

18th February, 1925

THE

LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

SECOND SESSION

OF THE

SECOND LEGISLATIVE ASSEMBLY, 1925



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LEGISLATIVE ASSEMBLY.

Wednesday, 18th February, 1925.

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

QUESTIONS AND ANSWERS.

GRANT OF ANNUAL INCREMENTS TO TEMPORARY MEN IN THE GOVERNMENT OF INDIA SECRETARIAT.

†932. ***Mr. Chaman Lall**: Are the Government aware that temporary men in the Indian Stores Department, and in the office of the Accountant General, Railways, get their usual annual increments? If so, are the Government prepared to grant such increments to temporary men in other offices?

TEMPORARY MEN IN THE CIVIL SECRETARIAT.

†933. ***Mr. Chaman Lall**: Is it a fact that temporary men in the Civil Secretariat get, on confirmation, the benefit of their past temporary service in respect of pay? If so, are the Government prepared to give the same concession to temporary men in other subordinate or attached offices?

CONFIRMATION OF TEMPORARY MEN IN THE GOVERNMENT OF INDIA SECRETARIAT.

†934. ***Mr. Chaman Lall**: Is it a fact that since 1920 the channel of recruitment in the Government of India offices has been the Staff Selection Board? If so, will the Government be pleased to state if those recruited by the Board and having less service have been confirmed in different offices whereas those of the same category having more service are still working as temporary men? If so, why?

TEMPORARY MEN IN THE CIVIL SECRETARIAT.

†935. ***Mr. Chaman Lall**: Are the Government aware that a temporary man who is sent from one office at the termination of his appointment to another office is taken as a juniormost man in spite of his total service, and that it affects the person concerned in point of confirmation? If so, do the Government propose to fix such seniority by total service rendered?

PERMANENT RE-EMPLOYMENT OF TEMPORARY MEN WHOSE APPOINTMENTS WERE ABOLISHED OWING TO RETRENCHMENT.

†936. ***Mr. Chaman Lall**: Is it a fact that permanent men of some offices whose posts were abolished on account of retrenchment were provided for permanently in other offices with the same scale of pay and allowances? If so, do the Government propose to extend this treatment to purely temporary men (not officiating) who were thrown out of employment under similar circumstances and provided for in other offices?

† For Answers to these Questions—see below Question No. 937.

INITIAL PAY OF TEMPORARY MEN CONFIRMED IN THE GOVERNMENT OF
INDIA SECRETARIAT.

†937. *Mr. Chaman Lall: Are the Government aware that a temporary man having one year's service gets on confirmation the same initial pay as that which another temporary man gets under similar circumstances having rendered 4 or 5 years' service? If so, will the Government please state the reasons for this differentiation?

The Honourable Sir Alexander Muddiman: With your permission, Sir, I will answer questions 932 to 937 together.

932. Temporary men in the Indian Stores Department and in the office of the Accountant General, Railways, are given annual increments. The whole of the clerical establishment in the Indian Stores Department has been on a temporary basis since the creation of the Department, and the temporary men in the Office of the Accountant General, Railways, are employed on a lower scale of pay than that admissible to the permanent establishment. It is not proposed to extend this concession to temporary men in other offices.

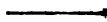
933. Temporary men in the Secretariat do not ordinarily get on confirmation the benefit of their past service in respect of pay; but it was decided in 1920 to allow some concession in this respect to be made in individual cases of hardship. Government are not considering any further extension of concessions.

934. Since 1920 the main channel of recruitment has been the Staff Selection Board. There may have been some cases of the nature referred to by the Honourable Member, but the confirmation of a man is not solely dependent on his seniority or length of temporary service: it depends largely on his abilities, and is purely a matter for departmental decision.

935. The general rule is as stated by the Honourable Member. Government see no reason to make any change.

936. The answer to the first part of the question is in the affirmative. Government do not propose to issue any special rule governing the terms on which temporary men thrown out of employment as a result of retrenchment are re-employed.

937. As stated in the answer to question No. 933, temporary men on confirmation do not ordinarily get the benefit of their past service. Government have never been prepared to place temporary service on the same footing as permanent service or to extend to it the privileges attached to permanent service.



LEGISLATION IN PARLIAMENT TO GIVE EFFECT TO THE RECOMMENDATIONS OF
THE LEE COMMISSION.

Dewan Bahadur M. Ramachandra Rao: Sir, I beg to ask the following questions of which I have given notice to the Honourable the Home Member.

(a) Will the Government be pleased to state whether legislation is proposed to be undertaken in Parliament to give effect to the recommendations made in the report of the Royal Commission on the Public Services?

(b) If the answer to the above is in the affirmative, will the Government be pleased to state whether the Government of India were consulted in the matter of this legislation?

(c) Will the Government be pleased to place the despatch of the Secretary of State on the subject on the table after obtaining his permission if necessary?

(d) Will the Government be pleased to state whether they intend that the proposals for legislation should be published in this country before they are finally adopted by Parliament so that representations may be made in due time to the authorities in Great Britain?

(e) If the answer to the above is in the affirmative, do the Government of India propose to take steps to secure the publication of the Bill in this country as soon as it is introduced in Parliament?

The Honourable Sir Alexander Muddiman: (1) As I explained in answer to Mr. Rangaswami Iyengar's question No. 666 on the 2nd instant, the matters for parliamentary legislation are still a subject of correspondence with the Secretary of State. I am unable to publish that correspondence.

(2) As I informed Diwan Bahadur Ramachandra Rao in reply to a supplementary question on the 2nd instant, the publication of Parliamentary Bills does not rest with me. I have, however, had a copy of the questions put and answers given on this subject on the 2nd instant sent to the Secretary of State, and I shall endeavour to arrange for simultaneous publication of the Bill or at any rate of its most important clauses.

Diwan Bahadur M. Ramachandra Rao: May I ask the Honourable Member when this legislation is likely to be introduced?

The Honourable Sir Alexander Muddiman: I have no definite information on the matter. The last I think we heard was that it might possibly come on early in April.

Diwan Bahadur M. Ramachandra Rao: May I ask the Honourable Member whether we are likely to have any of these proposals before the end of this session?

The Honourable Sir Alexander Muddiman: I should think it is not in the least likely because, as I said, the matter is still under correspondence with the Secretary of State.

Diwan Bahadur M. Ramachandra Rao: May I point out that by the time we meet in September the legislation will have gone through Parliament?

The Honourable Sir Alexander Muddiman: That is quite possible, but I regret I cannot control the course of legislation in Parliament.

Diwan Bahadur M. Ramachandra Rao: May I ask that you may suggest to the Secretary of State that the legislation should be put off till this House has had an opportunity of examining those proposals?

The Honourable Sir Alexander Muddiman: I do not think it will be any use making any such suggestion. As the Honourable Member knows, it is extremely difficult even for Secretaries of State to get the time of Parliament. They must take it when they get it.

Mr. A. Rangaswami Iyengar: May I ask the Honourable Member to communicate the feelings of this House to the Secretary of State?

The Honourable Sir Alexander Muddiman: I shall send a copy of the questions and the answers that I have given.

Mr. A. Rangaswami Iyengar: I presume it will include also the supplementary questions that have been put?

The Honourable Sir Alexander Muddiman: Certainly.

UNSTARRED QUESTIONS AND ANSWERS.

STOPPAGE OF THE ANNUAL INCREMENTS OF CERTAIN PUNJAB POSTAL OFFICIALS.

133. **Mr. Ohaman Lall:** (a) Is it a fact that annual increments of the following Punjab postal officials were stopped for the periods noted against them:—

Name and Designation.	Period.
1. Amir Chand, S. P. M., Lachi (Derajat Division)	6 months.
2. Behari Lal, S. P. M., Sadda " "	1 year.
3. Udhe Bhan, Clerk, Hangu	6 months.
4. Bhim Sain, Clerk, Kohat	2 "
5. Qadir Bakhsh, " "	8 "
6. Abdul Aziz, Postmaster, Campbellpore	3 "

(b) Is it a fact that the punishments detailed in (a) above were ordered to effect all future increments of the said officials?

(c) Will the Government be pleased to state the cumulative effect of stoppage of increments in each case separately?

(d) Are the Government prepared to re-consider all the cases with a view to remit or reduce the punishments?

The Honourable Sir Bhupendra Nath Mitra: The Honourable Member's attention is drawn to his starred question No. 1963 which was replied to on the 15th September, 1924.

ARREARS OF PAY OF R. M. S. OFFICIALS OF "D" DIVISION.

134. **Mr. Ohaman Lall:** (a) Will the Government be pleased to state reasons for which officiating and temporary services rendered by the R. M. S. officials of 'D' Division could not be accounted for and arrears of pay could not be paid up till now?

(b) Is it a fact that the R. M. S. officials concerned are not responsible for delay in the disbursement of arrears of pay?

(c) Is it a fact that according to the latest orders of the Government the arrears of pay were due to these R. M. S. officials with effect from the year 1921 as in the case of other officials?

(d) Will the Government be pleased to state reasons on the strength of which these R. M. S. officials can be debarred from their dues from the date they were paid to other Postal and R. M. S. officials?

(e) Are the Government prepared to consider the disbursement of the arrears of pay from the date they actually fell due?

Sir Geoffrey Clarke: A reference is invited to the reply given by Mr. H. A. Sams to the Honourable Member's similar question on the 15th September, 1924. Since then certain further claims have been received. Including 16 claims for arrears of pay due in respect of 1924 (not 1921), altogether 21 claims are at present pending final settlement. Steps have already been taken to have them disposed of as soon as possible.

PROMOTION OF POSTAL OFFICIALS IN THE PUNJAB CIRCLE.

135. **Mr. Chaman Lal:** (a) Will the Government be pleased to state separately the number of appointments of Rs. 50 and 60 grade vacant on 23rd September 1920 in the Punjab Postal Circle, which were not filled up before the introduction of the time-scale of pay from the same date?

(b) Will the Government be pleased to state the names of the postal officials who could be promoted to the vacant appointments referred to above?

(c) Will the Government be pleased to state separately the salaries which the officials alluded to in (b) above could draw to-day by virtue of their promotions?

(d) Is it a fact that a Financial Adviser, Posts and Telegraphs, has been pleased to decide in his letter No. 65-P. D., dated the 4th March, 1924, a similar case of Mr. Munshi Ram, clerk, Simla, allowing the official to draw higher pay Rs. 106, with effect from 1st June 1924?

(e) Are the Government prepared to consider similarly the cases of all other postal officials referred to in (b) above who could similarly get promotions had the posts been filled up?

The Honourable Sir Bhupendra Nath Mitra: (a) to (e). Government have no information in respect of the appointments or officials referred to with the exception of Mr. Munshi Ram, whose case was decided on appeal. If any of those officials has any grievance, he is at liberty to appeal in the usual manner.

SUB-POST OFFICES IN THE PUNJAB POSTAL CIRCLE MANNED BY FIVE OR MORE OFFICIALS?

136. **Mr. Chaman Lal:** (a) Will the Government be pleased to state the names of the Sub-Post offices in the Punjab Postal Circle manned by five or more officials?

(b) Will the Government be pleased to state as to which of the offices named in (a) above are of the selection grade?

Sir Geoffrey Clarke: (a) A statement showing the names of the sub-offices in the Punjab Postal Circle manned by five or more officials of the clerical class is placed on the table. It is presumed that the Honourable Member refers to officials of that class.

(b) Offices Nos. 1 to 34 and No. 52 are in charge of Sub-postmasters in the selection grade.

