THE

LEGISLATIVE ASSEMBLY DEBATES

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(1st February, 1923 to 20th February, 1923.)

THIRD SESSION

OF THE

LEGISLATIVE ASSEMBLY, 1923.

SIMLA
GOVERNMENT CENTRAL PRESS
1923.

Legislative Assembly.

The President :

THE HONOURABLE SIR FREDERICK WHYTE, KT.

Deputy President :

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Panel of Chairmen :

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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.

Secretary :

SIR HENRY MONCRIEFF SMITH, KT., C.I.E., M.L.A., I.C.S.

Assistants of the Secretary :

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

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

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

Marshal :

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

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LEGISLATIVE ASSEMBLY.

Thursday, 1st February, 1923.

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

MEMBER SWORN:

Mr. Crewe Hamilton Townsend, M.L.A. (Punjab: Nominated official)

QUESTIONS AND ANSWERS.

Payment of Piece Workers in Presses.

297. ***Khan Bahadur Sarfaraz Hosain Khan:** Is it true that the Government had promised payment, according to class rates, to piece workers in the Press for periods in normal working hours during which they have to remain idle?

Mr. A. H. Ley: Yes.

Bombing on North-West Frontier.

298. ***Mr. Ahmed Baksh:** (*a*) Will the Government be pleased to state the number of villages bombed or machine gunned from aeroplanes and also the quantity of bombs and other explosive matter dropped on the villages in the independent territory on the North-West Frontier from January, 1922, to 15th January, 1923?

(*b*) Have the Government any information as to whether the tribesmen possess any aeroplanes or anti-aircraft guns; if so, how many in each case?

Mr. E. Burdon: (*a*) Twenty one villages and various settlements have been bombed and 94 tons of explosives dropped between the dates mentioned.

(*b*) No.

Mosques in New Delhi.

299. ***Haji Wajihuddin:** Has the attention of the Government been drawn to the article headed "*Nai Dehli ki masajid khatre men*" published in the vernacular organ of Lahore known as *Daily Paisa Akbar*, dated 19th January, 1923, on page 3, column 4, and whether Government propose to investigate the matter and declare its policy with regard to the safety and preservation of old mosques in question?

Mr. A. H. Ley: Government has not seen the article in question. All ruins of mosques in New Delhi are preserved from destruction. In addition those of archæological interest are maintained and repaired, as necessary, in accordance with the advice of the Archæological Department.

Mr. K. Ahmed: Is it not a fact that there were petitions after petitions with regard to the mosques which have been dismantled at Sikh Burji and if so what has happened to them?

Mr. A. H. Ley: I am afraid I must ask for notice in the absence of my friend the Honourable Mr. Chatterjee.

Mr. K. Ahmed: Is it not a fact that two mosques have come within the Lady Hardinge Medical College and have been totally closed for the outside Muslims and even the Muslim menial staff in the hospital are not allowed by the Principal to give Ajan?

Mr. A. H. Ley: I am not aware of the fact.

Mr. K. Ahmed: Will you be good enough to inquire into the matter and do the needful by removing the anomaly?

EMPLOYMENT OF PROFESSOR RUSHBROOK WILLIAMS.

300. ***Mr. K. G. Bagde:** Will the Government be pleased to state:

(*i*) For what specific period was Professor Rushbrook Williams, Director of the Central Bureau of Information, on deputation in connection with the tour of His Royal Highness the Prince of Wales in India?

(*ii*) What were his emoluments during the period and were they paid by the Foreign and Political Department or by his own office? and

(*iii*) During that period who acted respectively as Director and Assistant Director of the Central Bureau of Information? What were their emoluments and by which Department were they met?

The Honourable Sir Malcolm Hailey: (*i*) Forenoon of 11th October 1921 to afternoon of 31st March 1922.

(*ii*) Rs. 2,000 per mensem paid by the Home Department *plus* a halting allowance of Rs. 15 a day for actual halts on the Royal tour. This allowance was paid from Royal Visit Funds presided over by the Royal Visit Finance Sub-Committee.

(*iii*) Mr. R. S. Bajpai acted as Director and received the full pay of the post, namely, Rs. 2,000. This expenditure was shared equally by the Home Department and the Royal Visit Funds. The post of Assistant Director was not filled during this period.

MORAL AND MATERIAL PROGRESS REPORT OF INDIA.

301. ***Mr. K. G. Bagde:** Will the Government be pleased to state:

(*i*) When was the Moral and Material Progress Report submitted by the Secretary of State for India to the House of Parliament in the years 1919, 1920, 1921 and 1922?

(*ii*) Were all or any of these reports, in full or in parts, prepared by Professor Rushbrook Williams?

(*iii*) If so, did he prepare them in his personal capacity or as part of the duties of the Director of the Central Bureau of Information?

The Honourable Sir Malcolm Hailey: (*i*) Copies of "India in 1919" were sent from India to the Secretary of State in June 1920 and presented to Parliament in July 1920.

Copies of "India in 1920" were sent in May 1921 and presented to Parliament in June 1921.

Copies of "India in 1921-22" were sent in July 1922 and presented to Parliament in August 1922.

(*ii*) They were prepared by Professor Rushbrook Williams with the help of material supplied by Departments of the Government of India and Local Governments.

(*iii*) As part of his duties as Director, Central Bureau of Information.

TOURING OF OFFICERS OF CENTRAL BUREAU OF INFORMATION.

302. ***Mr. K. G. Bagde:** Will the Government be pleased to lay on the table a statement showing:

(*i*) The period during which (*a*) the Director and (*b*) the Assistant Director of the Central Bureau of Information were on tour in the years 1921, 1922 and 1923;

(*ii*) The places which they visited;

(*iii*) The travelling and other expenses incurred by the tours; and

(*iv*) The purpose and result of the tours?

The Honourable Sir Malcolm Hailey: Statements giving the information required in parts (*i*) and (*ii*) will be supplied to the Honourable Member.

(*iii*) The total cost for the period mentioned is:

	Rs.	A.	P.
Director	5,761	7	0
Assistant Director	6,154	0	0
TOTAL ...	11,915	7	0

(*iv*) The Director and Assistant Director, Central Bureau of Information, go on tour under the direction of the Home Department for the purpose of consulting on publicity matters with provincial publicity officers and local Governments and sometimes local officials. The Assistant Director also has to be in Calcutta for several weeks in connection with the publication of the annual Moral and Material Progress Report which is presented to Parliament. The results of the tours have been satisfactory.

Sir Deva Prasad Sarvadhikary: Have these officers any authority over the provincial officers in regard to publicity? If so, what?

The Honourable Sir Malcolm Hailey: They have no such authority.

SECRET SERVICE GRANT EXPENDED BY CENTRAL BUREAU.

303. ***Mr. K. G. Bagde:** Will the Government be pleased to state:

(*i*) Is it a fact that an annual allotment is made to the Central Bureau of Information called the Secret Service Grant?

(*ii*) If so, what were the allotments made, and how were they spent in the years 1921 and 1922?

The Honourable Sir Malcolm Hailey: Government are not prepared to make any statement regarding expenditure from funds provided for Secret Service.

M. K. Reddi Garu: Is any account kept of the Secret Service Grant?

The Honourable Sir Malcolm Hailey: Certainly; but I am not prepared to reveal it.

Mr. T. V. Seshagiri Ayyar: Is this grant placed before the Standing Finance Committee—the way in which it is spent? Will the Committee have a voice in deciding the matter.

The Honourable Sir Malcolm Hailey: Secret Service funds are devoted for secret purposes and it is not possible to consult our Committee as to the manner in which they should be expended.

Mr. W. M. Hussanally: What are the objects upon which this fund is spent?

The Honourable Sir Malcolm Hailey: Secret objects.

Mr. K. Ahmed: Is the amount spent for secret service votable or non-votable and is it open to the Assembly to criticise the expenditure for the secret purpose?

The Honourable Sir Malcolm Hailey: It is part of the votable funds.

Mr. N. M. Joshi: Are these accounts audited by the Auditor General?

The Honourable Sir Malcolm Hailey: Yes.

RE-EMPLOYMENT OF PENSIONERS.

304. ***Mr. K. G. Bagde:** Will the Government be pleased to state:

(*i*) Is it a rule that Government pensioners should not, after retirement from service, be re-employed in the offices of the Government of India?

(*ii*) Have any such men been so employed?

(*iii*) If so, what are their names, ages, and the offices in which they are working?

(*iv*) Will they consider the desirability of adhering to the rule rigorously in future?

The Honourable Sir Malcolm Hailey: (*i*) No. Government pensioners can be re-employed on public grounds under Article 520 of the Civil Service Regulations.

(*ii*) Yes.

(*iii*) The information is being collected and will be supplied to the Honourable Member in due course.

(*iv*) This does not arise.

Mr. K. Ahmed: Instead of giving or furnishing information to the questioner, would it not be desirable, for the benefit of the public, that each and every Member of the Assembly should also be furnished with the information in question and that it should be published in the proceedings of the business of the House?

Mr. President: It is not necessary for every answer to every question to appear in the Report. If the Member of Government answering the question considers it to be of sufficient public importance, then he may, on

his own responsibility, lay it on the table; otherwise it is an economical and proper procedure to supply the information only to the Member who asked for it. It is perfectly open, on the other hand, for any other Member to repeat the question and ask for the information in a public form.

RULES UNDER GOVERNMENT OF INDIA ACT.

305. *Mr. K. C. Neogy: Have Government any information as to whether and when it is intended to make rules under Section 19A of the Government of India Act for the purpose of regulating and restricting the exercise of the power of superintendence, direction and control, vested in the Secretary of State and the Secretary of State in Council, so as to give effect to the purposes of the Government of India Act?

The Honourable Sir Malcolm Hailey: The attention of the Honourable Member is invited to the rules published with the Reforms Office notification No. 835-G., dated the 14th December, 1920.

UNSTARRED QUESTIONS AND ANSWERS.

MR. AGARWALA'S BILL *re*: IMPROVEMENT OF CATTLE.

132. **Babu Ambica Prasad Sinha:** Will the Government be pleased to lay on the table Lala Girdharilal Agarwala's last Bill on the subject of the Improvement of Cattle with all correspondence on the subject?

Sir Henry Moncrieff Smith: As the Honourable Member is aware there is no such Bill before the House.

In the exercise of his statutory powers under section 67 of the Government of India Act, His Excellency the Governor General refused his previous sanction to the introduction of Lala Girdharilal Agarwala's latest Bill on the subject of the protection and improvement of cattle. The Bill cannot therefore be introduced. The Government cannot see their way to lay on the table either the Bill or the correspondence relating to it as they consider that such a course would not, in the circumstances, be proper.

PROTECTION OF CATTLE.

133. **Rai Sahib Lakshmi Narayan Lal:** (*a*) Has the attention of the Government been drawn to the resolutions passed for cattle protection in India at a public meeting of the citizens of Calcutta and suburbs presided over by Dr. H. W. B. Moreno in December last?

(*b*) Has the attention of the Government been drawn to the following rules for the restriction of slaughter of cattle in slaughter houses contained in Government notification No. 1236-955-XIII of the Central Provinces dated 31st May, 1922 (referred to in resolution No. 2 of the said meeting):

"*Rule 6 of the said notification.*

The following animals shall be rejected and returned to the owner:—

(1) Any animal which in the opinion of the supervisor is
  (*a*) pregnant or
  (*b*) in milk.

(2) All cows.

(3) Any animal other than sheep or goats which in the opinion of the supervisor is of or under the age of 9 years."

(*c*) Are the Government aware that all-India Cow Conference has, year after year, been craving some substantial steps by the Government for the protection of the cattle?

(*d*) Are the Government aware that substantial steps have been taken for the protection of cattle in Afghanistan and Hyderabad?

(*e*) Will the Government be pleased to consider the advisability of addressing other Provincial Governments regarding the desirability of restricting the slaughter of cattle in their provinces, on the lines of the aforesaid Government notification of the Central Provinces and take such other substantial steps for the protection of the cattle as the Government think fit and proper?

(*f*) Will the Government be pleased to state whether the Government are going to do anything in the matter?

Mr. J. Hullah: (*a*) and (*b*) Yes.

(*d*) The Government have no information as to what has been done in Afghanistan and Hyderabad.

(*c*), (*e*) and (*f*). A full statement on the subject was made by the Honourable Member in the Department of Revenue and Agriculture in the Council of State on the 19th September, 1922. The Government have nothing to add to that statement.

THE INDIAN FACTORIES (AMENDMENT) BILL.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): Sir, I move for leave to introduce a Bill further to amend the Indian Factories Act, 1911. I feel rather ashamed, Sir, standing before this Assembly with yet another Bill, but this time at least I can plead that it is a very small Bill. Sections 3, 4 and 5 are entirely unimportant. Section 3 clears up an ambiguity in the Act. Sections 4 and 5 correct obvious errors. The only clause of any importance is clause 2; and I hope, that if Honourable Members will read the Statement of Objects and Reasons, they will find that it fully explains why we have inserted this clause in the Bill. The fact of the matter is that when we introduced a Bill to amend the Factories Act two years ago we proposed to prescribe that the weekly rest day should always be on the same day. We did not propose to give employers any discretion at all to substitute other holidays for that day. That proposal was adversely criticised in many quarters, and it was represented very strongly that employers should be allowed to substitute an important Hindu or Muhammadan religious festival. Subsequently the Government proposal was turned down by the Select Committee and by the Legislature, and the Legislature left section 22 of the Act practically as it was before, that is to say, it enabled an employer to substitute for a Sunday a holiday any one of the three days preceding or any one of the three succeeding the Sunday. At the same time we introduced into the Bill a clause defining the week as beginning always on a Sunday and we also introduced into the Bill a prescription that the weekly hours of work must not exceed sixty. I am afraid that nobody realized what the effect of these three provisions, taken together, would be, and the effect of the three provisions taken together has been to neutralize what was the expressed intention of the Legislature. I can explain it by a very simple instance. Supposing an important religious festival occurs on a Saturday. The

employer gives his workman a holiday on that Saturday and makes him work on the following Sunday. That employer is working 10 hours a day. The result is that in the first week he works 50 hours, in the second week he works 70 hours because the week begins on a Sunday and in the two weeks together he only works 120 hours; but in the second week he has worked 70 hours, and therefore he has infringed the law which prescribes a weekly limit of 60 hours. We have consulted Local Governments and also our Standing Departmental Committee, and we have decided to put up to the Assembly this proposal to amend the law in order to bring it into accord with the expressed intention of the Legislature when the Factories Amendment Bill was carried this time last year. I move, Sir, for leave to introduce the Bill.

Mr. President: The question is that leave be given to introduce a Bill further to amend the Indian Factories Act, 1911.

The motion was adopted.

The Honourable Mr. C. A. Innes: Sir, I introduce the Bill.

RESOLUTION *RE* EMIGRATION OF UNSKILLED LABOURERS TO CEYLON.

Mr. J. Hullah (Revenue and Agriculture Secretary): I move, Sir:

"That this Assembly approves the draft notification which has been laid in draft before the Chamber specifying the terms and conditions on which emigration for the purpose of unskilled work shall be lawful to Ceylon, and recommends to the Governor General in Council that the notification be published in the Gazette of India."

This Resolution, Sir, is of a kind altogether unfamiliar in the history of the Indian Legislature. It is a direct outcome of section 10 of the Emigration Act which we passed about a year ago, and which lays down that emigration for the purpose of unskilled work shall not be lawful except to such countries and on such terms and conditions as the Governor General in Council by notification in the Gazette of India may specify in this behalf. The Act goes on to say that no notification shall be made under this section unless it has been laid in draft before both Chambers of the Legislature and has been approved by Resolution in each Chamber, either as it stands or with modifications. It will thus be seen that the Assembly has been given practically full power over the emigration of unskilled labour. It can not only regulate it, but it can control it, it can stop it, and let it begin, and so forth. That is a very big power and one which should obviously be exercised with the greatest care. It not only concerns the interests of the labouring population in India and the extent to which they should be able to avail themselves of outlets abroad, of work under conditions which are often far superior to those which they know at home, but it also involves the interests of those labourers when they reach the countries to which they emigrate and the interests of those who are already there; and lastly, it may involve, and I think it must involve, a very considerable degree of interference with the domestic arrangements of other countries and other Governments.

I hope that Honourable Members will bear with me for a while if I set forth certain facts many of which will be known to them; my reason for doing so is that although they are known to Members, it is possible that

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the important bearing which they have on the question before us may not be fully appreciated by those who have neither the time, nor the inclination perhaps, nor the opportunity to study the subject.

Ceylon, as we all know, is very close to India, being separated from India by the narrowest of narrow seas. The journey from India to Ceylon is as easy as that, say, from Delhi to Agra,—easier, certainly less formidable than the journey from London to Paris. Consequently, there is always a very great stream of traffic in both directions. Conditions in Ceylon are well known in southern India; conditions in southern India are well known in Ceylon. Many labourers have part of their families in one country and part in another; still more have their relations in Ceylon, though their own residence may be in India. The Indian population of Ceylon is very great. About a third of the Ceylon population consists of Indians and about a quarter of it consists of Tamils. In all there are more than 1,100,000 Tamils in Ceylon. A great deal of the movement between Ceylon and India consists of labourers going to Ceylon or returning from that country. In the last five years the average annual number of labourers going to the Ceylon estates has been no less than 49,000, and of those returning no less than 29,000. It is clear then that we have not here a new slate to write upon. It is not as though we were deciding whether to allow emigration to a country to which it is not allowed at present, such as Fiji, British Guiana, Mauritius or any other country which may desire Indian labour. We have to consider the conditions applicable to a movement which is already in force on a very wide scale and I think that our conditions should be such as to dislocate as little as possible a movement which has in the past been free and for the most part healthy. It was because we appreciated the difficulties of regulating this movement that we exempted, when we passed the Act last year, Ceylon and the Straits from the operation of the Act for a period of one year. But the Act will come into force in respect of these countries on the 5th of next month and we have therefore to make up our minds as to the conditions on which we shall allow emigration to proceed.

The coolie in Ceylon is on the whole well looked after. He lives in lines which are constantly inspected by the Government sanitary officers and the pattern of these lines was very favourably reported on by Mr. Marjoribanks and Sir Ahmed Thambi Maricair who were deputed by the Government of India to make an inquiry some years ago into the conditions of labour in Ceylon. There is plenty of provision for medical relief. There are 54 Government hospitals, 81 Government dispensaries, 63 private hospitals and 471 private dispensaries. There are numerous schools for the children of labourers and an Ordinance lays down that the Government Educational Officer can require any estate owner to establish a school on his estate. In practice that power has never been exercised because it is found that the estate owners are willing to establish schools and have done so on a very considerable scale. Recruitment for Ceylon at present is done by a body known as the Ceylon Labour Commission, which is financed by contributions from the estates. The Commission has a Commissioner in India with headquarters at Trichinopoly, who supervises all the arrangements and working of recruitment. Recruits are obtained by persons known as Kanganis, who are labourers themselves on the estates in Ceylon and are sent over by the estates to obtain labourers. When a Kangani comes to India he brings with him from the estate an authority to the Labour Commissioner in India to obtain an advance for his expenses.

He is then given a certificate by the Labour Commissioner and he sets forth to recruit labourers, almost invariably in his own village or its neighbourhood; and the labourers which he recruits are usually his own relations or his own friends. In practice he recruits only about four labourers. He is not a professional recruiter; it has been the aim and object of the Ceylon Labour Commission throughout to discountenance absolutely the professional recruiter. Recruitment is simply done by one labourer coming over to India and inducing his friends to accompany him back.

Before we passed the Emigration Act and before we entered into negotiations with the Ceylon Government, that Government had already taken steps for the improvement of the conditions of labour in Ceylon. They repealed all the penal provisions of their labour law and they also tackled the very grave question of indebtedness among the labourers. They abolished a curious institution known as the Tundu. It would take me some time to explain exactly what that institution is, but briefly it is a contract to pay off labourers if the labourers pay off the debts due to the estate. Ordinarily the Kanganis were in debt to the estate and the labourers in their turn were in debt to the estate through the Kangani in respect of advances which had been made to cover the expenses of their transport. In time abuses grew up. All kinds of advances were made by the Kanganis to the labourers and to a certain extent by the estates to the Kanganis; with the result that each Kangani with his band of labourers was often saddled with a very heavy burden of debt. Now, when the Kangani wanted more advances he went to the Superintendent of the estate and demanded them, and if they were refused he demanded a Tundu, the written contract that he could move off with his labourers if he paid up his debts. The Superintendent of the estate either had to give more advances or he had to stand the risk of the coolies leaving him by simply giving a month's notice, or he had to give the Tundu. The Kangani then hawked the Tundu around the other estates and sold it, practically offering himself and his labourers as the price of the debt which he owed to his existing estate; he also demanded an extra advance for himself which he put into his own pocket and did not hand over to his labourers. The Ceylon Government has now abolished the Tundu altogether and has made its issue absolutely illegal. The penalty laid down in the law is a fine of Rs. 20,000 or two years' imprisonment.

So much for what the Ceylon Government had done. Before we entered into negotiations with them we held a meeting of our Standing Emigration Committee about June last, and settled the conditions that we should put forward to the Government of Ceylon. Those conditions were practically the same as we have now put before the House. I will briefly refer to them. The first refers to licensing. The fourth requires that the cost of recruitment shall be borne by a common fund to be raised in such manner and managed by such agency as may appear suitable to the Colonial Government. These were the only conditions to which the Government of Ceylon demurred. They said that they did not wish to be directly concerned with recruitment in any form. They said that the attitude which they desired to take up was one between the employer and the labourer and they pointed out that there were very serious disadvantages if the work of recruitment were practically thrown on them since it would then be necessary for them to appear, at any rate, to be identified with the interests of the planters. On the other hand, the Government of India took the view that the Colonial Governments who desire Indian labourers should be responsible for clean recruitment. The

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Standing Emigration Committee advised the Government of India to adhere to this attitude. We did so and the Ceylon Government has now accepted these conditions. The condition regarding contracts of service not exceeding one month was accepted without any difficulty at all; and it will be seen from condition (3) that the Ceylon Government will introduce legislation limiting contracts to one month. Condition No. (5) asks for the appointment of an agent; that was accepted without any hesitation by the Ceylon Government. Condition No. (6) refers to repatriation; that also has been accepted. Similarly the other conditions, which I need not detail, as they would only take up time, have been accepted. We also made certain inquiries and certain suggestions. The estates provide rice to their labourers, in many cases at below cost price. We asked the Ceylon Government to satisfy themselves that no profit was made on this supply of rice. A deputation that came over from Ceylon regarded that request with some surprise, and even with some amusement, pointing out that so far from any profit being made from these supplies of rice very heavy losses indeed had been incurred, especially at the time when the Government of India themselves imposed control of rice with the result that the price of rice abroad was extremely high and the Ceylon planters had to stand the loss. However, we have been assured that the estates make no profit on the supply of rice. We also asked for the prohibition of the employment of children below the age of 10 years; that has been accepted. We also threw out a suggestion for the introduction of compulsory education in Ceylon. We did not add that we had no compulsory education at the time in India. The Ceylon Government gave us a sympathetic reply, but they pointed out that power is already given by the Ordinance to provide schools at the expense of the estates, but it has never been found necessary to impose this by compulsion, and we have not pressed the point any further. We also asked for information regarding the cost of living and wages, and we threw out a tentative suggestion about the minimum wage. I will come to that later. We had the advantage of hearing a deputation from Ceylon and our enquiries, the enquiries which the Standing Emigration Committee made of that deputation, were exhaustive and lasted for several days. At those meetings a great deal of attention was concentrated on the subject of the minimum wage, but as one result of them we asked the Ceylon Government to make a further concession and undertake to repatriate not only those people who, as the condition lays down must be repatriated on the ground of their state of health, on the ground that the work which they are required to do is unsuitable or on the ground of unjust treatment, but also all persons who are thrown out of employment by a slump in the tea or rubber industries. That was a considerable concession to ask, but it has been granted.

