

Saturday, 23rd September, 1922

THE
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COUNCIL OF STATE, 1922 °



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TUESDAY, 19TH SEPTEMBER, 1922 305-349

- Member Sworn.
- Police (Incitement to Disaffection) Bill.
- Resolution *re* : Forest Research.
- Resolution *re* : Milch and Agricultural Cattle.
- Resolution *re* : Limitation on Hours of Work in Inland Navigation.
- Resolution *re* : Trimmers and Stokers and Children employed at Sea.
- Resolution *re* : Weekly Rest day in Commercial Establishments.
- Government Business.

WEDNESDAY, 20TH SEPTEMBER, 1922 351-400

- Questions and Answers.
- Statement laid on the Table.
- Election of Members of Delhi University Court.
- Session in November.
- Resolution *re* : Political Prisoners.
- Amendment of Standing Orders.
- Election to Panels of Standing Committees.
- Message from Legislative Assembly.
- Government Business.

SATURDAY, 23RD SEPTEMBER, 1922 401-433

- Questions and Answers.
- Messages from Legislative Assembly regarding Indian Extradition (Amendment) Bill and Indian Museum (Amendment) Bill.
- Indian Transfer of Ships Restriction (Repealing) Bill.
- Panels of Standing Advisory Committees—
 - Home, Commerce and Industries, Revenue and Agriculture and Education and Health Departments.
- Police (Incitement to Disaffection) Bill.
- Negotiable Instruments (Amendment) Bill.
- Indian Mines Bill.
- Nomination of Members of Joint Committee.
- Court-fees (Amendment) Bill.
- Parsi Marriage and Divorce (Amendment) Bill.
- Official Trustees and Administrator General's Acts (Amendment) Bill.
- Message from Legislative Assembly regarding Joint Committee on Cotton Transport Bill.

COUNCIL OF STATE.

Saturday, the 23rd September, 1922.

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

QUESTIONS AND ANSWERS.

GOVERNMENT OF INDIA LIST.

153. The HONOURABLE LALA SUKHBIR SINHA : Will Government be pleased to order that a copy of " Government of India List " may be supplied to all members of the Legislature ?

The HONOURABLE MR. S. P. O'DONNELL : Twelve copies of the List are kept in the Members' Library. Any Honourable Member who asks to be supplied with a copy will receive one.

LADY CLERKS IN POST OFFICES.

154. The HONOURABLE MR. V. G. KALE : (a) Will Government be pleased to state the specific classes of business in the Post Offices for which lady clerks are supposed to be specially useful ?

(b) Will Government be pleased to state if the maximum percentage limit, prescribed for the employment of lady clerks, is maintained in the case of lady clerks in the Bombay General Post Office ?

The HONOURABLE MR. B. N. SARMA : (a) Lady clerks are specially useful as typists, stenographers and for preparing statements of all kinds ; also in the Inquiry Branch. Their attendance is usually excellent and their work quick and accurate.

(b) There is no maximum limit prescribed. The Director General of Posts and Telegraphs, however, has recently decided that in view of the fact that women are more expensive than men, the number of lady clerks should not ordinarily exceed one per cent. of the total clerical staff. In the Bombay General Post Office and its town sub-offices, the proportion is higher (approximately 4 per cent.) owing to the number employed in the Inquiry Branch, which is very large and where, as already stated, lady clerks are particularly useful.

BOMBAY POSTAL CLERICAL ESTABLISHMENT.

155. The HONOURABLE MR. V. G. KALE : (a) Will Government be pleased to state if the maximum of the time scale of pay and the rate of annual increment sanctioned for the postal clerical establishment in Bombay city are on a par with the rates of pay sanctioned for the Mechanical Branches of the clerical establishment in Local Government offices in Bombay city ?

(b) If the answer to (a) above be in the negative, will Government be pleased to state if the pay of the postal establishment in Bombay city will be brought to the level of the Local Government offices ?

The HONOURABLE MR. B. N. SARMA : (a) The time-scale for B. cadre clerks in the Local Government Secretariat in Bombay is understood to be Rs. 60—4—100—3—160. The scale of pay for the postal clerical establishment in Bombay City is Rs. 50—50—60—3—105—5—140, and for the Foreign Mail Division, Railway Mail Service and the Dead Letter Office, it is Rs. 50—50—55—3—100—4—120—5—130.

(b) Government do not propose to level up the pay of the postal establishment in Bombay City to that of the Local Government offices merely in order to make them level, for it cannot be said for certain whether in all cases the work done by the B. cadre clerks of the Secretariat and by the postal clerical establishment in Bombay is exactly comparable. The Director General, however, is considering whether there is any justification for further improving the sanctioned scale of pay for Bombay City in view of the fact that there are a considerable number of Selection Grade appointments above the time-scale to which the efficient men of the clerical personnel can aspire.

SCALE OF PAY FOR DEAD LETTER OFFICE, BOMBAY.

156. The HONOURABLE MR. V. G. KALE : Has the attention of Government been drawn to the discontent which prevails regarding the scale of pay sanctioned for the Dead Letter Office, Bombay ?

The HONOURABLE MR. B. N. SARMA : Yes. The scale was fixed in accordance with the recommendations of the Postal Inquiry Committee of 1920, and the question of its suitability was subsequently examined, but sufficient justification was not found for making any change. The matter is, however, being examined by the Director General again.

RAILWAY MAIL SORTING OFFICES.

157. The HONOURABLE MR. V. G. KALE : (a) Has the attention of Government been drawn to the conditions of work at stationary Railway Mail Sorting Offices, where the staff is required to work throughout the year without respite on Sundays and Post Office holidays ?

(b) Do Government intend to consider the question of improving the conditions of service ?

The HONOURABLE MR. B. N. SARMA : (a) and (b). The matter has received attention from the Director General of Posts and Telegraphs who has already issued orders to reduce the working hours of sorters in stationary Railway Mail Sorting Offices.

TIME-SCALE OF PAY FOR POSTMASTERS-GENERAL.

158. The HONOURABLE MAHARAJA SHOSHI KANTA ACHARYYA CHAUDHURI : (a) Is it a fact that the Postal Officers' Association addressed a letter to the Government of India on the 9th September 1920, asking that an inadequate time-scale of pay should not be substituted for the existing graded scale for all Postmasters-General ?

(b) Is it a fact that the Government of India replied to the said letter on 16th October 1920, stating that " the prayer for the retention of a

graded scale of pay has been rejected because on examination it has been found that, when the new rules with regard to acting allowances in officiating posts are introduced, a time-scale of pay will be of greater advantage to Postmasters-General ?

The HONOURABLE MR. B. N. SARMA : (a) The Postal Officers' Association addressed a letter to the Government of India on the 9th September 1920, asking among other things that a time-scale of pay for Postmasters-General should not be introduced, but that the grades of these officers should be altered as follows :

	Rs.		Rs.
1st grade from	2,500	to	3,000
2nd grade from	2,250	to	2,750
3rd grade from	2,000	to	2,500
4th grade from	1,750	to	2,250

(b) The answer is in the affirmative.

PAY OF POSTMASTERS-GENERAL.

153. The HONOURABLE MAHARAJA SHOSHI KANTA ACHARYYA CHAUDHURI : (a) Is the Government aware that the separate revised scales of pay for Civilian and non-Civilian Postmasters-General, sanctioned in Commerce Department Notification No. 853-S., of 30th May 1921, was entirely to the advantage of the former class of officers, who thereby received an extra duty allowance of Rs. 250 a month in addition to the time-scale pay and overseas allowance admissible to them in the regular line ?

(b) Has the attention of Government been drawn in this connection to the recommendation in paragraph 2, Annexure XVII, of the Report of the Royal Commission on Public Services in India that members of the Indian Civil Service holding posts as Postmasters-General " should have no special privilege in the matter of salary or status to differentiate them in any way from their colleagues of the same rank " ? If so, what are the reasons for departing from the said recommendation ?

The HONOURABLE MR. B. N. SARMA : (a) If the Honourable Member means that the revision was not to the advantage of the departmental Postmasters-General, the answer is in the negative.

(b) The attention of Government has been drawn to the recommendation referred to. The scale of pay for I.C.S. Postmasters-General was fixed at a rate which was considered to be the lowest on which suitable officers could be induced to relinquish their prospects in the ordinary line and to elect for service in the Post Office. That for non-civilian Postmasters-General was fixed with reference to the length of service, which they normally put in before rising to be Postmaster-General and to the scale of pay sanctioned for the corresponding officers of administrative rank on the Telegraph Engineering side.

PAY OF I. C. S. AND NON-I. C. S. POSTMASTERS-GENERAL.

160. The HONOURABLE MAHARAJA SHOSHI KANTA ACHARYYA CHAUDHURI : Is Government aware that, whereas the members of the Indian Civil Service holding appointments as Postmasters-General received windfalls in the shape of large sums as ' back pay,' in addition to immediate increases in their emoluments in consequence of the revised scale of pay,

being introduced with retrospective effect from 1st December 1919, the majority of departmental officers of the Post Office holding the same posts received retrenchment orders from their Accountant-General asking them to refund large sums alleged to have been overdrawn from that date ?

The HONOURABLE MR. B. N. SARMA : After the 30th May 1921, the date of issue of orders introducing revised scales of pay for Postmasters-General with retrospective effect, namely, from the 1st December 1919, the Accountant-General, Posts and Telegraphs, made an adjustment in respect of salary drawn under the former graded system of pay and that admissible under the revised scales. It was found by him after audit that certain amounts were short drawn by I.C.S. Postmasters-General and that, of the four departmental officers of the Post Office then permanently in the cadre of Postmasters-General, two received payment of certain amounts in excess. These two officers have since retired from the service and Government propose to waive recovery of the amounts overdrawn by them. Of the four departmental officers of the Post Office now holding permanent appointments as Postmaster-General, three received an increase of pay on coming on to the revised scale, while the remaining officer who has been paid an amount in excess in his officiating appointment under the former system, will not actually be required to refund that amount, as his total service, both officiating and permanent, will ultimately count for increments in the revised scale.

ALLOWANCES TO OFFICERS OF THE POST OFFICE.

