THE

# LEGISLATIVE ASSEMBLY DEBATES

## (Official Report)

VOL. III.

PART III.

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

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## THIRD SESSION

OF THE

# LEGISLATIVE ASSEMBLY, 1923.

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# LEGISLATIVE ASSEMBLY.

*Monday, 19th February, 1923.*

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

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## MEMBER SWORN:

Mr. George Sampson Clark, M.L.A. (Burma: European).

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## STATEMENT LAID ON THE TABLE.

**Mr. A. H. Ley** (Industries Secretary): I beg to lay on the table a statement furnished by the High Commissioner for India in the United Kingdom of cases in which tenders other than the lowest in respect of stores purchased for India have been accepted by him during the half year ending 31st December, 1922.

HIGH COMMISSIONER FOR INDIA,
INDIA STORE DEPARTMENT.

ABSTRACT OF CASES in which Tenders, not the lowest complying with the requirements of the Stores Department and of the Indenting Officer, were accepted on the grounds of superior quality, superior trustworthiness of the firm tendering, greater facility of inspection, quicker delivery, etc.

HALF YEAR ENDING 31ST DECEMBER 1922.

PART A.—*Cases in which lower foreign tenders, including British tenders for foreign made goods, have been set aside wholly or partially in favour of British tenders.*

| Stores ordered. | Contract Number. | Name of Contractor. | Amount of Contract. | Lowest Tender not accepted. | Reason for acceptance. |
|---|---|---|---|---|---|
| | | | £ s. d. | £ s. d. | |
| Insulators . . . | B. 2608-1602, 10th July 1922. | Jas. Macintyre & Coy., Ltd. | 545 10 0 | 479 10 0 (German Manufacture). | Better delivery. The difference in cost would be further reduced by extra cost of inspection in Germany. |
| Wire Insulated . . | B. 2640-2262, 12th July 1922. | Hackbridge Cable Coy., Ltd. | 485 5 0 (Item 7) | 450 15 0 (Item 7.) (Belgium Manufacture). | Quicker delivery. The small difference in cost would probably be absorbed by the extra expense of inspection abroad. |
| Ferro-Silicon . . . | B. 2988-2663, 2nd August 1922. | J. Hinckley & Son . . | 348 15 0 F. O. B. (Immingham). | 341 5 0 (F. O. B. Porsgrund, Norway). | Lowest suitable having regard to shipping facilities. |
| Cable . . . . | B. 3163-3153, 16th August 1922. | Western Electric Coy. . | 3,574 3 8 | 12,949 6 3 (Austrian manufacture) Extra cost of inspection say £100. | The order was shared between the British firms on account of their greater reliability, the conditions prevailing in Austria being uncertain. The additional cost, after allowing for the extra cost of inspection abroad, is inconsiderable. |
| | B. 3164 | W. T. Hinley's Telegraph Works. | 3,104 12 8 | | |
| | B. 3165 | Johnson & Phillips, Ltd. . | 3,318 6 11 | | |
| | B. 3166 | Callender's Cable Coy. . | 3,112 9 4 | | |
| | | | 13,109 12 7 | | |

PART A.—*Cases in which lower foreign tenders, including British tenders for foreign made goods, have been set aside wholly or partially in favour of British tenders*—contd.

| Stores ordered. | Contract Number. | Name of Contractor. | Amount of Contract. | Lowest Tender not accepted. | Reason for acceptance. |
|---|---|---|---|---|---|
| | | | £ s. d. | £ s. d. | |
| War, Aerial . . . | B. 3507-3256, 2nd September 1922. | T. Bolton and Sons, Ltd. . | 260 14 10 | 234 0 6 (German Manufacture). | Quicker delivery. The small difference in price would be further reduced by extra cost of inspection in Germany. |
| Dog Spikes . . . | B. 3997-5877, 28th September 1922. | W. Kelway Bamber . . | 265 2 6 | 249 2 4 (made in Belgium). | Quicker delivery offered. There was also much delay in shipping from Antwerp. |
| Iron Wire . . . | B. 4035-5032, 2nd October 1922. | Dorman Long & Coy. . . | 1,968 15 0 | 1,950 7 6 (German). | Small difference in cost and the extra expense that would be incurred by inspection in Germany. The British firm also offered much better delivery. |
| Cement . . . | B. 4074-5964, 4th October 1922. | Ship Canal Portland Cement Manufacturers, Ltd. | 831 5 0 (11s. 1d. a Cask). (1,500 Casks) | 637 10 0 (8s. 6d. a Cask). (Belgian Cement.) | Quicker delivery. It was also not considered advisable to accept the Belgian Cement offered by the lowest tenderer until a report has been obtained on supplies being made on a Contract now running with this firm. |
| Copper Plates . . | B. 4600-6204, 8th November 1922. | Linley & Coy. . . . | 13,163 16 0 | 12,128 0 0 | Superior trustworthiness. The lowest tender was from an English firm of locomotive makers for foreign plates flanged by themselves. This is not considered nearly so satisfactory as obtaining plates flanged by the copper makers. |
| Tyres for Locos. . . | B. 5166-6533, 5th December 1922. | Steel Coy. of Scotland, Ltd. | 3,857 13 3 | 2,898 12 6 (German). | The correct supply of Locomotive Tyres is of the utmost importance and it was not considered advisable to place a further order with the German firm until they have established their reliability by completion of two other contracts which they already hold. The delivery offered by the English firm was also much quicker. |

PART B.—*Cases in which the discrimination is between British or between foreign firms.*

| Stores ordered. | Contract No. | Name of Contractor. | Amount of Contract. | Lowest Tender not accepted. | Reason for acceptance. |
|---|---|---|---|---|---|
| | | | £ s. d. | £ s. d. | |
| Wire Copper | B. 2706-2360, 17th July 1922. | London Electric Wire Co. and Smiths. | 121 11 3 | 121 0 10 | Quicker delivery. |
| Tyres | B. 2767-4130, 19th July 1922. | Pirelli, Limited | 982 10 0 | 944 5 0 | Superior quality. |
| Milliamperemeters | B. 2781-3299, 20th July 1922. | Crompton & Co., Ld. | 27 10 0 | 24 16 3 | Ditto. |
| Lamp bulbs | B. 2789-3756, 21st July 1922. | C. A. Vandervell & Co. | 45 18 11 | 38 12 0 | Ditto. |
| Ground sheets | B. 2919-3778, 28th July 1922. | G. Macintosh & Co., Ltd. | 3,687 10 0 (9s. 10d. each). | The Ioco Rubber Co. at 9s. 9d. each. | The stores were urgently required and the order was accordingly shared between the three lowest suitable firms to secure the best delivery. The Ioco Company quoted lowest and were given an order for 15,000 sheets. |
| | B. 2920, 28th July 1922. | Broadhurst & Co., Ltd | 3,687 10 0 (9s. 10d. each). (7,500 sheets to each). | | |
| Hinges | B. 3056-3085, 9th August 1922. | Pryke and Palmer, Ltd. | 121 1 6 | 116 18 0 | The lowest tenderer was less reliable and also not on the King's Roll. |
| Lysol | B. 3065-4433, 9th August 1922. | Burgoyne Burbidges & Co., Ltd. | 553 15 0 | 531 5 0 | Quicker delivery. |
| Nuts, hexagon | B. 3160-5129, 15th August 1922. | Charles Richards & Sons, Ltd. | 45 10 6 | 45 5 8 | Ditto. |
| Expanders | B. 3266-3013, 22nd August 1922. | Charles Wicksteed & Co., Ltd. | 34 17 0 | 19 0 8 | On account of the superior type of expanders offered. |
| Tubes, Maiocchi's | B. 3597-4471, 7th September 1923. | J. Powell & Son, Ltd. | 76 8 9 | 74 8 9 | Quicker delivery. |
| Engine turntables | B. 3678-4550, 11th September 1922. | Metropolitan Carriage, Wagon & Finance Co., Ltd. | 2,382 0 0 | 2,380 0 0 | Ditto. |
| Gloves | B. 3656-4489, 11th September 1922. | A. E. Braid & Co. | 154 3 10 | 136 9 7 | Better quality. |
| Paint | B. 3692-3105, 12th September 1922. | The London Varnish and Enamel Co., Ltd. | 65 0 0 | 57 10 0 | Ditto. |

PART B.—*Cases in which the discrimination is between British or between foreign firms*—contd.

| Stores ordered. | Contract No. | Name of Contractor. | Amount of Contract. | Lowest Tender not accepted. | Reason for acceptance. |
|---|---|---|---|---|---|
| | | | £ s. d. | £ s. d. | |
| Switches . . . | B. 3722-5128, 12th September 1922. | Erskine Heap & Co. . . | 15 7 6 | 14 0 0 | Better quality. |
| Flannel . . . | B. 3775-5071, 15th September 1922. | J. Schofield & Sons . . | 10,833 6 8 (yds. 100,000 at 2s. 2d.) | 9,791 13 4 | In view of the urgency the order was shared between the two lowest firms to secure the best delivery. The lowest firm was given 150,000 yards at 1s. 11½d. per yard. |
| Screws . . . . | B. 3820-4884, 18th September 1922. | C. Richards & Sons, Ltd. . | 75 4 0 | 71 8 0 | The lowest tender did not comply with the conditions of contract. |
| Theodolites . . . | B. 3888-5308, 22nd September 1922. | T. Cooke & Sons, Ltd. . | 231 5 0 | 176 10 0 | In view of special urgency and the much quicker delivery offered. A superior type of instrument was also obtained for the higher payment. |
| Field Glasses . . | B. 3909-4166, 23rd September 1922. | Ross, Ltd. . . . . | 35 4 6 | 26 8 6 | Better value. |
| Cliff Bolts . . . | B. 3939-5121, 26th September 1922. | W. Kelway Bamber . . | 2,539 6 0 | 2,494 14 9 | In view of urgency and the quicker delivery offered. |
| Safes . . . . | B. 3954-5193, 26th September 1922. | J. & E. Bates & Son., Ltd. | 98 5 0 | 92 10 0 | Better value. |
| Cranes . . . . | B. 3970-4963, 27th September 1922. | Grafton & Coy. . . . | 1,840 0 0 | 1,710 0 0 | The cranes offered were of better design and considered better value. |
| Wagons . . . | B. 4029-4801, 2nd October 1922. | Ruston & Hornsby, Ltd. . | 872 0 0 | 840 0 0 | Better value. |
| Ford Spares . . . | B. 4084-6067, 5th October 1922. | Ford Motor Coy. (England), Ltd. | 35 8 9 | 35 8 5 | Quicker delivery. |
| Saw Blades . . . | B. 4122-5130, 7th October 1922. | Sanderson Bros. & Newbould, Ltd. | 3,120 0 0 | 2,600 0 0 | Superior reliability of firm and better quality of stores offered. |

PART B.—*Cases in which the discrimination is between British or between foreign firms*—contd.

| Stores ordered. | Contract No. | Name of Contractor. | Amount of Contract. | Lowest Tender not accepted. | Reason for acceptance. |
|---|---|---|---|---|---|
| | | | £ s. d. | £ s. d. | |
| Chalk | B. 4148-5686, 10th October 1922. | Reeves & Sons | 48 2 6 | 47 2 6 | Better value. |
| Rubber connections for Pumps. | B. 4155-5425, 10th October 1922. | E. H. Hill, Ltd. | 40 0 0 | 36 18 4 | Ditto. |
| Taps, compression | B. 4156-5426, 10th October 1922. | Best & Lloyd, Ltd. | 54 15 10 | 41 5 10 | Ditto. |
| Theodolites | B. 4240-6127, 14th October 1922. | T. Cooke & Sons., Ltd. | 93 0 0 | 90 15 0 | Ditto. |
| Anhydrous Ammonia | B. 4282-877, 17th October 1922. | J. & E. Hall, Ltd. | 36 12 0 | 34 6 0 | More convenient as J. & E. Hall held the contract for the Plant. Lower firm was also not on the King's Roll. |
| Clips, towel | B. 4295-5943, 18th October 1922. | Down Bros., Ltd. | 49 19 0 | 46 11 6 | Quicker delivery. |
| Rings, copper | B. 4399-6207, 24th October 1922. | Combination Metallic Pkg. Co. (1921), Ltd. | 72 10 5 | 68 15 0 | Quicker delivery. The lower firm was also not on the King's Roll. |
| Tanks, M. S. | B. 4402-6091, 24th October 1922. | F. Braby & Co., Ltd. | 382 14 0 | 355 16 0 | Superior quality. |
| Pipes | B. 4501-6083, 1st November 1922. | Cochrane & Coy., Ltd. | 1,409 13 2 | 1,381 13 1 | Quicker delivery. |
| Bearings, ball | B. 4625-6804, 8th November 1922. | The Hoffmann Manufacturing Co., Ltd. | 178 2 2 | 177 14 0 | Better value. |
| Drill, cotton | B. 4630-7566, 9th November 1922. | E. Spinner & Co. | 1,088 19 0 | 1,017 2 6 | Immediate delivery offered. Supply urgently required. |
| Telephones | B. 4769-6497, 17th November 1922. | Peel-Conner Telephone Works. | 220 0 0 | 191 12 6 | Better value. |
| Magneto parts | B. 5039-7803, 1st December 1922. | The British Lighting & Ignition Co., Ltd. | 72 16 7 | 68 0 3 | Better quality. |

PART B.—*Cases in which the discrimination is between British or between foreign firms*—concld.

| Stores ordered. | Contract No. | Name of Contractor. | Amount of Contract. | Lowest Tender not accepted. | Reason for acceptance. |
|---|---|---|---|---|---|
| | | | £ s. d. | £ s. d. | |
| Mantles | B. 5108-6677, 4th December 1922. | Oil Lighting, Ltd. | 1,210 18 4 | 1,180 11 0 | Better value. |
| Drilling Machine | B. 5118-6793, 4th December 1922. | A. Herbert, Ltd. | 297 16 0 | 270 0 0 | Ditto. |
| Cutters | B. 5128-6585, 4th December 1922. | Henry Rossell & Coy., Ltd. | 563 4 6 | 503 4 5 | Ditto. |
| Wheels | B. 5234-7.92, 8th December 192?. | A. Hall & Coy., Ltd. | 1,178 6 1 | 1,140 4 0 Less 5 per cent. Plus Pkg. | Greater reliability. The lowest tender was also subject to an extra charge for packing. |
| Wire rope | B. 5241-6467, 8th December 1923. | J. & E. Wright | 170 19 0 | 165 7 4 | On account of the firm's special reliability for the rope required. |
| Wire rope | B. 5376-6576, 15th December 1922. | Allen Whyte & Co. | 24 11 0 | 22 15 10 | Superior reliability. The price quoted by the lowest firm was also not firm. |
| Netting, Mosquito | B. 5384-7353, 15th December 1922. | Hy. Mallet & Sons | 7,218 15 0 (yds. 140,000 at 12½d.) | 7,000 0 0 (at 1s. per yd.) | Lowest suitable in view of the urgency of the requirements. The lowest firm also received an order for 350,000 yards at 1s. per yard. |
| Blower | B. 5416-7902, 18th December 1922. | Samuelson & Coy. | 67 0 0 | 66 0 0 | Better value. |
| Belting Cotton | B. 5449-7025, 19th December 1922. | Lewis & Taylor, Ltd. | 20 4 2 | 18 15 0 | Ditto. |
| Machine Shaping | B. 5489-7935, 21st December 1922. | Selson Engineering Coy., Ltd. | 172 15 0 | 153 15 0 | Ditto. |
| Helmets | B. 5481-7575, 21st December 1922. | Percy Ayers & Coy. | 10,908 6 8 (28,000 at 7s 9½d.) | 9,800 0 0 (at 7s.) | Lowest suitable having regard to urgency of the requirements. The lowest firm, who are in arrears in delivery on a current contract, were given an order for 7,500 helmets to be taken into stock. |
| Paper | B. 5593-8486, 28th December 1922. | W. Nash, Ltd. | 75 0 0 | 74 7 6 | Better value. |

IMPORT DUTY ON PAPER.

366. ***Sir Montagu Webb:** (1) Are Government aware:

(*a*) That under the Finance Act, 1922, passed by the Legislature in March last, an import duty of fifteen per cent. *ad valorem* was imposed on paper? (Item 94 in Schedule II, Import Tariff); yet

(*b*) That by a Notification " Customs Duties, No. 6705 of 23rd December, 1922, new items have been introduced into Schedule II of the Import Tariff under the heading Paper, namely, news printing paper, printing paper flints, real art, imitation art, etc., to which Tariff Valuations have been given in some cases more than twice the current market values of the papers mentioned, with the result that the present Import Duty on paper instead of being fifteen per cent. as laid down by the Finance Act, 1922, is now twenty to thirty-seven per cent.?

(2) Will Government be pleased to say what steps they propose to take to correct this deviation from the scale of duties authorised by the Legislature, so as to ensure that the duty on paper shall not be suddenly doubled or more by mere executive order?

**The Honourable Mr. C. A. Innes:** (1) (*a*) Yes.

(1) (*b*) and (2). These valuations were based on the prices of the previous years and were fixed in consultation with the principal Chambers of Commerce, and were not criticised at the time as being excessive. The Government of India have, however, further examined the matter in the light of information subsequently supplied and have ascertained that the valuations then fixed are somewhat above actual market prices, partly on account of the considerable fall which has taken place in the prices of paper during the last 4½ months, *i.e.*, since the collection of the quotations on which the valuations were based. They have therefore revised the tariff valuations for this article, and a notification to this effect appeared in the Gazette of India of the 17th instant.

**Sir Montagu Webb:** Having regard to the fact that prices generally are now falling, will Government undertake from time to time to re-examine other tariff valuations so that the scale of duties authorised by the Legislature shall not be greatly exceeded?

**The Honourable Mr. C. A. Innes:** That, Sir, raises a big question. In exceptional cases we do reduce the valuations but not often. It would be against the whole object of tariff valuation to do so as a matter of course and the Honourable Member will see that if we reduce the valuation when prices fall we must also increase it when prices rise.

ARMS RULES COMMITTEE'S REPORT.

367. ***Baba Ujagar Singh Bedi:** (*a*) Will Government be pleased to state if they have accepted the recommendations of the Arms Rules Committee?

(*b*) What points of the Report they have accepted?

(*c*) Have the Government given any legal shape to those recommendations yet, if not, when are they going to be enforced as Law?

(*d*) Have they given any consideration to the Notes of Dissent, on the said Report, and if so, to what points?

**The Honourable Sir Malcolm Hailey:** We hope very shortly to be in a position to make a statement on the subject.

WORKING OF CHIT ASSOCIATIONS AND NIDHIS IN MADRAS.

368. ***Mr. Narayandas Girdhardas:** Will the Government be pleased to state whether they will call for a report from the Government of Madras as to whether in view of the inapplicability of several of the fundamental provisions of the Indian Companies Act, to Chit Associations and Nidhis, it is desirable to modify the Act to suit the constitution and working of these institutions?

**The Honourable Mr. C. A. Innes:** A letter on this subject has just been received within the last few days from the Southern Indian Chamber of Commerce and is under examination. This covers also the next question, No. 369.

WITHDRAWALS AND LOANS IN CONNECTION WITH NIDHIS AND CHIT ASSOCIATIONS.

369. ***Mr. Narayandas Girdhardas:** Will the Government be pleased to state whether in the case of Nidhis and Chit Associations, withdrawals from, and loans on share capital are allowed against the provisions of the Indian Companies Act?

AUDITORS IN MADRAS.

370. ***Mr. Narayandas Girdhardas:** Will the Government be pleased to state the number of Auditors certified as qualified to audit accounts for purposes of Income-tax in the Madras Presidency?

**The Honourable Sir Basil Blackett:** The information is being collected and will be supplied to the Honourable Member. This answer I am afraid I must ask him to accept to all the questions up to No. 375 inclusive.

INCOME-TAX ASSESSEES, MADRAS.

371. ***Mr. Narayandas Girdhardas:** Will the Government be pleased to state the number of assessees to Income-tax in the Madras Presidency on 31st March, 1922?

INCOME-TAX AUDITORS.

372. ***Mr. Narayandas Girdhardas:** Will the Government be pleased to state whether it is a fact that since the passing of the Indian Income-tax Act of 1922, no additions to the list of qualified Auditors for Income-tax purposes have been made?

COMMITTEE ON INCOME-TAX AUDITORS.

373. ***Mr. Narayandas Girdhardas:** (*a*) Will the Government be pleased to state under what provision of the Indian Income-tax Act of 1922, or the

rules thereunder, the Commissioner of Income-tax for the Madras Presidency has constituted a Committee for the selection of Auditors for Income-tax purposes?

(*b*) Will the Government be pleased to state whether Commissioners of Income-tax in other Presidencies have constituted similar committees for the selection of Auditors for Income-tax purposes?

ENLISTMENT OF INCOME-TAX AUDITORS.

374. ***Mr. Narayandas Girdhardas:** Will the Government be pleased to state whether any rules have been framed by the Commissioner of Income-tax for the Madras Presidency to regulate the enlistment of Auditors for Income-tax purposes? If so, will the Government be pleased to lay a copy on the table?

INCOME-TAX ASSESSEES.

375. ***Mr. Narayandas Girdhardas:** Will the Government be pleased to lay on the table a statement of the number of Income-tax assessees in each of the major Provinces on the last day of the last official year, and also the latest number of qualified Auditors for Income-tax purposes in each of those major Provinces?

RAILWAY ADVISORY COUNCILS.

376. ***Mr. B. S. Kamat:** (*i*) Will Government be pleased to state for which of the Railway Administrations Local Advisory Councils have been established so far in terms of the recommendation of the Railway Committee, 1920-21?

(*ii*) In this connection, will Government also be pleased to give the constitution, the method of selection of the Members, the scope of duties, remuneration, if any, to Members, and the nature of proceedings of these Advisory Councils as fixed at present?

(*iii*) If Local Advisory Councils have been appointed for the G. I. P. and the B. B. C. I. Administrations, will Government be pleased to give the names of the Members?

**The Honourable Mr. C. A. Innes:** (*i*) and (*iii*) Apart from the two committees on Eastern Bengal and East Indian Railways which have been for some years in existence no new Local Advisory Committees have yet been established in accordance with the revised principles referred to. Orders have however been issued for the formation of committees on the three State lines, and these will very shortly be constituted. The principles which are being followed on State-worked railways have been recommended to all Companies for adoption, and in most cases preliminary measures are believed to be now well advanced for the formation of similar committees on all the principal lines.

(*ii*) Government have confined themselves to formulating certain general principles in consultation with the Central Advisory Council, and detailed arrangements such as those referred to will necessarily be settled on each individual line to suit local circumstances. A copy of the memorandum of general principles prescribed is laid on the table.