The minimum wage, as I have said, was the subject of very prolonged discussion. The deputation that came over pointed out the difficulty of introducing a minimum wage and we fully appreciated those difficulties. But still we thought the matter was one of great importance and should be pursued. Finally the recommendation of the Standing Committee was "that the Ceylon Government should be asked to make an inquiry into the question of fixing a basic wage subject to a minimum and of the cost of living in relation to the wages now paid. In the meantime the Government of India should do its best to secure an improvement in wages. On receipt of the report of the inquiry suggested above the Emigration Committee will have to consider the findings and decide whether to ask for a

Joint Committee to settle what should be the rate of wages and other details." That is how the matter was left. We asked for an inquiry into the possibility of fixing a minimum wage. They replied at once that they agreed to institute an inquiry as we desired; at the same time they pointed out the very considerable difficulties involved. It may interest the Assembly if I read out those parts of their reply which deal with this subject. They say:

"They will at once institute the inquiry. It must be noted, however, that the question is complex and that no satisfactory solution can be ascertained without very careful inquiry and consideration. There are several important factors tending to raise the rate of wages in general which are now in course of operation, the chief of them being the abolition of the *tundu* and of the penal clauses in the labour ordinance. The full effects of these factors have not yet had time to develop and cannot be ascertained without careful analysis. Conditions in Ceylon vary greatly in the different districts. Such operations as plucking tea and tapping rubber are generally performed as piece-work and the unit rates of payment vary according to conditions. Again, it will also be necessary to investigate the cost of living in Southern India on a standard basis of comfort in order to compute the allowance for provision for old age which is asked for."

We asked incidentally that the minimum wage should include provision for old age.

"It will, therefore, be no simple task to analyse",

they say,

"the statistics collected and ascertained whether they can be reduced with any degree of accuracy to a uniform datum for the whole Island. Unless this can be done, the probable margin of error in calculating any basic wage might well be such that the establishment of such a uniform wage might operate to the disadvantage and not to the advantage of a large proportion of the labour on estates."

In this way they have pointed out the difficulties and have asked for time, which we have practically offered them, for we told them, in communicating our views about the minimum wage, that the Government of India would not insert in the draft Notification placed before the Assembly any stipulation on the subject. The reason why the Emigration Committee were anxious to have introduced if possible a minimum wage was that, they considered the rates of wages in Ceylon were too low.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Who did not consider that?

Mr. J. Hullah: The Standing Committee considered that the wages in Ceylon were too low, though they are above the rates of wages in Southern India.

Rao Bahadur T. Rangachariar: That is not correct.

Mr. J. Hullah: If they are not above the wages in Southern India, why do the labourers go in such large numbers to Ceylon?

Rao Bahadur T. Rangachariar: The Army of Kanganis.

Mr. J. Hullah: A possible suggestion, but one that I should not like to make, is that they are not so favourably treated by the landholders in Madras as they are in Ceylon.

Rao Bahadur T. Rangachariar: That is true also.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Mr. Joshi would not let them go if he could help it.

Mr. J. Hullah: The actual rates in Ceylon are unknown to us; they vary so much from estate to estate. We have had much difficulty in ascertaining them; so has the Ceylon Government in ascertaining them and giving them to us. The Labour Commissioner stated that the rates of wages for men are 6 annas 11 pies per day on rubber estates and 6 annas 9 pies per day on tea estates; for women 5 annas one pie and 5 annas respectively, and for children 3 annas 6 pies and 3 annas 8 pies but in addition the labourer is offered piece-work, and he can also, if he likes, work overtime. The rates with piece-work and overtime are for a man 8 annas 10 pies per day on a rubber estate, 8 annas 6 pies per day on a tea estate; for women 6 annas 10 pies and 7 annas 1 pie; for a child 4 annas in both cases. The information given to us by the Ceylon Government is in rupees per month. They tell us that the average rates with piece-work and overtime are, for a man 16 to 20 rupees a month on rubber estates, 12 to 16 rupees a month on tea estates; for a woman 10 to 12 rupees for rubber and the same for tea; for a child Rs. 6-8 per month for rubber and the same for tea. The cost of living for a man, his wife and two children is approximately Rs. 17 a month for bazaar supplies and rice, but does not include the cost of clothes, festivals and so forth. On this information as I have said, the Standing Emigration Committee were not satisfied that wages were sufficiently high, and they therefore proposed the institution of a minimum wage. We have asked that an inquiry should be made into the question of establishing such a wage and that the results of the inquiry may be submitted to our Emigration Committee, and possibly we may have to ask for a Joint Committee of India and Ceylon to investigate conditions before the minimum wage can be settled and imposed. It will thus be seen that a considerable time must elapse. The subject is an extremely difficult one. Conditions vary in different parts of the island; they vary between tea and rubber estates. There is always the possibility, almost the certainty, of considerable fluctuations in the products, rubber and tea; there is also the possibility that a minimum wage may not operate to the advantage of the labourer. For that reason we have not placed in our stipulatous anything about a minimum wage, and we told the Ceylon Government that we should not insert anything of the kind in the notification that we should place before the Assembly.

I have now shown, I hope, Sir, that conditions in Ceylon are on the whole favourable, that it may be necessary to have wages raised, and that it may be necessary to have them fixed by Statute in the forms of a minimum wage. I have also shown that there is a very large movement of labourers in both directions, and that it would not be to the advantage of ourselves or of the labourers or of the Government of Ceylon that there should be any drastic interference with present conditions. I have shown that the Ceylon Government have met us as far as they can at present and that they have agreed to all that we have placed before them as the absolute conditions that we require. I now commend the Resolution to the House.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, I move that the consideration of this question be adjourned to some day next week which you, in conjunction with the Leader of the House, may fix for the purpose. Sir, the Honourable Member who has just spoken has been very enthusiastic over the condition of the labourers in Ceylon. I am inclined to think that a planter could not have put it more enthusiastically and ably than the Honourable Member has done regarding the way in which the labourers are being treated in Ceylon. We, Sir, on this side of the House believe that the picture is quite different to what has been depicted

by the Honourable Member. We consider, at any rate, that the materials placed before us are not sufficient to enable us to come to a definite conclusion upon the question which we have to discuss. For example, we should like to have some information regarding the wages which are being paid by various industries in Ceylon; we should like to have some information as regards the sex proportion in Ceylon; we should like to know what the Standing Emigration Committee recommended as regards the various matters placed before them. It is not enough that you place certain materials before the Standing Committee, but it is necessary, to enable the House to judge rightly upon the question, that these materials should also be available to the House. Whatever may be the deliberations of the Standing Committee, those deliberations must be made available to us to enable us to come to an impartial decision upon the matters placed before us. Without that information it would be impossible to decide the very important questions which have been brought forward for consideration in the rules which have been promulgated. One matter which the Honourable Member mentioned was that the Government of India have informed the Ceylon Government that they would not insist upon the minimum wage being included in the rules. I do not think, as at present advised, that this House would agree with the advice which has been tendered by the Executive Government to the Ceylon Government on the subject. We should certainly like to know something about the minimum wages which are paid and also what it costs a family to live in Ceylon. Unless these matters are clearly placed before us, we will not be in a position to give our decision on these questions.

Sir, Some statements were made as regards the wages paid in South India and it was said that these wages compare unfavourably with the wages paid in Ceylon. We join issue upon that question. Some of us know what we pay to labourers in South India, and it is not at all right to say that the wages paid in Ceylon, ranging from five annas and nine pies to nine annas, are more than what is paid in South India by landlords. However, Sir, I do not want to enter into a discussion of the various questions which will have to be discussed later on, but I do think that, having regard to the materials which the Government have placed before us, it would be impossible for us to arrive at any satisfactory conclusion at present. As my friends point out, there are no materials before us whatsoever. Whatever may be the materials that have been placed before the Standing Committee, we have no materials before us. We want all these materials to be placed before us before we can arrive at any decision.

I therefore move, Sir, that the consideration of this Resolution be adjourned to some day next week.

Sir Deva Prasad Sarvadhikary: Sir, I desire to support the motion for postponement of the consideration of this Resolution. I am afraid, I cannot, like my friend Mr. Seshagiri Ayyar, characterise the statement of Mr. Hullah, that has been placed before us, as very "enthusiastic," in the sense suggested by Mr. Seshagiri and must admit that it was a balanced statement of the case which has been very helpful. I wish we had the materials before us earlier. Mr. Hullah has told us that this is unfamiliar in the history of Indian legislation and that under section 10 of the Emigration Act we have certain powers that are large. Following him up I say that those who have powers must also recognise obligations; they cannot be expected to assent to any proposition, however seemingly simple, without thorough investigation. Sir, I do not for a moment wish to suggest that this House should again go into a Committee of the whole House for the

[Sir Deva Prasad Sarvadhikary.]

purpose of traversing what our Committee has already done. Perhaps I am wrong in calling it our Committee, but I mean the Joint Emigration Committee which sat and will be still sitting. I think that every material that has been placed before that Committee should be made available to Members of this House. We tried to enlighten ourselves. We approached some of the Members of the Committee; they were good enough to talk to us, but when we asked them for papers, they said the papers were confidential and that they could not let us see them. Well, official secrets are being very well kept by those Members, and I congratulate them and the Government upon such loyal adherence to their instructions. At the same time, Sir, it cannot be expected that we, as a House, should agree to what is laid before us, without thoroughly knowing and appreciating the situation upon materials.

Sir, no one can deny that a considerable advance has been made in this direction. Thanks to Lord Hardinge's endeavours, indentured labour—shall I call it slavery—is at an end. We have just heard that the *toondu* system compelled people to go and sell themselves like King Harish Chandra of old at Benares, to keep himself out of indebtedness. That is a past thing now, but we should like to be satisfied that the *Kangani*, who has always lived to his own interest, is not able to profit by all the loopholes and openings there may be. Well, the indebtedness is wiped out; that is a matter for congratulation. Those who have gone into the matter know what that indebtedness was. It was mostly imaginary, such as any *Kangani* or *sowcar* can work up, if he wants to. We have that in Bengal. I speak with some feeling, because it is not entirely a South Indian question. If the figures that I have got are anywhere near correct, about one-third of the labour goes from the Bengal ports. I do not say they are all Bengalis; there may be United Provinces people and Punjab people going through Bengal. But there is a point of view other than South Indian, and whatever the rapacious South Indian landlord may be doing, other parts of the country will probably claim to join issue in the same way that Mr. Seshagiri Ayyar joins issue with regard to South India. However, these are extraneous matters for the moment. What we in general wish to know is the exact condition of things. I quite agree that by the 5th of March some definite action will have to be taken because it affects many and large interests and probably the vexed question of minimum wages will have to stand over; and admittedly interim notifications will be needed, we shall be prepared to assent to them when we have the materials before us.

In the meantime, there are one or two points that have struck us, which will require elucidation. I do not want to go into the details now, if this motion is to be carried, but, if it is not, I should like to ask what is to happen after the expiration of the period of one year mentioned in article 6 of this notification? These are matters that require to be cleared up. We have provisions as to what is to happen between the expiration of the period of one month and one year, mentioned in item 6 of the notification, but, is it to be taken for granted that, if the man has been there for a year and has known all about the prevailing situation, that there is to be no further help afterwards? Several matters that are not in the notification have been mentioned by Mr. Hullah. It is very necessary that we should know all these definitely. Whether that is to be made a part of the notification or not is another matter, but, in order to enable us to judge whether we should assent to these notifications, these items of information

which have been now furnished to us or foreshadowed should be available in a more tangible form. I do not want to labour these points at the present moment because we are now speaking on the motion for postponement of the Resolution and, if that is assented to, it will not be necessary to go into the details now.

With these words, I support the motion for postponement of the consideration of the Resolution.

The Honourable Mr. B. N. Sarma (Revenue and Agriculture Member): Sir, the question before the House is as to whether postponement should be granted, in order to enable Members to study fully the subject before they come to any definite decision. I may state at once that the Government do not intend to oppose the motion; we are entirely in the hands of the House. Government welcome the desire on the part of Members to obtain all the information available to the Government in order that they may adequately judge the material issues before them and then come to correct conclusions.

They have no desire whatsoever to withhold from any Member of the Assembly any information which the Colonial Governments may not have marked as confidential which would help them in arriving at correct conclusions. I may state that that proviso that I have mentioned does not preclude us at all, as a matter of fact, from giving information, substantial information on all the questions that have been referred to by Mr. Seshagiri Ayyar. There seems to be some slight misapprehension as to the position which the Government and the Emigration Committee have been taking in this regard with reference to some of the matters which came up for discussion before them being kept confidential. Honourable Members will realise that we were not dealing entirely with domestic concerns, but were entering into negotiations with Colonial Governments, and they will appreciate readily the desire of the Colonial Governments to keep certain matters confidential. It was with that object that some of the papers were marked confidential, when they were circulated among the Committee members. But on an analysis the Government have found that all the information that is necessary and that Honourable Members of this House would desire can be supplied to them. There is nothing secret about the facts at all. The conclusions to which the Emigration Committee have come on the several subjects which came up for discussion before them will also be open to every Member of the House. It may not be possible for us, inasmuch as we have not enough copies of all these papers, to supply each Member with a separate copy. But the information will always be available at the office and we shall try also to place all the material papers in the Committee Room, and if possible circulate them to the Eastern Hostel and any other place where the Members live together. I hope that arrangements will be made for circulation of the papers to all those who are interested in the matter. I appreciate the desire on the part of Honourable Members to assist us in arriving at conclusions at an early date. As Honourable Members have seen, we must come to our conclusions here soon and then proceed with the Resolution in the Council of State, then define the rules; and all this has to be done before the 5th of March.

12 Noon.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): May I suggest that a copy be placed in the library.

Mr. President: The question is that further consideration of the Resolution be postponed.

The motion was adopted.

The Honourable Sir Malcolm Hailey: (Home Member): I think perhaps in the circumstances it would be most convenient if we were to take this discussion on the Friday or Saturday of next week for which we have not hitherto assigned any work. We have not yet decided whether we will sit on Friday or Saturday.

RESOLUTION *RE* WORKMEN'S COMPENSATION IN AGRICULTURE.

Mr. A. H. Ley (Industries Secretary): Sir, I have to move the following Resolution:

"This Assembly recommends to the Governor General in Council that no action be taken on the Draft Convention relating to workmen's compensation in agriculture and the recommendation concerning social insurance in agriculture adopted by the Third Session of the International Labour Conference at Geneva in 1921."

Sir, I do not think I need trouble the House, for more than a few minutes on the subject of this Resolution, which, if I judge correctly, should cause no controversy, and, *pace* my friend Mr. Joshi, no material difference of opinion. It will be observed, Sir, that this Resolution refers only to agricultural workers, and it may be held that it is really so obvious, that I may reasonably be asked why it is necessary to trouble the House with the matter at all. I will briefly explain the reason. The reason is merely this, that India being a Member of the International Labour Organization, a Member of the League of Nations and a signatory to the Treaty of Peace, is obliged, under Article 405 of the Treaty of Versailles, to lay before the competent authority in India (that is to say, before the Legislature, in respect of matters which would require legislation) any draft Conventions or recommendations passed at any meeting of the International Labour Organization, within 18 months of the date of the Conference at which those Draft Conventions or recommendations were passed. Now, the Draft Convention and recommendation, which are dealt with in this Resolution, were part of various Draft Conventions and recommendations passed at the Geneva Conference in October 1921, and therefore they have to be laid before this House during the present Session, in order that India may fulfil its International obligation. That Sir, is the only reason why I have troubled the House with this subject at all.

Now it will be observed that the Resolution falls into two parts, two subjects which might be treated separately. But I have joined them together partly for the sake of brevity and convenience, and mainly because the principle which should determine the action taken on the Draft Convention is I submit exactly the same as the principle which should determine the discussion of the recommendation.

I think that Honourable Members of this House will have probably studied the recommendations and the Draft Conventions passed at the Geneva Conference. They have all appeared in Bulletin No. 26, published by the Department of Industries, which was circulated when published to every Member of this House. But perhaps it would be convenient if I just read the Draft Convention in question. I will take the question of Workmen's Compensation first. The draft Convention runs as follows: the material part of it—I omit the preamble and other matters which are irrelevant. "Each Member of the International Labour Organization which ratifies this Convention undertakes to extend to all agricultural wage-earners its laws and regulations which provide for the compensation of workers for personal injury by accident arising out of or in the course of their employment."

Now, Sir, it would have been in many respects perhaps convenient—and certainly convenient for me—if I had had an opportunity of moving this Resolution a little later in this Session, at the time when we were considering or had just finished considering the Workmen's Compensation Bill, the report of the Joint Committee regarding which is already before the House. But I think it will be in the recollection of every Member of this Assembly, who has studied the subject at all, that that Bill was definitely and advisedly framed as a modest measure to begin with, in introducing an entirely new principle into India. It was definitely and advisedly limited to organised industries,—industries falling within the definition of the Factories Act, and to other occupations which fall under Schedule II of the Bill, such as hazardous occupations—occupations in which there is a material element of risk. I think in the first place, that that clearly does not apply to the case of agricultural workers. All Local Governments, every authority who has been consulted on the subject of workmen's compensation, I think I am right in saying nearly every authority, are agreed that that limitation is, in the existing conditions of India, a wise limitation. It is obviously impossible and impracticable to extend that legislation to all forms of agricultural labour. In fact, I do not think it is really necessary for me to argue that point further. There is one other point, Sir, which I should like to make— a practical point—in this connection, and that is this: that if this House, in disagreement with me, or if the Government of India, decide to ratify this draft convention, I think it is clear that they will be doing a disservice to workers in this country as a whole, and I will explain why. What would be the first result? The first and obvious result would be that the Workmen's Compensation Bill would have to be dropped; that is quite clear. It would be illegal, according to India's International obligations, for her to pass the Bill in its present form. It would have to be dropped altogether, and either the subject would be postponed until it becomes possible to rope in all agricultural workers in this country, or a new Bill would have to be framed in order to do so. I may observe in passing that it is impossible for India to ratify this Convention with reservations. They have either to ratify it or not to ratify it as it stands. The International Labour Organization and the League of Nations will not accept as fulfilling international obligations partial ratification or ratification with reservations. Well, it is perfectly clear that as far as agricultural workers are concerned, and indeed it has been admitted by everybody, that any measure of this kind at the present time is quite beyond the sphere of practical politics; (*Rao Bahadur T. Rangachariar*: " At any time ".) At any time, possibly, but at this time certainly—and therefore I say that if this House and the Government of India were to ratify this Convention, all they would be doing would be indefinitely postponing, postponing for a period of years, possibly I think, as Mr. Rangachariar suggested, postponing to the Greek Kalends, what is, I think everybody will admit, a very desirable measure of social and economic reform. That is all I have got to say on the subject of workmen's compensation, and I think it is unnecessary for me to labour the argument further.

I pass on to the second part of this Resolution which deals with the question of social insurance. There is nothing very much in this, I think; and I shall read the recommendation in question. It runs as follows—I omit the preamble which is unimportant. " The General Conference of the International Labour Organisation recommend that each Member of the International Labour Organisation extend its laws and regulations

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establishing systems of insurance against sickness, invalidity, old age and other similar social risks to agricultural wage-earners on conditions similar to those prevailing in the case of workers in industrial and commercial occupations" Well, Sir, we have none of these laws at present, even with regard to industrial workers. We have no old age pensions; we have no laws relating to compulsory or state insurance of workers even in industrial undertakings; indeed, we have no insurance data on which such laws could be framed; and I think it is quite obvious that if ever a movement in this direction takes place it will first take place in regard to forms of labour in which it is easy and practicable, or may be found easy and practicable hereafter, to introduce such measures. That again, I think, is a point of view which it is perhaps unnecessary for me to labour.

In conclusion I would desire to express my opinion that the principle of this draft convention and this recommendation is in the case of India an unsound principle. The principle of it is to prevent any discrimination between industrial and agricultural workers in respect of laws which may be enacted to provide for insurance against accident, sickness, old age and the like; that is to say, it is designed to compel a nation which adopts it to legislate, at one and the same time and together, not only for industrial workers but for all kinds of agricultural workers. Whatever view may be held, Sir, as to the wisdom or the soundness of that principle in the case of countries like England and other European countries, whose agricultural and industrial workers are well-educated, comparatively speaking, fully organised and fully developed, I venture to put forward the view that it is an unsound principle in the case of a country like India where agricultural and industrial workers are not only uneducated on the whole, undeveloped and unorganised, but where the stages of development, education and organisation are so wholly different in respect of different classes of workers. It is much easier obviously to develop measures of this kind in the first instance in the case of organised industries, for example. It is surely a much better principle to adapt measures of this kind as time goes on to such classes of workers and in such conditions, in respect of which it may be found practicable and desirable to apply them. It is much better to do that, I say, than to make, if I may say so, a leap in the dark and adopt wholesale a measure for which I think it is obvious the country as a whole is not ripe. With these words, Sir, I move this Resolution.

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I beg to move the following amendment to the Resolution which has been placed before the Assembly by my Honourable friend, Mr. Ley. My amendment runs thus:

"At the end of the Resolution add the following, namely:

'and request the Government of India to inquire and report to the Assembly what action regarding these matters is necessary and practicable in the case of organised plantations in India'."

Sir, it is quite obvious from the terms of my Resolution that I am not opposing the main body of the Resolution at all. Although I do not approve of the attitude taken by Government in this Resolution, I do not propose to oppose it also for reasons which are obvious to Members of this Assembly. But Sir, the only thing which I asked the Assembly to do is that after having accepted the Resolution put forward by the Government we should ask the Government to do one little thing, namely, that they should inquire whether it is possible for them to take

some action as regards these matters in the case of organised plantations. What I ask is only an inquiry. I do not anticipate the result of the inquiry at all. Now my reasons for asking for this inquiry are these. In the first place, from the speech of my Honourable friend, the Mover, it was not clear at all whether Government before placing this Resolution before the Assembly had made any inquiries whether any action could be taken or not. I had seen some Resolutions placed by Government about the Conventions and the Recommendations of the International Labour Conference before, and I had seen that in the case of those Resolutions Government had made certain inquiries, the Local Governments had been consulted, and we were placed in a position to know what the views of the Local Governments were and what the result of the inquiries was. I should like to know whether my Honourable friend, the Mover, had made any inquiries as to the practicability of certain action being taken on these Resolutions. From his speech it was clear that no such inquiry was made, and therefore it is quite obvious that this Assembly should insist that out of mere courtesy, if not respect, for the Conventions and Recommendations of the International Labour Conference, the Government of India should make an inquiry into these matters. But, Sir, when I ask for an inquiry you will find that I am not only not unreasonable but am more moderate than I ought to be. Sir, my Resolution does not ask for an inquiry as regards the application of these Conventions and Recommendations to the whole sphere of agricultural work in this country. I ask for an inquiry only into a very limited portion of the agricultural work in India, and that is, the agricultural work on organized plantations. The words " organized plantations " are, I think, well known to Government Members. (*A Voice from the Government Benches*: ' No.') Well, somebody here says ' No '. Therefore for their benefit I would like to define these words. Organized plantations in my humble opinion are those plantations where a large number of people work under one master and in one place. For example, the tea plantations in Assam, the tea and coffee and rubber plantations in Madras, where 100, 200 or 500 or more people work under one master and in one small locality. Such plantations are called ' organized plantations '.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): What do you want to do with that?