161. The HONOURABLE MAHARAJA SHOSHI KANTA ACHARYYA CHAUDHURI : Is it a fact that the assurance given by Government in its letter, dated 16th October 1920, referred to above, has not been fulfilled up to date, in spite of repeated representations from the Postal Officers' Association, and that officers of the Post Office proper have been excluded from the benefits of the new rules with regard to acting allowances in officiating posts, with the result that such allowances due to them have been curtailed and increments withheld for the past two years in several cases ?

The HONOURABLE MR. B. N. SARMA : The new acting allowance rules are applicable to services organised on a time-scale basis and could not therefore be applied at once to the Postal Service which is not so organised throughout. Certain proposals have, however, already been submitted to the Secretary of State for India in this connection which, if approved, will admit of the new rules being applied to the Post Office with effect from the 1st July 1922.

The question of increments, which, it may be mentioned, has nothing to do with the new acting allowance rules, has also been under the consideration of the Government of India and proposals are under submission to the Secretary of State under which officiating service rendered by Postmasters-General as such will be permitted to count for increments in their time-scale.

PAY AND PROSPECTS OF OFFICERS OF POST OFFICE.

162. The HONOURABLE MAHARAJA SHOSHI KANTA ACHARYYA CHAUDHURI : Is Government aware that there is great discontent

among senior officers of the Indian Post Office, who have received no satisfactory reply to numerous memorials submitted on the question of their pay and prospects ?

The HONOURABLE MR. B. N. SARMA : The Government of India are not aware of the great discontent alleged. As stated in reply to the previous question asked by the Honourable Member on the subject, steps have already been taken to meet the legitimate grievances relating to acting allowances and increments in question.

MESSAGES FROM LEGISLATIVE ASSEMBLY RE INDIAN EXTRADITION (AMENDMENT) BILL AND INDIAN MUSEUM (AMENDMENT) BILL.

The SECRETARY OF THE COUNCIL : Sir, a message has been received from the Legislative Assembly.

The HONOURABLE THE PRESIDENT : Let it be read.

The SECRETARY OF THE COUNCIL : *Sir, I am directed to inform you that the Legislative Assembly have at their meeting of the 20th September, 1922, agreed without amendments to the following Bills which were passed by the Council of State on the 15th September, 1922 :—*

1. *A Bill further to amend the Indian Extradition Act, 1903.*
2. *A Bill further to amend the Indian Museum Act, 1910.*

INDIAN TRANSFER OF SHIPS RESTRICTION (REPEALING) BILL.

The SECRETARY OF THE COUNCIL : Sir, in accordance with Rule 25 of the Indian Legislative Rules, I lay on the table a copy of the Bill to remove the restrictions imposed on the transfer of ships registered in British India, which was passed in the Legislative Assembly on the 20th September, 1922.

PANELS OF STANDING ADVISORY COMMITTEES—HOME, COMMERCE AND INDUSTRY, REVENUE AND AGRICULTURE, EDUCATION AND HEALTH DEPARTMENTS.

The HONOURABLE THE PRESIDENT : I have to announce to the Council the results of the elections held on Wednesday the 20th. They are as follows :—

To be Members of the panel from which the Members of the Standing Committee to advise on subjects in the Home Department will be nominated—

- The Honourable Sir Zulfiqar Ali Khan.
- The Honourable Sir Maneckji B. Dadabhoj.
- The Honourable Sir Benode Chandra Mitter.
- The Honourable Mr. Phiroze C. Sethna.

[The Honourable the President.]

To be Members of the panel from which the Members of the Standing Committee to advise on subjects in the Departments of Commerce and Industries will be nominated—

The Honourable Sir Maneckji B. Dadabhoj.
 The Honourable Khan Bahadur Sir Ahmedthamby Maricair.
 The Honourable Rai Bahadur Lala Ram Saran Das.
 The Honourable Mr. Vaman Govind Kale.
 The Honourable Sir Alexander Murray.
 The Honourable Mr. Phiroze C. Sethna.

To be Members of the panel from which the Members of the Standing Committee to advise on subjects in the Department of Revenue and Agriculture will be nominated—

The Honourable Colonel Sir Umar Hayat Khan.
 The Honourable Lala Sukhbir Sinha.
 The Honourable Sardar Jogendra Singh.
 The Honourable Major Mohamed Akbar Khan.
 The Honourable Maharaja Bahadur Keshva Prasad Singh of Dumraon.
 The Honourable Maharaja Shoshi Kanta Acharyya Chaudhuri of Muktagacha.

To be Members of the panel from which the Members of the Standing Committee to advise on subjects in the Department of Education and Health will be nominated—

The Honourable Mr. Vaman Govind Kale.
 The Honourable Mr. Lalubhai Samaldas.
 The Honourable Sir Benode Chandra Mitter.
 The Honourable Sir Zulfiqar Ali Khan.

POLICE (INCITEMENT TO DISAFFECTION) BILL.

The HONOURABLE MR. S. P. O'DONNELL (Home Secretary) : Sir, I beg to inquire whether you would be willing that the Bill to provide a penalty for spreading disaffection among the police and for kindred offences, as passed by the Legislative Assembly, should be taken next. My reason for asking if you are willing to adopt this course is that it is very desirable that a message from this Council explaining what amendments have been made should be communicated to-day to the Legislative Assembly. I have ascertained from the Honourable Mr. Lindsay that he has no objection to that course being adopted.

The HONOURABLE THE PRESIDENT : I take it the House has no objection either.

The HONOURABLE MR. S. P. O'DONNELL : Sir, I beg to move that the Bill to provide a penalty for spreading disaffection among the police and for kindred offences, as passed by the Legislative Assembly, be taken into consideration.

I shall have occasion, Sir, later to move certain amendments. At present I am concerned only with the principle of the Bill. I do not think it is necessary that I should take up the time of the Council with lengthy arguments in support of that principle. During the course of the debate on Wednesday last on the subject of political prisoners one Honourable Member recommended that persons guilty of attempting to seduce the police from their allegiance should not receive differential treatment, and that recommendation seemed to meet with the general assent of the Council. (Hear, hear). I take it, therefore, for granted that this Council regards attempts to promote disaffection amongst the police as a very serious matter, and is satisfied that the law should contain adequate provisions for the penalisation of such attempts. Now, Sir, is it necessary for me to argue at length that such attempts have been made: It is indeed notorious that they have been made. It may be that at present they are not being made on the scale on which they were being made some time ago, and it is quite true that, despite these attempts—and in conditions that not long ago were very trying—the loyalty of the vast majority of the police has remained unimpaired, and for that I think we all owe them a debt of gratitude. (Hear, hear). The fact remains, however, that attempts have been made, not long ago they were being made on a serious scale, and in some few instances they have been made successfully, even now they have not altogether ceased, and there is no guarantee that they will not be renewed on some future occasion with increased vigour. In these circumstances it is essential that an adequate and an effective remedy should be available. At present that is not the case. It is true that section 124-A can be applied, but there are objections to placing sole reliance on that section. I shall not go into these objections at present because I anticipate there will be an opportunity of doing so later in connection with an amendment which may come before the Council. Again, section 29 of the Police Act, read with the abatement sections of the Indian Penal Code, is entirely inefficacious. Section 29 of the Police Act was never intended for that purpose, and any one who examines that section and considers what the difficulties are of proving a conviction under that section will realise that that remedy is entirely ineffective. It is important, therefore, that legislation should be passed on the lines of this Bill. I may add that this Bill is based on an Act passed in England in 1919 for the same purpose. It differs from the English Act in two respects. In the first place, it embodies certain safeguards not to be found in the English Act; and, in the second place, the penalty proposed is much less severe. Under the English Act the penalty may extend to two years' imprisonment. Under this Bill as it now stands the penalty cannot exceed six months' imprisonment.

The HONOURABLE SAIYID RAZA ALI (United Provinces, East : Muhammadan): Sir, I wish to avail myself of this opportunity by saying a few words on the general principles underlying the Bill. Sir, when fresh legislation is undertaken, it is the duty of Government to convince the Legislature that any necessity has arisen for that legislation being placed on the Statute-book. I was very anxious to know from the Honourable Mr. O'Donnell as to what was the occasion which has induced the Government to propose this Bill. The solitary argument, or the almost solitary argument, that he advanced, so far as I was able to follow him, was that in the year 1919 a similar Act had been passed in England. He

[Saiyid Raza Ali.]

also remarked in this connection that there was agitation in the country, and with a view to remove all the undesirable forms of that agitation it was necessary to pass this motion into law.

New, Sir, as one who has tried to go somewhat carefully into the Bill, it seems to me that the Bill provides two remedies for enabling the Executive to deal with offences contemplated by it. The first is to punish those who cause disaffection towards His Majesty or the Government among the police force, and the second is intended to punish those who bring about or induce the police to withdraw their services from the State.

Now, as the Home Secretary has himself admitted, the general law of the country is quite sufficient to meet both these cases. The Honourable Member has himself admitted that, so far as sedition goes, we have section 204-A, and so far as the spreading of pernicious doctrines among the police is concerned, we have section 29 of the Police Act read with certain sections of the Indian Penal Code. Now, Sir, the Honourable Member says that the general law is insufficient to enable the Government to cope with this agitation. It is here, Sir, that I join issue with the Honourable Mr. O'Donnell. I put it to you, Sir, and I put it to the Council and to the Honourable the Home Secretary, is he really justified, are the Government justified, in asking us to pass this law.