*Memorandum regarding Local Railway Advisory Committees.*

I. *Title.*—The new bodies to be known on each line as "Railway Advisory Committee".

II. *Constitution.*—A separate main Committee to be constituted for each administration, the number of members being decided by circumstances subject to a maximum of 12. The Agent to be *ex-officio* Chairman. The remaining members to consist of:

two Local Government members nominated by the Local Government in whose jurisdiction the headquarters of the railway in question is situated;

three representatives of the Legislative Council of the Government in whose jurisdiction the headquarters of the railway in question is situated. These members should be selected to represent rural interests and the travelling public;

one member from the local municipality or corporation at the railway headquarters;

five members representing industries, commerce and trade.

The heads of departments of railways may be called in merely to advise on subjects under discussion which may affect their department and on which their technical expert advice would be useful to the committee.

The method of selection of the non-official members to be left largely to local discretion. The representatives of the Legislative Council need not necessarily be members of the Council. Members of the Central Advisory Council are not debarred from membership of Local Advisory Committees. The five members representing industries, commerce and trade would ordinarily be drawn from important local bodies representing predominant trade interests; the actual selection of such bodies should be made in consultation with the Local Government, and once the selection is made it should be left to them to nominate or elect their representatives. The tenure of office of the members to be left to the electing or nominating bodies to decide.

Agents will consider whether it is desirable to form separte branch local committees at large centres, and in case of doubt they may consult their main committee in this matter.

III. *Scope of duties.*—The functions of the committee to be purely advisory. The sort of subjects which might suitably be placed before the Committees are:

(*a*) alterations in time tables and passenger services;

(*b*) alterations of rates and fares and changes of goods classifications;

(*c*) proposals in regard to new projects and extensions;

(*d*) proposal in regard to new rolling stock;

(*e*) any matters affecting the general public interest or convenience.

Questions of personnel, discipline and appointments will not be brought before the committee; subject to this condition any member may suggest a subject for discussion, but the Agent may rule out any subject for reasons which should be explained at the first meeting after the ruling has been given.

IV. *Remuneration.*—Non-railway members may be paid Rs. 32 for each meeting attended.

V. *Proceedings.*—The committee to meet once a month if there are matters to be discussed. A copy of the minutes of meetings to be furnished to each member and to the Railway Board. If in any case the Agent decides that he is unable to follow the advice given by the majority of the committee, he must bring the matter to the notice of the Railway Board in forwarding the minutes of the meeting for their perusal.

**Sir Deva Prasad Sarvadhikary:** Would the Honourable Member please state how Members of this House can obtain information regarding the proceedings of these Committees?

**The Honourable Mr. C. A. Innes:** I am afraid I must ask for notice of that question.

RECOMMENDATIONS OF DECK PASSENGER COMMITTEE.

377. ***Mr. B. S. Kamat:** (*i*) Will Government be pleased to state what action has been taken in the matter of the recommendations of the Deck Passenger Committee, 1921, so far as any amending legislation to amend the Indian Passenger Ships Act is concerned to improve space allowance?

(*ii*) Will Government also please state what steps, if any, have been taken to improve existing conditions in general and particularly in respect of the following recommendations of the said Committee, *viz.*:

(*a*) Paragraph 68A, (*iv*) Shelter accommodation at ports;

(*b*) Paragraph 68A, (*v*) better arrangements for Surf boats;

(*c*) Paragraph 68A, (*vi*) embarking and disembarking;

(*d*) Paragraph 68A, (*viii*) telegraphic communications between ports;

(*e*) Paragraph 68A, (*ix*) night signalling between shore and adjacent villages;

(*f*) Paragraph 68A, (*xxiii*) non-official visitors at important ports.

**The Honourable Mr. C. A. Innes:** The Government of India informed Maritime Local Governments in November, 1921, of the provisional conclusions they had come to on the more important recommendations contained in the Deck Passengers Committee's Report and asked them to consult Steamship Companies and public bodies on these questions and to furnish the Government of India with their views. A reply is still due from one important Local Government who have been asked to expedite the matter. Until this reply is received, it is impossible for Government to formulate final conclusions.

QUARTERS AT WINDSOR PLACE, RAISINA.

378. ***Rai Bahadur Lachmi Prasad Sinha:** Will the Government be pleased to state—(*a*) How many quarters are still lying unoccupied at Windsor Place?

(*b*) Whether the rent of those quarters will be charged from the Honourable Members, for the whole Season, to whom they have been allotted or from the date of their occupation?

(*c*) If from the date of occupation, then who will be liable for rent of those unoccupied quarters, either for the unoccupied period or for the rest of the Session—in case the Members to whom they have been allotted do not owing to certain reasons come to Delhi or occupy them?

**Sir Henry Moncrieff Smith:** (*a*) Four quarters at Windsor Place were until a few days ago unoccupied.

(*b*) and (*c*) Quarters at Windsor Place have all been allotted on the basis of seasonal rents, and rent will be charged for the whole season whether the quarters are occupied or not unless the quarter is definitely relinquished. Where a Member relinquishes his quarter he is liable for the rent till a new tenant has been found.

ALLOTMENT OF QUARTERS AT RAISINA.

379. *Rai Bahadur Lachmi Prasad Sinha: Will the Government be pleased to state if it will be possible for them to re-allot the Windsor Place quarters after allowing a certain reasonable period from the date of commencement of the Session for their occupation instead of keeping them vacant?

**Sir Henry Moncrieff Smith:** Hitherto the practice has been that when a quarter at Windsor Place has been allotted to a member it is kept at that member's disposal even though he may not be occupying it until he definitely relinquishes it. Government will consider the Honourable Member's suggestion that a re-allotment of the vacant quarters should be made after the lapse of a reasonable period.

**Rao Bahadur T. Rangachariar:** Having regard to the popularity of these quarters, will the Government be pleased to build more such quarters?

**Colonel Sir Sydney Crookshank:** We have taken out estimates for the construction of 10 additional quarters of this particular design and when the Finance Department are in a position to provide the funds and the Legislative Assembly vote the funds, the construction of these quarters will be put in hand.

WINDSOR PLACE QUARTERS UNOCCUPIED.

380. *Rai Bahadur Lachmi Prasad Sinha: Will the Government be pleased to state as to how many Windsor Place quarters were unoccupied during the whole of the last Delhi Session?

**Sir Henry Moncrieff Smith:** None of the quarters at Windsor Place was unoccupied for the whole of the last Delhi Session.

TRAINING OF INDIANS IN ARTILLERY, ENGINEERING, ETC.

381. *Mr. Ahmad Baksh: Will the Government be pleased to state what definite steps have been taken in the matter of training of Indians for Commissions in Artillery, Engineering, Air Force and Royal Marine in pursuance of the promise given in His Excellency the Viceroy's speech on the 3rd of September 1921 when opening the second session of the Indian Legislature at Simla printed on page 14, Volume II of the Legislative Assembly Debates?

**Mr. E. Burdon:** The question of the admission of Indians to the commissioned ranks of the Artillery and Engineer services in India, as well as the Royal Air Force in India, is still under consideration.

As regards the Royal Indian Marine, I invite the attention of the Honourable Member to the reply given on the 16th instant to unstarred question No. 180.

**Mr. B. S. Kamat:** May I ask what has been the decision about the training of Indians for the Air Force?

**Mr. E. Burdon:** I have stated this in the reply which I have just given. The matter is still under consideration.

MAINTENANCE OF STANDING ARMY IN INDIA.

382. *Mr. P. P. Ginwala: With reference to the answer to my question No. 3, dated the 15th January 1923 (*re* the Statutory or other authority under which the Governor General in Council maintained a Standing Army in India), will the Government be pleased to state:

(*a*) Whether it is not the fact that all the three Statutes therein cited have been repealed by the Government of India Act?

(*b*) If the answer to (*a*) is in the affirmative, whether it is not the fact that there is no express statutory authority for the maintenance of a Standing Army in India?

(*c*) If the answer to (*b*) is in the affirmative, under what other authority is the Standing Army in India maintained?

**Mr. E. Burdon:** I wish in the first instance to express my regret that the reply which I gave to the question on the same subject asked by my Honourable friend on the 15th January last was incorrect. This was due, I need hardly say, to inadvertence, and the Honourable Member's present question gives me an opportunity of setting the matter right. The answer to his question is as follows:

(*a*) Of the three Statutes referred to, the East India Mutiny Act, 1754, was repealed by the Statute Law Revision Act, 1867, while the Government of India Act, 1833, and the Government of India Act, 1858, were repealed by the Government of India Act, 1915.

(*b*) Yes.

(*c*) Under the inherent power of the Crown.

**Mr. P. P. Ginwala:** May I ask what is meant by the inherent power of the Crown as applied to the Army in India?

**Dr. H. S. Gour:** May I also ask whether the inherent power of the Crown is invoked for the purpose of maintaining a Standing Army in Great Britain?

**Mr. E. Burdon:** The matter in the case of the United Kingdom is affected, I am advised, by the Bill of Rights, that is to say in the absence of the limitations on the power of the Crown imposed by the Bill of Rights those powers would be unlimited; and my Honourable friend is probably aware that the Bill of Rights has no application to India.

**Mr. N. M. Samarth:** Has the attention of the Auditor General been drawn to the expenditure incurred on the Standing Army in India?

**Mr. E. Burdon:** I do not think the Auditor General has overlooked it.

**Mr. P. P. Ginwala:** Do I understand that it is the view of the Government of India that the Governor General or the Governor General in Council exercises all the inherent powers of the Crown as they are understood in Great Britain?

**Mr. President:** That is a large question to ask the Army Secretary.

**Dr. H. S. Gour:** If the inherent power of the Crown is to maintain an Army, who pays for it?

**Mr. E. Burdon:** Surely the Honourable Member knows.

**Dr. H. S. Gour:** Is the Honourable Member aware of the fact that the revenues are not to be used under the Government of India Act, except to the extent authorised by that Statute?

**Mr. E. Burdon:** Certainly.

**Dr. H. S. Gour:** Then it follows that if the Crown has the power of maintaining an Army the Crown has not the inherent right of pledging the revenues of India except to the extent provided by the Statute and that statement makes no provision for the maintenance of an Army in India. Is that not so?

**Mr. E. Burdon:** Do I understand the Honourable Member is asking a question?

**Dr. H. S. Gour:** Yes.

**Mr. E. Burdon:** What is the question?

**Dr. H. S. Gour:** I will repeat it for the benefit of the Honourable Member. If I understood the Honourable Member aright, the Army in India is maintained in the exercise of the Royal Prerogative which my Honourable friend calls the inherent right of the Crown to maintain the Army of India. It does not extend to paying for the Army of India in view of the Government of India Act which lays down that the revenues of India cannot be hypothecated for any purpose except to the extent provided by the Statute and that Statute does not make any provision for the maintenance of an Army in India.

**Mr. President:** I did not observe any note of interrogation at the end of that statement.

**Mr. T. V. Seshagiri Ayyar:** In the self-governing Colonies, has the inherent power of the Crown ever been used for the purpose of maintaining a Standing Army?

**Mr. President:** The Army Secretary is not responsible for the administration of His Majesty's Overseas Dominions.

REGISTRATION OF NURSES TRAINED IN INDIA.

383. ***Lieut.-Colonel H. A. J. Gidney:** 1. Will Government be pleased to state whether nurses trained in India can obtain registration under any rules made by the Imperial or Local Governments or under a Local or General Act?

2. If the reply is in the affirmative, would such registration be recognised by the General Nursing Council for England and Wales?

3. Are the Government of India aware of the fact that owing to the absence of a Registration Act in India many nurses who have been trained and qualified in India are refused registration in England and are thereby prevented from practising their profession and earning a livelihood?

4. Will Government be pleased to state whether they are:

(*a*) prepared to introduce an All-India Nurses Registration Act, or

(*b*) willing to recommend each Local Government to do so?

**The Honourable Mr. A. C. Chatterjee:** (1) There are no rules made by the Government of India under which nurses can obtain registration. Registration is possible in certain provinces under local or private arrangements. In Burma there is the Burma Midwives and Nurses Act, 1922.

(2) The Government of India have no information as to whether registration in Burma is recognised by the General Nursing Council for England and Wales.

(3) The Government of India are aware that nurses trained and qualified in India would be ineligible for registration in England, though the absence of registration would not preclude such nurses from practising their profession and earning a livelihood there.

(4) The Government of India have no such proposal under consideration.

**Lieut.-Colonel H. A. J. Gidney:** Is the Government aware that the matter has been brought before the Local Councils and in one Council, the Central Provinces, the reply given to a similar question was disallowed under its rule 7 as it is an all-India question? Will the Government under those circumstances see their way to introducing all-India legislation?

**The Honourable Mr. A. C. Chatterjee:** I could not hear the last few words.

**Lieut.-Colonel H. A. J. Gidney:** A question of a similar kind was asked in one of the Local Councils and the reply given in the Central Provinces Council was " Disallowed under Rule 7 as it is an all-India question." Under those circumstances I ask whether the Honourable Member for Government will be good enough to tell me whether he would, in the face of that answer, introduce all-India legislation.

**The Honourable Mr. A. C. Chatterjee:** I have no information of the proceedings in the Provincial Councils. The Honourable Member is aware that medical education is a provincial subject.

**Lieut.-Colonel H. A. J. Gidney:** I am perfectly aware that it is a provincial subject but the provinces have refused to entertain such legislation. I now ask whether the Central Government will pass a Registration Act.

**The Honourable Mr. A. C. Chatterjee:** As I have said, we have no request from any Provincial Government.

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## UNSTARRED QUESTIONS AND ANSWERS.

### SECRET SERVICE DEPARTMENT.

189. **Mr. Saiyed Muhammad Abdulla:** (*a*) What works are done by the Secret Service Department?

(*b*) How is it administered? Is it through special Agency or through the District officers and Political officers?

(*c*) What amounts were spent on it for the last 5 years?

**The Honourable Sir Malcolm Hailey:** There is no Secret Service Department but as in all countries a sum—in India a very small sum—is set apart under the head of Secret Service contingencies for confidential enquiries and other measures in the interest of public security. I may mention that the amount so allotted was Rs. 2,50,000 for the years 1917-1920, in 1921-22, Rs. 2,80,000, and a considerably smaller sum will be required for 1922-23. The Honourable Member will readily understand that details of its administration cannot be given without prejudice to the purposes for which the allotment is made.

WOMEN'S MEDICAL SERVICE.

190. **Lieut.-Colonel H. A. J. Gidney:** (1) Will Government be pleased to state what is the ordinary period for which qualified lady doctors are kept on probation in the Senior Branch of the Women's Medical Service?

(2) Has it been found necessary to extend the period in any case: if so, in how many cases, and on what grounds has the extension of probation been insisted on and for what periods?

(3) What is the number of cases, falling under the category in question No. (2) in which confirmation in the service has entirely been notified?

**The Honourable Mr. A. C. Chatterjee:** The Women's Medical Service is not a Government service but Government are informed that the answers to the Honourable Member's questions are as follows:

(1) One year.

(2) Yes; in one case, on the ground that the person concerned had been transferred during the period of probation and the reports on the advisability of confirming her in the service were doubtful. Her period of probation was therefore extended in order to give her every opportunity of proving her capacity. The extension was for six months.

(3) If the last word in this question is intended for "refused" the reply is "one."

REVERSION OF MEN SERVING *ex*-INDIA DURING THE WAR.

191. **Lieut.-Colonel H. A. J. Gidney:** (1) Will the Government of India be pleased to state whether Government servants who were serving temporarily under them and were placed on deputation *ex*-India during the war, were permitted to return to the Government of India at the conclusion of such deputation though their substantive posts were under a local Government? If not, why not?

(2) If any Government servants have been so reverted to their substantive posts, were they given any option in the matter before being placed on deputation?

**The Honourable Sir Malcolm Hailey:** The information asked for by the Honourable Member is being collected and will be supplied to him when ready.

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## THE REPEALING AND AMENDING BILL.

**Sir Henry Moncrieff Smith** (Secretary, Legislative Department): Sir, I beg to move:

"That the Bill to amend certain enactments and to repeal certain other enactments be taken into consideration."

As this Bill involves no principle other than that of removing from time to time obsolete matter and formal defects from the Statute Book, I do not think I need make any further remarks in support of my motion.

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

"That the Bill to amend certain enactments and to repeal certain other enactments be taken into consideration."

The motion was adopted.

Clauses 1, 2, 3 and 4 were added to the Bill.

**Mr. President:** Schedule I.

**Sir Henry Moncrieff Smith:** Sir, as I explained the other day in asking for leave to introduce this Bill, we find from time to time and often very frequently that defects are created in our Statute Book by changes of circumstances. Sir, after this Bill was printed off and ready for introduction, it was brought to our notice that amendments had been necessitated in our Statute Book by an Act which was passed in 1922 in Burma in respect of provisions which applied only in Burma, and until we in the Central Legislature amend those provisions in a corresponding manner, they will have to stand in our Statute. Therefore, Sir, the amendments which I am proposing are merely to bring our Statute Book into line with the law of the province of Burma, which has been amended by the Burma Courts Act, 1922. The amendments are of a purely formal nature. Sir, I move:

"That in the First Schedule—

(*a*) the entry in the fourth column relating to the Indian Divorce Act, 1869, be renumbered '(*1*)' and after that entry the following be added, namely:

'(*2*) In section 3, clause (*2*) for the word 'Divisional' the word 'District' shall be substituted';

(*b*) after the entry relating to the Court Fees Act, 1870, the following entry be inserted, namely:

| | | | |
|---|---|---|---|
| '1877 | I | The Specific Relief Act, 1877. | In Section 45 for the words 'and Bombay' the words 'Bombay and Rangoon' shall be substituted'." |

The motion was adopted.

The first Schedule, as amended, was added to the Bill.

**Sir Henry Moncrieff Smith:** Sir, I move:

"That in the Second Schedule—

(*a*) after the entry relating to the Trustees and Mortgagees' Powers Act, 1866, the following entry be inserted, namely:

| | | | |
|---|---|---|---|
| '1870 | VII | The Court Fees Act, 1870. | In Schedule I, Article 15.' |

(*b*) in the fourth column of the entry relating to the Code of Civil Procedure, 1908, the following be added, namely:

'(*3*) In section 123, sub-section (*2*) the words '(in Burma)'.'

(*c*) for the heading 'Regulation by the Governor General in Council' the heading 'Regulations by the Governor General in Council' be substituted and under that heading before the entry relating to the Upper Burma Civil Courts Regulation, 1896, the following entry be inserted, namely:

| | | | |
|---|---|---|---|
| '1892 | V | The Upper Burma Criminal Justice Regulation, 1892. | In the Schedule, section I and sub-sections (*1*) to (*4*) of section II and section X'." |

The motion was adopted.

The Second Schedule, as amended, was added to the Bill.

The Title and Preamble were added to the Bill.

**Sir Henry Moncrieff Smith:** Sir, I move that the Bill, as amended, be passed.

**Mr. President:** The question is that the Bill to amend certain enactments and to repeal certain other enactments, as amended, be passed.

The motion was adopted.

## THE GOVERNMENT SAVINGS BANKS (AMENDMENT) BILL.

**Colonel Sir Sydney Crookshank** (Secretary, Public Works Department): Sir, I beg to move for leave to introduce a Bill further to amend the Government Savings Banks Act, 1873.

The Bill which I have the honour to present to this House—a Bill which Honourable Members will observe is of a very simple character and non-controversial—marks a further step on the road of affording facilities and convenience to the public offered by the Posts and Telegraph Department which is so ably administered by my Honourable friend, Mr. Sams. We desire here to expedite the payment of Cash Certificates and Savings Bank deposits to the heirs of deceased depositors by relieving Post-Masters General of the duty of sanctioning the payment of such deposits where they are small in amount and thus decentralizing this work on to Head Post-Masters. By this Bill Head Post-Masters will be empowered to calculate the interest due and to close accounts without reference to the Post-Master General of the Circle when the amount involved does not exceed Rs. 100. The alteration does not throw any liability on Government and reduces the routine work and, generally speaking, benefits the community, that is to say, the small depositor, and facilitates business generally. We have already made an experiment with this practice since 1919 in the case of Cash Certificates and we have found that there has been no trouble and the procedure has worked very satisfactorily. We are therefore anxious to regularise the procedure. Sir, I commend my Bill to the House.

**Mr. President:** The question is that leave be given to introduce a Bill further to amend the Government Savings Banks Act, 1873.

The motion was adopted.

**Colonel Sir Sydney Crookshank:** Sir, I introduce the Bill.

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## THE INDIAN PAPER CURRENCY BILL.

**The Honourable Sir Basil Blackett** (Finance Member): Sir, I beg to move:

"That the Bill to consolidate the law relating to the Government Paper Currency be taken into consideration."

The motion was adopted.

Clause 1 was added to the Bill.

Clauses 2 to 30 were added to the Bill.

The Schedule was added to the Bill.

The Title was added to the Bill.

The Preamble was added to the Bill.

**The Honourable Sir Basil Blackett:** Sir, I move that the Bill be passed.

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

"That the Bill to consolidate the law relating to the Government Paper Currency be passed."

The motion was adopted.

**The Honourable Sir Malcolm Hailey** (Home Member): I beg to move:

"That the Bill further to amend the Code of Criminal Procedure, 1898, the European Vagrancy Act, 1874, the Indian Limitation Act, 1908, and the Central Provinces Courts Act, 1917, in order to provide for the removal of certain existing discriminations between European British subjects and Indians in criminal trials and proceedings, be taken into consideration."

I briefly referred a few days ago, in discussing the programme of business to be laid before the House, to the reasons why I proposed to make this motion. The House will perhaps excuse me if I give those reasons to-day at somewhat greater length. I am sure that I shall be acquitted of any desire to rush this measure through the Legislature. As I said the other day in introducing the measure, it is intended to provide some solution for a controversy which has lasted 40 years; and whatever one's anxiety to see the consummation of our hopes of a solution, whatever the satisfaction of Government at securing the seal of the Legislature on an agreement arrived at between the two communities: yet no one could plead that it is a matter of the highest urgency or that it is of real urgency that we should pass this Act either this week or this month or next. I could not therefore plead that it is necessary to omit the stage of Select Committee and proceed at once to consideration in order to avoid the lapse of time. Anxious therefore as I was to proceed, I thought it well to discuss with many of my friends in the House the procedure which they would prefer in the matter. I found that there were some who thought that we ought to have a Select Committee; but there were others, and these were in the majority, who thought that no Select Committee was necessary, for the reason that they foresaw in any case a considerable number of amendments. Those amendments, they thought, would come forward whether we held a Select Committee or not, because they were amendments of principle; they were amendments not of detail but amendments affecting the whole basis of the compromise on which the Bill was based. So much for the opinions of my friends in the House. Now, a Select Committee is usually called for and justified when a measure is put forward by Government in pursuance of some end of Government policy. But here we have a measure which is based not on the views of Government but on the recommendations of a Committee on which there were only three Government Members, and the drafting of the Bill to give effect to those recommendations has been all the simpler because the Committee contained so preponderating an amount of high legal talent. Then again, a Select Committee is frequently called for—and again I say it is frequently justified—in order that the press and public of the country may have time to digest a complicated measure, and, if necessary, to formulate its criticisms on the proposals. Now, I have carefully watched the press since our Bill was introduced. I have tried as far as possible to follow also other expressions of public opinion, but our only guide has been the press, for I do not think that we have been addressed by a single public association or public body on the subject. I do not think that I have seen notice of a single public meeting. Our only guide therefore has been the press, and I think I may say that I have nowhere seen a demand that further time should be given for assimilation of this measure. Indeed, it appears to me that the press, having made its criticisms and given its directions to the country as the press will do, has been content to leave the matter there, in other words to await the decision of this Legislature. These are the reasons why I thought that we might well proceed directly to the

stage of consideration; I think the public generally will be satisfied that we are justified in doing so; indeed I would not put the motion forward on any other ground.