Mr. N. M. Joshi: Yes, I am going to explain that. Now I do not ask for an inquiry into the whole sphere of agricultural work. I ask for an inquiry only as regards the organized plantations. Government knows that some of these organized plantations in India are governed by some special laws. So it is not difficult for them at all to find out what those plantations are and I ask for an inquiry only as regards those. Now what is the inquiry going to be about? The inquiry is going to be about the two questions mentioned in this Resolution, namely, whether the Workmen's Compensation Act should be applied to the workers on these plantations. (*A Voice*: " What is the risk they run?") I will explain it presently. Secondly, whether any action on the lines of social insurance should be taken as regards these organized plantations. Sir, as regards the Workmen's Compensation Act, I am asked ' what is the risk that the workers on these plantations have to undergo? ' My Honourable friend, Mr. Rangachariar, was, I think, a Member of the Committee that considered the Workmen's Compensation Bill, and as a member of that Committee he ought to know that in this Bill there is a provision

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for what are called ' occupational diseases '. This question of workmen's compensation was considered by a committee which was appointed by Government last year, and when the Committee discussed this question, it was urged that organized plantations should be included in the scope of the Workmen's Compensation Bill. If my Honourable friend, Colonel Gidney, who is an authority on medical matters had been here, he would have told the members of this Committee that Kala Azar, which is a disease from which the workmen on plantations suffer, may be considered as an occupational disease. Sir, this is only one matter.

Rai G. C. Nag Bahadur (Surma Valley *cum* Shillong: Non-Muhammadan): Hookworm also.

Mr. N. M. Joshi: My Honourable friend, Mr. Nag, says that hookworm also is very prevalent and that might also be regarded as an occupational disease. Therefore, it will be quite clear to Honourable Members that there is a sufficient case for an inquiry whether the workers on organized plantations should be brought within the scope of the Workmen's Compensation Bill or not. I need not take more time on this question.

Then, Sir, there is the other question of social insurance. My Honourable friend, Mr. Ley, said that in the first place, we should not discriminate between agricultural and industrial workers if we want to legislate for both of them together . . . .

Mr. A. H. Ley: That is exactly the opposite of what I said, Sir.

Mr. N. M. Joshi: He says that he said quite the contrary. I can understand the partiality of my Honourable friend for the industrial workers. I am told that he is the Secretary of the Department of Industries. It is quite natural that he should say that the industrial workers should be first given the benefit of these ameliorating reforms. But, Sir, may I ask my Honourable friend whether as Secretary to the Department of Commerce and Industries he has ever read an Act called the Assam Labour and Emigration Act?

Mr. A. H. Ley: Yes.

Mr. N. M. Joshi: He says 'yes.' Sir, section 135 of that very Act by legislation provides that the employers on plantations should make provision against sickness for the workmen on these plantations. He therefore ought to have known that the Government of India had already legislated in the case of agricultural workers before they had done anything as regards the industrial workers. Therefore, it seems to me that the views which he has propounded at least did not find favour with the Government of India of 20 years ago. Moreover, my Honourable friend Mr. Ley, being in charge of this department, ought to have seen the Report of the Assam Labour Committee which was appointed only last year, and which has reported very recently. I will read only one sentence from that Report. My Honourable friend has already told the Assembly that the social insurance relates to the provision against old age and provision against invalidity. I have told him how the Government of India themselves have made provision against invalidity in the case of these plantations. I wish to tell him from this Report what the planters of

Assam have done for old age, etc. " Some gardens give small pensions in cash to deserving coolies who have earned them by long and faithful service on these estates, but the practice can hardly be described as common, though it is admitted that there is scope for the extension of the system." The Committee itself recommends that this system of giving pensions for old age for the workers on the plantations should be extended, and here is the Government of India saying that no action should be taken as regards social insurance. Sir, it seems to me that my Honourable friend was unnecessarily frightened by these modern words ' social insurance ' and such things. As a matter of fact, these ideas are quite well known to the Government of India and the planters in Assam. Therefore, there is nothing wrong if the Government of India makes an inquiry on these questions as regards these plantations. As a matter of fact, on these matters inquiry has been made. My only regret is that the Government of India did not care to consult the Assam Labour Committee whether these Conventions could be brought into practice or not. If the Government of India had been serious as regards these Conventions and recommendations, they could have placed these Conventions before this Committee and this Committee could have expressed its opinion on these matters, as it has already done on some questions, and the expression of view of this Committee is absolutely in my favour. I, therefore, hope that the Members of the Assembly will agree to my amendment for which there is the approval of the Government of India of old itself as well as of the Committee which was appointed by the Assam Government and which has recently reported.

Mr. B. S. Kamat (Bombay Central Division: Non-Muhammadan Rural): Sir, my friend, Mr. Joshi, claimed this morning that he was extraordinarily and unusually reasonable in his amendment which he has moved. After he elaborated his argument, it seemed to me he was beginning to suffer from some occupational disease himself—his occupation probably being labour legislation. Just as there are political idealists in this country who think Swaraj could be achieved before the 31st of December every year, there are also, I fear, a few labour idealists who think that, even in the matter of agriculture, the millenium could be reached by legislation within a very short time, even the short time assigned to a Member of this Assembly, namely the three years of his term of office. It seems to me, Sir, that, in the first place, the amendment of my friend, Mr. Joshi, is in a sense a direct negation of the original proposition. The original proposition of Mr. Ley said that no action be taken on the Draft Convention. My friend, Mr. Joshi, states on the other hand that some action by Government may be taken. I leave it to the House to reconcile these two things. Then, again, Mr. Joshi wants a limited inquiry and he claimed by reason of the very fact that he wanted a limited inquiry, that he was reasonable. He overlooked the fact, which Mr. Ley pointed out, that, so far as the Draft Conventions of the International Labour Organisation went, you can either take full action with reference to these Conventions or no action at all, and there was no question of a limited application or reservation with reference to the confirmation or ratification of any Convention of the International Labour Organisation. Even supposing the Government concede that there should be a limited inquiry with reference to the organised plantations, what would be the result? They can report the result of their inquiry to this House only but they cannot send a message to the International Organisation of Labour that they are prepared to take any action with reference to organised plantations for the simple reason that, under

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the rules of the International Labour Organisation, there could not be any such thing as a limited ratification at all.

Now, speaking on the merits of this inquiry, Sir, it seems to me my friend, Mr. Joshi, is carried away by a little bit of zeal, as I said in the beginning. Those who were on the Committee of the Workmen's Compensation Bill have realised how difficult it is even in matters of industrial concerns to legislate at the present stage of India for compensations. We have all our sympathy for workers, and I think it should be the duty of this House to extend to them the privileges of compensation, wherever it is possible and feasible, but in the field of agriculture which though it may be the mainstay of this country the field and the scope of enquiry are too large and yet the conditions so very difficult, I believe it would be premature even to begin to give compensation in the organised plantations to which my friend, Mr. Joshi, referred. Eventually, when we have tried industrial compensations and we see the result of the experiment, it may be possible to extend the privilege and the advantages of compensation to agricultural workers. But at the present moment, I believe the question is outside the sphere of practical politics and it would be nothing but a waste of time to go into this question, so far at any rate as the ratification of the Draft Convention of the International Labour Organisation is concerned. I, therefore, think the Members of this House should not support Mr. Joshi's amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I just wish to add a word or two to what has fallen from my Honourable friend, Mr. Kamat, and I may at once say that I stand up to oppose the amendment of my Honourable friend, Mr. Joshi. I do not know, Sir, whether I am suffering from any occupational disease, but, if there is any in me, I suppose it is the disease of the brakesman. I want to put on the brake whenever I find the coach of the social reformer is proceeding at a breakneck speed. My submission to the House is that, in this matter of agriculture, just as in other matters where labour is employed there are already elements present which go to protect the labourer. What I mean to say is that in affairs relating to employment of labour it is very often the self-interest of the employers themselves which leads them to provide healthy conditions for their labourers and so forth. And Government to some extent, is doing what it can in that respect. In the case of Kala Azar or hook-worm, the Government is not idle. It is looking after these evils and trying to prevent them. But to suppose that an employer of agricultural labour should be made responsible for Kala Azar or hook-worm where the disease is not caused by anything organised by the employer himself, and is due to natural causes alone, it seems to me, Sir, that such a supposition would amount to extending the principles of compensation unduly. We must also bear in mind that it is to the self-interest of the employer himself to induce labour into his organisation by old-age pensions, etc., and in that respect we see that these principles are to some extent in operation already In the case of Government, it pays pensions to its servants. Other employers also often pay pensions. But the real question is whether these things should be organised on the scale on which Europe is organising them, whether the conditions in India are such as to induce us to import wholesale all these principles which have been adopted in England under conditions altogether different from those existing in India. These are considerations which ought to actuate us. Because some means are adopted

on a certain scale in European countries, owing to the necessities of the situation in those countries, is it any reason that we should adopt those means without waiting to consider what their effect will be in our own country? I submit, Sir, that such a policy will not be a wise policy on the part of ourselves. My Honourable friend, Mr. Joshi, might ask "What is the harm in starting an inquiry?" My submission on that point is that Government should spend money only when there is a *primâ facie* case for starting an inquiry, that is, where the conditions are such as to justify the Government in spending money. Every inquiry means money. In the present instance when we know from existing circumstances that a case has not been made out for an inquiry—because conditions here are widely divergent from those existing in Europe, and America, when we know on the face of things that the conditions are such, we should not unnecessarily ask the Government to start an inquiry. I have very little more to say, Sir. In relation to the present question, the principle of compensation already exists in some form or other, in this country, though it may be, in a more or less elementary form, I think, Sir, the ordinary responsibilities of Government should not lead it to take action wherever it thinks action to be unnecessary. The crux of the whole question is, whether in the present case, we should adopt that complicated machinery which exists in the highly organised countries of Europe or America and similar places. I submit, Sir, that the time has not come when India should go in for legislation of a social character like that contemplated by the Honourable Mover of the amendment, and I oppose it.

Rao Bahadur T. Rangachariar: Sir, when I saw this Resolution tabled, I was wondering what had possessed the Government of India in asking the Assembly to affirm the obvious, and when I see there is a friend of the labourer, Mr. Joshi, I now see why the Government of India had felt the necessity for a motion of the kind which has been tabled. One observation, Sir, strikes me, and that is that the Government of India are not doing the right thing nor all they should in sending representatives to the International Labour Conference. I am afraid they are not choosing the right representatives. I think the agricultural interests, the vast interests of this country, are not sufficiently represented at that Conference. I must emphasise this point. Instead of the Legislature being asked to affirm obvious Resolutions of this sort I think this must be driven home to the Members of that Conference that these Conventions should not apply at all to India. Somebody should be there to tell them the real agricultural conditions of India and take note of all these things. I am afraid idealists alone go there without reference to practical politics. (*Mr. N. M. Joshi*: "Mr. Chatterjee had gone"). Then I am sorry I will have to classify him also as an idealist. Probably he is far remote from practical agriculture because he is in high heights and therefore does not condescent to go to his village and look after his land, if he has any. Sir, I think the time will come when we may not be able to cultivate our wet fields, where the unfortunate labourers have to go with bare feet and work in the mire, and my Honourable friend, Mr. Joshi, may tell us "Give them mire-proof boots." All this counsel of perfection may be given to us, and in the meanwhile, the country which is already a poor country will grow poorer. There will be no food to consume. The landlords are poor and the labourers are poor. As regards the plantations, I do not know why an invidious distinction should be made in the case of the plantations. Not that I am quite satisfied with the lot of the labourer there, but improvement is needed in other directions. You can improve their wages. You can remove the

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penal clauses which exist in local legislative measures. I am quite willing to assist Mr. Joshi in those directions. I fail to see, Sir, how all these ideas of social insurance in agriculture are going to be inculcated in the minds of even the educated people in this country, not to speak of the labourers. These are ideas which are quite foreign to this country and which will be quite impracticable. I think we will be landing the country in trouble if we allow things to go on like this. I think, Sir, it is time that the Government of India should send along with Mr. Joshi to the International Labour Conference some real corrective, some heads of Agricultural Departments. I am not sure whether my Honourable friend on my left (Mr. T. V. Seshagiri Ayyar) who himself is a big landlord, and others like him should not go to this Conference at least at their own expense in order to see that such ideas are not promulgated there. I therefore oppose the amendment and strongly support the Resolution.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): Sir, it seems to me that Mr. Joshi in his enthusiasm for the agricultural labourers is undoing the service that he is here to render to the cause of industrial labour. I have not here, a copy of the Draft Convention before me, but so far as I recollect, I think the Draft Convention lays down that no distinction should be made between the measures to be adopted in the case of industrial labour and in the case of agricultural labour. (*The Honourable Mr. A. C. Chatterjee*: "Yes.") That was probably due to the fact that there was a preponderance of agricultural labour representatives at the Conference, who, seeing that all the benefits were going to the industrial labour insisted that the benefits should also be given to them (agricultural labour). Now, we either ratify the Convention or do not ratify the Convention. If we ratify the Convention with regard to agricultural labour also, we are precluded from having a separate legislation for industrial labour. The immediate practical effect of ratifying the Convention or of instituting an inquiry pending the ratification would be that Mr. Joshi and this Legislature will be unable to legislate on the lines of the Workmen's Compensation Bill that is coming before this Assembly in a day or two. I wonder if in his enthusiasm for agricultural labour Mr. Joshi is doing a service to the cause of industrial labour which it is within the sphere of practical politics for this Assembly and for this country to render service to by means of legislation. Conditions in this country do not permit at the present moment of undertaking legislation to benefit agricultural labour, in the same way as you can undertake legislation for industrial labour for this it will be recognized, that this House at the initiative taken by Government has already accomplished much. I there fore think that Mr. Joshi, considering this point, will see his way to withdraw his amendment.

Rai Bahadur S. N. Singh (Bihar and Orissa: Nominated Official): I move, Sir, that the question be now put.

The motion was adopted.

Mr. President: The original question was:

"That this Assembly recommends to the Governor General in Council that no action be taken on the Draft Convention relating to workmen's compensation in agriculture and the recommendation concerning social insurance in agriculture adopted by the Third Session of the International Labour Conference at Geneva in 1921."

Since which an amendment has been moved that:

"At the end of the Resolution the following be added:

'and requests the Government of India to inquire and report to the Assembly what action regarding these matters is necessary and practicable in the case of organised plantations in India'."

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

The motion was negatived.

Mr. President: The question is that the following Resolution be adopted:

"This Assembly recommends to the Governor General in Council that no action be taken on the Draft Convention relating to workmen's compensation in agriculture and the recommendation concerning social insurance in agriculture adopted by the Third Session of the International Labour Conference at Geneva in 1921."

The motion was adopted.

RESOLUTION *RE* PROTECTION OF WOMEN WAGE-EARNERS IN AGRICULTURE.

Mr. A. H. Ley (Industries Secretary): Sir, the next Resolution I have to put forward before the House is in the following terms:

"This Assembly having considered the recommendations concerning the protection before and after child-birth of women wage-earners in agriculture, the night work of women, children and young persons employed in agriculture and the living-in conditions of agricultural workers adopted by the Third Session of the International Labour Conference at Geneva in 1921, recommends to the Governor General in Council that legislation to secure their enforcement should not be introduced at the present time."

I feel, Sir, a little diffidence in moving this Resolution. I recollect, two or three days ago when we were dealing with the Mines Bill, a certain amount of criticism, good humoured criticism I may say, was expressed on the want of practical acquaintance with mine labour displayed by certain Honourable gentlemen who took part in that debate. My friend, Mr. Joshi, if I remember rightly, anticipated an attack from the Honourable Member in the Industries Department that his knowledge of the subject was more theoretical than practical. Well, Sir, I must say that in regard to the present Resolution my sympathies are entirely with Mr. Joshi. I am in much the same position. I shall rightly be accused of having nothing more than an academic knowledge of this subject. But, Sir, while this is no doubt the case, I claim to yield to no one in my consciousness of the serious importance of the subject. It relates to matters which do merit the serious consideration of this House, as far as certain kinds of work are concerned. But I think it is obvious to everybody, whether he has any practical or any theoretical acquaintance with the subject, that as far as agricultural work is concerned, legislation of this kind is, in present day conditions in India, not only unenforceable and unnecessary but quite beyond the sphere of practical politics. I will just go through these recommendations. I have grouped them together in one Resolution for the sake of brevity. They all relate to more or less kindred subjects. The first one deals with protection before and after child-birth. The recommendation runs as follows:

"The General Conference of the International Labour Organisation recommends that each Member of the International Labour Organisation take measures to ensure

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to women wage-earners employed in agricultural undertakings protection before and after child-birth similar to that provided by the Draft Convention adopted by the International Labour Conference at Washington for women employed in industry and commerce, and that such measures should include the right to a period of absence from work before and after child-birth and to a grant of benefit during the said period, provided either out of public funds or by means of a system of insurance."

It will be observed, Sir, that the recommendation refers back to a Draft Convention passed at Washington, I think it was in 1919 (if I am wrong in my dates my friend the Honourable Mr. Chatterjee will no doubt correct me). That Draft Convention sought to impose compulsory absence from work for a period of six weeks before and after child-birth of women labourers in industrial and commercial undertakings and to provide for compulsory maternity benefits. There were other provisions as to the production of medical certificates regarding the condition of women during these periods. That Convention has not, like the Convention I was dealing with in my previous Resolution, been laid before this Legislature for the simple reason that India was never asked to ratify it; presumably because it was realised that it was premature to apply it to this country. India was not asked to ratify it, but was asked to make a study of the question. India was asked by a Resolution passed at the Washington Conference " to make a study of the question of the employment of women wage-earners before and after confinement and of the maternity facilities before the next Conference and to report on these matters to the next Conference." Well, that inquiry was made. It was made of all Local Governments and of everybody interested in the subject and a report was drawn up and was laid before the next Conference at Geneva in 1921. The result of those inquiries was that all Local Governments and everybody consulted were agreed that it was beyond the sphere of practical politics to adopt them at this time in connection with industrial workers. It will be obvious that it would be equally impossible to adopt a measure of this kind in respect of agricultural workers. The conditions of life of course are in their case much healthier and therefore the need is much less urgently felt. I pass now to the other parts of this Resolution. As regards the recommendation regarding the night work of women, children and young persons employed in agriculture, I do not think I need read these recommendations out,—they simply provide for a period of rest at night time—9 hours in the case of women and young persons and 10 hours in the case of children. Everybody knows—even I know,—that women and children in this country do no agricultural labour at night; even during harvest time they do not work at night at all; I believe I am correct in saying that,—and what is more, it is obvious that if you pass legislation of this kind, it will be quite impracticable to enforce it. It is easy enough in the case of industries for which there are factory inspectors; I do not know whether you contemplate having agricultural inspectors in all the villages of the country, groups of villages all over the country, looking to see when women go to bed and when they get up in the morning. It is clearly cut of the question. Finally, Sir, I must refer to the living-in conditions of agricultural workers. I think I must read the recommendation out, though it is somewhat longer. The General Conference of the International Organization recommends:

"That each Member of the International Labour Organisation, which has not already done so, take statutory or other measures to regulate the living-in conditions of agricultural workers with due regard to the special climatic or other conditions affecting agricultural work in its country, and after consultation with the employers' and workers' organisations concerned, if such organisations exist."

Secondly:

"That such measures shall apply to all accommodation provided by employers for housing their workers either individually, or in groups, or with their families, whether the accommodation is provided in the houses of such employers or in buildings placed by them at the workers' disposal."

And thirdly:

"That such measures shall contain the following provisions:

(*a*) Unless climatic conditions render heating superfluous, the accommodation intended for workers' families, groups of workers or individual workers, should contain rooms which can be heated;

(*b*) Accommodation intended for groups of workers shall provide a separate bed for each worker, shall afford facilities for ensuring personal cleanliness; and shall provide for the separation of the sexes. In the case of families, adequate provision shall be made for the children;

(*c*) Stables, cowhouses and open sheds should not be used for sleeping quarters."

And finally—this is important:

"That each Member of the International Labour Organisation take steps to ensure the observance of such measures."

The International Labour Organization, I may say, did not indicate what kind of steps would be practicable in a vast agricultural country like India; obviously it is not practicable. Indeed, Sir, it is also obvious that this particular recommendation was framed solely with a view to conditions in certain parts of European countries,—it was clearly also framed, I think, more to provide for the moral than the material well-being of agricultural workers in certain circumstances. No one can suggest, I am the last person to suggest, that there is an evil of this sort to be dealt with in India at all, as far as agricultural workers are concerned,—and I say that it is all to the credit and fair name of India that that is so. I can say this with absolute certainty of the full support of the House.