Statement showing the names of Sub-Offices in the Punjab and N. W. F. Circle manned by 5 or more officials of the clerical class.

No	Name of Sub-Office.	Name of Head Office.
1	Ambala city	} Ambala.
2	Kassuli	
3	Golden Temple	} Amritsar.
4	Majith Mandi	
5	Tarnarn	} Delhi.
6	Chaudni Chowk	
7	Tauk	} D. I. Khan.
8	Abohar	
9	Ferozepore City	} Ferozepore.
10	Moga	
11	Wazirabad	} Gujranwala.
12	Gujrat R. S.	
13	Batala	} Gujrat.
14	Dalhousie	
15	Rewari	} Gurdaspur.
16	Bhiwani	
17	Jullundur City	} Gurgaon.
18	Charing Cross	
19	Lahore Cantonment	} Hissar.
20	Naulakha	
21	Jagraon	} Jullundur.
22	Gojra	
23	Jaranwala	} Lahore.
24	Multan City	
25	Laudikotal	} Ludhiana.
26	Mardan	
27	Nowshera	} Lyallpur.
28	Peshawar City	
29	Murree	} Multan.
30	Sialkot City	
31	Chaura Maidan	} Peshawar.
32	Chota Simla	
33	Secretariat	} Rawalpindi.
34	Bara Mula	
35	Delhi Sudder Bazar	} Simla.
36	Malerkotla	
37	Anarkali	} Srinagar.
38	Toba Tek Singh	
39	Risalpur	} Delhi.
40	Sirsa	
41	Okara	} Ludhiana.
42	Jagadhri	
43	Rupar	} Lahore.
44	Kapurthala	
45	Hoshiarpur City	} Jhang.
46	Gujar Khan	
47	Rawalpindi City	} Peshawar.
48	Khanowal	
49	Bhatinda	} Hissar.
50	Gulmurg Season sub-office for 6 months	
51	Haripur	} Montgomery.
52	Nathingali	
		} Ambala.
		} Jullundur.
		} Hoshiarpur.
		} Rawalpindi.
		} Multan.
		} Ferozepur.
		} Srinagar.
		} Abbottabad.

MESSAGE FROM THE COUNCIL OF STATE.

Secretary of the Assembly: The following Message has been received from the Secretary of the Council of State:

"In accordance with Rule 36 (1) of the Indian Legislative Rules, I am directed to inform you that the amendments made by the Legislative Assembly in the Bill to consolidate and amend the law to provide for the special protection in respect of civil and revenue litigation of Indian soldiers serving under special conditions, were taken into consideration by the Council of State at their meeting to-day, the 17th February, 1925, and that the Council have agreed to the amendments."

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

PRESENTATION OF THE REPORT OF THE SELECT COMMITTEE.

Mr. L. Graham: Sir, I present the report of the Select Committee on the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes.

ELECTION OF THE PANEL FOR THE STANDING COMMITTEE ON EMIGRATION.

Mr. J. W. Bhore (Secretary, Department of Education, Health and Lands): Sir, I beg to move:

"That this Assembly do proceed to elect in the manner described in the Department of Education, Health and Lands Notification No. 114, dated the 7th February 1924, a panel of 16 members from which the members of the Standing Committee to advise on questions relating to emigration in the Department of Education, Health and Lands, will be nominated."

The motion was adopted.

Mr. President: As a result of the decision just made by the House I have to announce that nominations for this Committee will be received in the office of the Assembly up till 12 noon on Saturday, the 21st February, and the election will, if necessary, be held in this Chamber on Tuesday, the 24th February.

THE INDIAN TARIFF (AMENDMENT) BILL.

The Honourable Sir Charles Innes (Commerce Member): I beg to move:

"That the Bill further to amend the Indian Tariff Act, 1894, be referred to a Select Committee consisting of Diwan Bahadur M. Ramachandra Rao, Mr. K. C. Neogy, Mr. W. S. J. Willson, Sir Purshotamdas Thakurdas, Mr. N. C. Kelkar, Mr. R. K. Shanmukham Chetty, Sardar Gulab Singh, Maulvi Abul Kasem, Mr. M. C. Naidu, and myself with instructions to report within three weeks; and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be four."

I am very sorry that owing to causes which were entirely beyond my control I was unable to be present to introduce this Bill a week ago. With your permission, Sir, I will give to-day just a few words of explanation regarding the Bill. The operative part of the Bill, as the House will see, is contained in the Schedule which amends our statutory Tariff Schedule. Most of the items in the Schedule to the Bill are more or less of a formal nature. The House is no doubt aware that under section 23

[Sir Charles Innes.]

of the Sea Customs Act the Government have power to reduce the duties on articles by a notification in the Gazette. That is a very convenient power to the trade for obviously it would be inconvenient if we could not make an alteration in the way of reduction in petty cases without coming in every case to this House. But it is obviously right and proper that when we do take executive action of that kind by notification we should come from time to time to this House and ask for their ratification of what we have done. That, Sir, accounts for the greater part of the items in the Schedule. There is one other item to which I might perhaps draw attention and that is the item relating to iron or steel discs and circles. That, Sir, is a mistake which we made when we introduced the Steel (Protection) Bill last June. As the Bill was drafted a steel sheet coming in pays a protective duty but a disc or circle cut from that same sheet pays a duty of 10 per cent. *ad valorem*. That is obviously a mistake, and we are taking this opportunity of suggesting to the House that it should be remedied. But the really important part of this Bill lies in three items, namely, those relating to sugar, cigarettes and silk mixtures, particularly the two items relating to sugar and cigarettes. Those are proposals which do not affect the revenue of 1925-26 materially but they have an important effect on trade.

I should first like to explain this sugar problem. I took it up over two years ago, my attention having been directed to the grave inconvenience and embarrassment caused to our finances by the extraordinary fluctuations in our revenue from the import duty upon sugar. In July 1923, therefore, I directed the Commerce Department to examine the suggestion thrown out by the Fiscal Commission, namely, that the tariff valuation on sugar should be based not on the figures of the preceding 12 months but upon the market values of the preceding three years. I took up the examination of that suggestion in order to see whether, if we carried out that suggestion, it would reduce these fluctuations. These fluctuations are due to two causes. One of course is fluctuations in imports. This is a matter over which we have no control at all. The other is due to fluctuations in prices which naturally affect our *ad valorem* duties. Our duty at present is 25 per cent. *ad valorem*; but we do not assess this duty upon every individual shipment of sugar. We have a long-standing arrangement with the sugar trade by which the *ad valorem* duty is assessed upon what is called a tariff valuation, and by this arrangement with the sugar trade the tariff valuation is at present based upon the average values of the 12 months ending on the preceding 30th September. It comes into force on the 1st January and is based on the average market value of sugar during the 12 months ending the previous 30th September. Now I should just like to read to the House the fluctuations which have taken place in these tariff values. In 1921 the tariff value of sugar was Rs. 32-4-0 per cwt., in 1922 it was Rs. 26-4-0 per cwt., in 1923 it was Rs. 16-4-0 per cwt., a drop of Rs. 10, in 1924 it rose to Rs. 17-12-0 and this year it is Rs. 17-8-0. Now, as I have said, our *ad valorem* duty is 25 per cent. Therefore every difference of a rupee in the tariff valuation makes a difference of 4 annas in the rate of our duty. Our average import of sugar amounts to something like 450,000 tons a year, and a variation of 4 annas per cwt. in the rate of duty means a variation in our revenue of 22½ lakhs of rupees. We have had in recent years drops of Rs. 10, Rs. 5 and so on and you can see how inevitable it is that there should be these wide fluctuations in our revenue. The reve-

nue for instance in 1921-22 was 6½ crores, in 1922-23 it was 4½ crores, a drop of 2 crores, in 1923-24 it was 332 lakhs, a drop of a crore again. As I have said, this question was examined by the Commerce Department and by the Director General of Commercial Intelligence. They examined very carefully the proposal that instead of basing our tariff valuation on the figures for one year we should base it on the figures for three years. We found that it would make some improvement but only a small improvement and that even in spite of the alteration of the system we should still have these very big variations in the tariff valuation. For instance, there would have been a difference of Rs. 2-8-0 a cwt. between 1917 and 1918, a difference of Rs. 5 a cwt. between 1920 and 1921, a difference of Rs. 3-12-0 a cwt. between 1921 and 1922 and a difference of Rs. 5 a cwt. between 1923 and 1924. We were driven, therefore, to the conclusion that the only way of getting rid of these enormous fluctuations in our revenue would be to adopt boldly a specific duty. That was the definite recommendation of the Director General of Commercial Intelligence, and we arrived at that decision as far back as July last. I may say that no doubt owing to these fluctuations in revenue practically every country in the world has been driven to adopt a specific duty on sugar in lieu of an *ad valorem* one. As far as we can make out, the duty on sugar is specific in every country in the world except Cyprus, Sudan, Palestine, Iraq, Siam, Java and Paraguay. We decided, therefore, that the best plan would be more or less to stereotype the existing rates of duty. The rate of duty has averaged about Rs. 4-6-0 per cwt. in the last three years. In 1922 it was Rs. 6-9-0 a cwt., in 1923 it was Rs. 4-1-0 a cwt., in 1924 it was Rs. 4-7-0 a cwt., and the present duty is Rs. 4-6-0 a cwt. We decided, therefore, that the best plan would be more or less to stereotype these rates and we are proposing a rate of Rs. 4-8-0 for Java 23 Dutch Standard and over and a rate of Rs. 4 for sugar between 22 and 8 Dutch Standard. Since we arrived at that decision, which, as I said, was in July last, there has been a further development in the situation which makes it more necessary than ever that the House should consider this proposal. Since July, so to speak, the bottom has dropped out of the sugar market. There was a very large crop in Cuba, and beet sugar has again come into the market. The result is that the prices of sugar have dropped. In the first three months of the current year—the current year for the purpose of tariff valuation, that is to say in October, November and December—the average price of sugar coming into India was about Rs. 15 a cwt. The House will realize what it would mean to us, supposing for our tariff valuation in 1926 we should have to adopt Rs. 15 a cwt. It would mean that our duty on sugar would drop from Rs. 4-6-0 a cwt. to Rs. 3-12-0; that is to say, we should lose 10 annas a cwt. Now, as I have told you, every drop of 4 annas in the duty means a loss of 22½ lakhs of revenue to us. A drop therefore of 10 annas in the duty in 1926 would mean a loss of revenue of between 50 and 60 lakhs of rupees. As far as we can see, there is no reason why we should face that loss. The present rate of duty on sugar, namely, Rs. 4-6-0 has, as I say, been in force on an average for the last three years. It has not checked imports in the very least. The consumer seems likely next year to get the advantage of the drop in price, and I think it would be a mistake for this House to give up the revenue which the maintenance of our present system of tariff valuation combined with an *ad valorem* rate of 25 per cent. would involve. I may also mention that if we did adhere

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to our *ad valorem* rate we should undoubtedly get complaints from people who are trying to grow and make and refine sugar in this country. I do not want to make too much of that argument because naturally if we want to have a protective duty it ought to be examined first by the Tariff Board. But in regard to that the Sugar Bureau of Pusa has drawn our attention to the fact that from the point of view of the sugar producer in India what you want is a specific duty and not an *ad valorem* duty. The disadvantage of an *ad valorem* duty is that as prices drop the duty drops too: as prices rise the duty rises too, and that hits the consumer. A specific duty besides stabilising our revenue has that advantage. Now, Sir, I have explained as fully as I can the little problem which we have got before us as regards sugar.

