

Tuesday, 15th September, 1925

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COUNCIL OF STATE, 1925



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COUNCIL OF STATE.

Tuesday, the 15th September, 1925.

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

QUESTIONS AND ANSWERS.

THE CINEMA INDUSTRY.

130. THE HONOURABLE MR. HAROON JAFFER: Will Government be pleased to state:

- (a) the amount of the production of cinema films in India during 1924;
- (b) the amount of capital invested in the cinema industry in India; and
- (c) the value of imported films from America, Germany and England?

THE HONOURABLE MR. A. A. L. PARSONS: (a) and (b). Government have no information.

(c) The Honourable Member's attention is invited to pages 220-221 of the Annual Statement of the Sea-borne Trade of British India with the British Empire and Foreign Countries for the year ending the 31st March 1924, Vol. I, a copy of which is in the Library.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: Would the Honourable Member please tell the House as to how Indian films are censured?

THE HONOURABLE THE PRESIDENT: "Censuring films" does not arise out of questions which deal with "the amount of the production of cinema films in India, the amount of capital invested in the industry in India, and the value of imported films."

ESTABLISHMENT OF AIR COMMUNICATIONS BETWEEN INDIA AND ENGLAND.

131. THE HONOURABLE MR. HAROON JAFFER: Will Government be pleased to lay on the table a statement of the present situation relating to the establishment of air communications between India and England?

THE HONOURABLE MR. A. A. L. PARSONS: There are two proposals relating to the establishment of air communications between England and India. The first is for an Airship Service *via* Ismailia to Karachi. The Standing Finance Committee of the Legislative Assembly have agreed to the land required for the base at Karachi, which is estimated to cost about Rs. 90,000, being acquired by the Government of India and placed rent free at the disposal of the Home Government. They have also approved of a grant-in-aid of rupees

four lakhs being made by the Government of India to the scheme on the understanding that import duties at the ordinary rates will be paid on all materials imported into India for the works.

The second proposal is for the inauguration of a weekly heavier-than-air service between Egypt and Karachi. This service, which is the initial link in a future service to England, will replace that at present carried out fortnightly by the R. A. F. between Egypt and Iraq, and, as at present contemplated will operate weekly in each direction between Kantara and Karachi. A survey party is very shortly being sent out by the Air Ministry to inspect and report on the route. The Home Government have entered into an agreement with Imperial Airways, Limited, for the operation of the route.

COST TO GOVERNMENT OF THE STRIKE ON THE NORTH WESTERN RAILWAY.

132. THE HONOURABLE MR. HAROON JAFFER: Will Government be pleased to state how much the North Western Railway strike of June last cost the Government?

THE HONOURABLE MR. F. A. HADOW: It is impossible to frame a reliable estimate of what the recent strike on the North Western Railway cost Government.

OIL SUPPLIES OF INDIA.

133. THE HONOURABLE MR. HAROON JAFFER: Will Government please give figures showing:

- (a) the present oil supplies of India;
- (b) the amount of oil drawn annually;
- (c) the amount of oil exported; and
- (d) what means are being used for the discovery of new sources of oil?

THE HONOURABLE MR. A. A. L. PARSONS: (a) I am afraid that I am not clear as to what information the Honourable Member desires. If he wishes an estimate of the reserves of mineral oil in India, I regret that no accurate estimate is possible. If, however, he wishes to know the sources of our annual supply, the production of petroleum in India in 1923 was 294,215,053 gallons and particulars of the amounts imported will be found in the Annual Statement of Sea-borne Trade. This also answers part (b) of the question.

(c) During the year 1923-24 the amount of mineral oil exported was 16,841,325 gallons.

(d) Prospectors can obtain prospecting licenses and mining leases under the Mining Rules, and can ordinarily avail themselves of the advice of the Geological Survey.

INDIAN CADETS IN SANDHURST.

134. THE HONOURABLE MR. HAROON JAFFER: Will Government please state:

- (a) how many Indians are at present in Sandhurst;
- (b) how many Indians have completed their course at Sandhurst; and
- (c) how many of (b) have been given commissions?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF: (a) There are at present 15 Indian cadets at the Royal Military College, Sandhurst.

(b) and (c). The number who have passed out of Sandhurst since 1919 is 32. These were all given commissions. In addition, six cadets have recently completed the course, and we are awaiting intimation regarding the grant of their commissions.

CONSUMPTION OF OPIUM PER HEAD IN EACH PROVINCE.

135. THE HONOURABLE MR. HAROON JAFFER: Will Government please give figures showing:

- (a) the consumption of opium per head in each Province in 1924 compared with that in 1915 and 1905;
- (b) the average price of opium in each Province in each of those years; and
- (c) the amount of revenue derived from opium per Province in the three years above named?

THE HONOURABLE MR. A. C. MCWATTERS: (a), (b) and (c). Statements showing the information asked for are laid on the table. Figures have been given for financial years up to 1923-24, the latest available statistics are not maintained for calendar years.

A.—Statement showing the consumption of opium per head.

Province.	(In seers).		
	1905-06.	1915-16.	1923-24.
Madras	·001	·0009	·0008
Bombay	·0023	·003	·0017
Sind	·0028	·0026	·0018
Bengal	·0014	·0011	·0008
United Provinces	·0014	·001	·0005
Punjab	·0029	·0029	·0016
	(including Delhi).		
Bihar and Orissa	·0009	·0009	·0008
Burma	·0085	·0041	·0027
Central Provinces	·0032	·0036	·0022*
	(including Berar).	(including Berar).	
Berar	·0063	..	..
Assam	·0098	·0094	·0048

*Figures relate to 1923.

North-West Frontier Province	..	..	..	..	·0015	·0021	·0012
Ajmer-Merwara	..	..	..	..	·0064	·0047	·0057
Baluchistan	..	..	..	..	·0018	·0021	·0006
Coorg	..	..	..	..	·0002	·0003	·0002
Delhi	..	..	..	..	Included in the Pun- jab.	·0056	·0002

B.—Statement showing the average retail price (at which retail vendors sold opium to consumers) of opium per seer during the years 1905-06, 1915-16 and 1923-24.

		1905-06.	1915-16.	1923-24.
		Rs.	Rs.	Rs.
Madras		Varying from Rs. 35-8-11 to Rs. 72-10-10.	Varying from Rs. 58-1-10 to Rs. 101-9-11.	Varying from Rs. 91-14-0 to Rs. 170-13-4.
Bombay	.. ..	Rs. 34 to Rs. 42.	Rs. 35 to Rs. 40.	Not fixed.
Sind	.. ..	Rs. 40 till 15th March 1906 and Rs. 37 thereafter.	Rs. 40.	Do.
Bengal	.. ..	Rs. 20 to Rs. 45.	Rs. 60 to Rs. 131.	Rs. 126 to Rs. 130.
United Provinces	.. ..	Rs. 16 to Rs. 18.*	Rs. 23 to Rs. 25.*	Rs. 120.
Punjab	.. ..	Rs. 18-13-2 to Rs. 40.	Rs. 27 to Rs. 60.	Rs. 90 to Rs. 240.
Bihar and Orissa	.. ..	(This province was included in Bengal).	Rs. 25 to Rs. 75.	Rs. 95 to Rs. 130.
Burma	.. ..	Rs. 40 to Rs. 80 for raw opium and Rs. 50 to Rs. 100 for cooked.	Rs. 70 to Rs. 100 for raw opium and Rs. 90 to Rs. 125 for cooked.	Rs. 135 to Rs. 170.
Central Provinces	.. ..	Rs. 25 to Rs. 60.	Rs. 40 to Rs. 80.	Rs. 80 to Rs. 280.
Assam	.. ..	Rs. 35 to Rs. 70.	Rs. 55 to Rs. 70.	Rs. 140 to Rs. 160.
North-West Frontier Province.		Rs. 32-5-4 to Rs. 40.	Rs. 32 to Rs. 53.	Rs. 120 to Rs. 140.
Ajmer-Merwara	.. ..	Rs. 16 to Rs. 40.	Rs. 16 to Rs. 40.	†
Baluchistan	.. ..	†	Rs. 40 to Rs. 70.	Rs. 140 to Rs. 200.
Coorg	.. ..	Rs. 60 per Madras seer.	Not fixed.	Rs. 100.
Delhi	.. ..	Included in the Punjab.	Rs. 45.	†

* Figures represent wholesale price at which opium was sold to retail vendors. Information relating to retail price is not available.

† Information not available.

C.—Statement showing the amount of revenue derived from opium (Provincial and Imperial) per Province for the years 1905-06, 1915-16 and 1923-24.

Provinces.	1905-06.		1915-16.		1923-24.	
	Excise revenue from opium creditable to provincial accounts.	Opium revenue creditable to Central Revenues Nett.	Excise revenue from opium creditable to provincial revenues.	Opium revenue creditable to Central Revenues Nett.	Excise revenue from opium creditable to provincial revenues.	Opium revenue creditable to Central Revenues Nett.
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
Madras ..	4,85,782	..	14,03,224	4,02,759	27,72,077	18,32,564
Bombay including Sind	8,40,925	85,29,174	15,59,347	7,77,471	27,42,481	15,03,488
Bengal ..	17,96,254	4,30,44,111	16,42,213	2,48,45,201	32,16,256	3,29,38,532
	Figures relate to Lower Provinces of Bengal including Bihar and Orissa.					
United Provinces ..	5,79,150	5,74,014	8,94,428	1,65,53,550	18,35,190	2,49,55,430
Punjab ..	1,74,878	73,499	10,46,894	6,15,630	32,49,734	16,34,199
Bihar and Orissa ..	Included in Bengal.		10,77,012	3,32,338	22,25,563	10,20,875
Burma ..	40,26,600	6,08,306	32,90,854	3,65,554	39,23,787	9,16,740
Central Provinces and Berar	6,96,262	3,07,789	10,28,221	4,70,013	31,74,609	10,39,895
Assam ..	17,61,871	5,36,802	21,82,216	5,35,523	38,09,246	10,89,741
	Figures relate to Eastern Bengal and Assam.					
North-West Frontier Province. (a)	8,831*	8,747	79,173*	39,227	2,75,792*	83,553
India General (b) ..	15,024*	—10,949	56,264*	19,185	2,16,770*	36,638
TOTAL ..	1,03,61,312	5,36,71,493	1,41,24,409	1,15,49,351	2,69,49,885	1,66,72,426*
TOTAL provincial revenue from opium ..						..

(a), (b). Central Revenue.

* Excluding charges in England which amounted to Rs. 70,831.

INDIAN REPRESENTATIVES AT THE INTERNATIONAL COTTON CONFERENCE IN VIENNA.

136. THE HONOURABLE MR. HAROON JAFFER: Will Government be pleased to state:

(a) whether any official representatives were appointed to the International Cotton Conference which was held in Vienna from June 4th;

(b) if so, who were the representatives; and

(c) was any official invitation received for this Conference by India?

THE HONOURABLE MR. D. T. CHADWICK: (a) and (c). No.

(b) Does not arise.

CONCESSIONS TO CIVIL ENGINEERS IN THE ORDNANCE DEPARTMENT.

137. **THE HONOURABLE MR. HAROON JAFFER :** Is it a fact :

- (a) that Government are considering the question of granting civil engineers in the Ordnance Department concessions similar to those granted to Government engineers by the Lee Commission ; and
- (b) if so, when is a decision likely to be arrived at ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : (a) Yes, Sir, Government have under consideration the question of extending the concessions recommended by the Lee Commission to civilian gazetted officers of the Ordnance factories, who possess engineering or other technical qualifications, and are of a status corresponding to that of the officers in civil departments to whom the concessions have been granted.

(b) Government are not in a position to say when a decision is likely to be arrived at. Their proposals on the subject will shortly be placed before the Secretary of State.

REPORTED DISCOVERY OF A NEW RACE IN THE FORESTS OF SOUTH MALABAR.

138. **THE HONOURABLE MR. HAROON JAFFER :** Will Government please state :

- (a) whether it has seen the report of the discovery of a strange new race in the forests of South Malabar ;
- (b) whether it has received any official information on the question ; and
- (c) whether it proposes to make special investigations into the matter ?

THE HONOURABLE MIAN SIR FAZL-I-HUSAIN : (a) and (b). No.

(c) Inquiries will be made.

STATISTICS SHOWING ENTRIES FOR THE I. C. S. EXAMINATIONS.

139. **THE HONOURABLE MR. HAROON JAFFER :** Will Government please give statistics showing :

- (a) the entries for the Indian Civil Service Examinations for each of the past ten years ;
- (b) the number of Indians, according to caste, who sat for the examinations ;
- (c) the number of Indians, according to caste, who passed ;
- (d) the number of Indians, who have been given appointments in India ; and
- (e) the distribution according to Provinces of all Indians who have passed the I. C. S. Examinations ?

THE HONOURABLE MR. J. CRERAR : A statement has been laid on the table giving the information asked for in parts (a) to (d), but I regret that we have no information as to the caste of the Indian candidates.

(c) Since 1915 Indians have been allotted to provinces as follows : Madras, 20 ; Bombay, 11 ; Bengal, 18 ; United Provinces, 15 ; Punjab, 7 ; Burma 3 ; Bihar and Orissa, 8 ; Central Provinces, 14 ; Assam, 1. If the Honourable Member wants similar information for earlier years he will be able to obtain it from the Provincial Civil Lists.

Statement showing the number of entries for the Indian Civil Service examinations during the last ten years, the number of Indians who sat for those examinations, the number who passed and the number who were given appointments in India.

Year.	Number of entries.	Number of Indians who sat.	Number of Indians who were successful.	Number of Indians appointed.	REMARKS.
1915 . . .	Not known	23	1	3	
1916 . . .	49	28	2	5	
1917 . . .	35	28	3	4	
1918 . . .	34	28	9	9	
1919 . . .	24	21	5	6*	*One resigned before joining.
1920 . . .	32	22	6	6	
1921 . . .	86	59	13	13	
1922 . . . L.	80	54	10	10	
A.	178	74	9	13†	†One died during probation.
1923 . . . L.	96	46	4	4	
A.	192	93	9	11	
1924 . . . L.	90	Not known	8	8	
A.	214	98	5	7	

N.B.—The term "Indians" includes statutory natives of India and natives of Ceylon.

L.—Means London examination.

A.—Means Allahabad examination.

EMIGRATION OF INDIAN LABOUR TO CEYLON, ETC.

140. THE HONOURABLE MR. HAROON JAFFER: Will Government please give statistics regarding the emigration of Indian labour to Ceylon and other places outside of India during the past ten years?

THE HONOURABLE MIAN SIR FAZL-I-HUSAIN: A statement giving the information required is laid on the table.

Statement showing the number of Emigrants under the Indian Emigration Act to the various British Colonies during the years 1915—1924.

Year.	Ceylon.*	Malaya.*	Natal.	British Guiana.	British West Indies.	Fiji.	Mauritius.*	Mombassa.	Persian Gulf Ports.	To other places.	REMARKS.
1915 . . .	94,828	54,881	..	2,248	1,905	2,500	..	187	767	14	
1916 . . .	115,713	72,091	..	830	1,945	1,756	..	234	2,603	10	
1917 . . .	47,206	78,407	..	..	..	..	..	239	789	..	
1918 . . .	43,184	55,583	..	..	..	..	..	352	..	29	
1919 . . .	112,391	88,021	..	..	..	..	..	201	..	20	
1920 . . .	45,946	78,855	..	..	..	..	..	184	662	398	
1921 . . .	25,496	15,413	..	..	..	..	..	66	840	141	
1922 . . .	78,106	38,336	..	..	..	..	..	..	23	181	
1923 . . .	90,289	30,234	..	..	..	..	1,080	..	3	144	
1924 . . .	100,250	43,147	..	..	..	..	..	165	..	..

*Recruited and assisted labourers only; includes minors.

(a) To East Africa, Kenya, Dar-es-Salaam Nyassaland and Portuguese East Africa.

REPORT OF THE INSPECTOR GENERAL ON THE BENGAL JAILS.

141. **THE HONOURABLE MR. HAROON JAFFER :** Have the Government of India issued any orders to the Bengal Government in connection with the report of the Inspector General on the Bengal Jails ?

THE HONOURABLE MR. J. CRERAR : No. .

VISIT OF HIS MAJESTY THE KING EMPEROR TO INDIA.

142. **THE HONOURABLE MR. HAROON JAFFER :** Will Government be pleased to state :

- (a) whether they have seen the report that His Majesty the King Emperor is visiting India this year ; and
- (b) whether any official announcement can be made ?

THE HONOURABLE MR. J. CRERAR : Government have no information on the subject.

EMPLOYMENT OF INDIANS AS RAILWAY OFFICERS ON DIFFERENT RAILWAYS.

143. **THE HONOURABLE MR. HAROON JAFFER :** Will the Government be pleased to state :

- (a) how many Indians have been employed as railway officers on different railway lines from January last when it was stated that the Railway Training School, Chandausi, was being organised for the Indianisation of railway service ;
- (b) did the Railway Board advertise three posts, one in the Superior Traffic Service and the other two in the Subordinate Traffic Service in July last ;
- (c) is it a fact that applications were invited from those who were Bachelors of Science of any Indian University ;
- (d) will the Government be pleased to state the names of the selected candidates for these three posts and their qualifications. Is it a fact that Mr. Sohan Lal, B.Sc., an Inspector on the Eastern Bengal Railway with railway training at Chandausi applied for the post but was rejected ; and
- (e) on what grounds was Mr. Sohan Lal's application rejected and in what particular manner was he inferior to the selected candidates ?

THE HONOURABLE MR. F. A. HADOW : (a) The Honourable Member is under a misapprehension. The selection of officers for appointment as probationers in the Superior Transportation Service is made before they are sent to Chandausi for training.

(b) The Railway Board advertised for three posts ; one in the Superior and two in the local Service.

(c) Yes : It is one of the degrees specified.

(d) and (e). Candidates have not been finally selected as yet. Mr. Sohan Lal's application was rejected as there were many applicants with superior qualifications.

GRIEVANCES OF SUBORDINATE EMPLOYEES ON INDIAN RAILWAYS.

144. **THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY :** Would the Government be pleased to state what action has been taken on the Resolution of the Legislative Assembly passed on the 5th February 1925 recommending to the Governor General in Council that an immediate inquiry should be held regarding the grievances of subordinate employees of Indian railways ?

THE HONOURABLE MR. F. A. HADOW : The Government of India are not in agreement with the Resolution referred to by the Honourable Member and do not propose to initiate the inquiry suggested in that Resolution. They have drawn the attention of Railway Administrations to the debates not only on the Resolution, but also on the Budget, and they have no doubt that any genuine grievances which exist will be remedied by the Railway Administrations concerned.

THEFT OF GOVERNMENT CURRENCY NOTES.

145. **THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY :** (a) Would the Government be pleased to state if they have information regarding the extent of Government currency notes stolen since the discontinuance of the practice of registration of the numbers of Government currency notes ?

(b) Would the Government be pleased to state whether, since the discontinuance of the registration of the numbers of notes as before, a large number of notes have been stolen which have been neither traced nor recovered ?

(c) Would the Government be pleased to state what the likely cost of restoring the former practice of registering the number of notes would be ?

THE HONOURABLE MR. A. C. MCWATTERS : I must first correct a misunderstanding on the part of the Honourable Member. The practice of registration of the number of currency notes has not been discontinued. Currency offices do register the numbers of notes of the denomination of Rs. 50 and above which are issued and the date when each note on being paid is withdrawn from circulation. It is only the system of registering the number of notes reported by the public as stolen that has been abolished. As regards this I would refer the Honourable Member to the Government of India Resolution No. 523-F., dated the 12th November 1912, a copy of which will be given to the Honourable Member if desired.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY : Is the Honourable Member aware that owing to the discontinuance that he has referred to last, the public are being put to great loss ?

THE HONOURABLE MR. A. C. MCWATTERS : The discontinuance of the system is fully explained in the Resolution to which I have referred the Honourable Member. Very strong reasons are given in that Resolution for abolishing the system, which the Government of India believed did not in the long run lead to the general advantage of the public and resulted in a good deal of harassment to innocent possessors of notes that were stolen.

MESSAGE FROM THE LEGISLATIVE ASSEMBLY.

SECRETARY OF THE COUNCIL : Sir, a Message has been received from the Legislative Assembly. The Message runs as follows :

" I am directed to inform you that the Legislative Assembly have, at their meeting of the 14th September, 1925, agreed without any amendments, to the Bill to consolidate the law applicable to intestate and testamentary succession in British India which was passed by the Council of State on the 2nd September 1925."

BILLS PASSED BY THE LEGISLATIVE ASSEMBLY LAID ON THE TABLE.

SECRETARY OF THE COUNCIL : Sir, in accordance with Rule 25 of the Indian Legislative Rules, I lay on the table copies of a Bill to provide for the fostering and development of the bamboo paper industry in British India and of a Bill further to amend the Indian Limitation Act, 1908, which were passed by the Legislative Assembly at its meeting held on the 14th September, 1925.

RESOLUTION *RE* WORK DONE BY THE CENTRAL GOVERNMENT IN CONNECTION WITH TRANSFERRED SUBJECTS.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY (West Bengal: Non-Muhammadan): Sir, I would in the first instance ask your leave to make a slight alteration in the wording of the Resolution standing in my name and would, with your permission, move the Resolution in the following terms :

" This Council recommends to the Governor General in Council that he should consider the desirability of having a report prepared showing the nature and amount of work done by and in the Central Government for five years commencing with 1921 in respect of and connected with subjects ordinarily known as ' Transferred Subjects ' and also showing the nature and quantum of work under these heads that remains to be done under the Devolution Rules or otherwise."

I take it, Sir, that I have your leave to make the slight alteration.

THE HONOURABLE THE PRESIDENT : The Honourable Member may proceed.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY : Sir, I should attach more importance to the administrative, and if I may call it, the academic side of this Resolution more than to its constitutional side, although undoubtedly there is a considerably important constitutional question connected with it under the Devolution Rules and otherwise. Sir, very useful work is undoubtedly being done in the provinces under the heads ' Transferred Subjects ' even where the suspension of the constitution has become necessary. That class of work is connected with what ordinarily goes by the name of nation-building subjects, a term that, I do not know for what reason, has been unpopular in some quarters, but which I note with pleasure has been adopted by the Viceroy himself. Very important aspects of constructive work come under that category, and although they are largely, almost mainly, transferred and provincialised, I have always submitted, though not always with success, that a very large residual of central obligations with regard to

them continues in the Central Government, particularly in connection with subjects like Public Health, Sanitation, Education, medical work in its higher aspects, and also research in various departments particularly in connection with subjects like Agriculture, which has so long been looked upon as nearly entirely provincial. The answer to my suggestion on the few occasions when I raised this question either in this House or in the other, was that for the Central Government to attempt anything like even a suggestion regarding these subjects might amount to or be looked upon as interference. I submit, Sir, as I have submitted before, that that would not be so. As I have always contended and still contend and submit, the Central Government have and must continue to have considerable obligations with regard to these subjects. I have been encouraged to bring up this Resolution, particularly in view of what His Excellency the Viceroy in his opening address to the Legislature the other day said about the all-important subject of Agriculture. I shall read two short extracts from that address. His Excellency said :

“ The direct responsibility of the Government of India for agricultural development in the Provinces ceased with the inception of the Reforms. In view, however, of the paramount importance of agriculture as the basic industry of the people of India, of the improbability of Provincial Governments being in a position to undertake research on the scale required and of the necessity for co-ordinating activities in the wide field of agricultural development, the Central Government must continue to play an important part in agricultural progress. Their present agricultural policy is mainly directed to fostering research and undertaking work which is outside the normal ambit of provincial activities by reason of its all-India character.”

Then, Sir, details are given with which I do not want to trouble the Council now. His Excellency went on to say :

“ But apart from direct activities I conceive that one of the most important functions of a Central Government in respect of a great all-India interest is to facilitate the co-ordination of provincial effort. My Government have for some time past had under consideration a proposal for the establishment of an all-India agricultural organisation which would help towards co-ordinating the activities of the various provincial Departments of Agriculture, promote research, agricultural education, co-operation and other established aids to agriculture and serve as a medium for agricultural propaganda throughout the country.”