I move the Resolution, Sir.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, I rise to oppose the Resolution. The Resolution contains the words "at the present." What is the present time? What is the real situation now in the country? My friend, Mr. A. H. Ley, has not described that. And if, Sir, this Convention of the Third Session of the International Labour Conference at Geneva have passed and accepted this recommendation, why does it not suit India? If it suits labouring women in other countries why is it not suitable for our labouring class women here? Are they not persons who deserve the same sympathetic treatment as the agriculturists and labourers across the sea in other countries? These are the people who pay five rupees Chaukidari tax per year and these are the people whom we represent here in this Assembly. On Mr. Ley's previous Resolution speaker after speaker spoke, and Mr. Joshi tried to move an amendment to the main Resolution on the right direction. But my friend from Poona, who must be sitting in a non-Muhammadan seat, is probably a contractor, and therefore possibly he likes to see the miserable condition of the labourers continuing to the profit of the contractors of this country. From such people, these unfortunate agriculturists and labourers can have no sympathy. He tried to twist the tail of my friend Mr. Joshi, because he had moved the amendment which did not suit his views. As a matter of fact, Sir, Mr. Joshi is a nominated Member representing the labour of India. Mr. Joshi was sent by the Government of India, who picked him up as the representative of Indian labour to go across the Mediterranean

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to represent India at that Conference last year, and I supposed the year before as well, 1921-22. My friend, Mr. Joshi, unhappy man, wanted to ameliorate the conditions of these poor people. Government allowed him to represent India at the International Labour Conference held at Geneva, but now when he speaks on behalf of the people, what is the answer of the Government? He is thrown over-board. Mr. Ley says that his own Resolution is the best and therefore it should be carried. I wish the Government of India had sent Mr. Ley as their own representative and not of the people across the Mediterranean. I know the facts, Sir. Government and not the people of this country are represented. I know that my friend the Honourable Mr. Chatterjee was sent to represent India, also his colleague, our intimate friend, Mr. J. N. Gupta, who wanted to take a trip on account of ill-health. These gentlemen were sent instead of the Government selecting persons who are real representatives of the country and are the fittest persons to represent India at the International Labour Conference at Geneva. Yes, Sir; a one-sided statement has been made on behalf of the Government by Mr. Ley that effect should not be given to the recommendations of the Labour Conference at Geneva giving concessions to workmen and labourers. Sir, if it suits the civilised people, the labourers and the agriculturists of the West, it will suit certainly the labourers and agriculturists of this country as well; otherwise it is a shame. Members representing these poor people have come here to ameliorate their condition. We are not here to support the Government, every Member of which is drawing a salary after every 30 days. Here I quote Lord Curzon. Lord Curzon while inquiring into the condition of the agriculturists and the labouring population of India, said that these persons, *viz.*, the agriculturists and the labouring classes, are the backbone and the sinews of the country. Every copper that comes from their pocket is an addition to the revenues of the country, and their case should be considered and condition looked into by the Government. Is this the time, may I ask, is this the proper time, for Mr. Ley to move a Resolution not to give effect to the recommendations of the International Labour Conference at Geneva? It is given effect to in the case of the agriculturists and labourers of those prosperous countries and we protest against effect not being given to the recommendations in the case of the miserable agriculturists and labourers of this poor country. My friend, Mr. Rangachariar, speaking for the landholders of Madras, said in regard to the other Resolution that this sort of concession is not fit for Indian Labour. He represents the Non-Muhammadan labourers and agriculturists. He forgets that the agriculturists and the labourers have been paying Chowkidari tax. He is supposed to represent them and do things which are proper and fit for the country and to try to uplift the condition of these poor agriculturists and labourers. Mr. Mukherjee, who himself is a landholder and who represents the landholders, forgets the poor condition of the millions which form the great majority of the population, especially in the province of Bengal. I suppose, Sir, this Resolution which Mr. Ley has moved is not a properly worded Resolution. My friend says that he has consulted all the provincial Governments and some other persons with regard to the actual situation. I want to know who those other persons were. My friend is putting his case probably in a one-sided way—as we say sometimes in legal language, "the judgment of the learned Judge is one-sided and not properly worded and explained. It is a stereotyped one." And that is the summary way in which a case has been put in the Assembly for this House to accept. A Resolution of

this description, Sir, is an obstacle in the path of progress of this country, and in the path of progress of the world. Why should India be kept out like this, and why should not these poor people have the same kind of concession given to them as the people of other civilized countries? And why should not India and the people of this vast country be properly represented at the International Labour Conferences? I know, Sir, the secret fact. It is not easy to pick out a man from the West to represent this country, and thereby the poor unhappy people of this country of more than 300 millions most of whom are agriculturists are left without any light. They are totally ignorant because they are kept ignorant. My Honourable friend, Mr. Ley, at the time he was moving the Resolution, said that the Indians are very orthodox and said that these agriculturists have got different religions and different castes (I hope I am not wrong), but how does the question of caste come in with regard to this concession being given to these poor people?

Mr. A. H. Ley: Sir, I never said anything about caste at all.

Mr. K. Ahmed: Different kinds of people having different ideas in this country. If a child is dead, whether the child is an Indian child or a mixture, or whatever that child may be, the concession for that poor unhappy child is the same in this country as the concession for a child of a prosperous country. The International Labour Conference at Geneva has passed this concession and we are here to act according to it, but my friend says no, this is the recommendation of the Governor General in Council that this legislation to secure enforcement should not be introduced at the present time. The time is very bad, Oh! it is a troublous time, any my friend might say that there is a war going on, the Bolsheviks might come. Indian children might become prosperous; they will be properly educated; they will be properly fed; they will be strong enough to ameliorate their own condition, and then there will be the time when from the department of my friend, Mr. Innes, a Resolution of this kind should be moved. And we representing the people of this country, are we here to support that sort of proposal of the Government Member in charge? Sir, I vehemently oppose the Resolution and think it should not be accepted by this House.

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

"At the end of the Resolution the following be added:

'and requests the Government of India to inquire and report to the Assembly what action regarding these matters is necessary and practicable in the case of organised plantations in India'."

Sir, at the outset may I make one request to those people who would like to criticise my amendment, that they should first take care to understand the terms of the amendment and then criticise it. Sir, I will again bring to the notice of the Honourable Members of the Assembly that my amendment does not touch the whole agricultural sphere. My amendment only touches agricultural work as confined to the organized plantations. If any Honourable Members here want to criticise my amendments let them show that no action need be taken or can be taken in the case of these organized plantations. If I am going to be held responsible for remarks which I do not make or for terms which I do not put in my amendments, it will be difficult for me to make any reply to such critics.

Sir, the original Resolution deals with 3 or 4 things. It says that no legislative action should be taken as regards the protection of women

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before and after child birth, no action should be taken as regards the prohibition of the employment of children in agriculture nor as regards certain improvements in the living-in conditions of agriculturists and as regards the prohibition of night work of women, children and young persons employed in agriculture.

Now, I wish to take each of these items, one by one. In the case of legislation for the protection of women before and after child birth, may I again draw the attention of the Honourable Mover of this Resolution to the fact that already on organized plantations a good deal is being done by employers in helping women during their pregnancy. I shall only read one or two sentences from the same report from which I quoted a few minutes back:

"The Budla Beta Tea Company give leave for three months before and three months after birth with full pay for the whole period."

"The Doom Dooma Company allow a similar period of leave with five seers of rice a week, free of cost, and Rs. 1/8 in cash."

Several other companies mentioned in this report make provision for the protection of women before and after child birth. But, Sir, in a case of this kind, it is necessary that there should be legislation, otherwise, those employers who are generous-hearted and who are willing to spend money, cannot do so on account of the fact that our industries are based on the system of competition. The employers, who are generous-hearted, cannot introduce reforms because they feel that they will be beaten in competition by their less generous rivals. For this reason, in order that the condition of the working classes may be improved, there should be legislation. And it should not only be national legislation, but it has been found that, unless all countries join and there is international legislation, there cannot be much improvement in the condition of the working classes.

Sir, my critics will find that, when I ask that there should be legislation for the protection of women before and after child birth, I am not asking for something ideal. My plan is not merely theoretical or the plan of an idealist; it is being put into practice by a large number of generous-hearted people like my Honourable friend, Mr. Jamnadas Dwarkadas: it is not only the plan of an enthusiast who talks without practical experience.

The second question, Sir, is that the employment of children should be prohibited during their childhood. Now, I will also read something about conditions on plantations.

It has been found that when schools are started on these plantations at the suggestion of Government or by the free will of the planters, they do not get sufficient students. Why? Because—I will explain the reason which is given by the Committee—in the first place, children are a valuable asset to the garden—their work is a valuable asset to the garden; they are earning a welcome addition to the family income. Therefore the employers gain and the parents gain by the employment of children. But is it right that children should be so employed?

Mr. A. H. Ley: Sir, I rise to a point of order. There is nothing in this Resolution about the employment of children at all except at night.

Mr. N. M. Joshi: I am sorry and I apologise to the House. There is the question of night work for children and night work for women. Sir,

nightwork has been prohibited by our factory law both for young persons as well as for women. It is not a new thing that we are going to introduce. The legislation for prohibiting night work exists in India. My amendment only seeks that that legislation should be extended to women working on these plantations. Sir, there are real dangers for women if they have to go out and work on these plantations at night. I do not wish to dilate on these dangers here; I may do so on some other occasion. Then, Sir, there is the question of the living-in conditions. I want Government to find out whether they can legislate for improving the living-in conditions of the workers on plantations. As a matter of fact, while speaking on the last amendment, I did tell my Honourable friend that there exists some legislation on the statute-book of the Government which provides for improving the living-in conditions of workers on plantations. If he refers to sections 132, 133 and 134 of the Assam Labour and Emigration Act, 1901, he will find that that Act makes provision for house accommodation, water supply, sanitary arrangements for labourers, supply of foodgrains, provision for rest, for medical attendance, etc. These matters have been dealt with by legislation by the Government of India as regards the very people for whom I want legislation. The only difference is this—this Act was intended for people who entered into contracts for which there was a punishment of imprisonment. Now those contracts in a large number of cases are not now made. But there is a very large number who are free labourers. My one contention is that the benefit of this legislation which already exists for the contract labourers, should be given to free labourers. Sir, is there any Member here who will say that they will give the benefit of such beneficent legislation only to those who enter into what are called penal contracts, but they will not give its benefit to the free labourers. Everyone will see now that there is no difficulty in legislating on such matters. Legislation exists. The only thing is that we give the benefit of such legislation to a workman when he is prepared to sell his liberty and to become a slave. My friend, Mr. Kamat, has no objection to the legislation passed on these lines. But if a labourer wants to be free, then, he is not to benefit from such legislation. Sir, this is the democracy which unfortunately I have to see in this Assembly.

Sir, it has been said by my friend, Mr. Rangachariar—"How can we legislate only for planters?" As a matter of fact there is no difficulty. We have been doing that all along. When we legislated in the matter of industries, we legislated only for the organized industry. Our Factory Act defines a factory as a place, a workshop where there are 20 people employed and where there is some mechanical power used. We do not legislate all the industrial workers at all. So, what is the difficulty that he finds when we want to legislate only for the organized factories. We therefore can legislate for organized plantations, and there is no difficulty There is no discrimination if we legislate for organized plantations, because we have been doing that.

Then, Sir, my Honourable friend, Mr. Jamnadas Dwarkadas, without troubling to understand the terms of my amendment said that I wanted the ratification or non-ratification to be hung up. I do not want that. My amendment does not say that any action need be taken for the present but that an inquiry should be undertaken.

Mr. Jamnadas Dwarkadas (Bombay City: Non-Muhammadan Urban): It would be implied.

Mr. N. M. Joshi: I do not see how it can be implied. I have not changed the original words of the Resolution at all. I accept that no action should be taken for the present, I accept that part of the Resolution. I only say that you should begin an inquiry. If you want to write to the International Labour office to-day, write that you cannot take any Legislative action to-day. But there is nothing to prevent your making an inquiry even from to-day. Then, Sir, some capital is made out of the fact that the terms of the Convention cannot be changed and that if we want to accept it the whole of it should be accepted. That is true. But what prevents your taking action here? If you cannot accept the convention to its very letter, it does not prevent your taking action in the spirit of the convention. I cannot understand, Sir, what prevents our taking action in the spirit of the convention. After all if my Honourable friend, Mr. Kamat, or if my Honourable friend, Mr. Jamnadas Dwarkadas, consent to vote for some legislation in favour of labour, do they do it for the sake of the International Labour Conference, or do they do it for the sake of their country and for the sake of their countrymen? If they are not doing it for the sake of the International Labour Conference, there is nothing wrong in their not ratifying the convention, and at the same time taking some action. I therefore hope that my amendment will find favour with this House.

Sir, there is only one word more. Some people wonder why I go on moving amendments when there is not much support to my proposals. Sir, I am an optimist both by nature and by training. I do not despair. If only a few people vote with me and none speaks for my proposal, I hope there will be a time and not a very distant time at that when instead of one man speaking for labour there will be several Members speaking for labour in this House. I feel sure also that there will be a time when the labour Members make speeches people like my Honourable friends, Mr. Jamnadas and Mr. Kamat, instead of trying to pour ridicule on them will consider themselves fortunate if the labour Members smile upon them or speak to them a word or two. With these words, I put my amendment before the House.

The Honourable Mr. A. C. Chatterjee (Education Member): Sir, it has often been my very pleasant duty to be associated with my Honourable friend, Mr. Joshi, in advocating the cause of labour in this House, and it is with the greatest regret especially after his most eloquent peroration that I rise to oppose his amendment. Mr. Joshi, Sir, is an idealist; I have also been described with a certain amount of sarcasm during this morning's debate as an idealist; but I think, Sir, that I am not quite as impatient an idealist as the Honourable Mr. Joshi. That is why, Sir, I feel that I cannot agree with Mr. Joshi's views as propounded in the present amendment. My difficulty is entirely a practical one. Mr. Joshi wants an inquiry made into the possibility of certain reforms being carried out in organised plantations. On the first Resolution which we disposed of a little while ago, Mr. Joshi defined organised plantations as places in agricultural districts where a certain number of persons worked under one master and in one locality. Sir, if that definition is followed, I think we will have probably to include practically every Zemindar, every land-holder, practically every large tenant cultivator in the whole of India. Does Mr. Joshi wish us to make an inquiry of this all-embracing character? As a matter of fact, Sir, the Government of India have not been neglectful in this matter. They have made inquiries. Mr. Joshi himself has quoted

copious passages from the Report that has quite recently been made in Assam over the conditions prevailing in plantation labour there. That only indicates, Sir, that the matter is already engaging the attention of the Government of Assam. Similar inquiries on specific subjects have been made in the Dooar tea plantations in Bengal. On the earlier occasion Mr. Joshi said that no inquiries have been made with regard to workmen's compensation being extended to agriculturists all over India. Mr. Joshi knows perfectly well that inquiries had been made. On the original letter that was issued by the Government of India, it had been distinctly stated that the Government of India would like to know whether the provisions regarding workmen's compensation could be applied to agricultural workers or not. Mr. Joshi says that certain provisions are already made in the Assam Labour and Emigration Act, and therefore it is quite in the competence of Government to make further provisions. Earlier during the morning, Sir, Mr. Joshi passed very laudatory remarks with regard to the Government of 20 years ago as compared with the Government of to-day. I do not wish, Sir, to defend the Government of to-day, but I leave it to the House to determine whether the Government of to-day has been behindhand in the matter of social and economic legislation. As a matter of fact, Sir, Mr. Joshi himself has given the answer to his own question. He pointed out that the Assam Labour and Emigration Act applied to persons who entered into certain penal contracts, and it was the duty of the Legislature, it was the duty of the State particularly to protect those persons. When free contracts are made, when an agricultural labourer goes and works for a tenant cultivator or for a landholder, I do not think it is particularly incumbent on the State to make provision for his well-being unless a special case is made out for such provision. Mr. Joshi has not given an iota of fact to prove that conditions amongst agricultural labourers either in the plantations or elsewhere are bad. There is no necessity for any special inquiries beyond those that are being made by Government, and those that have already been made.

Similarly, Sir, Mr. Joshi wanted legislation prohibiting the night work of women and children in agriculture. My Honourable friend, Mr. Ley, has already pointed out that even if legislation is adopted it would be absolutely impossible to enforce such legislation. We, in India, Sir, have always taken care, we have always taken credit to ourselves that when we do pass legislation, we take steps to enforce that legislation; we do not want shop-window legislation.

Then again, Mr. Joshi has talked about living-in conditions. My Honourable friend, Mr. Ley, has already read out the passages from the draft recommendation on this point. While we were at Geneva, Sir, we took care to point out to the Conference there that these recommendations were absolutely inapplicable to the conditions prevailing in India. I know my Honourable friend, Mr. Rangachariar, has taken us to task for not having done our duty at the Conference. I think, Sir, if he had only taken the trouble to read the reports of the Conference, he would not have accused us of indifference towards the interests of India. We pointed out there that those conditions were absolutely inapplicable to India. But, Sir, these International Conventions are passed not with reference to the needs of any particular country but with reference to the needs of the whole world. As a matter of fact, we did succeed in carrying a suggestion that these recommendations, these proposals regarding agriculture, instead of being embodied in Draft Conventions which have a very much stricter

[Mr. A. C. Chatterjee.]

authority, should be embodied as Recommendations. We did succeed to that extent, and this House has not got the same responsibility with what are technically called Recommendations as they have with regard to Draft Conventions. I do not think, Sir, that my Honourable friend, Mr. Joshi, has made out a strong case, or for that matter, any case whatever for the acceptance of his amendment by the House, and with all due respect to his love for labour and the work that he has done for the betterment of the conditions of Indian labour, I respectfully beg this House not to accept his amendment.

Munshi Iswar Saran (Cities of the United Provinces: Non-Muhammadan Urban): Sir, I had no idea at all of taking part in this discussion, but the remarks made by some of the speakers incline me to the view that I should not let them pass unchallenged. Sir, I am not one of those who invariably express approval either of Government action or of Government choice, but I must say that Government were very wise in sending Mr. Joshi as our representative. (Hear, hear). Remarks have been made, which, when read outside this House might lead to the impression that Mr. Joshi had not our confidence. I wish to say that Mr. Joshi has our confidence, and we wish to pay our tribute or admiration for the work that he has done outside India and for the work that he is doing in this country. It has been said, Sir, that Mr. Joshi has got the vocational disease, but some people have got the ague of sobriety, which leaves them cold, and it is impossible for them to be moved to action or to any generous impulse or generous enthusiasm. If Mr. Joshi under the influence either of vocational disease or under the influence of patriotism is moved to action, it is not open to those who may perhaps be dead to those impulses to cast reflections upon him. Sir, I deprecate those references, and I protest against the remarks that have been made by some of the speakers here in this hall. Whom do they want to send? Some big landholder who engages thousands upon thousands of coolies to represent labour? (*A Voice*: "Why not?") Well, why not send a wolf to represent the sheep?

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I had not intended to intervene in this debate, but my Honourable friend, Munshi Iswar Saran, as he usually does, tries to please when he says he is not out to please. All that I said was that the Government of India should associate others with him and not that they did wrong in sending Mr. Joshi. It was far from my intention to say so. What I said was that the Government of India should associate other people with the deputation to represent the actual conditions from their point of view.

Mr. N. M. Joshi: You won't like that.

Rao Bahadur T. Rangachariar: Some employers may be represented, and not the landlords.

Mr. N. M. Joshi: If landlords sleep, what can be done?

Rao Bahadur T. Rangachariar: If they sleep, it is the duty of the Government of India to awake them, it is the duty of Mr. Joshi to awake them. But I do not think that they are really sleeping. We in this country do not think that these Labour Conferences really represent India or Indian views. That is the view we take. We do not take them seriously. It may be wrong to do so.

Well, now, to turn to the subject having regard to practical conditions, let us take the case of night work of women, what is night? After 6 P.M. I suppose it is night. (*A Voice*: "After 10 P.M.") Well, if it is after 10 P.M I do not think even men work after 10 P.M. It is very very seldom that even men work after 10 P.M. and that too perhaps in the very busy harvest season. There may be some work to be done after 10 P.M., but it is very rare indeed. I have not come across such cases even in our temperate climate in Madras where people like to spend their nights in the open rather than inside a house or a shed; even there their work seldom goes beyond 10 P.M. Well, mention has been made about pregnant women. I think work for pregnant women will do a lot of good before delivery. In fact, women of the working classes have their confinement very easily, whereas for women who are confined to their homes like our girls in their luxurious homes, we have to employ midwives and nurses and sometimes call in doctors; who can deny work outside in the open air does them a lot of good. After all, what is the work that these working class women do? They pluck leaves, remove weeds, they transplant, and they take their hours of work easily. I do not know whether it does them any injury at all. Three months before child-birth and three months after child-birth! Can any country afford to get labour at such a cost? I ask this question in all earnestness. I hope I am not conservative or orthodox in these matters. Orthodox I may be, and very crude perhaps I may be supposed to be, but I am bound to give expression to my views in this matter. Does my Honourable friend, Mr. Joshi, really expect labour women in this country to desist from labour for three months before child-birth and three months after child-birth? My Honourable friend read that some generous planter has made provision like that. If it is true, he must be a very generous man indeed. I do not think I can find the like of him in this world—at any rate not in the provinces of this country. (*Mr. K. Ahmed*: "What about other countries"?) We are not in other countries. We are here for India, and we are here to legislate for Indians in India. We are not in other countries. This is a counsel of perfection. Even in your own homes, do not your women work generally in that period? Do they not draw water from wells, and attend to all other domestic work? These are idealist's theories incapable of being carried into effect. Does my Honourable friend, Mr. Kabeer-ud-Din Ahmed, observe this rule with reference to his own servants? (*Mr. K. Ahmed*: "I do.") I am glad to hear that. Then, Sir, as regards these various living-in conditions which were mentioned, what is to be done? Take any planter. Take a planter in the Nilgiris. What do you expect him to do? You want so many rooms, you want so much accommodation. You know our gregarious habits. We live in a joint family system. The people would put up with any amount of inconvenience and live in the same house. Even if you provide a separate house, they won't go in there. Therefore, I think these are conditions which are incapable of being applied in this country. I quite sympathise with the object of improving conditions of labour and their wages. By all means remove all the penalties provided by special legislation for the benefit of the planters and enforced labour. But at the same time, where free labour is resorted to why should we interfere? I do not think that all planters after all are so bad as we suppose them to be and as they are painted. After all they have brought wealth to this country. The hills which were wastes have been brought under cultivation and they have got good seasons and bad seasons too. I know many a planter went to ruin in Mysore, in Nilgiris and in Wynad. I do not think it is after all correct to assume that they

[Rao Bahadur T. Rangachariar.]

are making huge fortunes. Therefore, I do not think these are practical propositions. I therefore heartily support the Resolution and I am sorry with all respect to my friend, Mr. Joshi, that I cannot support his amendment. I do not want to cry down his work. In fact, I won't say this. It is not necessary for me to say this but for the fact that Munshi Iswar Saran supposed that I did cry down Mr. Joshi's work. I disclaim any such intention on my part. On the other hand, I have every admiration for his work. But at the same time I consider him an idealist in these matters.

Mr. N. M. Samarth (Bombay: Nominated Non-Official): I move, Sir, that the question be now put.

The motion was adopted.

Mr. President: The original question was that:

"This Assembly having considered the recommendations concerning the protection before and after child-birth of women wage-earners in agriculture, the night work of women, children and young persons employed in agriculture and the living-in conditions of agricultural workers adopted by the Third Session of the International Labour Conference at Geneva in 1921, recommends to the Governor General in Council that legislation to secure their enforcement should not be introduced at the present time."

Since which an amendment has been moved that:

"At the end of the Resolution the following be added:

'but so far as the organised plantations are concerned requests the Government of India to consider the advisability of undertaking legislation to introduce these reforms'."

The question is that that amendment be made.

The motion was negatived.

Mr. President: The question is that the Resolution be adopted.

The motion was adopted.

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

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

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: The House will now resume consideration of the Bill further to amend the Code of Criminal Procedure, 1898 and the Court fees Act, 1870.

Mr. K. B. L. Agnihotri (Central Provinces, Hindi Divisions: Non-Muhammadan): Sir, I beg to move:

"That in clause 47 in the proposed sub-section (1) clauses (*b*) and (*c*) all words after the words 'is subordinate' be omitted."

Sir, under section 195 in the existing Code, it was laid down that the Magistrate was not to take cognisance of any of the offences enumerated therein without the sanction of the Court concerned or of the Court to which it was subordinate and under the present Bill and its proviso, we have removed

the provision requiring the sanction and have retained that the cognisance could only be taken on the complaint of that court or the complaint of the court to which it is subordinate. We also go a step further and provide that the court can also take cognisance of the offence on the complaint made by order of or under authority from the Local Government. I beg to object to and move the removal of this additional clause which provides that cognisance may also be taken on the complaint made by order of or under authority from the Local Government. Sir, by the omission of a provision of this kind I am sure the administration of justice will not be hampered in any way. The courts in which the offences specified in this section are committed will be watchful and competent enough to file a complaint as required and in cases in which the courts concerned have not filed a complaint, the Local Government could if thought desirable, request those subordinate courts to take such action. It is not necessary to provide herein that the complaint be filed by order of the Local Government or under their authority. It will not only encumber the provisions of this Code but will also be undesirable in the ends of justice. For instance, where a Local Government orders the filing of a complaint before a subordinate Magistrate of the district, the subordinate Court will naturally think that that complaint has been filed by the Local Government, after good and thorough consideration of the facts concerned, and that the Local Government's opinion formed after consideration of these facts must be very sound and, on that basis the Magistrate will have no alternative in his own mind but to convict such person. Therefore, Sir, I suggest that this provision authorising the filing of the complaint on orders of the Local Government be deleted. Moreover, Sir, the provisions that have been provided in these two sub-clauses (*b*) and (*c*) relate to the offences that have been committed in the Courts during the trial of cases before them and they relate to such offences, for instance, perjury, making false statements or using them as true or filing false or fraudulent suits, removing property from being taken possession of under processes of the Court or for contempt of Court or filing or using as genuine forged documents. For these offences committed in courts it is unnecessary that the Local Government should order the filing of a complaint. The Magistrate in whose courts these offences have been committed or their superior courts will be the best persons to decide whether or not such complaints be filed; therefore, I suggest, Sir, that this provision be deleted.

