeting the situation. The direction that is suggested here and demanded is not discretion with regard to his finding an accused guilty or not because that would be preposterous. Conviction will depend upon a variety of circumstances, one of which circumstances and factors—and a very important factor and link—is dealt with in clause 4. There can be no doubt about that and I do not think that Dr. Gour seriously suggests that discretion should be given to the Court to convict or not to convict merely upon what is provided in this clause, apart from other ancillary circumstances. Sir, the authors of the Act of 1872 of the Indian Legislature were given a very high compliment. There is hardly a piece of legislation in any country that can touch the Evidence Act of 1872. The author of that Act was invited by England to place its law of evidence on a satisfactory footing which certainly it had not been when our Act of 1872 was passed. Therefore, when we are for passing purposes, for temporary purposes, trying to go back upon what the Indian Evidence Act deliberately did,—and it did a piece of very good work,—we ought to be very careful. When a man is taking his trial under circumstances of grave suspicion all the safeguards that can be provided for him should be there without being positively detrimental to the State. I quite appreciate what the Honourable Sir Malcolm Hailey and others have said in this regard. I do not think there is the slightest sympathy here for enemies of the State or desire to support espionage to the detriment of the Government or the country. Those who feel it their duty to suggest amendments securing some more protection for the accused must not for a moment be thought as having sympathy of that kind or having any desire prejudicial to the State or to the Government. Sir Malcolm Hailey has complained with regard to members who are adversely criticising Members of the Select Committee who had the courage of their convictions both in the Select Committee and here. I do not see that there is much differentiation between either class of criticism. Those who think it their duty to bring to the notice of the Assembly points which may without detriment to the State be provided for in the interest of the accused have not deserved any reflections cast upon them. I desire to associate myself with Dr. Gour in his suggestion for substitution of the word *may* for *shall*. The trial will in no way suffer, the State will in no way be prejudiced if the court is given the discretion, the tendency now-a-days is to take it away. Even the High Court does not sometimes escape the 'shalls' of the Legislature where the High Court ought to be the supreme arbiter in the matter. We have a very elaborate definition clause in this Bill. The "foreign agent" is not defined, "his address" is not defined and these two matters are brought in as an essential and integral part of this substantive clause, thereby differentiating as it were from what might and should have been done in the definition section of the clause. That makes it all the more necessary to examine the matter as closely as possible, and from that point of view I submit again that unless there is some change at all events in the last

two lines and a half of clause (c) the matter will be open to serious objection. Apart from that I do suggest that it will be an improvement on the clause to substitute the word 'may' for the word 'shall'; if Government are prepared to do it, it will be a real improvement and it will in no way jeopardise the interests of the State or the prosecution.

**The Honourable Sir Malcolm Hailey:** Can the Honourable Member suggest a definite alteration in the last two lines for us to consider?

**Sir Deva Prasad Sarvadhikary:** The words I would suggest would be "communications to or intended for a foreign agent" or words to that effect. It ought not to be left blank like that. Any communication addressed to that address must not raise the presumption that this clause seeks to raise.

**Dr. H. S. Gour:** The word 'may' may be substituted for the word 'shall' both in clause (a) and clause (c). That will give the court a certain amount of discretion for which we are struggling here.

**Mr. T. V. Seahagiri Ayyar (Madras: Nominated Non-Official):** There is a real difficulty in regard to this clause, and I want the Honourable the Home Member once more to explain it fully. As has been pointed out by Sir Deva Prasad Sarvadhikary the position is this. Take clause (c):

"Any address whether within or without British India, in respect of which it appears that there are reasonable grounds for suspecting it of being an address used for the receipt of communications intended for a foreign agent."

That is No. 1. The second is:

"or any address at which a foreign agent resides."

That is No. 2. No. 3 is:

"or any address to which he resorts for the purpose of giving or receiving communications,"

and the 4th is:

"any address at which he carries on business shall be presumed to be the address of the foreign agent."

This is what follows:

"and communications addressed to such an address to be communications with a foreign agent, and in the case of a man carrying on business at a particular place if any communications are addressed to him, they shall be deemed to have been addressed to a foreign agent."

You will find in the earlier portion of clause 4 these words:

"In any proceedings against a person for an offence under section 3, the fact that he has been in communication with or attempted to be communicated with, a foreign agent whether within or without British India, shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information."

First of all, you address a letter to an agent to a place where he carries on business, and from that you come to the conclusion that the foreign agent has been addressed, and this fact becomes relevant for the purpose of proving that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information. Now, Sir, if you go back to section 3, clause (2), you will find:

"On a prosecution for an offence punishable under this section with imprisonment for a term which may extend to fourteen years, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State."

[Mr. T. V. Seshagiri Ayyar.]

So, there is no necessity for proving anything to show a purpose prejudicial to the safety or interests of the State. That you establish by the presumption in clause 4; by the communication being sent to a particular person at a particular place,—you presume that it was addressed to a foreign agent,—and it becomes a relevant fact for the purpose of proving that some act has been done prejudicial to the safety or interests of the State; and when you go back to section 3, it says 'nothing more need be proved'. That is the position so far as I can see; and unless there is some more explanation, I think this is a dangerous provision to put before the country, I tried to work it, but so far as I can see, unless there are some more safeguards introduced, it would be a very dangerous provision.