Sir, I should like to lay some emphasis upon the expressions “ co-ordination ” and “ co-operation ”, which His Excellency has very fittingly introduced in this connection. Although provincial autonomy is our objective and we have asked for it and insist on it, although in the nature of things these subjects must largely be provincialised, yet co-ordination all over the country is absolutely necessary without which the building up of the nation's interest as a whole regarding these all-important subjects would be an impossibility. While the provinces are pursuing their own individual and necessarily isolated methods according to their own requirements and their own resources, it is of the utmost importance that the rest of the continent of India should know what is going on elsewhere, so that they may profit by the mistakes that are being made and profit also by the good results that are being achieved. From that point of view and from no other, from the point of view, to put it shortly, of mutual help and suggestive co-ordination, it is of the utmost importance that work of this kind that I suggest in all these subjects should be undertaken.

[Dr. Sir Deva Prasad Sarvadhikary.]

And what authority can do it with greater success than the Central Government? The subject of co-operation has been mentioned in His Excellency's address. I remember, Sir, attending co-operative conferences in Simla before the present regime came into existence, where most useful results used to be achieved by interchange of ideas between provincial representatives in the great department of public activity, namely, co-operation which I am afraid is somewhat in the background now, not in the political sense only but also in the economic sense. Take, for example, Sir, again a subject like excise, with regard to which different provinces have different ideals and different routine and procedure which at times go to work prejudicially against not only the interests and objectives of other provinces, but also against what must be regarded as all-India objects. My suggestion that officials and non-officials interested in the excise question should now and again come together in conference has not been yet given effect to.

These are, Sir, transferred subjects, yet I say from the larger point of view that they involve considerable central obligations, and work of the kind I suggest should not be overlooked or delayed. It may not be possible for the Central Government to do all that they would have liked to do but it may be possible to take stock of what is going on and to help the provinces with the information, suggestions and probably with active assistance now and again if the resources of the Central Government permit it. It is notorious that the Provincial Governments in their resources are helpless in many of these subjects, if not most. And with regard to subjects like research—I am not talking of medical or scientific research proper because that is a central subject—especially in agriculture, where research is and must be the basis of all future improvements, the Government of India can very considerably help, as His Excellency has been good enough to adumbrate. Here in passing—may more than in passing—I should like to refer to the good work done in the department which is responsible for agriculture and forestry in spite of the handicap—the seeming handicap—under the Devolution Rules. The other day, while speaking on emigration in this House I had occasion to remark that, when the later history of that question came to be written, no mean place will be assigned to the Honourable Sir Narasimha Sarma who presided over this Department for some time. I think it can be said with confidence that in regard to Agriculture and Forestry and the Civil Veterinary Department and other Departments that have a minor connection with his department, Sir Narasimha Sarma's services to the country have been very great. That is one of the departments where constructive work of some value can be undertaken and I am glad to say has been undertaken within the limitations with which the department is hedged in, which are not only financial but also constitutional. That Department, Sir, and the Department represented by the Honourable Mr. Crerar could, if they were inclined to do it, easily give us a fair amount of survey without having to engage, at least on this question, any extraneous machinery. The materials are all there. So, if only the will is there, I think it will be possible to present a very acceptable report as a result of some slight survey, which will be helpful not only to the Central Government in realising these obligations, but also to the provinces and the

public at large in realising what work has been done and what work remains to be done. The time will come when other aspects of the question will have to be considered. In view of further reforms, however delayed, this will not be a mean subject to consider, and if the Government collect all the material, I am sure a great deal of spade work and more than spade work will have been done.

This, I am sure, can be undertaken, without the slightest prejudice to the entire and absolute autonomic principles that may be claimed by the provinces from the intimate relations between the provinces and the Central Government that must subsist. Unifying results for all India would be of the utmost importance. We are fast losing the few links that had been left so long that kept the provinces together. For example, the All-India Services are nearly going and are being provincialised to the extent which I myself have not been able to contemplate with equanimity. We want to be together, while the provinces are growing from more to more we want to feel, realise and think that all the provinces make one united India. Towards that objective the proposed survey would be of the greatest importance. I had been told by some friends that the Government should not be put to this trouble and expense because these facts can be gathered from various blue books and statistical records that are published from time to time. Pusa, for example, publishes its own records; the Veterinary Department publishes its own records and in the same way other departments publish their own records. On a previous occasion, I had an opportunity of drawing attention to the scattered and the unavailable character, if I may so call it, of these statistics, although they are somewhere to be found. I suggested that the Publicity Department with its organization which is doing such useful work in regard to publications like "India" might be told off to make a collection of necessary statistics in an intelligent and intelligible fashion. But even that will not answer the purposes that I have in view. An organic survey and a self-contained report dealing with the whole question as one as far as possible is the sort of report that I have in mind in making this proposal and I make a present of this idea to the Government.

We are about to close our deliberations and I should like to see them ended on a somewhat constructive note. We in this part of the House, at least some of us, have not been quite satisfying to Government views with regard to questions that have come up from time to time. By this demand, at all events, that I now put forth, it will be shown that the great constructive work awaiting us all in the country is never lost sight of amidst the heat and dust of passing events, and I want Government assistance with regard to the pushing on of questions connected with this all-important matter. I hope Government will find it possible to accept this Resolution in its modified form and in a reasonable time will be able to give us the benefit of their deliberations and researches and their survey.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN (West Punjab: Muhammadan): Sir, I rise to oppose the Resolution, for this reason that had there been one minute more given to the agenda to-day when the questions were being asked, this whole subject would have been

[Colonel Nawab Sir Umar Hayat Khan.]

finished. If this Resolution was put in the form of a question, an answer would have been given and we would have got more time to debate on more important subjects. I have tried to get up early, Sir, for the reason that this Resolution should be thrown out before any amendments are moved. For this reason I hope Honourable Members will not speak on this Resolution and waste the time of the House which can be better utilised on other important subjects. In fact, I had a mind to get up during the speech of the Honourable Mover to say that the question be put, but did not do so.

THE HONOURABLE MR. K. C. ROY (Bengal : Nominated Non-Official) : Sir, I shall not detain the House for more than five minutes. When I read the Resolution of my Honourable friend Sir Deva Prasad Sarvadhikary I wondered what it could be for and to what purpose this report could be useful. I wondered whether this report would be useful for his National Convention or for his round table conference. If such a report is needed for this House, we have got it before us. You know, Sir, more than anybody else that you had this matter thoroughly examined by the Reforms Committee which sat about this time last year.

Briefly, I shall direct the attention of the House to the three different heads under which the Government of India exercise their control over transferred subjects. In the first place, they have control over the provincial Bills. The Government of India was represented before the Reforms Inquiry Committee by Mr. G. H. Spence and he was asked this question :

“ Certain Local Governments have complained of this control exercised through section 80-A. Have they complained of the way in which the control has been exercised or of the fact that it is there ? ”

Mr. Spence gave a most conclusive answer. I shall not tire the House by reading extracts from his evidence. He said that the only cogent argument came from the Bengal Government, not on a point of law but on the interpretation of the law. Similar complaints came also from the Burma as well as the Central Provinces Governments. Then he gave another instance of the Oudh Rent Bill, and proceeded to give the following answer :

“ The Government of India entered something in the nature of a protest against the very small period of time allowed for examination of the Bill, and the Local Government in apologising said that they had taken it that the effect of the introduction of the reformed constitution would be that legislation relating to provincial matters would be a matter for the provinces and not for the Government of India. Similar observations have been made in the case of other individual Bills but no reasoned argument.”

I know from my own personal experience that the control of the Government of India over provincial Bills is limited. I know, and the House is no doubt aware, that at least one Provincial Government is proceeding with a certain Bill calculated to do a lot of harm to Indians in general and to certain communities in particular. That Bill is now before the Governor General for His Excellency's assent, and we are all waiting to hear the result ; but in the end it will be found that the powers which the Government of India Act vested in the Governor General have been used for the common well-being of India. I should not like to see any change in that direction.

Then, Sir, next we come to the control which the Government of India exercise over transferred subjects in the matter of provincial taxation and borrowing. On that point Mr. Jukes, our present Auditor General, gave some very definite evidence. Mr. Jukes, after giving an exhaustive analysis, proceeded to make this observation :

“The Secretary of State and the Governor General have very limited powers over superintendence, direction and control over the administration of transferred subjects.”

Then, lastly, he added :

“The powers of superintendence, direction and control exercised over transferred subjects by the Secretary of State and the Governor General are not susceptible to reduction.”

What would be the result of the new inquiry ? I think my learned friend will be able to enlighten the Council.

I now come to the administrative aspect. He talks of Agriculture, of Co-operation and of Emigration. We have nothing to do with Emigration as a result of this Resolution. As regards Agriculture, as we all know, we have the Pusa Institute, the Agricultural Adviser to the Government of India and a good deal of co-ordinating work done by that officer. As the House is aware, agricultural research is a purely central subject, and as the House is also aware from the press comments, any idea of the Royal Commission to look into agriculture in India has been strongly resented. They do not like the idea at all, and they regard it as unnecessary interference with ministerial authority. I have been reading some of the evidence given by the Ministers and they are not very anxious, however much we may be, of interference with central authority. In fact they are looking forward to more devolution.

I am glad that there is a common ground between my Honourable friend and myself in the matter of the Central Government. The best power that the Governor General in Council has got is his power of superintendence, direction and control. I am very glad that in this House there are Members who stand up for the Government of India. I have some experience of the other House where feeling runs high, and the Government of India are regarded as something of a negligible factor.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, I must confess that when I received the first intimation of my Honourable and learned friend's Resolution, I shared the doubts entertained by the Honourable Mr. Roy as to his precise intention. We have listened to the very interesting exposition which the Honourable Dr. Sir Deva Prasad Sarvadhikary has given of the intention of his Resolution, and in the light of that exposition I am somewhat doubtful whether he really did intend to embark upon the difficult and delicate grounds, the dangerous possibilities of which have been so clearly pointed out by the previous speaker. I understand that it is not the purpose of the Honourable Mover to commit the Government of India to any serious constitutional implications ; but in view of the possibility that his Resolution, when read without the interpretation which he has put upon it, might raise certain apprehensions, I think I had better, very briefly, explain to the House what the constitutional situation actually is.

[Mr. J. Crerar.]

In the matter of provincial transferred subjects, the administration of which under the Government of India Act is now committed to the Governors of the Provinces and their Ministers, the powers of superintendence, direction and control still retained by the Governor General in Council over Local Governments are extremely limited. Devolution Rule 49 is as follows :

“ The powers of superintendence, direction and control over the Local Government of a Governor's province vested in the Governor General in Council under the Act shall in relation to transferred subjects be exercised only for the following purposes, namely :

- (1) to safeguard the administration of central subjects ;
- (2) to decide questions arising between two provinces, in cases where the provinces concerned fail to arrive at an agreement ; and
- (3) to safeguard the due exercise and performance of any powers and duties possessed by, or imposed on, the Governor General in Council under or in connection with, or for the purposes of the following provisions of the Act, namely, section 29-A., section 30 (1-A), Part VII-A, or of any rules made by, or with the sanction of, the Secretary of State in Council ”.

Now, Sir, those prescriptions place very stringent limits upon the possibility of action by the Governor General in Council in these matters. In the matter of collecting information, the situation is also perfectly clear. Under Devolution Rule 5 the Local Government is bound to furnish to the Governor General in Council, from time to time, such returns and information on matters relating to the administration of provincial subjects, that is to say, both reserved and transferred subjects, as the Governor General in Council may require and in such form as he may direct.

I venture to remind the House of the constitutional position, because I think it is very necessary that, in considering this Resolution, we must avoid entangling ourselves in any course of action inconsistent with this position. I do not allege these facts as a ground for not accepting my Honourable friend's Resolution. I recite them in order that the House may be fully apprised of the situation.

As regards the second part of the Honourable Member's Resolution, I certainly did not understand it when I first read it, and listening to him I confess I am even now not perfectly clear what he intends when he refers to the nature and quantum of work under these heads that remains to be done. That may possibly suggest to the House that the Government of India have laid down some kind of programme, subject to some limit of time or some other form of limitation under which, on the expiry of the limit, they will retire from and resign such responsibilities relating to transferred subjects as remain.

That of course is a misapprehension. So long as the present constitution continues, the Governor General in Council will certainly continue to exercise his powers in relation to transferred subjects subject to the limitations which are laid upon those powers. There is no question of the Governor General in Council resigning such powers as he still retains. Subject to these remarks, I agree that there is a certain residuum of central obligations, as the Honourable Member phrases it. I also recognize where you have important transferred

subjects such as agriculture and so forth, the sum and the resultant of the activities of the provinces in these subjects is undoubtedly a matter of the greatest all-India importance and is one which consequently concerns the Government of India. I should be the last to affirm that the Government of India are relieved of all responsibility and concern. But, as I say, these are matters on which we have to enter with the very greatest discretion and the very greatest deliberation. The Honourable Member has suggested that this is a light and easy task and he especially deprecated what he was pleased to call any extraneous assistance being invoked. I would venture however to point out that so extensive a review—and the review, if it can be undertaken, will be valuable largely in proportion as it is extensive—would be a very large task indeed; and if the Honourable Member proposes to throw the burden of preparing this review on the shoulders of an already over-burdened Secretariat, I must enter a demurrer. That however, is by the way. What I wish to make quite clear to the House—because Government are prepared to accept the Resolution—what I wish to make perfectly clear to the House, lest there should be any misunderstanding, is that we undertake to examine the whole situation raised by the Honourable Member's Resolution, and we undertake to consider whether having regard to all the circumstances of the case, it would be advisable and practicable for us to enter upon such an inquiry and to draw up such a report. I hope that is perfectly clear. I cannot commit the Government definitely to embarking on the preparation of this report. All I can commit the Government to is that they will give a very careful and conscientious examination to the whole aspect of the case and will consider whether something on the lines suggested by my Honourable and learned friend is practicable. Subject to that clear exposition of what we do undertake, Government will accept this Resolution.

THE HONOURABLE THE PRESIDENT: The question is:

“That the following Resolution be adopted:—

“This Council recommends to the Governor General in Council that he should consider the desirability of having a report prepared showing the nature and amount of work done by and in the Central Government for five years commencing with 1921 in respect of and connected with subjects ordinarily known as ‘Transferred Subjects’ and also showing the nature and quantum of work under these heads that remains to be done, under the Devolution Rules or otherwise”.

The motion was adopted.

THE HONOURABLE MR. G. S. KHAPARDE (Berar: Nominated Non-Official): What about my amendment, Sir?

THE HONOURABLE THE PRESIDENT: Before I rose, I waited to see whether my Honourable friend desired to speak. The Chair is not in a position to know what is in Honourable Members' minds, and if they want to speak, they must rise in their places. If Honourable Members will rise beforehand, the Chair will always take care to call them. The Honourable Member's amendment is now, I am afraid, out of order. The Resolution has been passed by the Council.

RESOLUTION RE RAILWAY FREIGHTS ON COAL.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : Sir, I rise to move the following Resolution :—

“ This Council recommends to the Governor General in Council that special concession rates be granted by the different railway systems for railway freight on coal when booked in full wagon loads and at owner's risk—

(a) for long distances of 500 miles and over ; and

(b) during the slack season over various Railways ”.

Sir, it is a fact which cannot be challenged that coal is the very life-blood of industry. All progress and development in industry depends on the easy accessibility of coal. The industrial greatness of the British Isles is due to coal, and the gigantic strides made in industry by America is also due to coal. The recent industrial rise of Japan is also on account of coal. Sir, India too is richly endowed by nature with extensive deposits of coal. In spite of great handicaps, the coal production in India has during the past few years advanced from 16½ million tons to 21 million tons per year. The total amount of coal raised in the Indian coalfields is about 21 million tons. In 1923 it was 19·6 million tons. The total amount exported in this year was a little more than it was last year. The exports amounted to 46,031 tons. So the total amount of coal available for home consumption was 20·1 million tons in the year 1923. This 20·1 million of tons of coal consumed in India was distributed as follows :—

Railways	6,184,000
Royal Indian Marine	26,000
Bunker coal	819,000
Cotton mills	1,082,000
Jute Mills	981,000
Iron workshops	1,852,000
Port Trusts	202,000
Inland Steamers	554,000
Brick and Tile factories	452,000
Tea Gardens	230,000
Paper mills	146,000
Consumption at collieries and wastage	2,556,000
Miscellaneous	5,016,000

Out of the 195 lakhs of tons of coal raised from Indian coalfields, 157½ lakhs of tons is carried away from the collieries by the railways. Out of these 157½ lakhs carried away by railways, 40½ lakhs were carried by the Bengal-Nagpur Railway, and 117 lakhs by the East Indian Railway. Two-thirds of the coal carried by the Bengal Nagpur Railway were carried towards Bombay and one-third towards Calcutta. On the East Indian Railway half the coal is carried northwards and the other half towards Calcutta. This means that quite 72 lakhs of tons of coal, i.e., 46 per cent. of the entire coal carried by railways, is taken to Calcutta. Out of the remaining 54 per cent. of coal

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The different freight charges for some of the towns in the Punjab and in other provinces are as follows :—

	1919.			1924.		
	Rs.	A.	P.	Rs.	A.	P.
Ludhiana	9	1	0	12	2	0
Jullundur	9	5	0	12	7	0
Dhariwal	9	15	0	13	2	0
Amritsar	9	10	0	12	14	0
Lahore	9	15	0	13	2	0
Rawalpindi	11	3	0	14	9	0
Wah .. .. .	..	..	..	14	13	0
Peshawar	11	14	0	15	9	0
Saragodha	11	3	0	14	9	0
Lyallpur	10	10	0	13	14	0
Multan	11	3	0	14	9	0
Kasur	9	12	0	12	14	0
Ferozpur	9	10	0	12	11	0
Bhatinda	9	3	0	12	5	0
Bhuvani	8	12	0	12	0	0
Delhi	8	1	0	10	10	0
Madras	13	15	0	10	14	0
Kolar Gold Fields	19	5	0	14	15	0
Surat	13	15	0	10	8	0
Ahmedabad	14	6	0	10	12	0
Agra	9	10	0	7	3	0
Sholapur	15	4	0	11	10	0
Lucknow	7	15	0	5	15	0
Cawnpore	8	1	0	6	1	0
Akola	11	4	0	8	6	0
Meerut	10	10	0	7	15	0

The average increase in the rates between 1919 and 1924 is 33 per cent. On the 26th February, 1925, we were told in another place by the Honourable Sir Charles Innes :

“ that having regard to the increase in price we pay for our own coal, and having regard to the increase in running expenses generally, we are carrying coal at an extremely moderate rate ”.

I would, Sir, just like to examine how far the railway rates are moderate. Sir, the East Indian Railway charges the public Rs. 13-2-0 per ton for carrying coal to Lahore. But for locomotive coal for the North Western Railway at Lahore the freight is Rs. 11-14-0 a ton. That is to say, it lowers the rate in the case of the railway by Rs. 1-4-0 a ton, a reduction of 10 per cent.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : General) : That is in locomotive coal.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Yes, locomotive coal. I may reply to my Honourable friend, Sir Maneckji Dadabhoy, who says that generally locomotive coal has been carried at a cheaper rate. I want to say, Sir, that that coal, as far as I can see, is carried at cost price or at a little margin of profit. That is why I am comparing this with locomotive coal. When these railways carry coal for themselves at that rate, why should they not carry also at the same rate for the public ?

But, Sir, I ask whether the railways are carrying this huge amount of 6 million tons at a loss? Surely the East Indian and Bengal Nagpur Railways in carrying railway coal at a ten per cent. reduced rate are not every year making a present out of their profits to other railways. We are told, Sir, that in 1923-24 the price of coal at the pit head was 123 per cent. higher than what it was in 1919. I have not been able to understand this argument. Do I understand that the transportation charges of the railways are based on the value of the commodities carried? As far as the price of coal is concerned, I may inform the House that the price of coal since the beginning of this year has very materially gone down and the reduction amounts to as much as Rs. 2 to Rs. 3 per ton. The Honourable Sir Charles Innes told us that the railways are carrying coal at a loss. I would like to ask the Honourable Mr. Hadow how the railway authorities have calculated, that with the present rates, coal is being carried by the railways at a loss? The railways are carrying all kinds of commodities. The East Indian Railway alone earns something like Rs. 10 crores per annum for carrying goods. I would ask the railway authorities to tell this House by what process they are able to calculate which rates on what commodities pay and which rates do not pay? Everywhere in the world railway freights are fixed with the idea of promoting and developing industry. In this connection I would draw the attention of this House to a statement made by Sir W. W. Hoy, General Manager for Railways and Harbour, South African Government, in his evidence before a Commission of Inquiry in South Africa in 1916. He said :

“The broad features of the tariff policy of South African Railways are low rates for exports, raw materials for manufacture, agricultural produce, minerals and other raw products of the country, with a view to stimulating agricultural and industrial development”.

And the Associated Chambers of Commerce recently passed the following Resolution :

“That in view of the fact that the present high rate of railway freight on coal prejudicially affects the maintenance and development of industrial concerns in Northern India and those situated at a great distance from the Bengal and Bihar coalfields, this Association strongly urges the Government of India to take immediate action substantially to reduce the railway freight on coal carried over a long distance”.

Sir, I believe that it is in pursuance of this principle that a reduction of ten per cent. is made in rates for coal supplied to railways. It is perhaps in pursuance of this principle that a rebate is allowed on the carriage of raw materials of all kinds used for the manufacture of iron and steel. A rebate is also allowed on all finished products and bye-products of the cooking ovens to and from the Indian Iron and Steel Company's works. Only recently, Sir, a rebate of 25 per cent. has been given on coal carried to the dockyards at Calcutta. Under

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the new Shipping Bill we have proposed yesterday to give another rebate of 25 per cent. on coal exported from Calcutta. Sir, more than a million tons of coal are exported from Bengal to other provinces in India or to foreign countries. The Honourable

12 Noon.

Mr. Chadwick was telling this House that the exports to foreign countries during the recent years have fallen by a million and a half tons. The total freight amounts to somewhere about 90 lakhs and 25 per cent. of 90 lakhs is about 22½ lakhs. The amount of coal exported to Northern India is only about a million tons. And supposing the rates are brought to the level which the railways charge for their locomotive coal, a considerable difference in freight will not count very much. On a million tons carried to the Punjab and Northern India, the freight will be about a crore of rupees, and 10 per cent. of a crore of rupees will be only 10 lakhs. So, Sir, I am not asking for any great concession. I am not putting or limiting the concession to any amount. What I say is that the rates of freight should be considerably reduced. I leave the rate open to the railway authorities. It is for them to find out what they can possibly do in this matter. I would like to ask the railway authorities now, if the present rates for the carriage of coal do not pay, they are making a reduction of 10 per cent. in the rates to the railways on locomotive coal? How are they able to grant a rebate on the rates charged to Tata and Co. and how are they able to grant a 50 per cent rebate on coal meant for export? I have already given those figures. In the case of Tata and Co. they are giving low rates and concession rates for the carriage of raw material and for the carriage of finished products. I welcome that and I think the country ought to be grateful to the Government for doing that. But certain people think that these reductions were made when the policy of Government towards the industries was a little bit different. Now, since the reduction of freight has been hanging fire for some time, the people are beginning to think that perhaps the Government are making a change in their policy. The Honourable Sir Charles Innes replied to the deputation of the Indian Coal Federation that the reduction of railway freight on coal carried for long distances was under consideration. Nothing has so far been done. Time is passing and things are becoming hopeless. I believe, Sir, that the concessions granted in these rates pay the railways and that they do not suffer any loss in this. If they had suffered any loss then I am sure they would have applied to the Government for compensation. If they had suffered any loss in giving rebate to the Tata Company they would have asked for this loss to be made good to them by the central revenues. After all, railways are run as a business concern and in case there is any loss to them they can approach the Government for contributions from the central revenues. They can say that you have protected the Steel Industry and the carriage of steel is also a portion of protection and so the Government must meet the loss of the railways from the central revenues. If they had suffered any loss in making a reduction of 10 per cent on Locomotive coal for railways, the East Indian and the Bengal Nagpur Railways would have asked other railways for some countervailing concessions for themselves in return. Nothing of the sort has happened. Sir, the only inference we can

draw from this is that the railways suffer no loss in granting these concessions. I would therefore ask this House to come to the conclusion that if railway freight charges are not reduced, this country's progress will be seriously retarded.