I now turn to cigarettes which I think is the only other subject with which I need take up the time of the House. This again is purely an administrative and a trade problem. The duty on cigarettes at the present time is 75 per cent. *ad valorem*, a very high rate of duty. Now, our experience is that this *ad valorem* rate of 75 per cent. is working unfairly to the trade. We have two systems of assessing goods for duty. One is what is known as assessing goods to duty on the local wholesale market value. You can apply that in the case of cigarettes to known brands for we know what the local wholesale market value of known brands is. But we cannot apply that system to unknown brands or brands which are just beginning to force their way into the Indian market, because they have no local wholesale market value, and therefore we have to resort to our alternative system of assessment, namely, basing the assessment on invoice values. Our experience is that invoice values are very often understated. The remedy for understatement of invoice values which is provided for us by the Sea Customs Act is that we may take over the goods at the invoice value and sell them ourselves. But that remedy is entirely illusory in the case of an article like cigarettes. Cigarettes are a peculiarly perishable article and the only result of our taking over a large consignment of unknown cigarettes and trying to sell them ourselves would be that the country would lose a very large amount of money. And so, as compared with known brands, unknown brands get in at a lower rate of duty than they should. That creates soreness in the trade and has been the subject of representations to us by the trade. That is why we are making this proposal to have one flat specific rate of duty on cigarettes. This question was brought before us in this House about two or three years ago in the course of debate. In the course of debate I naturally took what would seem to be the obvious objection, namely, that if you have one flat rate of duty for cigarettes obviously you let in the higher priced cigarettes at possibly too low a rate and you charge the cheap smoke at too high a rate. That seems to be the obvious objection to this proposal. But we looked into the matter further. I have the figures here. In the six months ending October 1924, 626,000 pounds of cigarettes were imported into Calcutta and Bombay. Of these 626,000 pounds only 5½ per cent. were cigarettes valued at less than Rs. 4 a pound, nearly 83 per cent. were valued at between Rs. 4 and Rs. 5 a pound, and only 11 per cent. were valued at more than Rs. 5 a pound. Thus, 90 per cent. of the cigarettes that came into Calcutta and Bombay in those six months are valued at less than Rs. 5 a pound. Of that 90 per cent. 95 per cent. according to these statistics were valued at between Rs. 4 and Rs. 5 a

pound. And thus 95 per cent. of the lower valued cigarettes have paid a duty of 17 lakhs of rupees on an import of 575,000 lbs. That is to say, they paid an actual rate of duty of Rs. 3-5-0 a pound. Now $2\frac{1}{4}$ lbs. of cigarettes equal 1,000 cigarettes on an average, and therefore the duty which they actually paid at Rs. 3-5-0 a lb. would amount to Rs. 8-4-6 a thousand. Therefore we thought that without doing very much harm to anyone we could impose this flat specific rate of Rs. 8 a thousand. I may say that many other countries have had to adopt the same principle. They do not attempt to distinguish between cigarette and cigarette. They have one uniform rate. For instance, the United Kingdom has a flat rate of 12s. 7d. a lb.; Australia has a flat rate of 11s. 6d. a lb., the Argentine has a flat rate of 2 dollars a kilo; Belgium has a flat rate of 1,200 frs. per 100 kilos, and so on. We think therefore that our proposal is the best, but we are quite prepared to discuss the whole thing with the Select Committee, and I may say that we do not think that this proposal will have any serious effect on the revenue.

There is one other thing that I wish to say before I sit down. I understand that on the last occasion when this Bill was introduced a suggestion was made that we were trying to rush it. I hope that the motion I am moving to-day will remove that suspicion from the minds of the House. I am not trying to rush the proposal. I am proposing that it should be referred to a Select Committee. I am further proposing that that Select Committee should be required to report within three weeks. I am definitely making that proposal in order that anybody affected by these proposals should have time to put in their representations and then the whole question will be discussed by a committee of this House. I may say that, though this Bill was introduced a week ago, I cannot find from the public press that it has caused a ripple of excitement anywhere. It is a fact that we have had some representations about this duty upon cigarettes, but, as I say, we have practically an open mind about that. We are quite prepared to discuss the whole question with this Select Committee. I hope therefore that the House will agree to my proposal that this Bill should be referred to a Select Committee in order that every item of it may be thoroughly sifted and examined before the proposals in the Bill are discussed in detail on the floor of this House. Sir, I move my motion.

Mr. President: Motion moved:

"That the Bill further to amend the Indian Tariff Act, 1894, be referred to a Select Committee consisting of Diwan Bahadur M. Ramachandra Rao, Mr. K. C. Neogy, Mr. W. S. J. Willson, Sir Purshotamdas Thakurdas, Mr. N. C. Kelkar, Mr. R. K. Shanmukham Chetty, Sardar Gulab Singh, Maulvi Abul Kasem, Mr. M. C. Naidu and the Mover, with instructions to report within three weeks and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be four."

Mr. W. S. J. Willson (Associated Chambers of Commerce: Nominated Non-Official): Sir, in the absence of the Honourable Member for Commerce the other day, I took exception to what I understood was the intention of Government, to introduce this Bill and propose that it should be referred to a Select Committee forthwith. I now desire, Sir, to renew that protest. The Honourable Member for Commerce knows I believe quite well that it is the strong opinion of commercial bodies in India that Bills affecting the principle of the tariffs should be circulated for the expression of public opinion before being passed in detail. I am not asking, I would not ask, that any Bill raising or reducing a duty should be so referred, because obviously in such cases prompt action is necessary to avoid speculation and interference. At this stage I do not propose to follow Sir Charles Innes

[Mr. W. S. J. Willson.]

into the actual merits of the Bill itself. I am well aware of the Report of the Fiscal Commission, and especially paragraphs 269 and 270 in which they have much to say on the question of specific duties *versus ad valorem*, and it may be that sugar, as Sir Charles Innes has endeavoured to show, is essentially an article in which a specific duty may be the more advisable, but, Sir, he referred to the long-standing arrangement with the sugar trade under which the rates of value for the ensuing twelve months are fixed, and I am sorry that in his desire to change the system he has not thought fit to refer to the sugar trade—at least he has not said that he had done so—before making a change of this kind. I think a long-standing arrangement with a trade should be honoured by making a reference to it in a change of this kind, especially when, as he told us, the decision to make this change was come to so far back as last July. It is perfectly true that Government have the power to reduce the duties, but this is not either a reduction or an increase. It is an entire change of system. The Chambers of Commerce have always urged that any Bill affecting the principle of taxation or tariffs should be circulated, and they are still emphatically of that opinion. I might, Sir, have gone so far as to move an amendment that this Bill be circulated for the purpose of eliciting public opinion. But I have not done so, partly because the Honourable Member has been good enough to give us a certain amount of time in not wanting us to report upon the Bill except within three weeks, but I might point out that had he taken the opportunity of introducing this Bill in January, at the opening of the session, we should have had some 2½ months in which to examine the details of it, instead of having to do it within three weeks, which is really insufficient. Sugar is imported at certainly all the principal ports in India and they are all interested in this change. They may all have views which they wish to express, and the time at our disposal for collecting these opinions and putting them before the House for its guidance has been quite insufficient. The Honourable Member said that, although the Bill had been before the House about a week, he had not seen anything in the public press opposing its conditions. I have merely to say with reference to that, that it is not the practice of commercial bodies to immediately rush into print. They first of all require to go into a measure themselves, and that takes some time, so that I do not think that the fact that nothing has appeared in the public press is in any sense an argument that it has received general acceptance. In view of the remarks which have fallen from the Honourable Member and the reasonable attitude he has taken up in regard to the three weeks, I hardly feel inclined to go so far as to oppose the reference to a Select Committee, but should that be the opinion of the House that it should be so referred, I shall undoubtedly vote that way myself.

Mr. M. A. Jinnah (Bombay City: Muhammadan Urban): *Sir, as far as I am concerned, I have no objection to this Bill being referred to a Select Committee. But with regard to the provisions in the Bill, particularly with regard to cigarettes, I must confess that I was not satisfied with the statement made by Sir Charles Innes. Sir, he took us into some complicated figures which it is not possible to scrutinise carefully or to follow at this distance between him and me. But whatever may be his mathematics, right or wrong, I will place before him my elementary

* Not corrected by the Honourable Member.

mathematics. Sir, I hope he will correct me if I am wrong. I, say a well-to-do man, wish to import a brand of first class luxurious cigarettes, and I am prepared to pay Rs. 6 a hundred. Sir, according to the present tariff, 75 per cent. on that will come to Rs. 4-8-0. A poor man who cannot afford the luxury, perhaps Sir Charles himself, indulges in imported cigarettes for which he can afford to pay only Rs. 3. 75 per cent. on that will work out at Rs. 2½. But according to the proposed tariff the poor man, who gets his hundred cigarettes will have to pay 12 annas and so would the luxurious man, who imports his cigarettes valued at Rs. 6 a hundred, have to pay 12 annas a hundred. Now, Sir, this is obvious I submit—and I think Sir Charles Innes will agree with me as we are both addicted to this evil habit, to this weed which does soothe you and console you after the day's work—that the poor labourer needs his cheap cigarettes as much as we do, and I think it is not fair to make his burden greater, having regard to his earning capacity. I certainly therefore think, Sir, that it will hit not only the poor man but also the trade which deals in these cheap cigarettes, and I am not at present satisfied with the details. I therefore ask the Honourable Member to take some care to protect these two classes, particularly the poor man.

Sir Purshotamdas Thakurdas (Indian Merchants' Chamber: Indian Commerce): Sir, the two previous speakers have referred to certain aspects of the question that is before the House. I wish, Sir, to draw the attention of the House to a very important question which underlies the whole proposition, and that is it appears now to be proposed by the Commerce Member, certainly, I take it, with the consent of the Honourable the Finance Member, to change the mode of tariff as far as sugar and cigarettes are concerned from the *ad valorem* basis to the specific basis. When the values were high, the *ad valorem* basis brought in a good deal of revenue. When values are falling the same amount of revenue is aimed at by change of the basis for the duty. The change may be very attractive even to the Honourable the Finance Member when the value of sugar goes down to Rs. 15: but when the value goes up to Rs. 20 or Rs. 22, I really wonder if the Honourable the Commerce Member will again ask this House to change the basis to the *ad valorem* one. I feel, Sir, that that is a question where no quotations from precedents in foreign countries should appeal to us. I was looking forward to the Honourable the Commerce Member making out a very much stronger case than quoting some other foreign countries where the basis of valuation had been changed for reasons of which we are not quite aware. I feel that in the Select Committee considerable discussion will have to take place on this aspect of the change, for I thought that whenever tariff duties were levied on an *ad valorem* basis the one thing that was always urged in favour of it was that if values fell the consumer at this end got the benefit of the fall in values. Here now you fix your duty at Rs. 4-8-0, I think, in the case of sugar; whether the value is Rs. 12 or Rs. 20 the consumer still pays Rs. 4-8-0 as duty on the imported article. I feel that considerable discussion will be necessary and the Commerce Member will have to advance many other grounds besides the one of mere convenience, for after all, with the convenience of the Customs Department you have also got to look at not only the convenience but also the pocket of the consumer at this end. I feel, Sir, therefore that whilst one would not like to obstruct the swift passage of this simple-looking measure at this stage, it is quite possible that, unless some very strong grounds are urged for the change of basis

[Sir Purshotamdas Thakurdas.]

of tariff assessment, this measure may be delayed considerably more than the Honourable the Commerce Member himself expects. The other two items referred to in the Statement of Objects and Reasons as No. 4 and No. 5 appear to be more or less formal ones and I take it therefore that the Commerce Member did not deal with those two; but where a question of change of basis for valuation purposes, and therefore for taxation purposes, is concerned, I expected that the Commerce Member—if he does not mind my saying so—had much stronger reasons than this, namely, that the income would fluctuate. If the income fluctuates with lower rates, the income also fluctuates with higher rates. That I thought was the strongest ground in favour of an *ad valorem* valuation. However, as the Honourable the Commerce Member is prepared to give us some time before the Select Committee submit their report, and as, I take it, that he would be prepared to discuss this question from this particular point of view in the Select Committee, I do not wish, Sir, at this stage to say anything against the motion before the House.