**Rao Bahadur T. Rangachariar:** I quite recognize, having regard to the two long sections we are dealing with, sections 3 and 4, my Honourable friends, Sir Deva Prasad Sarvadhikary and Mr. Seshagiri Ayyar, feel the difficulty which they have pointed out. If I try to point out that really they have mistaken the question, I hope they will excuse me. The first question is, what is likely to be the charge against the prisoner or the accused person? The charge, so far as section 4 is concerned, will come under 3 (1) (c), not under 3 (1) (a) or (b). The charge against him will be: 'you have obtained, collected, recorded, published or communicated to a person a secret official code or pass word, or any sketch, plan, model, article or note, etc., etc.' The evidence against him will be that he did a particular act; therefore, that will be first proved against him. Section 4 says what shall be the evidence in order to prove the necessary facts. Now let us confine our attention only to (c), because (a) and (b) won't come in at all—(a) and (b) refer to approaching or entering, etc., a prohibited place or making a sketch, etc.—so (a) and (b) won't apply to section 4 at all. Section 4 would apply to 'communication',—communicating a secret official code or pass word, etc. Now section 4 says that if you are in communication with a foreign agent, it is a relevant fact, in order to show that you have communicated, that is to say, in order to show that you have communicated with a purpose. 'Your intention was to communicate',—it is a relevant fact to prove the purpose you have had, namely, a purpose prejudicial to the safety or interests of the State. But still the prosecution has to prove that you communicated any secret official code, any sketch, plan or model. That has to be proved. My learned friend, Mr. Seshagiri Ayyar, is under a mistake in supposing that that fact need not be proved. The fact to be proved is that he communicated a code or pass word, etc., or a sketch or plan—something of that sort has to be proved.

**Dr. H. S. Gour:** No, no. Information.

**Rao Bahadur T. Rangachariar:** Or any information. That is to say, they will have to prove that he communicated "any information". That communication of information is not in itself enough; it must be done with a particular purpose. "If any person for any purpose prejudicial to the safety or interests of the State communicates some information". Those are the words. It is very difficult to argue a point like this in a court of law, and much more difficult to argue in a Legislative body a pure question of law like this. It is still more difficult to argue with gentlemen who can build fairly castles in the air. But in this

matter two things are necessary to be proved, first of all the intention and then the Act. The intention is in 3 (1)—

“If any person for any purpose prejudicial to the safety or interests of the State . . . .”

That is the intention; with that intention he does a particular act. These two things are essential. He must do the act and he must have the intention. Now section 4 (1) says that in order to prove the intention alone something is relevant:

“In any proceedings against a person for an offence under section 3,..... shall be relevant for the purpose of proving that he has for a purpose prejudicial to the safety or interests of the State.....etc.”

So, Honourable Members will see if they read that carefully that it refers to proof of the intention, not proof of the act; the act is a separate thing; he must have done something under clause 3. It is not that without any proof whatever the whole case is presumed against him. The section says “it shall be relevant for the purpose of proving”.

Now my Honourable friend, Sir Deva Prasad Sarvadhikary, finds some difficulty in the matters of communications addressed to such an address being deemed to be communications with a foreign agent. But what does that mean? It means that if you are in communication with a foreign agent that fact can be proved in the case; it is not conclusive evidence of your guilt; it is a relevant fact to be taken into consideration along with the rest of the evidence in arriving at a conclusion as to whether a man has committed an offence or not. Suppose I write a letter to a foreign agent, is it wrong to assume that I am in communication with him, and is not that a relevant fact to be proved? Would my Honourable friend object to that fact being proved in the case in order to find out whether I have done something prejudicial to the safety or interests of the State? The whole thing comes back to 4 (1). It is a relevant fact which has to be taken into consideration. It is not as Dr. Gour put it because he has the address, say “Maiden's Hotel” in his pocket and because a foreign agent resides there that he will be convicted of an offence. That is not the section at all. I do not think, unless Dr. Gour was sitting on the Bench, that any other Judge would give such a conviction and hold that because a fact is relevant, therefore the man has committed a crime. If any court was likely to come to such a conclusion perhaps it would be necessary for us to legislate accordingly. But do Honourable Members really believe that the most stupid Magistrate or the most stupid Sessions Judge is going to come to such a conclusion simply because I may have the written address “Maiden's Hotel” in my pocket book? But if, of course, I have “Maiden's Hotel, Room No. 38” in which Dr. Gour, a foreign agent, is living, then that I say would be a relevant fact; but even that is not enough for conviction. That is where Honourable Members who have spoken, make the mistake; it is not enough for conviction; it is merely a relevant fact from which it shall be presumed that I have been in communication with a foreign agent. The whole presumption is he shall be presumed to have been in communication. And that fact is a relevant fact. The whole difference between me and Dr. Gour lies in this. Afterwards I will show the hollowness of the objection which he has taken. In fact from his own mouth I am going to convict him what a shadow it is he has been pursuing. I will come to that later on. It is not “shall be convicted”. It is merely a relevant fact. That is a piece of evidence to be taken along with the rest of the evidence. “Shall be

[Rao Bahadur T. Rangachariar.]

presumed" is only in order to make it a relevant fact. It does not say 'presumed to have been guilty'. Let us remember that. Now, Sir, my Honourable friend concedes that there is a presumption which may be raised. He says it is a right presumption to draw. It may be naturally presumed. He says the whole injustice, the whole enormity will be removed if you put in the word "may" for "shall". Therefore he is willing to grant that a presumption may be drawn. He is willing to grant so far, and all that he complains is the difference between the word "shall" and the word "may". But that is not the amendment. Let us look, Sir, at the Evidence Act. If a Court is to be so stupid as he assumes it to be, namely, to convict me because I have got the address 'Maiden's Hotel' in my pocket, then he wishes to leave that discretion to that stupid Court; he is willing to trust that stupid Court with that discretion. If we look at the Evidence Act, we find:

"Whenever it is provided by this Act that the Court may presume a fact, it may, either regard such fact as proved unless and until it is disproved," that is the very language applying to "shall presume" and it goes on "or may call for proof of it".

He is going to entrust this discretion to this stupid Court which is going to convict me on the mere piece of a card in my pocket containing the name of Maiden's Hotel. That shows the hollowness of his contention. I do not think it will make much difference if that change is made. I am also appealing to the Treasury Benches to substitute the word "may" because it will satisfy my Honourable friends and I do not think the law will in any way suffer by substituting the word "may" for the word "shall".