In South Africa, Sir, the coalfields are at a distance of 325 miles from Durban, the exporting port. They charge Rs. 4-2-0 per ton. Our coalfields may be taken to be 170 miles from Calcutta and our railways charge Rs. 3-4-0 per ton. The charge per mile per ton in South Africa comes to 2-4 pies. The charge in India amounts to 3-7 pies. This means that the rates of our railways are 50 per cent. higher than those prevailing in South Africa. I would ask Government to tell us why is that so? Sir, I have been in years past taking a considerable interest in railway tariffs. Sir, I know as a matter of experience that on many commodities extremely low rates are charged. On the export of grain very low rates are charged by the North-Western and other railways. We know, Sir, that on the import of many of the foreign manufactured goods low rates are charged. Sir, those of us Indians who are in trade and business know that the existing rates on railways promote and encourage the import of foreign manufactured goods. They encourage the export of raw material, but they do not help the home industries of the country. If the railway authorities had taken as much care of our manufactures as they are obviously taking of our export of raw materials, I am sure they would have fixed low rates for carrying coal which is the life-blood of industry. The Tariff Board dealing with the question of protection for the cement industry remarked and I am quoting this passage from their report because the Honourable Mr. Chadwick in this House said that the question of the coal industry is likely to be referred to that Board. The Tariff Board remarked as follows on the cement industry :

“ A general reduction of coal freights would not be open to this objection for all industries would benefit alike ”

They tell us :

“ The conviction has been strengthening in our minds that the question of the cost of coal is vital if the end in view is a rapid industrial development in India. Over a large part of the country progress may be seriously retarded unless the freight of coal can be substantially reduced. We believe that no one would challenge the proposition that coal freights on the Indian railways should be kept at the very lowest point which is commercially possible. But more than this is required in the interests of industrial development. Sooner or later, the country may have to face the question whether it would not be worth while to secure a substantial reduction in coal freights at the cost of sacrificing part of the contribution which the railways make to the general revenues ”.

This is a quotation from the recommendations of the Indian Tariff Board in the Report on the cement industry.

Sir, I have given this long quotation from the Report of the Tariff Board to show how strongly they feel on the question of freight on coal. Sir, I have not asked for a general reduction of rates for all distances, and at all seasons. My demands are very moderate. I have only asked for a concession in rates for long distances. Sir, in the United Provinces there are large industrial centres like Benares, Allahabad, Cawnpore, Lucknow, Shahjahanpur, Roos, Meerut, Muttra, Agra and Jhansi. Similarly, in the Bombay Presidency,

[Lala Ram Saran Das.]

there are large industrial centres like Bijapur, Sholapur, Bombay, Ahmedabad, Surat and Karachi. Sir, all these large industrial centres are at a great distance from the coalfields of Bengal and Bihar. The thousands of factories lying in these distant provinces are sorely in need of cheap coal. I would therefore request that at any rate for all these distant places the old coal tariff prevailing in 1919 should be restored. I know in the interests of industrial development reduction is required even in the rates of 1919, but in my present Resolution I do not demand that. Perhaps for that reduction a preliminary inquiry in which both the needs of the industries and the cost of the concession would be fully examined may be suggested by Government. For the present therefore I would content myself with the restoration of the old 1919 rates. The price of coal during the last year and more has considerably fallen. The working expenses of the railways on this account must have therefore also fallen. There is therefore no justification to keep up the new higher rates.

There is another concession, Sir, that I in my Resolution demand from the railway authorities, so far as the carriage of coal is concerned. Sir, we all know that the busiest season for the railways is when foodgrains, cotton and oilseeds are to be carried during the harvesting season. In the rainy season the goods traffic is not so heavy. During the months when the crops are standing and are not ready for export, the railways do not have heavy goods traffic. I ask the railway authorities, cannot these months, when a large number of railway wagons are lying idle, be utilised for carrying coal? I am sure the railways can make additional profits. The railway wagons instead of remaining idle can earn something. Even if very low rates, lower than what prevail ordinarily are levied, they can prove remunerative to the railway administration. If coal is carried during the slack season of the railways, the public can get coal at cheaper rates, and it would certainly prove of very great advantage to the industries.

My Honourable friends on the Government Benches may tell us that the coal fields at all seasons are even now full of wagons, and that no more coal can be moved in the coalfields. Sir, during the last few years we have increased very much the mileage in sidings in these coalfields. We have increased the number of stations. We have increased road facilities at the different railway junctions and in this way we have increased considerably the capacity of the railway lines for the traffic in the coalfields, and the railways cannot make any excuse now that they are unable to carry more coal every day from the collieries which they could not do last year. In this connection I might also mention that the amount of coal which is generally carried to all other provinces from Bengal and Bihar comes to over 6 million tons for railways and an almost equal amount for other purposes. I am giving these figures to show you that our.....

THE HONOURABLE THE PRESIDENT: Order, order. I might remind the Honourable Member that he has exhausted his time, and I trust that he will bring his remarks to a close.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : I will conclude in a few minutes, Sir.

THE HONOURABLE THE PRESIDENT : I must ask him to conclude his remarks now and spare the Council the figures he was about to read.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : There is another concession that I am demanding, and that is regarding the reduction of freight in the slack season. I have explained fully what I mean by the slack season, namely, when the harvesting season is over.

Sir, I appeal to the Official Benches to accept my Resolution for the reasons I have explained. New railways will very soon be constructed and the output of coal very largely increased. Even now the coal industry is in difficulties. The Government of England have very generously given a million pounds sterling towards their own coal industry, but I do not know what will be our condition. Firms in Calcutta are now opening branches in the mofussil towns and are getting rid of their heavy coal stocks. The Honourable Mr. Chadwick has already said that we are exporting short by a million and a half tons, and so in the interests of the coal industry I hope the Government will see their way to accede to my request.

THE HONOURABLE DR. DWARKANATH MITTER (West Bengal : Non-Muhammadiyah) : Sir, I desire to move an amendment to the Resolution of my Honourable friend. The amendment is with reference to clause (a) asking for a reduction of railway freight on coal booked for long distances of 500 miles and over. My amendment proposes that the freight should be reduced for long distances of 300 miles and over. The object of my amendment is to draw the attention of the House to consider the advisability of a still further and more liberal reduction in the coal rates. The objective I have in view is to place coal at a cheaper price within the reach of the industries of the various provinces in India situated at great distances from coalfields. I also rise to move this amendment because of the very precarious condition of the coal industry in Bengal at the present moment. I believe that the railway administration has so to conduct itself as to secure the growth and development of indigenous industries by giving special facilities in the matter of freight rates, wherever possible. The coal industry in Bengal, as Honourable Members might be aware, is holding its own at the present moment with very great difficulty. That industry certainly requires to be assisted not only for its own sake, but also for the sake of other industries that are dependent on it. It has to be recognised that the freights with regard to the carrying of coal remained unaltered from 1905 to 1919, but after 1919 the coal rates have been increased to what appears to be on the average a rate of practically 35 per cent., or it varies between 30 and 35 per cent, as my learned friend has just stated in the House. If we just take one instance, Sir, from Jharia to Ahmedabad, the freight before 1919 was Rs. 10-12-0. It has now increased to Rs. 14-6-0. From Jharia to Bombay, to take another instance, the freight was Rs. 11-4-0 before 1919, and it has now increased to Rs. 16-6-0, which really works out to an increase of more than 35 per cent. Now this is a demand which not only we, the Indian Members of the Council, are making but I may just ask the attention of the House to a demand which the Associated

[Dr. Dwarkanath Mitter.]

Chambers of Commerce made on a Resolution which they embodied in their proceedings and which runs as follows :

“ That in view of the fact that the present high rate of railway freight on coal prejudicially affects the maintenance and development of industrial concerns in Northern India and those situated at a great distance from the Bengal and Bihar coalfields, this Association strongly urges the Government of India to take immediate action substantially to reduce the railway freight on coal carried over long distances ”.

which shows that this was a practically united demand of both the European and Indian representatives who are interested in coal. Then in a memorandum which the Mining Federation submitted before the Coal Committee which has just finished its sittings, they pointed out that the Natal coal, which has a lead of 320 miles from the coalfields to Durban, pays a net freight of 6s. 4d. per ton, which works out at Rs. 4-2-0, taking of course exchange at 1s. 6d. as compared with the rate of Rs. 3-1-0 paid by Indian coal with a lead of 170 miles. Yet without any bounty the South African Government is able to allow a much lower freight than what is allowed on the Indian railways. I submit, Sir, for these reasons—for I do not propose to travel over the same ground over which my Honourable friend the Honourable Rai Bahadur Lala Ram Saran Das has travelled, and after his exhaustive treatment of the subject—that the materials which I have placed before the House justify us in asking the Government of India to accept a reduction in the railway freight on coal. The industry has to be maintained, not only this industry but, as I have submitted, other industries, with particular reference to cement, also to the sugar manufactory in Bihar which lies at a distance of 300 miles from the Jharia coalfields. I submit, therefore, for these reasons that a case has been made out for asking the Government to accept this Resolution which asks for a reduction of freight with reference to coal carried to a distance of over 300 miles. I therefore, Sir, move this amendment.

THE HONOURABLE THE PRESIDENT: Amendment moved :

“ That in clause (a) of the Resolution for the figure ‘ 500 ’ the figure ‘ 300 ’ be substituted.”

THE HONOURABLE MR. F. A. HADOW (Chief Commissioner, Railways) : Sir, I think it is advisable to clear the position at once by saying that Government are unable to accept this Resolution, although in many ways the fundamental idea expressed by the Honourable Mover is at one with the Government's own ideas on the subject. It has always been the accepted policy of Government that the carriage of coal on railways should be charged at the lowest rates commercially possible ; and I can assure the House that there is no intention whatever of departing from this principle. Moreover, the House will recognize from the reply that was recently given by the Honourable Mr. Chadwick in this House about a fortnight ago that the possibility of reducing long-distance coal rates has been under consideration recently. That was in reply to a question asked by the Honourable Lala Ram Saran Das. The wording of the reply was that—

“ railways are considering the possibility of a reduction in the rates for long-distance coal but a decision has not yet been arrived at ”.

I will enter a little more in detail into the reasons why Government cannot accept this Resolution presently. But the real, fundamental reason is that we are not ready to commit ourselves to it. The Honourable Member has not mentioned any time or date in his Resolution with effect from which he wants these rates to be reduced ; presumably, he wants that done at the earliest possible date. Sir, that is what we intend to do as soon as we are satisfied that we can do it. There is one point about the Resolution itself ; we do not quite like the use of the word "concession." The Honourable Member has used it several times during his speech also ; he spoke about concessions to the export coal for the docks, concessions given by the railways to industries like Tatas in Bengal, but, Sir, they are not concessions, they are really business propositions. That is the way we look at this matter. It is a question of business, not of concessions at all, really. It is a question always of course how soon such a reduction in rate will take effect in producing the result which you want. I shall come to that presently.

As both the Honourable Mover and the Honourable Dr. Dwarkanath Mitter have mentioned, this subject was discussed at considerable length at a meeting of the Associated Chambers of Commerce last December under two headings, one of which was the subject of the Coal Committee, and the other was "railway freight on coal". It is unnecessary for me to repeat all the arguments then put forward by the Honourable Sir Charles Innes in replying to the points that were then brought up, but he arrived at two conclusions, and those conclusions more or less hold still. The first was that on our calculations the long-distance rates for public coal have increased on the average only 30 per cent. over those for 1905. There was, as the Honourable Member pointed out, no increase in coal rates between 1905 and 1919. We can compare therefore with 1919 or 1905, but it sounds better from our point of view to say 1905. He pointed out that this increase could not be considered unreasonable in view of the increased expenditure which railways have had to face in respect of their fuel, wages, and so forth, which amounted then to an increase of something like 106 per cent. The Honourable Sir Maneckji Dadabhoy in talking about the Coal Grading Bill yesterday seemed to imply that coal ought to be carried at a loss. . . .

THE HONOURABLE SIR MANECKJI DADABHOY : No, not at a loss but at cost rate.

THE HONOURABLE MR. F. A. HADOW : It is an extremely difficult thing to calculate exactly what it costs the Railway to carry one particular commodity. We can get an average per wagon mile or per ton mile for all goods, but it is extremely difficult to analyse that further. So far as I am aware no country in the world has yet been able to design any arrangement for getting at that. But there is one point also in that discussion in the Associated Chambers, to which I should like to call the attention of the House. The representative from Karachi used these words :

"That is one matter, gentlemen, to inquire into the possibility of reduction of rates. But it is another matter to pass a Resolution urging the Government of India to take immediate action substantially to reduce the railway freight on coal carried over long distances.

[Mr. F. A. Hadow.]

The Chamber I represent".—I am still quoting: "feels that this is introducing a dangerous principle. In other words, an industry should be self-supporting and not carried on at the expense of say other industries, the Karachi Chamber of Commerce's point being that, if an uneconomic rate for coal is granted, it will be accompanied by a corresponding increase in railway rates on other commodities."

Now, that brings me to the point of what I mentioned just now, of calculating what it costs to carry one particular commodity. The Honourable Sir Charles Innes at that meeting gave some figures which were the best that we could make out. He said the bare cost of carrying a wagon of coal one mile is 34 pies. Now, the earnings on a wagon for one mile would be 40 pies. But in that actual cost of 34 pies we have not included all the interest charges which are a very big item of course; and if interest charges were added, the average cost to a railway of taking a wagon one mile is 51 pies. That looks as if we were carrying below the actual cost rate, and it might be argued of course that we should not include interest charges in making such a calculation. As against that, Sir, it is very important to remember what an enormous expense is involved to the railways that serve the coalfields in providing facilities for the movement of this traffic. The Bengal Nagpur Railway made a certain calculation recently of the expenditure that they were involved in at the present moment in providing coal facilities and those coal facilities were going to cost them in capital about one crore of rupees. That expenditure will all be incurred just in these two or three years that are now in. I have not got a similar calculation for the East Indian Railway, but I feel convinced that it must be a great deal higher. But that is not the end. These particular coal facilities are required at various stations in the coalfields for marshalling, shunting, weighing arrangements and all the rest of it, but there is also the capacity which is required on the line which lead to and from the coalfields. Is it likely that the East Indian Railway would now be duplicating their grand chord line if it were not for all the coal traffic that it has to carry? That is a very big expense. There are various other things. A big marshalling yard at Moghalsera, not in the coalfields, is another item. The Bengal Nagpur Railway may be said to be incurring something like Rs. 136 lakhs of expenditure at the present time, mainly, for the coal traffic, though not entirely. Now, would it be fair in that case to leave out these interest charges in calculating what it costs us to carry a wagon of coal a mile? It is a question whether we are not rather near the bone already. It might be argued that railways are getting back to more normal conditions and there is no doubt there is improvement. We are very glad to see it of course. But though we had a very successful year last year, we have had a sadly disappointing time since last April. At the present moment our earnings on the first five months of this financial year are down by Rs. 120 lakhs as compared with last year. We had budgeted for an improvement over last year, so that after having planned to do that, it is very difficult to bring back your working expenses at once to a figure which would be suitable for the smaller traffic you are carrying. That is a very serious thing. We have had to revise our budget for the current year and bring down our estimated gross receipts for the year by

Rs. 2 crores. Is this a time when we can consider light-heartedly the reduction even of such an important thing as coal rates ?

I was in some doubt, Sir, about the wording of the Resolution, whether the Honourable Mover meant that both these reductions should be made that he has mentioned in (a) and (b). He puts the word "and" in between (a) and (b). But I am not sure that he did not mean (b) to be an alternative if it was impossible to grant (a). I do not want to use the word "impossible", because we do not consider it that way. We hope that very shortly we may be able to make out a case for reducing these long distance coal rates. A calculation was made recently and is referred to in a reply that was given in another place. This was the reply given by the Honourable Sir Charles Innes to Diwan Bahadur Ramachandra Rao. He mentioned after replying to a part of the question :

"I have ascertainedthat a reduction of about 10 per cent. in our existing railway freights for distances over 400 miles would cost something over Rs. 30 lakhs".

It is a little bit difficult for us at the present moment to face an immediate loss of Rs. 30 lakhs while we are having a bad year and we are naturally in some doubt about it. The matter is, however, being considered at the meeting of the Indian Railway Conference Association next month, when I hope we shall get a little more light on the matter. I gathered that the Honourable Mover did not want to pay a great deal of attention to the exact mileage which was to be the limit between what he would describe as short distance and long distance.

In his Resolution he used the figure of 500 miles, but I gathered that he did not think it a matter of great importance. The Honourable Dr. Dwarkanath Mitter apparently did consider it a matter of importance because he has put a much lower distance in his amendment. I may mention that we have in all our calculations been taking 400 miles as our limit between the short distance and long distance, because our rates are so designed now that for any distance up to 400 miles the rate is so much for that 400 miles ; if the coal is going to be carried more than 400 miles, the rate for the first 400 miles itself is lower. It is extremely difficult to vary our basis. We have, therefore, been making all our calculations on a 400 mile limit. The distance of 400 happens to be the mean between the Honourable Mover's Resolution and the proposal contained in the amendment of Dr. Dwarkanath Mitter.

There was one point and some remarks made by Sir Maneckji Dadabhoy yesterday which I would rather like to take up. He remarked on and praised the generosity of the Great Indian Peninsula Railway in having reduced their coal rates between the Pench Valley field and Bombay. Probably it was a very good thing to have reduced those rates, but there was no particular generosity about it. The rates that the Great Indian Peninsula Railway charge on coal from the Central Provinces are still more per ton mile than what they receive on coal from Bengal. So there was nothing very particularly generous about it. Sir, I have tried to show the difficulty which we are in at the present moment in effecting a general reduction of long distance coal rates. The matter is receiving constant—I may say daily—attention for

[Mr. F. A. Hadow.]

the last four or five years. It is too important a subject for us to forget even if we were allowed to forget it by the public and commercial bodies.

May I turn for a minute to the proposal that there should be a slack season rate. This point was examined very carefully last year. It was a proposition that was supported by the Indian Mining Association, the Bengal National Chamber of Commerce and the Indian Mining Federation, but it did not receive much support from distant consumers. In particular, the Punjab and the United Provinces Chambers of Commerce considered that upcountry consumers would not benefit by this unless the rates could be reduced by so much as to offset the loss of interest that would be caused by accumulating a reserve of any kind, by deterioration in the coal so accumulated and by other things. Moreover, we had a careful examination made of the margin of capacity that might be said to be available in the slack season as compared with the busy season. I have not got the statement by me but it was a statement that was prepared as a part answer to the question which the Mover ought to have put yesterday but was unfortunately not present. He asked :

“ Will the Government kindly state the total quantity (in tons) of coal booked by the Indian Railways in full wagon loads and at owner's risk during last year for distance (i) of 300 miles and over ; and (ii) of 500 miles and over ?”

What is the total quantity of coal so booked in the slack season ?”

We could not answer the first part of the question as our statistics are not susceptible of being analysed in that fashion. But to the second part of the question I had figures got out for the last 12 months and gave them to him, that is, from July 1924 up to June 1925, to show the number of wagons despatched by the East Indian Railway and the Bengal Nagpur Railway month by month during the twelve months. It was fairly even all the year round. Certainly there was nothing to warrant us in thinking that the quoting of a lower rate between the months of July and October would be of very particular benefit either to the consumers or to ourselves. It was, therefore, given up. But we are quite open to reconsider the question and, in fact, we have got at the present moment a proposal of the same kind under consideration among others. In fact, we have three proposals under consideration at the present time for a reduction of long distance rates on coal. That is one of them that there should be a seasonal rate, at any rate, for certain places.

Sir, the Honourable Rai Bahadur Lala Ram Saran Das questioned the correctness of charging a lower rate for railway coal than for public coal. Surely, Sir, this is again a matter of business. Government are so much concerned in all these railways that they are really only carrying the coal for themselves even where the coal is being carried from Bengal for the North-Western Railway or where it is being carried from Bengal to Madras for the Madras and Southern Mahratta Railway. All these things affect Government money so much that they are really doing work for themselves. We do not see that there is anything illogical in Government carrying coal for their own purposes at a rather lower rate than we can do for the public. I hope the House now is more clearly aware of the Government's position in this matter. I have

shown that at the present time we are not making much over our coal as calculated by our earnings on and the cost of carrying a wagon of coal one mile. I have shown that our earnings are down this year, and that it is a very awkward time for us to begin giving what are called concessions but what we like to think of as reduction in rates for business purposes.

But, Sir, I do want to assure the House that this is a matter which is not allowed to drop, but is a matter which is constantly receiving attention.....

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : And it will go on receiving attention for another ten years, because five years have now elapsed and it has not been allowed to drop.

THE HONOURABLE MR. F. A. HADOW : I think it is a little unfair to say that five years have elapsed. It is only five years since with great reluctance it was agreed that the first increase should be put on the coal rates. A year after that we had to raise it further. Has not every commodity that everyone uses for everyday use or at his meals increased in value ? Surely it is not unreasonable that we should get a little more for carrying coal. We make it an average of 30 per cent. If we can bring it down by 10 per cent. for long distances we reckon it is going to cost us over 30 lakhs, and it is difficult for us to face that just at the present moment. But I am the last to say that there is no hope. Our operating expenses, by which we mean the relation between our working expenses and our earnings, are showing a tendency to drop. The rates which we pay for the coal that we can burn ourselves are going to be much less next year. The Honourable Member assumed that we were already getting the benefit from the drop in prices of coal which has taken place early this year. We have not yet profited by that owing to the form of our contracts and those contracts carry us on till next spring. From that time and from the fact that we shall be profiting by our own collieries we hope that there will be a distinct reduction in fuel cost. Therefore we have those hopes in our mind and are very much inclined to anticipate them to a certain extent, but it is impossible for me to commit myself at this moment or to commit the Government.

It is with considerable regret that the Government have to refuse to accept this Resolution. The Honourable Mover questioned my good faith just now when I said that we would reduce freights at a very early opportunity ; I hope, however, that the rest of the House will take it from me that it will come very soon.

THE HONOURABLE MR. PHIROZE C. SETHNA : (Bombay : Non-Muhammadan) : Sir, this is one of those subjects upon which, as the House is aware, both the Indian and the European commercial community are in perfect agreement. The best proof of that lies in the fact of a Resolution moved by the Associated Chambers of Commerce which was quoted by two Honourable Members who spoke before me...

THE HONOURABLE MR. F. A. HADOW : They were not unanimous.

THE HONOURABLE MR. PHIROZE C. SETHNA : There might have been one dissident. So far as I know there was only one dissident, namely, Karachi.

[Mr. Phiroze C. Sethna.]

I must confess to a sense of disappointment at the reply given by Government. The Government make out that they cannot afford this extra loss which would be incurred if the proposed reduction in freights on coal carried to long distances was given effect to. The Honourable Mr. Hadow pointed out that it was not right on the part of the Honourable Mover of this Resolution to refer to the facilities afforded the coal export trade as also to the Tata Iron and Steel Company as "concessions;" he called them "business propositions." May I ask the Honourable Member to consider whether the proposal embodied in this Resolution is not also a business proposition? I say it is a business proposition, and it is a business proposition in the sense that if a reduction were made on coal freight for long distances, it would mean the spread of industries which perhaps is at present retarded to some extent. Therefore, if the rate is reduced to some extent, it will mean not only the carriage of more coal to distant parts, but also the carriage of more goods made by such new industries which will grow up as a result of the decrease in freights. Therefore, we regard it as a business proposition and by no means a concession. I think that Government should adopt this far-seeing policy in the interest of the Railways in the country.

In February last, at the time of the discussion of the Railway Budget, an amendment was moved in the other House suggesting a cut of Rs. 100 under this head, and the Mover of the amendment pointed out that the average increase of freights on all commodities was 25 per cent., and that in regard to coal it varied from 33 to 37½ per cent. He said in the case of the carriage of coal from Jharia to Ahmedabad, the increase being from Rs. 10-12-0 to Rs. 14-5-0 worked out at 33 per cent., and the increase of the freight rate from Jharia to Bombay being from Rs. 11-4-0 to Rs. 16-6-0, the increase was 37 per cent.

The Honourable Commerce Member speaking in that House gave other figures of rates to different parts of the country, such as Delhi, Lahore, Madras, and stated that the average increase was 30 per cent. The Honourable Mr. Hadow to-day has also quoted the increase in coal rates as 30 per cent. and did not agree to the rate quoted by the Honourable Rai Bahadur Lala Ram Saran Das as an average increase of 33½ per cent. Even assuming that 30 per cent. is correct, I would like the Honourable Mr. Hadow to inform the House why it is that in all other commodities the increase is only 25 per cent. while in coal it is 30? I say so, Sir, because the statement made in the other House was not contradicted by the Honourable Sir Charles Innes. If, however, their contention is correct, may I ask if it is not a greater reason for Government to consider the proposal put forward by the Honourable Rai Bahadur Lala Ram Saran Das? He said that the difference of 10 per cent. would only mean a matter of 10 lakhs.—

THE HONOURABLE MR. F. A. HADOW: I think he referred only to the case of the Punjab.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: I said Northern India.