Now, I come to the Bill itself. If my motion for consideration is carried we shall shortly be discussing amendments which deal both with the principle and the details comprised in the Bill. I have already in introducing the Bill referred to the circumstances in which the Bill was framed, and the light in which we would seek to have it regarded. Important, almost momentous as it is, I said nevertheless that Government did not claim too much for it. We put forward no extravagant estimates of what it achieved. I made it clear that we did not regard it as the sole, or as the final or as a permanent solution of a controversy which had troubled our predecessors so greatly, which indeed they must have felt to be insoluble. We regarded it as an advance, but an advance all the more valuable because it was obtained by way of compromise and of mutual sacrifice. I say all the more valuable, but I feel that the word is inadequate in dealing with an achievement so important, for the fact that those sacrifices have been made by two communities on a matter on which they feel so deeply, is not in itself only a proof that we shall some day find the solution of this difficulty, but it is more; it is a proof that there is in this country that temper of statesmanship which will not only help us to see an end of a difficulty such as this, but affords a guarantee that we can face with confidence even greater difficulties in our political future.

I said, Sir, the solution is not final, and perhaps it may not be satisfactory in all its details, but that it is the very essence of a compromise. You could not expect a compromise on a matter affecting two communities so deeply which would leave either of the two perfectly satisfied. And in practical matters of ordinary life, when some great issue is at stake, whom do we choose as our guide and our counsellor? Do we choose the man who by prudent abatement of part of his demand secures the substance of what he aims at, or do we follow the intransigent, the inflexible, the impracticable man who stands out for every jot and tittle of his demand, until in the end he so frequently loses the whole? We choose the former, but indeed I do not think I need dilate on this aspect of the question, because, as far as I am able to determine, the public at large has accepted the fact that this was an occasion which justified compromise, and that the terms of settlement does actually constitute both an advance and an improvement. If there has been criticism—criticism, I mean of the type of which we need take account here—if there has been criticism, it turns in main not on the recommendations of the Committee, but on the fact that in certain respects our Bill has modified those recommendations at the instance of His Majesty's Government; I am choosing my words advisedly, and I say His Majesty's Government and not the Secretary of State. I have seen it stated that it is a matter for disappointment, indeed that it is a matter for resentment, that the terms of the Committee's recommendations have been so modified. I will put the case as clearly and as fairly as possible to the House and I ask the House to judge of what I say with equal fairness. It has been stated—I think I heard a murmur just now which confirms me in saying so—that the instructions we have received on the subject are the instructions of a reactionary Secretary of State, no friend of India. Well, let us have the truth. The instructions which we have received on the matter with which for the moment we are mostly concerned (namely, the position of subjects of the Dominion Governments ) are the instructions of His Majesty's Government as a whole, communicated to the Secretary of

[Sir Malcolm Hailey.]

State as the condition on which he could give the approval which is necessary under section 65 of the Government of India Act. I say, with all sincerity, that I believe that those instructions would have been given by the preceding Government, perhaps by any preceding Government. I do not believe—again I speak with all sincerity—I do not believe that these directions involve any change of policy or any new angle of vision in regard to India. They represent simply the result of a calculation of the balance of advantages of two alternatives in respect to a question of great imperial importance. Let me explore that subject, if I may, for a minute. What is the essence of the demand which was made by the Committee, and which has been so largely made in India generally, that the status which the dominion subject now enjoys should be withdrawn? Obviously, the demand cannot be motived merely by a spirit of reprisal, in view of the disabilities which Indians suffer in many of the dominions or the slight which is felt that those disabilities have caused on the name and fame of India. As I say, the motive cannot be merely that of reprisal, for to legislate as an act of revenge without any consideration of the future advantages or disadvantages of such an act would not be the act of a serious Legislature, and indeed were anybody to put that motive or argue that reason before the Legislature, I should feel that he was depreciating the judgment of the Legislature by doing so. It is of course,—I think this is obvious—it is of course the fact that this demand was put forward as providing an instrument of negotiation, in other words to help to secure the speedy execution of the reciprocity Resolution on the part of those dominions which had agreed to it, and further to help to secure agreement to the Resolutions by those dominions who have not already so engaged themselves. It was, I say, put forward as an instrument of negotiation. The only question which His Majesty's Government had to ask themselves— and indeed which the Assembly will now have to ask itself—is whether that was an effective instrument? What we want to secure is fair immigration laws as applied to Indians and due extension of franchise as regards Indian settlers in the Dominions. The Dominions are independent. You can only secure measures of that kind by two methods, first, by enforcing compliance by a threat of consequences so grave as to cause serious apprehensions to the Dominions affected, or in the second alternative, by persuading the Dominions that it is to their advantage to give way, because your friendship and your good-will may be of value to them, either on grounds peculiar to them or on Imperial grounds. There is no other way. Yet take the facts. The number of Colonials in this country is so infinitesimal, that if you withdraw their existing rights from them, the only result will be to impose some disability on them; it will certainly not involve consequences so serious to the Dominions that they will on that account feel bound to give way to you in regard to questions on which they feel strongly, namely, immigration and franchise. It is unlikely, then, that this act of legislation would secure any result as a threat, the first alternative is therefore gone. Then, as for the second alternative, namely, persuasion, would it succeed there? Obviously not because it would create an estranged and not an improved atmosphere, and an improved atmosphere is obviously what you require to effect your immediate purpose. Indeed, one might perhaps go further and say not only that the proposed legislation would fail either as a threat or a means of persuasion, but it might have actually another consequence, harmful in itself. It might harden the Dominions in any action they are taking or proposing to take in regard to Indians already settled in their country. In that case, the

weapon would have turned in your own hands. Now, I do not ask you to accept the whole of these arguments or conclusions; it is unnecessary for my purpose that I should do so. I only put them forward to demonstrate to the House that such arguments and such conclusions can be held without implying prejudice against India or over-affection for the Colonies or callousness in regard to the claims of Indians settled in the Colonies. If it is held that the arguments or the conclusions are not in themselves evidence of such prejudice, then my case is complete. Obviously the decision of His Majesty's Government is not prompted by any undue desire to support the cause of the Colonies or Dominions as against India, or by any lack of feeling for India itself. It merely involved a decision that, on the whole, present legislation of this type was likely to effect no good and might do harm. And indeed, Sir, I should not be astonished if there were not many thinking Indians who are now arriving at something of the same conclusion. Now I have dealt, I fear at some length, with this aspect of the question, not in order to anticipate arguments that may be raised in the course of the discussion on the amendments, but for one purpose only. I am by no means averse to India protesting against decisions of His Majesty's Government with which it does not find itself in accord. I am by no means averse to this Legislature taking a strong stand, if necessary, when it thinks it is being injured by the attitude of the Home Government; but I am anxious that this measure should be treated only on its merits and that its judgment should not be obscured by prejudice derived from a false reading of the attitude of His Majesty's Government. Sir, if I speak further on the Bill, it would, I fear, be trespassing on ground covered by amendments which must be discussed subsequently on the floor of the House. And I shall say nothing more to commend the Bill to the Assembly, for, I feel that if a Bill, the primary object of which is to still a controversy, an old and long-standing controversy between two great communities, and which is based on a compromise involving both concessions and sacrifices by the representatives of those two communities, if such a Bill does not commend itself to the Assembly, no words of mine can help, I will only say this in conclusion. Close now the long chapter of the past, take your account as it will stand if you pass this Bill and see what is the result. What shall we have gained? First, we shall have gained a settlement by compromise, an achievement which in itself transcends its details. Secondly, we shall have gained this, that the extent of the special privileges of the European will have been reduced to a minimum, while Indians themselves will have gained an improvement in trial procedure in many respects, for instance, appeals, *Habeas Corpus*, and the like. Thirdly, that we shall have in our new procedure, the provision for appeals by Government on fact as well as law which we hope will prevent some of those miscarriages of justice in important cases of which Indians have frequently complained. Fourthly, and I attach equal importance to this, the European having no special procedure of his own, will no longer fail to be interested in the general progress of the administration of justice in this country. Indeed he will be vitally interested in it, and that will be all to the advantage of India. Once again, I wish to advance no extravagant claims on behalf of this Bill. I wish to speak in the language of strict moderation. But if India at large does not regard this advance as solid, substantial, and satisfactory, if it does not press you, its representatives, to carry this measure into law, then indeed the historian of the future might charge it with lack of foresight and political prevision. But I myself have too robust a confidence in the political sense of India to fear any such contingency.

**Sir Campbell Rhodes** (Bengal: European): Sir, I do not think the House will consider me at all irrelevant on the subject matter we are now discussing if in my opening remarks I express the pleasure of the whole House at the re-appearance on the front Bench of Sir Malcolm Hailey. We trust, Sir, that he will soon be restored to his accustomed health, and I think we all pay our tribute to his courage at rising from a sick bed to come here to do his duty. We miss, Sir, from the front Bench to-day two men, Sir William Vincent and Sir Tej Bahadur Sapru, who played a very important part in the negotiations which have led to the introduction of this Bill, and I think we want to remember to-day with some gratitude the important part they played. As one of the representatives of the largest body of the community chiefly affected by this Bill I felt that I could not let it pass with a silent vote. When I spoke on the Honourable Mr. Samarth's Resolution in Simla in September 1921, I said that, though we Europeans desired no change, we were not averse to exploring fresh avenues. Well, Sir, those avenues have been explored at great length and at some considerable delay, and the result is found first in the report and then in the Bill now before us. I should not be true, Sir, to my constituents, nor should I be adopting a frank attitude with this House if I were to say that we are entirely pleased with the resulting Bill that is before us to-day. But as Sir Malcolm Hailey has pointed out, it is impossible to please every one in a compromise and our chief dissatisfaction probably centres round the summons cases. At the same time, if we have had to make sacrifices, I shall be the first to recognise that my Indian friends have also had to make sacrifices, and have done so with cheerfulness and with a determination that somehow or other we should reach a fair compromise. I should like to pay my tribute, Sir, to that Committee which tackled this subject with so much courage, so much determination, with so great a determination to see that some way should be found out of this very great difficulty which, for the last 40 years, has been in our midst. I have put one small amendment on the paper. Others have been suggested to me, but I have the authority of the largest corporate body of my constituents, the European Association, to refrain from putting any amendments on the paper at all which would go outside the compromise reached by the Committee. We had as our representative on the Committee one of our most distinguished Europeans, a gentleman who is in the inner circle of the European Association, and who, I am pleased to say, will succeed me as President of the Bengal Chamber. There is one right from which we have to some extent been debarred in the past, to which I now hope we shall attain under this Bill, I mean that elementary right of every man to be believed to be innocent even though he has been acquitted. (Laughter.) In the debate to which I referred my Honourable friend, Munshi Iswar Saran, whose absence to-day I regret, paid me the compliment of saying that my remarks on that occasion were a sugar-coated quinine pill. I think he paid me more of a compliment than he really intended. Well, Sir, we have the quinine pill without the sugar coating before us to-day, but I hope it will perform its proper quinine functions and abate those fevered passions which have oppressed us these forty years.

* 12 NOON.

**Sir Deva Prasad Sarvadhikary** (Calcutta: Non-Muhammadan Urban): Sir, I desire to join my friend, Sir Campbell Rhodes, in the expression of our pleasure in welcoming back in our midst the Honourable the Leader of the House after his illness. A few occasions could be more appropriate for his return to the scene of his labours. He is animated with the desire to do contrary to what was done hundreds of years ago by the great Moghul.

Aurangzeb was no friend of music—concord—and he forbade it. Some people, who wanted to be sarcastic and humorous at the same time, but did not venture to go direct against the Emperor's wishes organised a funeral party. The Emperor when passing by asked whose funeral it was. The reply was " Sire, it is the funeral of concord—music—which the Emperor has destroyed, and we are going to bury it." The Emperor said " Bury it deep, so that it may not raise its head again "; and concord never more raised its head again in the Moghul Empire. To-day the scene has changed. It is discord of forty years' standing and more that we are asked to bury. We hope we shall bury it deep so that it may not raise its head again. I say therefore that I am glad that Sir Malcolm should be in our midst to assist us in this burial and appeal to us and through us to the country to bury discord deep.

I am afraid, Sir, I am one of those who do view the whittling down of the compromise, so far as it has been whittled down, with what Sir Malcolm calls disappointment and resentment. The two communities agree to make sacrifices but that did not please the supreme authorities, it does not matter to us whether it was what has been called the reactionary Secretary of State, the big brother with his big stick, of whom we have so often heard, or whether it was his big brothers, the big four or the big three in the Cabinet, as according to the time the number may be. They tell us what we should do because section 65 of the Government of India Act is there and gives the Secretary of State certain powers. So far as the Dominions and Colonies are concerned section, 65 of that Act has to my mind no bearing, although clause (3) of section 65 has an enormous bearing so far as European British subjects in this country are concerned. The only reason why we should be prepared to accept things as they are presented, is, in the Honourable Sir Malcolm Hailey's language, because this is neither final nor permanent, but is a further temporary compromise. I agree that, so far as the Dominions and Colonies are concerned, we should do nothing now that would jeopardise the future settlement on a satisfactory basis of those differences about which we have had frequent occasions of raising protests in this Chamber and elsewhere. I agree with the Right Honourable Mr. Srinivasa Sastri that retaliation or reprisal of a rank type should be the last arrow to leave our quiver, and, whether that arrow will have to be taken out or not, the near future will show. I do believe that, when the time comes for us to take that arrow out, section 65 of the Government of India Act will not stand in our way.

Sir, I shall not anticipate the motion of which we have notice that the matter should be referred to a Select Committee. I am afraid, if we are to have another Select Committee, it will be in the language of the Standing Order really asking for a recommittal of the Bill to the Select Committee, and I shall await with interest the reasons for which that demand is to be made. (*Mr. N. M. Samarth*: " If it is at all made.") If it is at all made, says Mr. Samarth. I do not know if Mr. Samarth is more in the confidence of Dr. Gour than I am, because I see it tabled on the papers, but I believe, Sir, it will be unnecessarily impeding the burial of that unsightly thing which we have sought to see buried for 40 years. Supposing you do get a Select Committee, how will the matters be advanced? We had Mr. Abul Kasem, Mr. Samarth, Mr. Rangachariar, Colonel Gidney and, last, though by no means the least, Dr. Gour himself, on the former Committee and, therefore, the recommittal to the Select Committee will have to be more than justified. But, I shall not anticipate that for the

[Sir Deva Prasad Sarvadhikary.]

moment. I believe the whole House, whatever the intensity of feeling on some of the grounds may be, are united that this Bill being the furthest that Government will now possibly go, it will be best for us to accept it and see what the future will yield. There is acute disappointment on both sides and with those feelings, Sir, I should like to give the motion my support. And in passing, I cannot help feeling, if this Bill is passed, that we shall be having a succession of red letter days, in the language of my friend to the left, who was himself responsible for one red letter day by the acceptance of the principle that, so far as fiscal policy is concerned, India shall be master in her own house. I regret the absence of my revered friend and leader, Sir Sivaswamy Aiyer, who made himself responsible for the motion which resulted in the momentous announcement of His Excellency the Commander-in-Chief not many hours ago. And, to-day, at the instance of my friend, Mr. Samarth, we are considering the rectification of a measure which has been galling to the minds, the better minds of India and its statesmen, who want to bring about a state of things that will make the European and the Indian work hand in hand together. Sir, as I said once before in this Assembly, and it will bear repetition, in the Swaraj which we visualise for ourselves, the Hindu and the Muhammadan have a place, as a matter of right, and so has the European. The Muhammadan has been with us a few hundred years more than the European; but the European is here on his own title as the Muhammadan. Therefore, in anything you may do, be as circumspect as you can be to see that the friendly relations now growing up between all these communities is in no way jeopardised; and this Bill, when passed, will be a further step in that direction and, more than that, a good step.

**Mr. T. V. Seshagiri Ayyar** (Madras: Nominated Non-Official): Sir, I may be permitted to join in the welcome which has been extended to the Honourable Sir Malcolm Hailey: He has come in good time to guide us on this important occasion. Sir, no part of the House felt his absence more than we on this side of the House, and his speech this morning shows how cleverly he can sugar-coat a very bitter pill, and therefore, Sir, his presence is very welcome. Sir, I feel myself in agreement with everything that Sir Campbell Rhodes has said, only from a slightly different standpoint. Sir Campbell Rhodes said that he was not quite satisfied with the Bill because as regards summons cases his community did not get as much as was expected from the compromise. From our side, Sir, we also feel that the Bill is not everything that we desire. If the House will remember aright, when my Honourable friend, Mr. Samarth, brought forward his motion, that which underlay the Resolution was the fear which has long been entertained in this country that justice is not being meted out to those Europeans who are committing offences against Indians. It is on that ground that the agitation became clamant, that some endeavour should be made to see that justice is properly done. Sir, no doubt my friends on this side and the European members have put their heads together, weighed the pros and cons and have come to a decision which they consider is the only proper solution of the problem at present. As was pointed out by the Honourable the Home Member, this is the beginning of the break in the privilege which we hope may continue and may ultimately result in removing all vestiges of difference between subjects and subjects of His Imperial Majesty. At the same time, Sir, we must say that the compromise is not wholly acceptable to the country from the fact that it does not

deal with the crying evil for which the Committee was appointed, namely, the removal of all possibilities of miscarriage of justice. No doubt Indians have acquired certain rights along with their European brethren. That is one step in advance. But that is not the real idea which underlay the agitation against the distinction which is found in the Criminal Procedure Code. However, Sir, there is no doubt that a very honest attempt has been made both by the European Members of the Committee and by the Indian Members of the Committee to reach a compromise which would be regarded as the beginning of the removal of all distinctions between man and man in the Criminal Procedure Code and in securing to the accused a proper right of defence and to the persons who have been offended against speedy and sure justice. Sir, in that spirit, I also welcome the Bill which has been introduced. At the same time I cannot help feeling that there has been undue interference by somebody in higher authority with the principle which has been recognised both by the Government of India and the Committee. The Honourable the Home Member referred to the fact that it is necessary to make concessions in order that Indians may receive proper treatment in the Colonies. Sir, I think that is not the proper attitude or frame of mind with which this question should be tackled. The more you concede, the more you will be regarded as timid, as not self-respecting, and as not able to stand on your rights. If we are satisfied that concessions would bring us magnanimity from the other side, generosity from the other side, we shall be very happy to make concessions. But we, Sir, are afraid that concessions may be regarded as indicating weakness and may induce those gentlemen to say that they would use violence even in securing the ordinary rights of citizenship by our fellow-countrymen in the Colonies. That is our fear. Otherwise, Sir, we shall be most happy to meet them more than half way if it is possible to secure from our countrymen just and equal rights. It is because we are afraid that this is not possible that we regret that the Honourable the Home Member should have said that the recognition of the rights of the colonials would in any way help to settle the rights of Indians in these Colonies. Sir, although that is our belief, we think that the exercise of authority by the Secretary of State should not be regarded as rendering so futile the fundamental principle as to induce us to throw out the whole Bill. We think that it is absolutely necessary that we should make a beginning in regard to this matter and, so far as I know, my friends on this side of the House are prepared to assist the Government Benches in their desire to see that this Bill is passed, and we would assure the Honourable the Home Member that there is no desire to go back upon the compromise which has been come to by our friends and by their European colleagues.

**Colonel Sir Henry Stanyon** (United Provinces: European): Sir, I speak as a member of the European community. I am untrammelled by any rules of official discipline or of subordination to official etiquette. I speak as a non-official European—a member of the community of British India. It would be idle for me to attempt to assume a pose of impartial arbiter between what I may call two parties to this now expiring controversy. I speak on behalf of one of those parties. But none the less, I speak as a friend, *albeit* a European friend, of India; and I address myself, through you, Sir, to a House which I know, even from my short experience, to be full of Indian friends of Europeans. I unhesitatingly join in congratulating the Racial Distinctions Committee on their report. It is a report which is as impartial and straightforward as it is courageous.

[Colonel Sir Henry Stanyon.]

I do not accept or agree with all the recommendations contained in it, but that is a mere matter of detail. That does not take away from the merit of the report. And then, Sir, we come to this Bill. We have had Honourable Members of this House rightly pressing forward on more than one occasion to bring this matter to a head and to a conclusion. If any amendment is moved to refer this Bill back to a Select Committee, I shall strongly oppose that amendment, if I happen to catch your eye, Sir. But, at present, I speak only on the general question whether this Bill should be taken into consideration. The Bill represents the first serious attack upon the virus of race antagonism and racial distrust which has been very largely disseminated recently by poisonous tongues and pens, and which stands in the way of our national advance, and I say, let us by all means use this antidote as soon as possible and without any delay. It is an entirely novel step in legislation, and though it is practicable to theorise to any extent upon the different details of it, we can have nothing but theory at present. Sir, if I want to find out whether a new pair of shoes made for me are comfortable and a good fit, I like to wear them for a bit, till I am in a position to say whether they require alteration. That, I think, is our position with regard to this Bill. It is not the Legislature that will be on trial under it. It will be the Judges and the juries, upon whom responsibility will be cast in a new way, who will be on their trial. If those Judges and those juries acquit themselves well,—if they punish crime because it is crime,—give fair trial because the giving of fair trial is in accordance with the highest ideals of administrative jurisprudence—fearlessly acquit unless they are convinced of guilt irrespective of religion, caste, race or any such considerations—then, I think, this enactment when it becomes law will be justified. It is only by trial and by such encouragement as we give to our judiciary by reposing confidence in them that we can administer this useful antidote, and a removal of distrust between man and man can ever be accomplished. I look forward to the day when we shall not want any mixed juries or any special modes of trial—when the general body of the public, English and Indian, will be satisfied that a decision given by a Court or a finding given by a jury, however wrong, however mistaken, is honest and impartial. When public opinion rises to that standard, then, no doubt, our judiciary will also endeavour to maintain the level of that reputation. But the whole thing is this, that this measure must be tried. My own feeling is in entire accord with that of the constituents who have sent me here. As the Honourable Sir Malcolm Hailey has pointed out, in a compromise the best sign that it is a just compromise is that neither party is wholly satisfied. As a Judge I always thought that I had done my best when both sides denounced me as wrong. Therefore, though there is much here that we Europeans would like to alter,—much that we may regard as calculated to take away privileges, and so on—we prefer, and I am told to do so, to close our eyes and to accept the measure with both hands out as a compromise. Let this House take the Bill as it stands, without any theoretical tinkering with it at this stage, and try it. Let us go to the country with this measure and say, " Here is a measure which all classes and creeds and races are now given as a token of good feeling and justice." Therefore, without elaborating these remarks or entering into any details, my submission to this House is that we should accept this measure wholesale and pass it as soon as possible so that we can see by its trial in the country how this very great experiment works.