Mr. President: Amendment moved:

"In clause 47 in the proposed sub-section (1), clauses (*b*) and (*c*), omit all words after the words 'is subordinate'."

The Honourable Sir Malcolm Hailey (Home Member): It is true, that this is an addition to the existing Code. The reason for making it is given in the Report of the Lowndes Committee,—which I would again remind the House was not a Government Committee in any sense of the term. Section 195, they thought, caused constant difficulty:

"We have no doubt that it will not be possible to remedy the evils which are connected with this section so long as private individuals are allowed to prosecute for offences connected with the administration of justice. In our opinion, the only effective way of dealing with this section is to allow a prosecution to be launched only by the Court or, in exceptional cases, by the Local Government—who no doubt before long will be represented in such matters in their own provinces by a Director of Public Prosecutions."

It was intended therefore to provide only for exceptional cases in which the Local Government might find good reason for launching a prosecution. Mr. Agnihotri says this is dangerous—because if the sanction or complaint

[Sir Malcolm Hailey.]

is made by the Local Government, the Magistrate will no doubt consider that such complaint could only have been made after due and proper consideration. In that, of course, my Honourable friend is quite right; such a complaint would only be made after due and proper consideration, but I see no reason why Mr. Agnihotri should use this as an argument against allowing a complaint to be made by the Local Government.

Mr. K. B. L. Agnihotri: It will be prejudicial to the accused.

The Honourable Sir Malcolm Hailey: Why it should be prejudicial to the accused that the complaint is made only after due and proper consideration is a mystery which I will not attempt to solve. He has forgotten, I think, equally that we have the sanction of the Local Government in such a case under section 196. Is that, again, prejudicial to the accused? If so, I think that it is worthy of note that no body has so far ever attempted to amend section 196—indeed in the whole course of our exceptional legislation, if I may say so, there has been one continual demand on the part of critics, namely, that prosecutions should not be launched without the sanction of the Local Government; and there is, of course, very little difference in so far as it affects the accused between the Local Government lodging a complaint through the proper agency and the Local Government giving sanction to the complaint. But I have given the sole reason, why this addition has been made in this section of the Bill.

Dr. H. S. Gour (Nagpur Division: Non-Muhammadan): Sir, after hearing the Honourable the Home Member I feel convinced that the amendment is right and the explanation given by the Honourable Home Member is both unconvincing and wrong. Honourable Members will find that the offences categorised in clause (*b*) of section 195 are offences described in the Indian Penal Code as offences committed in the course of judicial proceedings, except in very exceptional cases to which I need not advert. The Honourable the Home Member has referred to the difficulty which both judges and practitioners felt in the working of section 195 coupled with section 476 of the Code of Criminal Procedure. I shall briefly advert to that difficulty. Under the existing law the courts were empowered either to complain on the motion of the party aggrieved or *suo motu* in respect of any offence committed in the course of proceedings before them. If they complained the matter was not open to revision and the accused had no redress except in a trial held in pursuance of that complaint. If, on the other hand, the court merely recorded a sanction for the prosecution of the accused, the accused had the right of appeal and revision, and the order of the court concerned was revisable both by the court of appeal and the ultimate court of revision. The difficulty to which Sir George Lowndes and his Committee advert is a difficulty of a different character upon which the High Courts in India have been at variance. The difficulty was not so much with reference to the complaint or sanction under section 195, but with reference to the inquiry possible under section 476. So far as the question of complaint is concerned, no difficulty arose, but when the question of granting a sanction to the party aggrieved was concerned, it sometimes happened that the person obtaining sanction did not prosecute the case within six months and he came to terms with the would-be accused; and there were other difficulties. These are the difficulties which confronted Sir George Lowndes' Committee and it was suggested by that Committee that it should do away with the distinction between complaint and

sanction. I welcome that change. So far as the artificial distinction between complaint and sanction was concerned the present Bill is an improvement. But when it goes further and arms a Local Government with the power of ordering a prosecution or complaining, as required by section 195, clauses (*b*) and (*c*), there is occasion to pause and consider. The Honourable the Home Member has told the Honourable Members here what differences there are between a complaint made by a court and a complaint made by the Local Government. Surely, Sir, the Honourable the Home Member could not be unaware of the fact that a complaint made by a court is made by a judicial authority after hearing all parties concerned, while a complaint by a Local Government is made by an executive authority without giving the party aggrieved any chance of complaint or redress in the lawfully constituted courts of the country.

3 P.M. That is a vital difference between a complaint of a judicial officer and a complaint by an executive authority. I, therefore, submit that the distinction between the two must be borne in mind by Honourable Members before they record their votes. Then, it has been said by the Honourable the Home Member, what difference would it make if the Local Governments are empowered to complain under section 195, when, as a matter of fact, they had possessed the power of complaining under section 196? Honourable Members have merely to advert to section 196 to see the difference between the two sections and the power of the Local Government in the one case should not be extended in the case of the other. Let me read to Honourable Members section 196 to which reference has been made from the Government Benches. That section, Sir, reads as follows:

"No Court shall take cognizance of any offence punishable under Chapter VI of the Indian Penal Code (except section 127), or punishable under section 108A, or section 153 or section 294A or section 505 of the same Code, unless upon complaint made by order of, or under authority from, the Governor General in Council the Local Government, or some officer empowered by the Governor General in Council in this behalf."

These, Honourable Members will observe, are disabling provisions which prevent any complaint being lodged except upon the motion of the Local Government, while section 195 (*b*) and (*c*) are intended to extend the powers of the Local Governments by placing within their jurisdiction cases which would not otherwise be within their jurisdiction. That is a difference, and, I submit, a very important difference. The analogy of section 196 is rather against the contention raised by the Honourable the Home Member and not in favour of it. It simply places an embargo upon all complaints against certain persons and in respect of certain offences except on the complaint of the Local Government. It is intended to protect certain persons from vexatious and frivolous prosecutions. That is not the object of the amendment which is inserted in clauses (*b*) and (*c*) of section 195. These clauses are intended to give the Local Government, as chief executive authority, power to initiate prosecutions on their own authority and it is that which is the gravamen of my friend, Mr. Agnihotri's contention. Mr. Agnihotri, Sir, has rightly observed, that, constituted as the Courts are in this country, it is very difficult for the poor accused to defend himself against a prosecution launched under the ægis of the Local Government. The Courts will assume: 'Here is a prosecution launched by no less a person or body than the Local Government. This man who stands here to defend himself has not a ghost of a chance.' The prosecution, I submit, play with loaded dice, the defence on the other has a forlorn hope. That, I submit, is the danger of arming the executive

[Dr. H. S. Gour.]

Government with a further power of complaining and ordering prosecutions. Sir George Lowndes' Committee contemplated, Sir, the institution of the office of a Director of Public Prosecutions, and if I understood the report of the Committee aright, they wanted to do away with section 195 as such and to substitute therefor an independent machinery for the purpose of dealing with cases referred to in section 195. That is entirely a different matter. If the Government had introduced in the present Code an amendment to the effect that all prosecutions against public justice for perjury, making false charges and the rest, are hereafter to be investigated and initiated by a special judicial officer, call him either the Director of Public Prosecution or the Prosecutor General as the case may be, and that officer will give the party aggrieved a chance of defending himself and showing cause why the order against him should not be recorded, I do not think this House would have any ground for complaint. It would be the creation of an independent tribunal to examine and judge of the *primâ facie* culpability of the persons against whom such prosecutions are initiated; but to give this power of a purely judicial character to an Executive Government who will not hear the accused, who will act *in camera*, and order prosecutions, is, I submit, a reactionary piece of legislation, against which this House should vote.

Munshi Mahadeo Prasad (Benares and Gorakhpur Divisions: Non-Muhammadan Rural): I beg to associate myself with what has fallen from the Mover of the amendment. When we look at the Criminal Procedure Code we find that the offences dealt with by section 195 are offences connected with contempts of lawful authority of public servants, and also offences relating to false evidence and offences against public justice; and when we refer to section 196 we find the offences referred to in that section are offences against the State. So the analogy between sections 195 and 196 is not sound. Further when the Court tries a case and goes into its *pros* and *cons*, both parties have a right to be represented by counsel. But Sir, when the matter goes to the Local Government, everything is done in *camera*, and I submit, Sir, the arguments put forward by Dr. Gour have very great weight and I support the amendment moved by Mr. Agnihotri.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, I rise to offer just a few remarks with reference to those which fell from my Honourable and learned friend, Dr. Gour. I wish, Sir, to explain the type of cases in view of which this provision has been inserted. It will be seen, Sir, that this section, read with section 476, abolishes sanction in these cases and substitutes complaint. The idea was, Sir, that in cases of complaints by the High Courts it might be difficult to get them to move and that it was therefore desirable in these exceptional cases—and the provision will only be used in very exceptional cases—to take this power for the Local Government to institute a prosecution by means of a complaint in these particular cases. My Honourable friend also stated that in cases instituted on the complaint of the Local Government the counsel for the defence were working against loaded dice. I would suggest that some 50 per cent. or more of the important prosecutions in this country are made under the orders of the Local Government. This, Sir, is also, I would submit, a provision very similar to provisions in the English law. If we take the Vexatious Indictments Act of 1859, perjury is one of the offences included there, and the indictment may be made by His Majesty's Attorney General or His Majesty's Solicitor General.

Dr. H. S. Gour: Is that the Local Government?

Mr. H. Tonkinson: His Majesty's Attorney General and His Majesty's Solicitor General are part of the Government.

Dr. H. S. Gour: They are Law Officers of the Crown.

Mr. H. Tonkinson: They absolutely make indictments on behalf of the Crown in exactly the same way as the Local Government moves here: there is no difference whatsoever.

Then, as regards the Director of Public Prosecutions, I was surprised, Sir, to learn that this officer was to be a judicial officer, an officer who was to make judicial inquiries. When we have been considering the appointments of Directors of Public Prosecutions in the past, we have always assumed that they were to be officers of the same character as the Director of Public Prosecutions who was constituted in England in 1879. That officer exercises no judicial functions at all, and I would submit that my Honourable friend is quite mistaken in what he assumes to have been the intention of Sir George Lowndes' Committee in their reference to a Director of Public Prosecutions.

Mr. W. M. Hussanally (Sind: Muhammadan Rural): I rise, Sir, to support my friend, Mr. Agnihotri, and, in addition to the reasons advanced by my Honourable friend, Dr. Gour, I shall only advance one more reason in support of the amendment. Suppose, Sir, I am an aggrieved party and I apply to the Court that it do lodge a complaint against the person at whose hands I am aggrieved, and the Court refuses to lodge that complaint. I then approach the Government, and Government, without reference to the Court, lodges a complaint on its own initiative. What happens? The Court is discredited by the Government, and the Government on its own initiative lodges a complaint against the considered opinion of a Court of law established by itself. If the Government wish to have a complaint lodged in cases of this kind, there is nothing to prevent it from moving the Court to lodge the complaint. That would be the proper procedure to adopt and not direct action on their own initiative. I therefore support the amendment.

Khan Bahadur Sarfaraz Hussain Khan (Tirhut Division: Muhammadan): Sir, I rise to oppose the amendment. Here is the amendment. It runs:

> "In clause 47 in the proposed sub-section (1), clauses (*b*) and (*c*), omit the words 'is subordinate'."

Now, Sir, I do not understand why when the subordinate court has power to sanction a prosecution, the prosecution should not be started at the instance of a court higher than that or by the Local Government. It cannot be supposed for a minute that the Government would be so foolish as to act against the interests of its subordinate officers.

Mr. P. P. Ginwala (Burma: Non-European): May I know, Sir, whom the Honourable Member is addressing. We cannot hear him.

Mr. President: He is addressing the Chair.

Khan Bahadur Sarfaraz Hussain Khan: So I do not see any necessity whatsoever for this amendment, which would stop a court to which that

[Khan Bahadur Sarfaraz Hussain Khan.]

court is subordinate from starting a prosecution or stopping the Local Government from doing so. This procedure will not help the administration of justice and I therefore oppose the amendment.

Mr. J. N. Mukherjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I beg to invite the attention of the House to one point to which no reference has been made so far, and it is this. According to the amendment of section 195, which has been proposed in the Bill, the right of appeal, if I may so describe it, which now exists under clause (6) of the section, has been taken away. Clause 6 of the present section says that any sanction given or refused under section 195, Criminal Procedure Code, may be revoked or granted by any authority to which the authority giving or refusing it, is subordinate. "No sanction shall remain in force" and so forth.

Mr. President: I do not quite see the relevance of that to the amendment. I am not a lawyer like the Honourable Member, but it is a matter of common sense.

Mr. J. N. Mukherjee: Therefore Sir, the question arises whether by vesting the Local Government with power to complain or order the prosecution of a person an important right which was reserved to the party who has been put upon his trial has been taken away. So that the position is this. The Local Government does not hear the case, the Local Government has no direct knowledge of the facts. Somebody represents to the Local Government that somebody ought to be prosecuted, and the conclusion that is formed by the Local Government or the representative of the Local Government is come to behind the back of the person who is going to be put upon his trial. Now, Sir, as I have pointed out, there is an important provision as to appeal under section 486 of the Criminal Procedure Code where certain offences of the nature of contempt have been committed. That section provides that if an offence is committed in the presence of a Court, the Court can put him on his trial under certain sections of the Indian Penal Code.

Dr. H. S. Gour: Those are not the sections here.

Mr. J. N. Mukherjee: Those are not all the sections of the Penal Code mentioned in section 195 of the Code of Criminal Procedure. I say those sections of the Penal Code, in respect of which an accused has been deprived of his right of appeal by clause 47 of the Bill, are different from the sections mentioned in section 486 of the Criminal Procedure Code. A complaint has been made by a person who has no direct knowledge of the facts. It is otherwise in the case of contempt proceedings. Therefore, Sir, the question arises whether the Local Government should be vested with powers of setting the criminal law in motion under these circumstances. I submit, Sir, when the right of appeal has been taken away, there can be no control of the orders of the Local Government. A complaint has to be tested when it is made before a Magistrate. The complainant has to be examined in all cases, and if a Magistrate has reason to distrust the complainant, a police inquiry is ordered, or something of that kind takes place. The inquiry that takes place at that stage is an open inquiry, a judicial inquiry, and the Magistrate has the right to dismiss a complaint under section 203, Criminal Procedure Code, for an adequate

cause. Whereas in the case in point, the Local Government formulates its order behind the back of the person who is going to be put on his trial. It comes to a conclusion in his absence, and he is deprived of all the safeguards which exist in the Code in the case of all complaints before a Magistrate. Surely, Sir, there is some value in the principle of testing a complaint, which principle the Criminal Procedure Code recognises to the full, and here is a provision which is going to be introduced by clause 47 of the Bill which will deprive the person who is going to be put on his trial, of a very important right, I have, therefore, great pleasure in supporting the amendment of my Honourable friend.

Mr. President: The question is:

"That in clause 47 in the proposed sub-section (*1*), clause (*b*), omit all the words after the words 'is subordinate'."

The Assembly then divided as follows:

AYES—38.

Abdul Majid, Sheikh.	Joshi, Mr. N. M.
Abdul Quadir, Maulvi.	Kamat, Mr. B. S.
Abdulla, Mr. S. M.	Latthe, Mr. A. B.
Agnihotri, Mr. K. B. L.	Mahadeo Prasad, Munshi.
Akram Hussain, Prince A. M. M.	Misra, Mr. B. N.
Ayyar, Mr. T. V. Seshagiri.	Mukherjee, Mr. J. N.
Bagde, Mr. K. G.	Nag, Mr. G. C.
Bajpai, Mr. S. P.	Nand Lal, Dr.
Basu, Mr. J. N.	Nayar, Mr. K. M.
Bhargava, Pandit J. L.	Neogy, Mr. K. C.
Chaudhuri, Mr. J.	Ramayya Pantulu, Mr. J.
Cotelingam, Mr. J. P.	Rangachariar, Mr. T.
Faiyaz Khan, Mr. M.	Samarth, Mr. N. M.
Gour, Dr. H. S.	Sarvadhikary, Sir Deva Prasad.
Gulab Singh, Sardar.	Shahab-ud-Din, Chaudhri.
Hussanally, Mr. W. M.	Sinha, Babu Adit Prasad.
Iswar Saran, Munshi.	Srinivasa Rao, Mr. P. V.
Jamnadas Dwarkadas, Mr.	Subrahmanayam, Mr. C. S.
Jatkar, Mr. B. H. R.	Venkatapatiraju, Mr. B.

NOES—31.

Abdul Rahman, Munshi.	Ley, Mr. A. H.
Allen, Mr. B. C.	Lindsay, Mr. Darcy.
Blackett, Sir Basil.	Mitter, Mr. K. N.
Bray, Mr. Denys.	Moir, Mr. T. E.
Burdon, Mr. E.	Moncrieff Smith, Sir Henry.
Cabell, Mr. W. H. L.	Muhammad Ismail, Mr. S.
Chatterjee, Mr. A. C.	Percival, Mr. P. E.
Crookshank, Sir Sydney.	Sarfaraz Hussain Khan, Mr.
Davies, Mr. R. W.	Sassoon, Capt. E. V.
Faridoonji, Mr. R.	Singh, Mr. S. N.
Haigh, Mr. P. B.	Tonkinson, Mr. H.
Hailey, the Honourable Sir Malcolm.	Townsend, Mr. C. A. H.
Hindley, Mr. C. D. M.	Webb, Sir Montagu.
Holme, Mr. H. E.	Willson, Mr. W. S. J.
Hullah, Mr. J.	Zahiruddin Ahmed, Mr.
Innes, the Honourable Mr. C. A.	

The motion was adopted.

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

"In clause 47 in the proposed sub-section (*1*), clause (*c*), omit all the words after the words 'is subordinate'."

Sir, this is the same amendment which I moved in respect of clause (*b*) and I need not say anything further. It is consequential.

The motion was adopted.

Mr. T. V. Seshagiri Ayyar (Madras: Nominated Non-Official): Sir, my amendment is a very modest one and I believe that the Government are rather inclined to favour me this time. Sir, my amendment is this. In the proviso in the third clause of section 195 which reads thus:

"For the purposes of this section a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or, in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court of ordinary civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate."

I move, as agreed to by the Government, to omit the word "of" and substitute the words "having ordinary". That carries out the idea which I have in view.

I move, therefore:

"In clause 47 (4) in proposed sub-section (3) after the words 'principal Court' omit the word 'of' in order to insert the words 'having ordinary'."

Sir Henry Moncrieff Smith (Secretary, Legislative Department): Sir, the Government supports the amendment moved by my Honourable friend.

The motion was adopted.

Rao Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, I will move my amendment in separate parts:

"In clause 47 after sub-clause (4) insert the following sub-clause:
'(5) After sub-section (4) of the same section as renumbered the following sub-sections shall be inserted, namely:
'(5) The person against whom proceedings are intended to be taken under this section shall be given an opportunity to show cause against the same'."

Honourable Members will notice that under section 195 there are three classes of cases in which proceedings are intended to be taken. The first portion, clause (*a*), deals with an offence that is committed in relation to contempt of the lawful authority of public servants (172 to 188). Then clauses (*b*) and (*c*) are offences committed in relation to matters which come before the courts. Now, the public servant concerned or some other public servant to whom he subordinates may complain under clause (*a*). Under clauses (*b*) and (*c*) as now amended the court or any court to which such Court is subordinate will have to make the complaint. It is not clear to me—I raise this question now—whether the complaint referred to in clauses (*b*) and (*c*) of section 195, whether in making that complaint that court has to adopt the procedure which is laid down for it in 476. Apparently it is the intention to do so, in which case I should like the word "complaint" to be followed by the words as provided in section 476 or some such thing introduced. If it is the intention of the Government that in making the complaint under clauses (*b*) and (*c*), that court has to adopt the procedure under section 476, it is not made clear. Even so 476 contemplates only "after such preliminary inquiry if any, as it thinks necessary". But that is not enough. I want to make it obligatory upon the court also that it will give notice to the accused of the charge against him and make him show cause against the proceedings. That is so far as the courts are concerned. The courts, the public servant or the superior authority, I think it is better that all of them should give an opportunity to the person against whom they intend to take proceedings to show cause against the same. Ordinarily in practice they do it but I want to make it a statutory obligation; in this way public money will be

saved and vexation avoided. Much annoyance will be avoided and no harm will be done by giving an opportunity to the person against whom proceedings are intended to be taken to show cause against the same.

Mr. H. Tonkinson: Sir, with reference to this amendment, I think it is desirable to take the different classes of cases dealt with under clauses (*a*), (*b*) and (*c*) of sub-section (1) of section 195 separately. That has been done, I admit to some extent by my Honourable and learned friend, Mr. Rangachariar. Take the case, first, Sir, of prosecutions for a contempt of the lawful authority of public servants which are dealt with under clause (*a*). Those sections, Sir, are the offences punishable under sections 172 to 188 of the Indian Penal Code. Honourable Members will observe what class of offences they relate to: Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information; Knowingly furnishing false information to a public servant; Giving false information to a public servant in order to cause him to use his lawful power to the injury of another person and so on. Now, Sir, these are offences against the authority of a public servant. It is true that we ought as we do in section 195 to prevent prosecutions in such cases being made on the complaint of a common informer, but why should not the public servant be able to complain himself in those cases just in the same manner as an ordinary private person can complain when he is the aggrieved person? Imagine, Sir, a Sub-Inspector of Police having to complain under clause (*a*). Suppose a Sub-Inspector of Police has received false information. He has gone to great trouble to inquire into the offence, and then he decides that the evidence is absolutely false and that he will proceed under section 182 of the Indian Penal Code. Why should he not be able to make a complaint? The person who gave information to him had sufficient opportunity to show cause during the inquiry into the offence. Why should he not then be able to go and make a complaint at once? Why should he have to ask the man to show cause before he makes a complaint? What is the procedure going to be in such cases? I presume, Sir, you will have to include all these papers among the police papers, and they shall not be produced in court. The Honourable Member is unable to trust this Sub-Inspector of Police. As regards the offences under clauses (*b*) and (*c*), as suggested by my Honourable friend, the intention is that the Courts should proceed under sections 476A and 476B in such cases. I should think, Sir, that this is quite clear; there is in fact a definite reference to section 195, sub-section (1), clauses (*b*) and (*c*) in section 476 as it is proposed to be revised by this Bill. What will happen if a Court decides to complain under these clauses? It can take action under section 476 after such preliminary enquiry as it thinks necessary. Now, Sir, we have similar words to this in section 476 of the Code at present and everybody knows what the meaning of those words is. Of course, Sir, the Courts will at once apply the old rulings to the interpretation of this provision. But we have gone beyond this in the proposed section 476. There is full power of appeal and so on in section 476B, and I submit it is entirely unnecessary, as regards the Courts, to make such a provision as has been proposed by my Honourable friend. It is worse than unnecessary in the case of offences dealt with under clause (*a*).