THE HONOURABLE MR. PHIROZE C. SETHNA : I stand corrected. I think the Honourable Mr. Hadow estimates 30 lakhs as the cost of the reduction. May I take that as at 10 per cent. on all coal carried to long distances ?

THE HONOURABLE MR. F. A. HADOW : The calculation showed that it was over 30 lakhs. It is very difficult to get accurate figures.

THE HONOURABLE MR. PHIROZE C. SETHNA : If Government are not in a position to-day to make a reduction of 10 per cent., surely the public will be satisfied with even 5 per cent. to begin with. Half of 30 lakhs will be 15 lakhs and surely, when Government estimate the earnings at 10 crores in the whole year, a difference of 15 or 20 lakhs will not much matter. There is no reason for Mr. Hadow to be so despondent because there is a drop of 120 lakhs in the earnings of the first five months, as it is quite possible that in the subsequent months the railways may make up this deficit and more.

Sir, all that I can say, therefore, is that Government ought to treat this Resolution with greater consideration than was shown in the reply which we have received from the Honourable Mr. Hadow to-day. The only consolation which we have received from the Honourable Mr. Hadow to-day is that Government are still considering the matter, but from the figures quoted I do not know whether he made out a case for a reduction or an increase. The

1 P.M.

Honourable Mr. Hadow said that the cost to-day is 34 pies per maund and that the Railways received 40 pies, but if the fact of interest is taken into account he said the cost mounts up to 51 pies. The simplest inference to be drawn from that statement is that the railways are working at a loss and therefore people in Northern India must be prepared to pay a still higher rate than what they are now doing. I do not know if I have understood Mr. Hadow correctly, but the remark which he made is tantamount to, or will lead one to, that conclusion. On the other hand, he afforded us some consolation by telling us that the Department are considering, and they will probably give effect to, the recommendation as early as possible, but when that early date will be reached he has not given us any indication.

THE HONOURABLE MAJOR NAWAB MOHAMED AKBAR KHAN (North-West Frontier Province : Nominated Non-Official) : Sir, there can be no gainsaying the fact that the coal trade in India is undergoing much depression owing to a great increase in the freight on coal. Since 1919 up to the present there has been an increase of 31 per cent. in railway freight on coal, and in the case of Bengal coal it is something near 35 per cent. This has greatly contributed to the rise in price of Indian coal, which consequently has lost its market in India and abroad in competition with coal from Australia and South Africa. It is growing fiercer every day, as the Honourable Member might know that the coal is every day coming more and more in competition with electrical power and oil fuels. Under the circumstances there is a great necessity of

[Major Nawab Mohamed Akbar Khan.]

making a reduction in the freight on coal. We hear that some weaker collieries are closing down and that there is a general complaint as to the selling of Indian coal. The reason of this difficulty is not far to seek, for it is no other than the immense increase in freight. Unless the railway freight is reduced and brought down to the pre-war rates, there can hardly be a possibility of the Indian coal industry recovering its market.

The Resolution as it stands seems to be a part of the Bill that the Honourable House had the pleasure of discussing yesterday with regard to the grading of coal and granting certificates therefor. The Bill, as stated in the Statement of Objects and Reasons, was based on the recommendations of the Indian Coal Committee, appointed for the purpose of devising measures whereby the Indian coal trade might be assisted to recover its market. The Committee recommended that the only possible solution of the problem could be made by making a reduction in the prices along with an improvement in the quality of coal. The recommendations so far concerned with the quality of coal have been given effect to in the Coal Grading Bill, whereas with regard to price nothing has been done save the grant of a rebate on freight and other charges on coal certified for export only. This clearly signifies that the concession does not apply to the coal trade within India.

Now Indian coal, as recommended by the Committee, must come down in price, as without the reduction in price it can hardly recover its market in competition with coal from Australia and South Africa. The competition is growing fiercer every day, and when legislative measures have been adopted to make the Indian coal compete with coal from abroad in quality, something ought to be done as regards bringing it down to a cheaper rate in India itself. Moreover, as I have already observed, it is more and more every day coming into competition with electrical power and oil fuel; some preventive measures ought therefore to be adopted at this juncture. Oil fuel particularly is becoming more popular on the west coast of India, and it is this competition which the Indian coal has now got to meet. This can only be met by lowering the price of coal which can be simply effected, if the railway authorities condescend to make a reduction in the present freight on it. I believe the railway authorities will have no hesitation in securing the growth and development of this industry by giving facilities with regard to the special freight rates. It is an easy matter for the people close to the coal mines to establish industries, but for people residing at long distances from the coal mines, it is hard to compete in the development and growth of their industries, especially in the North of India where people are made to pay high freights for the carriage of coal from the Bengal mines. We, the people of the North of India, will gratefully welcome any reduction in freight on coal whenever it is possible for the Government to do so. And I suggest that as the Honourable Mr. Hadow has already given us his assurance that the recommendations of the Honourable the Mover of the Resolution will be considered, there is no need for the Honourable the Mover to press the point any further.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN (West Punjab: Muhammadan). Sir, I am not an industrialist and do not know

much about coal. I came here with an open mind. Since I have been here in this Council all these years, I think the House knows that whenever the Government have been attacked in season and out of season, I have been always with them, but in this case I do find that the answer given by Government is not convincing. I think there can be no two Indians here who will not support this Resolution. I think it is a great mistake not to accept this Resolution, because there are hundreds of Resolutions, I may say, which have been accepted by the Government but which have not been acted upon immediately. There have been many such propositions, so it would have been much better if this Resolution was accepted, especially as the Honourable Mr. Hadow has said that he is doing something towards it, that is the Government are considering the matter. They may have gone on considering the matter for about another six months; we would have been pleased, and everything would have been all right. In this matter, Sir, I think that none of us will be true to ourselves if we do not vote for this Resolution, and I do hope that our Indian *Namak Halals* (Servants of India) will do the same. I was astonished just by one remark where it was stated that Government are doing one thing for themselves which cannot be done for the public. Hitherto, I have always had the idea that Government were for the public, and that both were more or less one. I thought it would have been better to say this.....

THE HONOURABLE MR. PHIROZE C. SETHNA : Quite so.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN : Sir, there is something fundamentally wrong, because if India cannot produce its coal so as to stop coal coming from outside, I think somebody ought to be responsible for it.

THE HONOURABLE MR. F. A. HADOW : Did Bombay never get coal from outside before the War ?

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN : It might have been done so, but the business of those who are responsible is that it should not get it from outside. For instance, as we are all very sorry that our people are being badly treated outside India, if the Government were simply to give an order and say hereafter "We will not take any more coal from South Africa" it would then be improper for those who have to obey it to say that "This is in the way and that is in the way in carrying it out."

I think for the good of the country and the good of the people you have to do it : and I think this is a proposition to which Government should no doubt yield. If they do not, at any rate the other Members of the House should show that they are on the right side and should not vote against it.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : General) : Sir, we are very grateful to the Honourable Mr. Hadow for his sympathetic and decisive assurance with regard to the policy of the Government in this connection. Mr. Hadow has rightly pointed out the immediate difficulties of the Government, and I agree with that view. Mr. Hadow has stated that during the current half year the receipts have gone down by 120 lakhs over the earnings as compared with the previous year. I must at the same time point out that the railway earnings last year were of a somewhat abnormal

[Sir Maneckji Dadabhoy.]

nature and we could not always expect the same volume of income. I quite realise the difficulties indicated by Mr. Hadow that in considering the freights Government have to take not only the working charges which have considerably increased of late years by a rise in the price of stores, but also to take into account the interest charges. Even taking all these factors into consideration, it appears clearly to me that if a small and reasonable reduction is made in long distance railway freights, Government's revenues will not be seriously affected. We have obtained a very candid and frank admission from Mr. Hadow that even if a general reduction is made on all freights over 400 miles it would cost the Government a sum of Rs. 30 lakhs, and I ask with great respect to Mr. Hadow what is this Rs. 30 lakhs in the large and ever-growing income of the railways. (Hear, hear.) When the Railway Budget was separated last year from the general finances, it was clearly indicated that the object, the immediate object of the separation, was not only to give relief wherever it was possible in the matter of the reduction of railway freights, but also to enable Government to carry out their railway policy to its full extent in the matter of development and otherwise. I submit, Sir, that the railway finances are elastic enough to admit of a reasonable reduction in the matter of freights. The whole commercial community in India, I may say from the Himalayas to Cape Comorin, have with one voice for the last 5 years steadily demanded the reduction in coal freights in this country and Mr. Hadow by his candid statement to-day has confirmed that the Government realises the validity and justice of the arguments advanced for the reduction of freight. I quite conceive that it may not be possible to effect the reduction within the next few months. I quite appreciate that this Resolution is somewhat vague as it does not definitely state the period of time under which this reduction should be made. However, the policy of the Government has been definitely indicated by Mr. Hadow, and I do not see any objection to Government accepting this Resolution. Mr. Hadow has made it perfectly clear why Government are not in a position to accept immediately this Resolution, and if I can read between the lines of his arguments, I see that in the near future some sort of reduction will be made in general charges. I do not agree with the amendment of the Honourable Dr. Dwarkanath Mitter in view of the information given that the limit between long distance and short distance is prescribed to be 400 miles, and I trust my Honourable colleague will see his way to withdraw his amendment. I therefore support this proposition of my friend Lala Ram Saran Das because it will strengthen the hands of Government in carrying out this policy, and when they meet at the Railway Conference a month hence it will enable them to consider this matter with a greater degree of confidence than would otherwise be the case. It is for this reason and as I find that there is no difference between the Railway Board policy and the policy indicated in this Resolution, that I support it.

THE HONOURABLE MR. MANMOHANDAS RAMJI: (Bombay: Non-Muhammadan): I move that the question be now put.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: I am very sorry, Sir, that the Honourable Mr. Hadow has given a very disappointing

and a very unconvincing answer to the queries that I set forth in my speech. I cannot approve of the answers, Sir. Mr. Hadow has said that the coal freights could not be reduced at present because it was commercially impossible. The matter was under consideration. It has been under consideration for 5 years and nothing has come of it and it will still be considered.

The next point, Sir, is that after all the Resolution is a recommendation, to the Government, and even in case the Resolution is accepted it is no more than a recommendation. As my Honourable friend Sir Maneckji Dadabhoy has said it will, if adopted, strengthen the hands of Government. I cannot see why Government should not accept my Resolution. The Honourable Mr. Hadow has said that I have invariably used the word "concession." Of course being a business man, I consider it as a concession, because railway people have already special rates; the present coal rates may be termed special rates and as I wanted a reduction in the special rates, I could not find any better word to use than concession rates. However, what I mean is that the rates should be reduced and they should be reduced soon.

The Honourable Mr. Hadow said that the cost of running a wagon per mile comes to somewhere near 51 pies. I asked certain questions. Government are giving a rebate on the export coal, which last year amounted to about 11½ lakhs. This year even in case only one million tons are exported, it will amount to 22½ lakhs. May I ask him how that Rs. 22½ lakhs is to be met when the Railway Board is forced to retrench 2 crores and when their revenue has so far gone down by 130 lakhs? That is inconsistent. On the one hand the Railway Department is prepared to give 22½ lakhs to 45 lakhs as rebate in freight on coal meant for export. When they are so very hard up, how can they afford to do it? No answer has been given to me on this point by Mr. Hadow. That is a very important point.

Another important point which I raised was that as far as the carriage of coal to Northern India was concerned it was calculated to be 10 million tons and the freight on 10 million tons on an average of Rs. 10 a ton, I calculate to be a crore of rupees. On that we wanted a reduction of 10 per cent. I say that when these railways are unable to sacrifice 10 lakhs for Indian industries, how is it possible that they are prepared to sacrifice 22½ to 45 lakhs for the export industry? That is most unjust for the Railway Board to say in the interests of the Indian industry that, although they are prepared to sacrifice 22½ to 45 lakhs in rebates on coal for export, they are not willing to reduce the coal freight by 10 lakhs. This is a very disappointing statement that has been made by Mr. Hadow.

Another point which I raised was that the Tata Iron and Steel Company were enjoying a railway rate of 1½ pies per ton per mile on their raw materials and upon other finished products to Calcutta while coal freight is 4 pies per ton per mile. I asked how was that rate paying to the railways? Mr. Hadow has given no answer to this.

Then there is locomotive coal upon which the railways are offering 10 per cent. concession or rebate or whatever you may call it to the railways.

[Lala Ram Saran Das.]

I do not grudge it. I welcome it. I say it is a good policy to protect your own industries, but I have got no satisfactory answer as far as coal is concerned.

Then, Sir, another point which Mr. Hadow made was that so far as the Karachi Chamber of Commerce was concerned, they were rather indifferent in their recommendation. If I rightly understand, Karachi is not much concerned. All the seaports can try to do away with Indian coal in case the railways go on raising their freights as they can depend upon the imported coal. It is the people of Northern India, Sir, who are absolutely at the mercy of railways for the carriage of their coal. Their industries are bound to go to rack and ruin because the railways cannot afford to give 10 lakhs as reductions in freights.

Then, Sir, Mr. Hadow said that in order to afford facilities for the carriage of coal crores of rupees have been spent on doubling the lines for providing sidings, etc. Well, Sir, that is a business proposition. After all, this investment will bring in a good traffic and return. If it is done in the interests of the coal traffic Mr. Hadow should find means to increase it in the coal traffic, otherwise that expenditure will be considered quite unjustifiable.

THE HONOURABLE MR. F. A. HADOW: I am not saying it is unjustifiable.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: After all you will be getting a return on the extra capital that you have put in on these railways for coal traffic.

THE HONOURABLE THE PRESIDENT: Will the Honourable Member bring his remarks to a close?

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Sir, Mr. Hadow has been kind enough to give me a statement of figures in which he showed me that so many wagons were despatched each month in the last year. I did not raise that point at all. I said in my speech that I was not referring to the coal traffic as far as the slack season was concerned. I was referring to the number of empty wagons which were allowed to remain idle during the months which are not harvest seasons.

Another thing which I want to say is that in the Punjab the coal which is being carried for the purpose of railways is 723,685 tons and the coal carried for other purposes is 463,463 tons. The quantity of coal consumed by the railways is nearly double that consumed by the public and still the railways can afford to charge a lower rate for their own coal. But Mr. Hadow says: "It is our own convenience and it is required for our own selves." After all railways are revenue-making machines, though I do not want them to be revenue-making machines in the true sense of the word. But I see no justification whatsoever for Railways demanding a higher rate of freight from the public. After all, money comes and is spent from the same purse. It is that the railways are paying lower freight on their own locomotive coal and are, of course, paying from the treasury of the State. I hold, Sir, that the loss to the railways if the freight is reduced will not be 30 lakhs. In fact, I cannot

make out how Mr. Hadow has put it at 30 lakhs. In case he takes the coal carried for other purposes than that of railways, it will amount to not more than 15 lakhs at the most.

THE HONOURABLE MR. F. A. HADOW : Is the Honourable Member talking only about Northern India ? His Resolution deals with all parts of India.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : I am afraid the time at my disposal will not permit me to go into details but I can give Mr. Hadow a statement for all India and that will convince him that whatever I have been saying is correct.

Sir, there is one more thing which I would like to say. It is this. In case this Resolution is thrown out by the Official Benches it will be a distinct proof that the Government have now adopted a certain definite policy towards the industries. I might also say, Sir, that early this year when a vote of censure was moved in another place, the vote of censure was only rejected by 4 votes. In case it was a Resolution, it would have been carried by a very heavy majority. Although it was a vote of censure, everybody had his say and in case. . . .

THE HONOURABLE THE PRESIDENT : Order, order. I would ask the Honourable Member to what particular remarks in the debate he is now referring. He should remember that the right of reply is given to him for the purpose of replying and not for the purpose of making a new speech.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Very well, Sir.

What I say now is that if Government really want to promote and develop the industry, if they really desire to develop the manufactures of this country, they must reduce the coal freights. I think the points which I have put before the House are sufficiently convincing to appeal to the House to accept my Resolution.

THE HONOURABLE THE PRESIDENT : The original question was

“ That the following Resolution be adopted :—

‘ This Council recommends to the Governor General in Council that special concession rates be granted by the different railway systems for railway freight on coal when booked in full wagon loads and at owner’s risk —

- (a) for long distances of 500 miles and over ; and
- (b) during the slack season over various railways ’.”

Since which an amendment has been moved

“ That in clause (a) for the figures ‘ 500 ’ the figures ‘ 300 ’ be substituted ”.

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

The motion was negatived.

THE HONOURABLE THE PRESIDENT : The question then is that the original Resolution be adopted.

I think the Ayes have it.

(Non-official Members shouted “ The Ayes have it.”)

[The President.]

I must point out to the House that when I am myself declaring in favour of the Ayes, there is no necessity for any Honourable Member to continue to say "Aye".

I think the Ayes have it.

(A division was called for and the division bell rang).

THE HONOURABLE THE PRESIDENT: The question is that the original Resolution be adopted.

The motion was adopted.

STATEMENT OF BUSINESS.

THE HONOURABLE SIR NARASIMHA SARMA (Law Member): Sir, as a result of events elsewhere the only Bills with which the Council will be asked to proceed are the two which have been laid on the table to-day, and I now ask for your ruling regarding the day for which they should be put down. Government have no desire to rush the Council, and it is only for the convenience of Honourable Members, many of whom are, I understand, anxious to leave Simla as soon as possible, that I venture to suggest a curtailment of the usual period of notice. The Bills in question which Honourable Members will find in their places are very short, and Honourable Members will have no difficulty in appreciating the effect of their provisions.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : General): Sir, many of the Members of this Council, as I understand, have definitely decided to leave on the 18th, and have booked their seats and accommodation. The two Bills which have been laid on the table to-day are very short, and I believe they could be easily disposed of to-morrow, if you, Sir, waive the rules of business. As far as I understand that is the general opinion of my colleagues, and I therefore request that the Bills may be taken up to-morrow for consideration.

THE HONOURABLE MR. D. T. CHADWICK (Commerce Secretary): If that be the wish of the House, all that I desire to say is that I will be perfectly prepared on behalf of Government to receive amendments up to any time or hour fixed by you, Sir

THE HONOURABLE THE PRESIDENT: As no Honourable Member has suggested that the full period or even a slightly curtailed period should be adopted for these Bills, I think I may take it that it is the unanimous wish of the House to proceed to the consideration of the Bills as soon as possible.

(Several Honourable Members : "Yes, Sir").

In that case I would be prepared to waive the full period of notice and allow the motions in respect of these two Bills to be made to-morrow. The Honourable Mr. Chadwick has asked me to fix a time up to which he should receive notice of amendments. I think it is only fair to the House to say that Government should be prepared not to raise objections to any amendments which are received up to eleven o'clock to-morrow morning, the hour at which we shall meet.

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

The Council re-assembled after Lunch at Ten Minutes to Three of the Clock, the Honourable the President in the Chair.

MESSAGE FROM HIS EXCELLENCY THE GOVERNOR GENERAL.

THE HONOURABLE THE PRESIDENT: I have a Message for the Council from His Excellency the Governor General.

(The Message was received by the Council Standing).

"In pursuance of sub-section (3) of section 63-A., of the Government of India Act, I, Rufus Daniel, Earl of Reading, hereby require the attendance of the Members of the Council of State in the Chamber at 11 a.m., on Thursday, the 17th September, 1925".

(Signed) **READING,**

Viceroy and Governor General.

CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

**THE HONOURABLE MR. V. RAMADAS-PANTULU (Madras: Non-Muham-
madan):** Sir, I beg to move that the Bill to provide that, when fire-arms are used for the purpose of dispersing an assembly, preliminary warning shall, in certain circumstances, be given, as passed by the Legislative Assembly, be taken into consideration.

I will request this House to give a calm and very dispassionate hearing to this motion. The Bill in question is a very humane and absolutely essential piece of legislation. There are in the Statute-books of many civilized countries provisions like those contained in this Bill, regulating the use of fire-arms. Chapter IX of the Criminal Procedure Code, which deals with unlawful assemblies, nowhere specifically mentions the use of fire-arms, though I concede that the word "force" used in the Chapter is in legal parlance comprehensive enough to include the use of fire-arms. There has been a feeling in the country, for a long time, that the use of fire-arms, either by the civil authorities, or the military, should be regulated by Statute and should not be left to the discretion of the Executive and the operation of executive circulars. The potential dangers of the use of fire-arms are so grave that in England and other countries it was considered necessary to regulate their use by law in order to prevent any excessive or wrong use of the power vested in the civil and military authorities. In this country resort to fire-arms is not a very uncommon occurrence, and whenever there was a riot very frequently either the police or the military were called upon to open fire. In my experience as a publicist for nearly 25 years, I have found that expression was given to a feeling, by the public, that in many cases, I do not say in all cases, but in many cases, there was either an excessive or an improper use of fire-arms. I have read newspaper reports of such occurrences and I have also read reports of private inquiries and non-official inquiries conducted with a view to ascertain the truth of the allegations after a riot was suppressed. That feeling came to a head after the Punjab tragedies which culminated in the Jallianwala Bagh massacre. Since then there has been a demand in the country, which has grown in volume almost every day, that something should be done to prevent, if possible, a recurrence of incidents like the massacre in the Jallianwala Bagh, and this Bill

[Mr. V. Ramadas Pantulu.]

is the result of efforts made for a long time past to get into the Statute-book some provisions whereby it would be possible to prevent such tragedies.

I shall very briefly trace the history of the present Bill and try to answer as well as I can some of the objections urged against its provisions. I am glad to be able to say, as in the case of the repeal of the repressive laws, in this case also, the initiative came from this House on a Resolution moved by the Right Honourable V. S. Srinivasa Sastri on the 3rd March 1921. The Resolution which he moved was in these terms :

“ This Council recommends to the Governor General in Council that the Code of Criminal Procedure and, if necessary, other enactments, be so amended
3 P.M. as to secure the following points in the suppression of riots and unlawful assemblies :

- (i) No fire-arms should be used except on the written authority of a Magistrate of the highest class that may be available on the spot ;
- (ii) In cases of grave emergency when no Magistrate is available in the neighbourhood, the chief police or military officer present on the spot may, if he considers that the riot or unlawful assembly cannot be suppressed otherwise, employ fire-arms ; but the onus of proving the emergency and the impossibility of securing the presence of a Magistrate within the proper time shall lie in the officer so acting ;
- (iii) Before resorting to fire-arms, the Magistrate or other civil or military officer responsible shall read or cause to be read a proclamation, both in English and in the local vernacular, similar to that contained in the English Riot Act ;
- (iv) Fire-arms shall not be used for one hour after such proclamation has been read unless, in the meantime, the assembly or crowd actually causes serious damage to person or property ;
- (v) Before the crowd is actually fired upon, the fullest warning shall be given ;
- (vi) The Magistrate or other civil or military officer responsible shall take all reasonable precautions to see that no more injury is inflicted on the crowd or assembly than is absolutely necessary ;
- (vii) The sanction of the Governor General in Council should not be a condition precedent to the institution of a criminal prosecution against officers or other persons who have acted illegally in the suppression of riots ;
- (viii) Every such prosecution shall be instituted in and triable by the Sessions Court having territorial jurisdiction, with the previous leave of such Court or the High Court of the Province ”.

As a result of the debate on this Resolution, only two clauses were finally adopted, namely, clause (v) and clause (vi). The other clauses were negatived on divisions which were pressed for by the Government. The Honourable Sir William Vincent, then Home Member, assumed a sympathetic attitude towards some of the clauses and opposed some of the other clauses rather strongly. As a result of this debate, Sir William Vincent introduced in this Council a Bill to amend Chapter IX of the Criminal Procedure Code containing only a single clause with regard to the warning and it was passed in this House sometime in October 1921. That Bill merely said this :

“ Where under the provisions of this Chapter any person determines to disperse any such assembly by the use of fire-arms, such persons shall, before directing that the assembly be fired on, warn the assembly by such means, if any, as may be available at the moment, that unless it disperses forthwith it will be fired on ”.