**Rai Bahadur Bakshi Sohan Lal** (Jullundur Division: Non-Muhammadan): Sir, I am most thankful for the very hard labours and the earnest desire on the part of the Members of the Racial Distinctions Committee to remove racial distinctions between Indians and Europeans in the administration of criminal justice in this country. But, Sir, I am extremely sorry that I cannot give them the credit of removing all racial distinctions in the administration of such justice as announced by His Excellency the Viceroy in more than one of his speeches, and as it was resolved upon in the Resolution of the Legislative Assembly on the 15th September 1921 and the instructions contained in the Home Department Resolution No. F-105, dated the 27th December 1921. Rather, if I go into the question from the very earliest time, it appears that the lapse of time has strengthened the differences between the two communities. The despatch of 1833 of the Court of Directors directed the removal of all racial distinctions in the trial of Europeans and Indians. That was the mentality of the British nation and the British Government in 1833. Fifty years later, that is, in 1883, there was no unanimity on the part of the British people, or the British nation or the British Government to remove all those distinctions, but still there were, at that time, a few voices at least of the Englishmen for removing these distinctions, such as we find in the speeches of Mr. Ilbert and some of his colleagues in the Council of 1883. Now, after forty years more, so far as I have been able to see there is not a single European who would concede to the Indian an equal status. So, the things are going from bad to worse as time passes. In 1883 it was said that it was a compromise on which they were acting. The same story is repeated now that we are effecting a compromise, and at the same time it is stated that this is a long-standing exercise of rights on the part of Europeans which cannot be done away with at once but that it will be done away with gradually. I respectfully submit that this was the very view which was taken in 1883 and that view has not changed. The bias, or what we may say, racial hatred continued just as it was in 1883, rather I should say it has grown stronger by lapse of time. If the matter is to be considered as a compromise we already have had a compromise in 1883, and there was no necessity of a second compromise after 40 years in 1923. We ought to have boldly decided whether the Indians and Europeans are to be treated on an equal footing and on equal considerations before courts of justice or not. It is not a matter of compromise. It is a matter of our national self-respect. In admitting the Bill as presented, we are admitting that we are inferior to the Europeans, that the Europeans belong to a superior race and we belong to an inferior race, that we are a subject race and that Europeans are victors, that their civilisation is much higher than that of ours. Are we admitting this or are we having any regard for our national respect in admitting the Bill which has been presented? If the Home Member or any other Member can tell me that what has been held in the Bill as good for Indians has also been held as good for Europeans, I would accept it. If the punishment of whipping is suitable for Indians, why is it not also suitable for Europeans? If not, how can it be said that Indians and Europeans have been placed on the same footing. If whipping degenerates the spirit of Englishmen, it also degenerates the spirit and freedom of Indians. There is a Magistrate, call him a District Magistrate or a first class Magistrate specially empowered under section 30. He can pass a sentence of 7 years upon an Indian but he cannot pass a sentence of more than 2 years upon an European. Is the liberty and independence or the life of an European more valuable than that of an Indian? Either sections 30 and 34 of the Criminal Procedure Code are to be repealed

[Rai Bahadur Bakshi Sohan Lal.]

altogether and the same Magistrate should be given power to administer justice against Indians and against Europeans equally or there is no reason why the Magistrate if the accused is an Indian should have the power of imprisoning him for 7 years and if the accused is an European he should not imprison him for more than 2 years. The same is the case in smaller cases. If a second or third class Magistrate can be trusted to pass a sentence of imprisonment on an Indian, there is no reason why he should not try a case punishable with imprisonment in which an European is concerned. There are many other matters, but these are some of the instances in which Englishmen and Indians should be put on the same footing. I am not claiming that the Indians should have a preferential right over Europeans. I am claiming that Indians and Europeans should be placed on the same footing at least before the sacred altar of courts of justice and that is the only way in which we can remove our differences. What will be the effect of this Bill? This Bill will rather perpetuate these differences. It has been stated that the Europeans have exercised these rights for the last hundred years and that they have made a great sacrifice of those rights but after a few years those rights will be still stronger and their sacrifices will be still greater. Are we going to perpetuate these rights for ever and are we going to be told always that it is a matter of compromise between the two communities and not a final settlement? No one ever said that it was a final settlement in 1883 and the same thing is repeated here. Whether this is due to the decision of the Secretary of State in Council or because the European communities cannot possibly give in, we are not to congratulate ourselves or the Committee in bringing about this compromise. I specially submit that this is not a matter of compromise and the matter ought to have been decided according to the principles of law and justice, according to what are the laws in other countries. I have not been able up to this time to know if there is any other civilised country in which the sons of the soil have been put under an inferior position to strangers or persons belonging to foreign countries. I think the question of the condition of the Indians in the Colonies can only be solved by our getting equal status in India. So long as we do not get equal status in India, we cannot possibly ask the Governments of Colonies to give us equal status with them in the Colonies and it is therefore useless sending our best men like the Right Honourable Mr. Sastri and spend so much money until we have been given equal status here in our own motherland. With these few remarks, I respectfully submit, whether I am doing a service or a disservice to the country, I cannot and I am not prepared to accept the Bill as it stands. Whether the old Criminal Procedure Code is worse or not, it is not proper for us to tolerate any further any racial distinctions giving preference to one community over another.

**Dr. H. S. Gour** (Nagpur Division: Non-Muhammadan): Sir, as a humble Member of the Racial Distinctions Committee, I acknowledge the compliments paid to that body and to the work done by it. In their speeches Honourable Members have however forgotten that the Bill as presented to this House is not the Bill as recommended by the Joint Committee and I think I must advert for a moment to the vital changes made in the Bill not only not in consonance with the tenor of the recommendations of the Joint Committee but directly opposed to their explicit and express recommendation. We decided that, so far as Colonials were concerned, there was no reason to include them in the definition of

European British subject. We further decided that except as regards people who were employed in the Army and Navy, there was no reason why others should be equally exempt or at any rate equally exempt under the Code of Criminal Procedure generally applicable to the people of this country. We further decided certain other matters regarding summons cases and the right of appeal. I do not wish to refer to these last points, because they will conveniently come up under discussion in the course of the amendments of which Honourable Members have given notice. But there is, Sir, one point upon which we feel and feel strongly, and that is the interference of His Majesty's Government with the unanimous recommendations of the Joint Committee. It has been assumed by the Honourable Sir Campbell Rhodes and by my friend, Sir Henry Stanyon, and others speaking on behalf of the European community in this country that the Joint Committee appointed by the Government of India have given their wise and well-considered decision embodied in the Bill presented to this House. Impliedly, they condemn any extraneous interference with the unanimous recommendations of that Committee. I therefore take it, Sir, that I am voicing the general feelings of the Members of this House when I say that we protest respectfully, but nevertheless emphatically, against the interference of His Majesty's Government with the unanimous recommendations of the Racial Distinctions Committee; and if we accept the decision of His Majesty's Government, it is not because we wish to accept it, but because we feel, circumstanced as we are, that we must accept it. Our acceptance, Sir, is not willing acceptance, and I think this House should make it perfectly clear that it accepts it merely as an *ad interim* decision and reserves to itself the right of reconsidering it at a more favourable opportunity, let us hope, in the near future. Sir, the Honourable the Home Member has pointed out that the feeling in this country against the Colonies is intense and strong. I for myself do not, Sir, recommend the exclusion of Colonials upon those narrow lines. I do so upon the broad principle that those who come here as travellers, as sojourners, as temporary residents, whether Europeans born and domiciled in the United Kingdom or in the British Colonies, may justifiably claim that they, being unacquainted with the laws here, are entitled to be judged by the British laws, or at any rate by the spirit of the British laws adapted to the conditions applicable to this country, and, so far as they are concerned, they are entitled to discriminating treatment; but I fail to understand why any European, whether a British subject or not, who has settled down permanently in this country and made this country his home should claim a right of ex-territoriality. I cannot understand, Sir, why he should say, 'I shall possess all the rights of a citizen of India and all the privileges of a foreign settler'. That, I submit, is the question which confronted us in the Joint Committee, and in my note I have laid emphasis upon this point, but when we found that a way was possible for the reconciliation of conflicting views, we came to terms and compromised in the manner indicated in our unanimous Report. This is my reply to my Honourable and learned friend, Mr. Bakshi Sohan Lal, whose speech I have listened to with great respect, but from whom I beg to differ on the main issue. It is perfectly true that the Joint Committee was appointed by His Excellency the Viceroy for the purpose of eliminating racial inequality. But it is at the same time equally true that this is a compromise arrived at by the representatives of both communities after long and arduous conferences and confabulations, and in which not only the Members of the Committee but outsiders were from time to time taken into counsel, and the Report of that Committee

[Dr. H. S. Gour.]

does not embody merely what may be regarded as their individual views, but the considered opinion of the vast community outside whose representatives were examined and consulted upon these questions. My friend says, 'this is no solution of the difficulty, it is merely perpetuating a racial distinction which this Committee sat to eliminate'. But my friend must not look at every detail of the compromise: my friend as a lawyer must know that if you are to tear up a compromise into its individual fragments and examine each part piecemeal, these pieces would not be found satisfactory, but you must look at the compromise as a whole and see whether the compromise on the whole is not satisfactory to both sides. My friend, Sir Campbell Rhodes, has called this compromise a bitter pill to swallow. Well, Sir, whether it is a bitter pill for him to swallow or for us to swallow, I shall not ask my friend or myself to decide. Each party feels that the other party has had the plums of the bargain, but I think, Sir, whatever may be our differences and our views, the fact remains that both parties have entered into a compromise, and we expect Honourable Members in this House to support us. It may be that we might have got more, it may be that we have lost much more than we should have fought for, but now that the compromise has been arrived at, and that compromise is the foundation for this Bill, we expect, Sir, the support of the Members of this Assembly. The Honourable the Home Member has further rightly pointed out that this compromise must not be regarded as sacrosanct: it is a compromise which would be the foundation for future consideration and further advancement of rights, and as Sir Henry Stanyon with his large judicial experience has told this House, let us examine this compromise, give it a trial, a fair trial, and if afterwards it is found to be weak and unworkable, we shall again re-shape it and re-adjust it so as to suit the changed conditions that may be found necessary in future. After all what do we gain and what do we lose by giving this compromise a fair trial? My friend, Mr. Bakshi Sohan Lal, says either we shall have what we want or nothing at all. I think the Honourable the Home Member has very rightly pointed out that this extreme view is not the view which commends itself to men of practical commonsense. It is not what we want but what we can get that you should strive for, and the question that we have not got all we wanted is, I submit, not the question that should detain this House. The main question with which we are confronted here is that this is a compromise; it has been cheerfully accepted by the very community which had been standing upon its privileges and tenaciously fighting for its rights during the last 40 years. That, I submit, is a great gain. That the vast European community in this country, conscious of their privileges and of their power, should have sat with us and through their spokesman consented to the modifications proposed in the manner stated in the Joint Committee's report is a matter, Sir, for congratulation and gratification. That at any rate shows that that community is prepared to surrender its power and privileges for the purpose of meeting the people of this country half way. That, I submit, is a happy augury of the future relations between the two great communities in this country. We know as well as they know that we cannot advance, be it politically or economically, without the co-operation and assistance of the British people. I therefore submit, Sir, that the fact that in a matter of this vital national importance the European community in India have voluntarily offered to co-operate with us is a matter for deep gratification. That is a question which my friends who think otherwise should consider for a moment. It is not a question of abstract principles or abstract

justice. It is a question, as I have said, of how the two communities can maintain and even advance those friendly relations which have been created by the two communities sitting together, the one surrendering its rights in favour of the other. That I submit is a question which should not be lost sight of in considering this question; it is the underlying principle of this Racial Distinctions Bill.

Now, Sir, reference has been made both by the Honourable the Home Member and my friend, Sir Deva Prasad Sarvadhikary, to my motion for the reference of this Bill to a Select Committee. In tabling that motion I was actuated by a desire to shorten the career of this Bill in its passage through this House. I thought that if we were to sit in a Select Committee, formally or informally constituted, and discuss the numerous amendments of which notice has been given by Honourable Members, we might be able to make more rapid progress. My intention never was and it certainly is not even now to delay by a single moment the speedy disposal of this measure. Now that I feel that the sense of this House is against the reference of this Bill to a Select Committee, I shall be very pleased, Sir, to withdraw my motion. I am very glad that the Honourable Members will be here to decide the several amendments for themselves without giving the Select Committee the trouble of going through them. But before I sit down I once more appeal to my Honourable friends to rally to our support in passing this measure without unnecessary and undue reference to the past. I deprecate, Sir, reference to any controversy of 1882 or of 1833. I ask my friends to bury the hatchet, forget the past and think of the future. Let this be the starting point for an amicable arrangement for the working of the Code of Criminal Procedure, and let it be an augury of the future relations between the people of England and this country.

**Mr. N. M. Samarth** (Bombay: Nominated Non-Official): Sir, I rise to say just a few words on the subject matter of this Bill. In doing so, may I be permitted to congratulate the Honourable Leader of the House not only on his appearance in the House this morning, but on the weighty, felicitous and statesmanlike speech he made in moving the consideration of the Bill.

Honourable Members will remember that when I moved the Resolution of which this Bill has been the outcome, I appealed to European members to bear in mind the feelings, sentiments and prejudices of Indians in this matter; I appealed to my Indian colleagues also to bear in mind the feelings, sentiments and prejudices of Europeans in this matter. I made that appeal then because I was convinced that no solution which was one-sided was going to be an acceptable solution of the matter. A life of action, if it is to be useful, must be a life of compromise. And when people think badly and oddly of that word "compromise," they fail to ask themselves, what after all is life? Life itself is a compromise. You cannot advance a step unless you meet the conflicting forces around you and draw the resultant. The resultant itself is a compromise between two opposing forces and as such I hail with gratification the outcome of the Resolution which,—may I say?—I was made the humble instrument by a higher power to propose before the House. I thought that the day had come when the old spirit of hatred must give way, that with the Reforms a new era had dawned, that Englishmen and Indians who had fought in the trenches side by side as comrades were going under the new era to fight side by side, arm in arm, for the progress of this nation towards the goal of responsible Government; and I thought that in the new Assembly, there was the much

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needed opportunity to appeal to the best feelings and the better mind of England and the best feelings and the better mind of India, in order that we may strive and struggle together on this onward path on a footing of mutual good-will and understanding.

Well, Sir, there are one or two matters which I may be permitted to refer to. Of course, we, the members of the Racial Distinctions Committee, came to a unanimous conclusion so far as the exclusion of colonials from the definition of "European British subjects" was concerned. But I may assure the Leader of the House that so far as I was concerned, no feelings of retaliation animated me. My point was and is that I am not prepared in India to give to any Colonial any better treatment than is accorded him in criminal trials and procedure in a Crown Colony like Ceylon. If a Colonial does not get in Ceylon any better treatment than a Singhalese in this matter, what right has he to get any better treatment in India? That was the ground upon which I urged the exclusion of Colonials, and not because I wanted to retaliate. I do not believe in retaliation, spite and hatred. But I am afraid that that aspect of the question has not been brought to the notice of the British Cabinet.

1 P.M. Well, rightly or wrongly the British Cabinet has decided now against us on this point and introduced this little amendment. I do not quarrel over it. After all, as I said, it is a trifling matter. It has been already pointed out that there are only a few people who will be affected by it, and at the same time surely we need not presume that any of them are going to be offenders. Therefore, as a matter of practical politics, we need not now quarrel over it.

There is another matter upon which also there has been a deviation from the unanimous recommendation of the Committee. But that also is a matter which in practice will not be of much difficulty or will not entail any further disabilities. After all, we have provided that these men shall be triable at their option in warrant cases before Sessions Judges and all that is now proposed to be done is that in a particular case, the Commanding Officer will ask the man to be brought before the Sessions Judge. It has been said by Mr. Seshagiri Ayyar that this Committee has not provided against miscarriage of justice. That was the gravamen of the charge. I am afraid, Sir, he has failed to see that we did everything possible to provide against it by way of providing for appeals both on facts and law against both convictions and acquittals. And that is the only safeguard that was needed and we have provided for it. Sir, I do not wish to detain the House any more. I congratulate the Government on having brought forward this measure ultimately, and I trust that the House will, without any difficulty, pass it as it is.

**Lieut.-Colonel H. A. J. Gidney** (Nominated: Anglo-Indians): Sir, I rise to take part in this discussion as another humble member of the Racial Distinctions Committee and to make but a few generic remarks. I wholeheartedly associate myself with Sir Campbell Rhodes in the remarks he made deservedly eulogising about the labours of Sir Tej Bahadur Sapru and Sir William Vincent on this Committee whilst adding appreciation of their labours. I must not forget to mention the great part that was played, at a very critical moment, by Mr. Justice Shah, another valued member of the Committee. Sir, when I attended the early sittings of this Committee, the old saying, *possumus non-possumus*, came prominently to my mind. I thought at first it was impossible that there could ever be an

amicable decision on the grave issues at stake, but, after a few days, I could see that it was possible; and the ultimate decision of compromise which we agreed upon was the outcome of a mutual feeling of friendship and a development of trust between both the communities—to such an extent that in a very little while a compromising spirit of give and take pervaded the whole of the atmosphere of our deliberations. Although I subscribed myself to a very minor minute of dissent, yet, Sir, after hearing what other Members, both European and Indian, have said here to-day and the eloquent speech of the Honourable the Leader of the House, Sir Malcolm Hailey, I, for one, representing as I do the domiciled community, am sure, nay, I am convinced, that I have every reason to re-echo what Sir Henry Stanyon has just said, namely, that the time is not far distant when there will be no more need for the existence of a Racial Distinctions Bill,—that both Indians and Europeans and the other communities in this country will work hand in hand as equals,—that justice will be administered and will be accepted in its administration,—as Sir Henry Stanyon put it, irrespective of caste, creed and colour. Sir, the pitfalls and difficulties which confronted us at this Racial Distinctions Committee were multanimous. At times we found that we had come to an impasse, but it was the skilful leadership of Sir Tej Bahadur Sapru and the tact and strategy of Sir William Vincent that turned this position to one of mutual understanding with the result that we have brought before this House this Bill,—a compromise—which I feel sure every community in India will accept with pleasure and satisfaction as a decided advance in equality of stati. I compliment the Government on the production of this Bill, I compliment the House on the statesmanlike way in which it is accepting it and I am sure the House will pass it without any dissentient voice whatever. As my Honourable friend, Mr. Rangachariar, said the other day " After all it is the first step that counts " and I am sure we will take this first step with such confidence, that our succeeding steps will guide us towards a better understanding—towards a better and truer realisation of that reciprocal feeling of trust between the various communities which India needs and must possess in her endeavours to develop a nation out of the heterogeneous classes that inhabit this country. With these few remarks, Sir, I associate myself wholeheartedly with all that my friend, Sir Campbell Rhodes, has said.

**Mr. Pyari Lal** (Meerut Division: Non-Muhammadan Rural): Sir, I feel to-day that Members of this House have formed themselves into a mutual adulation Society. There are my Indian friends who are congratulating the Europeans for the concessions the latter have made; and there are my European friends who are also thankful for the spirit that the Indians have displayed in approaching this question; and, I think we are in this sense, a very happy family, I congratulate the Government in bringing about this state of things. Sir, to me this question of abolishing distinctions between Europeans and Indians, is a question of practical politics. We, the Indians, should on our part realise our position; how we stand in respect to Europeans; and the Europeans also must realise their present position, and let alone things which happened 150 or 200 years ago. We have now advanced a great deal in their direction and are coming nearer and nearer to them in more matters than one; esteem and confidence should be mutual. The Europeans should be prepared to accept in India the same treatment that we Indians are receiving at the hands of Government. To me, Sir, as Dr. Gour put it, it is not what we wish to get, but what we can get, and it is a source of gratification to us that the Europeans have

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conceded in this matter what they have done, in dragging us up to their level rather than dragging themselves down to our level. As Bakshi Sohan Lal put it, the distinction still remains and will remain for many years to come. But the point is whether we are any better to-day than what we were yesterday and I decidedly think we are better. Although it may be a case of 'small mercies,' still we have to thank Government for them and our European friends also.

**Dr. Nand Lal** (West Punjab: Non-Muhammadan): Sir, if the interference with the recommendation of the Committee is due to the sincere desire that our relations with those who are in Colonies may become better, then, I, speaking for myself, welcome that idea. This is an epoch-making day in that the racial distinction which has been in existence seems to be buried for ever. But I may offer a suggestion to Colonies that they may not consider that this is our weakness and therefore we welcome it. It is simply on account of our sincere desire that we may prove our loyalty to the desire which has emanated from England. They must remember and bear in mind that we are laying claim to our equality and they will be pleased to appreciate this claim. Sir, I shall be failing in my duty if I do not also offer a suggestion to the Jury and to the Judges and that is this, that their task has become much more responsible by this Bill, and therefore they should see that justice is done and nothing of racial distinction is allowed to remain. With these few remarks, Sir, I heartily support the motion.

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

The motion was adopted.

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

"That the Bill further to amend the Code of Criminal Procedure, 1898, the European Vagrancy Act, 1874, the Indian Limitation Act, 1908, and the Central Provinces Courts Act, 1917, in order to provide for the removal of certain existing discriminations between European British subjects and Indians in criminal trials and proceedings, be taken into consideration."

The motion was adopted.

The Assembly then adjourned for Lunch till Fifteen Minutes Past Two of the Clock.

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The Assembly re-assembled after Lunch at Fifteen Minutes Past Two of the Clock. Mr. President was in the Chair.