Maulvi Mohammad Shafee (Tirhut Division: Muhammadan): Sir, I move for the addition of two important names to the Select Committee, namely, Mr. Jamnadas Mehta and Mr. Rangaswami Iyengar.

Mr. A. Rangaswami Iyengar (Tanjore cum Trichinopoly: Non-Muhammadan Rural): May I inquire, Sir, on this question of the Bill going before a Select Committee, whether having allowed the motion for a reference to a Select Committee, it is open to us again to discuss the question whether we shall accept the *ad valorem* principle or the specific duty principle and whether we would not be considered to have committed ourselves to the specific duty principle by reference to a Select Committee? If it is not so, we wish that this matter should stand over so that the principle might be decided after further discussion.

Mr. President: In the sense in which the Honourable Member uses the words, the principle would be open to discussion by the Select Committee and it will be open to the Select Committee to change the character of the Bill in that particular aspect. Referring the Bill to a Select Committee does commit the House to the principle, but I should not care to say what precisely is the principle of this Bill.

Mr. A. Rangaswami Iyengar: I should like to know what the Honourable the Commerce Member has to say on this point.

The Honourable Sir Charles Innes: I would at once say that the House is not committed to accepting these particular proposals.

Sir Campbell Rhodes (Bengal: European): Sir, I had not intended to intervene in this debate, but as Sir Purshotamdas Thakurdas has raised the question of the general principle involved, I should like to say a few words as a member of the Indian Fiscal Commission. We did examine this question of *ad valorem* and specific duties very carefully and we wrote a Chapter on it, which, I hope, will have the serious consideration of the members of the Select Committee. The suggestions that were there propounded have been proved to be valuable by the experience of the last couple of years. High prices, high revenue duties, have brought their own dangers with them, as we forecasted. There has been the danger of false invoices produced at home; there have been serious mis-valuations and there

have been imposed on the appraisers and subordinates in the Custom House very grave temptations. It is now well worth the importers' while to spend a great deal of money in order to get a low valuation. Values in certain classes of goods are very difficult to arrive at, and therefore the Fiscal Commission advocated a large extension of the basis of specific valuations. Sir Purshotamdas Thakurdas has looked at the question from the point of view of the consumer. From that point of view, Sir, I submit that it is in his interest to have steady prices, and specific duties, as Sir Charles Innes has pointed out, make him pay relatively more in duty when prices are low and relatively less when prices are high. But I think I can appeal to Sir Purshotamdas in another way. The Fiscal Commission pointed out that, in so far as these duties are protective, the advantage is distinctly in favour of specific duties. The duties give greater protection when prices are low and less protection when prices are high. Now, it is just when prices are low that the danger of dumping comes in and that is the time when local industries require the greatest protection. When prices are high that protection is not so necessary. So, I think, Sir, that there is a great deal to be said for specific duties in addition to the points that have been raised by Sir Charles Innes. There is one other point in connection with them, namely, it is a great advantage to the merchant to know what duty he is going to pay. Take the piece-goods trader. He sells goods in the bazaar sometimes eight months ahead of the time when the goods will arrive. He does not pay his duty on the price he paid to the Lancashire manufacturer, but on the bazaar valuation at the time the goods arrive and he therefore has to calculate what the duty will be eight months hence and naturally he has to be on the safe side. Therefore the consumer must inevitably suffer. I merely wish, as I shall not myself be on the Select Committee, to draw the attention of that Committee to these points and ask them to read up in the report of the Indian Fiscal Commission the Chapter on specific duties.

Mr. President: I understand the Honourable Member (Maulvi Mohammad Shafee) moved for the inclusion of two names on the Select Committee, Mr. Rangaswami Aiyangar and Mr. Jamnadas Mehta.

Mr. W. S. J. Willson: May I, Sir, move an amendment?

Mr. President: The Honourable Member has already spoken.

Mr. W. S. J. Willson: But I have not yet moved my amendment.

Mr. President: The Honourable Member has exhausted his opportunity.

Amendment moved:

"That the names of Mr. Rangaswami Aiyangar and Mr. Jamnadas Mehta be added to the Committee."

The motion was adopted.

Sardar V. N. Mutalk (Gujarat and Deccan Sardars and Inamdars: Landholders): Sir, when I read this Bill, I was rather in doubt,—as perhaps the Government themselves were in doubt,—whether these two items, namely, sugar and cigarettes, should have been in the hands of the Honourable the Commerce Member or the Honourable the Finance Member. In fact, this is an attempt, Sir, to increase the duties on sugar and also perhaps on cigarettes because I find that the prices of sugar are falling and the Honourable the Finance Member is perhaps not quite sure that the Finance Bill will have a smooth sailing in this House and therefore he has

[Sardar V. N. Mutalik.]

made an attempt through the Commerce Member to justify an increase of duty for this item. So far as the specific duties on sugar are concerned, I think we had better have at this time the original arrangement, namely, *ad valorem* duties. Sir Campbell Rhodes gave us very good quotations from the Fiscal Commission's report for having specific duties at this stage. But I suppose the report of the Commission was before the Government and the Government never found it advisable to adopt the recommendations made therein up till now. Why is it now, when the prices of sugar are falling, that the good points of that report are being brought forward which had not been touched upon till now?

Sir Campbell Rhodes: Knowledge comes but wisdom lingers!

Sardar V. N. Mutalik: Only yesterday we were saying that the poor tax-payers have been over-taxed and that it is but right that they should have some additional relief. If we are now trying only to increase the burden of the tax-payer in an indirect way or by an indirect method, I think it is but right that we should stop such an attempt. I hope, Sir, that the Select Committee will consider this aspect of the question both with regard to cigarettes, as pointed out by Mr. Jinnah, and sugar.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhamadan): Sir, I beg to move that the words "with instructions to report within three weeks" be deleted from this motion. I take it, Sir, that it is the general sense of the House that the Select Committee should not be fettered in their discretion to consult commercial opinion and it may be that they may take a little more time. I, therefore, move that these words be omitted.

Mr. President: Amendment moved:

"That the words 'with instructions to report within three weeks' be omitted."

The Honourable Sir Charles Innes: Sir, as Sir Hari Singh Gour well knows, the effect of that amendment, if carried, will be just the same as if Mr. Willson had moved an amendment that the Bill be circulated. The effect of this amendment, if carried, if I remember the rules aright, would be that the Select Committee would not be allowed under the rules to report within three months. That brings me, Sir, to Mr. Willson's point, namely, that a Bill of this kind should be circulated to commercial bodies. I should like to join issue at once with Mr. Willson. This is a Bill which affects the sugar trade as well as the cigarette trade. Both these aspects of the Bill will be placed before the Select Committee and this House, and I say, that the sooner the House comes to a decision on these points the better. Let them turn down my proposals if they consider them to be wrong. But, Sir, I appeal very strongly to this House that they should not allow a Bill of this kind which affects trade materially to go wandering about the country till the September session. The trade in these two articles will be kept in a state of jump and disorganisation the whole time. It is for this reason that I hope that the House will not accept this insidious amendment moved by Sir Hari Singh Gour at the request of my friend Mr. Willson.

I now come to the remarks made by Sardar V. N. Mutalik. I think, Sir, that the Honourable Member was a little . . .

Mr. President: We are only discussing now the limitation to three weeks.

Sir Purshotamdas Thakurdas: I am inclined, Sir, to agree with the Honourable Commerce Member that nothing will be gained by postponing this matter until a reference has been made to commercial bodies. It would be for the Select Committee to examine the question from all points of view and it will be for this House to approve in principle the change which it is sought now to make.

Mr. President: The question is:

“That the words ‘with instructions to report within three weeks’ be omitted.”

The motion was negatived.

Mr. President: The question is:

“That the Bill further to amend the Indian Tariff Act, 1894, be referred to a Select Committee consisting of Diwan Bahadur M. Ramachandra Rao, Mr. K. C. Neogy, Mr. W. S. J. Willson, Sir Purshotamdas Thakurdas, Mr. N. C. Kelkar, Mr. R. K. Shanmukham Chetty, Sardar Gulab Singh, Maulvi Abul Kasem, Mr. M. C. Naidu, Mr. Rangaswami Iyenger, Mr. Jamnadas M. Mehta and the Mover, with instructions to report within three weeks and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be four.”

The motion was adopted

THE LEGISLATIVE ASSEMBLY (PRESIDENT'S SALARY)
BILL—*contd.*

Mr. L. Graham (Secretary, Legislative Department): Sir, I rise to move:

“That the Bill to determine the salary of the President of the Legislative Assembly, as amended, be passed.”

This Bill was so recently before the House that on this motion I think it unnecessary for me to make any remarks. The remarks which I shall have to make later will be on the amendment which I shall move when the motion is before the House.

Mr. President: Motion moved:

“That the Bill to determine the salary of the President of the Legislative Assembly, as amended, be passed.”

Mr. L. Graham: Honourable Members will remember that at the conclusion of the proceedings a week ago, the House accepted the amendment moved by my Honourable friend Khan Bahadur Wali Mohanmad Hussanally to add a proviso to clause 2 of the Bill. The amendment, as Honourable Members will remember, was opposed from this side of the House on the ground that it did not effect its intention and it was accepted by the House subject to the condition that it should be examined and that, if necessary, at this stage a formal amendment should be moved to correct the drafting. Sir, the amendment is now before the House and I shall move it for that purpose. I should like to say, Sir, that in preparing this

[Mr. L. Graham.]

amendment I have had the very valuable assistance, advice and criticism of Members representing the various parties in this House. The general feeling which underlay the debate on this amendment was that it should be made quite clear that the President of the Assembly in accepting office would bind himself not to accept any sort of employment involving remuneration or to practise any profession or to engage in trade. The amendment in the form in which it was put before the Assembly was in the form of a proviso to clause 2 and that step, I think, Sir, was certainly faulty. What this House is seeking to effect is not that the drawing of Rs. 4,000 a month by the President should depend upon the devotion of his time to the duties of his office, because that would involve the Accountant-General in the task of having to decide whether the President was devoting all his time to his duties or not. What the House wanted to lay down was the principle that the President should devote all his time to the duties of his office. At the same time he should not be excluded from undertaking duties of an honorary nature such as have been so efficiently undertaken by you, Sir. What they desired to effect

12 Noon. was that he should undertake nothing which might possibly raise a suspicion of impartiality, and the amendment which I have brought before the House, and which I shall now read, is intended to give that effect to the amendment proposed by my Honourable friend, that is to say to give his amendment the effect which the House really desires it to have. The amendment which I move is as follows:

"That the proviso to clause 2 be omitted, that clause 2 be re-numbered as sub-clause (1) of clause 2, and below sub-clause (1) of the said clause there be added the following sub-clause, namely:

- (2) The elected President of the Legislative Assembly shall not during his tenure of that office practise any profession or engage in any trade or undertake for remuneration any employment other than his duties as President of the Legislative Assembly."