**Colonel Sir Henry Stanyon** (United Provinces: European): Sir, the amendment actually before the House is the elimination of sub-clause (2) (c) of clause 4, but the discussion has gone on in connection with the whole of clause 4. Sir, it may be a surprising view that I put forward, but I put it forward in all deliberation, that the whole of this clause 4 will introduce *practically* no change in the law of evidence. Sub-clause (1) declares something to be relevant that would most certainly be relevant under the existing law. In a trial under clause (3) the fact that the accused had been in communication with a spy (the accused being, say, a person who was seen taking a photograph of a prohibited place in the Delhi Fort) is one of the most relevant facts that could possibly be proved under the existing law. Therefore this clause which declares relevancy introduces nothing new. We next come to sub-clause (2) which lays down a rule of presumption, *i.e.*, onus of proof. Sub-clause (a) deals with the onus of proof, not of an offence, but in connection with one relevant fact in the trial. Now, Sir, have the Honourable Members who support these amendments with regard to the words "shall presume," forgotten section 106 of the Indian Evidence Act, which lays down that "when any fact is specially within the knowledge of any person, the burden of proving that fact is upon him"? That section embodies a principle of the Law of Evidence, which we find in Best on Evidence in these words: "A person will not be forced to show a thing which lies not in his knowledge." The illustration given under section 106 is this: "When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him." A short illustration will make the matter clear. We are, I will suppose (God forbid it), at war

with Germany. Mr. Johnson, an American citizen, is found taking a photograph of a prohibited place. He is proceeded against under section 3. In his pocket is found a card with an address, "Herr Von Goldstein, care of the Post Master, Bombay." Thereupon he is presumed to have some communication with the foreign agent. The Honourable Mr. Agnihotri said, 'Why that may be the address of a man from whom he bought some groceries in Bombay.' Well, if it is, the accused has only got to say so, and prove it,—to rebut the presumption—and the matter is over. But who knows how that card came into his pocket so well as he knows? Are the police to go and find out how that card came into his pocket, and prove that Von Goldstein, a German by name, is a foreign agent? Is the Court not to make any presumption from the circumstances above stated? If Dr. Gour were on the Bench trying that case, he would immediately presume that Mr. Johnson was in communication with a foreign agent, until that gentleman disclosed how that card came into his pocket, and who Herr Von Goldstein was. This is what would happen under the present law. The Government seek to make the matter stronger and clearer in the clause under debate. The clause would compel the Court to do what the Court would certainly do under the present law of evidence. It will introduce no novelty; it will introduce no danger. I have said, in a former speech on this Bill, that only particular courts are to be allowed to try these cases; and such courts can be depended upon to use these extensive powers with discretion. I submit that no hardship is cast upon any person proceeded against for committing one of the acts which may be an offence under section 3, if he is asked to prove his connection with an address found in his pocket. If he is innocent, he has no difficulty whatever in proving it; and nobody but he has that special knowledge which will enable him to prove it. Therefore all this fear of the word "shall," and the supposed necessity for substituting the word "may" are absolutely, I submit, without any reasonable foundation. There is no hardship whatever in asking a person found doing an act of which the character and circumstances are such as to suggest a particular intention, to show that there was no such intention. There need be no hardship on the accused and no difficulty whatever. I have no doubt that the case in my illustration would never go beyond an investigation if the accused was able to show that the address found on him was an address which was there for the purpose of having his piano tuned, or of buying a violin or a pound of tea, or anything equally innocent. Therefore I submit that clause 4 (c) as it now stands inflicts no hardship on anybody, that it is a very proper provision as to a rule relating to the onus of proof, and that it should be adopted by the House.

**Mr. B. Venkatapatiraju** (Ganjam *cum* Vizagapatam: Non-Muhamadan Rural): Sir, I must at the outset state that the Honourable Sir Malcolm Hailey is perfectly right when he says that we should not bring in any personal attacks into the discussion. I endorse every word of that and think also, if every unbecoming word is avoided in this Assembly, it would add to the dignity of the House. Unfortunately, this mistake arose on account of what Mr. Rangachariar said on the last occasion; but let us drop that matter. Sir Henry Stanyon really made a surprising statement when he said that this does not introduce any change in the law. (Sir Henry Stanyon: "Any practical change.") Even the Lord Chief Justice of England, quoted by the Honourable Sir Malcolm Hailey, stated that this unusual procedure was admitted into England during the war and that no unforeseen consequences would be forthcoming on account of that



[Mr. B. Venkatapatiraju.]

introduction there. Perhaps it is known to all criminal lawyers and Judges that, ordinarily, a criminal is not asked to open his mouth: It is for the prosecution to establish his guilt. He stays there and sees what evidence is adduced against him; till the guilt is established against him he need not open his mouth. Perhaps that was what Sir Henry Stanyon thinks is unnecessary, because in all criminal cases it may be said to the accused "there are suspicious circumstances against you and, therefore, you are guilty unless you establish your innocence." It is to avoid that that English jurisprudence and the jurisprudence of the world says it is far better that one hundred guilty men should escape than that one innocent person should be convicted.