After the Bill was passed in this Chamber it was laid on the table of the other House. There, Diwan Bahadur T. Rangachariar tabled a certain number of amendments which were necessary to make the regulations regarding the use of fire-arms complete and he wanted that the Chapter in the Criminal Procedure Code should be self-contained with regard to regulations as to the use of fire-arms. But for some reason Government did not proceed with the Bill. I guess the reason—there is no official version as to the reason. I believe the fact was that amendments which were not liked by the Government would undoubtedly have been carried by the Assembly, and so I suppose they acted on the principle that “discretion is the better part of valour” and dropped the matter. Then Mr. Rangachariar made a further attempt when the Criminal Procedure Code was sought to be amended. When a Bill to amend certain portions of the Code was on the legislative anvil he tried to introduce these provisions by way of amendment. The amendments were overruled on the ground that they were beyond the scope of the Bill. Finally, he introduced the present Bill in its original form in January 1924 into the Legislative Assembly, and in September 1924 after a prolonged and informing debate it was referred to a very strong Select Committee consisting of a dozen able men and the Honourable the Home Member. The Select Committee had sent up their report sometime in August 1925 and the Bill had undergone material changes in the Select Committee, and then it was finally passed by the Assembly on the 9th of this month after undergoing further amendments. In the form in which it was passed by the Assembly it is laid on the table of this House. Therefore you will see that this Bill was before the country during the whole lifetime of this Council. It began almost simultaneously with the birth of this Council and it has been there practically to the last day of its existence, and the particular Bill in question has been before the country for nearly two years, and a strong Select Committee sat upon it and considered it very carefully. Therefore there was no undue haste or hurry in this matter; and the persons connected with the genesis of this Bill were the Right Honourable Srinivasa Sastri and Mr. Rangachariar who cannot be said to be actuated by any desire to weaken the hands of the Executive of this country. Of course if a wicked Swarajist was at the bottom of it, my friend opposite might have made a point of it. But I venture to say, Sir, that the gentlemen whose names are so intimately associated with the genesis of this Bill are themselves a guarantee against any such imputation. On a motion for a division it was carried by 58 to 45, and among those who voted for it were men like Sir Purshotamdas Thakurdas, Sir Sivaswamy Aiyer, Diwan Bahadur T. Rangachariar, Diwan Bahadur Ramachandra Rao and others. Therefore my request to you to consider this motion sympathetically and with due regard to the history of this Bill is not an unreasonable one. Further, in commending this Bill to your acceptance, I speak, Sir, with a full sense of responsibility. I am fully alive to the fact that there is no reason to suppose that the Government have any desire to allow their officers to inflict any more injury on a mob or to destroy more human life than is absolutely necessary to avoid a greater danger to the community. I am quite prepared to accept that. I am also willing to concede that an officer who is employed on such a task will not normally do anything that is calculated to destroy human life except to the extent necessary; and I also recognise, Sir, that officers who are expected to take quick

[Mr. V. Ramadas Pantulu.]

and decisive action in emergencies should get all the adequate protection which the law and the State can give to them in the discharge of their public duties. I recognise every one of these positions. But, Sir, bearing them in mind as well as I can, I cannot forget the duty which the State and the Legislature owe to the citizen in safeguarding his rights against the improper exercise or excessive use of the powers vested in the police and the military. The Bill tries to recognise and also to harmonise these conflicting interests, and I think it is a result of very considered judgment upon the subject. I may also state that this Bill does not touch the provisions of the Criminal Procedure Code so far as they relate to the dispersal of unlawful assemblies by the use of any other kind of force except that of fire-arms. The use of *lathis* or bayonets or other weapons for dispersing unlawful assemblies which are contemplated by the provisions of the Criminal Procedure Code are not sought to be touched by this; the use of force in these cases is not sought to be regulated by this Bill. It is in its scope entirely confined to the use of fire arms. With these preliminary observations as regards the history and the scope of this Bill, I will now proceed to deal very briefly with the various clauses of this Bill. It is placed on the table for your perusal and I would earnestly request your attention to the clauses, or rather to the sub-clauses of clause 2.

THE HONOURABLE THE PRESIDENT: I must remind the Honourable Member that at this stage he will only be in order in referring to the details of the Bill in so far as such reference is necessary to explain the principle of the Bill. Beyond that he should not go now.

THE HONOURABLE MR. V. RAMADAS PANTULU: I was not proposing to read the clauses, Sir, but I wanted to mention that it embodied four principles. Firstly, in order to disperse an unlawful assembly, fire-arms should be used as a last resort, and only when it is unavoidable. That is the first principle which the Bill embodies. There is a proviso which I will explain later. The second principle is that in all cases where fire-arms are used to disperse an unlawful assembly, warning should be given to the assembly. That is the second principle. The third is that as soon as an unlawful assembly is dispersed by use of fire-arms, the person who authorises the firing should make a full report of the circumstances which led to the use of fire-arms. And the fourth and the last principle is that a person injured by the firing or if he is killed his specified near relations shall have freedom to complain and take legal action against unlawful exercise of power. These are the four principles which this Bill embodies. I shall very briefly deal with each of these four principles in moving that the Bill embodying them be taken into consideration.

The first principle is that fire-arms should be used as a last resort. The reasons for this are to my mind very obvious. Fire-arms being the most deadly weapons whose use is attended with grave danger even to innocent people who are near and round about a riotous mob, their use should be the last expedient. Again, the second reason is that there is always the temptation to persons engaged in suppressing riots and in dispersing riotous mobs to do it as quickly as possible, and with as little risk to themselves as possible by the use of fire-arms although it may not be absolutely necessary, as other modes

of dispersal will be slightly more risky to themselves, but calculated to cause less bloodshed and are less risky to the community. Especially when the officer employed in doing this duty is not a man of very great nerve, he may be tempted to use fire-arms in order to save himself and the men under his command and quickly to get over the trouble and impending danger; that will be always a temptation. Then, thirdly, there are unfortunately some officers in India who believe that a little extra blood may be shed in order to prevent future riots, to produce a moral effect and to make an example to others. It is now well known from the contents of the Hunter Committee report and from other records that General Dyer himself acted upon this principle. I do not now propose to quote from his evidence which I have got before me, but he himself admitted that his immediate object was not to disperse the assembly but to produce a sudden and striking moral effect by an exhibition of force, by firing till his ammunition was exhausted. I have read the judgment of Justice McCardie in that famous trial, *O'Dwyer v. Sankaran Nair*, in which a shocking revelation is made that several military officers in this country approved of the action of General Dyer. Therefore my fears are not merely imaginary, that people who consider that striking and sudden effect should be produced by using fire-arms, are still to be found in India. I am thankful to His Excellency the Commander-in-Chief who the other day spoke in the other House and assured us that the soldiers in India are not actuated by any such desire and that they are as human as any other citizens. I am fully willing to accept His Excellency's assurance and I am also glad to recognise the fact that the Government of India dissociated themselves from the theory that General Dyer propounded; and the Resolution of the Government of India which followed the publication of the Hunter Report has also showed us that at any rate that is not the principle the Government of India propose to adopt in this country. I am thankful for these. But nevertheless there are well grounded fears entertained by my countrymen that the Jallianwala Bagh incident is not the last word in the episodes in this country. Therefore, it is the duty of the law to protect the people from recurrences of such misdeeds. However well meaning the officers may be, it is but right that we should have safeguarding provisions. It is, I submit, considerations of this kind that induced great English lawyers to lay down that the use of fire-arms shall always be resorted to as the very last expedient. I shall only read one sentence from the famous report of the three English lawyers in that *locus classicus* known as the Ackton Hall Colliery dispute. Lord Bowen, Sir Albert Rolit and Lord Haldane said in their report on the Featherstone riots:—

“ A soldier can only act by using his arms. The weapons he carries are death; they cannot be employed at all without danger to life and limb and in these days of improved rifle and perfected ammunition, without some risk of injuring distant and possibly innocent bystanders. To call for assistance against rioters from those who can only interpose and under such grave conditions ought of course to be the *last expedient* of the civil authorities ”.

Sir, I lay stress upon the last words that the use of fire arms should be the last expedient of the civil authorities. I am also told that there are certain executive instructions issued to officers that force should be resorted to generally only as a last expedient, though it is not obligatory under the rules. Therefore,

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the first principle that this Bill seeks to establish is not a very astounding one. It is a well recognised principle based upon very humane and sound considerations.

Two objections have been raised by the Government, so far as I can gather from the Select Committee's Report as well as the debate in the other House. They say that if fire-arms are to be used only when it is unavoidable who is to decide the question of fact whether the officer using them acted under the circumstances which may be legally described as being unavoidable? My only answer is that it is not an innovation which the Bill makes. Section 129 of the Criminal Procedure Code, as it stands, authorises the use of military force. It says that, if any such assembly cannot otherwise be dispersed, military force should be resorted to. The Assembly made a change in favour of the officer by substituting the word "unavoidable". The same authority will also decide the question as to whether the circumstances were such as to render the use of fire-arms unavoidable. Therefore, there is no substance in the objection because it is really a mere reproduction in a different language of all the limitations that already exist in section 129. The other objection I understand is that why should fire-arms be resorted to in the last instance? Why should they not be preferred to other modes of dispersing an assembly if the officer in charge feels that other kinds of force will cause less injury in dispersing the assembly more effectively than the recourse to fire-arms? For instance, why should not an officer resort to a bayonet charge and relegate the fire-arms to the background? My answer is this; that in the case of a bayonet charge you injure such of the rioters as are determined to make a stand against the authorities who are trying to disperse the crowd. The bayonet charge will not touch the people who are not determined to oppose the authority. Secondly, in the case of a bayonet charge people know that the military and the police are marching; they know what the impending danger is and they quickly disperse. But in the case of fire-arms which are used from a long distance it will not be possible to scent the impending danger. It will not be known to the rioters. Therefore, there is a greater risk. Thirdly, the use of fire-arms as has already been said is likely also to affect innocent bystanders and others who will be shot and killed. It will not be the case in a bayonet charge. So these objections are not very sound. I have already informed the Council that in other countries and also in Executive instructions generally the use of fire-arms is relegated to the last resort and that is a good and sound principle. That is the first principle.

The second principle is that the assembly shall not be fired upon without a previous warning. Then, this Bill makes it very clear that the warning can be given by such means as are available. If no means are available, it does not preclude an officer from firing. All that is necessary to say is "unless you disperse you will be fired upon". This clause of the Bill makes it very elastic in favour of the officers using fire-arms by using the words "such means as may be available". Therefore, it is not a very stringent rule. Moreover, I beg to remind this House that this clause about the giving of warning was accepted by this House and it was embodied in the Bill. I am not therefore asking for any new provision. It is a clause which was accepted in a Resolu-

tion and subsequently embodied in a Bill which was also passed by this House. To that extent, therefore, this Bill does not seem to depart in any way from the intentions of this House once expressed in 1921 both in the Resolution and in the Bill. The provisions of the English law regarding the reading of the Riot Act and giving time to the assembly to disperse are more stringent against officers, in that they lay down that a certain time must elapse before the assembly can be fired upon. Besides this act of warning will also serve as a protection to the very officer who is ordering the use of fire-arms, because, once it is proved that he had given the necessary warning and the crowd did not disperse, any allegation made against him will be without substance. Once he has given the warning, it will put him in a very safe position. Therefore, I submit that the second principle embodied in the Bill does not need much to commend it to the acceptance of the House.

Then, Sir, the third principle is that a person authorising the firing shall send an immediate report of the occurrence to the nearest first class Magistrate. From the debate in this Council and the recent debate in the Assembly I find that the Honourable the Home Member has not seriously disputed the correctness of this position. He only said why should the report be confined to the use of fire-arms? Why should it not be extended to the case of dispersing assemblies by other means? I have no objection to making a report in other cases also, but this Bill deals with the case of fire-arms only. Therefore, I do not think the Government will oppose the necessity of sending the report on the principle involved in this case.

I now come to the last and the most important clause of this Bill, namely, giving liberty to a person who is injured and in the case of an individual who is killed to his parent or guardian or to wife or husband to make a complaint without the previous sanction of the Local Government. You are now aware that under section 132 of the Criminal Procedure Code no such prosecution can be launched without the previous sanction of the Local Government or the Governor General in Council. It is an absolute provision. Now, what does this Bill say? It says:

“Notwithstanding anything contained in section 132, no sanction shall be necessary for the institution of a prosecution by any person injured by the use of fire-arms or any parent or guardian, husband or wife of a person killed by the use of fire-arms against any person in respect of any offence committed by him by reason of any act purporting to be done under this Chapter”.

On this I know there is a great deal of controversy and I would therefore like to say a few words. This is an elementary right of a citizen to proceed against an officer of the Government for exceeding his powers. It is not an innovation which is sought to be introduced for the first time. I shall read one small sentence in Dicey's Rule of Law. He says:-

“In every legal system the right to proceed against a servant of Government for wrongs done to individuals in his official capacity exists in some form or other. The right corresponds to the instinctive impulse of the legal victim to seek compensation from the immediately visible wrong-doer”.

This is a fundamental rule of every legislation and it is only enacted here. Then, Sir, English and American laws do not require any previous sanction to prosecute any wrong-doer. It is, humanly speaking, too

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much to expect the Executive Government to sanction the prosecution of one of its own officers who has purported to act in the discharge of his official duties. I am not aware of any instance in which sanction was given, and I was told by men who have considerably more experience than I, men like my friend Mr. Jinnah, that they never came across any case in which sanction was accorded. And I may tell you that this clause only tries to remove the restrictions contained in section 132, and that it does only very partially. It does not do away with the necessity for sanction when force other than fire-arms is used. In all other cases the necessity for sanction still remains. Secondly, unlike in England and America the power or liberty to complain is not sought to be given to any person. There any person can complain against excessive use of force, but in this case it is restricted to the injured person, and in the case of death to his nearest relation. Honourable Members will therefore see that this clause very much restricts the English law and also modifies section 132 to a very limited extent.

Then, Sir, I shall deal with two objections which I have come across regarding this provision, which have been raised to the principle embodied in this clause. The first is that fear of impending prosecution might unnerve an officer and prevent him from discharging his duties efficiently in an emergency. In this matter I can only say this. It is a question of human psychology. If officers in England and America and other places, where similar liberty exists in much wider terms, are not unnerved, I do not see why officers in India should be treated in an exceptional manner, and why it should be considered that they should be unnerved by this provision. I do not think human nature differs very widely in this matter, and I do not think the assumption underlying it is correct. Secondly, it is said that there is a certain amount of hostility, unreasonable hostility, towards the police and the Executive in India and that the liberty is likely to be abused by the institution of frivolous charges against officers in the discharge of their duties, and supporting them in some cases by false testimony. There seems to be no justification for making such an assertion, and it would be a libel on the character of the whole Indian nation. People realise and are thankful for the help that the military and police render them when a furious mob attacks their home and hearth, and it was handsomely acknowledged by the Honourable Home Member that in Delhi and other places where riots had occurred, people offered fruits and things to eat to the soldiers and police in charge of the operations. Everyone is interested in seeing that their property, home and hearth are safeguarded, and when the police and troops are discharging their duties in the interests of the community, it is difficult to believe that people would be so wantonly wicked as to bring false charges.

Then, Sir, it is not as if the officers had not got safeguards. The Indian Penal Code gives them so many safeguards, in addition to safeguards in the Criminal Procedure Code. The Indian Penal Code deals very favourably with cases relating to officers in the discharge of their duties. All acts if *bona fide* and done while acting in the public interests are exempted from the category of offences. That is a very great safeguard which ought to be sufficient. In case a complaint is filed under section 202, a Magistrate may not take

on his file a complaint without previous inquiry and may dismiss it under section 203 without notice to the accused. There is also section 494 of the Criminal Procedure Code under which a complaint may be withdrawn and a *nulli prosequi* entered by an officer of the Crown

THE HONOURABLE SAIYID RAZA ALI : That is a disputed point whether the case can be withdrawn.

THE HONOURABLE MR. V. RAMADAS PANTULU : So that even in the face of so many safeguards, if you say that a person who makes improper use of the powers and kills human beings without justification should not be brought to book, then I can only say that the law of this country seeks to set very little value upon the sanctity of human life. I do not say that such incidents will be of frequent occurrence, but all the same it is possible. I know that is a very difficult and delicate duty which an officer discharges, but I do not see why he should not submit himself to the consequences of the law just as any other citizen. The law as set out in England is very clear. I will only make a brief reference to two English authorities. The first is a judgment delivered in England in the case of the Bristol riots. It is in the case of King *versus* Pinney, in which the judiciary took into consideration the very unenviable position of the Magistrate or officer, and at the same time imposed on him duties which you may consider to be extremely difficult to discharge :

“ Now ”—said Mr. Justice Littledale—“ a person whether a Magistrate or an officer who has the duty of suppressing a riot, is placed in a very difficult situation, for, if by his acts he causes death, he is liable to be indicted for murder or manslaughter ; and if he does not act, he is liable to an indictment or an information for neglect. He is therefore bound to hit the precise line of duty, and how difficult it is to hit that precise line will be a matter for your consideration ”—that is to say for the Jury’s consideration—“ But that ”—continues the Judge—“ difficult as it may be, he is bound to do ”.

That is the view which an English Judge has taken of the duties of a Magistrate or an officer as a citizen. I will only quote one more passage from Dicey’s book :

“ A General, an officer, a Magistrate or a constable, who, whether in time of war or in time of peace, does without legal justification any act which injures property or interferes with the liberty of an Englishman, incurs the penalty to which every man is liable. It is a breach of the law. ”

When a man accepts the office of Magistrate or Justice of the Peace, he, like any other citizen, takes the same risk. I daresay every Honourable Member of the Government of India takes a risk in arriving at a decision, but they are responsible for their actions, and upon their decisions depend the fortunes of many people. Therefore a Magistrate ought not to be an exception in this case, and he ought, like any other citizen, to take risks, provided that he is safeguarded under the law, and the law has so many safeguards. Therefore, Sir, to hem in an officer with further provisions in the Criminal Procedure Code is most unjustified. Section 132 of the Code is still there operating in his favour to a large extent.

I have practically said all that I need say on the principles of the Bill and I am fortified in my position by the views that the Right Honourable Srinivasa Sastri has expressed. I quote him because I consider him to be a public man whose opinion might carry very great weight in this House.

He said, Sir, on this particular matter :

" A grave occurrence is the subject of a communication to the Governor in Council or the Governor General in Council. His police officers, probably the military, his Magistrates, are accused of having used unnecessary force. His sanction is sought for a prosecution. We know how these things go in such cases. The Governor in Council has hitherto tried every means even of avoiding a public inquiry. Is he likely to afford the sanction for a criminal prosecution? Is that the way things go on in England? When one officer errs and you wish to bring him to book, do you go and ask the permission of his immediate superior? Or do you go and sue him in a court of law? It is something that Indian law cannot be proud of. It belongs, if I may say so, to a barbarous age. It ought to go out of the Statute-book. To require the sanction of the Governor General in Council or the Local Government to prosecute an officer for what would be murder or man-slaughter is to ask, I think, for the impossible. When an officer is accused, the whole of his department with all its moral force comes down whether in a court of law or in the public or anywhere to prove that the officer is in the right and the complainant is in the wrong. To make a prosecution conditional on that superior giving his previous sanction to it, is effectually to close the jurisdiction of the court. Now I object to all legislation which shuts courts out of their natural and proper jurisdiction."

That is the position Sir.

In conclusion, Sir, I will urge one or two reasons why this Bill should be taken into consideration. My friend Mr. Crerar will tell me that I proceeded on *a priori* reasoning and on Juristic principles, and not upon real facts; but I am not shutting my eyes to the realities of the case. It is possible to exaggerate or to invoke the aid of any particular incident of a very exceptional character, but we can neither of us be benefited by having recourse to or by invoking the aid of exceptional circumstances. Generally speaking, I may venture to say that the crowds in India are not very dangerous. We are a disarmed nation and the way in which you have administered the Arms Act for half a century has completely disarmed us, and in this country riotous mobs are not likely to be as dangerous as in countries where arms may be used. Therefore, it may safely be said that ordinarily the police or the military can face these crowds without grave risks without resort to the indiscriminate use of fire-arms. Secondly, Sir, as I have told you already, there is this fear that some officers are likely to use fire-arms to produce a sudden and striking effect. Lastly, in England the soldiery understand the habits and customs of the people; in this country there is great danger that the soldiery, which is employed to suppress riots, may not understand [the customs of the people. I have read of an incident in connection with the Punjab tragedies, that when a group of men was walking to the Deputy Commissioner's house to make a representation to him, a company of Gurkha soldiers mistook their having bare feet as a mark of disrespect to the Government and as a mark of insolence and fired on them killing some people. This incident which I have read of shows that even Gurkhas, who live on the borders of India, know so little about the customs of the people. It is little wonder if European soldiers, who come from Scotland, Wales, Ireland and England, mistake customs and without understanding the temper or manners of the group, open fire, under

circumstances which would not be justified. There are grave dangers involved in this, and all that we seek to do is to regulate the use of fire-arms by having the same prohibitions as those which are well recognised in other countries. With these words I beg to commend this motion to this House and hope that this House will not go against the widespread feeling in this country in the general desire to prevent the recurrence of such unhappy incidents as I have mentioned, by the undue and excessive use of fire-arms. I appeal to you to recognise the sanctity of Indian life in the same way as human life is protected all the world over.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, despite all the persuasive and conciliatory language used by my Honourable and learned friend opposite, I regret that it is my duty to oppose his motion. In so far as the Bill is intended to protect the public against the unnecessary use of fire-arms and to instruct the officers of Government in their duties and their liabilities, I take no exception to the intention, which is unquestionably based upon humane principles. But on that intention the Government themselves have already repeatedly and consistently acted, and of the prescriptions contained in this Bill which are likely to be of the slightest advantage either to the public or to the forces of the Crown, all are already contained in the Executive orders of Government, both in those addressed to the civil forces of the Crown and in those addressed to the military forces of the Crown. My objection to the Bill is that, in respect of what it purports to do and what, as a matter of fact, it would effect in operation, as well as in respect of the expedients it proposes, it is entirely misconceived. Its fundamental misconception is that it is either practicable or advisable to provide by Statute for the manifold contingencies of any one event of a class which presents almost infinite possibilities, which must commonly arise suddenly and either unexpectedly or in some form impossible to foresee, and which demands action which must be not only prompt and resolute but cool, responsible and intelligent. Now the Bill gives no directions whatsoever to assist the officer, which are not, as I have already said, at least equally well provided elsewhere, and it is in the highest degree calculated to impair these primary requirements—good judgment in assessing a situation, intelligence in considering the action to be taken, in respect both of its necessity and of its sufficiency, and promptitude in taking that action. There are, Sir, I believe, certain Chinese Manuals of the art of war which set out to instruct the aspiring soldier in every possible contingency of an action or campaign, and which lay down most rigidly the specific action in each which alone is orthodox and permissible. They are very ingenious, but I confess, in any particular problem of military action, I should prefer to be guided by the science, experience and judgment of His Excellency the Commander-in-Chief or one of his officers. There is a most interesting treatise on the art of government commonly known as the Arthashastra of Kautilya, and this is also an elaborate codification of this character, which in respect of its warlike precepts, was drawn up, I imagine, by the Brahmin for the use and execution of the Kshatriya. We have something of the same kind here, a Bill drawn up in seclusion, by the sole light of the Palladian oil, for the admonition—I regret I cannot say the use or the instruction or the encouragement—of the...

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executive officer, who works in the dust and heat, and who bears the burden, the odium and the peril on his own head. Well, Sir, the Bill is not quite so elaborate as the instances which I have adduced, but it does suffer from the same defect of endeavouring to stereotype into a Statute matter which is inappropriate for a Statute. Further, and more, it is calculated not to instruct, but to deter.

Now, Sir, my Honourable and learned friend informed the House that prescriptions regarding the use of fire-arms dealing with an unlawful assembly have in England been drawn up in Statute form. There, I must say,—and I say so with the utmost submission and deference to my Honourable and learned friend's legal attainments—there, I venture to submit, he is gravely incorrect. Allow me in the first instance to remind the House,—and though I speak as a layman, this is naturally a matter which I have had to study very closely,—let me, Sir, endeavour to remind the House very briefly of some of the main features of the English law in this matter. In the first instance, I must say as a preliminary, that practically the whole body of English law in the matter is contained not in any Statute at all but in the common law of England and in the judgments of the Courts. Now, Sir, in my judgment the most important and the most significant prescription of the English law in the matter of the responsibility of all classes of persons in regard to public disorders is the following, laid down in the well-known charge to the Grand Jury after the Bristol riots of 1832 delivered by Chief Justice Tindal :

“ By the common law every private person may lawfully endeavour, by his own authority, and without any warrant or sanction of the Magistrate, to suppress a riot by every means in his power. He may disperse, or assist in dispersing, those who are assembled ; he may stay those who are engaged in it from executing their purpose : he may stop and prevent others whom he shall see coming up from joining the rest : and not only has he”—and I invite the special attention of the House to this—“ the authority, but it is his bounden duty as a good subject of the King, to perform this to the utmost of his ability ”.