Sir, I move that amendment.

Sir Campbell Rhodes (Bengal: European): Sir, I have no quarrel with the wording of this clause, but I should like to ask the Honourable Mover whether the phrase "undertake for remuneration any employment" includes directorships. Some people regard directorships not as employment, but as a very pleasant mode of relaxation, and I merely wish to ask the question in order that it may be on the records of the House.

Mr. L. Graham: Sir, I am only in a position to give my own view that a directorship is an employment for remuneration.

Mr. A. Rangaswami Iyengar (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural):* May I say I am not exactly inclined to take the view of the Honourable Mr. Graham took with regard to treating directorships as employment for remuneration. On the other hand, I am not prepared to agree with my friend Sir Campbell Rhodes that they are a pleasant pastime. But what is important in this case is that we should have a clear definition of what is employment for remuneration, and therefore I should like that the House should clear up this matter in the

* Not corrected by the Honourable Member.

interests of the position and the work of our future Presidents. It is not clear whether a man who engages in trade as a shareholder of a concern and takes part in the business of that concern as a shareholder would come within this clause. Therefore, so far as I am concerned, it seems to me, Sir, that the position of the President and the duties we expect of him do not necessarily conflict with his being a director of any joint stock company. It is not a case in which we expect that his duties and responsibilities might have something to do with the business which he has got to deal with as a director. He is President, and what we want from him is full-time employment in the duties of his office, and we want to guarantee his impartiality; and the sole question is whether as a shareholder or director of a joint stock company that impartiality would be affected, or whether his full-time occupation in that duty would be interfered with. Therefore, Sir, I should like the House to consider, as an amendment, the proposition to add at the end of the word "employment", the words "otherwise than as a shareholder or director of a joint stock company."

Mr. President: Amendment moved:

"After the word 'employment' to insert the words 'otherwise than as a shareholder or director of a joint stock company'."

I observe in the form the Honourable Member has handed to me, the words following his amendment have been struck out. Does he mean them to be omitted?

The question is that that amendment be made.

The Honourable Sir Alexander Muddiman (Home Member): Sir, on the question of a shareholder I think the House will find no difficulty in coming to the conclusion that the words of the draft do not prohibit the holding of shares in a joint stock company. I think that is clear. On the question of the director, I think the position is also equally clear. I suggest to the House that a man who is engaged as a director of a joint stock company is in fact, or should be, carrying on very important duties. The only possible ground to my mind for accepting an amendment on these lines would be that he was a "guinea pig director." I am quite sure Members of this House would not desire their President to be a guinea pig director. If the House takes the line, and it has taken the line, that it is necessary to restrict by statutory provision the work that may be taken up by its President, it is certainly right that a provision should be made specifying directorships as a form of employment which should not be taken up by any one while he is actually in office as President of this House. In my judgment the draft before the House does give effect to that.

Mr. M. A. Jinnah (Bombay City: Muhammadan Urban):* Sir, first of all I would be entitled to object to this amendment being moved on the ground that no proper notice has been given. Also I object to it on the merits. On the merits, who has ever heard of a shareholder being employed for remuneration otherwise than as a shareholder? On the face of it it is an absurd amendment. We are dealing with an employment; that is to say, the President is not to engage in any trade or to employ himself for a remuneration. Then you want an amendment "otherwise

* Not corrected by the Honourable Member.

[Mr. M. A. Jinnah.]

than as a shareholder." Who ever heard of a shareholder being employed? But besides the absurdity of the phraseology, I strongly object to it because, Sir, it is obvious, any elementary book on law will tell you, that if you are a shareholder, you are not employed in any company for a remuneration. Therefore really it is unnecessary.

Then with regard to the director, I certainly, on the merits, object to our President being a director of half a dozen, or a dozen companies, or even one, and I will not have it. Where are you going to draw the line? Therefore, Sir, first of all I say that proper notice ought to have been given of this amendment, and I ask you to rule it out. If you do not, then I object to it on the merits.

Pandit Motilal Nehru (Cities of the United Provinces: Non-Muhammadan Urban): Sir, I am very thankful to my friend Mr. Jinnah for the lecture he has just given on the elementary principles of law, but if he had only considered all the words of the proposed amendment of the Honourable Mr. Graham and not confined his attention merely to the words "any employment for remuneration" he would have seen that there are words there which do cover a shareholder, who even less than an elementary knowledge of law would tell him does take part in the trade in which he takes a share. I understand the intention of the Mover of the amendment to be that the words "other than as a shareholder", should come immediately after the word "trade"—i.e., "engaged in any trade other than as a shareholder"; and I do not know of any principle of law, elementary or otherwise, by which it can be said that a shareholder who holds a share in a commercial concern does not engage in trade.

Then as to the remarks of my Honourable friend about our President not accepting the office of director in any company, whether it be one or half a dozen companies, I agree, but it should be made clear. In my opinion a shareholder who has shares in a joint stock company, or for the matter of that even in a private concern, does engage in the trade of that company or concern to the extent of his share.

I would put my Honourable friend's amendment in the form of an exception to make it quite clear. Instead of putting the words "other than as a shareholder" in the clause itself I would suggest that after the amendment of my Honourable friend Mr. Graham an exception be inserted that a shareholder in a joint stock company (I would confine it to a joint stock company) shall not be deemed to engage in a trade for the purposes of this section.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I wish my Honourable friend Pandit Motilal Nehru had given timely notice of his extraordinary amendment. As for the elementary knowledge of law, I do not know, Sir: I would rather go wrong with Mr. Jinnah than be right with my friend Pandit Motilal Nehru; and as for the language, I have still to understand what my learned friend really means. First of all he supported an amendment which, with due respect to him, is utter nonsense. That amendment ran—"or undertake for remuneration any employment other than his duties as President of the Legislative Assembly otherwise than as a shareholder".

Pandit Motilal Nehru: No, that is wrong; that was not the amendment.

Sir Hari Singh Gour: That is the amendment which was first moved. Then my learned friend saw that that amendment was meaningless and now he comes forward with an amendment which, with due respect to him, is even more meaningless. He says a shareholder shall not be deemed to be engaged in trade. But who ever thought, Sir, that a shareholder anywhere is deemed to be engaged in trade? A shareholder is not a trader and that we know as a matter of fact.

Pandit Motilal Nehru: Is it a matter of fact or a matter of law—that a shareholder is not concerned in the trade in which he has a share?

Sir Hari Singh Gour: My Honourable friend has asked me a question. I will reply to him. It is both matter of fact and matter of law.

Pandit Motilal Nehru: Then it is as mixed up as my friend.

Sir Hari Singh Gour: Now, as regards the matter of directorship, I agree with the Honourable the Home Member that it would be *infra dig* for the President of the Legislative Assembly to engage as a director, may be a managing director or may be one of the board of directors, for remuneration, and I therefore submit that the exception that is proposed is not an exception which this House should accept, and I object to any amendment, either moved by my Honourable friend Pandit Motilal Nehru or by his lieutenant, on the ground that no timely notice has been given to us by either of them.

Mr. B. Venkatapatiraju (Ganjam *cum* Vizagapatam: Non-Muhammadan): Sir, I take exception to the word used by Sir Hari Singh Gour who spoke of Pandit Motilal Nehru's amendment as "nonsense", because the other day when the Honourable Sir Basil Blackett used that word you, Sir, objected that it should not be used; and I expect Sir Hari Singh Gour to withdraw that word "nonsense" which he has used with reference to the Leader of this House—Pandit Motilal Nehru.

Mr. W. S. J. Willson (Associated Chambers of Commerce: Nominated Non-official): Sir, with all these lawyers falling out as to the meaning of words, I do not quite know where I am; but I think I can suggest a very small amendment here which will make its meaning clear, and I leave it to you, Sir, to decide whether you will put it now or later. I merely want to make it evident to the House what I would propose. I would like to add after the words "or undertake for remuneration" the words "including directorship of a joint stock company". I think there can be no doubt as to what that would mean, and when I say there can be no doubt I also take it that there is no doubt that that also would include editorship of a newspaper or anything of that sort.

Mr. President: I cannot put the Honourable Member's amendment as an amendment to this amendment.

Mr. W. S. J. Willson: No, Sir. I only wish to explain to the House that they can have this as an alternative.

Mr. M. A. Jinnah: What is the amendment before the House, Sir?

Mr. President: The amendment as originally moved was to insert after the word "employment" the words "otherwise than as a shareholder or director of a joint stock company". Some doubt has been thrown

[Mr. President.]

on the precise form of the amendment by the Honourable Pandit's suggestion that that amendment should be inserted after the word "trade". Does the Mover wish to insert it after the word "trade" or after the word "employment"? If the Honourable Member is really uncertain, I shall have to uphold the objection on the ground of notice because apparently he requires some notice himself!

Colonel Sir Henry Stanyon (United Provinces: European): Sir, I recommend to the House the use of a weapon very common with lawyers—caution. We have heard this amendment discussed. Either the amendment put forward by the Honourable Mr. Graham goes too far or it does not go far enough. It is an extremely dangerous thing to add words to a considered amendment of that kind in the way that is being done by one Member after another to-day. I suggest to the House that this debate should be adjourned and that the amendment, which is a very important one, should be reconsidered and again put up for approval by the House. By all means let it be redrafted and made much fuller so that if we like we may cut out something; but it is a very dangerous thing to add words on the impulse of the moment or perhaps from one single point of view in the way which has been suggested. My proposal therefore is that this debate do stand adjourned in order that the amendment may be re-drafted in the light of what has been said about it to-day.

Mr. President: Motion moved:

"That further consideration of the motion be adjourned."

Mr. L. Graham: Sir, from the speeches that I have heard I gather that the general feeling of the House is that this amendment does meet the requirements of the House. The suggestion has been made that we should add an exception in favour of a shareholder in a joint stock company. It would not be an exception, it would be an explanation from our point of view. The House, I am quite convinced, Sir, is against the President being allowed to take up a directorship in a joint stock company, and the only question before the House is this question of the shareholder—that is, whether you should have an explanation or whether you should have an exception. I say, an explanation is unnecessary because the drafting is quite clear and I say an exception would be against the sense of the House and that no question has really arisen for adjourning the consideration of this motion.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): Sir, explanations of that nature will not satisfy because there are many varieties of explanations and if you are going to add one after the other, the explanations will be too many. And I say, Sir, to you, Mr. President, supposing you were an elected President sitting here to-day in a deliberative place and you were asked to preside over a Committee

Mr. President: Order, order. As I see that the Honourable Member is dealing with the main question, I had better dispose of the motion that the debate be now adjourned.

The question is:

"That this debate be now adjourned."

The motion was negatived.

Mr. Devaki Prasad Sinha (Chota Nagpur Division : Non-Muhammadan) : Sir, we have often heard the expression that birds of the same feather flock together. But to-day when I heard Dr. Gour taking pride in joining hands with Mr. Jinnah, I was disposed to revise my ideas about that saying. For Dr. Gour enjoys in this Assembly the unenviable position of being a bird without a flock. (Laughter.) I should have said that Dr. Gour has the unenviable position of being a bird without any feather and a bird whom perhaps no flock in this House would like to claim. Sometimes he chooses to join hands with the Swarajists, sometimes he chooses to join hands with the followers of Mr. Jinnah. We can have no quarrel with his decisions or with his indecisions.

Sir Hari Singh Gour : I rise to a point of order. I wish to ask whether my Honourable friend is in order in making personal allusions to me?