Then the Government has not even attempted to make the statement that so many prosecutions were undertaken by them of persons who were trying to spread these pernicious doctrines among the police, either to ferment disaffection or in order to induce the police to withdraw their services from the State. Sir, I speak with great respect, but I do feel it my duty to say, and say emphatically, that if the Government wants to pass this Bill it is the duty of Government to convince us that the present law has proved ineffective, and that could not be done unless the Government laid before us facts and figures showing that out of 100 cases undertaken against this sort of criminals, the Government could not secure conviction in more than 15, because the present general law of the country is inadequate. If that were the case, I for one, Sir, I assure this Council, would have been quite prepared to support this measure, very stringent in its terms though it is. But Sir, I entirely fail to see how the Government hope successfully to induce any Legislature, without giving it facts and figures and without bringing forward any arguments, simply by enunciating the proposition that the general law is insufficient and saying "Therefore, gentlemen, you have got to pass this Bill." I submit, Sir, that that is not a position that any Government can take up. It is a wholly untenable position. No facts have been given by the Honourable the Home Secretary. Now if I were one of those who take every step made by the opposite benches for gospel truth, as I believe there are some of us here unfortunately who are inclined to take that view—then I for one would be prepared to support this measure. But as it is, in the absence of any information from Government, I, Sir, do not see that the Government are justified in asking us to pass a Bill of this character. If the Honourable Mr. O'Donnell is prepared to give us some information which would go to show that the present general law of the country is insufficient and inadequate, then I can say that I would be prepared to give my careful and best consideration to the problems of the Bill. But, Sir, in the absence

of any such information, I submit, to put it at the very lowest, no case has been made out by Government for inducing us to take this Bill into consideration. As a lawyer, I may put it like this, that the Government are the plaintiff in the case and the onus of proof is on the Government, which they have not yet properly discharged.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : General) : Sir, I am not only disappointed with the speech of the Honourable Saiyid Raza Ali, but I must say I am extremely surprised to hear many of his remarks, especially when he stated that the Government had not made out the necessity for this legislation. I believe the Honourable Member who has just spoken has been in constant touch with the state of affairs in the country during the last two years—I mean the state of affairs which has not only brought about a serious volume of trouble in the country but also dislocation of all trade and business and among other things, a violation of peace. I should have thought that, considering all this, my Honourable friend, Saiyid Raza Ali, should have given his support to this Bill.

THE HONOURABLE SAIYID RAZA ALI : Peace comes afterwards : first trade.

THE HONOURABLE SIR MANECKJI DADABHOY : We are all aware, and I am certain my Honourable friend, is more than aware of the activities of the non-co-operators. My Honourable friend wishes to know what has made it necessary to introduce this legislation. He knows that in his own part of the country there have been cases where mischievous people have attempted to seduce the loyalty of the police and prevented them from discharging their duty. And what after all is this legislation aiming at ? Is there anything very serious, anything very objectionable and repugnant in this little piece of legislation ? Is there anything in this legislation for any honest man to dread ? All that this legislation seeks is to prevent mischievous people from interfering with the police discharging their honest duty, interfering with their ordinary work, inducing them by false promises and hopes, by misrepresentations, from withdrawing from their public duty at most critical times. Do you call that an unnecessary or a mischievous piece of legislation ? Does my Honourable friend as a lawyer need to be told that for the maintenance of law and order one thing is very essential, and that is a reliable police. (Hear, hear.) And does he want to destroy the fabric, the foundation on which all peace and tranquillity rests—the proper administration of all police work. I personally think that this Bill is too weak. I personally think that the Bill has been sent up to this Council wholly emasculated by the Legislative Assembly. If people do not want the maintenance of order, law and peace, let them have the courage to stand up in this Council and boldly say that they shall have no legislation of this kind ; that they do not wish to strengthen the hands of Government with legislation of this kind to maintain peace and order in the country. Let them say that they want chaos, they want anarchy, they want dislocation of all trade and business.

I am extremely sorry that the Legislative Assembly did not handle this Bill in the fair and open manner in which it ought to have been

[Sir Maneckji Dadabhoy.]

handled. The object of the Bill is to enforce discipline in the ranks of police officers and men and not to allow mischievous people to tamper with their loyalty and their daily duties. I think that a man who in time of trouble, in time of riot, seduces a police officer and prevents him from discharging his duty is guilty of a very heinous crime and that six months' imprisonment is too little for an offence of that nature. I am extremely grieved therefore to find that the penalty of two years which was a most reasonable punishment, has been in its discretion, modified by the Assembly, thus making the provision of law almost nugatory and of no value. No penal law is of any use unless it has a deterrent effect, and an offence of this kind ought to be adequately and properly punished.

My friend, the Honourable Saiyid Raza Ali, has stated that the onus of proof is on Government to show that this legislation is necessary, and that Mr. O'Donnell has not mentioned anything in support of this Bill. He said that for this reason the plaintiff's suit ought to be non-suited. I presume my Honourable friend has followed the debate in the other House. When a Bill comes from another House to this Chamber, after being passed there, it is not necessary for any Member of Government to prove at length that such a Bill is necessary—and I may say here that I do not hold any brief for Government. But as my Honourable friend has made this remark, I may remind him that it is not necessary that any reasons at length should be given. I am quite certain that he has read the speech of the Honourable Sir William Vincent, and if he is not convinced after that, then I say he refuses to be convinced. Then, as regards the statement that the present law is sufficient, my Honourable friend as a lawyer of long standing ought to know that it has been found to be wholly insufficient. You cannot put the machinery of the law under section 124-A in operation in small cases, such as breaches of discipline or where a small police officer has been seduced from doing his ordinary duty; and I am doubtful, extremely doubtful, myself—and I think my Honourable friend as a lawyer will agree with me—that a conviction could be obtained under section 124-A for seducing a police officer from doing his duty in time of trouble or difficulty. I say definitely—and my Honourable friend knows very well—that the law is not sufficient, and that this sort of special legislation is expedient and necessary. The Local Governments have been shouting for the last two years for legislation of this nature to protect honest people in the performance of their duty and to prevent a breach of the peace in various localities. I am only surprised that two long years have been allowed to elapse since this matter was taken up. This Bill was introduced in March last and this incomprehensible delay has prevented the proper administration of the law at many anxious times. You are aware, of course, as the Honourable Mr. O'Donnell has pointed out, that this legislation now may not be necessary to that very degree and extent that it was two years ago, when the non-co-operator was in the zenith of his glory and probably in the zenith of his mischievous activity, but I believe that if an Act of this sort exists on our Statute-book it will be of immense service and will prevent a repetition or recurrence of the mischief.

The very existence of this law will deter mischievous people from intervening and seducing honest police officers from discharging their duties. It cannot, therefore, be said that the Bill has been hastily brought in and passed or that the provisions of the existing law are sufficient to meet the exigencies of the case created by a new state of affairs. I think this is a most eminently desirable piece of legislation, and I hope this Council will with one voice accept this legislation. There is only one other matter which I should like to refer to in connection with this Bill. I have heard and I have read in a responsible paper that this is a repressive Act. The word "repressive" has been given such wide significance now-a-days that it is very difficult to answer such allegations. This is by no means a repressive Act. This Act merely enforces discipline. It only seeks to keep down irrepressive and dangerous people who could not be kept down by the provisions of the existing law without some delay and difficulty. I therefore see no harm in this legislation. Though the Bill has been seriously emasculated by the Lower House, I think there is no alternative now for us but to accept the legislation in the form in which it has come before us.

The HONOURABLE SAIYID RAZA ALI : You could have moved amendments.

The HONOURABLE SIR MANECKJI DADABHOY : I know I could have moved amendments, and thus delay the passing of this Bill, to see which result you are so anxious.

The HONOURABLE SAIYID RAZA ALI : Not necessarily :

The HONOURABLE SIR MANECKJI DADABHOY : No. We shall accept for the present this Bill and see how it works in practice, and if it is necessary I shall move amendments at the next Session. It can be easily done then. But at this Session we shall see that this Bill is passed. I hope, therefore, that Honourable Members will support this Bill. My Honourable friend, Saiyid Raza Ali said it is the duty of Government to convince the Council. I think it is the duty of every man to convince himself, and if a man has no prejudices and is open to conviction and reason, he will see that no greater measure of safety for the peace of the country could have been devised than the one which we are now discussing. For these reasons, Sir, I give my emphatic support to this Bill as a most eminently necessary and desirable piece of legislation.

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN (West Punjab : Muhammadan) : Sir, I think this Bill is not good enough to be supported, but it is said that half a loaf is better than none, and it is only for this purpose, and this purpose alone, that we have to support it.

The HONOURABLE SAIYID RAZA ALI : But it is the offenders who get the sentence.

The HONOURABLE THE PRESIDENT : The Honourable Member is adopting the practice of interrupting Honourable Members when they are speaking. I would desire him to refrain from that practice.

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN : Sir, each question has got two sides, and unfortunately if we try to put the other

[Colonel Sir Umar Hayat Khan.]

side of the case we are interrupted. It might happen perhaps that only one person will remain here and all the rest of the Council would have to go, because they may not have the same idea as the Honourable Member. But of course one has got a duty to do, and though one is blackmailed by Extremists, or those who help them, or the Extreme press, one has to say what one feels. In other countries, the police is a sort of army. The police is meant for dealing with internal trouble, and directly the police is not capable of doing the work, it at once resorts to calling out the army to help them. Under the law anyone who seduces a soldier is punished. I think men belonging to the police force are also soldiers, and I do not know why in the very beginning it was not enacted that all those who seduce the police will also be punished just as those who seduce the soldiers. The police also for this purpose come under the category of the army. This law has been ignored. Even in England, they have come to the decision that it is necessary that there should be such a law as this. Then, again, Sir, we have got very able Members in the Lower House, and if the Bill is passed in the other House and comes to us, at any rate it must be thought that there is some need for it. Of course many things have not been brought out either in the speeches there or here ; but all of us who are in the mofussil know how things are going on. It is better if we just say certain things for the information of the House. A policeman is an inhabitant of the country. He was before enlistment in the country, and after taking service he continues to be a resident of the country again, and when a servant he is not absolutely aloof from the public, but has got relations, social ties and all sorts of such things. If this Bill was not passed there would have been a hundred and odd things that could be brought against a policeman which he could not possibly resist. You must have heard of the case that occurred in Delhi, where a man who was on the Government side and who was trying to do justice was refused burial. A police constable is a poor man, and one who is not educated, and if he were told that when he died he was not going to be buried, it would be a very bad thing for him to hear.

Again, Sir, if a policeman has a son whom he wants to get married, and has been giving all his hard-saved earnings into a family for that purpose and is told afterwards that no one will give his daughter to him in marriage, he would lose perhaps Rs. 1,000 or more by such an act, and there is no law to come to his help. In the same way his water and hookah can be stopped ; no sweeper will come and work for him, and no bhistic, and he is accordingly put into such a position that it becomes intolerable.