You will observe, therefore, that, firstly, the law in England lays on every citizen, whether he is an officer of the State or a private citizen, the positive obligation of acting and, if necessary, taking the initiative in suppressing a disorder. Now the rest of the law is very simple in substance. The principal prescription is that the force used must be strictly proportionate to the necessities of the case. The law in England is simply this :

“ The degree of force, however, which may lawfully be used in their suppression depends on the nature of each riot, for the force used must always be moderated and proportioned to the circumstances of the case and to the end to be attained ”.

Sir, during the course of the debate in this House in 1921 cited by my Honourable and learned friend, it was actually stated, and if I heard my Honourable friend correctly, I believe he repeated that statement to the House, on the present occasion, that the effect of the English Riot Act was to make it unlawful to fire until after the expiry of a certain period. Nothing, Sir, could

be more remote from the facts. The reading of the proclamation under the Riot Act is not by any means a necessary preliminary to the use of force in dispersing an assembly in England. The only effect of the Riot Act proclamation is to make it a felony on the part of any persons constituting members of an assembly who do not disperse within one hour after the proclamation by the Magistrate. The Act imposes no restrictions whatsoever on the officers concerned : what it says is that to remain in an assembly after the proclamation is read by the Magistrate :

“ shall be adjudged felony without benefit of clergy and the offenders therein shall be adjudged felons and shall suffer death as in case of felony without benefit of clergy ”.

That, Sir, is the operative provision of the Riot Act which has been represented to us as an Act which forbade the use of fire-arms in dispersing an assembly until an hour after the Magistrate had read the proclamation.

Now, Sir, let me come back to what is really the important, practical proposition before the House. What benefit is this Bill likely to confer, and on whom ? If it is going to benefit anybody in any way at all, it seems to me that it makes a very strange and irrational choice of its beneficiaries. In a riot, apart from those immediately responsible for order, there are at least two parties interested,— the law-abiding citizen and the rioter. The interest of the law-abiding citizen is the protection of his own person and property and the speedy termination of the disorder. The rioter, I presume, conceives his interest to be license to do as his passion dictates and to do it with impunity. Which of these interests is this Bill calculated to serve ? And why this extraordinary favour shown to the breaker of the law ? As regards the officer of the Crown, the Bill obviously is not designed for his advantage. It is to instil into him a salutary dread of any error of judgment or mischance, which may be imputed as malice by an *ex hypothesi* highly prejudiced party. Now that really must have the effect of impairing his confidence and therefore his efficiency. And who, in the end, is likely to suffer most ? The officer no doubt suffers to a certain extent, because if he fails to do his duty, he will have to answer a very rigorous departmental inquiry ; but he will not suffer so much as the other party whose interests seem to have been so singularly neglected by the promoter of this measure, the law-abiding citizen.

Now, Sir, I will proceed to examine very briefly the effects as I conceive them to be of some of the principles of this Bill in operation. The Honourable Member has informed the House what in his conception would be the effect of clause 1 (a) of this measure. Well, the first observation I have to offer is that I can see no rational basis for the discrimination of force which has been introduced. I presume the idea was that the use of fire-arms is necessarily the most dangerous and most destructive kind of force which could be used, and we had the Honourable Member giving us his own views as to the comparative innocuousness of a bayonet charge.

The real objection from the practical point of view to that argument is that a bayonet charge is a form of force the use and the limit of which it is far more difficult to control. That is a matter which can be much more authoritatively explained to the House, as I trust it will be explained, by His Excellency the Commander-in-Chief.

4 P.M.

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There is another consequence of that clause which I do not think my Honourable friend has really considered. It places necessarily, in all circumstances and without qualification, or with very little qualification, the whole responsibility for the initiative on a Magistrate, if a Magistrate is present. Now, a position which is very likely to arise, a position which frequently has arisen, is that a riot occurs and you have on the spot possibly a third class Magistrate. I do not wish to disparage him in the least. The third class Magistrate discharges very important and very useful functions ; but in the ordinary course of events that Magistrate will be a man who has not had very much experience of the law at all and none whatsoever of carrying out the executive action laid down by the law. He is unfamiliar with situations of this kind, and it would not be surprising if his judgment were very seriously affected by the critical character of the circumstances. On the other hand, there may be present on the spot a very senior Superintendent of Police who, I will not say has grown grey in suppressing disorders, but who during the course of a long police service has had opportunities of learning how to deal with a situation of this kind. My Honourable friend says: "No, that Superintendent of Police should not be allowed to exercise his superior judgment in this matter, and the action to be taken by him should depend entirely on what the inexperienced Magistrate who happens to be there authorises him to take, though the Superintendent of Police knows much better what action is immediately, urgently and imperatively necessary."

Then, Sir, we have the second proposition, that on all occasions the fullest warning shall be given. This is what the Bill lays down :

"The person who directs that the assembly shall be fired on shall, before so doing, warn the assembly by such means as may be available that unless it disperses it will be fired on."

That does seem a very reasonable prescription to make. The only question is whether it is more conveniently to be made in the form of the imperative executive orders which are now in force or in the form of a Statute. Moreover, if you proceed to embody a prescription of this kind in a Statute, you will find yourself involved in very serious difficulties. It seems a very plain, simple and obvious proposition. But it is a matter of almost daily occurrence in this country that armed dacoits are pursued by what is possibly an inferior police force. The police force pursues this body of dacoits. Now, according to the Bill, that police force is bound to give notice of firing before doing so. It is not a case in which there is any physical impossibility of conveying the warning. It can perfectly well be done. But what is going to be the consequence? The police force having probably spent days in pursuit of this body of dacoits, when it finds itself in a position of tactical superiority, for which it has laboured hard and long, is compelled to surrender that superiority and possibly involve itself in a very serious disaster. There is no sense in that proposition, innocent as it appears and laudable as its motives no doubt are.

Then, Sir, I come to the question of the statutory report. There again I contend that though the prescription is in itself quite proper, it is not a proper one to be embodied in a Statute and more particularly, I contend,

that its value will be absolutely nil. First of all, it is one of the commonest experiences of those who have had anything whatever to do with the suppression of serious disorders that it is exceedingly difficult to ascertain the authentic facts in any short period of time. You will possibly have rioting going on simultaneously in different parts of a large city. It takes sometimes three or four days before the officer in supreme charge of the operations can get from his various outposts and stations even preliminary, to say nothing of correct and authentic, information of what is actually happening. That is one objection. Then, I take another, which to my mind is really more fundamental, because it touches on the value of the report itself. I ask Honourable Members to put themselves in the position of an officer who has made himself responsible for the use of firearms in the suppression of a riot. What does the Bill require him to do? It requires him to send a report within twenty-four hours of the occurrence. That report will moreover become a public document. It will be matter which can be used against this officer in precisely those circumstances contemplated by my Honourable and learned friend in the last clause of his Bill. Can you really expect that an officer in those circumstances will report facts which might be used subsequently to his own disadvantage in a Criminal Court? I appeal to my Honourable and learned friends opposite, I appeal to the learned doctors of law in this House and ask them, if they were advising a client in that position, what advice would they give him? I venture to predict that they would say to that officer: "Comply with the Statute and no more." Well, Sir, if that was the advice given to the officer in question, as it is the course obviously dictated to him by the necessities of the case, I ask of what value is that report likely to be and to whom? I submit it will be an absolutely valueless document.

Finally, Sir, I come to the question of sanction. The Honourable Member has very truly said, and I entirely agree with him in the statement, that this is the most important provision in the Bill. Let us examine it. I take it that the purpose of this Bill and of this particular provision is to ensure that any officer, civil or military, who has been concerned in the dispersal of an unlawful assembly by the use of firearms can be prosecuted on a criminal charge without the sanction of the Local Government or the Governor-General in Council. If that is not the intention of the Bill, I trust my Honourable and learned friend will correct me here and now. I assume therefore that it is the intention. Now, Sir, let us examine some of the consequences. There is a general provision in the Indian criminal law, section 197 of the Criminal Procedure Code, which lays down:

"When any person who is a Judge within the meaning of section 19 of the Indian Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of a Local Government or some higher authority, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the Local Government".

Now, Sir, that is a general rule of law in this country and the House will observe the very grave derogation from this rule which is contemplated by the Honourable Member's Bill as he himself interprets it. Whether the Bill would precisely have that consequence is another matter. But as the Honourable

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Member has made it clear that that is his intention, let us see to what class of officers and of official acts section 197 of the Criminal Procedure Code applies. It applies to every public servant who cannot be removed from his office without the sanction of a Local Government. And the kind of action covered is that taken every day in the ordinary course of Government business. It may be an ejection, it may be the realization of arrears of revenue or the execution of the decree of a Court. In doing this the officer concerned can consider at his leisure what his rights and liabilities are and he can, if he so desires, take legal advice or obtain the directions of superior authorities. In performing those actions you very rightly extend to this officer, not an indemnity nor an immunity, but a certain limited protection. But when you have the case of an officer who has to take decisive and immediate action, who has, without any opportunity for reflection, to act forthwith on the dictates of his duty, his conscience and his judgment, you propose to deprive him of such measure of protection as the law now provides. I can see, Sir, neither the reason nor the equity of that distinction. Moreover, I must point out that the class of officers I have myself more particularly in mind is not the European officer of the Crown, whether civil or military, but the Indian officer. I regret very much that I am compelled by this measure to advert to a melancholy fact. During the course of the last few years the greater part of the disturbances that have taken place have been communal riots. In certain of these we have had a Hindu police officer dealing with a case in which the rioters were mainly Muhammadans and in others we have had a Muhammadan District Magistrate dealing with disorders in which both Hindus and Muhammadans were concerned. Now, Sir, into what kind of a position do you propose to put such an officer? We all know, and it is perfectly natural, that when riots take place popular passions are violently inflamed and it is easier to inflame popular passions than to alleviate them. It takes some time before the bitterness, the acrimony and the hatred engendered by these riots subside. And, while that exacerbation of public opinion continues and the odium of having to fire upon a mob or to take any other course of action to suppress it is still raging in all its virulence, my Honourable and learned friend proposes to expose an officer in that position to the prejudicial attacks of those who may find it convenient to take advantage of the situation, possibly to vindicate some old revenge or personal malice. Again, I say that is not a reasonable or an equitable proposition.

I fear I have delayed the House already too long and perhaps I have spoken with a warmth which will contrast not very favourably with the calm demeanour of the Honourable and learned gentleman opposite. If I must make some excuse for that it is, that I have had a considerable amount of personal experience of dealing with disorders and of the position of the officers whose duty it is to deal with such disorders. And I can hardly speak on these matters without a certain amount of warmth when I see a proposition to lay so heavy and so dangerous a burden on shoulders which already are bearing a very great burden of responsibility and danger.

Finally, Sir, let me say quite plainly and candidly that the consequence of passing this Bill would unquestionably be to raise apprehensions regarding

the sense of responsibility of the Indian Legislature in matters relating to law and order, apprehensions which will be very widely noted in many quarters and very severely construed. I cannot refer to them more specifically at this stage of the debate, but I am happy to note from the list of business to-day that there are individual Members of this House who have displayed a very active and individual sense of responsibility by amendments to the Bill which would certainly have the effect of importing into it valuable safeguards. That active and individual sense of responsibility will, I feel sure, be fully shared by the House or by a great majority of the House. One word more, Sir. I spoke of the inference in regard to the Legislature which would be likely to be drawn from the passage of this Bill. Let me also briefly give my judgment as to what the impression drawn outside the Legislatures will be. It will be simply this that, whatever the intentions and whatever the designs of the framers may be, the effect of the Bill would be generally interpreted as directed to the encouragement of the law breaker and the discouragement of those responsible for maintaining the law.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : General) : Sir, I am afraid I cannot see my way to support the consideration of this Bill. It has been my practice for several years during which I have occupied a seat in this Council that I shall not be a party to any legislation which will curb or restrict in any way the ordinary statutory powers for the maintenance and preservation of law and order. The genesis of this Bill has been fully explained by the Honourable Mover of the Bill. This Bill has emanated out of the Resolution moved by the Right Honourable Srinivasa Sastri on the 3rd March 1921 in this Council. I have looked forward in vain for some explanation from the Honourable Mover for the introduction of this Bill. I thought that he would assign some reason or some justification for reviving a dead controversy after full four years that have elapsed since the moving of that Resolution. I thought he might refer to any events or incidents in which a further abuse of the power in the matter of the use of firearms had taken place. At least there has been no reason ascribed either in this House or elsewhere as to the immediate motive for changing the ordinary machinery of the law as provided in Chapter IX of the Criminal Procedure Code and substituting in its place a machinery of doubtful utility.

Sir, before I analyse the Bill and the principles embodied in it, I would like to dispose of some of the arguments which have been urged in this Council by the Honourable Mover. He first stated that the Bill was referred to a very strong Select Committee and has received its full support. That is not a fact. It was certainly a strong Select Committee, but it was by no means unanimous.

The two members, Sir Alexander Muddiman and Mr. Tonkinson distinctly stated in their dissenting note :

“We are not in favour of any alteration”—I am quoting their words—“in the existing sections of the Criminal Procedure Code. The alterations proposed in sub-clauses (1) and (2) of proposed section 131-A, of clause 2 of the Bill are in the nature of executive instructions, and if not included in any executive instructions, it may well be so.”

Even Mr. Jinnah did not give his wholehearted support to the Bill. With

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reference to the important clause, clause 4 he stated :

" I substantially agree with the report, save and except clause 4, as I am very doubtful as to the real use that might be made of it ".

Then my friend has invoked support and sympathy by mentioning certain names and said that the original Resolution was brought forward by the Right Honourable Srinivasa Sastri, and the Bill was introduced in the Assembly by Diwan Bahadur Rangachariar. He added that when the division took place, men of the type of Sir Purshotamdas Thakurdas, Mr. Ramachandra Rao and other stalwarts gave their support. I am sorry that a reprehensible practice has been growing up of late in this Council of obtaining support for measures by the sanctity of certain names. Sir, I am no respecter of persons in this Council when the question to be decided is of momentous importance. I only look to the justice of the cause. I think in this Council there are men entitled to as much respect, authority and weight as the Honourable names which have been cited by my Honourable colleague there. I do not make these remarks in any spirit of disparagement of those gentlemen, but I say that that argument will not count with this Council in coming to a right decision in regard to this Bill.

Then also two important points were raised, and an appeal was based on the strength of some specious arguments. It was pointed out in a feeling of despondency that we are a disarmed nation and therefore there could be no great and consequential results out of riots, etc. In that connection I would only mention that the history of the last five years belies that assumption. The terrible riots at Malabar and the horrible scenes that took place lately in the Punjab do not permit of our making such assumptions. Further, it was stated that some officers are likely to abuse the powers in regard to the use of fire-arms and that it is the duty of this Council to prevent such abuses. There may be many abuses in this country, but this is not a tribunal for the prevention of all abuses. It is a task beyond the power of this Council. We are only concerned with the immediate effects of this Bill and we must view the Bill from that standpoint only.

Sir, I am opposed to any legislation which attempts to deal with the use of fire-arms by a number of statutory provisions crystallized in an Act. There are serious objections to that procedure. The first and foremost is that a Bill of this character takes away from the men concerned in the suppression of riots full liberty of judgment and action. I say full liberty of action, because the Magistrate or the police officer who is present at the time of the riots, in my opinion, is the best judge of the situation. He, in my opinion, is the sole judge of the critical circumstances. He is the only person who can realize whether a serious mischief is likely to ensue, and whether the tumult or the riot should not be immediately stayed by the use of fire-arms. If we pass this legislation we make the Executive absolutely impotent in my opinion. Have we any right, I ask, to prevent the liberty of action of a police officer or Magistrate who comes to a conclusion that an emergency has arisen and in that emergency fire-arms should be used ?

Sir, I am wholly opposed to deprivation of such liberty of action. It is a matter of common knowledge that when we discussed the repeal of the repressive laws we were often emphatically told that the ordinary machinery of the criminal law was sufficient and adequate to meet all manner of offences. We have out of thirteen penal Statutes already repealed seven and we are to-day asked to take away by an act of State the powers which a Magistrate or a police officer has of suppressing riots under the ordinary machinery of laws. There seems to be no consistency in politics. When it suits us that certain steps should be taken for the repeal of certain Acts we come forward and very vehemently urge that our ordinary criminal law is quite sufficient and yet in the same breath we at another moment say that that very criminal law, the ordinary criminal law of the country, should be emasculated by some ridiculous and unwarranted piece of legislation. It is on that ground of indefensible inconsistency also that I oppose this Bill.

I further oppose this Bill because many of the provisions are covered by the executive instructions that are issued by Government, and in a matter of this nature I think executive instructions should form rather the method and guide by which discretion is to be exercised, than setting up unalterable rules and injunctions by legislation. In matters of emergency it is impossible to act or give strict effect or adherence to provisions of law, howsoever salutary and just they may be. My main objection to this Bill is that if it is passed, it will deter officers from doing their duty in serious emergencies. Do you really expect that, with a Bill of this character existing any Magistrate or any police officer will take the responsibility of acting on the spur of the moment when a call is made upon his judgment to decide whether fire-arms are to be used or not? This legislation will be hanging over his head and he will be first contemplating whether, by giving the order to fire, he would not be placing himself within the penal provisions of this law. And what will be the result? The result will be not the suppression of the riot, but the loss of many lives among the rioters themselves, the loss of property, and a serious destruction of the place where this riot has taken place. Sir, I am not at all in favour of placing unreasonable limitations upon the powers of our executive officers. I wish to keep them free and untied to any strict forms or the strict letter of the law and allow them to act as their best judgment dictates in moments of emergency. Another effect of passing legislation of this nature is that you destroy all sense of responsibility in a man. You make him the creature of the specific provisions of the adjective law. Many disastrous consequences might ensue as the result of that officer refraining from discharging his duty in a moment of grave emergency. Further, I have not been at all satisfied that this power has been abused in the past. In the last four years many instances have taken place where fire-arms have been used, and I do not know of one case—that case would have been undoubtedly cited by my Honourable friend here if it existed—to show that there was an abuse in the exercise of that power. Why should we then change the ordinary machinery of our criminal law and substitute for it a law of doubtful importance and utility? Sir, this is not the time to speak about the several provisions of the Bill. I shall only refer to clause 4, which takes away the necessity of obtaining the sanction and subjects any Magistrate or police officer who has done his duty, to a criminal

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prosecution. With the dispensation of such sanction is it likely that any man will perform his duty and rise to the occasion? I do not believe so. I see also the gross injustice of depriving a Magistrate or police officer of the protection which the ordinary law gives them. My Honourable friend Mr. Crerar has already referred to section 197. If Judges and Magistrates can ordinarily claim such immunity, I do not see why a Magistrate or a subordinate police officer, who does his duty gallantly and bravely under circumstances involving personal danger, should be deprived of that privilege. I cannot see either the justice or the force of argument in a retrograde proposal of this nature. My friend stated that such a law does not exist in England. That is true, but pray do not compare England with India at present. In England I know there are political and economic riots. In India we have got communal riots, religious riots, where fanaticism often finds itself supreme and uncontrolled. There are occasions which I need not refer to here, when it would be indispensable that some power to make prompt and unfettered decisions should be preserved in the hands of the police. Moreover, in the later history of this country communal differences have led to many sanguinary skirmishes such as the riot which recently took place in Delhi only a few months ago, which justify the maintenance of some sort of protection for our police officers. My friend also stated that there is the provision of section 202, which enables a Magistrate, after a preliminary investigation, to dismiss the complaint, and he also referred to another provision of the law. But after all, why should a police officer be even subjected to the indignity and harassment of a prosecution of this character without the sanction of Government? I am not therefore, Sir, in favour of making any change in the existing provisions of the law. In my opinion Chapter IX of the Criminal Procedure Code makes ample provision, together with the executive rules issued on the subject. The present legislation embodied in the Criminal Procedure Code is the outcome of many years of very careful investigation, discussion and experience, and unless there are very very substantial reasons given for changing the law on the subject, I am one who is opposed to the adoption of such a course.

*THE HONOURABLE SAIYID RAZA ALI (United Provinces East : Muhammadan): Sir, I have listened to the speech of my Honourable friend Mr. Crerar with that attention with which his eloquent speeches are generally heard in this House.

(At this stage the Honourable the President vacated the Chair which was taken by the Honourable Sir Maneckji Dadabhoy.)

Sir, it will serve no useful purpose to go through all the principles that have been embodied in the Bill. They have been briefly summarised by the Honourable Mr. Ramadas Pantulu in his carefully worded speech. The basic points of the Bill, Sir, are, as the Mover of the Bill pointed out, four in number. Now I must at once say that so far as the last of these four points is concerned, namely, the necessity for sanction to institute a prosecution against a person who has been engaged in suppressing a riot being waived and every injured man being allowed to institute prosecutions against such officers,

* Speech not corrected by the Honourable Member.

I do not think it is necessary for me to say much, inasmuch as my friend has very carefully and impartially gone through the subject. Let me at once point out that unfortunately the Bill, as it has been sent up to this Council, is open to the great objection that the poison is contained in its tail, and that tail is clause 4 which proposes to add section 131A. That is the poison that can never be tolerated by any reasonable man. All the same, Sir, I was not quite in a position to follow what was the Government's position, as pointed out by the Honourable Mr. Crerar. Honourable Members of this House no doubt will generally agree that when the next stage comes, it will be open to this House to amend the Bill according to its wishes, but that stage has not arrived yet.

Now what are the other three points which are contained in the Bill. The Honourable Mr. Crerar made a few general observations, and since I find myself in agreement with him on the most important and vital point in the Bill, I do not think it necessary for me to go over the same ground. I would like however to point out to the Council that the law relating to the dispersal of unlawful assemblies as contained in Chapter IX of the Code of Criminal Procedure very closely follows the English law, and in connection with the reference of the Honourable Mr. Crerar to the Judge's charge to the Grand Jury after the Bristol riots in 1832, Honourable Members will find that we have got an almost corresponding section in the present Act, and that the English law and the Indian law on the point are substantially the same and there is no difference. . .

THE HONOURABLE MR. J. CRERAR: May I interrupt the Honourable Member? The point I wished to make in regard to that was that the English law definitely lays a responsibility for initiative on the private citizen: the Indian law empowers the public authorities to require his assistance.

THE HONOURABLE SAIYID RAZA ALI: That was exactly the point I was making. If I understand my Honourable friend, the point is this, that if a riot is in progress, it is the duty, according to the Indian law, of every subject of His Majesty, of every male subject of His Majesty, to help the authorities, be they police or military authorities or Magistrates, to exert himself and do all he can in the suppression of a riot. Now I do not think, Sir, it is necessary for my purpose to go in greater detail into the point at this late stage. All the same there are three important points to which I hope this Council, before giving its verdict, will give its very careful thought and dispassionate judgment. Now, Sir, the first point is that the present Bill makes it necessary that before fire-arms are used, every care should be taken to suppress the riot by the use of other arms. Now, so far as this point is concerned, Sir, with the exception that the sub-clause mentions fire-arms specifically, there is nothing new so far as the basic principle on which the sub-clause is based is concerned. If Honourable Members refer to section 129, they will find that the present Code of Criminal Procedure definitely lays down that unless it is absolutely necessary that force should be used, no force should be used. The words are:

"If any such unlawful assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed."

the Magistrate will use force. So with the exception of this small point that this sub-clause allows the use of other arms, there is absolutely no difference

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in the sub-clause as drafted in the Bill and the existing Indian law. I would like to know where the objection on the part of the Government to this sub-clause comes in? It may be perhaps that I was not quite able to follow the very elaborate and carefully worded speech of my Honourable friend, but I do not see where the substantial objection lies. Well, if the point of my Honourable friend is, "why should it be necessary to use fire-arms last of all and why should they not be used in the first instance," the answer was supplied by the Honourable Mr. Ramadas. He gave the reasons—it is open to my Honourable friend and the Government to agree with them or not—but he adduced a number of reasons, and I do not think any reply was made by my Honourable friend. The points were these, that by the use of fire-arms you are likely to injure the innocent as well as the guilty, whereas if you make a bayonet charge, in all likelihood you will be injuring those who are determined to have a fight. That is one of the reasons. He adduced one or two more reasons, and I say that so far as the use of fire-arms comes last of all, I do not think any very reasonable objection can be urged. Now here the Honourable the Home Secretary criticized the powers that are proposed to be given to a Magistrate of the highest class. There again he talked of the efficiency of third class Magistrates and he spoke of those powers being vested in Magistrates of the highest class at present. Now there again let me point out that the Bill makes no innovation. If my Honourable friend will refer to section 129, he will find that it says that the Magistrate of the highest rank who is present may disperse by military force. The proposed clauses very closely follow the plan of the existing law and make no departure except in two respects, namely, they allow the use of fire-arms in certain contingencies, and, secondly, in the direction set forth in sub-clause (d) on which I do not find myself in agreement. Now so far as the giving of warning is concerned, Honourable Members will find that no departure from the existing law has been introduced in the Bill. What is the existing law? If you take sections 127 and 128 together, you will find that these two sections read together.....