Dr. H. S. Gour: Sir, the short answer to my Honourable friend Mr. Tonkinson is this. He has only referred to certain sections enumerated in

[Dr. H. S. Gour.]

clause (*a*) but he has omitted to mention the rest, and I shall do so. Section 172—Absconding to avoid service of summons or other proceeding from a public servant. Section 173—Preventing the service or the affixing of any summons or notice, or the removal of it when it has been fixed. Section 174—Not obeying a legal order to attend a certain place in person or by agent. 175—Intentially omitting to produce a document. 176—Intentionally omitting to give notice or information. 177—Knowingly furnishing false information to a public servant. 178—Refusing oath when duly required to take oath. 179—Being legally bound to state the truth and refusing to answer questions. 180—Refusing to sign a document. 181—Knowingly stating to a public servant on oath that which is false. 182—Giving false information to a public servant. 183—Resistance to the taking of property by the lawful authority of a public servant. 184—Obstructing the sale of property offered for sale by the authority of the public servant. 185—Bidding for a person under legal incapacity to purchase that property at a lawfully authorised sale. 186—Obstructing a public servant in the discharge of his public functions. 187—Omission to assist public servant when bound by law to give such assistance. 188—Disobedience to an order lawfully promulgated by a public servant. These are the various offences categorised in clause (*a*) of section 195, sub-clause (1). These offences may be committed before any public servant. They may be before a Collector. They may be before a public servant other than a sub-inspector of police instanced by my friend the Honourable Mr. Tonkinson. There is a conglomeration of these various sections in one particular clause and if these sections have been collected under clause (*a*) it is perfectly obvious that there are numerous cases in which the party aggrieved may have a very good defence and which he would be deprived of if he is not called upon to show cause. I therefore submit that it is idle to contend that these are cases in which nothing is gained and much would be lost by giving notice to the accused. I think, Sir, Mr. Rangachariar's amendment is a necessary amendment and the House should vote for it.

Dr. Nand Lal (West Punjab: Non-Muhammadan): Sir, the Honourable Mr. Tonkinson put this question to us. If a private person has got the right of complaining, why a public servant may not exercise the same right? That is the main question which has been put. The answer is obvious. If a private person lodges a complaint and eventually it is established or determined by the court which tries that case that the complaint was unfounded then that private person, who was the complainant, wasted his time and money and then he is defeated. There are a number of private persons. They lodge complaints. Their complaints are dismissed and they do not mind and the public has not got notice of that, I mean the public at large. But if a public servant goes to the court without examining fully what explanation the accused has got to give and he lodges the complaint and if the complaint is dismissed, in the first place, public money is wasted. In the second place, who is defeated? The public servant, and that defeat will give a bad name to the executive department, because that defeat will minimise the prestige and it will go to indicate and may be talked over that the public servants do not do things with that amount of carefulness which they should observe. That is the answer which I can give to that question. Now, Sir, if a man who is going to be prosecuted is given the chance of explaining his con-

duct and the explanation which he gives is satisfactory, then there will be no necessity for lodging the complaint, and if the same explanation is not taken before the complaint is lodged and subsequent to that that explanation is given in court and considered sufficient, then the whole procedure in connection with that prosecution will be considered futile, and therefore, it is very desirable that before a public servant comes to the Court, he should try to see whether there is some force in his complaint, whether there is not sufficient rebuttal which could be given by the other side subsequently, and consequently this amendment in regard to this clause (*a*) is a very commendable one. As to clauses (*b*) and (*c*), the Government benches . . . .

(*Honourable Members*: "We are not concerned with them.")

Dr. Nand Lal: All right. Therefore I, Sir, strongly support this amendment, which commends itself.

Sir Henry Moncrieff Smith: Sir, my friend, Dr. Nand Lal, has said that public servants may make complaints on their own initiative without giving the accused persons an opportunity to show cause, that some of these complaints may be false, that a horrible disaster will happen, and that public time and public money will be wasted. The Government is to be blamed for that. Hundreds of complaints are lodged every day in the Courts of this country by private individuals which lead to nothing —they are dismissed, perhaps dismissed under section 203; hundreds of complaints lead to nothing, and public time and public money is wasted. Who is to blame for this I should not like to say,—but it is not the Government. Why a distinction should be drawn in this matter between the private complainant and the public servant who wants to complain I entirely fail to understand.

Dr. H. S. Gour: Is it not that a private complainant is fined for a frivolous prosecution?

Sir Henry Moncrieff Smith: He can be fined for a frivolous prosecution, yes, but we are not talking about frivolous prosecutions. Public servants do not waste their time by making frivolous prosecutions at all. They are all too busy. Dr. Gour, Sir, read long extracts from the Second Schedule to the Criminal Procedure Code, and I thought he was going to build up some argument. He apparently decided not to do so after he had read out a description of the offences that are included in section 195 (1) (*a*). Let me take one of these, Sir. He read out to the House section 188: disobedience to an order promulgated by a public servant, that is, an order issued under one of the preventive sections of the Code. The man to whom it is issued takes no steps to comply with the order,—takes no steps to show cause why he should not comply with the order; the public servant thereupon calls upon him to come and show cause why he should not be prosecuted for not having complied with the order. Sir, there will be no finality in this matter. Surely the public servant can be trusted in this case to exercise his discretion wisely and well. Mr. Rangachariar, Sir, suggested that it was the practice at the present moment for public servants to call upon persons whom they intended to prosecute to show cause. That is not my experience at all. I have never heard of such a suggestion, that it is the practice, nor, until this moment, have I ever heard it suggested that it should be the practice.

[Sir Henry Moncrieff Smith.]

Dr. Gour's main argument, which came out in his well known peroration, was to the effect that the man might have a very good answer to the charge indeed, and that if you don't enable him to come and show cause, you are depriving him of a very valuable defence. Sir, I hope the House will not be deceived by that argument. The trial has not begun yet. The complaint is going to be lodged. If the man has got a very good defence, he will have ample opportunity to raise it. Take the case, Sir, of a process server who wants to lodge a complaint. He goes to his superior officer and says to him, "I desire to lodge a complaint against this man who has refused to obey my orders." Is the process server going to issue notice to the man to come and show cause before him? If the man does appear to show cause how is the process server to hold a judicial inquiry and decide whether the complaint should be lodged or not?

Chaudhri Shahab-ud-Din (East Central Punjab: Muhammadan): Sir, under the existing law, when the offences enumerated in clauses (*a*), (*b*) and (*c*) could be taken cognizance of by courts on the complaints of private individuals with the previous sanction of courts or the public servants there was at least this satisfaction that the public servant or the presiding Judge of a court, when he decided upon the application of a private individual as to whether sanction to prosecute should be accorded or not acted as a judge or arbitrator, that is, as a third party. But under the proposed law, he himself is to be the complainant. In all cases in which he can complain under the proposed section, offences will not be committed in his presence and very often he will have to form his opinion upon the report of one of his subordinates or menials, say, a process server. Therefore it is not only fair but I think quite consonant with judicial principles that before initiating proceedings he should call upon the person concerned to show cause; and if, after examining and hearing him, he is satisfied that there is really a good case against him, he should start the prosecution. But if, on the other hand, simply on the report of a menial, he is entitled to start a prosecution or initiate a complaint, that in my humble opinion will be an injustice to the person proceeded against. Therefore, no complaint should be lodged by any public servant or presiding Judge in regard to offences enumerated in clauses (*a*), (*b*) and (*c*) without giving an opportunity to the person concerned to appear before him to show that the complaint which is proposed to be lodged against him is not warranted.

Sir Deva Prasad Sarvadhikary (Calcutta: Non-Muhammadan Urban): Sir, how halting Sir Henry Moncrieff Smith's opposition to the proposed amendment is was shown by the way in which owing to his enforced halt in his speech more than one Member of the House was deceived and rose in his place to address the House before he had as it proved quite finished. I am surprised, Sir, that this very necessary, important and valuable safeguard should be resisted by the Government as they have done. We have not heard anything from the Government Benches yet which is likely to convince this House of the necessity for rejecting this amendment. The state of things has partially changed. Complaint has been substituted for sanction. Whether that is good, bad or indifferent is quite another matter. In the changed order of things it would be more than a safeguard to have this preliminary inquiry. Sir Henry Moncrieff Smith asked whether a man who refused to attend was to be called upon to show cause why he should not be prosecuted for not attending under certain circumstances. Does

he not remember the story of the Irishman who came in his father's stead to show cause why his father had not appeared as a juror. He had thirty-nine reasons, Sir, and the first was that his father was dead. Well, Sir, in many of these cases, as Chaudhuri Shahab-ud-din has pointed out, on the report of a process server or a menial—sometimes a very coloured and exaggerated report—proceedings have been ordered to be taken and then it has turned out that there was absolutely no substratum of truth underlying the whole of the proceedings. Before all that elaborate and expensive procedure has been gone through, what do we ask? We simply ask that the man should have an opportunity of explaining his conduct if he has any explanation to offer, and then if that is not satisfactory, you can go forward. I think enough has been said, Sir, by more than one Member to support the amendment. There is just one matter that I should like to suggest to Mr. Rangachariar to consider, *viz.*, if he is pressing his amendment—as I hope he will—whether he would not like to consider the phraseology. The amendment ends with these words: "Shall be given an opportunity to show cause against the same." Against what? Is it against the proceedings? I take it that Mr. Rangachariar's intention is that the person should have an opportunity of showing cause against the proposal to lodge complaint. (*Dr. H. S. Gour*: "We all see it.") I am glad Dr. Gour sees it. It is sometimes impossible for him to see things for the time being. I hope he will consider that and with your leave suggest such verbal alteration as is necessary and press the amendment.

Mr. P. E. Percival (Bombay: Nominated Official): I only wish to point out to my Honourable friend that the word "complaint" existed in section 195 (*a*) under the old law. There has been no change in section 195 (*a*) in regard to any substitution of "complaint" for "sanction"; so that the proposal now made is an addition to the existing law in section 195 (*a*), against which no objection has been raised hitherto. My Honourable friend Dr. Gour quoted different sections—section 172 and other sections. I would like to point out that these offences are of a very mild character—section 172, "absconding to avoid service"—punishment, simple imprisonment for one month. And similarly with regard to the other sections, the offences are of a very mild character. We have to remember that at this stage the man is not being tried for any offence. In respect of other offences a man may be put on his trial without any complaint or anything of the kind. Merely the Police send up the case. But in the cases now under consideration the officer in question has to give his approval to the prosecution before it is started. Now, it is proposed to go still further. Suppose that the public servant gives an order and that the man does not obey his order. First of all the public servant has to call upon him to show cause why a complaint should not be made and then he has to make a complaint; all this for the matter of a sentence of one month's imprisonment. After all these things are done, then the trial begins. (*Dr. H. S. Gour*: "Section 177—punishment 2 years.") That may be so in some cases. We cannot take an extreme case. As observed by my Honourable friend Mr. Tonkinson, in respect of clauses (*b*) and (*c*) the amendment will not make much difference. But the important clause is clause (*a*); and there is no ground whatever, I submit, for making any change in respect of section 195 (*a*).

Mr. K. B. L. Agnihotri: Sir, if we look to clause (*a*) of section 195, we find that it has been inserted with the object of protecting the public against the prosecutions or complaints, filed by a public servant vexatiously

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

or lightly, and with this view, the old clause provided that except with the previous sanction, or on the complaint, of the public servant concerned or of some public servant to whom he was subordinate any cognisance of the offence was not to be taken. Here, you have removed the words "with the sanction of the public servant." We do not object to that, but by removing "sanction" you have also removed the clause (6) which existed in the old Code. Under clause (6) if a sanction to prosecute was given by a public servant, that sanction could be revoked by a higher authority. We have taken away that provision from this new section; and, therefore, now we leave the matter absolutely in the hands of the public servant aggrieved to file a complaint if he so pleases and no authority has been given to revise or revoke it. It therefore becomes necessary that the amendment which has been proposed by my Honourable friend, Mr. Rangachariar, be seriously considered and inserted in this section.

The Honourable Sir Malcolm Hailey: I wish to point out to the House how very far it proposes to go in this respect. Our Criminal Procedure Code lays down certain rules for Courts. Incidentally it also lays down certain rules as regulating those proceedings of the police which are preliminary to action being taken by the Courts. Here you propose to go much further; you propose to lay down proceedings for revenue servants, executive servants of all kinds. If a revenue officer has to file a complaint you first of all demand that because he is a revenue officer, he should undertake semi-judicial proceedings in advance . . .

4 P.M.

Rao Bahadur T. Rangachariar: They do it. The Evidence Act applies to them also in certain matters.

The Honourable Sir Malcolm Hailey: Whether any arrangement can be made for bringing the proceedings taken by that public servant before the review of any Courts to see if they were adequate or appropriate or not I am not sure. I will only remark that the amendment refers to complaints made by all public servants, and the definition of public servant occupies over a page in the Code. They therefore apply to a very numerous class of persons for whom the Code usually lays down no rules of procedure whatever; and you are proposing that this extensive class of public servants should be placed under an embargo on making complaints which any man in the street can undertake. We are told that the time of the Court should not be wasted on infructuous prosecutions. Then why do you not, in justice and logic, lay down that any person, before he files a complaint before a Magistrate, should give the person against whom the complaint is to be filed an opportunity to show cause why the complaint should not be made? Every argument you have urged against the right of the public servant applies equally to the rights of the private individual.

Mr. President: The amendment moved is:

"That in clause 47 after sub-clause (4) insert the following sub-clause:

'(5) After sub-section (4) of the same section as renumbered the following sub-section shall be inserted, namely:

'(5) The person against whom proceedings are intended to be taken under this section shall be given an opportunity to show cause against the same'."

Sir Henry Moncrieff Smith: I should like to know whether we are asked to vote on this amendment with reference only to clause (*a*) or to all the clauses?

Rao Bahadur T. Rangachariar: I have no objection to putting it clause by clause.

Mr. President: There can be no misunderstanding about it. The question I have put means that the new sub-section proposed by Mr. Rangachariar affects the section, that is, the whole section (*a*), (*b*) and (*c*).

Does the Honourable Member wish to make any verbal alteration?

Rao Bahadur T. Rangachariar: I am prepared to make a verbal alteration so that the last part of sub-clause (5) will read " shall be given an opportunity to show cause against the proceedings."

Sir Henry Moncrieff Smith: Against the making of the complaint I suppose the Honourable Member means.

Rao Bahadur T. Rangachariar: I accept Sir Henry Moncrieff Smith's amendment.

Sir Henry Moncrieff Smith: It is not my amendment.

Mr. President: The amendment will read:

" The person against whom proceedings are intended to be taken under this section shall be given an opportunity to show cause against the making of the complaint."

Mr. K. Ahmed: Wouldn't the words " proceeded against " be more appropriate, Sir?

Mr. President: I did not catch the words of wisdom which fell from the Honourable Member from Bengal.

Mr. K. Ahmed: I repeat, Sir, I think the words " proceeded against " would be better and more appropriate.

Mr. President: Amendment moved:

" In clause 47 after sub-clause (4) insert the following sub-clause:

' (5) After sub-section (4) of the same section as renumbered the following sub-section shall be inserted, namely:

' (5) The person against whom proceedings are intended to be taken under this section shall be given an opportunity to show cause against the making of the complaint'."

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—36.

Abdul Majid, Sheikh.	Joshi, Mr. N. M.
Abdulla, Mr. S. M.	Kamat, Mr. B. S.
Agnihotri, Mr. K. B. L.	Mahadeo Prasad, Munshi.
Ahmed, Mr. K.	Misra, Mr. B. N.
Akram Hussain, Prince A. M. M.	Muhammad Ismail, Mr. S
Asad Ali, Mir.	Mukherjee, Mr. J. N.
Ayyar, Mr. T. V. Seshagiri.	Nag, Mr. G. C.
Bagde, Mr. K. G.	Nand Lal, Dr.
Bajpai, Mr. S. P.	Nayar, Mr. K. M.
Basu, Mr. J. N.	Neogy, Mr. K. C.
Bhargava, Pandit J. L.	Rangachariar, Mr. T.
Chaudhuri, Mr. J.	Reddi, Mr. M. K.
Ginwala, Mr. P. P.	Samarth, Mr. N. M.
Gour, Dr. H. S.	Sarvadhikary, Sir Deva Prasad.
Gulab Singh, Sardar.	Shahab-ud-Din, Chaudhri.
Hussanally, Mr. W. M.	Sriniyasa Rao, Mr. P. V.
Iswar Saran, Munshi.	Subrahmanayam, Mr. C. S.
Jatkar, Mr. B. H. R.	Venkatapatiraju, Mr. B.

NOES—33.

Abdul Quadir, Maulvi.	Ley, Mr. A. H.
Abdul Rahman, Munshi.	Lindsay, Mr. Darcy.
Allen, Mr. B. C.	Mitter, Mr. K. N.
Blackett, Sir Basil.	Moir, Mr. T. E.
Burdon, Mr. E.	Moncrieff Smith, Sir Henry.
Cabell, Mr. W. H. L.	Percival, Mr. P. E.
Chatterjee, Mr. A. C.	Ramayya Pantulu, Mr. J.
Cotelingam, Mr. J. P.	Sarfaraz Hussain Khan, Mr.
Crookshank, Sir Sydney.	Sassoon, Capt. E. V.
Davies, Mr. R. W.	Singh, Mr. S. N.
Faridoonji, Mr. R.	Spence, Mr. R. A.
Haigh, Mr. P. B.	Tonkinson, Mr. H.
Hailey, the Honourable Sir Malcolm.	Townsend, Mr. C. A. H.
Hindley, Mr. C. D. M.	Webb, Sir Montagu.
Holme, Mr. H. E.	Willson, Mr. W. S. J.
Hullah, Mr. J.	Zahiruddin Ahmed, Mr.
Innes, the Honourable Mr. C. A.	

The motion was adopted.

Rao Bahadur T. Rangachariar: Sir, I move the following; I do so with some diffidence:

"In clause 47, after sub-clause (4) insert the following sub-clause:

'(7) In Provinces where a Provincial Director of Public Prosecutions has been appointed, any complaint by him in respect of offences mentioned in this section shall be deemed to be a complaint under this section'."

Then the *Explanation*:

"The Local Government may appoint from among persons qualified to be Judges of the High Court a Director of Public Prosecutions for the Province."

Sir, as has been pointed out just a few minutes ago, the Lowndes Committee on which so much reliance is placed by the Government Benches have recommended this and therefore I have the highest authority, that authority of the Lowndes Committee, for recommending this procedure in the case of prosecutions in this country. Sir, it will be a very welcome addition to our criminal procedure if prosecutions, not only in cases in which the Government are interested such as offences against the State but ordinary prosecutions for murder and other serious offences, the initiation of proceedings and their conduct can be placed in charge of a Director of Public Prosecutions as is the case in England. It will be a very good departure indeed. Much of the complaint against the administration of criminal justice in this country will disappear if we can place prosecutions in the hands of a responsible officer, a legal gentleman who can bring a judicial mind to bear upon the conduct of prosecutions—not hold judicial proceedings as Mr. Tonkinson misunderstood. As it is now, in each province you have got only public prosecutors in the districts who are seldom consulted in the case of prosecutions before Magistrates. Before Magistrates you have got the police as prosecutor in the shape of prosecuting inspectors of police. I am speaking of the system which is prevailing in my province—I do not knew if a similar system prevails elsewhere. Again there is a very responsible function to be performed by the Local Government in these matters. There are offences against the State; there are offences which we have just been dealing with—contempt of lawful authority of public servants—and there are offences of a serious nature such as big conspiracies and other things and in which before undertaking a prosecution if the Government have the assistance

of a person like this it will be very helpful indeed. The system of Director of Public Prosecutions has been tried in England from the year 1879, and, Sir, he occupies a very important position indeed. All the serious prosecutions are in his hands; the police are bound to give him such information as he wants; he takes charge of prosecutions at any stage he thinks fit; he can appoint assistants; he can appoint counsel to conduct the prosecutions in various cases and, Sir, I think it will be a very right departure to make. Sir, we have advanced very far in this country. We are not in those ancient days when the country had not got the advantages of that education and other amenities that we have now. Therefore the time has come for each province to appoint a Director of Public Prosecutions who will be very useful not only in conducting prosecutions and in advising prosecutions and in initiating criminal proceedings against subjects of the Crown, but also useful to the Crown in cases where appeals against acquittals have to be preferred. Sir, what happens now? Under our present Criminal Procedure Code, the Government has got the power to appeal against acquittals. How is that power exercised? Some investigating officer is dissatisfied with the verdict of acquittal given in a Sessions case and he moves his District Superintendent of Police who moves the District Magistrate who moves the Secretary in the Home Department of every Local Government. Sir, how can you expect the Government to bring a judicial mind to bear in respect of these matters? What machinery have they at their disposal? No doubt some times they consult the Public Prosecutor in the High Court whether an appeal should be filed or not. Sometimes they are consulted, sometimes not. Public Prosecutors in the High Court have their hands very full indeed with their ordinary criminal work, appeal work and revisional work which they have to look after. In England you have got not only an Attorney-General, but a Solicitor-General and a Director of Public Prosecutions, and this Director of Public Prosecutions performs a very important function. There are three pages in this book where the duties of such Director of Public Prosecutions are described. The procedure adopted there is conducive to the sound administration of criminal justice:

"Before 1879 there was no provision for the systematic prosecution of offences in England such as there was in Scotland and in most countries on the Continent. Except in those cases in which the Attorney-General intervened on the ground that they were of special public importance, the initiation of prosecutions was left to the injured parties, encouraged by the provision made for defraying the costs of the prosecution out of the public funds. By the Prosecution of Offences Acts, 1879 and 1884, more adequate provisions were made for a national and public system of prosecutions.

"By the Act of 1879 a new department of 'Director of Public Prosecutions was created, to be distinct from the previously existing legal departments of the Crown. By the Act of 1884, this department was merged in that of the Solicitor to the Treasury. But this arrangement was found not to work well, and accordingly, by the Prosecution of Offences Act, 1908, the two departments were again separated and power was given to the Secretary of State to appoint a Director of Public Prosecutions, and such number of Assistant Directors as the Treasury may sanction.'

Then:

'He is subject in all matters including the selection and instruction of counsel, to the directions of the Attorney General.' *He is* 'to institute, undertake or carry on criminal proceedings . . . . '"

Mr. President: Order, order. I observe that the amendment turns upon the existence of an office known as the Director of Public Prosecutions. Now the Honourable Member apparently proposes to create that office by an unusual procedure, namely, by an Explanation. On looking at

[Mr. President.]

the Code I find that there is a Chapter, Chapter II dealing with the constitution of Criminal Courts and Offices. It seems to me that it is a very unusual procedure to attempt to create a new and important office under the criminal law of the country by a sub-section which deals with a comparatively small matter, and unless the Honourable Member can satisfy me that such office already exists, I don't think that his amendment is in order.

Rao Bahadur T. Rangachariar: I am sorry, Sir, no such office exists, and my object is to educate the Government on the necessity of such an office . . . .

Mr. President: I have given the Honourable Member a fair opportunity of educating Government, and I must now rule his amendment out of order.

Clause 47, as amended, was added to the Bill.