Well, Mr. Neogy has referred to the Judicial Commissioner's dictum as a high authority; the Honourable Sir Malcolm Hailey has pointed out that the Lord Chief Justice of England has said so and so. Perhaps the Honourable Sir Malcolm Hailey will admit that England is not India. There, in the matter of trials the executive is under responsive control and the judiciary are afraid of public opinion. In India we have not yet got such an organised public opinion to compel both the judicial officer and the executive officer to hear the voice of justice and reason. Till we secure that position, perhaps the dictum of the Lord Chief Justice of England cannot be applicable to India. There is one other circumstance. Not only does the Judicial Commissioner of Sind say so but also the Chief Commissioner of the North-West Frontier Province, in endorsing the statement of the Judicial Commissioner of that province, has stated that it is . . . . (*The Honourable Sir Malcolm Hailey*: "Read the whole sentence.") I will read the whole sentence. He says:

"I agree, in principle, as to the desirability of replacing the existing Acts by a single consolidated Act applicable to Indian conditions. In regard to the specific provisions of the Bill under reference the opinions that have been consulted in this Province are generally favourable. A minority of those consulted, however, are of the opinion that, while the Bill might have been fully justified under war conditions, it is unduly wide and drastic for the ordinary conditions of peace."

(*The Honourable Sir Malcolm Hailey*: "Go on.")

"and that it contains clauses which may easily become an instrument of oppression in the hands of unscrupulous officers. There is no doubt that such a provision as section 4 (2) (ii) of the Bill, if not carefully and justly treated, might be so utilised. The Judicial Commissioner, who had special experience of the English and French laws on the subject of espionage during the war, has pointed out that the presumption arising from the presence in an accused person's note book of the name and address of a person believed to be a spy is one which, if pressed, might result in the conviction of innocent persons, and it seems doubtful whether there is sufficient justification for retaining it in a Statute which applies to peace conditions. To this extent the fears of the minority are perhaps not entirely unjustified."

This is what the Commissioner states. What Sir Malcolm Hailey wants is that in view of the fact that prosecutions cannot be instituted without reference to the Governor General in Council and Local Governments it may perhaps be considered that the public is sufficiently protected. Now with reference to the last observation which Sir Malcolm Hailey invited the attention of the House to, I may mention, Sir, that generally the Governor General in Council or the Governor in Council . . . .

**Mr. President:** I cannot allow the discussion of the authority which is to institute the proceedings. We are considering the question of what is, or what should be presumed to be, the address of a foreign agent.

**Mr. B. Venkatapatiraju:** Sir, I am only just doing what Sir Malcolm Hailey wanted me to do; otherwise I should not have entered into that discussion.

**The Honourable Sir Malcolm Hailey:** I should like to explain, as the Honourable Member says he has yielded to a request of mine, that as he was irrelevant at the beginning he might as well continue to be irrelevant to the end.

**Mr. B. Venkatapatiraju:** Sir, my irrelevancy only follows on the observations made by Sir Malcolm Hailey, which are equally irrelevant. What is wanted is that instead of leaving it to Executive officers an opportunity may be given to Judicial officers to exercise their discretion by changing 'shall' into 'may.' If the Government think that Judicial officers' discretion cannot be trusted and they prefer to trust the discretion of Executive officers, that is a different matter. It will have this effect. Instead of blindly following in every case, instead of compelling the Judge always to hold that it must be presumed to be correct unless it is proved to the contrary, they have discretion to apply. I think the suggestion made by my friend is most reasonable and the Government should think twice before they reject such advice coming as it does from the Judicial Commissioner himself.

**Dr. Nand Lal (West Punjab: Non-Muhammadan):** Sir, of course the 'address' relates to the question of evidence. It has nothing to do with the actual commission of the offence, and my view is that in the interests of the safety of the State the law must be stringent. But at the same time I feel bound to say that it should not be too stringent. Fairness of the trial should never be ignored by the Legislature. And the other point which should be always before the mind of the Legislature is "in what way the provisions will be construed, in what way the statutory law will be executed and carried out?" My construction of the provision, under debate now, is that it is very very harsh and hard, and my fear is that the Magistrate, in some cases, will not properly act up to the expectations of the Honourable the Home Member. I am not prepared to say that all Magistrates are stupid. Some of them are very intelligent, and learned men, no doubt. But the Honourable the Home Member cannot deny the fact that there are some who could be branded with this unenviable epithet 'stupid.' On account of there being some such Magistrates this Legislative Assembly entertains a fear; and in order to remove that fear it would be better that the word 'shall' may be substituted by the word 'may.' Now, the Honourable Mr. Stanyon went to the length of saying that it did not make any difference whether the word was "may" or "shall;" at any rate, he said there was no practical difference. I say there is a great difference. If you will be pleased to see the definition in regard to the expression "may presume" given in section 4 of the Evidence Act, you will find that that provision says "Whenever it is provided by this Act that the Court may presume a fact, it may either regard such facts as proved, unless and until it is disproved, or may call for proof of it." Now here, it depends on the Court's discretion. But where the word is "shall," then that Court is bound to presume; there is no other alternative. Whenever an address is found in the possession of an accused, then the Magistrate or the Court has got no other alternative; he shall have to presume it as a relevant fact within the contemplation of clause 4 of this Bill. Then the other difference is that the Court may call for proof of it; namely, the Court may call for the proof itself, that is, the

[Dr. Nand Lal.]

Magistrate himself may call for the proof; though the accused may not be able to disprove it, it rests with the Court or Magistrate to send for the record or send for some sort of proof in order to satisfy itself or himself as the case may be. But when we come to the expression 'shall presume' the definition given is "Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved." It is incumbent upon him to hold that that fact is proved. Of course it is rebuttable, I agree with the Honourable Mr. Rangachariar; it is not conclusive, it is rebuttable no doubt; but the Court is bound to take it as proved unless and until it is disproved. It cannot be denied that this provision which is embodied in sub-clause (c) of clause 4, is harder, without doubt.