Mr. President : The Honourable Member from Chota Nagpur was only making allusion to the Honourable Member from Nagpur in his public capacity.

Mr. Devaki Prasad Sinha : We can have no quarrel with Dr. Gour either in his decisions or in his indecisions, which are too frequent. But, Sir, when Dr. Gour spoke on this amendment, I was reminded of what he said when a question regarding the position of the President was raised in your absence when the Bill for granting protection to the Tatas was taken into consideration. Dr. Gour then eloquently pleaded not only for the shareholders but for the directors taking part—not only that but taking a prominent part as the President of this Assembly. I have not been able to understand the point of view of Dr. Gour and I am sure that very few people in this House do understand him. (*Mr. K. Ahmed* : “ Excepting me.”) I apologise to my Honourable friend Mr. Kabeerud-Din Ahmed who is perhaps the only gentleman in this House who understands Dr. Gour and would claim him as one of his glorious companions. But, Sir, when we come to the main question under discussion, we find that there are two things to be considered : one is whether or not a shareholder should be allowed to take part in the deliberations of this Assembly as its President, and the other is whether or not a director of a company should be allowed to take part as the Chairman of this Assembly. With regard to the position of director, there seems to be almost a unanimity of opinion, but with regard to the shareholders there is some difficulty. The degree to which a person can be influenced in his capacity as a shareholder depends to a very large extent upon the volume of shares which he holds in a particular business. (*Mr. M. A. Jinnah* : “ And also upon the kind of man.”) Exactly. I am very glad to be corrected by Mr. Jinnah. It depends upon various factors, and for deciding all these things we shall have to leave the matter to the judgment of the House. Therefore, Sir, if we lay down any hard and fast rule at the present time, we may not be achieving the purpose which all of us have in view. I feel that an indication has been given in the amendment that has been proposed by Mr. Graham and it may be left to the discretion of the House to decide which shareholder is entitled to occupy the position of our President, and which not. These are matters which must be settled by convention to a very large extent and we cannot hope to lay down any hard and fast rule for deciding them. We are anxious that nobody who has any personal interest in the deliberations of this Assembly should be allowed to guide its deliberations in the capacity of its chief. But we also realise

[Mr. Devaki Prasad Sinha.]

that when the interest which a man has in any proposal under discussion—I mean only personal interest—is so small and insignificant that it would not influence his judgment one way or the other, we must not try to bind him. Therefore, Sir, these are matters which must be settled by convention, and a convention that would be in the interest of the country and help in the impartial deliberations of the Assembly will have to be built up in the course of time. I therefore hope that, even if this amendment as it stands in the name of Mr. Graham is carried, we shall keep in view the fact that not only a person who is a director in a joint stock company but also a person who holds very large shares that are likely to influence his opinion one way or another, should be precluded from occupying the dignified position which you occupy to-day.

Mr. K. Ahmed: As I said a few minutes ago, supposing the elected President is nominated to preside over a committee meeting, say, in Calcutta, and he is allowed an emolument of Rs. 100 per day, will he draw it over and above the Rs. 4,000 a month salary which he will get under this Bill when it is passed, less no doubt Rs. 400 income-tax? But the President will be a whole-time President and he should draw only the salary he is allowed to take under this Bill. Sir, this one hundred rupees of emolument he gets for a day's work when he occupies the chairmanship on that committee to which I was referring. Would that not be considered again another explanation for undertaking employment for remuneration adding to the explanation of my friend the Honourable Mr. Graham? It is looking at the same point of view when in the matter of interpretation and construction now-a-days we find the students in the political arena are not quite accurate in saying. Once probably my Honourable friend Mr. Devaki Prasad Sinha, if he is engaged in a case, will throw considerable light, a different light altogether and get a verdict out of the court favourable to his client and probably to-morrow if he is to go before a different court, being engaged on a different line, probably he will consider the same thing in a different light and now-a-days with pupils and students in the debating hall what will be the position? See how Sir Hari Singh Gour is treated. Even a student like the Honourable Mr. D. P. Sinha who studied his book will take advantage of the author and ignore the fact that he had passed his examination after reading that book on which a different principle was laid down. There is no use now following a different principle and become a bird of the flock to which he has made reference. Sir, if I am a follower of the principle of the author quoted I am glad to float in the same boat with Sir Hari Singh Gour. I am sorry, Sir, I will have to differ from my young friend Mr. Sinha. I think it is better to follow the author and to read him on the same principle. Then I shall be quite right in going ashore rather than be drowned with my Honourable friend Mr. Devaki Prasad Sinha.

An Honourable Member: I move that the question be now put.

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

The motion was adopted.

Mr. President: The original question was:

"That the Bill to determine the salary of the President of the Legislative Assembly, as amended, be passed."

Since which an amendment has been moved :

" That the proviso to clause 2 be omitted, that clause 2 be re-numbered as sub-clause (1) of clause 2, and below sub-clause (1) of the said clause there be added the following sub-clause, namely :

' (2) The elected President of the Legislative Assembly shall not during his tenure of that office practise any profession or engage in any trade or undertake for remuneration any employment other than his duties as President of the Legislative Assembly '."

Further amendment moved :

" That at the end of the word ' employment ' the words ' otherwise than as a shareholder or director of a joint stock company ' be added."

Mr. A. Rangaswami Iyengar: I beg to withdraw that amendment.

Mr. President It is too late.

The question is :

" That that further amendment be made."

The motion was negatived.

Mr. President: The question is :

" That the original amendment be inserted."

The motion was adopted.

Mr. President: The question is :

" That the Bill to determine the salary of the President of the Legislative Assembly, as amended, be passed."

The motion was adopted.

THE OBSCENE PUBLICATIONS BILL.

The Honourable Sir Alexander Muddiman (Home Member): I beg to move :

" That the Bill to give effect to certain articles of the International Convention for the suppression of the circulation of, and traffic in, Obscene Publications, as reported by the Select Committee, be taken into consideration."

Sir, I must detain the House for a moment to bring to their notice the previous history of this Bill. It was introduced in the Council of State as a result of a Resolution that has been passed by both Houses of our Legislature to give effect to certain articles of the International Convention for the suppression of this traffic. That Resolution was passed in this Assembly on the 8th March 1924. Briefly, the purpose of the present legislation is to extend the law dealing with obscene publications so as to fulfil our commitment to the International Convention in this respect. The Bill was introduced in the Council of State and passed by that House. It was then brought up by me in this House last September and the House decided that it should go to the Select Committee. That Select Committee has now reported and the report was laid on the table of this House some time back and has been, no doubt, considered by Honourable Members of this House. The Select Committee propose certain amendments in the Bill as referred to them. They are not of a very important character except in one respect to which I shall refer later. The Select Committee were considerably agitated as to whether the scope of the

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Exception to the existing section 292 of the Indian Penal Code should be enlarged. That section, as the House is aware, has been the law for many years, indeed since the enactment of the Penal Code.

Previously the question of amending the *Exception* has not, I think, ever been agitated either in the country or brought before the Legislature. The Select Committee after fully considering the matter decided that it was wise to retain the law as it stands in that respect at any rate. If I may say so, I think they were well advised in taking up that attitude.

Then, Sir, the Select Committee have proposed to amend clause 3 of the Bill so as to limit the power of issuing search warrants to District, Presidency and Sub-Divisional Magistrates. Sir, on that point my own personal view coincides with that of the Select Committee. This is a new power—to issue search warrants for obscene publications, and I think it will be well to confine it, at any rate at first to the more experienced class of Magistrates in the manner which has been suggested by the Select Committee.

Then, Sir, the Committee have introduced a further amendment to the Bill concerning which I must say a few words. They have proposed a new clause 4 in the Bill which, if Honourable Members will refer to the copy before them, they will see confers on an accused the right of a trial by a Court of Session. The clause runs as follows :

“ If any person under trial before a Magistrate for an offence under section 292 or section 293 of the Indian Penal Code, at any time before he is asked if he has any cause to show why he should not be convicted, claims to be tried by the Court of Session, the Magistrate shall, if he does not acquit the accused, commit the case for trial by that Court and the trial before that Court shall be by jury.”

Now, Sir, that is a very important and wide ranging clause. As Honourable Members are aware, the existing offence under section 292 of the Indian Penal Code is an offence punishable with three months' imprisonment and is triable by a first or second class magistrate. I should add, however, to put the case fairly before the House, that the Bill does contemplate an enhancement of that sentence in certain circumstances. It proposes that, where the offence is committed with reference to juvenile offenders, the maximum power of imprisonment shall be raised from three to six months. In that respect it is true that this Bill raises the maximum punishment for the offence in a particular class of case. If you look at the general scheme of our criminal courts and at the manner in which we classify offences for the purposes of trial by those courts, you will see that offences punishable with six months' imprisonment are I think never triable by a Court of Session; at any rate I cannot remember at the moment any such case. The whole system of our criminal courts is based on a classification by which the lower classes of courts try the minor offences and as the hierarchy of the courts increases so does the gravity of the offence which is brought before them. I will not go through the various powers of the various classes of magistrates because they are well known to the House; but the least of all offences are naturally triable by magistrates of the third class; those in which the punishment which can be awarded is of a more serious character are triable by magistrates of the 1st or 2nd class, and again more serious offences are triable by 1st class magistrates; while the Court of Session is reserved as a rule for the trial of offences of a very grave character. I should therefore feel very great difficulty in advising this House to accept an amendment by which

an offence where the maximum penalty is six months should be brought before a Court of Session under any circumstances. I have an amendment on the paper which, if I have the opportunity, I shall move later, which seems to me to meet the fact that the Bill in one respect at any rate enhances the punishment which may be awarded for the trial of these offences. The reason no doubt which moved the Select Committee to suggest this very special procedure was some anxiety lest judgment might be arrived at inadvisedly on the question of whether a matter is or is not "obscene". Well, Sir, if that is a difficulty, it is a difficulty which exists in the existing law, for the section, as I have already said, has been in the Penal Code since that Code was enacted. I also venture to suggest to this House that the law has been examined by the various High Courts during that long period and is fairly well settled. I think therefore there is no reason to suggest that the views of the Select Committee in dealing with this point in the Bill (which is in effect only making minor amendments in the law), require this drastic change. I will not go into the question of what is obscene and what is not obscene. It has been considered by the English courts and the Indian courts have arrived at what I might call a state of stability in that respect which appears to render it undesirable to disturb the position arrived at. I would also like to point out to the House that this Bill has been brought before the House at the request of the House itself with the object of extending the power to control obscene literature; and if you insist on inserting in a Bill a provision of that kind which must at any rate delay the determination of proceedings in certain cases and may frequently add greatly to the expense of the prosecution, you will not be carrying out what is the main purpose of the Bill which is now before you. The object of that Bill is to make the way of transgressors in respect of obscene literature harder rather than lighter, and I therefore hope, when the time comes, that the House will look very carefully at this recommendation of the Select Committee. Sir, I move that the Bill be taken into consideration.

Mr. President: The question is:

"That the Bill to give effect to certain articles of the International Convention for the suppression of the circulation of, and traffic in, Obscene Publications, as reported by the Select Committee, be taken into consideration."

The motion was adopted.

Mr. President: The question is:

"That clause 2 stand part of the Bill."

Mr. K. Rama Aiyangar (Madura and Rannad cum Tinnevely: Non-Muhammadian Rural): Sir, I beg to move:

"That in the *Exception* to clause 2 of the Bill, after the word 'any' the following words be inserted, namely:

'books, pamphlets, writing, drawing or painting kept or used *bona fide* for religious purposes or any.'