THE HONOURABLE THE CHAIRMAN (SIR MANECKJI DADABHOY): Order, order. My Honourable friend is going into a detailed examination of the provisions of this Bill. At this stage only the principles can be discussed. I have already allowed considerable latitude to the Honourable Member to go into the provisions. I request him now to confine himself to the principles of the Bill.

THE HONOURABLE SAIYID RAZA ALI: It is my duty, Sir, to follow your ruling, and I do it, in fact, if I am not mistaken, I have been doing so already. My point is this, that so far as the existing law is concerned—quite apart from the clauses and sub-clauses of the Bill—the law as laid down in sections 127 and 128 lays down that you are to give a warning to an assembly before you disperse it. That is the principle that has been incorporated in one of the sub-clauses to the proposed section. That was my point. Let me not omit to mention that a certain word has been slightly altered. The word used in section 127 is "may", whereas in the Bill before us the word "shall" is used. But that is a point in favour of my Honourable friend and therefore I specially bring it to his

notice. Then, again as regards the interpretation of the words "may" and "shall", as my Honourable friend very well knows, on such occasions the word "may" means "shall". If you take the case law into consideration, there is no departure. Though there is a slight departure, practically there is no departure in this matter.

Then, Sir, I come to the last point and that last point is that a report is to be made immediately after the suppression of the riot by the officer who has suppressed it to the nearest Magistrate of the first class or to the District Magistrate or to the Local Government, as the case may be. I for one, Sir, attach no very great value to this report. But if the last clause, namely, sub-clause (4) is omitted, then sub-clause (3) will be rendered entirely free from all the objections that were raised against it by the Honourable Mr. Crerar. His one point which had great force in it, I must admit, was that if you are going to take this report into consideration and if you are going to use this report in a subsequent judicial proceeding against the very man who has submitted this report, you cannot expect him to make a true, faithful and accurate report. I entirely agree with the reasoning of my Honourable friend. But my point is this. Suppose we do not take this report into consideration in any judicial proceeding, suppose in fact we do away with the judicial proceeding as proposed in the Bill, where is the objection to the officer who has suppressed the riot making such a report? If I am right and if Honourable Members agree with me that the last sub-clause should be deleted, then it will be absolutely harmless to have a report.

THE HONOURABLE MR. J. CRERAR: What is the value of the report? What purpose would it serve?

THE HONOURABLE SAIYID RAZA ALI: My Honourable friend's intervention is very timely, Sir. The value is this. I have known cases in which riots have occurred and no report has been made for several days. Now, that is a thing which is very highly objectionable. My Honourable friend knows it. In fact he has been an administrator; he might as well have been at the Bar. I am sorry really that he is not at the Bar. My Honourable friend knows what great value is attached in criminal cases to the first report. The first report, as my Honourable friend is aware, is the report that is recorded without unnecessary loss of time by the complainant or by somebody on his behalf at the police station. In big riots, there is no first police report. This is a report that gives you for the first time the facts and circumstances of the case. If a riot has happened and if you make no report for 3 or 4 days, if you sleep over it disregarding what has been going on, and then after 4 or 5 days' careful consideration you sit down to make a studied report, I need hardly say that that report will be of very little help either in the prosecution of the offenders or to the Government from its executive view point. Therefore, my Honourable friend will realise that, so far as the making of this report is concerned, it will be very helpful to the Government inasmuch as it is not going to be used in any judicial proceeding against anybody. If it is decided that the report contains true, accurate and faithful information and that therefore the offenders could be brought to justice, it may be put in; otherwise there is no legal obligation for this report to be used. Sir, these are the considerations.

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My Honourable friend Mr. Crerar while criticising some of these points went on to say that if you insist on warning, it will be necessary for the police to give notice to the dacoits who have been pursued by the police for a whole day. I believe I am right in interpreting the argument of my Honourable friend. Now, Sir, I am really surprised at this expression of opinion from a gentleman of the legal acumen of the Honourable Mr. Crerar. If he will please see section 54 of the Criminal Procedure Code, he will find that a band of dacoits hotly pursued by the police could be arrested without any notice whatsoever. Even when this Bill is passed it could be done under more than one of the sub-clauses of section 54 of the Code of Criminal Procedure. You do not require any notice; they are men who have committed an offence and they can be arrested without any warning.

There is only one other point which I may be allowed to specifically state. It is this. It seems to me that the insertion of sub-clause (f) has prejudiced my Honourable friend's mind against the whole frame-work of the Bill that is before the Council, and I submit, Sir, that that could be the only explanation why a man of the learning of the Home Secretary, who takes a very keen interest in legal questions, has been forced to advance an argument of this character. Then, my Honourable friend has referred, towards the end of his speech, to the sense of responsibility that has been constantly displayed by this House. Sir, I entirely endorse the remarks of my Honourable and learned friend, of my Honourable friend. (Laughter.) Sir, I enjoy this joke that the Council has enjoyed at my expense, but I give expression to my real feeling that perhaps my Honourable friend is more entitled to be called learned than many of the gentlemen who belong to the legal profession. (Laughter.)

THE HONOURABLE PANDIT SHYAM BIHARI MISRA (United Provinces: Nominated Official): The word "learned" was withdrawn.

THE HONOURABLE SAIYID RAZA ALI: Will you please restore it, Sir, to its place for me?

So far as that argument is concerned, I agree with my Honourable friend. But, Sir, there is one danger and the danger is this, that it is our duty in fact as citizens to revise everything that comes from the other Chamber—I will not use the words "Lower House"—that comes up before us from the other Chamber and to record our opinions in a most independent and patriotic manner. But at the same time, there is a limit and there ought to be a limit to our so-called sense of responsibility. I say so-called, because at times it is not used in a right and proper sense. Sir, it is no longer our duty to reject everything that is promoted by a private Member and is passed by the other House and that comes up before this House for revision and concurrence. We will be failing in our duty if we allow our minds to be over-weighted and obsessed by our sense of responsibility to such an extent that we shut our eyes to the fact whether a certain measure that is before us and that has been promoted in the other House, was proper or improper or whether it is a combination of things which are proper and improper. Sir, if it is an improper measure it should be thrown out. Sir, if it is a proper measure, it should receive sanction from this House.

Sir, if it is a proper and partly improper combination of both, it is our duty to separate the proper from the improper. We will reject the improper and we will give our sanction to the proper. If we fail to do this,—and it is high time that the fact were taken into consideration by us—I am afraid we shall not only be not adding to the reputation which, I hope, we have rightly earned in the past, but we will be painted in colours in which no Honourable Member of this Council would like to see his picture painted. Already the general criticism that has been offered is—and here I am not referring to the opinion of any particular individual—that we are in our dotage and are incapable of forming a rational judgment, and that we are merely an instrument for the registration of Government decrees.....

THE HONOURABLE MR. PHIROZE C. SETHNA : Question ?

THE HONOURABLE SAIYID RAZA ALI : I entirely agree with my Honourable friend. I am very glad my Honourable friend has interjected something. My own view is exactly the same as that which is held by my Honourable friend. It is no part of our duty to register the decrees of Government. At the same time, it is no part of our duty to reject everything that comes from the other House whether it is good, bad or indifferent. My plea, therefore, is that if this House is really jealous of its reputation and if the Government really want to help this House because it has been helping the Government for a considerable number of years in the past, then the duty of my Honourable friend is to vote in favour of leave being given for the consideration of this Bill. When this Bill is put before us clause by clause, we know that our clear duty will be to reject the objectionable clauses and to accept those clauses which are unobjectionable. Sir, I support the motion that the Bill be taken into consideration.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF (Who was greeted with applause on rising to address the House) : Sir, I think Honourable Members are aware that I have already spoken upon this Bill in another place. Since then I have had an opportunity of further considering the views I gave, and I have not in any way departed from those views. I am also aware that some of my Honourable colleagues have been kind enough to read what I said and have discussed the matter with me. I therefore fear I must apologise to them if I again repeat some of the arguments I then used. I would begin by saying to all my Honourable colleagues, that we soldiers are first and foremost citizens of the British Empire. That is a title which we attained at our birth and of which we cannot be deprived until our death. I emphasise this point because, I think, there is often a tendency among civilians to look upon us as "peculiar people," to look upon the soldier as a rough and coarse creature, who possibly is not fit for decent society. I can assure you, Sir, that there is no reason to regard soldiers as such. We are intensely human creatures and we know no military castes. We are like you all just citizens of the Empire throughout our lives. During such period as we are soldiering we realise that one of our first duties is to do what we can to ensure the safety and well-being of our fellow civilian British subjects, and to see that all members of the Empire shall be able to go where they want, and to do what they wish upon their lawful occasions. I know all will agree with me when I say that

[His Excellency the Commander-in-Chief.]

in performing those duties we, soldiers, are faced with many and great difficulties. One of the duties which we all detest and which we look upon with the utmost dislike is when called out in aid of the civil power, and the reason for that is very obvious. To begin with, the soldier realizes that he is generally called on in aid of the civil power when matters have reached a crisis and as a last resort. He knows, therefore, that he may have to take drastic action immediately. Moreover, it often happens both in England and in India that the soldiers who are so-called upon, will have to act against their own friends and relations. Then probably what influences him more than anything else, is the fact that at the back of his mind he has got the feeling, that whatever he does he has very little chance of being credited with having done the right thing. He is almost certain to be told later on that he has done the wrong thing, because it is so easy for the armchair critic later on at his leisure and after the event to say exactly what should have been done. If he takes a very serious view of the situation when he arrives to take over, and considers it essential to take drastic action he is almost certain to be held up to execration. If, on the other hand, he takes too optimistic a view and the situation gets beyond his control, if in consequence a robbery, arson or bloodshed takes place, he is at once told that he is a poltroon and a fool and he will certainly be tried by court-martial. It is very unlikely that there can be two episodes which will present exactly the same features. And, unlike the Chinese, as the Honourable the Home Member informed us, we are not able to draw up exact regulations that will cover every possible situation. I will however read with your permission, Sir, a short extract from the latest instructions relating to martial law. It runs as follows :

“When an officer is required by a Magistrate or himself determines that a serious situation arises when there is no Magistrate within reach, to disperse an assembly by force, he will before taking action, adopt the most effectual measures possible to explain to the people that, if necessary, fire will be opened and that, if firing becomes necessary, the fire of the troops will be effective. If he is of opinion that it is necessary to fire but that the fire of a few men will attain the object of dispersing the assembly, he will personally give the command to a few specified men to fire. If a greater effort be required he will personally give the command to one of the sections to fire.”

You will, I think, observe from this extract that it is definitely an obligation laid upon him both to give notice and to fire as little as he possibly can. The instructions further go on to elaborate, (and I may mention that these rules have been based upon long experience and upon the highest conception of the sanctity of human life). Certain principles which are to be followed and which I have summarized as follows :

- (1) When a Magistrate determines that force is necessary to [disperse a crowd, he calls upon the officer commanding the troops to do so.
- (2) The officer commanding troops thereafter is empowered to take such action as he deems necessary for this purpose. He is the sole judge of what action to take, and what weapons to use.
- (3) He is bound to use the minimum possible force for the purpose.
- (4) No *statutory* warning is laid down previous to the opening of fire.

(5) He is responsible for the safety of his command, and

(6) The officer can only be prosecuted for his action with the sanction of Government.

I think Honourable Members will be able to gather from these instructions that I have mentioned, that there are four main principles which emerge. They are as follows :

- (1) If ordered by due authority to disperse a crowd, the officer commanding troops will do so in such manner as he thinks fit and of this he is the sole judge.
- (2) He will always give warning before opening fire, if it is possible to do so.
- (3) He is definitely responsible that he uses as little force as possible, and
- (4) He is definitely responsible for the safety of his own command.

Honourable Members will, I am sure, join with me in realising what extraordinary sound judgment, great discretion and very often considerable personal self-control and restraint must be necessary for an officer who is called upon in a sudden emergency to reconcile what may at times appear to be conflicting principles. But running through them all there is one definite idea of personal responsibility. The officer commanding realises that once he has received his orders on him devolves a definite duty and he alone is responsible for the results. It seems to me, Sir, that that sense of personal responsibility is probably the very best possible safeguard that can be devised to ensure that when the troops are called out, their duties shall be performed both efficiently and without unnecessary loss of life.

I will now turn, Sir, to the alterations that would be made if effect should be given to the proposed legislation. The three main proposals under this which affect the soldiers, are (1) that the Magistrate must decide on the weapon to be used. Responsibility for the particular kind of force to be used is thrown on him. (2) Warning must invariably and *under all circumstances* be given in any case before fire is opened, (3) An officer may be prosecuted for any offence committed by him in this connection without Government sanction for such prosecution. I will take those three points in turn, Sir.

The first is that the Magistrate is to decide what weapons are to be used. By bringing in a rule of this sort, you at once take away from the executive officer, the officer who will carry out the order, the responsibility previously laid upon him. In fact by taking away the responsibility, of the *method* by which he will carry out his work, you reduce him to a machine, and from a machine you are going to get nothing but mechanical results. No human thoughts are governed by a machine. Further, and this is probably the most vital point of all, we must remember that, if the officer in command is not responsible for the *methods* employed, he cannot possibly be held in any way responsible for results. That is a point I would like Honourable Members to realise very clearly. In fact under the proposed legislation the decision as regards the weapon to be used

[His Excellency the Commander-in-Chief.]

is taken away from the soldier and placed upon the civilian who can not be as competent to judge of the effects likely to be produced by the various weapons at his disposal, as the soldier, expert in arms. Surely, it is not fair to impose that responsibility upon the civilian officer. The Deputy Commissioner, Magistrate or *tehsildar*, how can he possibly be able to judge of the results of different classes of fire? It is, Sir, with much diffidence, as I know it is so hard to prove, that I say that the experience of many senior officers in many lands is that the restraining influence is that of the experienced soldier and not of the inexperienced and often somewhat perplexed and harassed civilian officer.

The Honourable Mover of this Bill has talked about the terrible effect that may result from rifle fire, but he does not anticipate that there would be anything like this effect from the use of the bayonet, or *kukri* of the Gurkha soldiers. It is quite true that in modern battle, rifle or gun fire is the deciding factor and the bayonet does not cause the enormous number of casualties inflicted by the bullet, but that is absolutely different from the situation which is likely to occur, when troops are called out in aid of the civil power. I imagine that the Honourable Mover of this Bill in his own mind thinks that, when firing is ordered, he contemplates the possibility of say a hundred men bringing their rifles to their shoulders and firing continuously volley after volley. That would be by no means the case. One or two individual men would probably be called upon, in the first instance, to fire two or three shots when the crowd might melt away. But suppose the Magistrate says, you are not to fire, you are to use your bayonet. The slaughter would then certainly be greater, and the casualties far heavier than could happen from one or two rifle shots, which the military officer from his experience realises might well save the situation.

I will turn to the second point, Sir. The second point lays down that definite warning must *invariably* be given before fire is opened. From what I have quoted, it will be seen that the present regulations do compel an officer to give warning *whenever it is possible to do so*. I wonder if, when the framer of this Bill made this proposal, which emphasised the word "invariably" and omitted the word "possible" he could realise what would happen? Let us just take one or two possible instances which might happen at any time. You sometimes get a sudden rush by a maddened crowd upon what may be innocent citizens or upon the troops themselves. Remember the officer commanding is responsible for the safety of his command, as well as of the citizens. He may have only a small handful of men, and one or two shots from that handful of men may, and probably will, save the situation. If, on the other hand, he does not fire, there is every possibility of his small command being envelopeed by the mob (even if they were only armed with *lathis*) when he and his men might eventually succumb to overwhelming numbers, if they did not use rifle fire. Then again can we imagine, any of us here in this room, suddenly seeing a crowd advancing with torches and firebrands and on the point of setting fire to our houses in which our wives and families are. The troops have just arrived and able to save the situation by a few shots, but are

unable to fire because the necessary warning cannot be given. I do not think I can see any of my Punjab friends there saying :

*“Ghar phuk tamasha vekh,
Bhulai din awenga.”*

I am convinced that there would be not one of us here in such a situation who would not implore the officer commanding to fire straight away to save the situation.

I come, Sir, to the third clause. The third clause, as far as the soldier is concerned, permits an officer to be prosecuted without Government sanction. I am sure that everyone here will sympathise most deeply with us soldiers when we are called out to perform duties of this nature. You will realise that we are entitled to the full possible support that Government can give us. These duties are most repugnant to us. We do not carry them out as individual citizens but as servants of the Government, and we do feel that we are entitled to that support. It would indeed be intolerable if in such circumstances an officer's action should be at the caprice of any individual who might see fit to lay an accusation against him. If an officer who has these duties to perform has a feeling at the back of his head, “I am liable to prosecution for whatever I do”, he cannot devote his whole attention and energies to the matter in hand. He must be able to approach these duties, which are abhorrent to him, with an absolutely detached mind, feeling that he is carrying out the orders of Government for the well-being of his fellow-citizens, and Government should see that he is not laid open to prosecution or unduly harassed as a result of an honest attempt to perform his duties.

Putting it briefly, it seems to me that there are three sections of the community who are likely to be affected by the proposed legislation—

- (a) Innocent and law-abiding citizens who, through no fault of their own, find themselves and their property liable to be destroyed by an unruly mob.
- (b) The equally innocent and law-abiding soldiers who have been sent out against their will to protect the lives and properties of their fellow-citizens.
- (c) The law breaking mob, who take the law into their own hands, who are deliberately out to do all they possibly can to endanger the life and property of peaceful citizens.

It seems to me that the proposed legislation contemplates, I will not say willingly, but it would certainly result in the safeguarding of the last mentioned section of the community at the expense of the two former, because if passed it is bound to hamper the soldier in the discharge of his duties, and consequently lead to the more likely loss of life and property of innocent citizens. I need hardly say, Sir, how grateful I, as the representative of the soldiers in this country, shall always be for any help which this Council can give us ; but being convinced, as I am, that the duties of the troops in aid of the civil power, and the duties of the police in aid of the civil power can be most efficiently and harmoniously carried out by placing a definite responsibility upon the executive officer on the spot, I would urge that we do nothing to tie his hands, nothing which will make his already most arduous duties more arduous and more complicated.

THE HONOURABLE MR. PHIROZE C. SETHNA (Bombay : Non-Muham-
madan) : Sir, even after the very eloquent and lucid explanation given by
His Excellency the Commander-in-Chief, I say, even after that, I feel I must
support the Bill, with certain reservations. I do so because there is another
side to the question, and it is that side which I propose to place before the
Council in as few words as possible. More than one previous speaker has
stated that the question of regulations for the use of fire-arms for the dispersal
of menacing crowds was brought before the Legislature for the first time in
1921 by the Right Honourable Srinivasa Sastri soon after the new Councils
were formed. He did so from a humanitarian point of view. He was induced
to bring forward his motion because of the record of previous cases of pre-
mature shooting. The suggestion was not lost on Government as we learn
from His Excellency the Commander-in-Chief that regulations have been
framed, and one of the objects of the Bill is no more than to legalise those
regulations.

The Bill in the other place was referred to a Select Committee, and on the
report of the Select Committee we find dissentient minutes from three Euro-
pean members, two officials and one non-official. It appears that the argu-
ments of the European members of the Committee were not convincing enough
to make the other members veer round to the opinion of the minority. If they
did not do so, it must have been because they thought it was necessary to
provide statutory regulations in order to prevent any repetition of the abuse
of premature shooting, which there was no denying had occurred in the past.
The Bill does not forbid the use of fire-arms when occasion demands it, but only
emphasises the necessity of providing precautions against hasty and reckless
recourse to them when less drastic means would suffice.

His Excellency the Commander-in-Chief stated that the military officials
recognise themselves first as citizens of the Empire and next as soldiers. He
further told us that if an officer used greater force than was necessary, he would
be held up to execration, and, on the other hand, if he used less force he would
be regarded as a poltroon. I quite admit that, but His Excellency will admit
that, because the use of fire-arms is in the nature of his calling, he certainly will
have less hesitation in the use of fire-arms than a civilian.....

**HIS EXCELLENCY THE COMMANDER-IN-CHIEF AND ANOTHER HONOUR-
ABLE MEMBER :** No.

THE HONOURABLE MR. PHIROZE C. SETHNA : A difference of opinion.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : I think he knows
the results too well.

THE HONOURABLE MR. PHIROZE C. SETHNA : It has not always
proved so as far as I know. However, the Bill says fire-arms shall not be used
unless it is unavoidable and unless a Magistrate of the highest class present
specifically authorises such use. The Honourable Mr. Crerar said you some-
times had to deal with third class Magistrates who were not competent to
decide a question like this. Surely if that is the objection, Government could
have brought forward an amendment to the effect that only a first class
Magistrate could give such orders, and, in the absence of such Magistrate, the
senior police officer or the military officer, as stated in the proviso, would be

able to give the order. But Government have not done so, and object to the Bill wholesale. Therefore it is that I do not see what harm there is in accepting the principle and I think the addition that has been proposed to the existing law is a sensible one, and the objection advanced by Government is to me unintelligible.

The main point, of course, is the last clause, and I am quite in sympathy with what has been said not only by Mr. Crerar, but also by His Excellency the Commander-in-Chief. Mr. Crerar particularly referred to this clause, and said that the officer would always stand in dread of any action taken against him. I know there is a serious objection to this clause and that it exposes an officer who discharges perhaps a very urgent and painful duty, to harassment and loss, but in all the arguments that have been advanced against it, it has been presumed that injustice was going to be done to the officer, as if he was going to be dragged into a court of law through spite and as if the courts of law would never decide in his favour, and as if the public would in all cases be against him. That is an entirely wrong assumption. But I certainly am of opinion that sanction should be required from a proper authority. I mention as the authority the Advocate General, and if it is possible for me to move my amendment to that effect, I would further propose that such sanction should be obtained from the Advocate General and within a period of six months. We should not allow the officer to remain in suspense for a longer time. If this last clause in the form in which it is, or in any amended form, is not included in the Bill, then its absence would give immunity to an officer in all excesses, and that is the intention of the promoters of the Bill to safeguard against, and particularly so because of the incidents which did occur some years ago. I do not for one moment say that any military officer without good cause would give the order to fire. I hope he may not do so now or in the future; but in the past, as we know, there have been some instances, and it is therefore that this clause is included.

Now Sir, His Excellency has told us to-day that soldiers generally exercise a very great restraining influence. It may be so; I admit it. But is the temperament of every officer and is the judgment of every officer alike, so that the country may trust them on all occasions uniformly to do what His Excellency the Commander-in-Chief believes the soldier would always do? I may be allowed to narrate my own experience in a case of this kind. This happened at the time of the Prince of Wales' visit to Bombay, when, as the House will remember, there were riots in that city. There was a lunch given in honour of His Royal Highness at which he was present at a well known Club in that City, and just as we rose from lunch, word was brought that there was a large, unruly crowd with lathis and stones gathered together at the foot of Bellasis Bridge, Tardeo. I mention the place because I am sure His Excellency knows it. I was one of those who hastened to the scene. I saw for myself that the soldiers were almost ready to fire. And one of the crowd, a person whom I had never met before, came to me and appealed to me to dissuade the military officer from firing and he was supported in his appeal by several others whom I well knew. He said that if he was given the chance he would in five minutes be able to disperse the crowd. It seemed to be a tall order, but he gave me his name as Mr. Banker. Now I knew Mr. Banker by

[Mr. Phiroze C. Sethna.]

reputation as a person with much influence over the masses. This is the same Mr. Banker who was put on trial along with Mr. Gandhi at Ahmedabad later on and was sentenced. I therefore appealed to the officer present, who said he had his orders from the Honorary Magistrate. The Honorary Magistrate present was an Englishman whom I knew and I begged of him to withhold his order. I mention his name because there are Bombay Members in the House who will know him. He was Mr. Barraclough. At first he was reluctant but subsequently he yielded to my persuasion, with the result that Mr. Banker, surprising to say, in five minutes succeeded in dispersing that crowd of 5,000 people, certainly a remarkable feat to my mind, as was acknowledged by the military officer present and by Mr. Barraclough, and it proved the influence Mr. Banker commanded over these people.