Then, Sir, imagine if a constable at the nick of time were not to do his duty, what would happen ? We had a case recently at Multan. If the poor fellow does not do his duty, we are at him, and if he does, even then we are against him. I don't know where the poor fellow is to go. If any other law could have served the same purpose, as is said by my Honourable friend, I think the whole of the Government and its officers, who are very handsomely paid, and the Legislative people as well, would have found it out. They would not have resorted to this Bill.

• Then, again, we all know that a police constable is not very handsomely paid, and I think it is common knowledge that the very best English officers, who were in the Police Service, are leaving the service, because their pay was not sufficient. Directly they are removed, the discipline will fall to a very low standard, and then they will be perhaps governed by their own men. But as it is said, "familiarity breeds contempt." I don't think by the removal of these officers, the discipline will be improved. With the removal of these officers, together with the low pay that constables receive, and the fact of the agitators getting at these poor people, it will be too much for a poor constable to offer resistance.

Whenever a useful law is introduced, there is always a cry that it is not wanted. If the law is not amended now and then, one would be obliged to say either end it or mend it. I would not mind if the law was altogether abolished, because very soon it will be seen, and perhaps by the very people who do not want it to be strengthened, that these people themselves will come to grief. There will be hundreds of rascals getting at them, and if they have any property it will be taken away. If the police were not in the country, and a man was beaten, or his belongings stolen, what is he going to do? He would have to go to the rascals and beg them to restore his property for which he will get a slap and be asked to go away. If this Bill is passed now, it will be meant for such rascals only who want to paralyse the police, and not for those who are frightened of it.

I have spoken on the Bill only in a general way, and though not with a full heart owing to its being a weak one, all the same I support it.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : Sir, from what I have seen and heard, I think that this Bill is a necessity. Spreading disaffection among the police or the army should be treated as a very serious offence. Various cogent reasons have already been given in support of the introduction of this Bill, and so I also support the Bill.

The HONOURABLE MR. V. G. KALE (Bombay : Non-Muhammadan) : Sir, I have listened with very great interest to what has been said on both sides with regard to this question ; but I regret to find that no answer has been given to one important question which has been put by the Honourable Mr. Raza Ali, namely, the necessity of this particular Bill at this particular moment. The Honourable Sir Umar Hayat Khan made a number of very interesting, and some of them very jocular, remarks, but he fought shy of the one important question to which I have made reference, namely, what is the necessity of this Bill? Cannot the object sought to be attained by this Bill be attained by the ordinary law as it exists? Sir Maneckji Dadabhai made great efforts to establish the necessity of this Bill. He out-governmented Government and went further and blamed Government for having brought forward a very weak Bill. But he has also evaded that important question, namely, whether the present law is ineffective for the attainment of the object which is sought to be attained by the Bill before the House. So far as I see, spreading disaffection is covered by the existing law, and I do not see why that law should not be put into operation in this instance. We have not

[Mr. V. G. Kale.]

been convinced as to the reasons why that law should be ineffective or not prove useful.

Under these circumstances, I think that some further light ought to have been thrown on the whole question before we are called upon to give our support to this Bill. With these remarks, Sir I would ask the Honourable the Home Secretary to tell us exactly how the difficulty to which I have made reference can be got over.

The HONOURABLE Mr. S. P. O'DONNELL: The Honourable Mr. Raza Ali said that the only argument I had adduced in support of this Bill was the fact that similar legislation had been passed in England. I am at a loss to understand how anybody could possibly place that interpretation upon my remarks. I did refer to the English Bill, but simply as an indication of the fact that India was not the only country in which the necessity for this legislation had been proved to exist. As, however, the Honourable Mr. Raza Ali does not admit that serious attempts on the loyalty of the police have been made, I think, in that respect he is in the position of *Athanasius contramundum*. I will refer to one report received from a particular province. I do not propose to mention the name of the province, as I do not think it desirable, in the public interest, to do so :

“ In the matter of agitation against Government servants, there has been greater effort and more result. The doctrine of the sinfulness of Government service was preached at meetings in 16 districts before Christmas and in 14 since. It has also been enunciated by perambulating volunteers. One Police Sub-Inspector, two Head Constables and 23 Constables from 11 districts have succumbed.”

I think, Sir, that establishes that propoganda of this kind has been carried on. So far back as 1920, when these attempts had not assumed the magnitude which they subsequently assumed, the Local Governments were almost unanimously of the view that legislation was essential. I am prepared to admit that during the last six months there has been some slackening off in the efforts of the extremists in this direction, but I think he would be a bold man who would say that they will not be resumed when a favourable opportunity in the judgment of the non-co-operation party arises. It is not so long ago that the Congress decided that funds should be provided to support those people who resigned Government service, an ominous indication of the intentions of that party, when they judge the time ripe.

Then, Sir, I have been asked why we cannot rely on the ordinary law. Now, Sir, I am prepared to admit that, so far as the promotion of disaffection is concerned, section 124A of the Indian Penal Code is legally applicable. The objection to relying on that section is simply the great delay involved. A prosecution under section 124A is in the nature of a State trial. It cannot be instituted without the sanction of the Local Government. The case is first sent up by the District Magistrate to the Local Government. There is, then, a preliminary examination by the Secretariat. The case is then sent on to the legal advisers of Government, the Legal Remembrancer or the Advocate General, as the case may be. When his opinion is received, the case is again examined in the Secretariat. The orders of the Local Government

have then to be taken and they have then to be communicated to the District Magistrate. With the best desire on the part of every one to expedite these processes delay is inevitable, and may extend over weeks or even longer. Now, Sir, we cannot afford that kind of thing. The promotion of disaffection amongst the police is far too serious a matter to admit the application of so dilatory a remedy. We cannot afford to allow attempts to be made on the police with impunity for weeks at a time. That, Sir, is the reason why a remedy more prompt than that available under section 124A is necessary.

Then, Sir, I will explain for the benefit of the Honourable Saiyid Raza Ali—I should have thought that an accomplished lawyer like the Honourable Member did not need such an explanation from me—why it is not possible to rely on section 29 of the Police Act read with the abetment sections of the Indian Penal Code. The objection to relying on these provisions is, in the first place, that it is extremely difficult to prove the abetment of an offence of this kind. Where the incitements take the form of solicitations addressed to particular police officers it is obvious that the only evidence available will usually be that of the police officers concerned. The people who go in for propaganda of this kind do not operate openly; they operate secretly; and, therefore, the only evidence available is likely to be that of the particular officers who have been approached, and even that evidence will only be available if the abetment has actually been unsuccessful. On the other hand, Sir, when the abetment takes the form of general propaganda, it is extremely difficult to prove the connection between such abetment and any act or omission on the part of a particular policeman or policemen. The second objection, Sir, to relying on these sections is that delay is inevitable, for it is usually not possible to prosecute until after the mischief has occurred, and, therefore, the remedy is in the nature of closing the door of the stable after the horse has been stolen. The third objection is that the penalty provided is too small. The maximum penalty would be three months' imprisonment, and even that maximum would not in all cases be possible, as Honourable Members will see if they read the abetment sections in the Indian Penal Code. These are the reasons why legislation is essential and why we cannot rely on the existing provisions of the law.

Lastly, the Honourable Saiyid Raza Ali said that the measure is of a very stringent character. If the Bill is passed, it will actually be possible to impose a sentence of six months' imprisonment for promoting disaffection amongst the police. Well, Sir, I can only say that the suggestion that this Bill is unnecessarily stringent, is a suggestion which defies comment.

The motion was adopted.

The HONOURABLE THE PRESIDENT: We will now proceed with the consideration of the Bill clause by clause and will, as usual, reserve the Preamble to the end. I observe that on clause 1 there is an amendment * standing in the name of the Honourable Saiyid Raza Ali. That

* "That in sub-clause (1) of clause I of the Bill for the word 'disaffection' the words 'withdrawal of services' be substituted."

[The Honourable the President.]

amendment is consequential on the substantive amendment to clause 3. Therefore, we will return to clause 1 after we have discussed clause 3. I think that the Honourable Member will agree that that will be convenient.

The HONOURABLE SAIYID RAZA ALI : Yes, Sir.

The HONOURABLE MR. S. P. O'DONNELL : Sir, I rise to object under Standing Order No. 74 (1) on the ground that two days' notice of this amendment from the Honourable Saiyid Raza Ali has not been received. The Bill was passed by the Legislative Assembly on the 18th ; it was laid on the table here on the 19th, and I understand that copies of the Bill were then placed in front of every Member. The other amendments of which notice has been given have been received within the period prescribed *viz.*, two days. I should not have raised this objection to the amendments of the Honourable Saiyid Raza Ali had they been small amendments, but his amendments are practically in the nature of wrecking amendments. If they are accepted, the Bill will be emasculated and will be rendered absolutely ineffective.

The HONOURABLE SAIYID RAZA ALI : Sir, it is true that I gave notice of this amendment yesterday and the rules provide for two days' notice. But the fact, Sir, is that I got a copy of this Bill on the 21st to the best of my recollection and I took some time, in fact, to consider the question. That is the reason why I could not give notice in time. In fact, it seems, Sir, that I could not possibly have given notice in time, having received a copy of the Bill, as I remember on the 21st. That is the reason why my amendments were delayed. That is one point. The next point, Sir, is that, having regard to the rules which provide for legislation by the two Chambers, it is open to Government no doubt to take advantage of the rules to introduce a measure in this Council only after three days. That is quite true, but, all the same, you will see, Sir, that three days is hardly sufficient to enable Members to go through a very important Bill like the present one. The Government have taken advantage of course of the rules. I do not say they have no right ; they have every right, I admit that. All the same, you will see, Sir, that the rules only give three days' time.

Lastly, I appeal to you to suspend the rules. You have power under the rules to suspend the rules and to enable me to move this amendment. My friend, the Honourable the Home Secretary need not be anxious as to what is going to happen to my amendment, because we know what the result will be.

The HONOURABLE THE PRESIDENT : I noticed myself that these amendments were received somewhat late, because I make it a practice to go through amendments in order that I may be in a position to put them to the Council in their proper place. I therefore called for a report on the facts of this case, which is now before me.