I have ventured to bring forward this amendment not without noticing the points that have now been mentioned by the Honourable Sir Alexander Muddiman or the report of the Select Committee which refers to the fact that the word "obscene" has been explained and has almost been given a standard meaning by the decisions of the courts. If in spite of that I thought that this amendment was necessary it is because of the wording of the present clause, under the circumstances in which the clause is

[Mr. K. Rama Aiyangar.]

being enacted. The old section 292 had an *Explanation* of almost the same wording that is being retained here now, but the section itself has been considerably modified. Section 292 ran as follows:

"Whoever sells or distributes, imports or brings for sale or hire or wilfully exhibits to public view any obscene book, pamphlet, paper, drawing, painting, representation or figure or attempts or offers so to do shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

And you had an *Explanation* of almost the same wording as the one in the Bill before us. But you know the present section has been considerably amplified and we have various clauses which bring almost all possible heads of violation within the purview of the Bill. Clause (a) deals with

"whoever sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation . . . "

and later on it says:

" . . . produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever."

Clause (b) refers to

"imports, exports or conveys any obscene object for any of the purposes aforesaid, . . . "

And then clause (c) runs as follows:

"takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, etc. . . . "

And clause (d) runs as follows:

"advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act . . . "

And the last clause, clause (e) runs as follows:

"offers or attempts to do any act . . . "

So that it is a very comprehensive section which we are enacting now. The International Convention has laid special stress on this point and the whole section has therefore been remodelled. In these circumstances what I submit is that we have to see that the alteration made is perfect and we ought not to rely upon previous decisions to explain any term that will have to be considered as per the present section. Of course the word "obscene" appears in section 292. The word "obscene" appears here also. No doubt the interpretation of the word "obscene" as previously given by the courts will have to be taken into consideration. But at the same time the circumstances under which these alterations were made will have also to be taken into consideration; and the effect of it will be that if the *Exception* is strictly construed, you will have only "representations sculptured, engraved, painted or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose"—so that these representations on temples or on any cars used for the conveyance of idols will alone be exempted. Of course the Select Committee's Report, it is well known, cannot be referred to in construing the section, so much so that we have often given expression to our feeling that in the case of enactments introduced for purposes of preservation of peace and order in the country, the latter, as has always happened, have been utilised for purposes which, according to many, were not the purposes for which they were contemplated that they should be used at the time the enactments were passed. Of course, if any of the Select Committees' Reports are read and explained to

courts, the objection is easily taken that the observations in Select Committees' Reports are not relevant to the construction of the Act itself: so that the effect of this will be that you make every other thing punishable and you only exempt such obscene representations as are noted in the *Exception*, and it will follow that almost every other printed matter, book or pamphlet or things of the kind will be brought within the clutches of the section. Apparently the Select Committee did not intend to do that. They refer to the fact, and this is the wording that they adopt:

"We have considered at length the desirability of extending the scope of the *Exception* to new section 292 of the Indian Penal Code so as to cover religious, artistic and scientific writings, etc., but we have come to the conclusion that it would be difficult to do so without including writings, etc., which are not *bona fide* of the nature stated."

But by just indicating their intention that way, the section cannot be improved, the effect of the section cannot be improved. They meant to exempt such, but the section itself would not convey the same effect, and the construction of the section will necessarily bring us up against the fact that only those cases in which representations of the kind which are included in the *Exception* should be exempted, and any magistrate or any judge will be completely entitled, if this Bill is passed into law, to say that after this day all other things ought not to be taken as included, and that therefore any new publication coming into existence will be punishable irrespective of the fact that the old copies of the same thing that might be available may not come under the clutches of the section. Suppose there is a printing press which actually reprints most of the things of old which may in the view of a magistrate be obscene though they relate to religious purposes. He may refuse to say that he is bound by the previous decisions because this enactment which has adopted the recommendations of the International Convention was meant not to permit the republication of such things or printing presses being maintained for such purposes, and the magistrate will be entitled to convict a person under those circumstances. Well it is one thing to say that the High Court might come in and interfere and set it aside; or it might quite well be argued the other way. But certainly when you choose to pass an enactment, under the circumstances it is only proper that you should make it clear. The intention as expressed in the Select Committee's Report cannot be part of the Act itself, and the Act must be made full and clear. It is in that view that I came forward to place this amendment before the House, as I said, after considering all the facts. I submit, Sir, that the only plea that might be raised, as has already been referred to by the Honourable the Home Member, is the fact that this *Exception* has been there all these days and nobody has sought to amend it nor has it done any mischief. I am not prepared to say that anything has been done to go into the whole matter, nor do I know that where any particular magistrate held that these religious books were obscene, anybody has made an appeal or anything of the kind except where the matter has been more or less clear that they refer to scientific or religious objects, but in my amendment I have not brought in scientific books or works of art because there may be a view taken of them ordinarily which ought not to be brought within the meaning of the word "obscene." But it is not so with religious literature. The view may be taken one way or the other, and therefore I do not want that any occasion should be given for literature of that kind being brought within the scope of this enactment, and therefore I move my amendment.

Mr. President: Amendment moved :

" In the *Exception* to clause 2 after the word ' any ' the following words be inserted, namely :

' books, pamphlets, writing, drawing or painting kept or used *bona fide* for religious purposes or any '."

The Honourable Sir Alexander Muddiman: Sir, I propose to deal with this amendment very shortly. If my Honourable friend will permit me to say so, his observations come to this. In the first place he seems to assume that the ambit of " obscenity " has been extended by the amending law. That is not so. The word " obscene " remains where it did. We make punishable more acts in connection with obscene publications but we have not in the least altered the meaning of the word " obscene." That stands as it did before. Then I would ask Honourable Members to look at section 292, and they will see that it consists of two parts,—the effective section and the *Exception*. The *Exception* provides a complete withdrawal of the matters mentioned in the *Exception* from the scope of the enacting section. " Things which fall within the *Exception* may be as obscene as you please, but they are withdrawn from the operation of the law, and that no doubt was the intention of those who moved it. But when you have got to that, you have to go further and you have to consider whether a certain publication is obscene, not being a publication within the *Exception* which is already exempted. Then you will have to apply the ordinary rules which have been laid down in that connection, and these have been accepted by the courts out here, they have been accepted by the courts in England, and they are these :

" The test of obscenity is whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands the publication may fall."

You have got the law. It must be applied according to the circumstances of the case. The House will see that you may have a medical book which it may be strictly proper to place in the hands of medical students but which it would not be proper to circulate in a girls' school. That is a point of view I should think which should strike anyone and that is the rule of law the courts have laid down. I take it that, if you were to examine the books of most religions and were to collect separately certain passages, you might produce a production which, unless collected for a very special reason, it would not be desirable to allow to be sold to the general public. That, Sir, is the position. That I desire to put to the House very clearly and it is on that ground that I have to oppose my friend's amendment. It is not that I have no sympathy with him. I have seen what he has in mind. He has himself admitted that during the long period this law has been in force nothing has happened to draw attention to any need for change in the law. There is no ground for the amendment, and as I say the object aimed at by the amendment will certainly be secured if they fall within the very reasonable rule to which I have referred. I oppose the amendment.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadian Rural): Sir, I desire to add a few words to what the Honourable the Home

1 P.M. Member has said just now. I would point out that neither the International Convention nor this Bill seeks to lay down any new standard or test of obscenity. If any book, pamphlet, writing, drawing or painting was to be held to be obscene under section 292, as it now exists, that would still be obscene under the proposed Bill. Any book or pamphlet or writing or drawing or painting which was not considered to be obscene under the existing law, will not be considered obscene under the present Bill. That

is the point which I want to make perfectly clear to this House. The main object which I think the International Convention had in mind was to put an effective check to the circulation of obscene literature. When we find that in the present section 292 certain aspects of traffic in obscene things were not penalised, when we compare the present Bill with the present section 292, it is apparent that what the present new clause 292 seeks to do is to supply those omissions which provided a loophole for people who used to carry on traffic in obscene articles. I find that under the present section 292 the following were not offences at all, that is to say, letting to hire any obscene article; circulation—without payment of course—of any obscene article was not held to be an offence; possession for purposes of circulation or sale also was not held to be an offence under the present Act. Although the present section 292 penalises import, it does not penalise export of obscene articles. Then, again, conveying for purposes of carrying on trade is not held to be an offence under the existing section, and then having financial interest in any traffic in obscene articles is, again, not held to be an offence under the existing section; and last of all advertising for the purpose of promoting such trade is not also considered to be a penal offence under section 292. It is merely with the object of remedying these defects in the present law that the new clause 292 has been framed in the way it has been. Sub-clause (a) of the new clause 292 practically reproduces most of the provisions of the present section 292; (b), (c) and (d) expand the provisions so as to meet the deficiencies which I have already mentioned. Therefore, my Honourable friend need not be under any apprehension that by merely trying to cast our net wide for the purpose of dealing with persons who may carry on traffic in various ways in obscene articles, we are at all changing the definition of the word "obscene" in any way. Not only that, I think that the implication of my Honourable friend's amendment is that there may be books, pamphlets, writings, drawings or paintings which are kept or used *bona fide* for religious purposes which may be taken to be obscene; and when a person accused under this section for possessing any such book, can prove that he kept or used such books, pamphlets, writings, drawings or painting for *bona fide* religious purposes, then only will it be a good defence. That is, I believe, my Honourable friend's intention. But I ask him to realise that he is placing these things certainly in a worse position than they are under the existing case law under this section 292, because it has been well settled by the case law under this section that no book, pamphlet, writing, drawing or painting kept or used for religious purposes shall be deemed to be obscene at all. Then again that question as to whether a book or painting or some other thing is kept or used for *bona fide* religious purposes, is a question of fact, which will have to be gone into by a court. Therefore, I do not suppose my Honourable friend's amendment will at all improve the law as it now stands. In the Select Committee we were quite alive to the difficulties, some of which my Honourable friend has mentioned. In this country we have got magistrates who are not thoroughly conversant with the religious practices of the people, and cases are conceivable in which an abuse of the law may be made on account of the ignorance on the part of the magistrate. It is because we are anxious to meet such situations that we drafted the new clause 4 of this Bill under which the accused person will have the option of claiming trial in a Court of Sessions with the help of a jury. I think the objections raised by my Honourable friend from Madras will be met if we adopt this clause, and in that view I would strongly urge the Honourable the Home Member not to press his objection to clause 4 when we come to that.