Reference has been made to section 106 of the Evidence Act; and after citing that section it has been argued that practically there is no difference. The argument is based on the ground that since the address will be found in the pocket or possession of the accused, therefore it rests with him to prove with what intention he has got that address in his pocket. I think this argument is fallacious altogether. Section 106 of the Evidence Act, to my mind, does not seem to be applicable to the case which is being debated upon before this Assembly. Section 106 says "When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him." As for instance a person is found travelling without a ticket in a first class carriage. Then he is confronted by the railway official who asks him "where is your ticket"? He says "I have got it with me." The railway official says "Show it to me." Unless and until that ticket is shown or it is proved that he has purchased that ticket, he will be considered a passenger travelling without a ticket since the possession or purchase of that ticket is within the special knowledge of that passenger, onus of proving that fact is on him. Section 106 governs cases of that type. It has got no bearing on the question which we are debating now. Therefore, I submit that the present provision, as is incorporated in sub-clause (c), is harder and it will not do great harm if for the word "shall" the word "may" is substituted and I recommend that substitution, namely, the word "may" may be put in instead of the word "shall."

**The Honourable Sir Malcolm Halley:** May I be permitted to interrupt the Honourable Member? There are some dangers to the State which must be avoided at all costs. I am prepared to put in the word "may" instead of the word "shall."

**Mr. President:** Does the Honourable Member wish to withdraw his amendment in order to do that?

(Cries of "Yes.")

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

**Mr. President:** Further amendment moved:

That in sub-clause (c) . . . .

**Dr. H. S. Gour:** In clauses (a) and (c) substitute the word "may" for the word "shall."

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\* "Omit sub-clause (c) in sub-clause (2)."

**The Honourable Sir Malcolm Hailey:** We are dealing at present, I understand, with the amendment relating to (c).

**Mr. President:** The amendment relating to sub-clause (c) has been withdrawn.

**The Honourable Sir Malcolm Hailey:** Then dealing with the clause as a whole, I am prepared to substitute the word "may" for the word "shall" in sub-clauses (2) (a) and (2) (c).

**Mr. President:** Further amendment moved:

"In clause 4, sub-clause 2 (a), the word 'shall' be omitted in order to insert the word 'may'."

The question is that that amendment be made.

The motion was adopted.

**Mr. President:** Further amendment moved:

"In clause 4, sub-clause 2 (c), to substitute the word 'may' for the word 'shall' in the fourth line from the bottom."

The question is that that amendment be made.

The motion was adopted.

Clause 4, as amended, was added to the Bill.

**Mr. K. B. L. Agnihotri:** Sir, I beg to move:

"That in sub-clause (3) of clause (5), omit the words 'or interests'."

Sir, my object in moving this amendment is to show the vagueness of the clause and the elasticity and the likely wide interpretation of the words used therein. Sub-clause (3) of clause 5 says:

"If any person having in his possession or control any sketch, plan, model, article, note, document information, which relates to munitions of war, communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State, he shall be guilty of an offence under this section."

Sir, in the clauses relating to military affairs the House has decided that the words "or interests" should remain and should not be dropped. Now, clause 5 deals with offences relating to civil affairs. This clause . . . .

**The Honourable Sir Malcolm Hailey:** On a point of order, this is the same question which the House has already decided.

**Mr. President:** I was waiting to see how the Honourable Member differentiated between the two. I can see no difference whatsoever between the words "or interests" in this clause and in the other clauses. The question of the principle involved in the words, in so far as any principle is involved, has already been decided by the vote of the House. I am prepared to hear the Honourable Member on the subject.

**Mr. K. B. L. Agnihotri:** During the debate on the definitions the Honourable Members who constituted the Select Committee and even the Members on the Government Benches said that the words "or interests" have been dropped in certain clauses which refer to civil affairs, and these words are used in this clause, Sir.

**The Honourable Sir Malcolm Hailey:** Surely you will find the word "interest" all right in clause 5.

**Mr. K. B. L. Agnihotri:** As I am much pressed by friends, I beg to withdraw the amendment, Sir.

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

**Mr. President:** The question is that clause 5 stand part of the Bill.

**The Honourable Sir Malcolm Hailey:** May I point out that there is a printing mistake in the third line of clause 5. The word should be "code" instead of "word" where it occurs for the first time in line 3 of clause 5.

**Mr. President:** The question is:

"That for the word 'word' where it occurs for the first time in line 3 of clause 5 substitute the word 'code'."

The motion was adopted.

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

**Mr. K. B. L. Agnihotri:** I move:

"In sub-clause (1) (c) of clause 6 insert the word 'knowingly' between the words 'or' and 'uses'."

Clause 6 . . . ."

**The Honourable Sir Malcolm Hailey:** We are prepared to accept the amendment.

The motion was adopted.

Clause 6, as amended, was added to the Bill.

Clauses 7, 8, 9 and 10 were added to the Bill.

(Rai Bahadur G. C. Nag rose to move amendment No. 24.)

**The Honourable Sir Malcolm Hailey:** I accept that amendment.

**Mr. President:** Amendment moved:

"In sub-clause (3) of clause 11, after the words 'town to' where they occur for the second time the words 'the District or' be inserted."

The question is that that amendment be made.

The motion was adopted.

Clause 11, as amended, was added to the Bill.

Clause 12 was added to the Bill.

**Mr. K. C. Neogy:** I understand that Government are prepared to accept an amendment which stands in the name of Dr. Gour in regard to this clause 13. If that be so, I do not propose to move my amendment.

**Dr. H. S. Gour:** I beg to move with the consent of the Government:

"That in clause 13, sub-clauses (2) and (3) shall be re-numbered (3) and (4), respectively, and after sub-clause (1) the following sub-clause be inserted:

"(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed claims to be tried by the Court of Session, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that Court, notwithstanding that it is not a case exclusively triable by that Court."

**The Honourable Sir Malcolm Hailey:** In agreeing to this amendment I should like to make it clear that we do so not because we have any  
2 P.M. desire to underrate or depreciate the capacity of first class Magistrates to try these cases adequately and with justice. We simply admit this provision because we realise that the Bill itself does introduce new

presumptions and a law of evidence which may require to be somewhat carefully administered. I myself believe that our first class Magistrates could do so with absolute fairness and justice, but since apprehensions have been expressed on the subject in many parts of the House and since the cases are likely to be few, we are prepared to accept that if necessary the accused should have the option of demanding committal to the Court of Sessions.