I am afraid the Honourable Member is not altogether on a strong ground. I find, according to the report before me, that the Bill was passed in the Legislative Assembly on the 18th. It was actually laid on the table

12 NOON.

of this House on the 19th, and in addition to being laid on the table of this House, on the seat of every Honourable Member a copy of the Bill was placed. I can only imagine that the Honourable Member, if he tells me that he did not get the Bill till the 21st, failed to examine the papers in his place. On the information before me, therefore, the Bill was actually given him on the 19th. I have frequently called the attention of Honourable Members to the desirability of giving early notice of any amendments they wish to move to a Bill. They ought to do this in every instance. It is not fair to the Department concerned and it is not a wise way of proceeding to legislation to discuss unexamined amendments.

On the other hand, I find some difficulty in accepting the Honourable Mr. O'Donnell's argument that because these amendments are wrecking amendments, it was all the more necessary to give full two days' notice of them. I should have thought, on the contrary, that shorter notice in the case of wrecking amendments is necessary than would be necessary in the case of amendments of an intricate legal character.

In all the circumstances of the case, however, I think I will allow the amendments to be moved though the Honourable Saiyid Raza Ali ought to express his regret for the mistake he has made as to the date on which he received the Bill.

The HONOURABLE SAIYID RAZA ALI : It may be that the Bill was put here, and if you say that the Bill was put here, then it must have been put here. But I can assure the Council I did not examine the Bill on the 21st.

The HONOURABLE THE PRESIDENT : Then I think the Honourable Member on his own showing is convicted of a regrettable piece of negligence. (Laughter).

The HONOURABLE THE PRESIDENT : The question is :

“ That clause 2 stand part of the Bill ”

The motion was adopted.

Clause 2 was added to the Bill.

The HONOURABLE SAIYID RAZA ALI : Sir, I beg to move that the following words be omitted in clause 3. This is the passage, Sir, that I propose to be deleted :

“ or does any act which he knows is likely to cause disaffection towards His Majesty or the Government established by law in British India amongst the members of a police force, or induces or attempts to induce, or does any act which he knows is likely to induce.”

Sir, the principles of the Bill having been discussed I do not think it is necessary for me to support this amendment with any lengthy speech. I do not at the same time think it necessary to defend myself against the insinuation that has been made as to how far some of us are prepared to support the Government. It is for those who made the insinuation to decide how far that insinuation is worthy of them, and at that I am content to leave it, Sir.

This section, Sir, is intended to attack a two-fold evil. The first is to prevent the spreading of disaffection among the police, and the second object is to deal with those who induce these officers not to serve Govern-

[Saiyid Raza Ali.]

ment. The object of my amendment, I must state at once, is this—that instead of disaffection finding a place in clause 3, that clause should be confined solely to those cases in which persons are prosecuted for persuading police from serving Government. That, I must at once say, is the real intention of this amendment.

Now, Sir, it was pointed out that it is a lengthy procedure to obtain the sanction of Government for all prosecutions under section 124-A, and therefore it was pointed out that with a view to providing a speedier procedure, this part of the clause was drafted in those words. Now, Sir, I am free to admit that the procedure relating to the section is rather a lengthy one. But a serious objection that I can urge against this portion of the clause which I propose to omit, Sir, is this—that practically you are not relying on section 124-A to deal with seditionists or those who commit offences under section 124-A, but to divide the public into so many classes. First you have got your general law under which if a man commits that offence he can be prosecuted, namely, 124-A. Then you have got this particular law which is proposed to be enacted in this clause 3 to deal with that section of the public who dissuade these officers from discharging their duty. The serious objection to this procedure, as the Honourable Mr. O'Donnell will I think see, is that if you so divide your general law as to split it up into portions, each portion, if this policy is pursued, will enable the Government to deal with one section of the public ignoring the others. My submission is that this is not at all sound in policy, and the Honourable Member will be hard put to it, I think, to find any precedent of this character in any other Code. But my submission is, you have your general law—you rely on that and don't bring those who have been subject to this under clause 3, because my submission is that it does not stand on a new principle. Well, if that is done, Sir, I for one am quite prepared to say that I may be in a position to support the rest of the clause. I admit that in the second part perhaps the Government are on firmer ground, and as regards that, it is perhaps one which the Government can ask the Council to take into consideration and pass—it may be with amendments, it may be without amendments. But the first portion, I submit, gives very large powers indeed to those who have it in their power to launch these prosecutions, and my submission is that instead of having this new clause we can amend section 124-A itself in such a manner as to enable Government to deal with this class of people ; but to divide the general law into so many portions, having one bit here and one bit there, one law to deal with one section and another law to deal with another section of people—that, I submit, is very unsound in principle and therefore I submit, Sir, that at least this portion should be deleted in the words of the amendment that I have moved.

The HONOURABLE MR. S. P. O'DONNELL : Sir, I gather that the Honourable Mr. Raza Ali does not for one moment suggest that it is desirable that acts which are likely to cause disaffection towards His Majesty or the Government established by law in British India amongst the members of a police force, should be permitted with impunity. His objection, if I understood him aright, was of a different nature. He did not contend doubtless, after considering the remarks I previously made, that the provisions contained in section 124-A constitute an adequate remedy. But

he went on to say that what the Government ought to have done is to amend section 124-A so as to serve the same purpose which this Bill would serve. His objection, therefore, appears to me to be entirely of a formal character. He does not object to the substance of this clause of the Bill, but he merely says that Government should have adopted the alternative course of bringing in an amendment to the general law instead of passing a separate Bill. Well, Sir, it hardly seems to be necessary to discuss at any length a contention of this kind. Since the Honourable Member himself admits that he has no objection of substance, I am content to leave it to the Council to decide.

The HONOURABLE THE PRESIDENT : I will put the amendment in the proper Parliamentary way, that is that the words referred to in the amendment do stand part of the clause and those who wish to retain the words in the clause will vote for the motion.

The question is :

“ That the words—

‘ or does any act which he knows is likely to cause disaffection towards His Majesty or the Government established by law in British India amongst the members of a police force, or induces or attempts to induce, or does any act which he knows is likely to induce ’.”

stand part of clause 3 of the Bill.”

The HONOURABLE SAIYID RAZA ALI : May I say a word, Sir? There are two more amendments on the same point. If this amendment is put in the form in which you propose to put it, the other two amendments will go.

The HONOURABLE THE PRESIDENT : That is my point in putting it in that form.

The question is that these words do stand part of the clause.

The motion was adopted.

The HONOURABLE THE PRESIDENT : That disposes the other two amendments of the Honourable Saiyid Raza Ali.

The HONOURABLE LALA SUKHBIR SINHA (United Provinces Northern : Non-Muhammadan) : Sir, I beg to move :

“ That in clause 3 of the Bill for the words ‘ member of a police force to withhold his ’ the words ‘ members of a police force to withhold their ’ be substituted.”

My object in moving this amendment is this. So far as I understand the object of this Bill is to prevent people from seducing the police not individually but collectively. I find this from the Statement of Objects and Reasons and also from the first part of clause 3, where they speak about members of a police force. In the Statement of Objects and Reasons also it is said “ to induce members of a police force or to spread disaffection amongst them.” From these I find that the object of the Bill is to penalise the inducing of a police force as a whole, not in individual cases. The Bill refers to the police force as a whole, or to more than one man. By having the words, as they are, in clause 3 of the Bill, *viz.*, “ any member of a police force to withhold ” it will mean that any member of a police force may bring a charge against any person as an individual case. For instance, if a police constable has got some

[Lala Sukhbir Sinha.]

grudge against any person, then he can go and report that he was induced to leave the police service, and in that way the Act could be misused. I want to make the singular into plural. I think Honourable Members will understand what I mean. The object is, to prevent people from deserting the police force as a whole, but as the Bill is framed now, individual policemen will have the right to make a report. If a man seduces a police force as a whole or at least more than one policeman, then the offence may be made punishable, but not otherwise. That is my object. Therefore, I move this amendment.

The HONOURABLE MR. S. P. O'DONNELL : Sir, the Honourable Lala Sukhbir Sinha expressed the hope that the meaning of his amendment was clear to the Council. I do not know if the meaning is clear to the Council, but it is not clear to me. But I gather that what he desires is that it should be open to anybody to approach a particular member, an individual member of the police, and induce him to withhold his services, and that no prosecution should lie for doing that. (*The Honourable Lala Sukhbir Sinha* : That is what I want.) All I can say then is that I hope the Council will summarily reject this amendment.

The HONOURABLE SIR MANECKJI DADABHOY : I understood my Honourable friend to refer to the plural number, because there was a difficulty. But under the general clause the singular includes the plural, and so there will be no difficulty, so far as prosecutions are concerned.

The HONOURABLE THE PRESIDENT : The question is :

“ That in clause 3 of the Bill for the words ‘ member of a police force to withhold his ’ the words ‘ members of a police force to withhold their ’ be substituted.”

The motion was negatived.

The HONOURABLE MR. S. P. O'DONNELL : Sir, I beg to move :

“ That in clause 3 of the Bill the words ‘ otherwise than in a manner expressly authorised by or under any law for the time being in force ’ be omitted.”

This, Sir, is certainly a drafting amendment. I will move later an amendment to clause 4 of the Bill, and in view of that amendment, the retention of these words is unnecessary.

The HONOURABLE SIR MANECKJI DADABHOY : Sir, I support the amendment. Not only are these words unnecessary, but to my mind they are meaningless, and will only cause complication if they are allowed to be retained. I therefore support the amendment.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Sir, I beg to oppose the amendment.

The HONOURABLE THE PRESIDENT : Does the Honourable Member intend to give reasons, or does he confine himself to the bare statement ?

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : I will only confine myself to the statement, because the reasons are obvious.

The HONOURABLE THE PRESIDENT : The question is :

“ That in clause 3 of the Bill the words ‘ otherwise than in a manner expressly authorised by or under any law for the time being in force ’ be omitted.”

The motion was adopted.

The HONOURABLE THE PRESIDENT : The question is :

“ That clause 3 as amended stand part of the Bill.”

The HONOURABLE SAIYID RAZA ALI : I have got one more amendment on clause 3, viz., that the words " or to commit a breach of the discipline " be omitted.

The HONOURABLE THE PRESIDENT : The Honourable Saiyid Raza Ali is entitled to move this.