I have quoted this instance in view of what fell from His Excellency the Commander-in-Chief, because it shows that if firing had taken place as intended, there would certainly have been some loss of life, and if not loss of life, certainly serious injury. This is a typical instance of what did happen and may happen elsewhere, and because of such cases it is that this measure has been introduced. This Bill therefore is a very necessary safeguard against the impetuosity of the votaries in this country of that principle, known as Martial law and no silly nonsense.

The HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN : (West Punjab : Muhammadan) : Sir, I think, after His Excellency the Commander-in-Chief and the Honourable Mr. Cresser have explained the position the best thing is that our friend, the Honourable Mr. Ramadas should deem it proper to withdraw his Bill. But if he does not, I think all of us who have heard all these speeches are convinced that the necessity for this Bill does not arise when the Government orders are already there to the same effect. Sir, I would not have got up at this hour but I am doing so as I come from the Punjab, which is connected not only with soldiers but with martial classes. This is a typical Bill showing to what length some of the politically-minded people can go, and it proves beyond doubt the necessity of this House, as it has been many times proved. The Indian Legislature without this House is like a ship without mooring. The words used in the Bill, Sir, are "to disperse an assembly". Well I think, there the word simply means the "Assembly" where such a Bill has been passed (Laughter) and I should have thought that so far as that body is concerned, fire-arms need not be used, but an ordinary cracker on the floor would be quite sufficient for the purpose (Laughter). Sir, the Bill in itself is quite a bad omen from the very beginning, and is inconsistent in itself. On the one hand it says "notice shall be given", on the other hand in the very same place it says "in certain circumstances". Now who is the man who will judge the circumstances? Each man would have to think for himself what these circumstances are. Now if an honest man after thinking over the matter comes to the conclusion that it is his duty to do a certain thing and he does it, it will be wrong that this honest man should be prosecuted. Then, Sir, such assemblies or mobs can only be of two kinds. One is that which is harmless. If they are harmless, there is no use firing on them at all. But if those people once decide that

they are going to do mischief and they start doing it, is there any use to parley with them? It has been said that there should be a warning. A man in such a situation is told by his conscience not to do wrong. I think directly he begins to do such a thing, first warning is given to him by his own conscience which tells him that he is doing wrong. Then, Sir, the law of the land lays down that unruly mobs shall not do mischief. Now ignorance of the law is no excuse. But they do know that there is the law, and if they ignore it and do mischief they will suffer. The existence of this law is another warning. The next warning is that the mob in question sees the soldiers or policemen with fire-arms. They are not blind. They know that if they do mischief, they may be fired on. That is another warning. If in spite of all these warnings, the mob does not come to its senses, there is a fourth warning and that is afforded when firing in the air is resorted to to tell them to stop doing mischief. Then, Sir, some people who have been under fire know that when the bullets pass, they whistle, and if they are still nearer, they rattle in a different way, which again shows to them that this is a warning. And I think if all these warnings are not sufficient, then the only warning left is through the medium of the metal which it conveys to the body.

The Honourable Mover when he was moving his Bill went back to a time which we thought had been forgotten. He has spoken about the Punjab troubles. Well I happen to be one of those who were in the thick of them, and I must correct him if he makes any mistakes. The *Jhallianwala Bagh* has been spoken about. Well this is not the only affair, but there are many other instances like that. I think in most of these troubles, wherever they were, it was decided by competent authorities that all that was done was generally quite right. In that very place, some British men and women were killed, and I think that the community is still angry to-day that the police did nothing, that they were inactive, while these people were being killed and places were being set on fire, and while our politicians were trying to create trouble at that time....

THE HONOURABLE THE PRESIDENT: Will the Honourable Member please confine himself to the principle of the Bill?

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: It has been said that this Bill is only brought forward in connection with such occurrences. Well, there have been other troubles at Nankana—and, there is always danger, wherever there are fighting classes and when there are communal troubles, that one side will go for the other. Now in such a case where one party is helpless you have two things to do. One is to parley with the offending party and tell them: 'don't do it', and thereby lose time. The other is to fire on them or they will get at the innocent people and when they are together fighting, to fire on them at that juncture will be to kill the innocent along with the guilty. If one has to fire one should do so before they begin mischief. The same mob instead of killing members of some community goes straight for the very authority which is there to quell the disturbances, and they are armed with clubs and "Chhavies." I am sorry that some down-country people have not seen our "Chhavies" and clubs. I can assure them, Sir, that if once the men

[Col. Sir Umar Hayat Khan.]

with these things mix with riflemen, their arms are very much more effective than bayonets and swords. If one has to stop them, one has to stop them not only at arms length but at a greater distance and especially if the party is a very small one, as the police party at Chauri Chaura, if they do not start making the impression on the mob at the right time, then they are done for. Sir, I also know that there is something in the law which is called self-defence. Where does that self-defence go? If the mob is going to kill one and if he does not in self-defence save himself, when is he going to do so? If that very body is killed, *i.e.*, the officer and the small party, how are they going to disperse the assembly after they are killed? It is just the same case with one who parleys with his assailant. What will happen? The man can say "if you kill me, take care I will kill you". How is it to be done. If one is killed how can he kill another afterwards. A man finds that a mob is coming. Would he fight and save his life or would he think that as afterwards he would be prosecuted, would go to jail or would be humiliated he should not fight. Even if this Bill is there, a man will use his discretion, and fight and kill before he is killed. If an officer when charged with the duty of dispersing a mob did not do it, and Muhammadans killed Hindus or Hindus killed Muhammadans, there would be such a trouble in India that the offended party will accuse the officer and will never advise again to parley and wait and lose time. I think, Sir, under the circumstances, I would ask the House to unite and leave my friend the Honourable Mr. Ramadas alone as he is generally left and side with law and order, which will be the best thing for us to do and not allow the Bill to proceed to the extent of amendments being moved to it, because this is not a Bill that should be mended but I think it is a Bill which should be ended. (Applause.)

THE HONOURABLE MR. P. C. DUTT (Madras : Nominated Official) : Sir, I rise to oppose consideration of the Bill. As a District Magistrate I am keenly interested in the Bill, and as District Magistrates are primarily and principally responsible for the peace and order in the country, I think this House will give me an indulgent ear. I feel that this House could not do a worse disservice to the country than to pass the Bill which has been moved by my Honourable friend Mr. Ramadas. Sir, I have in my time held charge of some of the most turbulent and most populous districts in the Madras Presidency outside Malabar. Cuddapah is perhaps the most turbulent district in my province and the districts of Tanjore and South Arcot are the most populous containing a population of more than 22 lakhs in each of them. I have been in charge of these districts for years and I have also been for over 9 years in charge of the agency tracts of Vizagapatam and Ganjam inhabited by wild tribes; and I can conscientiously say that the administration of these districts and these tracts will be seriously affected and very great difficulties will arise if the Bill before the House is passed. More than once I have had to lead Mohurram processions with a revolver in my pocket expecting a riot to break out at any moment. Once in the course of such a procession there was a disturbance but we did not fire off our rifles and revolvers as those who support the Bill think that we are apt to do. Sir, I can tell the House—and I speak as an Indian with 25 years' experience as an executive officer—that I have never heard of any authentic instance in which fire-arms were used by the police to disperse a mob unless

they were absolutely obliged to do so in self-defence or in defence of persons or property. (Hear, hear.) I may be told that there have been such instances of unnecessary use of fire-arms. But I would ask the Honourable Members to remember how reports often lie and are always exaggerated in this country and I doubt very much if any Honourable Member of this House is in a position to say that he was present when such a case happened or took part in an inquiry into such a case. Supposing there have been such cases occasionally are we going to legislate for such exceptional cases and in doing so tie the hands of those who have to face very difficult situations ?

Sir, those who have passed the Bill in the other House must be lacking not only in experience but also in humour. What are the police to do when a mob charges a police station, say to rescue a prisoner, as a mob did at Kumbakonam when I was the District Magistrate of Tanjore ? In a serious matter like this. I do not want to be flippant, but do you expect the police to go and tickle the mob and make it laugh ? The Bill is to regulate the use of fire-arms. The police are to warn, send a report within 24 hours and at the end of this to lay themselves open to prosecution at the instance of anyone who may have a grudge against them. If they use bayonets, or what are called regulation *lathis*, they are not obliged by this Bill to warn, to send a report within 24 hours and need not fear prosecution without the sanction of Government (Hear, hear). Is the House to imagine that a bayonet charge is the more humanitarian procedure to adopt in a case like this ? Well, Sir, if I was in that position and if I had no other option I would rather like to have a bullet wound than a bayonet thrust.

(At this stage the Honourable Sir Maneckji Dadabhoy vacated the Chair which was resumed by the Honourable the President.)

I wonder whether those who supported the Bill in the other House thought that the police were allowed to fire on a mob just for the pleasure of firing. There are very stringent regulations and executive orders on the subject. I have been trying to get hold of some of these executive orders here, but I have not been able to procure any at Simla. I just got one Police Order of the Government of Madras. It runs as follows :

“ In every case in which the police use fire-arms in suppressing a riot or in self-defence an express report or telegrams—whichever is quicker—shall be sent to the Sub-Divisional Magistrate. In this report the number of persons killed or injured, if any, shall be stated ”.

I think this goes further than what my Honourable friend would like to legislate for. I dare say in other provinces there are similar orders. In any case it may be said that these being merely executive orders need not be obeyed. These who think so are very much mistaken. Every Magistrate, every police officer knows that, if he violates these orders, he incurs considerable risk. These orders lay down that force should not be used except when it is absolutely necessary, that no more force should be used than what is absolutely necessary, and that warning, whenever possible, should be given before force is used and the report should be sent as expeditiously as possible after the occurrence of such unfortunate events. I ask what more is wanted ? It is not proposed to legislate for more in the first three sub-clauses of section 2 of the Bill. I can say from my own personal experience that these orders are obeyed. What, therefore, I ask, is the justification for this proposed legislation ? It may be

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asked that, if there are these orders in existence, then what is the harm in enacting this legislation? That question has already been answered by the Honourable the Home Member in his minute of dissent. He says :

"A statutory inhibition of this kind will always render the question in issue 'could the assembly have been otherwise dispersed'. I think it a matter very difficult for the courts to deal with".

He adds :—

"Finally, clause (4) is far too wide in granting a right to make complaints without sanction of any public authority and will inevitably lead to much harassment of officers who have to perform these unpleasant duties."

Sir, as my Honourable friend Mr. Saiyid Raza Ali remarked, the sting of the Bill lies in its tail. Nothing could have been conceived which was more calculated to paralyse the hands of the local authorities raised to protect the persons and property in their charge than the threat that they were liable to be prosecuted without sanction by an injured person or the father, husband or wife or guardian of a person killed in quelling a mob. The police and the Magistracy will be at the mercy of any law tout who may see in this a chance for levying blackmail. There will be a trial. What sort of a trial will it be? The evidence produced will be very conflicting and extremely unreliable. The trial will be a huge farce and it will be a cruel mockery to subject a public officer, or for the matter of that anybody, to a trial of that kind. Sir, human nature, especially Indian nature, being what it is, I shall not be surprised if a subordinate Magistrate or an Inspector of Police is reluctant, after this Bill is passed, to defend the people and the property he is paid to protect for fear of prosecution. It should be realised that the Bill if passed will not affect so much the European as the Indian officers. The European officers are very few in the districts and are getting fewer and fewer. A mob does not attack after giving the same period of notice as the Honourable Members of this House do when they attack Government on a Resolution. The Indian officers being numerous and also being on the spot will have to quell these disturbances. It is the Indian officers who will have to suffer and this Bill will be quoted as another lamentable instance of the Indians' distrust of their fellow Indians.

Sir, I trust that the House will clearly realise what it is asked to do when it is asked to support the Bill. When a riot is imminent, officers of the Government are forced to undertake a very unpleasant task and they do their duty at the risk of their lives. They save persons and property by exposing themselves to great danger. They prevent a temple or a mosque from being desecrated, a bazaar from being looted, and men and women from being killed or maltreated. As a reward for this they are to be prosecuted at the instance of any man who may take it into his head to set up the injured person or the relatives of a killed person to do so. Could ingratitude go further?

Sir, it has already been mentioned in this Council as to how this Bill originated. But the real origin of the Bill lies in the psychology of the people. The Bill has its origin in the curious belief of many Indians that, whenever a disturbance occurs, the police are and must be in the wrong and all the authorities from the Sub-divisional Magistrate to the Governor of the province conspire to shield the police. Sir, this belief is absolutely and wholly

inexcusable. In any case such a belief cannot be allowed to hamper the administration of districts as this Bill will undoubtedly do if it is passed into law. For these reasons I oppose consideration of the Bill. 9

THE HONOURABLE MR. V. RAMADAS PANTULU: Sir, I will very briefly reply to the points raised in this debate and I shall certainly endeavour not to take much time of this Council at this late hour. Sir, I should like to begin with my Honourable friend Nawab Sir Umar Hayat Khan. He has very kindly advised me to withdraw this Bill on the ground that I cannot get the support for it in this House. I may assure him that I was not under any delusion when I made this motion in this House. But I certainly expected that the Government at least would have the courtesy of not opposing the Bill at the consideration stage, and that it would at least allow the Members of this House an opportunity to move amendments and bring it into line with what the Government and the Members consider to be a proper piece of legislation. Even this the Government have not done and I regret very much the attitude they have adopted. But I can assure my friend Nawab Sir Umar Hayat Khan that I have not got his implicit faith in the wisdom of this House and I certainly have much greater faith in the wisdom of the Legislative Assembly which consists of the accredited representatives of the people of this country. And when that body passed this Bill by a large majority, I have every faith that they represented the views of the country much more than this House....

THE HONOURABLE SIR MANECKJI DADABHOY: Why are you here?

THE HONOURABLE MR. V. RAMADAS PANTULU: Every Member who sits in this House, I submit, need not share the views of the Honourable Sir Maneckji Dadabhoy. People may differ from him and still they may be in this House. And I claim to be in this House to represent the views of my constituency and my country as I understand them to be. Sir, as I said, the country is there to judge between the views of my friend Sir Umar Hayat Khan and myself, and I shall leave it there.

Then, Sir, I come to the Honourable Mr. Crerar's observations. He said that he put warmth into his speech on account of the experience he had as a District Magistrate for a number of years and he spoke feelingly because of the experience which he gained of riots as a district officer, and I see that my Honourable friend Mr. Dutt has done the same thing. But I must point out that I adhere to the view that the "man-on-the-spot theory" is a very fallacious one and that the people who ought from their very situation and experience to know the best and the most know the least and the worst. These are the words of the great statesman, Lord Gladstone. And I also rely upon the observation of Lord Morley that the Executive in this country have an inherent repugnance to law and lawyers. Therefore, Sir, I am not prepared to give any great weight to the opinions that they express.

6 P.M.

My Honourable friend Mr. Crerar has pointed out that I made a mistake in stating that the rules regulating the use of fire-arms are on the Statute in England. When I was speaking of bringing Indian law into conformity with English law, all that I meant was that the Bill seeks to embody in it the provisions of common law laid down in the Ackton Hall Colliery dispute and other

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decisions and the King's Regulations. If I used the word Statute it was merely a slip of the tongue.

Then with regard to this question of the English law being applied to India, the Government do not seem to know their own mind. One member of the Government tells us that the English law need not be adopted in India, and His Excellency the Commander-in-Chief has very pointedly objected to clause 1, because as a matter of fact what is sought to be enacted in this is not consistent with English law, namely, the necessity of the Magistrate to give orders with regard to the firing. Very probably His Excellency is right, but I should like to draw attention to the fact that the Queen's Regulations which he quotes have undergone some change as the result of the circumstances reported in the Ackton Colliery case. I know as a matter of fact that the regulations before they were amended, some time ago, did incorporate provisions like the one incorporated in this Bill. I shall read from the King's Regulations :

"All commands to the troops are to be given by the officer. The troops are not, on any account, to fire excepting by word of command of their officer, who is to exercise a humane discretion respecting the extent of the line of fire, and is not to give the word of command to fire, unless distinctly required to do so by the *Magistrate*."

That was the law. If it has subsequently been changed in England, there is no reason why we should adopt the change in the English law, only in this matter, when the Honourable Mr. Crerar tells us that we need not adopt the English law in regard to the other provisions of the Bill. Therefore it seems that doctors seem to differ; some ask us to follow the English law and some ask us not to follow the English law.

The Honourable Mr. Crerar asked me a question for whose benefit this Bill was intended, and what the benefit was? My answer to that is that it is intended for the benefit of both the citizen as well as the officer who acts under its provisions. The citizen is to be protected against improper and excessive use of the powers vested in the hands of an officer who purports to act under the authority conferred on him, and the officer is protected from being harassed or otherwise unduly interfered with in the discharge of his duties. Both these principles are well borne in mind by the author of this Bill which has received the sanction of the Assembly. I also make no secret of my belief that unless some such provisions are enacted, Indian life will be considered somewhat cheap. Even sometimes the bureaucracy may not hesitate to use unconstitutional violence to put down constitutional political agitation, and I accordingly consider it a very sound measure.

With regard to the question of the warning, I have not heard any new arguments. I only heard one from the Honourable Nawab. He says either the crowd is dangerous or it is not dangerous. If the crowd is dangerous, fire, if it is not dangerous, don't fire. He does not think that there is a possible alternative. The crowd may be dangerous but not so dangerous as to require immediate firing upon without warning. It reminds me of a case where a question was put by a lawyer: "Did you cease beating your father, yes or no." I regret that a soldier like the Honourable Colonel Nawab Sir Umar Hayat Khan could not see the possibility of a crowd being not sufficiently dangerous to warrant immediate firing. I think it is a common occurrence.

As I have not heard anything against the remarks I urged in my opening speech with regard to the necessity for "warning" that it is recognised in the common law of England, that it is consistent with the spirit of the King's Regulations, that it is consistent with the spirit of executive orders, I do not think it necessary to labour the point any further.

Then with regard to the next thing about the report to be submitted of the occurrence within 24 hours. Mr. Crerar has objected to that very simple provision in this Bill. I find the Home Member, Sir Alexander Muddiman, in the debate in the Assembly, accepted the principle of that provision, and throughout his speech the Honourable Home Secretary took up a much more militant attitude than his Chief took in the Assembly. I suppose it is a compliment to the pliability of this House.

Then with regard to the last and most important provision, namely, freedom to prosecute; the arguments that I have heard are not legal but psychological. My friends Mr. Dutt and Mr. Crerar think that all humanity stands apart from Indian humanity. Human nature is similar all over the world; therefore to transgress the bounds of law and go into psychological conditions is indefensible. I refuse to admit that Indian humanity differs in any way from humanity elsewhere. It has been said more than once that whenever this freedom is given to Indians to prosecute a man, it is immediately abused. May I ask why? May I put the same question which Mr. Jinnah put to the Home Member in the other House: "Why does he think that this country is composed of such wicked people and such undesirable people, that when you come to an honest judgment, a *bona fide* decision in the best interests of the people over whom you are appointed as an officer to exercise your authority, human nature is so low that you will not be vindicated by the people of this country?" Are we so ungrateful, so wicked, so immoral, so low and undesirable? My emphatic answer is that such a charge is unfounded and unworthy of a House like this.

Then, Sir, I will only refer to one statement made by the Honourable Sir Maneckji Dadabhoy. He said that this is an attempt to make the Executive entirely impotent. He said that there were Executive orders that would suffice, and any attempt to fetter executive action by legislation would make the Executive impotent. The Honourable Sir Maneckji Dadabhoy affects to be more loyal than the King. I never heard such an argument. Are executive orders intended to be obeyed or not to be obeyed? If they are intended to be obeyed, where does the harm lie in embodying them in the Statute? If they are not intended to be obeyed, all the more reason to take steps to see that they are obeyed by putting them in the form of a Statute.

Therefore Sir, I really do not see any point in what Sir Maneckji Dadabhoy said. We are all equally anxious that the peace of this country should be preserved, and that our homes and hearths and our women and children should be protected from the violence of infuriated mobs. Therefore there is no reason why we should be less anxious about the peace in this country than he is. I assure him every Indian in this country is equally as anxious as he is that executive officers' hands should not be weakened and that the peace of this country should not be disturbed by riots.

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We have also got the welfare of the country at heart, but at the same time we desire to see that, while we have peace and order, we do not unnecessarily or unjustly inflict injury upon citizens. I have already alluded, Sir, to the various safeguards the executive officers have got under the law. The *Exceptions* in the Penal Code practically give them immunity. There is section 494, and section 202 and section 203 in which a complaint can be dismissed, and sections 54 and 132 which require previous sanction, and section 197 under which Magistrates are exempt from prosecution. All these sections are there and practically make it impossible for a citizen to proceed against an officer, and what you want is that the safeguard that you must invoke the aid of the Executive Government, on whose behalf the officer is really acting, to sanction this prosecution, should not be slightly relaxed. Human nature being what it is, in India as elsewhere, it will be impossible to get the Executive Government to sanction the prosecution. What you are really doing is you are depriving the Courts of their legitimate jurisdiction to punish offenders, and if you are not content with all these safeguards, it shows you are not attaching sufficient value to the sanctity of human life.

Sir, I have very little more to say. I only wish to point out that it seems to be by some strange coincidence that this Council, which began with debates on the repeal of the repressive laws, and the enactment of a Bill for the regulation of fire-arms, is closing with the consideration of the same measures, and that the Right Honourable Srinivasa Sastri, whose place I have the honour to occupy here to-day, moved in these matters and inaugurated legislation in both these matters. But this Council seems to have had better notions about the liberties of the people then and gave the Right Honourable Srinivasa Sastri greater support than they have been pleased to accord to me to-day. I hope we shall not be liable to the charge that we ended worse than we began. I hope that even now, the Government will allow the consideration of this Bill to be taken up so that they will give the Honourable Members of this House an opportunity to move amendments to certain clauses so as to remove objectionable features, if any, and if the sting is in the tail, the tail can be cut off. It will be for Honourable Members to do so. I hope this Bill will not be killed in its infancy. Many of the Bills which were given birth in the Assembly have been killed here ruthlessly, and I hope you will not add to your past record of infanticide in this House, and I earnestly hope that this Bill will be allowed to be considered on its merits, whatever changes it may undergo in the course of the debate. With these words, I commend the motion to the consideration of this House.

THE HONOURABLE MR. J. CRERAR: Sir, the hour is late, the merits of this Bill have been very fully discussed from every point of view, and I think the House has made up its mind. I therefore do not propose to detain it except to make one observation. Two Honourable Members—and I regret that among those two should be my friend Saiyid Raza Ali, who in other respects spoke in terms of the greatest courtesy and consideration—have suggested that Government, in opposing this motion, have rejected in a summary, or propose to reject in a summary, in a contemptuous manner, a Bill emanating from another place, and promoted in that other place by a

very eminent lawyer. Now, Sir, the only observation I wish to make is that that imputation is entirely undeserved. I leave it to the justice of the House to determine whether the grounds on which this measure has been opposed from these Benches have not been grounds relating solely to the merits or demerits of the measure itself, and not to any other extraneous consideration whatsoever. Secondly, it is surely perfectly well known to such experienced lawyers as my Honourable and learned friend from Aligarh and the Mover of the motion that, if this House passed the motion for the consideration of this Bill, the House would be committed to the principles of the Bill. My Honourable friend complains that by refusing to pass this motion, we are refusing even to take the Bill into consideration. He knows perfectly well, if the House passes the motion for consideration, it definitely commits itself to the principle of the Bill. I endeavoured to explain why the principles of the Bill were objectionable, and it is because I think the principles of the Bill are in the highest degree objectionable that I have asked the House to reject the motion for its consideration.

THE HONOURABLE THE PRESIDENT: The question is:

“That the Bill to provide that, when fire-arms are used for the purpose of dispersing an assembly, preliminary warning shall, in certain circumstances, be given, as passed by the Legislative Assembly, be taken into consideration.”

The motion was negatived.

PHOTOGRAPHIC GROUP OF THE COUNCIL.

THE HONOURABLE THE PRESIDENT: A desire has been expressed by several Honourable Members that, before the Council disperses at the end of this Session, prior to its dissolution, a photographic group should be taken of as many Honourable Members as are in Simla at the moment. Arrangements have accordingly been made that a photographer shall be in attendance on Thursday morning at half past 10, that is to say half an hour before His Excellency the Viceroy comes to address the Council. I hope as many Honourable Members as possible will be present on that occasion. I am sure our Honourable friend the Leader of the House, Sir Narasimha Sarma, would like as complete a memento as possible of his long association with this Council.

The Council then adjourned, till Eleven of the Clock on Wednesday, the 16th September, 1925.