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

The motion was adopted.

**Rai Bahadur G. C. Nag** (Surma Valley *cum* Shillong: Non-Muhammadan): I beg to substitute the following for the amendment I have got on the paper:

“In sub-clause (2) of clause 13, insert after the words ‘Governor General in Council’ where they occur for the first time the word ‘or’ and in the last two lines of sub-section (2) omit the words ‘or some officer empowered by the Governor General in Council in this behalf.’”

This amendment is intended to provide that the Governor General in Council or the Local Government should have the sole authority to sanction prosecutions for offences under this Act. The words which we want to be omitted have been put in here for the first time. These words are not in the amended Act of 1904 and if these words are there and if the Governor General in Council has power to delegate authority to any officer it thinks fit to sanction prosecutions under this Act, then the safeguard provided in the earlier part of the clause would be reduced to a nullity, because in that case the Governor General in Council may not have any objection to sanction prosecutions and these words were not in the Act of 1904. So I think these words may be omitted.

**The Honourable Sir Malcolm Hailey:** I think my Honourable friend was under some misapprehension in believing that Mr. Graham agreed to this amendment. All that Mr. Graham did, I think, was to agree to correct the wording of the amendment, because as worded it appeared to have the consequence of cancelling the proviso, which I understand my Honourable friend did not himself desire. The reason why we have inserted the words which it is now proposed to omit is that they occur in section 196 of the Criminal Procedure Code. Obviously the powers sought herein would be employed in very rare instances. There might be cases where an officer is not exercising the powers of a Local Government should yet be empowered by the Governor General in Council to make a complaint; I take, for instance, the case of a Political Officer; his function would not, of course, be to try the case but to make a complaint. But before he can do so, he will have to be empowered under this section by the Governor General in Council. Such cases will be few.

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

**Mr. K. C. Neogy:** Sir, I am perfectly aware that this particular sub-section has been taken bodily from section 196 of the Code of Criminal Procedure. But I draw the attention of the Honourable the Home Member to the fact that this section 196 was in exactly the same terms in the Code of 1882, and the Honourable the Home Member will remember that when the Indian Official Secrets Act, 1889, came to be enacted, they purposely departed from that language, and this is what they laid down in section 7 of the Act—“No Court shall proceed to the trial of any person

[Mr. K. C. Neogy.]

for an offence against this Act except with the consent of the Local Government or the Governor General in Council." Therefore, Sir, the justification which has been made of this particular sub-section by the Honourable the Home Member on the ground that it merely re-enacts section 196, was in existence in 1899 also, but the Legislature deliberately departed from that language, because they did not intend that any officer should have any general authority delegated to him by either the Local Government or the Governor General in Council for the purpose of instituting any prosecution under this very special measure. Sir, if the Honourable the Home Member will refresh his memory, he will find that when the Amending Act of 1904 was under discussion in the Indian Legislative Council, a good deal was made by Government of the fact that no single prosecution under that Act could be undertaken except with the express authority of either the Local Government or the Governor General in Council. I am not very much concerned with the language of the section; what I want to know is whether each particular case will have to be looked into by the Governor General in Council and the Local Government, or not,—or will anybody have the authority, by virtue of any general delegation of powers, to undertake prosecutions under this Act? If that be so, then I think we should all press for the acceptance not of Mr. Nag's amendment but of the amendment which stands in the name of my Honourable friend, Mr. Bagde.

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

The motion was negatived.

**Mr. K. G. Bagde** (Bombay Central Division: Non-Muhammadan Rural): Sir, Mr. Neogy has made a speech in support of my amendment, and it is unnecessary for me to make a further speech. I therefore formally move my amendment, which runs as follows:

"In clause 13 (2), omit all the words after the word 'Act' in the second line and in their place substitute the following:

'except with the consent of the Local Government or the Governor General in Council'."

Sir, I recommend the amendment for the acceptance of the House.

**Mr. L. Graham:** Sir, there is no difference at all in substance; it is the same as that which has just now been rejected.

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

The Assembly divided:

AYES—26.

Agarwala, Lala Girdharilal.  
Agnihotri, Mr. K. B. L.  
Asjad-ul-lah, Maulvi Miyan.  
Ayyangar, Mr. M. G. M.  
Ayyar, Mr. T. V. Seshagiri.  
Bagde, Mr. K. G.  
Basu, Mr. J. N.  
Bhargava, Pandit J. L.  
Bishambhar Nath, Mr.  
Girdhardas, Mr. N.  
Gour, Dr. H. S.  
Gulab Singh, Sardar.  
Iswar Saran, Munshi.

Jatkar, Mr. B. H. R.  
Mahadeo Prasad, Munshi.  
Man Singh, Bhai.  
Mudaliar, Mr. S.  
Nag, Mr. G. C.  
Nand Lal, Dr.  
Nayar, Mr. K. M.  
Neogy, Mr. K. C.  
Reddi, Mr. M. K.  
Sarvadhikary, Sir Deva Prasad.  
Schamnad, Mr. Mahmood.  
Singh, Babu B. P.  
Venkatapatiraju, Mr. B.

## NOES—42.

Abdul Rahim Khan, Mr.  
 Akram Hussain, Prince A. M. M.  
 Allen, Mr. B. C.  
 Asad Ali, Mir.  
 Barua, Mr. D. C.  
 Bradley-Birt, Mr. F. B.  
 Chaudhuri, Mr. J.  
 Cotelingam, Mr. J. P.  
 Crookshank, Sir Sydney.  
 Dalal, Sardar B. A.  
 Faridooji, Mr. R.  
 Fraser, Sir Gordon.  
 Graham, Mr. L.  
 Haigh, Mr. P. B.  
 Hailey, the Honourable Sir Malcolm.  
 Holme, Mr. H. E.  
 Hullah, Mr. J.  
 Jamall, Mr. A. O.  
 Jamnadas Dwarkadas, Mr.  
 Jejeebhoy, Sir Jamsetjee.  
 Kamat, Mr. B. S.