The HONOURABLE SAIYID RAZA ALI : Sir, I move :

" That in clause 3 the words ' or to commit a breach of discipline ' be omitted."

Sir, the clause that we are discussing goes further in its terms than section 124-A of the Indian Penal Code. Honourable Members will see that in the opening part of the clause the words are :

" Whoever intentionally causes or attempts to cause, or does any act which he knows is likely to cause, disaffection towards His Majesty, etc."

which, Sir, are much wider than anything we have in section 124-A of the Indian Penal Code.

It was claimed by the Honourable Mr. O'Donnell, and on the whole I should think to some extent rightly, that there are cases of disaffection in which delays are dangerous. Therefore, even if you have a law, apparently you are going to have another law to supplement section 124-A. I submit that we should be very careful not to extend the scope of the new law too wide. As I have pointed out already, this law goes much further than section 124-A, but we are now dealing with a matter which, I submit, is as deliciously vague as anything under the sun can be. Discipline is the word that has been used in this Bill. That has not been defined anywhere in any clause. The result, if these words are incorporated, as it is proposed to do in the section, will be that it will be open to an unscrupulous policeman—of whom I hope there are not very many in this country—to bring a charge which it will not at all be difficult for him to substantiate. After all, we do not know what is meant by the commission of a breach of discipline. As I have submitted, the term has not been defined, and in the absence of that, we will have to rely on the judicial interpretation of this term by the highest Court in the country. We know that the police force is a sort of regular force, and many of the rules which apply to one also apply to another. I can easily contemplate cases in which a most inoffensive request made to a police officer can fall within these words in the clause, and if an unscrupulous policeman is so minded, he can prefer a charge, though, as I have submitted, the man who used that language towards the policeman, never meant his words in that sense. We are dealing with a rather important matter ; therefore we should try to be as definite and as specific as possible. In fact it should not be necessary for me to draw attention to the matter, if some indication had been given as to what are the cases that are contemplated to be covered by these words, though assurance of that sort would come to very little in a court of law. The words are very vague, and the result will be that a number of cases will be launched and after all these words will have to go to the highest Court for judicial interpretation. On the other hand, if we remove these words, I submit that the difficulty with which the Government has been confronted in the past, and which they are not confronted with, at the present moment, will, to a large extent, be removed. In fact, my case is, Sir, that having regard to the ambiguous character of these words, every general case can fall under those words,

[Saiyid Raza Ali.]

and it will give rise to a very great difficulty, and mostly to unfounded charges being preferred by unscrupulous policemen. Therefore, my submission is that these words be omitted.

The HONOURABLE LALA SUKHBIR SINHA : Sir, I support this amendment, and agree with what the Honourable Saiyid Raza Ali has said. If these words remain, it will be a weapon in the hands of the police to ghallan any man and say that he induced him to commit a breach of discipline. I think the words "breach of discipline" are too wide, and they should be omitted.

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN : Sir, this is the only time I think I heard the word "discipline" being called vague. I wish my friends were all in a place where there was discipline.....

The HONOURABLE THE PRESIDENT : Is the Honourable Member reflecting on the procedure of this House ?

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN : I think those who have been in the police or army can very well realise what discipline is, and if this word were omitted, I think it would be quite wrong.

The HONOURABLE MR. S. P. O'DONNELL : The Honourable Saiyid Raza Ali has taken two objections to the retention in clause 3 of the words "or to commit a breach of discipline". In the first place he argues that the insertion of these words makes this clause wider in its scope than section 124-A. I think if the Honourable Member will refer to the preamble to the Bill he will find the solution of his difficulty. The preamble says :

"Whereas it is expedient to penalize the spreading of disaffection among the police and other kindred offences."

Now, to cause a police officer to commit a breach of discipline is not necessarily an offence under section 124-A ; but this Bill has a two-fold object. It is intended to penalize the spreading of disaffection and also to penalise people who induce a police officer to commit breach of discipline.

The second objection which the Honourable Saiyid Raza Ali took was that the term "breach of discipline" was very vague, and he warned us that if these words were allowed to remain, we may find unscrupulous officers bringing charges against innocent persons, and that the unfortunate Courts having no definition of the term in front of them might give decisions which would involve grave injustice. I do not believe that there is any practical difficulty whatever as regards the meaning of the term, "commit a breach of discipline", and I believe that every Member of this Council, including the Honourable Saiyid Raza Ali, knows perfectly well what the meaning of those words is. If however the Honourable Saiyid Raza Ali would like a definition from me, I would refer him to section 23 of the Police Act. Under that section every police officer must obey all orders lawfully issued to him, and if he does not do so, he commits a breach of discipline.

The HONOURABLE SIR LESLIE MILLER (Madras : Nominated Non-Official) : Sir, I have a certain amount of sympathy with the Honourable Saiyid Raza Ali, as it is not quite clear to me that the words "or to

commit a breach of discipline" are not too wide, and after hearing read to us the section of the Police Act in which discipline is defined, it seems to me the difficulty is not diminished but rather increased. It is quite impossible, of course, for any member of the public to know what orders have been lawfully issued to any particular policeman. It may be that I have myself intentionally induced a policeman on point duty to commit a breach of discipline by driving my motor car too near him to make him get out of the way. I do not deny that for offences of that kind I may have deserved six months' rigorous imprisonment, but I do not think the Bill was meant to cover cases of that kind and I should like to have, if possible, some clearer definition in the Bill so that we may be in a position to realise a little what we are doing, and what penalties we are incurring.

I am not at all perturbed by the trouble that seems to have in part actuated this amendment, that is to say, the possibility of false charges by unscrupulous policemen. The favourite false charge is probably that of obstructing a policeman in the execution of his duty, and as that always remains open to the police, recourse to the provisions of this Bill will rarely appear necessary. There is not a section in the Penal Code which contains a penalty on which a policeman, if he chooses, cannot make false charges, and this Bill by adding one more offence, will not materially or appreciably increase the danger of the public. I do feel, however, that the words, "or to commit a breach of discipline" are very wide, and unless it can be said that other provisions of the Bill are a sufficient safeguard, may lead to charges which are not contemplated by the Bill.

The HONOURABLE MR. H. MONCRIEFF SMITH (Legislative Secretary): Sir, I think the answer to Sir Leslie Miller's difficulties is contained in the Bill itself. There is great safeguard in clause 5 of the Bill. I do not think that he need have any apprehension that he may be prosecuted for any of the acts which he mentions, or that there is any risk at all of a police officer launching frivolous charges against him under the Act. Under clause 5 of the Bill no prosecution can be launched until the sanction of the District Magistrate has been obtained. If the Honourable Member has any doubts of the probity of the police I am sure that he will be prepared to concede that he can trust the District Magistrate.

The HONOURABLE THE PRESIDENT: The question is:

"That in clause 3 the words 'or to commit a breach of discipline' be omitted."

The motion was negatived.

The Honourable Mr. Khaparde withdrew his amendment which runs as follows:

"That in clause 3 of the Bill the existing explanation be numbered as 'Explanation I,' and below it the following be added, namely:—

'Explanation II.—Nothing in this section shall apply to advice given by a relation or friend interested in a police officer, when such advice is given with the intention of procuring in a lawful manner the absence from duty or resignation of a member of the police force for the purpose of bettering his prospects or otherwise furthering his welfare.'

The HONOURABLE THE PRESIDENT: The question is:

"That clause 3, as amended, stand part of the Bill."

[The Honourable the President.]

The motion was adopted.

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

The HONOURABLE MR. S. P. O'DONNELL : Sir, I beg to move that in clause 4 of the Bill :

(i) after the words " which is done " the following be inserted, namely :—
" in good faith—

(a) for the purpose of promoting the welfare or interests of any member of a police force by inducing him to withhold his services in any manner authorised by law; or

(b)."

(ii) that the words " in good faith " be omitted.

I think, Sir, that the object of this amendment will be clear from its terms. As the Bill at present stands, there is a clause which is intended to save acts done in certain circumstances by police associations. I think it will be agreed by the Council that that clause does not go far enough, and that it is essential also to save acts which are done in good faith for the purpose of promoting the welfare or interests of any member of a police force by inducing him to withhold his services in any manner authorised by law. I do not think any possible objection can be taken to a provision which has that effect.

The motion was adopted.

The HONOURABLE MR. V. G. KALE : Sir, I beg to move that in clause 4 of the Bill for the words :

" has been authorised or recognised by the Government and the act done is done in good faith under any rules or articles of the association which have been approved by the Government."

the following words be substituted, namely :

" conforms to the rules made by Government in that behalf."

Sir, I appreciate the necessity for Government laying down rules for the guidance of associations of its employees, and, if associations which are started for the purpose of helping the police and bettering their conditions are prepared to conform to the rules made by Government in that behalf, I think that safeguard ought to be enough. It is for this reason that I move the amendment.

The HONOURABLE MR. S. P. O'DONNELL : Sir, I do not think that the addition of this amendment will be an improvement to the Bill. On the contrary, it seems to me it is open to objection. The Honourable Mr. Kale has said that it ought to be sufficient if the association is one which conforms to the rules made by Government in that behalf. In the first place, however, Sir, that amendment omits the words " in good faith." It seems to me very important that any act which is done by the Association and which is to be exempted should be an act which is done in good faith. In the second place, it is not clear to me that, if this amendment is accepted, the act must necessarily be one which is done under the rules or articles of the association. It might be argued that, because the Association is one whose articles conform to the rules made by Government, that is sufficient, even though the act is one which has nothing to do with the purposes for which the Association has been

formed as embodied in the rules and articles of that Association. I do not suppose for a moment that the Honourable Mr. Kale intended that effect. I think he would entirely agree that the act must be one which is done not only in good faith but in accordance with the rules and articles of the Association which define the purposes for which the Association has been formed. There would be no justification whatsoever for exempting an act which is done for some purpose which has nothing whatever to do with the rules and articles which define the purposes of the Association.

On that ground, Sir, I oppose this amendment.

The motion was negatived.

The HONOURABLE THE PRESIDENT : The question is :

“ That clause 4, as amended, stand part of the Bill.”

The motion was adopted.