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**Mr. President:** I think it may simplify the proceedings this afternoon if I refer to one or two amendments which raise questions of order. Amendment No. 2, standing in the name of Bakshi Sohan Lal, is out of order as it attempts to bring in an Act which is not proposed to be amended by the original Bill, and that ruling carries with it the exclusion of amendment No. 78. Similarly, amendments Nos. 16, 18, 36 and 39, in view of the manner in which the title and preamble of the Bill are drawn, bring in matters which are not in order.

The amendment standing in the name of Mr. Venkatapatiraju will only be in order if he excludes the two words "political or". The word "political" raises wide issues which are not contemplated in the present measure.

Then, as for amendment No. 21 standing in the name of Bakshi Sohan Lal, I am not quite sure what the Honourable Member's intention is. I shall deal with it, when we come to it.

Bakshi Sohan Lal, amendment No. 3.

**Rai Bahadur Bakshi Sohan Lal:** Sir, my amendment has two effects. The first is that this clause deals with the definition of European British subject, and, I submit, Sir, that Judges or Magistrates ought not to be influenced by the personality of the accused. Thus there is no necessity for keeping the definition of European British subject in the Criminal Procedure Code. We have got no definition of Indian British subjects. We have got no definition of a European or of an Indian, and there is no reason why we should have the definition of a European British subject.

**Mr. President:** Which amendment is the Honourable Member moving?

**Rai Bahadur Bakshi Sohan Lal:** Amendment No. 3. I move:

"That in clause 2 (1) substitute the word 'omit' for the word 'for' and omit all the words following the words and figures 'clause (i)'."

This will place all subjects of His Majesty in India on the same footing. Secondly, why should we influence the mind of the Judge or the Magistrate by the fact that a party is a European British subject or an Indian British subject, or whether he is a foreigner, a Parsi, or anything else? We should do away with this definition altogether and keep the mind of the Magistrate quite clean as if he knew nothing who was before him and treated wealthy and poor, King and subject of the King, on the same footing. That is the object of this amendment and, if it is also the view of the House that the Courts of Justice in this country should be free from any such bias, they ought to remove this definition. There is no reason why a European British subject should be defined in a law relating to the procedure of Courts of Justice in India. So I move that this amendment be passed.

**The Honourable Sir Malcolm Hailey:** Bakshi Sohan Lal of course harks back to his own Bill, forgetting all that has happened in the interval; but I think that the sense of the House this morning was that we can take no such radical views; the Committee has produced a compromise, and the general sense of the House and I believe of the country is that that compromise should be accepted. I do not, therefore, argue his proposition on its merits. I only remark this. This amendment excludes a definition. If he does so, then the rest of the Bill must fall to the ground. We could not provide for exceptional procedure in cases involving racial considerations without that defintion. I am content to leave the matter at that; it is hardly necessary to make the further point that, if this definition goes out, then we shall need a fresh approval of the Secretary of State under section 65 of the Government of India Act.

The motion was negatived.

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

"That in clause 2 (1) in the proposed definition of 'European British subject' omit the words 'or any Colony'."

Sir, from the time when this Bill was introduced up to the present moment we have been asked to accept the Bill in its present form on

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the basis of the compromise arrived at between the representatives of the different communities in this country. We now find that this is a clause which goes even beyond that. In this definition, His Majesty's Government have not accepted that very compromise on which we are asked to accept this Bill. This is the definition on which there has been a sort of veiled threat of disallowance of the whole Bill if the Indian Legislature insisted on doing away with the privilege that is being accorded to the Colonials in this Bill. Sir, I do not know how we should act on that veiled threat. I thought that the moment the rights of legislation had been given to us and along with it the rights of vetoing had been reserved for the higher authorities, there was no need of giving approval or disapproval or any sort of veiled threat before the Bill had been passed by us. As Sir Malcolm Hailey has found from the attitude of this House, they are prepared to accept the compromise, and it was a needless fear on the part of His Majesty's Government to have thought that the Legislature would not act on the compromise, or that the whole Bill would be dangerous or capable of mischief without the inclusion of Colonials in this definition. I think the Secretary of State or His Majesty's Government should have left it to the good sense and as is always apparent the sweet reasonableness of the Indian Legislature to accept the compromise and to allow any definition that may have been put in the Bill. If His Majesty's Government or the Secretary of State thought that there was any danger or that any provision in the Bill was capable of mischief, they were perfectly at liberty under the powers vested in them to disallow subsequently that portion which they thought to be improper. Sir, apart from that, let us see what will be the effect of the inclusion of the Colonials in this definition of European British subject. We are giving certain rights and privileges to this special body of persons and which rights and privileges we disallow to other Europeans and other Members of the civilised nations. We are giving certain rights and privileges to a certain class of Colonials while we deprive other Colonials of those rights and privileges which they had enjoyed before. Sir, we are giving certain rights and privileges to Colonials which will be resented not only by the Members of this House but also by the whole of the Indian community at large, because of the treatment that has been accorded to our fellow brethren living in those Colonies. I do concede, Sir, that so far as rights and privileges and concessions in criminal trials in those countries are concerned, we have the same rights and privileges in their country as they have got in ours, and we are prepared to give the same rights and privileges which we have ourselves got to those gentlemen who come from those Colonies to this country. But I am not prepared to give those gentlemen any rights or privileges superior to those which we ourselves enjoy in this country. For instance, the Indians in this country are subject to the jurisdiction of even second and third class Magistrates. Why should the Colonials be taken away from that jurisdiction? Why should they not submit themselves to the same jurisdiction which we Indians submit ourselves to? Here, if they have to submit to the jurisdiction of second and third class Magistrates, they will be on terms of equality with us, but the moment we put ourselves under the jurisdiction of those Magistrates and take out these Colonials out of this jurisdiction, we give them something more which we ourselves do not enjoy. Under these circumstances, Sir, I think it is not proper to give these rights to these gentlemen. It is contended that probably it might be treated as a sort of reprisal and we may have to suffer certain other indignities and certain other bad treatment in their own country.

I do not believe, Sir, that it would be a reprisal if we give them the same rights which we ourselves enjoy. We give them the same rights that the highest in our country enjoys. We are prepared to give them the same rights which Americans and other European nations enjoy, and I do not think why we should give them superior rights. Sir, as for reprisal, I do not believe that any such will be the case; moreover if we are afraid of any reprisals from the Colonies owing to our taking away certain rights which we give to the European British subjects in this country, we should then also be afraid of reprisals from nations or countries other than the Colonials. For instance, America, or any other country. Further, Sir, it was said when the Bill was introduced and was moved for consideration that there were certain privileges which should not be withdrawn. I do not know why this definition of European British subject is to-day being put on the Statute Book. Under the old definition there were certain other people in the Colonies who enjoyed these rights. Why should they not enjoy it now? For instance, we may give a right to a Ceylonese to-day. But if the Ceylonese were to migrate to any other Colony, say South Africa, then two or three generations afterwards, his issue may not have the same rights which we may extend to him under the present definition in this Bill. For instance, his children or his grandsons or great grandsons or people of his descent in the male line will not have the same privilege as the present day European brother Colonials' issues will enjoy. It is quite incomprehensible to me on what ground this differentiation has been made Moreover, there is another danger by giving this superior right to Colonials. The Colonials who do not like to give us equal rights in their own country will say " in your own country, by your own legislation, you recognise our superiority. How do you then claim equality in our country in other matters?" That will be giving them a weapon, an excuse, for putting us further down and heaping indignities and humilities on the shoulders of our fellow-brethren. Sir, I could very well understand that those Colonials who have come to this country under the orders of His Majesty's Government or as servants of the Army and Navy may be given the same rights as the European British subjects and I would have conceded so far because they do not come to this country of their own choice. But why should those persons who have submitted themselves to our jurisdiction of their own choice, who have become permanent residents of this country of their own choice, have these privileges extended to them? With these words, Sir, I move that the words " or any Colony " be deleted from the definition of " European British subject."

**Rao Bahadur T. Rangachariar** (Madras City: Non-Muhammadan Urban): Sir, I was at first inclined myself to quarrel with the view taken by the Secretary of State in respect of this position, given to the Colonials but on reflection I thought it would be better that this country, uncivilised as it may be considered to be by these barbarians elsewhere might at least teach them a lesson, teach them a lesson in magnanimity, teach them a lesson that we can rise above passions and prejudices and if not thereby correct those people, at least enlist the sympathy and support of our European friends in this country and in Britain in all our legitimate fights which we are putting up in other directions in the colonies. Sir, if it were for the first time that an attempt was being made in this Legislature to include in the definition of European British subject the Colonial, we should have hesitated twice and thrice before we accepted such an inclusion. But we have to remember that the definition as it exists includes the Colonial, and therefore it is a question of taking away what exists in the Statute, not of

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what we are creating for the first time. That is one of the circumstances which weighed with me in this connection.

In the next place, as I have pointed out in my separate minute, if there is any reason at all for maintaining a distinction in favour of any class of people, that reason applies to the case of all people who are aliens in this country. I should advocate a distinction in favour of the Afghan, in favour of the Chinese, in favour of the Japanese, because there is as much justice in maintaining a distinction in favour of these people as there is in favour of European British subjects, because after all the whole thing turns upon whether they get fair justice or not in our courts, and these people are in a strange land and it must be admitted that as regards us, Indians, we do not distinguish an Englishman from a Colonial. I mean they are all alike to us. They do not associate with us as freely as they ought to do, and I do not know that we are able to make out the nationality of many of the members of the Civil Service present in this Hall itself. It is only for the first time I learn that the first Member of Council in Madras is a Colonial. It was for the first time I learnt on reading the report of the Local Government that the Governor in one of the provinces is a Colonial. I mean that that idea never crosses our minds. They are all whites to us: just as we are blacks to them, they are whites to us. But I daresay we are making a move to-day to abolish this colour distinction and I hope this will be a successful move. (Hear, hear.) Sir, it is quite true that very many people advocate that these strokes of retaliation should take place, but let us remember that our nature and our religion in this country forbid retaliation. We are always required to forgive, and in fact even in the case of the extremist politician in this country, the non-co-operator—what is his weapon? It is not anger, it is love (Laughter); and I have no doubt they will appreciate magnanimity on our part; the non-co-operators in this country, I am sure will appreciate the magnanimous spirit in which we are doing our work to-day, because, as I stated already, it is our main object to teach these people a lesson. Again, there are Colonies and Colonies. That also we have to remember. It is not all Colonies which misbehave. There are some Colonies like Mauritius, where equal rights are accorded. There is no distinction at all either in the political franchise, or the municipal franchise; no disabilities in acquiring land, no disabilities in owning property. But there are Colonies which impose the poll tax. I was pained to hear the other day that Indian labourers in Fiji have to pay a poll tax. Of course they say they do it to all alike, but the Indians come in for the largest share; and I hope, Sir, that when such treatment is brought to the notice of our European colleagues, our European fellow subjects in this country, they will agitate more strongly than we can do in these matters. Their agitation will be more effective. An appeal from our European fellow-subjects in this land to their brethren in those Colonies will have a greater effect. Sir, in order to attain that end, with great reluctance I oppose this motion made by my friend, Mr. Agnihotri. I think he will on the whole be acting wisely in accepting this suggestion which has been made by Government. Let us not mar the passage of this measure by insisting upon this matter. I appeal to my Honourable friend, Mr. Agnihotri, to follow the example of the great man of this country, Mr. Gandhi, and exercise forbearance for his part.

**Dr. H. S. Gour:** Sir, my friend, Mr. Rangachariar, has no doubt unwittingly committed two mistakes. The first one is that the present definition of European British subject does not take away anything from the

present Statute Law. (*Rao Bahadur T. Rangachariar*: "I did not say that; I said the Colonial was there already.") He said that the word "Colonials" was there already and that consequently we are not giving them anything more than what exists in the present enactment. That is wrong. Under section 65 of the Government of India Act to which reference was made by the Honourable the Home Member European British subject is defined as any subject of His Majesty born in Europe or the children of such subjects; that is the sole definition which occurs in the Government of India Act. Now, let us turn to the definition in the Indian Code of Criminal Procedure. There we find, not as my friend Mr. Rangachariar has pointed out, a person of European descent or extraction born in any of the colonies. The definition is " any subject of Her Majesty born, naturalised or domiciled in the United Kingdom of Great Britain and Ireland or in any of the European, American or Australian colonies or possessions of Her Majesty or in the colony of New Zealand or in the colony of the Cape of Good Hope or Natal." The colonies are enumerated and as Honourable Members will see these are all self-governing colonies where people of the English race have settled down permanently. The definition now proposed by Government is a wide extension over the definitions contained in the Government of India Act and also in the Code of Criminal Procedure. I shall presently illustrate my meaning. The definition says, " domiciled in the British islands or in any colony." Honourable Members know there is such a thing as a Crown Colony, Ceylon and Kenya for instance. Under the present definition any person of British descent being a subject of His Majesty, born in Ceylon or Kenya would become *ipso facto* a European British subject which he would not have been under the definition in the Code of Criminal Procedure and the Government of India Act. In that sense and to that extent the definition is not a reproduction of the old definition contained in the two Statutes I have mentoned; and as my friend, Mr. Samarth pointed out the law at present is that a person of European descent or of British descent born in Ceylon is amenable to the general law applicable in Ceylon. In passing I may point out that the criminal law of Ceylon is almost a verbatim reproduction of the Indian Penal Code, and the Criminal Procedure Code there more or less follows the lines of the Criminal Procedure Code here. In the trial of cases in that country no distinction is made between a native born subject of Ceylon and a person of British extraction born in Ceylon. Consequently, we introduce this anomaly, that if a person of British origin is born or domiciled in Ceylon he will be tried under the general law in Ceylon itself, whereas if he crosses the Straits and is tried anywhere on the Continent of India he will immediately claim exemption under the proposed definition on the ground that he was born in a colony of England. That is the distinction. As I have said the distinction is a vital one. We are extending the definition of a European British subject. Let us make no mistake about it.

The second point is this: my friend, Mr. Rangachariar, said: " Let us be magnanimous and out of a sheer spirit of magnanimity let us give to the colonial-born the same rights and privileges as are enjoyed by a natural-born British subject." I am not so sentimental as my friend sitting opposite to me. I am prepared to accept the definition drafted, not on the ground of any real, assumed or pretended magnanimity, but out of sheer helplessness. I have protested at the commencement; I protest again that this extension of the definition is not in consonance with our national sentiment, and if it was within our power we would tear it up. But the Honourable the Home Member has given us an ultimatum. This is the irreducible

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minimum which the British Cabinet or the Home Government insists and upon which the Government are prepared to proceed with this measure of legislation. If we whittle it down, if we alter it or suggest any alterations upon this vital principle, the progress of the Bill will be delayed and possibly the Bill itself defeated. Honourable Members know that we are now almost at the end of our term. Any further delay in the progress of this measure might jeopardise its final enactment during our life. Therefore I suggest that although we do not accept the principle and protest as have protested before against a decision which we consider to be an undue and unnecessary enlargement of the definition which exists at present on the Statute Book. But we have no alternative. We have to bow to the inevitable and say— " If this is all you can give us, we are prepared to take it, but I wish you will recognise that we are doing so under an emphatic protest. We are doing so because we fear that owing to some misapprehension on your part or those who have given you instructions, you have unduly and unnecessarily enlarged the definition of European British subject and brought within its compass people who never could have been brought under the existing definition." This is the position, Sir, and in view of what I have said I think the House must now decide whether it is in favour of threshing out this question upon its merits or accept what has been offered to us and say " let us hope at least that in the near future wisdom will dawn upon those who are responsible for the introduction of this measure and that they will rectify the errors into which we are being led by force of circumstances."

It is upon these grounds, Sir, that I have decided not to move the amendment worded in the same terms as those of the Honourable Mover of this amendment, and I request him to do what I have decided to do, namely, to withdraw the amendment.

**Sir Deva Prasad Sarvadhikary:** Sir, there is no counter-arguing with a downright *sine qua non* argument. At the same time, one must be quite clear with regard to what one is doing and can do in future. Dr. Gour has referred to section 65 (3) as containing a definition of European British subject. Well, my reading of that sub-section is not Dr. Gour's reading. Let us see what section 65 (3) of the Government of India says:

" The Indian Legislature has not power, without the previous approval of the Secretary of State in Council, to make any law empowering any Court, other than a High Court, to sentence to the punishment of death any of His Majesty's subjects born in Europe or the children of such subjects, of abolishing any High Court."

I would not have taken up the time of the Assembly by reading that clause merely to combat Dr. Gour's point of view if I had not another object in view. In the Statement of Objects and Reasons, we have this sentence:

" His Majesty's Government are particularly interested in the Imperial aspect of the proposal, and they consider that the proposal of the Committee would raise an invidious and controversial question throughout the Empire. The Secretary of State for India in Council whose specific approval was required under section 65 (3) of the Government of India Act for certain provisions of the Bill has accordingly only accorded his sanction on the understanding that the definition proposed in the Bill will be accepted. On the other hand, it is recognised that the Committee have indicated clear grounds . . . . ."

And so on. What I was not at all clear about when the Honourable Sir Malcolm Hailey was speaking this morning and I am still less clear now, was with regard to how far section 65(3) of the Government of India Act

comes in so far as the question of Colonials on its merits goes. Is the position this, that, under section 65(3) of the Act, the Secretary of State has certain powers of withholding sanction because of the question as to whether a Sessions Judge should have the right of sentencing a European British subject to death or not? That is the whip hand; availing himself of that, he imposes other conditions. We ought to clearly understand the situation, and, if the condition he imposes is a *sine qua non*, we are, as Dr. Gour says, helpless and have to submit. If the condition is on any other ground, matters would stand on a different footing altogether. We are pleased and thankful to learn that His Majesty's Government is particularly interested in the Imperial aspect of the proposal and that they consider that the proposal of the Committee would raise an invidious and controversial question throughout the Empire. When we appeal to the Imperial Government in regard to other matters in the colonies in respect of their Imperial aspect and object to invidious distinction, they say: "The colonies have their own laws: how can the Imperial Government interfere with them?" That is the point where the difficulty comes in. I recognise, Sir, that it is absolutely no good now at all events, going into the matter in the way the Mover of the amendment proposes but we want to have the matter quite cleared up when Sir Malcolm Hailey is replying so that we may know how far this Assembly or its successor would be prepared to go in deleting the word in question or corroborating them later on after the colonies show responsiveness. Now is not the time.

**Colonel Sir Henry Stanyon:** Sir, I have a very few words to say on this matter, but I should be glad indeed if I could take away from the House any impression that we are being dragged as it were at the wheel of the Secretary of State. I agree with the dignified pronouncement of my friend, Mr. Rangachariiar, on this point; and I venture to differ with great respect from the interpretation put upon the proposed definition of an European British subject by my learned friend, Dr. Gour. It seems to me that he has missed the most essential words in that definition. He tells us that a Sinhalese will be an European British subject under this definition. The important words here are " any subject of His Majesty *of European descent*." That for which the consideration of this House is asked by way of this definition, and other parts of this Bill, is the continuance of a form of privilege,—if it be called a privilege—" a technical form of trial " is what I prefer to call it—to which His Majesty's subjects of European descent have been accustomed for centuries. It is not a matter so much of *domicile* as a matter of *descent*. This definition does not enlarge unduly the former definition of a " European British subject ". It makes it far more correct. Under the existing definition now in the Criminal Procedure Code, a Maori, a Hottentot, or a Red Indian in Canada would be an European British subject. Under the definition now proposed, only a subject of European descent in the male line, born, naturalised, or domiciled in the British Islands or in any Colony would be an European British subject. Dr. Gour referred to certain colonies which are specifically mentioned in the Code of 1898. The alteration now proposed merely moves with the times. We have had a big war since that Code was enacted and the colonies have expanded. If we were to include in a list all the present colonies of Great Britain by name, we should have a very cumbrous section and I do not know that we should gain any advantage. The consideration by way of compromise of this House is asked in favour of British subjects of the European race wherever they are. Let the spirit of compromise be extended towards the race, without reference to

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the place where the subjects of this race may live. I contend that we are not accepting the proposed definition because we have no alternative. Our position is, I think, much more dignified. If we choose to do so, we can throw out the definition. Indeed we can throw out the whole Bill, we have power to do so. We are by no means slavishly dragged into this legislation. But it is put to us that one body whose opinion at all events, we are bound to respect, namely, His Majesty's Government, think that persons of European race wherever they may be, ought to have the same privileges, and to be included in this definition; and I agree with Mr. Rangachariar that it will be the more dignified and more magnanimous course, and set a proper example to those European subjects who take a wrong view of the rights of Indians in other places, for us, to accept this claim—not in a spirit of churlishness, but in a spirit of dignity.

**Mr. Jamnadas Dwarkadas** (Bombay City: Non-Muhammadan Urban): I am afraid, Sir, that the position both as placed by my Honourable friend, Mr. Rangachariar, and also as placed by my Honourable friend, Dr. Gour, was such as is not acceptable at any rate to me. I look at the question entirely from the practical point of view and I am glad to find that my Honourable friend, Sir Henry Stanyon, has to a certain extent made that position clear. What is the position? The position is this that His Majesty's Government want the inclusion of Colonials in the definition of European British subject. Now, I have not been slow to protest against the continual interference of His Majesty's Secretary of State in matters in which he is ignorant, in matters upon which the Government of India and the Indian Legislature as at present constituted are more competent to decide than the Secretary of State himself, but I do feel on deep reflection, that this is a matter on which His Majesty's Government can legitimately have some say, that the point of view of the colonies can be appreciated more by His Majesty's Government than all those of us, the Government of India as well as ourselves, who feel keenly on the question of the treatment of our own countrymen and countrywomen in the colonies. Now, naturally, the exclusion of colonials from the definition of European British subjects would have caused embarrassment to His Majesty's Government. If His Majesty's Government had acquiesced in accepting that privilege for British subjects which they were not prepared to extend to their subjects in the Colonies, it would have made their position at any rate awkward *vis-a-vis* the colonies. What then should be our position? What then are we called upon to do? Are we prepared or not to draw His Majesty's Government out of that position of embarrassment in which they would be rightly placed if they took that for Britishers which they were not prepared to offer to colonials, and I say speaking as a practical man that we would be doing well in helping His Majesty's Government in being drawn out of that state of embarrassment. For this reason, we shall have an argument in our favour when we shall have to call upon the assistance and the support of His Majesty's Government in putting forward our claims in regard to our own countrymen and countrywomen in the colonies. This is a matter on which if we acted wisely, appreciated the difficulties of His Majesty's Government and not through a position of sheer helplessness which my Honourable friend, Dr. Gour, has depicted, but through a position of the correct understanding of the legitimate and real difficulties of His Majesty's Government if we assisted His Majesty's Government in being drawn out of that awkward situation, we, I think, will have the right to make capital of the support thus given, in insisting upon His

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Majesty's Government supporting us in our demand for according better treatment to our own countrymen and countrywomen in the Colonies. As Sir Malcolm Hailey has pointed out, an obstinate attitude on this question might satisfy our pride to a certain extent that we have dealt a blow at the Colonies by retaliating. But it would be a childish and false pride indeed. That blow is bound to be ineffective. The Colonies are not likely to feel that blow, and we might be able perhaps to create more bad blood in the Colonies. If instead of that, if, instead of making an obstinate effort at rendering an ineffective blow on a matter which is not really pertinent to our political position in the Colonies, if we at this moment supported His Majesty's Government, we should then have the right of claiming the support of His Majesty's Government in getting better treatment accorded to our own countrymen and countrywomen in the Colonies. It is because I think our attitude on this question would be a capital, would be an investment for the future, that I support the attitude taken up by His Majesty's Government.