Ley, Mr. A. H.  
 • Lindsay, Mr. Darcy.  
 Mitter, Mr. K. N.  
 Moncrieff Smith, Sir Henry.  
 Muhammad Hussain, Mr. T.  
 Mukherjee, Mr. J. N.  
 Mukherjee, Mr. T. P.  
 Percival, Mr. P. E.  
 Pyari Lal, Mr.  
 Rajan Baksh Shah, Mukhdum S.  
 Ramayya Pantulu, Mr. J.  
 Rangachariar, Mr. T.  
 Rhodes, Sir Campbell.  
 Sams, Mr. H. A.  
 Sarfaraz Hussain Khan, Mr.  
 Singh, Mr. S. N.  
 Stanyon, Col. Sir Henry.  
 Subrahmanayam, Mr. C. S.  
 Tonkinson, Mr. H.  
 Tulshan, Mr. Sheopershad.  
 Webb, Sir Montagu.

The motion was negatived.

Clause 13, as amended, and clauses 14, 15 and 16 were added to the Bill. The Title and the Preamble were added to the Bill.

**The Honourable Sir Malcolm Hailey:** Sir, I move that the Bill, as amended, be now passed.

**Rao Bahadur T. Rangachariar:** Sir, I am afraid there has been a great deal of misapprehension created as regards this Bill outside this Chamber and also inside this Chamber. It has been mentioned in a telegram sent to Madras from here that it was a matter of surprise that Mr. Rangachariar gave support to this engine of oppression, to this retrograde measure, notwithstanding the heroic efforts made by Dr. Gour, Mr. Agnihotri and Mr. Neogy. It is forgotten that this measure is not a new measure at all. It is the existing law. If anything, we have liberalised the existing provisions. There is the English Act of 1911, which is the law here and which apparently the public are not aware of, which cannot be got rid of. Section 11 of that Act says:

“If by any law made before or after the passing of this Act by the Legislature of any British Possession provisions are made which appear to His Majesty to be of the like effect as those contained in this Act, His Majesty may, by Order in Council, suspend the operation within that British Possession of this Act, or of any part thereof, so long as that law continues in force there, and no longer, and the Order shall have effect as if it were enacted in this Act.”

We have not got a clean slate to write on. We had not a new legislation to commence here. Unless we substantially follow the English Act our labours will be in vain. Our law was contained in the English Act and also in the Indian Act. The two measures had to be brought together so that the Magistracy and the Judges and the Government and the public may have guidance in one self-contained Act. Honourable Members will notice we are dealing with an extraordinary piece of human conduct on the part of the persons who are likely to come within the scope of this Act, spies with reference to military matters and spies with reference to civil matters. The Bill as it came to us made no distinction between the two classes of spies.

But in the Select Committee we were able to make that distinction between military and non-military matters. My Honourable friend Mr. Neogy asked what about the Act of 1920? The English Act of 1920 is the



[Rao Bahadur T. Rangachariar.]

result of experience in the working of the Act of 1911, the result of that experience in time of war. After all this Act is intended to be applied to enemies, and mostly in times of war which may arise at any time. We do not know when it will arise. You are not going to pass an enactment then for the time being. You are here putting in your armoury of legislation a piece of legislation to cope with that situation which may arise. Certain portions of the Act of 1920 have been embodied in this Act, that is section 4, the rules relating to evidence about which we have had so much discussion. And as regards the offences which are referred to, I do not think any objection has been taken to those offences by any Honourable Member here, or by the public outside. Section 3 deals with spying, section 5 with the communication of secret entrusted in various ways. Then as regards the other offences, namely, interfering with officers of the police or Members of His Majesty's forces, attempts and incitements, they are already there, and I do not see any new or novel offences which have been created by this Act. Any way Honourable Members will recognise that it is a necessary piece of legislation if any Government is to get on. As I have said already, I do not think we should have sympathy with insidious foes. I think Honourable Members will agree to that proposition, and insidious foes have to be rigorously dealt with. I am not ashamed to confess that I have absolutely no sympathy with such insidious foes . . . .

**Mr. T. V. Seshagiri Ayyar** : No one has.

**Rao Bahadur T. Rangachariar** : I am glad to hear that. And therefore to say that this is an unnecessary piece of legislation, an oppressive and retrogressive measure to which the Legislature is laying its hand is to exaggerate, is to raise a false cry, is to really catch applause which is undeserved. It is asked who raises the cry? I do not know who it is. Whoever incites it, whoever advocates it, whoever sympathises with it, whoever wants it, it is to him and to them I am addressing these remarks. I am convinced, Sir, it is a necessary piece of legislation and I am glad, by the vote of this Assembly, on the amendments, they have shown that this is a measure which the Legislature considers is not harmful. And as I have pointed out already, you want a stable Government and a steady Government and unless you have this measure, it is very difficult to deal with these people who adopt underhand methods. In order to deal with underhand people you must have a piece of legislation which will be wide enough to cover all cases. It is not a case in which the oft-quoted maxim applies—Let rather a hundred guilty people escape than one innocent man be convicted. When you have to deal with enemies, can you say, let one hundred enemies escape? Can you take such a risk? That is a proposition which I do not think any sensible person can subscribe to. It will be taking an undue risk. If Honourable Members who quote the maxim will reflect, they will see the total inapplicability of such a maxim in a case like this. Where you are dealing with the enemies of the State the law should be wide and not too strict, and I do not think that the Legislature or any of us have committed any sin in putting this on the Statute Book. I congratulate the Legislature on passing this Bill. Let us hope there will be no occasion for using it.