Clause 4 was added to the Bill

The HONOURABLE MR. S. P. O'DONNELL : Sir, I beg to move that in clause 5 of the Bill the words :

“ if any, to whom such Court is subordinate.”

be omitted.

The object of this amendment, Sir, is simply to remove certain objections which were taken to the clause as it originally stood. It has been suggested that it is undesirable that the Magistrate must necessarily be a Magistrate subordinate to the District Magistrate.

I therefore propose that these words “ if any, to whom such Court is subordinate ” be omitted.

The motion was adopted.

The HONOURABLE SAIYID RAZA ALI : I am afraid I must make it clear that the amendment that I have proposed, namely :

“ that in clause 5 for the words ‘ District Magistrate, if any, to whom such Court is subordinate or in the case of a Presidency Town or the Town of Rangoon, of the Commissioner of Police ’ the words ‘ Member of the Executive Council in charge of Police, or of the Local Government ’ be substituted ” ; will not find quite that favour with some Honourable Members which I would otherwise expect. The difficulty, Sir, is one which most of us realise. That was clearly pointed out in the beginning by Mr. O'Donnell. At the time I drafted the amendment, I myself realised that it might give rise to some difficulty. Now, the position, Sir, is this—that if the power of launching prosecutions is given to the District Magistrate, then I am afraid that at times, specially when local feeling in a particular area is excited, and that excited feeling must react on the authorities, unfortunately some District Magistrates might make a wider use of the provisions of this clause than would be justifiable or than would be the case if this power were reserved to an officer who would be somewhat removed from the excited local area. That, I must say, is the objection on the one hand, and I do not think that I have put it unfairly. Without saying that the District Magistrate would be so perverse as to make an improper use of the provisions of this clause, I simply say that at times

[Saiyid Raza Ali.]

the force of circumstances and the excited feeling in a particular area may act in such a manner as to induce him to make a very wide use of this section. That is the objection, Sir. On the other hand, if the power were reserved to the Government, then the delay that would sometimes be experienced before sanction is obtained from the headquarters of Government, would be undesirable. I am not going into the question as to what would be the additional amount of work that would be thrown on the Government or the Member of the Executive Council in charge of Police. But, Sir, I have taken this into consideration, and that no doubt raises some difficulty. Therefore, Sir, the question if I may be allowed to put it that way, is that neither proposition is free from difficulty. My amendment raises some difficulties I must admit, but the difficulties that have been raised by the adoption of the words that are to be found here in this clause are greater than would be the case if my amendment is accepted. I do not think I need put it higher than that ; but that is the position. I do not say that this is an ideal amendment, or that it would work quite as satisfactorily or smoothly as we would all desire. But, on the other hand, the Government's proposition raises worse difficulties. Therefore I say on the whole, not minimising the difficulties that are incidental to my amendment, it would be better if we adopted this amendment and gave this power in the major Provinces to the Member in charge of Police, who of course is not responsible to the Electorate and on this principle I do not think the Government will be in a position to object to that. In those cases where there is no Executive Council the power should be given to the Local Government.

With these words I commend this amendment to the consideration of the Council.

The HONOURABLE SIR MANECKJI DADABHOY : Sir, in my opinion this amendment is most undesirable. My Honourable friend wants to substitute the machinery of a Member of the Executive Council for the District Magistrate. He has acknowledged that in many cases considerable delay would be caused, if his suggestion was adopted, but I should like to ask him one simple question. When the question is referred to a Member of the Executive Council of Government, on what information will he rely before he passes his order ? He will have to depend on the information of the District Magistrate in the first instance. He will have no personal knowledge of the affair. The District Magistrate who is on the spot and who has made personal inquiries and investigations, and is supported by evidence, is in the best position to know and to decide whether it is desirable to launch a prosecution or not ; while, on the other hand, the Executive Member of Council will have to depend on secondary information and will not be in the same position as the District Magistrate to come to a conclusion,—apart from the question of delay which in some cases will defeat the ends of justice. I think on this very ground, apart from all other reasons the amendment ought not to be supported.

The HONOURABLE MR. S. P. O'DONNELL : Sir, the objection to this amendment is precisely the same as the objection which attaches to relying on section 124-A, namely, the great delay involved. The Honourable Saiyid Raza Ali has not denied that delay will occur. Nor does

he deny that the occurrence of such delay would be an evil. He contends, however, that although his amendment is open to objection, the objection to it is less than the objections which attach to the clause in the Bill as it at present stands. I maintain, Sir, that the position is just the reverse, namely, that the objections to this amendment are far greater than any objections which can reasonably be urged against the Bill as it at present stands. It is quite certain that delay will occur. It is quite certain that on occasions the delay will be considerable, and as I argued before, it is absolutely essential that in a matter of this kind, namely, attempts to create disaffection among the police, a remedy should be available which can be promptly applied.

I do not believe that the apprehensions which have been expressed by the Honourable Saiyid Raza Ali as to District Magistrates using their powers unwisely—I do not think those apprehensions have any serious foundation. I do not think any District Magistrate would institute or sanction a prosecution without due cause. Should he do so, however should a prosecution be launched without sufficient evidence, then the remedies provided by the ordinary law are available. There is the right of appeal, and the case can be taken up on revision to the High Court. As a matter of fact, however I do not believe there is any risk whatever in accepting this clause as it stands.

Therefore I oppose the amendment.

The HONOURABLE THE PRESIDENT : The question is :

“ that in the clause under consideration, for the words ‘ District Magistrate, if any, to whom such Court is subordinate or, in the case of a Presidency Town or the Town of Rangoon, of the Commissioner of Police ’ the words ‘ Member of the Executive Council in charge of Police, or of the Local Government ’ be substituted.”

The motion was negatived.

The HONOURABLE THE PRESIDENT : The question is :

“ That clause 5, as amended, stand part of the Bill.”

The motion was adopted.

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

The HONOURABLE MR. S. P. O'DONNELL : Sir, I move :

“ That after clause 5 of the Bill the following clause be added, namely :—

“ 6. (1) No Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try any offence under this Act.

Trial of cases.

Act.

(2) Notwithstanding anything contained in Chapter XXII of the Code of Criminal Procedure, 1898, no offence under this Act shall be triable summarily.”

The object of this amendment is obvious. It is designed in the first place to ensure that no case shall be tried except by a Magistrate of considerable experience, namely, a Presidency Magistrate or a Magistrate of the first class. It is also designed to ensure that no case shall be tried summarily. There must be a full hearing. I think the Council will have no hesitation in accepting this amendment.

The HONOURABLE SAIYID RAZA ALI : This is a very necessary amendment, Sir, and I am glad that the Government have seen the necessity of bringing this. I have no doubt that both the amendments will be passed by this House.

[The Honourable the President.]

The HONOURABLE THE PRESIDENT : The question is :

“ That after clause 5 of the Bill the following clause be added, namely :—

“ 6. (1) No Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try any offence under this Act.

Trial of cases.

V of 1928.

(2) Notwithstanding anything contained in Chapter XXII of the Code of Criminal Procedure, 1898, no offence under this Act shall be triable summarily.”

The motion was adopted.

Clause 6 was added to the Bill.

The HONOURABLE THE PRESIDENT : The question is :

“ That clause 1 and the Preamble stand part of the Bill.”

The motion was adopted.

Clause 1 was added to the Bill.

The Preamble was added to the Bill.

The HONOURABLE MR. S. P. O'DONNELL : I beg to move that the Bill as passed by the Legislative Assembly, and amended by the Council of State, be passed.

The HONOURABLE SAIYID RAZA ALI : Sir, the stage has come when the question whether the Bill should be passed has to be decided. Sir, whatever may have been the differences of opinion on the necessity of the Bill, now that the Bill has been taken into consideration clause by clause and we have voted upon it, I think it behoves us all to do what we can to see, on the one hand, that not many opportunities, or as few as are in our power, for enforcing the provisions of the Bill arise ; and, on the other hand, Government should see that the provisions of this Bill are not enforced with a light heart. Sir, I am glad that the official amendments that were moved and passed by this Council earlier in the day have made this Bill much more acceptable to the people than would otherwise have been the case. I, for one, have no hesitation in saying that instead of these amendments having been moved by the Honourable Mr. O'Donnell, if a non-official Member had been able to induce the Government to take this view and modify their attitude and to agree to these amendments being passed, the Government would have been entitled to congratulation from us. But, Sir, we should not disguise from ourselves that the position is that the amendments that were moved and accepted to-day were mostly those that had been promised by the Home Member in the other House ; and when we remember that, Sir, though fortunately the Bill has been considerably improved upon, I do not think, Sir, that we can claim much credit for having passed these amendments. In fact, the announcement was made by the Honourable Sir William Vincent in the other House that most of the amendments that were moved to-day would be moved when the Bill came to this House. I am not, Sir, one of those who would unnecessarily like to meddle with a Bill that has been duly taken into consideration and passed by the other House, simply because we must justify our existence. That is not, Sir, the view I take. All the same, I have been watching at several Sessions from day to day that the tendency has unfortunately been for us to take everything that comes from the other House for granted, which leads in fact to the position of this Council going down very considerably in the public estimation. I do hope, Sir, that having regard, after all to the output of our exertions, though those exertions were made by the Honourable Mr. O'Donnell, that the public will not be in a position to take the view that we could take everything

that comes to us. The only remark that I will make, Sir, is that the Bill has been passed now and even those who have differed, and strongly differed, from Government would, I hope, deem it their duty now to see, on the one hand, that no occasion arises for the enforcement of these provisions, and secondly that if an occasion does arise, then the Government would keep a watchful eye over the District Magistrates, though they are a very experienced body, a body of men really who serve this country to the best of their ability, and see that they are not carried away by excitement in local areas. The District Magistrates, Sir, are after all human beings, and I do not think it can be claimed by anybody that no District Magistrate ever makes a mistake. Having that in mind, Sir, I do hope that the Government will see to it that the power which has now been given to the District Magistrates is exercised by them properly and not indiscriminately. With these words, Sir, I support the passing of this Bill.