**The Honourable Sir Malcolm Hailey:** The amendment under discussion involves questions both of detail and of principle; and I may be pardoned if I deal first with the questions of detail that have been raised, for it is necessary to do so, since some of the suggestions made to the House were to my mind misleading. Mr. Agnihotri told us that he saw no reason why when this Legislature had been given its powers, the Secretary of State or the Home Government should not be content to rely on their powers of veto. He suggested that if any clause of the Bill as passed by us was unsatisfactory to the Home Government, they could veto that clause. But as has appeared from the discussions this afternoon, we have to reckon with section 65 of the Government of India Act under which the specific approval of the Secretary of State to certain sections of this Bill would in any case be necessary. It would not therefore have been possible for the Home Government to rely purely on the power of veto. Nor indeed would it have been possible for His Majesty's Government to veto, as Mr. Agnihotri suggested, a single section of the Bill. If the Bill contained sections which they could not accept, they would have been obliged to disallow the whole. Mr. Agnihotri, again, compared his own position in moving this amendment to that of the Committee, which, he said, recommended that the status at present enjoyed by Dominion subjects should be taken away from them. But here he is wrong; his position is not that of the Committee, for it will be realized that while the Committee, both the majority and the minority, considered that some protection should be given to Colonial Members of His Majesty's forces serving in India, Mr. Agnihotri's amendment would withdraw even that amount of protection. Again, he drew a comparison between Colonials and Americans; he suggested that we should give the Colonials the same rights as Americans. Now of course his amendment would not do that. It will be admitted everywhere, I think, that when we have certain Treaties which force us to give to certain nations, six in number, the rights at present enjoyed under section 460, we cannot deny those rights to Americans generally. It would be impossible, for instance, to give rights to citizens of Costa Rica or Venezuela which were denied to citizens of the United States; I am sure I need not argue the point to this Assembly. But, if we have to give rights to Americans equivalent to rights now enjoyed under section 460, then Mr. Agnihotri's amendment would have the effect of giving Colonials far less than those rights. It would give them nothing at all. It would give them less than Indians, for Indians at all events under our

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Bill will be able to claim a majority on a jury, and under Mr. Agnihotri's amendments Colonials would not be able to claim even that much. So that his amendment, so far from giving them, as he thinks, it would, the rights enjoyed by Americans, would give them far less than those rights and would give them far less rights than Indians themselves. Obviously, therefore, there is something wrong, even in the manner in which he proposes to carry out his own proposals. He finished by saying that if Colonials can feel that they have succeeded in extorting this privilege from us, they will use that as an argument for further maltreating the Indians in the Dominions. But would it be correct to say that they have succeeded in extorting this privilege from us? They have had this privilege since 1872. It has been maintained at the express desire of His Majesty's Government. There is no question of extortion by Colonials at all.

Then, Sir, Dr. Gour objected that our definition involved a very considerable extension of rights to Colonial subjects. I do not intend to deal with that point at length, since Dr. Gour (though for reasons other than those which commend themselves to us) has agreed to withdraw his amendment on the subject. But I think it is well to point out again the steps by which we have proceeded to our present amendment; he was corrected on that point both by Sir Deva Prasad Sarvadhikary and by Sir Henry Stanyon. We of course have merely endeavoured to get one comprehensive expression which will do away with the geographical inexactitude, if nothing else, of the present definition in the Criminal Procedure Code. That, and nothing else, was our intention in adding the words " or any Colony "; this being the phrase used in the General Clauses Act. We wanted one comprehensive term which would carry out the obvious intention of the original section, which was, as Sir Henry Stanyon very rightly said, to give to people of the British race wherever domiciled the privileges we are now discussing. But Dr. Gour has I think forgotten that though the exact effect of our present definition may be to give this protection to residents of Crown Colonies, when they happen to be in India and might therefore appear to involve an extension, since the existing definition refers only to the Dominions yet on the other hand it involves a very considerable restriction. I need not refer to what Mr. Rangachariar himself said in his minute and the Committee has also said in the course of its report, in regard to the exceeding undesirableness of our present definition. It was an absurdity that certain persons entirely of non-British and non-European ancestry living in the Colonies should on visiting India receive these exceptional rights; and we have revised our definition by the addition of the words " of European extraction " for the purpose of excluding those persons. So that, while on the one hand it may seem that we have opened the privileges to persons residing in Crown Colonies as well as the Dominions, yet on the other hand the effect of our definition will in point of practice be a wide and logical exclusion of privileges in regard to persons for whom those privileges were never intended. I can not accept what Dr. Gour says about Ceylon. He says that while a European living in Ceylon is subject to a law which is in every way equivalent to the Criminal Procedure Code, yet when he comes to India he would enjoy the exceptional procedure provided in the Bill. The Ceylon Code is not, I think, in every way equivalent to the Criminal Procedure Code. There are vital differences. You have there the Police Court with small powers, the District Court which could give imprisonment up to two years and all other cases have to go to the Supreme Court. Whatever the outward form

of the law that constitutes a very vital difference between Indian and Ceylon Courts. But in the end, Dr. Gour accepts our position under protest and under a feeling of helplessness. Now, there are many other reasons—and some of them have this afternoon been adduced—why it is on the whole advisable to accept the position of this definition. As was very rightly pointed out, there is no compulsion in the matter. The only compulsion in the matter is—and here I address myself to the arguments of Sir Deva Prasad Sarvadhikary—the only compulsion in the matter is that if you value the other features of the Bill, then it is undoubtedly necessary to accept this feature. There is no " veiled threat " as Mr. Agnihotri said; there is no threat at all. The matter is perfectly open. The Secretary of State under section 65 of the Government of India Act was obliged to give approval to certain features of the Bill. You may speak of it if you like, a bargain or as a condition; but it is certainly not a threat if in giving his assent the Secretary of State states that he does so purely on the condition that the new definition should maintain the privileges of the Dominion subject. I quite agree with Sir Deva Prasad Sarvadhikary that section 65 does not refer to Colonial subjects unless they are born in Europe. But it is quite competent for the Secretary of State, acting under the orders of His Majesty, to attach that condition to his assent. Further I would not myself advise the House to accept the definition under any feeling of helplessness. I do not even advise it to accept the definition under that peculiar safeguard known to lawyers, I mean " without prejudice ". I discussed the question this morning and I think that Mr. Seshagiri Ayyar in his remarks somewhat misinterpreted what I said. I did not go so far as to pretend that if we waived our right to withdraw from Dominion subjects the status now enjoyed by them, we could put forward a claim to be treated with magnanimity by Dominion subjects. I saw myself that that was a somewhat dangerous argument, and I was afraid I should lay myself open to exactly the argument which Mr. Seshagiri Ayyar actully used, namely, that the Dominion subjects would have no respect for you unless you show your teeth. What I did say, and I hold to it, was that whatever might be the possible result of allowing the definition to stand, yet to legislate now and here for withdrawing from Dominion subjects the status now enjoyed by them would undoubtedly do no good. I am no prophet; I can not pretend to say whether the exhibition of magnanimity on our part will earn its reward or not. But what I could say is this. If you legislate in the sense that was recommended by the Committee, then it is certain that you will do active harm; that at all events seems to me a direct certainty. But, Sir, this fact does remain; you have somehow got to induce a better atmosphere in the Dominions. You can only secure what you want—I say what you want, but it is also what your Government wants,—you can only induce by promoting a better knowledge of yourselves and a better estimation of India. I believe if you were to legislate in the sense in which Mr. Agnihotri desires, you would go far towards destroying all chance of securing that atmosphere with the Dominions. More than that, as Mr. Jamnadas pointed out—and I welcome his aid in this respect—you would perhaps lose your own claim on the assistance of the Home Government, for whatever value the Dominions may attach to the feelings and aspirations of India, remember that they will still more be influenced by what is said in England itself. If you can create in England itself an atmosphere favourable to you, you have taken an important step towards securing a better atmosphere in the Dominions also. I have argued the question purely on its merits. It is, as Mr. Jamnadas said, a practical question. You have simply to balance the advantages, and I

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believe myself that the advantage lies, and lies clearly and distinctly in recognizing that Colonials, as Members of the British race, should retain the rights which they now enjoy.

**Mr. B. Venkatapatiraju** (Ganjam *cum* Vizagapatam: Non-Muhammadan Rural): Sir, I do not rise here to show magnanimity as my friend, Mr. Rangachariar, or despair as Dr. Gour, or my view as a practical man, as Mr. Jamnadas. I want to make an appeal to my friend Mr. Agnihotri not to press this amendment, because when he gives up the substance, why should he fight for the shadow? Is there any country in the world wherein outsiders can come in and say "you must have a special law and a special procedure for us?" Is it possible in any self-governing and self-respecting country to provide for such a thing in any Criminal Procedure Code? When you have accepted that, why should you fight about a few Colonials? 'No Colony so far as I am aware has any discriminatory legislation in the Criminal Procedure Code against Indians?' On the other hand, I may tell you, there are some advantageous provisions in some Colonies. Whereas in Fiji the privilege of an European is to drink, while no Indian is allowed to drink, and no Indian is allowed to waste his time out of his house after nine, but only a European can. But these are only trifles and so long as there is that humiliating provision in the Bill discriminatory procedure for Europeans and Americans do not fight against the Colonials only. For these reasons I appeal to my friend not to press his amendment.

(*Some Honourable Members:* "The question may now be put.")

**Mr. K. B. L. Agnihotri:** Sir, as advised by my friends, I have no alternative but to ask the permission of the House to withdraw this amendment. Let us have some experience of being practical men, and let us see how that will benefit us.

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

**Bhai Man Singh:** Sir, the amendment which stands in my name is as follows:

"In clause 2 (1) (*i*) in the proposed definition of 'European British subject' after the word 'Colony' add the following words: 'The laws of which make no distinction between the status of Indians and Europeans'."

Of course, Sir, the legal phase of the question has been argued a good deal by my friends who have spoken on the previous amendment. I will only add that the definition of European British subject, as it at present stands in the Criminal Procedure Code, does not include many of the Colonies, against whose treatment Indians have to complain. Kenya is not included in the present definition nor is South Africa. For myself I cannot understand why the point should be pressed that we should give superior rights to the inhabitants of those Colonies which do not give us even the status of citizens. Sir, I may be called one who is very revengeful or one who is very retaliatory, but, if that is the fact, I am in very good company. Honourable Members must have read the replies from various bodies supplied to them. I would draw the attention of Honourable Members of this House to page 22 of those replies wherein we have got a letter from the Government of Bombay which runs as follows:

"In continuation of this Government letter No. 430, dated the 4th September 1922, I am directed, by the Governor in Council to forward herewith a separate minute of dissent recorded by the Honourable Sir Ibrahim Rahimtoola, Kt., C.I.E., and the

Honourable Dr. Sir Chimanlal Setalvad, Kt., LL.B., LL.D., Members of the Executive Council of the Governor of Bombay, on the proposals to amend the Criminal Procedure Code, 1898, based on the recommendations made by the Racial Distinctions Committee."

"We are of opinion that the subjects of those British Dominions and Colonies in which Indians are denied the rights of British citizens and equality of treatment should not have any privilege accorded to them in India. We desire that our view should be communicated to the Government of India."

Not only that, we have got another opinion of another eminent lawyer, the Additional Judicial Commissioner of Oudh, who says:

"I agree to the proposed change. I note that members of the overseas dominions are deprived of the right of European British subjects. But I consider this is quite fair in view of the attitude assumed towards Indians by these Governments. The question can be settled hereafter by negotiation between the Government of India and the Governments of the dominions."

Sir, it really pained me when I heard my Honourable friend Mr. Rangachariar preach to me this sermon of magnanimity and tells me that it is religion that makes it a duty of mine to be magnanimous. I do know that religion enjoins magnanimity, but at the same time, if Mr. Rangachariar wants to join issue with me, I will tell him from the Scriptures of nearly every religion from his own Gita, from the exact words of Shri Krishna that there are times when we have to retaliate. I really wonder that in the name of magnanimity we should do this. I say in the name of sheer self-respect, we should say "No, my dear Sirs, if the Colonies are not going to give us the status of citizens, for God's sake let us give them a superior status in India." Sir, the great point that has been made about these Colonials is the Imperial question. My Honourable friend Mr. Jamnadas Dwarkadas very vehemently and strongly laid stress on the point that if we submit to the wishes of the Imperial Government . . . .

**Mr. Jamnadas Dwarkadas**: Not 'submit'; 'support'.

**Bhai Man Singh**: I think it is 'submit'; you think it is 'support'— if we support the views of the Home Government, we shall have a claim on them to help us in getting equal rights in those Colonies. I would request Mr. Jamnadas Dwarkadas to consider whether we have not already got more than enough claims on the Home Government to support our claims in the Colonies. We have been crying out for years together to the Home Government to support us. What more is needed?

**Mr. Jamnadas Dwarkadas**: Why not have one more weapon in our armoury?

**Bhai Man Singh**: I take the other side of the question. The Colonies have been treating us as they have for a long time but they find the Imperial Government still helping them and trying to give them a higher status in India than what the Indians even are given. Does not that show that the Imperial Government does not care for the maltreatment that has been accorded to the Indians up till now? They would be convinced that the Indians also submit to that. Therefore we need not pay much attention to this argument. On the other hand, the Colonies would think that we have not got even the self-respect to fight for the honour of our own country. So we can say, "My dear Sir, at least if you are not going to give us equal rights in your country, we are not going to give you superior rights in our own country." Then, Sir, I cannot understand why the Secretary of State should interfere in such a matter on the side of the Colonies. Section 65 of the Government of India only lays down that the Indian Legislature has not power, without the previous approval of the Secretary of State in Council, to make any law empowering

[Bhai Man Singh.]

any Court other than the High Court to sentence to the punishment of death any of His Majesty's subjects born in Europe . . . .

**Mr. President:** Order, order. I cannot allow a repetition of the discussion on that point. The Honourable Member must confine himself to the terms of his amendment.

**Bhai Man Singh:** The point to which I wish to draw the attention of this House is that we should not take the position imposed upon us out of sheer helplessness. The utmost that the Secretary of State can do in the matter is to say, " All right. I do not allow this law to be passed to the extent that the Sessions Judge or any other Court below the status of a High Court can pass the sentence (of death)." I personally, Sir, would prefer not to give a superior status to a Colonial gentleman whose country does not give to our countrymen equal status, and I would prefer to have a law in the country that every European British subject should only be tried for offences . . . .

**Mr. President:** Order, order. The Honourable Member is getting a long way from the subject.

**Bhai Man Singh:** I am submitting, Sir, that even if the Secretary of State uses his powers under section 65 of the Government of India Act, still we should not mind it and we should carry this amendment. There are two alternatives before us. One is that the Secretary of State would disallow the law we pass to the extent that no Sessions Judge or no Court other than a High Court can pass any sentence of death. I would allow that discrimination in favour of the European British subject to remain to that extent, rather than give a Colonial, whose Government does not give equal status to the Indian, a superior status in my own country. That is my very clear position, Sir.

I think I am perfectly in order when I request the House to accept this alternative that is proposed in section 65 rather than accept this position which is highly incompatible with the self-respect of my countrymen. My Honourable friend Mr. Rangachariar in his speech said that there are colonies and colonies . . . .

**Mr. President:** The Honourable Member from Madras has not spoken on this amendment.

**Bhai Man Singh:** I am speaking on my amendment and I am drawing Mr. Rangachariar's attention to his speech so that he may support this amendment. There are colonies which give Indians equal status. For instance, there is Mauritius where Indians can buy lands and become members of the Legislature. I am saying this in order that my Honourable friend may support my amendment in pursuance of his utterance. I should say in conclusion that the change that has been made in the recommendations of the Racial Distinctions Committee is not really warranted by the opinions of a good many Indians and Local Governments. I know the Punjab Government, the Burma Government and Mr. Justice Stuart all agreed to the definition proposed by the Racial Distinctions Committee. Now, if we are going to accept any change, the change that has been proposed by the Secretary of State, we should only accept that change with the reservation that I have proposed in my amendment.

The amendment was negatived.

**Rai Bahadur Bakshi Sohan Lal:** The amendment which I propose is:

"In clause 2 for sub-clause (2) substitute the following:

'(2) In paragraph (*j*) of sub-section (1) of section 4 of the Code, omit the first 43 words'."

I respectfully submit even if this Assembly is powerless to remove all racial distinctions in the administration of criminal justice, why should not every High Court have the same power, why should the definition of a High Court for the purpose of European British subjects be different from that in the case of other subjects? I submit that one uniform definition should be quite enough to serve all the purposes we have in view. So the following definition should be enough:

"'High Court' means the highest Court of Criminal appeal or revision for any local area, or where no such Court is established under any law for the time being in force, such Officer as the Governor General in Council may appoint in this behalf."

In this Bill, the definition given in the Code has been retained with a few verbal changes. There is another thing. Why should some judicial Commissioners have been given the powers of a High Court, while others have not been?

I respectfully submit that the Judicial Commissioner of the North-West Frontier Province who exercises the highest powers of criminal appeal should also come within the definition which I propose to be adopted. I respectfully submit that we should not tamper with all the courts from the highest Court to the lowest Court, so far as the trial of European British subjects is concerned.

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

"In clause 2, sub-clause (2) substitute the following:

'(2) In paragraph (*j*) of sub-section (1) of section 4 of the Code, omit the first 43 words'."

The motion was negatived.

**Bhai Man Singh:** I simply move:

"That in clause (*j*) after the word 'Oudh' the words 'North-West Frontier Province' be inserted."

I do not wish to move the words "British Baluchistan" also. I would request the Honourable the Home Member to take into consideration if the Judicial Commissioner of the North-West Frontier Province is a sufficiently advanced court so as to be included in this section or not, and if he is not fit to be included in this list whether he will consider that he is a proper judicial court for the North-West Frontier Province.

The motion was negatived.

Clause 2 was added to the Bill.

**Mr. B. Venkatapatiraju:** My amendment is only a drafting amendment to clause 3. It runs:

"To clause 3 add the following:

'and in the marginal note to the same section for the words 'Justice of the Peace for the Mufassil' the words 'Justice of the Peace for British India' shall be substituted'."

I may mention with your permission that there is a mistake in the whole drafting of clause 3. I appeal to the Government draftsman to find out

[Mr. B. Venkatapatiraju.]

the words mentioned therein in the Criminal Procedure Code. They do not really find a place in the Criminal Procedure Code itself, because in section 22 of the said Code the words and brackets ("other than the presidency towns)" do not appear in the Code itself.

**The Honourable Sir Malcolm Hailey:** To terminate this part of the discussion I may point out that the amendment is obviously due to a mistake, as the Mover will see if he refers to the amended copy of the Code. Section 22 has been altered by the amendment of 1920.

Clause 3 was added to the Bill.

Clause 4 was added to the Bill.

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

"That clause 5 be omitted."

Clause 5 of the Bill provides:

"Notwithstanding anything contained in section 28 or 29, no Magistrate of the second or third class shall inquire into or try any offence which is punishable otherwise than with fine not exceeding Rs. 50 where the accused is a European British subject who claims to be tried as such."

Sir, under sections 28 and 29 of the Criminal Procedure Code the Courts are specified which are to take cognizance of offences for trials and under section 29 a provision has been made that, subject to the provisions of section 447—which will come up later on in the Bill—"any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court. Further, when no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code by which such offence is shown in the eighth column of the Second Schedule to be triable." By this clause 5 we are restricting the jurisdiction of certain Courts, over the trial of European British subjects; and those Courts whose jurisdiction we are restricting in respect of trials of European British subjects are the Courts of the Magistrates of the second class and the Magistrates of the third class. So far as I can judge or understand, the reason that may have influenced the authors of this Bill may have been the incompetency of such class of Magistrates to try an European British subject. I can not think of any other reason that may have been responsible for the taking away of the jurisdiction from such Magistrates. But to what I wish to draw the attention of the House is this, that whenever I spoke about the competency of such Magistrates while certain of the provisions of the Criminal Procedure Code were under discussion and wherein their powers have been increased, it was stated from the Government Benches that the Magistrates of the second class were quite competent to have an extension of jurisdiction over certain cases which were referred to in these sections of the Code. I do not understand how those Magistrates are now disqualified from trying European British subjects when they are qualified to try an Indian British subject of howsoever eminence he be. They would say, 'no, we are not taking away the jurisdiction of the second or third class Magistrates but we are simply restricting the jurisdiction in certain cases': They say that a second or a third class Magistrate shall be competent to try an European British subject for an offence which is punishable with a fine not exceeding Rs. 50. I admit, Sir, that there are certain offences mentioned in laws other than the Penal Code

which are punishable with a fine of Rs. 50 or less, but so far as I am aware, there is no offence defined in the Indian Penal Code (the chief penal law of India), excepting probably one of drunkenness under section 510 which is punishable with fine of Rs. 50 or less only. So, under this new clause 5 we practically take away the jurisdiction of these Magistrates over European British subjects for offences triable under the Penal Code. Sir, it has been claimed for this Bill and for the compromise which has been so much talked of, that no differentiation has been made between Magistrates with regard to the trial of cases in which European British subjects were involved; that is to say, that under this Bill every Magistrate shall have an equal jurisdiction over European and Indian British subjects. I beg to submit, however, that this clause of the Bill is contrary to this principle. Here you are taking away the rights of an Indian Magistrate of the second class who has been thought competent to try cases against Indians but who has on the other hand been thought to be incompetent to try cases involving Europeans. If they are really incompetent and unfit to try any cases, I do not then understand why they should be authorised to try Indian British subjects and put the liberties of such subjects in jeopardy. It is very incongruous that this differentiation in the jurisdiction of Magistrates should continue even in the present Bill. It is very desirable that this power be also extended to the second or third class Magistrates in the matter of trial of European British subjects and the Indian second and third class Magistrates be not led to believe that they are looked down upon by the Government whose interests they always serve and to whom they are always loyal and faithful may be sometimes even at the sacrifice of their conscience. I therefore submit that this withdrawal of jurisdiction so far as these Magistrates are concerned should not be perpetuated in this Bill and that the clause 5 be omitted.