**Mr. President** : If Honourable Members wish to continue the discussion, I think I must adjourn the House.

**Mr. Jamnadas Dwarkadas** (Bombay City : Non-Muhammadan Urban) : The question may now be put.

**Mr. President:** I cannot accept a motion for closure. If there is a general agreement that the debate may come to an end now, that is a different matter.

**Mr. Jamnadas Dwarkadas:** We want to end it.

**Mr. President:** Honourable Members are aware that there has only been one speech on the motion that the Bill, as amended, be passed. The matter is one of great importance, and I cannot stifle discussion, even though the House is ready to carry the closure by an enormous majority. At the same time, I would appeal to the House to shorten discussion as much as possible because, as has been already pointed out, the principles of the measure have been very largely and generously discussed on almost every clause which has come under discussion to-day. If Honourable Members can give me some reasonable undertaking that they will keep their comments on the passage of the Bill within reasonable limits, we can proceed now without an adjournment.

**Dr. H. S. Gour:** I do not think, Sir, this House is inclined to inflict too many speeches at this late hour. Speaking for myself, I hope I shall be voicing the sentiments of a great many of my friends who think with me and have stood by me during the progress of this Bill, if I indignantly repudiate, both on my own behalf and on their behalf, the charge that there was any intention to oppose the central principles of this measure. What we have opposed and what we should have continued to oppose are the details, which the occupants of the Treasury Benches have themselves confessed are of an exceptional and drastic character. We, as the representatives of the people, had to see that these provisions were not unduly enlarged so as to let in through their wide meshes accused persons against whom justice and the evidence adduced would not admit of conviction. Mr. Rangachariar, as the unaccredited spokesman, I suppose, of my friends on the other side of the House, pointed out that this is a measure intended only in case of a sudden outbreak of war. Sir, a greater misconception than that was never indulged in by my esteemed and learned friend. This is not a measure which is intended only to be used in the case of an outbreak of hostilities; it is a standing Statute which will be used both at the time of war and during peace, and, what is more, it intermingles within its 16 sections offences of a most heinous character, such as military offences, and of a comparatively trifling character, these being offences of a civil character. I should have expected, Sir, that there would have been some classification of these two classes of offences, and the public at large, who have to deal with this Act and to receive their caution from its provisions, would then have been in a better position to understand as to what they could do and what they were to avoid. Therefore, Sir, let us hope that on a future occasion the Government will be better advised in sorting out the civil and the military provisions of this Act, in relegating them to two independent Acts and providing the necessary punishments as will suit the gravity or lightness of the offences.

Frequent references have been made by the occupants of the Treasury Benches to the precedents furnished by English law. I am not surprised when the Members of Government refer to the English law as their authority for extending similar principles to this country. But I am surprised that my friend, Mr. Rangachariar, should have referred to the authority of English law as justifying the enactment of this measure in this country. Surely, Sir, he who runs can see the radical difference between English society and Indian society. The judiciary in England is vastly better trained, the public is better organised, the jurors

[Dr. H. S. Gour.]

are the final judges of fact; and on top of the jurors you have the Court of Appeal. Have you got the same high standard of judicial efficiency? Have you got the same strength and volume of public opinion? Have you got the same salutary check which trial with the help of a jury affords to an English accused? These are facts which cannot be forgotten, but these are facts which have been forgotten by the champion of this Bill.

Then, Sir, we have been told in the language equally loose and equally obscure that no provision of law can be sufficiently drastic to hunt down spies and to stop espionage. There is not the slightest intention on the part of anybody in this part of the House to decry the provisions relating to spies and espionage. I submit it was a deliberate red-herring intended to divert the attention of this House from the weak provisions of this enactment. What are its weak provisions? Well, Sir, if you read the Bill as it emerged from the Select Committee and the Bill as you see it to-day, you will find therein ample vindication of the opposition rendered by the Members of this House to its drastic provisions; and if we have not been able to do more it is not because our cause was not just but it was because being a highly technical provision bristling with questions of law and obscure expression, Members of this House took it for granted that the Government draft was sufficiently good to admit of no opposition. Well, Sir, there are two provisions, however, to which my friend on this side of the House wants to draw the special attention of the Government. One is the provision relating to sanction. You have the provision that the Local Government or any other officer empowered by the Local Government in this behalf . . .

**Mr. L. Graham:** No, no; the Governor General in Council.

**Dr. H. S. Gour:** I beg your pardon;—empowered by the Governor General in Council in this behalf may sanction a prosecution. I hope, Sir, that you will not generally delegate your power to any officer, but examine each case and as far as possible sanction prosecution after you are satisfied as to the guilt of the accused.

There is another fact, Sir, upon which I invite the attention of the Government relating to civil offences. Your provisions are so wide that you will have no difficulty whatever in running in anybody who peeps into an office for the purpose of making some, it may be entirely innocent, enquiry as to when there is going to be the next meeting of the Assembly, or whether a certain report on the Census of India has come out and what is the population of India recorded in that report. I hope, Sir, that you will work the civil side of it in a spirit of charity and that you will not use these provisions in a manner calculated to abridge and thwart popular liberties.

With these observations, Sir, I also concur in the motion made from the Treasury Bench that this Bill be now passed.

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

#### THE EXCLUSION FROM INHERITANCE BILL AND THE HINDU LAW OF INHERITANCE (AMENDMENT) BILL.

**Mr. T. V. Seshagiri Ayyar:** May I, with your permission, Sir, make a motion? I move that Sir Campbell Rhodes and Maulvi Abul Kasem be added as Members of the Select Committees on the Hindu Exclusion from Inheritance Bill and the Hindu Law of Inheritance Bill.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Monday, the 26th February, 1923.