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN : Sir, I congratulate the Government on the passing of this Bill, though it has come very late. I would say one thing, Sir, that this will put a stop to a struggle which was going on in the country. In hundreds of places there used to be written appeals saying *Police aur Fauj ki mulazemat haram hai* that it is *haram* according to religion to serve the army or the police. There are some volunteers who are doing mischief. I do not know why they are called volunteers when they all have got salaries from various funds. If those appeals had continued to come to the ranks of the police, they would have got less and less, and the rebel army would have been increased. People may say that the volunteers have not got arms, that is because they have not got them and therefore they are not carrying them. So I am really very glad that, at the end, such a Bill has come into existence, which will put a stop to such things and prevent the police being at the mercy of their opponents, and will be able to see that the Government has come forward to safeguard their interests and themselves.

The HONOURABLE NAWAB SIR BAHRAM KHAN (Punjab : Nominated Non-Official, * : Sir, on the present Bill which is introduced to punish the persons who want to keep the police off from doing their duty a good deal has been said by the Honourable Colonel Sir Umar Hayat Khan and the Honourable Sir Maneckji Dadabhoj. I entirely associate myself with them in the matter. I want to further emphasise that many an enemy of the country and the Government have left no stone unturned to keep the people off from serving the Government in general and the police force in particular. I have seen it with my own eyes in print where it was declared that to serve the Government was prohibited by religion by using the word *Haram* to which reference in his speech has been already made by the Honourable Colonel Sir Umar Hayat Khan. I strongly urge the necessity of such a measure and support the Bill accordingly.

The HONOURABLE THE PRESIDENT : The question is :

“ That the Bill to provide a penalty for spreading disaffection among the police and for kindred offences, as passed by the Legislative Assembly and amended by the Council of State, be passed.”

The motion was adopted.

* “ Translation of a speech delivered in the vernacular.”

NEGOTIABLE INSTRUMENTS (AMENDMENT) BILL.

• The HONOURABLE MR. E. M. COOK (Finance Secretary) : Sir, I beg to move :

“That the Bill further to amend the Negotiable Instruments Act, 1881, as passed by the Legislative Assembly, be taken into consideration.”

This is a small and unpretentious Bill, designed to bring the Indian law into conformity with the law of England in respect of crossed cheques. It was pointed out to us last year by the Indian Merchants Chamber and Bureau, Bombay, that section 131 of the Negotiable Instruments Act, which protects a banker who has in good faith and without negligence received payment for a customer of a crossed cheque, the title to which proves defective, does not protect a banker who credits a customer's account with the amount of a cheque before its realisation. It was suggested by the Indian Merchants' Chamber that it was desirable that in such a case also a banker should have protection. We consulted the other Chambers of Commerce, who were unanimous that this provision should be introduced in the Negotiable Instruments Act. I think the Bill is entirely non-controversial.

The HONOURABLE MR. LALUBHAI SAMALDAS (Bombay : Non-Muhammadian) : Sir, I support the passing of this Bill and congratulate the Honourable Member of the Finance Department for having adopted the suggestion made by the Indian Merchants' Chamber and Bureau. I think this Bill will remove the anomaly which has existed up to now.

The motion was adopted.

The HONOURABLE MR. E. M. COOK : I now beg to move that the Bill be passed.

The motion was adopted.

INDIAN MINES BILL.

The HONOURABLE MR. H. A. F. LINDSAY (Commerce Secretary) : Sir, I beg to move :

“That this Council do agree to the recommendation of the Legislative Assembly that the Bill to amend and consolidate the law relating to the regulation and inspection of mines be referred to a Joint Committee of the Council of State and of the Legislative Assembly and that the Joint Committee do consist of 18 Members.”

The object of this Bill may be very briefly stated. It defines the respective functions of the Central and Provincial Governments in respect of mining law. It also provides for the regulation of hours of work and employment of children in accordance with certain principles adopted at the Washington Conference. The House will note that the motion refers to a Joint Committee consisting of 18 members. On this point I feel that an explanation is due to the House. On the 14th instant, or

the motion of the Honourable Mr. Sethna, as amended by the Honourable Mr. Kale, the House recommended to the Legislative Assembly that a Joint Committee should usually consist of not more than 14 members. Let me at once assure the House that had this Committee been formulated after the recommendation had been passed, the maximum number would have been restricted to 14. Unfortunately the number 18 had been selected, and the Members had been approached, and had signified their assent, before the 14th instant when the recommendation was passed. It would have been difficult, not to say invidious, to reduce the number of the committee after the members had been approached and had agreed to serve. I trust, therefore, that the House will accept this motion and agree to 18 members.

The motion was adopted.

NOMINATION OF MEMBERS OF JOINT COMMITTEE.

The HONOURABLE MR. H. A. F. LINDSAY (Commerce Secretary) :
Sir, I beg to move :

“ That the following Members of the Council of State be nominated to serve on the Joint Committee to consider and report on the Bill to amend and consolidate the law relating to the regulation and inspection of mines, namely.”

The Honourable Mr. H. Moncrieff Smith,
The Honourable Diwan Tek Chand,
The Honourable Sir Alexander Murray,
The Honourable Mr. Lalubhai Samaldas,
The Honourable Sir Maneckji Dadabhoy,
The Honourable Mr. G. S. Khaparde,
The Honourable Rai Bahadur Lala Ram Saran Das,
The Honourable Sirjut Chandradhar Barua, and
The Honourable Mr. V. G. Kale.”

The motion was adopted.

COURT-FEES (AMENDMENT) BILL.

The HONOURABLE MR. S. P. O'DONNELL (Home Secretary) :
Sir, I beg to move that the Bill further to amend the Court-fees Act, 1870, as passed by the Legislative Assembly, be taken into consideration.

This Bill, Sir, is of a very simple and non-controversial character. The High Court at Allahabad has recently held that no Court-fee is leviable under section 4 of the Court-fees Act in an appeal under the Letters Patent of the various High Courts from the judgment of one Judge of the Court. That, of course, was never the intention of the law. It was always understood, before that decision of the High Court was given, that Court-fees were leviable in appeals from the judgment of one Judge. Possibly, at the time when the Act of 1870 was passed, such appeals were always heard by two Judges. At present, and for some time past, at any rate, the High Courts under the rules which they are empowered to make, have directed that certain classes of appeals, namely, appeals of a minor character, should be heard by a single Judge. There is obviously no reason why in the case of such appeals Court-fees should not be leviable.

• The motion was adopted.

[Mr. S. P. O'Donnell.]

The HONOURABLE MR. S. P. O'DONNELL : Sir, I beg to move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

PARSI MARRIAGE AND DIVORCE (AMENDMENT) BILL.

The HONOURABLE MR. S. P. O'DONNELL (Home Secretary) : Sir, I beg to move that the Bill further to amend the Parsi Marriage and Divorce Act, 1865, as passed by the Legislative Assembly, be taken into consideration.

In the trial of cases under the Parsi Marriage and Divorce Act, 1865, the presiding Judge is aided by delegates. In the Parsi Chief Matrimonial Courts eleven delegates and in the Parsi District Matrimonial Courts seven delegates are required. Naturally, difficulties have been experienced in the trial of cases which take more than one day, because these large numbers of delegates must be present at each hearing before the case can proceed. The delegates, like the rest of us, are human beings, and it happens occasionally that some of them are unable to attend. The Bill proposes that the trial shall proceed if nine or six delegates, as the case may be, are present throughout the proceedings. There is also a consequential amendment made in section 41 by which the presiding Judge will have the casting vote on the facts if the delegates are equally divided in opinion.

The motion was adopted.

The HONOURABLE MR. S. P. O'DONNELL : Sir, I beg to move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

OFFICIAL TRUSTEES AND ADMINISTRATOR GENERAL'S ACTS (AMENDMENT) BILL.

The HONOURABLE MR. S. P. O'DONNELL (Home Secretary) : Sir, I beg to move that the Bill further to amend the Official Trustees Act, 1913, and the Administrator General's Act, 1913, as passed by the Legislative Assembly, be taken into consideration.

Sir, although this Bill contains seven clauses and although it purports to amend several sections, both of the Official Trustees Act and of the Administrator General's Act, its object is merely to effect one formal change. Under the Devolution Rules Administrators General and Official Trustees is a provincial subject and, therefore, the receipts accruing in respect of the work done by these officers are credited to provincial revenues. On the other hand, the Act at present purports to make the revenues of the Government of India liable for sums required to discharge any liability which the Official Trustee or the Administrator General, as the case may be, would be personally liable to discharge. Now, Sir, that provision was quite suitable in the past,

because, although the receipts in the past also went to the provinces, still, at that time, provincial revenues were simply part of the general revenues of the Government of India. At present, as Honourable Members are aware, revenues have been allocated to the various provinces, and I think it will be agreed, therefore, that it is reasonable that, since the provinces are to receive the receipts, they should bear any liability that may be incurred. Local Governments were informed of the intention to introduce legislation upon these lines, and no objection has been received from them.

The motion was adopted.

The HONOURABLE MR. S. P. O'DONNELL : Sir, I beg to move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

MESSAGE FROM LEGISLATIVE ASSEMBLY REGARDING JOINT COMMITTEE ON COTTON TRANSPORT BILL.

The SECRETARY OF THE COUNCIL : Sir, a message has been received from the Legislative Assembly.

The HONOURABLE THE PRESIDENT : Let it be read.

The SECRETARY OF THE COUNCIL : The message runs as follows :—

“ Sir, I am directed to inform the Council of State that the following motion was carried in the Legislative Assembly at their meeting on the 23rd September, 1922, and to request the concurrence of the Council of State in the recommendation contained therein, namely :—

‘ That this Assembly do recommend to the Council of State that the Bill to provide for the restriction and control of the transport of cotton in certain circumstances be referred to a Joint Committee of this Assembly and of the Council of State and that the Joint Committee do consist of ten Members ’.”

The HONOURABLE MR. H. A. F. LINDSAY : Sir, in regard to this message, I had hoped to be able to move in the House on Monday that the recommendation for the appointment of a Joint Committee be accepted, but I understand that the Agenda has already been circulated. I trust that there will be no objection, with your permission, Sir, to an amendment of the Agenda.

The HONOURABLE THE PRESIDENT : I do not think it is necessary to amend the Agenda. The Honourable Member has given notice to the Council that he proposes to move. Unless anybody objects, I shall let him move.

The Council then adjourned till Eleven of the Clock on Monday, the 25th September, 1922.