Probably the Honourable the Home Member may say that there may be some difficulty if we were to do away with the whole clause, because by doing so we retain the words: "the provisions of section 447." But to that I would reply that there are other amendments tabled in the list of amendments which will remedy that defect even if this clause is omitted.

**Mr. Muhammad Yamin Khan** (Meerut Division: Muhammadan Rural): Undoubtedly, Sir, the Government is inconsistent in proposing this section to the Bill. When we had a discussion on the Police Disaffection Bill a lot of compliments were paid to the second and third class Magistrates. But apart from that, even if the Government is inconsistent, I do not see why this Assembly should be inconsistent. This Assembly in the Police Disaffection Bill passed the provision that these cases should not be tried by second and third class Magistrates but only by first class Magistrates. Adhering to that principle which the Assembly accepted after due consideration, I think Mr. Agnihotri who supported that amendment should now withdraw this amendment.

**The Honourable Sir Malcolm Hailey:** It is perhaps a little difficult to know where we stand in point of consistency; Mr. Agnihotri himself may find it a little difficult to justify what he says now about second and third class Magistrates in the light of what he said in our late discussions on the Criminal Procedure Code. But if there is any inconsistency to-day, it is not I feel on the part of Government. We have framed the Bill on the lines of a compromise accepted by representatives of both communities. I am not called upon, I consider, to support on its merits the proposal that second and third class Magistrates should not try these cases; it is sufficient that

[Sir Malcolm Hailey.]

I should take my stand on what was accepted, as I have said, by the representatives of these two communities. I can look perhaps into their reasons; I have examined them, and they reflect two somewhat different views. Different reasons obviously appealed to different parties to the compromise. Doubtless Mr. Agnihotri has been thinking of the reasons which appealed to the European side, namely, that second and third class Magistrates as a rule know very little English, and are still more handicapped by their entire lack of knowledge of English ways of life and thought. Yet obviously, there were at the same time other considerations which appealed to the other party to the compromise. Let me read what some of them said. Here is an Indian witness from Nasik, a High Court Vakil. He says:

"I do not wish to disparage the second and third class Magistrates as a class. Nevertheless, I hold the view, which is based on practical experience and which I believe will be supported by many members of the legal profession, that these lower class Magistrates are lacking in that spirit of independence which will save them from being influenced by the consideration of securing the favour of their European superiors, in some cases by the very fact that the European nationality will be offended."

That perhaps, is an argument which might come as a surprise to Mr. Agnihotri, and yet on the other hand, it undoubtedly appealed to some members of the Committee. I have given that quotation as typical; I could multiply it if necessary. That, undoubtedly, is the general consideration which influenced Mr. Justice Shah in supporting the proposal of the Committee. His conclusion was:

"This is an exception to the general scheme of the recommendations, which appears to me unavoidable under the circumstances, and so far as I have been able to ascertain the Indian opinion on this point as reflected in the evidence before us it will not be objected to."

The conclusion come to by Mr. Rangachariar on the subject was:

"I quite recognise it will not be safe, from more points of views than one", . . . .

I think we have now seen what those points of view are:

"to entrust the trial of European British subjects for serious offences in the hands of second and third class Magistrates."

I can do nothing better, I think, than leave Mr. Agnihotri in the hands of Mr. Rangachariar, and I have no doubt he will deal with him faithfully.

**Rao Bahadur T. Rangachariar:** Sir, as a direct appeal has been made to me, I could not resist the temptation of dealing with it. Sir, in my province, we have got second class Magistrates who are very efficient people indeed. But the evidence led before the Committee was that in these provinces,—I was surprised to hear it indeed—that even first class Magistrates do not know a word of English and they render their judgments in the vernacular. There are, I understand, many in the Punjab. But to the credit of my province, almost all the second class Magistrates and some third class Magistrates also are graduates. Another fact which weighed with me in agreeing to this recommendation was this. My Honourable friend, Sir Malcolm Hailey, read one portion of my minute. If he had read the previous sentence also, my meaning would have been plainer. I say there:

"Having regard to the present conditions of recruitment to these Magistracies and to the combination of executive and judicial functions in the District authorities, I quite recognise it will not be safe, from more points of view than one, to entrust the trial of European British subjects for serious offences in their hands."

What passed in my mind I will say plainly. These people are not able to resist the temptation of unduly respecting the European. I mean it has become a habit with them, and I have seen a Magistrate rise from his seat on the Bench when a European witness appeared before him and offer him a chair. Although the zemindar may appear a great man in the district, he does not do so for him. It was this weakness that I had in mind and it seemed to me a wholesome provision to avoid them. We want justice done, and we must have independence on the Bench. I think my Honourable friend, Mr. Agnihotri, will recognise that shortcoming with these Magistrates.

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**Khan Bahadur Zahiruddin Ahmed** (Dacca Division: Muhammadan Rural): I will say one word and one word only. I feel exactly the same as my Honourable Indian friends do feel. I wish to say that retaliation is not justice, but a sign of narrow-mindedness, which we should not forget. Indians are an old civilized people; the civilization of Europe is of comparatively recent origin. We cannot expect that these youngsters with faces like Japanese dolls . . . . .

**Mr. K. B. L. Agnihotri:** May I rise to a point or order. Do these remarks refer to my amendment or any other?

**Mr. Muhammad Yamin Khan:** May I ask what faces like Japanese dolls have got to do with it?

**Khan Bahadur Zahiruddin Ahmed** . . . will suddenly be as high minded as we Indians,—the oldest people on the face of the earth,—were, are or can be. A Persian poet says, if you have received a wrong from an equal or a superior party, you can repay him with another wrong; you may return ill for ill. But if you be a really superior party to him you are to return good for ill so that the perpetrator of the wrong may feel ashamed and naturally he will not do you any more wrong. The Indians have always been a magnanimous people. Why should we forget it on such an occasion? Let us rise up to our standard before the whole civilized world and show that we are a fair and broad-minded and superior people and know more how to give than to take. I am certain that in the course of time, which may be a few years, our magnanimity will be fully appreciated and the drawbacks placed on the Indians in the Colonies and elsewhere will soon be removed . . . .

**Mr. President:** The Honourable Member is getting out of order again.

**Khan Bahadur Zahiruddin Ahmed:** I am certain that the public opinion of the whole outside civilized world will be arrayed on our side, which sooner or later will force the Colonists to give in. I ask my countrymen to be as magnanimous as they have always been.

**Mr. Muhammad Yamin Khan:** This is a speech on the last amendment; we have nothing to do with the colonies in this one.

**Mr. President:** The House is well aware of it; I pulled him up before.

**Khan Bahadur Zahiruddin Ahmed:** Sir, I regret my mistake. I was out of the Assembly Hall and just returned. I was under the impression that the discussion is still going on on the old amendment. Hence I offer you my apology. I ask my countrymen to be magnanimous as they have always been. I now ask my Honourable friend to withdraw his amendment.

The motion that clause 5 be omitted was negatived.

**Rai Bahadur Bakshi Sohan Lal:** Sir, the amendment I propose refers to the same clause, clause 5. It is as follows:

" For clause 5 substitute the following clause :

' 5. In sub-section (i) of section 29 of the said Code, the words and figures ' subject to the provisions of section 44 ' shall be omitted '."

**Mr. President:** May I point out to the Honourable Member that two questions arise on this amendment. First of all, we have just decided not to omit clause 5 and we cannot substitute his clause 5 for the existing clause 5. We have further already amended the words which he proposes to amend during the proceedings on the Bill to amend the Code of Criminal Procedure, and the words now read " subject to the other provisions of this Code."

**Rai Bahadur Bakshi Sohan Lal:** There is one thing I wish to say. The effect of my amendment would be that it does away with section 29A as proposed and, though it has been negatived on the motion of Mr. Agnihotri, I respectfully submit that, if there are any such Magistrates, as has been suggested, who would be influenced by a European party, why not do away with such Magistrates and improve the Magistracy.

**Mr. President:** To what question is the Honourable Member addressing his remarks?

**Rai Bahadur Bakshi Sohan Lal:** That clause 5 of the Bill be omitted.

**Mr. President:** We have already decided not to omit it and therefore we cannot substitute his clause for it. Moreover, even if he were to put it in a different form, we have already decided this Session that the words " subject to the provisions of section 447," shall not stand part of the Code but other amended words.

**Rai Bahadur Bakshi Sohan Lal:** Then, I will withdraw this amendment.

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

**Mr. B. Venkatapatiraju:** Sir, my amendment would only be necessary if amendment No. 19 is passed; otherwise it is not necessary.

**Mr. President:** If the Honourable Member intends to move amendment No. 15, we will take it after No. 19.

**Dr. H. S. Gour:** Sir, I shall very briefly recapitulate the reasons which have induced me to give notice of this amendment.* I would invite the attention of the House to paragraph 22 of the report of the Committee where it is stated that " the majority are of opinion that sections 30 and 34 should be repealed on the ground that a sentence of more than two years' imprisonment should not be passed without the assistance of a jury or of assessors." In a very illuminating note penned by Mr. Justice Shah, appended to the report, he also in paragraph 10 (*a*), printed at page 24 of the report, points out that he was entirely opposed to the retention of section 30 on the Statute Book. Now, I shall very briefly point out what is the effect of the retention of section 30 and its consequential section 34 in the Code of Criminal Procedure. To my lay friends I may point out that under the present Code of Criminal Procedure all offences not punishable with death may be tried in provinces, where there exist Deputy Commissioners, by Magistrates of the first class empowered to try such cases; the result being

* " Omit clause 6."

that in several provinces, the majority of the Sessions cases not punishable with death are disposed of as mere Magisterial cases, with the result that there are no jury and no assessors and the trial is more or less in the hands of the Magistrate who performs the dual functions of a judicial officer and an executive officer. This question of asking the executive officer to discharge judicial functions in highly complicated cases requiring technical knowledge and skill and a certain amount of knowledge of the law has been the subject of adverse criticism in this country for a long time past and the Committee pointed out that the time had come when, with the advent of the jury system which the present Bill, if passed into law, will introduce, accused in districts and provinces where there exist Deputy Commissioners should not be deprived of the salutary aid which the jurors and the assessors give to the Court. If you will read the ensuing letters you will find that the then representatives of the Government were not unsympathetic towards our recommendations. I am moving this amendment with the first object of obtaining an official public pronouncement on the part of the present Home Member as to what the policy of the Government is regarding the repeal of section 30 of the Code of Criminal Procedure. So far as I understand, and I think those of you who have read the compilation will strengthen my view, that the view of the whole Committee was for an early repeal of sections 30 and 34 of the Code of Criminal Procedure, with the resultant effect that all Sessions cases not punishable with death shall be tried only in Sessions courts with the assessors or the jury as the case may be. Now, the Bill as drafted excludes from the cognizance of the Magistrates empowered under section 30 all European British subjects but does not, and indeed could not, exclude the British Indian subjects tried for the same offence. We were all of opinion, and I am of opinion still, that we do not wish that this obsolete anachronism of a system of asking Magistrates to dispose of cases of this gravity and heinousness should be perpetuated by allowing them to try European British subjects equally with British Indian subjects. So far we are all agreed. But at the same time we want a definite assurance from the Honourable the Home Member that this obsolete system will not be enured and perpetuated longer than it is necessary in the interests of justice. In the compilation which is accessible to us we find that some objection is taken to the change of system on the ground of expense.

Well, Sir, I have no doubt that if we are to revise our Criminal Procedure and if we are to level up, as this Bill proposes to do, our Indian subjects, and bring them alongside of European British subjects, then I submit some measure of reform on the lines indicated by me should be adumbrated by the occupants of the Treasury Benches. If they do so, I am not anxious to press for the deletion of clause 6 which I think, as a temporary measure, is a good one, because I have myself condemned the system of magisterial trials of cases not punishable with death, and having condemned that system, I could not, in consistency, ask that for the time being that that system be equally extended to European British subjects. Indeed, if I were inclined to take a leaf out of the note book of my esteemed friend, the occupant of the Treasury Bench, I would have said, as he has said in his opening remarks, that the unification of Criminal Procedure, where the two systems are assimilated and the same system applies equally to European British subjects and British Indian subjects, would lead to a steady and speedy improvement of our judicial machinery. If I wanted to use that as a lever for hastening up the pace of judicial reform in this direction, I would insist upon the deletion of this clause

[Dr. H. S. Gour.]

so that our fellow sufferers, the European British subjects, may join with me in asking for the early deletion of that clause. But I do not think I require that reinforcement, and I shall therefore rest content if an assurance is given by the Honourable the Home Member that this clause will engage his early attention and that it shall be purged out of the Statute Book at the earliest moment possible.

**Mr. President:** Amendment moved:

"Omit clause 6."

**The Honourable Sir Malcolm Hailey:** Some part of the assurance for which Dr. Gour asks I can, of course, give him, namely, that we shall at once take action to address the Local Governments in whose provinces this section applies, and ask their views why the recommendations of the Committee should not be carried out, namely, that section 30 should be withdrawn from operation. I cannot, of course, give a promise, for it will be impossible for me to do so, that this section will be withdrawn entirely at an early date. We must first consider the opinions of the Local Governments and the High Courts, and know what they have to say on the subject. The matter is of importance to Local Governments if only on the point of finance. I have here figures of the number of persons sentenced by Magistrates in the Punjab with special powers under section 30. They appear to amount in the years 1919-1921 to an average of some 1,193 cases. If those cases were tried by Sessions Judges, obviously there must be a large increase in the judicial cadre. Some 8 to 10 Sessions Judges would be required, and it is quite obvious that in a matter of this kind we must take into consideration what the Local Governments have to say as regards their ability to find finance for the measure. I hope Dr. Gour will be satisfied with my assurance that we do not intend to let the matter rest, and that we shall immediately address Local Governments on the matter.

**Rao Bahadur T. Rangachariar:** It is in this matter and one other matter that the co-operation of the European community in this country is needed. In two matters we condemned the question whether it was necessary to create equality between the two races. One is in regard to the sentence of whipping and the other is the extraordinary power vested in certain Magistrates to impose this very heavy sentence without a trial in a Sessions Court. If we were to work up to equality in all matters, we should have insisted upon European British subjects also being amenable to the same jurisdiction as Indian subjects are. So also in the case of whipping. But we felt that we must not work up to equality in injustice. Let us have equality only in justice. This we felt to be an injustice and therefore let us fight our battle by working for justice and not impose this injustice on the European British subjects also. It is in this spirit that we approached this question and we ask for the co-operation of the European Members in removing these blots from the sections of the Criminal Procedure Code. Our European non-official colleagues on the committee supported us very strongly in this matter in making the recommendation both as regards whipping and as regards this particular question. Unfortunately they are not here. I hope those European Members who are present here will not be led away by the specious argument which oftentimes misleads them, namely, the threat of increased cost, the increased number of people whom you will have to employ. I say it is worth paying for. You cannot have this machinery because you find it costly.

This is no argument for having insufficient tribunals trying and sentencing people to long terms of imprisonment. Let the accused people have a fair trial at any cost and I do not think we should be misled by any such argument. I am not satisfied with the way in which the Honourable the Home Member has treated this question. I know the Honourable Sir William Vincent had laid more emphasis on this than the present Home Member does. I hope he will also work himself up into enthusiasm in this matter and see that before the year is out these two disparities do disappear from our Statute Book.

**Mr. P. E. Percival** (Bombay: Nominated Official): I wish to make one remark with reference to the observation made by Mr. Rangachariar, that the committee were unanimous on the question of sections 30 and 34. The suggestion made by my friend Dr. Gour was also that the Committee were unanimous on this point. But that was not so. The report says:

"The majority of the Committee are of opinion that sections 30 and 34 should be repealed, on the ground that a sentence of more than two years' imprisonment should not be passed without the assistance of a jury or assessors. Dr. Sapru and Sir William Vincent consider that the Government of India must ultimately be guided in a large measure by the opinions of the Local Governments and the High Court on the question whether it is practicable to repeal those sections. Some members of the committee are of opinion that, if, after inquiry, it is decided to retain these sections, they should apply equally to Europeans and Indians."

I wish to point out that some only of the Members of the committee held the above view, though they were unanimous on the point that the matter was a suitable one for inquiry. I submit that Government have acted exactly in accordance with the proposal put forward by the Committee. That was the only point I wished to mention.

**Dr. Nand Lal:** In the interests of equality of treatment and uniformity of procedure I am in favour of the recommendation which was made by the Honourable Mr. Justice Shah. He has very clearly and in unmistakeable terms made out this case that sections 30 and 34 of the Criminal Procedure Code may be repealed at once and the understanding which has been very kindly given by the Honourable the Home Member is not very satisfactory. This recommendation may be accepted at once and with your permission I will invite the attention of the House to the luminous manner in which that recommendation has been made by the Honourable Judge. He says: 'the only other alternative is to repeal it. I think the section deprives an accused person of many important safeguards which he has in cases triable by the Sessions Court.' Then he says that "it deprives the accused of a jury or assessors, and it substitutes a District Magistrate or a first-class Magistrate specially empowered by the Government for a Sessions Judge, an Additional Sessions Judge or an Assistant Sessions Judge. A District Magistrate or a first class Magistrate specially empowered may not be, oftentimes would not be, an exclusively judicial officer like the Sessions Judge or the Additional Sessions Judge or the Assistant Sessions Judge and would not ordinarily be an officer of the same rank and judicial training as the latter. By investing the District Magistrate or a first-class Magistrate with such extensive powers under the Code, the accused are deprived of some of the most effective safeguards in a criminal trial in a Sessions Court." Again, that learned Judge says, 'I do not see how its retention can be justified except on the grounds of administrative convenience." It has, now, been propounded by the Honourable Home Member,—that there will be a large number of cases and therefore,

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in the first place, it will be very expensive, in the second place, it will be difficult to have all these cases, which are being in these days decided by the Magistrates empowered under section 34, to be tried and decided by the Sessions Judges . . . .

**Mr. President:** Order, order. I allowed Dr. Gour to pursue that line because, having read the Report of the Committee, I thought it might be desirable, even if a little disorderly, for Government to give a public pronouncement; but I cannot allow the Honourable Member now to go on arguing the merits of the case which I ruled out of order in the case of Mr. Bakshi Sohan Lal.

**Dr. Nand Lal:** Then I will not go into these details. I do not know how the elimination of new section 6 will really serve the purpose which my Honourable friend, Dr. Gour, wishes to see served, because, if that clause 6 is taken away altogether, it will not, in any way, repeal these two sections. Therefore, though I quite agree with the spirit of his amendment, I am sorry I cannot support it; but I would, however, suggest to the Honourable Home Member that he will kindly see that these two sections 30 and 34 may be repealed at the earliest possible date. (*Voices*: " I move that the question be now put.")

The motion was adopted.

**Mr. President:** The question is that clause 6 be omitted.

The motion was negatived.

**Mr. B. Venkatapatiraju:** Sir, we are told that the Government of India are anxious to carry into effect the recommendations of this Committee on which Europeans and Indians were well represented. In this case, Sir, what was recommended by that Committee? So far as whipping is concerned, the majority of the Committee considered that that punishment should apply to Europeans and Indians if retained alike. Therefore, the question is whether whipping should either be retained for Europeans and Indians alike or should be removed altogether; and to disabuse the minds of my European colleagues, I may say that in this or in any other amendment, I never wanted to suggest any reduction of the privileges which are provided in the Bill introduced by the Government. What I want to do and what I attempt to do in my amendment is to raise the position of Indians to the level of the Europeans in the enjoyment of privileges under this Bill. That is my main object. In order to effect that I submit that the Government of India should not be satisfied with abolishing whipping against Europeans only at this juncture and considering the question further in regard to Indians. I think that is maintaining an invidious distinction. It is to avoid that that I have moved this amendment. And though I move the whole amendment, I request, Sir, that it may be put to the House in parts. My amendment is:

" (*a*) In clause 6, in proposed section 34A, clause (*a*), omit the word ' European ' . . . . . "

My object in omitting the word " European " is that I have provided elsewhere that the only privilege allowed to a European in this connection is that he should not be tried by a second or third class Magistrate. Therefore by omitting the word " European " nobody suffers, because then it would apply to all British subjects equally. My amendment goes on:

" and omit the word ' death, penal servitude or '."

It states further:

"(*b*) In clause 6, in proposed section 34A(*b*), omit the word 'European', substitute the words 'one year' for the words 'two years' and add the following at the end:

'No Magistrate of the second class shall pass any sentence other than imprisonment which may extend for three months or fine which may extend to two hundred rupees or both; and no Magistrate of the third class shall pass any sentence other than imprisonment which may extend to one month or fine which may extend to fifty rupees or both'."

Now these are the definite suggestions which may be taken up separately but my main object is that if a European is not to be whipped for any offence committed by him, I think the same privilege should be enjoyed by an Indian who commits a similar offence. If you want to consider the matter further, by all means do so. But I appeal to you to keep this section out until the inquiry into the matter has been settled. There is no reason for haste in abolishing whipping for Europeans; and in that event also the Government will not feel the imperative necessity of bringing it against Indians. There must be a certain amount of pressure on the part of Europeans in favour of the abolition of this punishment, because they do not wish such a degradation should be applied to Europeans. Therefore I suggest, Sir, that whipping should be abolished. If the Government wish to move an amendment in this connection somewhere else, that is a different matter. They might say that they are considering the case of juvenile offenders. But I think there are also European juvenile offenders, and why should they not be punished in the same way? Therefore I appeal to my European colleagues that, if they are so very attached to the recommendations of the Joint Committee, they should stick up for the abolishing of whipping altogether in the case of both communities or retain it for both. Otherwise this will be misunderstood by the people. Let us be fair to both sides. I do not wish to say anything further about whipping.

I suggest further that both in the case of Europeans and Indians the death sentence is not at all desirable. Because when once you take life you cannot bring it back, and there may be occasions when there are judicial murders for which there is no hope of rectification. After all, what is the object of having death sentence? It is as a deterrent, and there are reasons urged that persons who commit offences liable with the punishment of death are doing it not being deterred at all by any section provided in the Code. I only invite, Sir, to what was stated by Buckley on Civilization. He states according to the environments of a population, according to the stage of civilization in a particular locality, a certain number of people invariably commit murder; whatever be your law, a certain number of people will commit murder, just like certain number of people commit suicides and certain number of people marry in a certain month. These are natural laws, whatever be your view. (Laughter.) You might laugh because you do not understand the underlying social principle which has been found by scientists. If you examine the cases in any country for a number of years, you will find that at a certain stage a certain number of people will commit a certain number of offences, whatever be the law; a certain proportion of people will marry and a certain number of people will commit suicide; if you examine the statistics, you will see the truth of this assertion. Such being the case what is the necessity for having death sentence? I leave it to you, Sir, to decide whether it is desirable to have death sentence. I state in my proposal that death sentence should be removed from the Sessions

[Mr. B. Venkatapatiraju.]