Mr. B. N. Misra (Orissa Division: Non-Muhammadan): Sir, I propose that clause 48 be omitted. Clause 48 is section 196B, which is entirely a new section in this Code. Section 196B says " In the case of any offence in respect of which the provisions of section 196 or section 196A apply, a District Magistrate or Chief Presidency Magistrate may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in section 155, sub-section (3)." Sir, the offences contemplated in sections 196A and 196B are very serious offences. They are practically offences relating to Chapter VI, namely of committing depredation on the territories of any Power in alliance with Her Majesty or receiving property taken in war or committing the depredations mentioned in sections 125 and 126. They are really very serious offences. Section 196A provides that "No court shall take cognisance of such offences except on the complaint of the Governor General in Council or the Local Government." I submit really that when such a thing as a depredation on a foreign territory takes place or if anybody receives property or commits the depredations mentioned in section 125—when such serious offences take place—it will be known throughout the country, and the Governor General in Council and the Local Government will certainly not remain idle or fail to inquire, and will accord sanction to such offences being tried. But when both the Local Government and the Governor General in Council do not take the matter into their consideration, it must be that either no such offence was committed or it must have been really a false case that might have been represented to the District Magistrate. If really the state of affairs is such that the offence is not very serious, then to allow the District Magistrate to make an inquiry through an Inspector of Police would be unnecessarily troubling the people. Of course, Sir, we have already in this Code provided for several actions to be taken by the police in the security proceedings and so on and I do not think really an inquiry should be made by the District Magistrate where the Local Government or the Governor General in Council do not take any steps. The inevitable result will be to put the people in a state of commotion when they are at peace, if you have this inquiry by the District Magistrate or through the Inspector of Police. Sir, there is a saying in our country that if you have no business, or if you have nothing to read, you go on coughing and disturbing people. If an inquiry is made by the Inspector of Police it will

simply make the people believe that they are being unnecessarily harassed. An inquiry in such cases will cause needless annoyance to the people. I submit that if steps are to be taken they must be taken under 196A, and 196B should be omitted from the Code. With these words I propose this amendment.

The motion was negatived.

Clause 48 was added to the Bill.

Mr. K. B. L. Agnihotri: I have been authorised by Bhai Man Singh to move the next amendment, No. 164, which stands against his name. It runs as follows:

"In clause 49, sub-clause (*i*), for the words 'the authority having power to order or, as the case may be, to sanction the removal from his office of such Judge, Magistrate or public servant' substitute the words 'the Local Government'."

Sir, under the old clause 197 of the existing Code the Judge or the public servant could not be removed from his office without the sanction of the Government of India or the Local Government and if he were accused as such Judge or public servant, the cognizance of the offence could not be taken without the previous sanction of the Local Government.

The Honourable Sir Malcom Hailey: May I be excused for interrupting the Honourable Member? I do not know if anybody else wishes to oppose his amendment: I do not desire to do so.

The motion was adopted.

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

"That in clause 49, sub-clause (*ii*), after the word 'substituted' the following words be inserted, namely:

'and after the word 'Judge' the word 'Magistrate' shall be inserted'."

The reason for this, Sir, is sufficiently obvious. The word "Magistrate" has dropped out in drafting this clause.

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

The motion was adopted.

Mr. President: The question is that clause 49, as amended, stand part of the Bill.

The motion was adopted.

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

"In clause 50, in the proviso:

(*a*) For the words 'some other person' substitute the words 'a guardian or a close relative having care of such person,'

(*b*) omit the words 'with the leave of the Court'."

Sir, I beg to move both amendments (*a*) and (*b*) together. Under this clause 50, any person with the leave of the court could file a complaint on behalf of a minor or a person of unsound mind or a female or an idiot or any person who owing to sickness or infirmity cannot make a complaint himself. By my amendment, Sir, I provide that instead of 'some other person,' the 'guardian or a close relative care of such person' should file such a complaint, and that in the case of such a person, no leave of the Court should be necessary. I move my amendment.

Mr. President: Amendment moved:

"In clause 50, in the proviso:

'(*a*) For the words 'some other person' substitute the words 'a guardian or a close relative having care of such person, or an agent'."

Rao Bahadur T. Rangachariar: I do not think he moved the words "or agent".

Mr. K. B. L. Agnihotri: Yes, Sir, I did not move the word "agent".

Rao Bahadur T. Rangachariar: I do not think he moved it, Sir.

Mr. President: Amendment moved:

"In clause 50, in the proviso:

(*a*) For the words 'some other person' substitute the words 'a guardian or a close relative having care of such person'."

Mr. H. Tonkinson: Sir, I do not know whether it is really necessary to oppose this amendment. Let us consider for a short time what it really means. A guardian. What does my Honourable friend mean by a guardian, Sir? When we use the expression two or three sections later (in the proposed section 199A) we have indicated clearly what it means. Here we have the word "guardian" used without any qualifying word to indicate the meaning which is to be attached to it Then, Sir, he goes on to say "a close relative". Who, Sir, is a close relative? Does the Honourable Member include a second cousin or step children? What does he mean by "close relative"? Really it seems almost useless arguing against an amendment of this character He objects also to the provision in the Bill which enables the Court to give leave to the person who shall make the complaint. Why should he not do like my Honourable friend Mr. Rangachariar and trust our Magistrates? I would suggest, Sir, that there is no doubt that an amendment of this character should not be accepted.

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

The motion was negatived.

Mr. President: The question is that clause 50 stand part of the Bill.

The motion was adopted.

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

"That in clause 51 after the words 'said Code' all words from 'after the' to the words 'same section' be omitted, and that after the word 'absence' in the original section the words 'may with the leave of the court' shall be inserted and to the same section the following proviso shall be added, that is, that the leave of the court should not be made necessary in the case of persons except on a complaint under section 199 of the Code."

I therefore move this amendment.

Mr. R. A. Spence (Bombay: European): How will the section read as amended by this amendment? The Honourable Member has not read out the section as it would appear after amendment.

Mr. President: The section will read thus:

"In section 199 of the said Code, the following proviso shall be added, namely:
'Provided that where,' etc."

Sir Henry Moncrieff Smith: The reason why the Joint Committee made an amendment here in this respect was that the Lowndes Committee undoubtedly by an oversight provided twice over for the absence of the husband. In section 199 of the Code as it stands (and they left it unaltered), there was a provision that in the absence of the husband complaint may be made by some person who had the care of such woman on his behalf at the time when such offence was committed. The Lowndes Committee then provided also for the absence of the husband in the proviso, and for that reason the Joint Committee cut ' absence ' out of the proviso and left it in the main section. The Joint Committee thought that we should have the leave of the court for making of a complaint by some person in the absence of the husband. The reason is very simple. The person having the care of the woman at the time the offence was committed may have interests which are entirely inimical to those of the husband. The Court will have to satisfy itself that there was an identity of interest between the person who desired to make the complaint and the absent husband. If no leave of the court is required in this case, there is, I think, a very grave danger of false charges being brought up by a person who desired to score off an enemy during the absence of the husband using the unprotected woman as his tool in the matter.

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

The motion was negatived.

Mr. President: The other two parts of Amendment No. 172 fall out.

The question is that clause 51 do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 52 do stand part of the Bill.

The motion was adopted.

Mr. President: The question is that clause 53 do stand part of the Bill.

The motion was adopted.

Dr. H. S. Gour: Sir, in moving the amendment which stands in my name, I am quite prepared to adopt the draft prepared by the Government, namely,

" That in clause 54, for the proviso to the proposed new sub-section (1) of section 202, the following be substituted, namely,—' provided that no such direction shall be made unless the complainant has been examined on oath under the provisions of section 200, or (*b*) where the complaint has been made by a Court under the provisions of this Code '."

Mr. President: Do I understand that the Honourable Member is not moving the first part of Amendment No. 179?

Dr. H. S. Gour: I shall very briefly explain, Sir, what my amendment amounts to. I accept the alteration suggested by Government to clauses (*a*) and (*b*), and I simply suggest to the Government the advisability of adopting improvements which I submit I have made in the first clause, that is to say, in clause 54 (1), for the words ' thinks for reasons to be recorded in writing ', substitute the words, ' for reasons to be recorded in writing, considers that there are grounds for thinking that the complaint is not true '. It is merely a drafting change, and I hope the Government will accept it also.

Mr. President: Amendment moved:

"In clause 54, sub-section (1), for the words 'thinks for reasons to be recorded in writing' substitute the words 'for reasons to be recorded in writing, considers that there are grounds for thinking that the complaint is not true'."

Sir Henry Moncrieff Smith: I regard this amendment of Dr. Gour's as slightly more than a matter of drafting; I think there is some substance in it, and in so far as there is substance in it, I think the House ought not to agree to the amendment being made. If Dr. Gour's amendment is embodied in the Code, it will prevent a Magistrate ordering an inquiry unless he can record in writing the reasons which lead him to consider that there are grounds for thinking that the complaint is not true. Sir, there are many cases in which the Magistrate really, on the complainant's statement, cannot make up his mind, cannot form an opinion even, whether the complaint is true or false. The complainant appears and makes a statement, but in some cases he cannot tell you much about the case—he says, 'the facts I have mentioned have been told me by my servants; they saw it during my absence'—and in that case, Sir, I think it would be rather hard to lay down that the Magistrate . . . .

Dr. H. S. Gour: I am quite prepared, Sir, to accept the Government amendment in substitution of the whole of my amendment.

Mr. President: The question is that leave be given to the Honourable Member to withdraw the amendment which I have just put.

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

Mr. President: The question is:

"That in clause 54, for the proviso to the proposed new sub-section (1) of section 202, the following be substituted, namely,—'provided that no such direction shall be made (*a*) unless the complainant has been examined on oath under the provisions of section 200 or (*b*) where the complaint has been made by a Court under the provisions of this Code'."

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

The motion was adopted.

Mr. K. Ahmed: I beg to move that in clause 54, sub-clause (1) . . .

Mr. President: The Honourable Member's amendment is covered by the amendment which Dr. Gour has just moved and which has been accepted by Government.

Mr. J. Ramayya Pantulu (Godavari *cum* Kistna: Non-Muhammadan Rural): Not exactly, Sir.

Sir Henry Moncrieff Smith: The Honourable Member has not heard the revised amendment which Dr. Gour has read.

Mr. President: The amendment which the House has carried is a different amendment to the one standing on the printed paper. It has just been unanimously carried by the House in view of the fact that Dr. Gour and the Government had come to an agreement.

Mr. K. Ahmed: Sir, I beg to move that:

"In clause 54 (*i*) after the proviso to proposed sub-section (1) insert the following further proviso:

'Provided further that no complaint against any police officer shall be referred to any other police officer for inquiry'."

Honourable Members will find that under section 200 of the Criminal Procedure Code as soon as a complaint is made, the Magistrate has to take down the substance of the evidence and if he thinks it is a good case, he at once issues warrant or summons as the case may be. But if he finds any difficulty in coming to a decision, he has, after recording the substance of the evidence, to pass an order to the effect that a police officer or some Magistrate other than the Magistrate passing the order, shall make an inquiry. But I ask, Sir, in the event of the complaint being made against a police officer, is it in the ordinary course of business likely that an inquiry by another police officer into a brother officer's delinquency will be made in a fair and just way and the true inquiry report placed before a Magistrate? I therefore say, Sir, that when a complaint is made against a police officer it should not be inquired into by another police officer. And my view, Sir, is supported by a recent ruling of the Patna High Court, Volume No. 9 or 10. In that case, Sir, it has been decided very recently that a complaint of this kind made against a police officer ought not to be inquired into by another police officer, and it was held that a Magistrate was not justified in passing such an order of inquiry held by the police. In this particular case the complaint was found to be a true one; and the Patna High Court held that the learned Magistrate ought to have sent the case for inquiry to some other judicial officer. That being so, Sir, I suppose my friends will support me.

Mr. W. M. Hussanally: May I ask the Honourable gentleman to read the ruling?

Mr. K. Ahmed: I am sorry the Government of India has not got it, and I am sorry at the same time that I could not carry it from my own Library all the way.

Mr. President: Amendment moved:

"In clause 54 (i) after the proviso to proposed sub-section (1) insert the following further proviso:

'Provided further that no complaint against any police officer shall be referred to any other police officer for inquiry'."

The question is that that amendment be made.

Mr. President: I think the 'Noes' have it . . . . .

Chaudhri Shahab-ud-Din: Sir, may I take it that this amendment has been put to the vote without any Member being given an opportunity to speak and without the Government opposing it? I want to speak in favour of it. I think this is a scandal in the country and the Government should remove it. I can point out cases . . . . .

Mr. President: Order, order. The Honourable Member must have observed that I looked round the Chamber and nobody gave any indication of getting up.

Chaudhri Shahab-ud-Din: The usual practice is that after an amendment is moved the Government Member stands up to oppose or accept it. We are bound therefore to await and see whether the Government Member stands up or not and then we stand up. If Government does not want to oppose the amendment, I think we may take it that it is accepted (*Voices*: 'No'); otherwise we stand up and support or oppose the amendment.

The Honourable Sir Malcolm Hailey: Our action in these cases is intended to avoid wasting the time of the House. If I think an amendment is not going to gain support, I do not take the trouble of arguing it. I did not possibly assume that an amendment of this nature was likely to be supported by anybody.

Chaudhri Shahab-ud-Din: Sir, I seek the leave of the Chair to support the amendment for reasons which are within my knowledge. There are District Magistrates in certain districts of the Punjab who have issued orders that all complaints against police officers should be sent to the District Superintendent of Police. I know of a district where a number of complaints were made against certain Police officers and all those complaints were made over to the Superintendent of Police. He sat over them and he never reported on them. When the police came to know who the complainant is either he does not appear or compromises the case. Justice requires that this should not be allowed to go on. I do not depreciate the services of the police. The Police Department is a very useful Department, but there are black sheep in that department as in all others, and I think the Government should not hesitate to protect the law-abiding and poor citizens from the machinations of certain police officers. Corruption is rampant in several districts in the Punjab and I think police officers are robbing right and left; and the civil authorities are helpless. In certain districts there is police rule and not civil rule. The civilians are very honest and upright. There is not that relation between the subordinate Magistrates and the civilian District Magistrates which exists between the District police officers and their subordinates. Therefore, the District police officers protect their subordinates, and consequently whenever there are complaints against the latter, the former do not pay much heed. Consequently it is only fair that whenever there is a complaint against a subordinate police officer it should be inquired into by a Magistrate or by some other authority, and not by the superior officer of the subordinate against whom the complaint is lodged. The proposed amendment is a very wholesome one and I request the House in the interests of justice to support it and thus protect innocent people from the police. Government should welcome such an amendment. If there are any complaints against the police, no one can maintain that they should not be inquired into. Then why should not, I ask, those complaints be inquired into by a Magistrate and why should those complaints be referred to the Superintendent of Police? He may sit over a complaint and may not submit his report, and the subordinate Magistrates have not the courage even to call for the reports. Sometimes they send reminders but they are not heeded. If the Government wants any information, I shall confidentially give some particulars. I request the House to support the proposed amendment very strongly.

Mr. R. A. Spence: Sir, may I, in the interests of justice, also ask that the floor of this House be not made the place for attacking the police when they are given no opportunity of refuting such attacks? The Honourable Member who just sat down has stated that he is able to produce definite cases. I say, if so, why does he not go to the competent authorities instead of coming to the Legislative Assembly and making this Assembly a place for absolutely unjustifiable and unwarranted attacks upon the people who exist for the protection of the interests of law-abiding citizens. I protest against this Assembly being made the place where attacks, such as we have just heard here, are made.

Mr. K. B. L. Agnihotri: Sir, I rise to support the amendment moved by my Honourable friend Mr. K. Ahmed. It is very surprising that even such a modest amendment should not be allowed or accepted by the Government. On the contrary opposition is offered if we make any suggestions for improvement in the procedure. My Honourable friend, Mr. Spence, has given us a lecture on the point whether we should make suggestions and insinuations based on our own experiences of the working of the police in our Provinces. Sir, we make those remarks here and if the official Members who represent the Local Governments think those insinuations are not based on good grounds, it is certainly open to them to request the Member who makes them to give definite information on the point. But it is not clear to me that if a matter has been referred to a Court of Law and from the Court of Law that matter has been sent to the District Superintendent of Police for a report and if the report is not sent to the Court of Law, how can those complaints be made to the Government officers outside the Court of Law? The only proper procedure in these cases is to proceed to the Appellate Courts. We cannot approach the superior executive officers. Our suggestions are based on personal experience and surely a Member is allowed to put his experience before the House for the consideration of the other Honourable Members so that they may judge from their own experience whether or not the remarks of a particular Member are correct. As far as the question before the House is concerned, it goes without saying that, if a complaint is made against a police officer in 90 per cent. of cases the police officer to whom such complaint is made for inquiry will be inclined to believe a person of his own department rather than some one outside. We have seen here champions of the Services who champion their cause even in this House, so it is possible and probable that the officers of a particular department may be inclined to be partial to their own departments. Probably it will be a surprise to my Honourable friend, Mr. Spence, if I were to tell him of one case within my own experience which happened in my own district. A complaint was filed by a pleader of the district against a police head constable. The Magistrate issued a summons to that head constable for appearance in his Court and the District Superintendent of Police, through whom the summons on the head constable was to be served, refused to serve it, and wrote back on the summons: "I decline to serve the summons as no sanction has been taken from me under section 42 of the Police Act." When police officers can go to such a length to shield their officers . . .

Mr. R. A. Spence: Was he justified?

Mr. K. B. L. Agnihotri: I think he was not, and that order of the Superintendent of Police was criticised by the Sessions Judge and he was taken to task for it. Sir, when the Police Superintendents can go to such lengths to shield their officers, is there not a probability that these police officers may shield their subordinate officers in the inquiries also? Moreover, Sir, the inquiries that are made by the police officers are not made under oath. A man may go and say what he likes before a police officer and there is nothing to show that the report of the police officer is a proper and good one. Therefore I suggest that in 90 cases out of a hundred there is a possibility of justice not being done if the complaints against these officers are submitted for inquiry to the police officers. I submit that the amendment is quite an appropriate one and should be supported by everyone in this House.

The Honourable Sir Malcolm Hailey: I am sorry that we should have been led into a discussion on a very old theme. As I said before, it is our custom, when we think that an amendment is not likely to be debated in the House, to avoid troubling the House with discussion; and it is for that reason that we did not proceed to argue the amendment of Mr. Kabeer-ud-din Ahmed. It has given an opportunity, however, to Mr. Shahab-ud-Din, speaking, I think, with added warmth, because he thought that he had been excluded from the discussion, to make a general attack on the police. He used language such as the machinations of the police; and the difficulties under which the ordinary man labours of securing justice owing to those machinations. He used in short language which on calmer reflection he would probably desire to modify. After all, I am sure that he, as much as other Members of this House, recognise the great difficulties under which the police work, the sterling good work which that force does, and the magnificent loyalty to Government which has characterised the police in spite of many unjust attacks and provocations during the last few years. It would have been welcome if at this late stage of our discussions on the Criminal Procedure Code we could have avoided these depreciatory references to the work of the police which some Members found themselves obliged to make when we were dealing more specifically with the police sections. General accusations of that kind prejudice the debate and add very little to the wisdom of our deliberations, nay, they tend to confuse the issues. I am not at the moment intending to pose as a champion of the police or of any other Service; I think it is unnecessary to say more than this, that the police work in this country, taking it generally and discounting all that you sometimes have to discount, is such that it entitles them to the gratitude instead of the condemnation of the general public. I shall say no more on the subject.

5 P.M.

Chaudhri Shahab-ud-Din: May I interrupt with a word of explanation? I am one of those who admire and have always admired the working of the police. I think they are to be admired for keeping peace and order in the country, and I believe that in the police force there are excellent officers, some of them very sympathetic, and they are indeed very useful both for the country and for Government. I referred only to those who were actually black sheep, and I do not think that Government or anybody else can maintain that there are not both good and bad people in the Police Force. We have got very good officers in the Punjab and most of them very upright and honest. I admire them and their work. Perhaps when addressing the House, I was excited or was a little misunderstood.

The Honourable Sir Malcolm Hailey: I was quite sure that Chaudhri Shahab-ud-Din did not really wish by hasty expressions to prejudice the views of the House on the subject of this particular amendment; for after all it is only this particular amendment, and not the general attitude of the police that we are discussing. As he says, the police force, like every other force, contains its black sheep. It is unavoidable. The very large numbers of men that we have to employ, the somewhat poor pay that until recently we were able to give them, made that inevitable. I do not think that you can say with justice that the police contains more black sheep than the revenue or any other department. But, ought we to legislate in every case on the basis of the existence of some few black sheep in the department? Ought we so to frame our legislation that it takes account only of extreme possibilities, instead of providing a fair working rule for ordinary action under ordinary circumstances?

This amendment makes it impossible for any Magistrate to investigate through the police a complaint in which any police officer is concerned. Examine the implications of this. We will take it that a police officer has been charged with theft of Government property. The Magistrate desires to know more about the case; he is not able to let another police officer investigate even a case of this kind. Then again, we will take such cases as an assault by a constable. It may not be a grave offence. The Magistrate wishes to know more about it; but he cannot send it for investigation by a police inspector, and why? Because Mr. Agnihotri says that the police inspector will be inevitably so prejudiced in favour of the constable that he would not be prepared to make a fair investigation. Honestly, I think we ought to waive that kind of thing aside. We know that there are in the Police Force, as Chaudhri Shahab-ud-Din has said, black sheep, but we also know that in the upper ranks at all events there are men whose lives and character would disprove at once such an insinuation as that put forward by Mr. Agnihotri.

Mr. K. B. L. Agnihotri: I said there was a possibility. I never said that all police officers are like that.

The Honourable Sir Malcolm Hailey: But, as a result, you rule out entirely investigations which may be very helpful to justice. I could understand that a Magistrate, where a case comes up which gravely concerns the local reputation of the Police Force, which has aroused a good deal of public attention, and which, if given against the police, might seriously affect their local prestige should hesitate to send the case for investigation by another police officer. That is obvious. And if he is a sensible Magistrate, he will not do so. But do not place on the Statute Book an amendment which would have the effect of ruling out the possibility of investigations which may give you correct and proper results merely because you are afraid that in one or two cases that system of investigation may be wrongly utilized by Magistrates. Let me again suppose—I will proceed with my illustrations—that a somewhat complicated case arises which a Magistrate desires to send to the police for further investigation. Is it realised that by an amendment of this nature you would prevent an officer of justice from utilising the services of the one trained detective agency which they have for the purpose? On a question like this, I think the House might very well leave the matter to executive instruction, and not place an absolute embargo, as the Honourable Member proposes to do, on investigation by the police in cases in which police officers are concerned. It might be left to the discretion of Magistrates not to send to the Police for investigation cases in which they know that the interests of the police are so much concerned that the investigation will not be a fair one. That ought to be sufficient.

Mr. Darcy Lindsay: I move that the question be now put.

Dr. H. S. Gour: Sir, I think there is a good deal more in my friend Mr. Kabeer-ud-Din Ahmed's amendment than meets the eye. The Honourable the Home Member has adverted to one aspect of the question, but he has not adverted to all aspects of the question. Let me present them to him. A Sub-Inspector of Police is accused of extortion and corruption before a Magistrate. The Magistrate refers the complaint for investigation to his superior officer, the Circle Inspector.

The Honourable Sir Malcolm Hailey (and other Honourable Members): Not necessarily.