Diwan Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, after listening very carefully to the Honourable the Home Member and the Honourable Mr. Neogy in opposition to this amendment, I am not convinced that the amendment is unnecessary. The point is not whether the scope of the *Exception* arises out of the new amendment to the original section but the question is whether, having regard to the existence of an *Exception* to the section, these other things also should not be included in the *Exception*. I do not think the fact that you are including other matters inside the scope of the section is an excuse by itself for amending the *Exception*. Now that you are amending the section we meet with this difficulty and try to remedy it also. Both my Honourable friends who opposed the amendment agreed that if a book or a painting is used for a religious purpose only, then it should not be classed as obscene, that is, it should not come within the scope of the original section itself, apart from the *Exception*. The same argument would apply, if my Honourable friend's contention is accepted, to a representation, sculpture, engraving, or painting used for a religious purpose. That argument is sound; that argument must also proceed to the length of saying that there is no need for an exception at all of any kind. If a book which is used for a religious purpose should not be deemed to be obscene within the meaning of the original section, so also should a representation so used in a temple for a religious purpose not come within the definition of obscenity. But, unfortunately, the *Exception* assumes that it would come within the definition of obscenity in the original clause and the Legislature takes care to say that if it is used for any religious purpose, then it is an exception to the rule. The rule is that if it shall be obscene it will come within the definition. The *Exception* says that if it is used for any religious purposes it shall not be deemed to come within the section. So that we are agreed on the principle. If a thing is used for a religious purpose, then it should not come within the section. The *Exception* takes hold of one set of things which are used for religious purpose. We know there are other sets of things which are used for religious purposes. So that it is irrelevant to argue: "Oh, we are only extending the scope of the section to things which are not mentioned already." I do not say that the amendment which my Honourable friend Mr. Rama Aiyangar has proposed has anything to do with the amendment of the original section. But, now that we are considering the section, it is a difficulty which has been brought to our notice. Why should we not take notice of it? Why should we leave it to the sweet will of the magistrate to say whether, if a thing is used for a religious purpose, it shall not be deemed to be obscene? But what is that thing? He looks at the *Exception*. It must be a representation, sculpture, painting, etc. What about a book or picture used for a religious purpose? Therefore, it may well be argued, why these things which are not in the *Exception* are included in the section? We are agreed on the principle that both shall be exempt. The *Exception* only excepts one and does not except the other. Even if it is a book used for a religious purpose it would come within the offence. But if it is only a representation, sculpture or engraving, they alone should escape. There is no meaning in that distinction and I do think, Sir, that there is a great deal of force in the amendment moved by Mr. Rama Aiyangar. It is sought to restrict the *Exception* on a narrow ground. Mr. Rama Aiyangar wants to increase the scope of the *Exception*. It has nothing whatever to do with the original section. The scope of the *Exception*, as it stands, must be extended to include these other things which Mr. Rama Aiyangar has mentioned.

Diwan Bahadur M. Ramachandra Rao (Godavari cum Kistna: Non-Muhammadian Rural): *Sir, the only logical position that the Honourable Sir Alexander Muddiman should have taken is either to remove the *Exception* or to meet all cases which ought to be provided on the ground that the object aimed at is to exclude from this section all representations, sculptures or engravings or books, writings or drawings, or paintings used for any religious purpose.

The Honourable Sir Alexander Muddiman: I am sorry to interrupt my Honourable friend. The *Exception* deals with representations, etc., in or on any temple or on any car and not with representations in general.

Diwan Bahadur M. Ramachandra Rao: But my friend Mr. Rama Aiyangar goes a little further and says that all books, pamphlets, writings, drawings or paintings kept or used for religious purposes should fall within the *Exception*, not necessarily the representations, etc., on a temple or on a car.

Sir, my Honourable friend, Mr. Neogy, referred to clause 4 of this Bill. I think that it is this clause of the Bill which will reconcile us to this legislation. It gives the option to the person aggrieved to ask for a trial by a Court of Session, and that certainly is a very great improvement in this Bill. But that has nothing to do with this amendment. The Bill is rendered much more acceptable by reason of clause 4, but so far as this amendment is concerned it seeks to extend the cases and to take them out of section 292. The *Exception* mentions "representation sculptured, engraved, painted or otherwise represented on or in any temple or on any car." Mr. Rama Aiyangar proposes to extend this *Exception* to books, pamphlets, writings, drawings, or paintings kept or used *bona fide* for religious purposes. I, therefore, think that it has nothing to do with the general clauses, namely, clauses (a) to (e) of section 292 to which reference has been made by Mr. Neogy. I think the amendment is logical and would carry out the purpose of excepting from the operation of section 292 all objects used for religious purposes.

Sir Hari Singh Gour: Sir, I think it is admitted by the Select Committee in paragraph 2 that books and writings were to be excepted from the provision of section 292. But the Select Committee point out that these exceptions are sufficiently covered by the case law. Now, the Honourable the Home Member is well aware of the fact that there is an established rule that where there is a certain case law on a particular subject and if there is a subsequent enactment of a Statute and that Statute makes no reference to the case law, the judges are of opinion that that case is to be governed by the subsequent Statute. That, at any rate, is one conceivable view. I do not think it is a right view, but that is the view which is sometimes taken. The Honourable the Home Member admits that books and writings are intended to be excepted, but excepted by the case law. The Honourable Mover of the amendment says that either remove the *Exception* altogether and leave everything to case law so far as the *Exception* is concerned or make your *Exception* exhaustive. The enumeration that you have made is partial. It is not exhaustive, and therefore it would lead to two conceivable views. It may mean that the books and paintings were intended to be excepted altogether because the policy of the law is to be exhaustive so far as it deals with that particular

* Not corrected by the Honourable Member.

[Sir Hari Singh Gour.]

subject. As the Privy Council have more than once pointed out, it is of the essence of the Code to be exhaustive. Therefore, we must presume that this *Exception* is exhaustive as to the matters excepted from the rule. But if, on the other hand, the Select Committee were of opinion and I understand that is the view taken by the Government—that religious books and the rest should be excepted and are intended to be excepted, then, I submit, nothing is lost by enlarging this *Exception* and making it as exhaustive as possible. I quite see the difficulty of making it exhaustive and I have already referred to the Select Committee's difficulty in this matter. Therefore, in order to overcome this difficulty an interpretation clause may be added saying that obscene publications shall be deemed to be such and such things and such and such things shall not be deemed to be obscene. But I submit that we must not leave anything to the case law. If you want to codify that portion of the law which deals with obscene literature you must make it self-contained and, as far as possible, exhaustive.

Mr. Bipin Chandra Pal (Calcutta: Non-Muhammadan Urban): *The matter does not seem to me, Sir, to be as simple as it has been tried to be made out. The *Exception*, to which a reference has been made, refers only to religious purposes and to paintings, sculptures, engravings, etc., on cars or temples. Now, I was thinking, Sir, of a particular case, a practical case, that might arise almost at any moment. If in the course of the journalistic business of a newspaper, say, the one with which I have the honour to be associated, I were to print the pictures of the temple at Puri with a scientific or artistic letter-press of those pictures, shall I or shall I not come within the purview of this clause? It would not be a religious purpose at all. The question has been raised again and again as to what is the meaning of these so-called obscene illustrations on some of our most popular temples, and I understand this question has not yet been settled nor even properly discussed. You have various views and various interpretations that are possible to be put upon these so-called obscene illustrations on our temple sculptures. If I were to publish scientific articles or even artistic articles with that point, I want to know whether I shall or shall not come within the clutches of the law as it will be made if you pass this measure. In any case if you were to pass this law with the exception as given here, "for any religious purpose," (*An Honourable Member*: "Photographs.") photographs and engravings will naturally come in. We ought therefore to add artistic and even scientific purposes. If you add that, it will make the position clearer. There are other matters also. In your note to the Select Committee you refer to these things and say that there is case law referring to *bona fide* religious, artistic and scientific writings and publications and illustrations. I do not think any court of law, unless it goes off its head, is likely to include the Song of Solomon, for instance, to go to ancient Scriptures, as coming under the purview of this section.

Mr. K. Ahmed: What is the Song of Solomon?

Mr. Bipin Chandra Pal: You have forgotten what it is. I have not got my Bible here. (*Mr. K. Ahmed*: "Suggest.") Read it. Therefore, if we are to have any exceptions, these things ought to be included and my

* Not corrected by the Honourable Member.

friend Mr. Rama Aiyangar's amendment does not go far enough for me. I therefore point out the difficulty and I leave it to the House to settle it in the best way it can.

Mr. President: The original question was:

"That clause 2 stand part of the Bill."

Since which an amendment has been moved:

"That in the *Exception* to clause 2 of the Bill, after the word 'any' the following words be inserted, namely:

'books, pamphlets, writing, drawing or painting kept or used *bona fide* for religious purposes or any'."

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

The Assembly divided:

AYES—45.

Abdul Haye, Mr.
Abdul Karim, Khwaja.
Abhyankar, Mr. M. V.
Abul Kasem, Maulvi.
Acharya, Mr. M. K.
Aiyer, Sir P. S. Sivaswamy.
Alimuzzaman Chowdhry, Mr.
Belvi, Mr. D. V.
Chaman Lall, Mr.
Chanda, Mr. Kamini Kumar.
Chetty, Mr. R. K. Shanmukham.
Dutt, Mr. Amar Nath.
Gour, Sir Hari Singh.
Gulab Singh, Sardar.
Hans Raj, Lala.
Ismail Khan, Mr.
Iyengar, Mr. A. Rangaswami.
Jajodia, Baboo Runglal.
Jeelani, Haji S. A. K.
Kasturbhai Lalbhai, Mr.
Kazim Ali, Shaikh-e-Chatgam Maulvi
Muhammad.
Malaviya, Pandit Madan Mohan.
Mehta, Mr. Jamnadas M.
Misra, Pandit Harkaran Nath.

Murtuza Sahib Bahadur, Maulvi
Sayad.
Mutalik, Sardar V. N.
Naidu, Mr. M. C.
Nambiyar, Mr. K. K.
Nehru, Dr. Kishenlal.
Nehru, Pandit Motilal.
Pal, Mr. Bipin Chandra.
Purshotamdas Thakurdas, Sir.
Ramachandra Rao, Diwan Bahadur
M.
Rangachariar, Diwan Bahadur T.
Ranga Iyer, Mr. C. S.
Ray, Mr. Kumar Sankar.
Roy, Mr. Bhabendra Chandra.
Samiullah Khan, Mr. M.
Sarfaraz Hussain Khan, Khan
Bahadur.
Shafee, Maulvi Mohammad.
Shams-uz-Zoha, Khan Bahadur M.
Singh, Mr. Gaya Prasad.
Sinha, Mr. Devaki Prasad.
Venkatapattiraju, Mr. B.
Wajihuddin, Haji.

NOES—35.

Abdul Mumin, Khan Bahadur
Muhammad.
Abdul Qaiyum, Nawab Sir Sahibzada.
Ahmed, Mr. K.
Ajab Khan, Captain.
Akram Hussain, Prince A. M. M.
Ashworth, Mr. E. H.
Bhore, Mr. J. W.
Blackett, The Honourable Sir Basil.
Burdon, Mr. E.
Calvert, Mr. H.
Clarke, Sir Geoffrey.
Clow, Mr. A. G.
Cosgrave, Mr. W. A.
Crawford, Colonel J. D.
Fleming, Mr. E. G.
Graham, Mr. L.
Hira Singh, Sardar Bahadur Captain.
Hudson, Mr. W. F.
Innes, The Honourable Sir Charles

Marr, Mr. A.
McCallum, Mr. J. L.
Moir, Mr. T. E.
Muddiman, The Honourable Sir
Alexander.
Muhammad Ismail, Khan Bahadur
Saiyid.
Neogy, Mr. K. C.
Reddi, Mr. K. Venkataramana.
Rhodes, Sir Campbell.
Rushbrook-Williams, Prof. L. F.
Sastri, Diwan Bahadur C. V.
Visvanatha.
Singh, Rai Bahadur S. N.
Sinha, Kumar Ganganand.
Sykes, Mr. E. F.
Tonkinson, Mr. H.
Webb, Mr. M.
Wilson, Mr. R. A.

The motion was adopted.

Mr. President: I propose now to adjourn. As I understand it will be impossible for the Honourable the Home Member to be present this afternoon, the further consideration of this Bill will be taken up on Friday next and I understand it is the intention of the Government to put it down on that day after the Railway Budget.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 19th February, 1925.