Dr. H. S. Gour: Ordinarily: the Circle Inspector will order the villagers to appear before him and substantiate the complaint. The villagers meet and say "These are all birds of the same feather. He has taken a bribe to-day; that fellow will take it to-morrow. How are we going to appear before him and make a complaint at all?" It is not that the sub-inspector is corrupt; it is not that the circle inspector is unfair; but it is the widespread and popular apprehension in the minds of the public to go before a police officer to accuse his comrade. Surely, Sir, the Home Member could not be unaware of such a term as *esprit de corps*, and surely the police officers who discharge their duties in this country so efficiently on the whole do so because they possess that *esprit de corps*, and it may be, consciously or unconsciously there is a bias in favour of a member of their own service, and consequently, without going to the length to which some of the previous speakers have gone of saying that the police officers in investigating a case are consciously and perversely biassed in favour of a brother officer, I make bold to say that there is an unconscious leaning towards a member of their own service, firstly, because they are members of their service and secondly because if the offence is brought home it would bring discredit upon the whole police force. Consequently, I submit it is in the interests of public justice that when an inquiry of this character is to be made it should be made by persons free from such prejudice or bias, or at any rate free from the suspicion of such prejudice or bias which witnesses must necessarily feel in a case of this character. Now it has been said by my Honourable friend the Home Member—he took a very apt illustration which certainly suited his arguments. Suppose, he said, a police officer is charged with the theft of Government property. But how many cases are there against the police for bribery and corruption, and how few cases there are of theft by police of Government property? We are dealing here with normal cases, not with a certain few individual stray abnormal cases. Now, Sir, there is no aspersion cast upon the police force; if such an aspersion is cast, it has been cast by the Statute law of this country. Is my friend, the Honourable the Home Member and his colleagues who adorn the Treasury Benches unaware of the provisions of the Indian Evidence Act which prohibit the making of a confession to a police officer, and any confession made to a police officer as inadmissible in evidence? Sir, some protagonists of the police may rise and say that it is an obnoxious provision, that it casts an unmerited slur upon the police force and that the Indian Evidence Act is an anachronism enacted as it was in 1872. But it is not against individuals that the provisions of that Act are directed; it is not against individuals that this amendment is directed; it is against a system and against a human weakness which surely members of the police force cannot be said to be innocent of. Surely, *esprit de corps camaraderie* and a friendly feeling does exist amongst the rank and file of the police and that makes for the solidarity of the force and for strength of character; and all that the Honourable the Home Member has said I echo as regards the services that the police force in this country is doing. But that is entirely wide of the mark. We are here concerned with a short and narrow issue, that if a police officer is accused before a Magistrate of an offence and the Magistrate thinks it necessary that it should be inquired into, whether it should go before another police officer for inquiry or before an independent tribunal. It is with this short question we are concerned, and I have no doubt, Sir, that the House will support this amendment.

Rai Bahadur G. C. Nag (Surma Valley *cum* Shillong: Non-Muhammadan): I move, Sir, that the question be put.

The motion was adopted.

Mr. President: Amendment moved:

"That in clause 54 (*i*) after the proviso to proposed sub-section (1) insert the following proviso:

'Provided further that no complaint against any police officer shall be referred to any other police officer for inquiry'."

Mr. President: I think the 'Noes' have it.

Mr. K. Ahmed: 'Ayes' have it.

Dr. H. S. Gour: We don't want a division.

The Honourable Sir Malcolm Hailey: Did you order a division, Sir?

Mr. President: Honourable Members must make up their minds before I put the question a second time. The division must now proceed.

The Assembly then divided as follows:

AYES—23.

Abdul Majid, Sheikh.	Kamat, Mr. B. S.
Abdulla, Mr. S. M.	Latthe, Mr. A. B.
Agnihotri, Mr. K. B. L.	Mahadeo Prasad, Munshi.
Ahmed, Mr. K.	Mukherjee, Mr. J. N.
Akram Hussain, Prince A. M. M.	Nag, Mr. G. C.
Ayyar, Mr. T. V. Seshagiri.	Nand Lal, Dr.
Basu, Mr. J. N.	Neogy, Mr. K. C.
Bhargava, Pandit J. L.	Rangachariar, Mr. T.
Chaudhuri, Mr. J.	Shahab-ud-Din, Chaudhri.
Gour, Dr. H. S.	Srinivasa Rao, Mr. P. V.
Gulab Singh, Sardar.	Subrahmanayam, Mr. C. S.
Jatkar, Mr. B. H. R.	

NOES—36.

Abdul Quadir, Maulvi.	Innes, the Honourable Mr. C. A.
Abdul Rahman, Munshi.	Joshi, Mr. N. M.
Aiyar, Mr. A. V. V.	Ley, Mr. A. H.
Allen, Mr. B. C.	Lindsay, Mr. Darcy.
Blackett, Sir Basil.	Misra, Mr. B. N.
Bray, Mr. Denys.	Mitter, Mr. K. N.
Burdon, Mr. E.	Moir, Mr. T. E.
Cabell, Mr. W. H. L.	Moncrieff Smith, Sir Henry.
Chatterjee, Mr. A. C.	Muhammad Ismail, Mr. S.
Cotelingam, Mr. J. P.	Percival, Mr. P. E.
Crookshank, Sir Sydney.	Samarth, Mr. N. M.
Davies, Mr. R. W.	Sassoon, Capt. E. V.
Faridoonji, Mr. R.	Singh, Mr. S. N.
Haigh, Mr. P. B.	Spence, Mr. R. A.
Hailey, the Honourable Sir Malcolm.	Tonkinson, Mr. H.
Hindley, Mr. C. D. M.	Townsend, Mr. C. A. H.
Holme, Mr. H. E.	Webb, Sir Montagu.
Hullah, Mr. J.	Zahiruddin Ahmed, Mr.

The motion was negatived.

Rao Bahadur T. Rangachariar: We are not concerned now with the police, we are concerned with Magistrates in my amendment.

My amendment reads as follows:

"In clause 54 (*ii*) after the word 'oath' insert the words 'and, may, if he thinks fit, allow the person complained against to attend his inquiry'."

Now Honourable Members will notice that clause 54 (2A) provides that "Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath". I propose that he may also, if he thinks fit, allow the person complained against to attend that inquiry.

[Rao Bahadur T. Rangachariar.]

Sir, I know there is a practice in the Presidency Magistrate's Courts in Madras—I don't know how far it prevails elsewhere, that when a Magistrate does not issue process for compelling the appearance of the accused when he wants to inquire into the truth of the case beforehand, the Presidency Magistrate always allows the accused person to be present in the inquiry which he makes under section 202. After all, it is the Magistrate who is examining and he is examining the persons on oath. I give it only as a discretionary power to the Magistrate, I don't say it should be done in all cases. If the accused asks for it, and if the Magistrate has no objection, he may allow him to be present. The object of his presence is this, because at this stage you are committing persons to certain statements on oath, and it is always the case that when a person against whom you give evidence is present, witnesses hesitate to speak lies, but when the person against whom you give evidence is not present, witnesses are prepared to tell any amount of lies, so that you will be safeguarding the interests of the persons against whom you will be giving evidence by allowing him to be present. If the Government do not agree to this, we are sure to lose the amendment, but if the Government accept it, I will be thankful to them.

Mr. H. Tonkinson: Sir, I think it is only necessary in opposition to this amendment to read the sub-section as it will stand if the amendment is made. The sub-section will run as follows:

"Any Magistrate inquiring into a case under this section may, if he thinks fit, take the evidence of witnesses and may, if he thinks fit, allow the person complained against to attend his inquiry."

What, Sir, is the use of these words that my Honourable friend proposes to add to the sub-section? It is no use for his purpose at all. He himself has informed us that in Madras at present it is the practice for the person complained against to appear at the inquiry. As he says himself, Sir, it only gives a permissive power. Why, then, put it in? There is nothing whatever in the Code to prevent a Magistrate doing it without any words of this kind being added to the sub-section.

Mr. W. M. Hussanally: Sir, I rise to support the amendment. I have got magisterial experience and I know several Magistrates are in the habit of allowing accused persons to appear, and notices are issued to the accused if they wish to appear. But in some cases I know Magistrates have actually refused to allow the accused to take part in the proceedings even if they appeared in the courts of their own accord, and that, I think, is not right.

Mr. President: I cannot regard Honourable Member's argument as relevant. The amendment gives the discretion to the Magistrate.

Mr. W. M. Hussanally: Yes, Sir, if the discretionary power is given to the Magistrate, it will follow that as a rule they will have to allow accused to appear and that will safeguard their interests. I don't think that anything is lost by allowing the accused to appear when the witnesses are being examined in a preliminary inquiry.

The motion was negatived.

Clause 54 was added to the Bill.

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

"To clause 55, add the following:

'And to the same section the following proviso shall be added, namely:

'provided that when the investigation or inquiry was made by police under section 202 the Magistrate shall before dismissing the complaint give an opportunity to the complainant to prove the complaint'."

Sir, I need not say that the clause which I wish to insert becomes much more important owing to the defeat of the amendment of Mr. Kabeer-ud-Din Ahmed. In its acceptance we will have one safeguard that in case a complaint against a police officer has been adversely reported on by another police officer, the complainant shall have an opportunity of adducing the evidence before the Magistrate and the Magistrate could then dismiss it if he found that there was no case against the police officer or he could continue if he found that there was a case against him. Apart from this, Sir, it often happens that, in cognizable cases where the police officer does not take cognizance of the offence, the complainant runs to the Magistrate and files a complaint against the accused and if in such cases the complaint is sent back to the police for inquiry, it will happen as it generally happens—that the police, in order to keep up their own opinion will try to substantiate their own previous report submitted to their officer for declining to interfere in that case, and will submit to the Court a report similar to the former. And, Sir, this will be avoided if this clause be inserted. Further as I pointed out before, that before the police officer the statement may not be given on oath or the complainant may not like to appear before the particular police officer or the witnesses may not state the truth, in which case it will be a very hard case for the complainant if his complaint were to be dismissed on the adverse report of the police officer. Therefore, I submit, Sir, that in such cases the complainant may be given an opportunity to prove or substantiate his case if he so likes. It might be argued, Sir, from the Government Benches that the very object for which this section has been inserted, will be defeated by allowing insertion of this clause. My reply to that will be, Sir, that the object was to do justice in all cases. And, if in certain cases the complainant finds that he has a grievance against the police officer, that his case was not properly inquired into by the police officer, why should he not be permitted to put in and adduce his evidence. If the complaint has been sent to a Magistrate for inquiry it would be reasonable not to allow and I also do not provide that the complainant should be given such opportunity. Because the subordinate Magistrate who, on being required by another Magistrate, inquires into such cases will examine the witnesses on oath and will have nothing to do with the cognizable or uncognizable nature of the case. Therefore, I submit that my amendment will be more desirable especially after the defeat of the amendment moved by Mr. Kabeer-ud-Din Ahmed.

Sir Henry Moncrieff Smith: Sir, there are, I think, two simple answers to my Honourable friend's amendment. The first is this. The Magistrate has decided that he will have an inquiry made into the case. It means that he has doubts in his mind as to whether he ought really to proceed, because if he has no doubt in his mind, under section 204 he issues a summons at once for the attendance of the accused. He sends the case to be investigated. In this particular case we are dealing with, he has it investigated by the police. It is quite possible that in a case where the Magistrate already has doubts and sends the case to the police, the police will confirm those doubts and the Magistrate then proceeds to dismiss the complaint. Now, if we are going to lay down in our law that in every case where a Magistrate dismisses a complaint after reading the police report the complainant is to be allowed to come up and say: "we ought to have another inquiry by the Magistrate," what will be the result? The Magistrate will not send cases to be investigated by the police at all. He will say, "I am wasting time. I expect that the police report in this case will be hostile to the complainant. Therefore, why should I waste time by sending

[Sir Henry Moncrieff Smith.]

to the police when I shall have to do it over again myself? I will do it myself now." The other answer, Sir, is simply this. Honourable Members have, I think, in the debates on sections 202 and 203 overlooked the fact that the dismissal of a complaint is not necessarily the end of the matter. They have probably overlooked section 437 of the Code in which a High Court or the Sessions Judge can direct a further inquiry by the District Magistrate into the dismissal of a complaint under section 202. I think that in itself is a safeguard which is an answer to my friend's amendment.

Dr. Nand Lal: Sir, no doubt the amendment does not seem to be very happily worded, because it is of a general character. But there may be two cases in regard to which this amendment may deserve sympathy. Those two cases are as follows:—Firstly, suppose a police officer, say a constable, has assaulted a private individual and the latter has lodged a complaint. That complaint has been forwarded to the police department. The officer who may investigate into the truth of that complaint may be an honest man. He may hold an inquiry in the right method. But yet there will be room for criticism that this complaint was against a constable or a police officer, that it has been forwarded to the Police Department, and that therefore justice has not been done to him. In order to meet that criticism it seems to me desirable that this amendment may be countenanced. The other case is this. Supposing there is a cognizable case, the complainant, who may be taken as an informant, goes to the police thana. He makes a report purporting to say that he has been robbed of his property or that a theft has been committed in his house or that his house was broken into. All these offences are cognizable offences. The police officer in charge of the thana or any other police officer competent to record that report does not hear him. He says 'Go to the Court.' The report is not recorded and he is forced to lodge his complaint. That very complaint has been forwarded to the police officer, perhaps the same officer who was in charge of the same thana where he went and he attempted to make a report and his attempt was not given a very favourable response. In that case that police officer, barring a few noble exceptions, will be the last person to hold that the complaint of the complainant is correct. If he arrives at that conclusion so far as the report goes then it will go against him to a certain extent. Therefore, in order to meet such sort of cases also, it seems very desirable that the Government Benches may very kindly give favourable consideration to this amendment, though it is of a very general character. On these two grounds I very seriously support this amendment with reference to those cases, which I have enumerated above before the House.

Chaudhri Shahab-ud-Din: Though the amendment proposed by Mr. Kabeer-ud-Din has been lost, yet I fail to see any force in the amendment proposed by my Honourable friend Mr. Agnihotri. There is absolutely no force in his amendment. The words of section 203, as amended, do not make it obligatory for a Magistrate to dismiss a complaint after the receipt of the report but it is discretionary with him to do so. If after considering the statement made by the complainant and the report made by the inquiring police officer, the Magistrate thinks that in his opinion there is a good case for further investigation or inquiry, he is not precluded from ordering or holding it under the section. Therefore I oppose the amendment as unnecessary.

Mr. J. Ramayya Pantulu: The amendment as worded now is no doubt untenable but, I would, with the permission of the Mover of the amendment, make a slight alteration at the end of it: "give an opportunity to the complainant to show cause why the order of dismissal should not be made." The effect of this amendment will be this. If a complaint is made to the magistrate and forwarded to the police for inquiry and the police make a report to the magistrate, the magistrate dismisses it without the party knowing anything as to what was done by the police, that is, behind his back. What I suggest is that before passing an order, he should give notice to the party saying that the police have reported that the complaint has not been proved and asking the party to show cause why the complaint should not be dismissed. I think that is a salutary provision. The party will have knowledge of what has been done in the case. It may be that he will be able to convince the magistrate that the police inquiry has been perfunctory and there are reasons why the magistrate should try the case. I do not think he should be given an opportunity of proving the complaint. That would mean trying the case, but he should be given an opportunity to show that the police investigation has been perfunctory and that there are grounds why the magistrate should not act upon the police report. That would, I think, be the effect of my amendment.

Mr. President: Further amendment moved to the original amendment:

"Omit the words 'to the complainant' at the end and insert the words 'an opportunity to the complainant to show cause why the order of dismissal should not be made."

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

The motion was negatived.

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

The motion was negatived.

Clause 55 was added to the Bill.

Clause 56 was added to the Bill.

Mr. President: Clause 57.

Mr. H. Tonkinson: I rise to a point of order, Sir. In connection with this amendment No. 184 and the four amendments following,* my Honourable friend proposes an entire revolution of the procedure for inquiries before

* 184. In the beginning of clause 57 before the words 'In sub-section (2)', insert the following:

"To sub-section (1) of section 210 the following shall be added at the end, namely:

'and shall, at the same time, make an order committing the accused for trial by the High Court, or the Court of Session (as the case may be) and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment'."

185. After clause 57 a new clause be inserted to omit sections 212 and 213 of the Code.

186. In clause 57-A after 'Code' insert the following:
"the figures '210' shall be substituted for the figures '213' and."

187. After clause 57-A a new clause be inserted to provide that in section 216 of the Code the words 'and has been committed for trial' and also the words 'as have not appeared before himself' be omitted.

188. (a) To clause 58, sub-clause (1), add the following:
"and the words 'and examine' shall be omitted."

(b) For sub-clause (2) of clause 58 substitute the following:
"(2) Sub-section (2) of section 219 shall be omitted."

[Mr. H. Tonkinson.]

commitment. In order to bring that procedure into force, Sir, he proposes the deletion of two sections which are not touched by the Bill. The Bill, Sir, only touches very minor points in this Chapter, and I would submit, Sir, that these amendments are outside the scope of the Bill.

Mr. President: I ask the Honourable Member whether what Mr. Tonkinson has said in substance is actually his intention.

Mr. J. Ramayya Pantulu: Yes.

Mr. President: Then I must uphold the objection raised by Mr. Tonkinson.

Mr. J. Ramayya Pantulu: I think, Sir, I am right in proposing this amendment, because the Bill itself deals in clause 57 with section 210, and I have got a right, I think, to propose an amendment to section 210—and the other four amendments are consequential on the amendment which I propose in section 210. Section 210 is amended by the Bill, I think, therefore, Sir, I have got a right to propose further amendments in section 210 . . . .

Mr. President: The amendment which the Honourable Member proposes to section 210 seems to me to be entirely outside the scope of the section to which he refers. But in any case the Honourable Member has admitted that his purpose is as defined by Mr. Tonkinson, and I am afraid I must uphold the objection put to me by Mr. Tonkinson.

Clause 57 was added to the Bill.

Clause 57A was added to the Bill.

Clause 58 was added to the Bill.

Mr. President: Clause 59. Dr. Gour.

Dr. H. S. Gour: Sir, my amendment is intended to direct that in a charge the particulars of the charge should be set out. Honourable Members will see that clause (1) of section 221 of the Code of Criminal Procedure as at present enacted requires that every charge under this Code shall state the offence with which the accused is charged. Now there are a very large number of sections of the Indian Penal Code in which the general offence of rioting, unlawful assembly or hurt, grievous hurt and the rest are specifically designated as such offences. But there are numerous sub-clauses under those sections under which, as in the case of unlawful assembly and rioting the nature and object of the unlawful assembly and the nature and object of the riots may be different. In several reported cases of the High Courts,—I will only instance one, 33 Calcutta page 295—it was pointed out that in all cases of rioting and unlawful assembly particulars must be given in the charge of the nature and object of the members of the unlawful assembly or of the riot; and without such charge how is the accused to defend himself. In that case what happened was that the charge was framed that five or more persons have committed the offence of rioting. Now, what was the object of that unlawful assembly which committed the rioting? If you refer to section 141 and the following sections of the Penal Code you will find that a member may be a member of an unlawful assembly for various reasons

and those reasons are as divergent as different sections of the Penal Code. Consequently, it happens in several cases which have been reported—I have only given one but I could give many more—it is found that the accused is tried upon one set of facts; he is charged generally for rioting or for being a member of an unlawful assembly. Subsequently there is a fresh development and he is convicted upon a very different set of facts to which he never adverted and upon which he never defended himself. The case goes in appeal and one of his grounds is that the whole case of the prosecution was based upon a certain set of facts upon which he never defended himself. He says, I now find that the prosecution have sprung a surprise upon me; in the charge nothing was said as to what was the unlawful purpose for which this assembly met and what was the unlawful object of this gang who committed the offence of rioting. It happens that the appellate courts set aside the conviction on the ground that the offence tried was different to the offence for which the accused has been convicted. That is unfair to the prosecution. They assumed all along that everybody knew what the accused was being tried for. It is unfair to the accused because he was under an apprehension that the prosecution had led evidence to prove a certain set of facts and that those were the facts upon which he has to defend himself. I therefore submit that it is in the interests of justice, in the interests of the prosecution and in the interests of the accused that the particulars of the charge should be set out in the charge sheet. It might be said on behalf of the Government that there is a provision in the existing law to set out the particulars of the charge and reference would conceivably be made to sections 222 and 223. I therefore refer to these sections. Section 222 says:

"The charge shall contain such particulars as to the time and place of the alleged offence and the person (if any) against whom, or the thing, (if any), in respect of which it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged."

Now, this certainly does not meet the case. I will now read section 223. It runs as follows:

"When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for the purpose."

Half a dozen people enforce a right of way. Half a dozen people on the other side also claim a right of way. There is a collision between these two opposing gangs and there is a fight. The object of one is the assertion of a right of way—a public right; the object of the opposing gang is defence of private property on the ground that the way is private and it is their exclusive property. All that section 222 enjoins is that the charge shall contain particulars as to the time, place and the persons committing the offence, and section 223 says that the charge shall contain the manner in which the alleged offence was committed. If these two sets of people used *lathis* the charge shall say that the rioting was committed by means of *lathis*. If they exchanged blows, the charge shall state that the rioting was committed by the exchange of blows. If there were any section which demanded that the particulars of the charge, the specific statement of facts which constitutes the offence should be shown in the charge, there would be no cases. The reported cases are far too voluminous for me to read before this House at this late hour. But I assure the House that if such a thing

[Dr. H. S. Gour.]

did exist in the existing law, there would not be so many cases as there are on the subject, and I, therefore, Sir, move the following amendment:

"In clause 59 before the words and figures 'In sub-section (7)' insert the following:

'In sub-section (1) of section 221 of the said Code for the word 'state' the words 'specify particulars of' shall be substituted and'."

I consider it to be an improvement on the existing law, and I hope it will be passed.

Sir Henry Moncrieff Smith: Sir, all that Dr. Gour has explained to the House is, I think, that Magistrates make mistakes and not that the Code is wrong. The provisions of the Code in sections 221, 222 and 223 are ample. I think there is no question about that at all. But, Magistrates following section 221 only frame incomplete charges. They do not regard the other sections and section 223 in particular which requires them to state such further particulars as may give reasonable notice to the accused of the offence with which he is charged. If my Honourable friend's amendment is carried, we shall have in section 221 a provision to the effect that every charge under this Code shall specify particulars of the offence with which the accused is charged, somewhat inconsistent with the next provision which lays down:

"If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only",

to which you have to add particulars as to the time and place, and the person, etc.

All the things that Dr. Gour would have put into the charge are already provided for in the Act by either section 222 or 223. All that the High Courts have to say is that the Magistrates framed charges wrongly, not that the law did not enable them to frame charges aright. I would suggest that the amendment be negatived.

The motion was negatived.

Clause 59 was added to the Bill.

Clause 60 was added to the Bill.

Clause 61 was added to the Bill.

Dr. H. S. Gour: Sir, I move the adjournment of the House. It is 6 o'clock and the remarks which I have to make on clause 62 will take some time.

Mr. President: It is not in the power of the Honourable Member to move the adjournment of the House. He may offer reasons why the House should adjourn. If the Honourable Member assures me that he is going to make a long speech, I *will* adjourn the House.

Dr. H. S. Gour: Yes, I intend to make a long speech.

The Assembly then adjourned till Eleven of the Clock on Saturday, the 3rd February, 1923.