Courts. It serves double purpose. It removes the necessity of the Secretary of State or the Home Government giving any sanction for any law that we pass. Therefore, if death sentence is removed from Sessions Courts, that right of intrusion into our domestic matters will be removed. Besides, after all, it is not a desirable state of things that, while it was not competent for Sessions Judges to pass death sentence before on Europeans, it should be introduced now. I do not want that Europeans should be subjected to death sentence by a Sessions Judge. If there is such a serious offence, be he an Indian or a European, he should be tried by a High Court. (*Dr. H. S. Gour*: "The death sentence is always passed by the High Court. It is always subject to confirmation by the High Court.") It is very well known that death sentences are subject to confirmation by the High Court. I am speaking about the trial, because much depends upon the atmosphere in which a person is tried with the jury taken from the mofussil or the metropolis. Therefore, my suggestion is that the death sentence might be removed. The third suggestion is about removal of penal servitude. It has been suggested, that it is going to be abolished, and that there is going to be a Bill about it. Therefore, there can be no difference of opinion, because it was stated long ago that the Government is going to abolish Andamans as a place for penal servitude. I do not know when they propose to pass the law. One strong point is that we do not want this penal servitude as a punishment at all. I would, therefore, suggest that both Europeans and Indians should not be subjected to the death sentence or penal servitude. I do not press for the reduction from six months to three months. That proviso goes. I only confined myself in moving the amendment to these things, namely, that whipping should be abolished, and that death sentence and penal servitude should be abolished. Therefore, I move my amendment, Sir, which is as follows:

"In clause 6, in proposed section 34A, clause (*a*) omit the word 'European'."

If this is passed, section 34 might be added there, so that no European will subject himself to be tried by second and third class Magistrates. Therefore, whatever privileges he has, he will continue to have, along with Indians. With that object in view, I move my amendment.

**The Honourable Sir Malcolm Hailey:** We are I think dealing (as Mr. Raju desired) with the amendment in two parts. So far you have put to us only that part which refers to the omission of the word "European." I understand Mr. Raju's object in omitting this word is to make the European subject, like the Indian, to whipping. He says if Europeans really feel the attachment they have expressed to the recommendations of the Racial Distinctions Committee's Report they should heartily support him in doing away with whipping. But I would remind him that the Racial Distinctions Committee's report did not propose to do away with whipping. They said public opinion should be invited on the question of whipping, in particular whether the punishment should not be confined to persons mentioned in section 4 of the Whipping Act and also in the way of school discipline to juvenile offenders. The minority of the Committee were in favour of the complete abolition of whipping except in the case of juvenile offenders. The majority recommended that if whipping was retained, Europeans should be equally subject to it. The suggestion was, not that whipping should be immediately abolished by the Legislature, but that inquiry should be made on these lines. Those inquiries we are, Sir, about to make . . . . .

**Dr. H. S. Gour:** About to make? In July you promised to make them. May I remind the Honourable Member that in Mr. Tonkinson's

letter of the 20th July 1922, it is said that separate references will be made to Local Governments on the following matters—section 30 and whipping. It is a matter of eight months.

**The Honourable Sir Malcolm Hailey** : That is perfectly true. These inquiries were to be made as the result of the publication of the Report of the Racial Distinctions Committee. I may remind the Honourable Member that that Report was only very recently published, and the inquiries have not yet been made. He may rest assured they will now be made as soon as the House has passed this Bill. If I am not speaking with enthusiasm on the subject, the absence of which Mr. Rangachariar deprecated in regard to the proposed abolition of the operation of section 30, it is only because I have a natural sense of caution in the matter. I do not like to engage, on the part of Government, definitely to carry out any measure of this kind until the Local Governments, who are vitally concerned, and the High Courts have been consulted on the subject; and I suggest that it is better to wait for the result of the investigations which we are about to make than to deal piecemeal with the proposition as suggested by Mr. Raju.

**Mr. Muhammad Yamin Khan:** Sir, as far as the question of whipping is concerned, I even deplore that it should be taken away in the case of European criminals. I do not want to enter into long details on this question, but I think from my experience at the Bar that the sentence of whipping is usually given only in those cases where the crime is not only a crime but it is coupled with cruelty. Most judges shirk passing sentences of whipping . . . .

**Dr. H. S. Gour:** Petty thefts are punished with whipping.

**Mr. Muhammad Yamin Khan:** But thefts of a particular nature. But in cases like those under section 376 of the Indian Penal Code where a person has committed an offence against a girl of tender years, say three, four or five years of age and the man is found guilty, would the House say that a sentence of whipping should not be passed on such a man? I think in these rare cases there should be a sentence of whipping on the man who commits a crime of this nature. I would not like this punishment to be taken away from even an European if he commits that kind of brutal crime. Here by taking away the word " European " my friend wants that where a society is protected by this law only, where only corporal punishment has got more force than imprisonment in jail, this punishment should be taken away. Take the case of a village society, where young girls work in the fields and go about unprotected. Supposing a man of this brutal kind of nature commits a crime to whom the punishment of whipping alone is deterrent. What other punishment could be awarded to a man who is a labourer, an ordinary man, a jail bird, who would much rather be in jail than outside? For him there is no other punishment than corporal punishment. Whipping is the only kind of punishment for this class of people. I do not see how this House can ignore these facts. I totally disagree with my friend, Mr. Venkatapatiraju on this point that whipping or solitary confinement should be taken away. Both these punishments should remain as a sort of deterrent punishment for this special kind of cases.

With these words, I oppose the amendment.

**Mr. President:** Amendment moved:

"In clause 6, in proposed section 34A, clause (*a*), omit the word 'European'."

The motion was negatived.

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

"Omit the words 'death, penal servitude or'."

The motion was negatived.

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

"In clause 6, in proposed section 34A, (*b*), omit the word 'European'."

The motion was negatived.

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

"Substitute the words 'one year' for the words 'two years'."

The motion was negatived.

**Mr. President:** I do not think the Honourable Member moved the rest, did he?

**Mr. B. Venkatapatiraju** : No, Sir.

**Mr. President:** Amendment No. 15 falls as the result of these decisions.

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

"That in clause 6 in the proposed section 34A (*b*) for the words 'two years or fine which may extend to one thousand rupees', substitute the words 'such period or such amount of fine as he be empowered under the said Code'."

Sir, much has already been said by Dr. Gour on this point in the previous amendment which was moved by him and it would not have been necessary for me to move this amendment but I am obliged to do so because of the observations of the Honourable Mr. Percival. Here, Sir, the Committee proposed that the provisions of law under sections 30 and 34 should be repealed and, so long as that provision had not been repealed it should extend equally to both European and Indian British subjects. Government, on the other hand, promise that they are prepared to make inquiries and that they will decide about it after they have received the opinions of the Local Governments and of the High Courts. If the Government are going to make the inquiries, and, if they are not sanguine as to how far they will succeed in repealing that provision, it will be but proper that the recommendation of the Committee and the compromise be adhered to. Sir, when in support of amendments I base my arguments on the compromise then the argument proceeds on other lines. And when I base my arguments on other points, then it is said that the Joint Committee had recommended it on the basis of the compromise, that the Committee was representative of the people, there has been no outcry from the public against that report or the compromise. Sir, we were neither a party to the compromise nor were we a party to the selecting of the representatives on the Committee. No doubt all those gentlemen who were members of that Committee were very eminent lawyers and nobody would belittle their opinion. If the right to elect had been extended to us . . .

**Mr. President:** Order, order. The Honourable Member is delivering a speech which he ought to have delivered "on consideration" and not on an amendment.

**Mr. K. B. L. Agnihotri:** No, Sir. I am speaking . . . .

**Mr. President:** I am telling the Honourable Member that he is delivering a speech which he ought to have delivered on the motion that the Bill be now considered.

**Mr. K. B. L. Agnihotri:** I shall have to bow to your ruling on the point, Sir, but I am simply saying about the compromise, that there may be some people who may not accept that compromise on certain grounds, but still, as some of us have accepted that compromise, it should be strictly adhered to. It was because my amendment was based on it that I referred to the compromise and the constitution of the Committee. But as you have been pleased, Sir, to rule me out of order, on that point, I shall not trouble the House with further arguments on it. What I beg to submit now is that when the Committee had entered into a certain compromise, and when the Committee had made certain conditions on which the compromise was entered into, there is no reason for the Government to deviate from the conditions on which that compromise was based. All these conditions formed the basis of the compromise which retained certain rights and privileges for the European British subjects in the Code. It cannot be said that the compromise was on a particular matter only, but all the sides of the question of racial inequality . . . .

**Mr. President:** I have told the Honourable Member already that he is out of order and if he repeats his arguments, I shall order him to resume his seat.

**Mr. K. B. L. Agnihotri:** In these circumstances I will now only say that the Committee has recommended that these provisions should extend equally both to Indians and Europeans and I see no reason for removing those provisions until the existing law is repealed. I therefore move this amendment and if my amendment is accepted by the House, the provision will be retained in the Bill in the form in which the Committee had recommended it. With these words, Sir, I commend my amendment for the acceptance of the House.

**Mr. President:** Amendment moved:

"In clause 6, in the proposed section 34A (*b*) for the words 'two years or fine which may extend to one thousand rupees', substitute the words 'such period or such amount of fine as he may be empowered under the said Code'."

The question is that that amendment be made.

The motion was negatived.

**Rai Bahadur Bakshi Sohan Lal:** Sir, the effect of my amendment is to add a new clause 6-A thus:

"6A. In section 188 of the said Code for the words 'Native Indian subject' substitute the words 'British Indian subject'."

Nowhere are the words "Native Indian subject" used and it is ambiguous whether "Native Indian subject" is the same thing as "British Indian subject" or an Indian subject of a Native State. We do not know what the words mean. If the word "Native" be omitted and for it the word "British" is substituted, the meaning will be quite clear. So I recommend that:

"After clause 6, the following clause be added:

'6A. In section 188 of the said Code for the words 'Native Indian subject' the words 'British Indian subject' be substituted'."

Clauses 5 and 6 were added to the Bill.

**Mr. President:** Amendment moved:

" After clause 6 add the following clause:

'6A. In section 188 of the said Code for the words 'Native Indian subject' substitute the words 'British Indian subject'."

**The Honourable Sir Malcolm Hailey:** I do not raise the point whether this amendment was out of order, but it will be sufficient to say that it is exactly one of the points that can be dealt with in consolidation. It is a matter of verbiage. The same words are used, of course, in the Government of India Act, but if necessary they can be put right when we prepare our consolidating Bill.

The amendment was negatived.

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

**Mr. President:** Clause 10. The Honourable Member (Mr. Agnihotri) proposes to raise in amendment No. 22, a question which appears to me to be outside the scope of the Bill. That question ought to be raised on some other measure dealing with general legal procedure and not in a measure of this kind where we are dealing with racial distinctions alone.

Clause 10 was added to the Bill.

Clauses 11 and 12 were added to the Bill.

**Rai Bahadur Bakshi Sohan Lal:** I move:

" For clause 13 substitute the following clause:

'13. Section 275 of the said Code shall be omitted'."

Section 275 is as follows:

" In a trial by jury before the Court of Session of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans."

What I want is that there should be no differentiation in trials as regards British Indian subjects and European British subjects. I submit that we ought to have juries chosen by lot and this section is unnecessary. Clause 13 runs as follows:

" (1) In a trial by jury before the High Court or Court of Session of a person who has been found under the provisions of this Code to be an European or Indian British subject, a majority of the jury shall, if such person before the first juror is called and accepted so requires, consist, in the case of an European British subject, of persons who are Europeans or Americans, and in the case of an Indian British subject, of Indians.

(2) In any such trial by jury of a person who has been found under the provisions of this Code to be an European (other than an European British subject) or an American, a majority of the jury shall, if practicable and if such European or American before the first juror is called and accepted so requires, consist of persons who are Europeans or Americans."

I beg to submit that no such distinction ought to be made and I do not think that mixed juries would do any good except perpetuating the racial differences between the two communities. If there is a mixed jury, the Indian jurors will return a verdict in favour of the Indian accused and the European jurors will return a verdict in favour of the European accused. So, the better thing will be to select the jurors or assessors by lot as is provided in other provisions of the Code.

**Dr. H. S. Gour:** Sir, as I have also given notice of a similar amendment, the House will indulge me for a few moments if I explain the reasons which have prompted me in giving notice of my amendment and which incidentally, though partially supports the amendment of my friend, Bakshi Sohan Lal. Honourable Members will find that the Racial Distinctions Committee limited the privileges to British subjects. It inquired whether we were under any treaty obligations with the nationals of other European and American States which compelled us to discriminate the citizens of those countries as regards the procedure for trials in criminal cases. We were then told that there were no treaty obligations governing other European and American countries, and we therefore decided that so far as the non-British Europeans and Americans were concerned they must stand on the same footing as British Indian subjects and that we could not discriminate in their favour any more than we could discriminate in favour of ourselves or in favour of any other foreigner. That was the position. Now, if Honourable Members will turn to the Statement of Objects and Reasons appended to the Bill, they will find in paragraph 4, the following statement:

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> "It has since been ascertained that by treaties with Italy, Switzerland, Argentine, Venezuela, Costa Rica and Columbia the same privileges as regards procedure in criminal trials are secured in India to nationals of those countries as are given to Indian subjects of His Majesty."

We have to be very clear as to what these sentences mean because on inquiry from the Home Department I ascertained that the treaties which we may have entered into, or for the matter of that which the British Government may have entered into with these countries are not available, and if I understand it aright they were not available or accessible to anybody in the Government of India here. This is a short statement which reproduces a report received from the India Office. We are not therefore in a position to examine the treaties for ourselves and to see what were the stipulations made by the British Government or the Government of India with the countries concerned but the only information available to us is hearsay or second-hand information contained in a short report which is condensed in this paragraph. Now, let us be very clear as to what it means. Assume for the sake of argument, and I am making an assumption entirely favourable to the countries concerned, that we have entered into an international obligation with the countries named in this clause giving to the nationals of those countries the same rights as are given to Indian subjects of His Majesty. If we have entered into those obligations, surely, Sir, those obligations could not, by any fiction of law or analogy, be extended to the whole continent of Europe and to the whole of America. Treaty obligations with those small States like Switzerland, Argentine, Venezuela, Costa Rica and Columbia, and Italy, of which the nationals in this country probably will number a few hundreds,—a few of them will perhaps be rare specimens, for I do not think that there are any nationals from Columbia or Costa Rica in this country; if there are, my friends on the other side of the House will be able to enlighten the House about them. Now the first question I wish to raise before this House is this: if we have treaty obligations with the nationals of these specified countries, we are bound to respect the treaty obligations and incorporate them in our Bill, but what justification have you for extending the same preferential privileges to people with whom you have no treaty obligations? Under the clause as it is embodied in the Government of India Bill, a Frenchman, a German, a Russian, an Hungarian, a Spaniard

[Dr. H. S. Gour.]

or a Portuguese will claim, if practicable, a jury of his own countrymen and an American . . . . (*Voices*: "No, no,—a European jury.) There is a contradistinction: you have on the one side, as my friends said, the Europeans in contradistinction and perhaps in contrast to the Europeans, you have the British Indian subjects. This distinction, an invidious distinction between an European and an American on the one hand and a British Indian on the other hand has been perpetuated and stereo-typed in this Bill, and therefore I say that we shall not allow you to advance one inch further than what your treaty obligations compel us to do. Surely, Sir, when we were not responsible for the legislation of this country, and when we were in a minority, the Government of India could place upon the Statute Books anything that they wanted; the executive were identified with the legislative machinery; but now, with the majority of the people's representatives in this House, are you prepared to perpetuate those galling and invidious distinctions between class and class, between Europeans and Indians, between Americans and Indians? Surely no high policy need interfere here with the display of your common sense and sense of fairness. My friends have been appealing to us, 'let the Colonials, either out of a spirit of magnanimity on our part or out of a feeling of helplessness, retain their rights,—nay, even enlarge their rights,' but what justification have you got for including all Europeans and all Americans in that privileged and charmed circle when we have no longer treaty obligations with any of them, excepting only a few which have been mentioned in paragraph 4? I am quite sure what will be the reply from the Government Benches: have you not heard such a word as 'comprehensive exactness,' 'compendiousness'? For the purpose of avoiding enumeration, for the purpose of not having to describe them by their names, it is much better to drive into one wide net the whole lot of Europeans and the whole lot of Americans. But are we prepared to subscribe to this doctrine that people with whom we have nothing to do, people with whom we have been waging war and for whom our country has shed blood—are we prepared to give them a place of honour and privilege which is claimed by the European British subject and which we have given to him? I say, Sir, that this House must rise against any perpetuation of privilege in favour of non-British Europeans and Americans. Why should they not take their trial as ordinary people? I have pointed out and I repeat it that on first principles, on the ground of international justice, on the ground of equity, on the ground of international law, no man has a right to come here to this country, suck nutrition therefrom and when he commits an offence against the laws of the country, to claim immunity from the ordinary procedure which is laid down by the law of this land, and to say, "I claim a special privilege. I claim a higher right. I stand for the right which I possess of a trial by a jury of European and American colorists." What right I submit has he got? Every lawyer and every school-boy knows that it is one of the elementary principles of law that any person who goes to reside in a country makes himself *primâ facie* liable to the *lex loci* or to the general laws of the land. If I or you or anybody went to Spain or to France or to Germany, he would be subject to the laws of Spain, of France and of Germany. No one will hear you there if you claim to be tried by the special procedure which is enacted in India or ask for any special privilege which does not obtain there or is not available to the citizens of those countries. But when those people come to this country should this Assembly, the representatives of the people, place them on a higher pedestal and give them

rights they are not ordinarily entitled to, which are not justified by international law, which are not justified by the comity of nations? That is the question to which you have to address yourself. I say that you should not give away a great principle while you have the chance. This is a principle which you must fight and struggle for, namely, equality of treatment as regards the people with whom you have no treaty rights, as regards the people with whom you have no treaty obligations. I am prepared to except Switzerland, the Argentine and the countries enumerated in paragraph 4. But I submit that there is no reason that I have been able to see and no reason has yet been given, why all the populations of the Continents of Europe and America should be placed on the same footing as the people enumerated in paragraph 4. I submit therefore, Sir, that this is a point upon which the House must unanimously give its opinion that it will not extend the rights and privileges, by analogy or for the sake of convenience or compendiousness of expression, to people with whom we have no treaty rights and who are ordinarily subject to the laws of the land. I entirely support my friend, Mr. Bakshi Sohan Lal's amendment to this extent that I have mentioned: and I particularise it. I hope, Sir, no hypercriticism of Mr. Bakshi Sohan Lal's amendment, no verbal criticism of the inaptitude of the words or expression on the part of he Treasury Benches will make us sacrifice this great and essential principle for which he and I are struggling here. I hope the Honourable the Home Member will assist us. My friend, Mr. Rangachariar, charged him for some lukewarmness on a matter upon which this House felt very strongly. He said the reason why he was lukewarm and did not display any degree of enthusiasm was because it is born of caution necessary in the holder of a high office in the Government of India. I quite understand it, Sir, but let the Home Member remember that he is under no obligation to the people with whom neither the British Government nor the people or the Government of this country is under any treaty obligation. He must assist us and he must, I submit, narrow and restrict the number of exemptions as far as it is possible for the purpose of meeting the national sentiment voiced by the people here. I hope, Sir, that no criticism of the language of my friend, Mr. Bakshi Sohan Lal, or of the other authors of the amendment will stand in the way of the acceptance of the principle, for which he and I and a great many of the Members of this House are contending, and I therefore support Mr. Bakshi Sohan Lal's amendment to the extent I have indicated.

**The Honourable Sir Malcolm Hailey:** I am not proposing to speak on Mr. Bakshi Sohan Lal's amendment for a simple reason, his proposal, just like his previous amendments and just like his subsequent amendments, goes entirely against the terms of the compromise. Following therefore the procedure adopted by me hitherto in regard to his amendments, when once I had ascertained the feeling of the House on the subject of the compromise, I shall therefore pass by the matter in silence and leave it to the vote of the House. I am, however, in dealing with the support which it found in Dr. Gour, in a somewhat difficult position. Dr. Gour described Mr. Bakshi Sohan Lal and himself as equally fighting for a great principle. Yet, as far as I am able to ascertain, Dr. Gour himself does not like Mr. Sohan Lal propose to do away with a mixed jury for the European British subject. That then cannot be the great principle for which they are both fighting, although that is the great principle which is embodied in Mr. Bakshi Sohan Lal's amendment. So I must look elsewhere for the reason which inspired Dr. Gour. Now, he has taken us to one item only in the clause,

[Sir Malcolm Hailey.]

namely, the position of the American and the European who is not a European British subject. He says that the Racial Distinctions Committee was told there were no treaties existing which would compel it to maintain what I may briefly describe as section 460 Rights. At the time the treaties had not been traced, but it was indicated to the Committee that there might be such treaties, and the Committee accordingly recommended as follows:

"We are of opinion that, unless any of the privileges in regard to such persons are found to be based on treaty, they should be abolished."

We have now ascertained both the number of nations to which treaties of this kind apply, namely, six, and we have just received a copy of one of these treaties. We are attempting to obtain others. It is quite clear from the treaty which I hold in my hand, namely, that with Italy, that we are obliged to maintain the existing section 460 Rights.

I take it that the House will be satisfied that in regard to those six countries at all events, the rights formerly held by Europeans and Americans under section 460 of the Criminal Procedure Code must be maintained. Dr. Gour asks us why and by what right and by what species of justification they should be extended to all Europeans and Americans? He suggests that I may defend this extension by the use of the word "compendiousness" I do not intend to do so. I put it to the House as a matter of reason that if you are to maintain these rights in regard to Italy and Switzerland among the European nations, it would be difficult to defend their withdrawal in regard, say, to France, our late Ally, or any other nation in Europe now enjoying them. There is little doubt in my mind that if other nations, shall we say the French, were to approach us with a view of making a treaty identical with Italy, we should find it very difficult to resist their request. The same with Spain or Portugal, and the like, and we should gradually come back to what we have embodied in our Bill. Perhaps for the moment you might make an exception of Germany; perhaps even we might exclude Russia. That might be the case; I will not prejudge it, but the reason why we have applied to all Europeans the rights which are enjoyed by the Swiss and Italians among the European nations is I think perfectly obvious.

**Mr. B. Venkatapatiraju:** Does it include Turks?

**The Honourable Sir Malcolm Hailey:** My Honourable friend will not ask me at the moment to discriminate accurately between European or Asiatic Turks, but as far as Turks are a European nation, they will obviously be included. Obviously other nations have not felt it necessary to apply for a treaty similar to that of Italy.

**Dr. H. S. Gour:** Germany too?

**The Honourable Sir Malcolm Hailey:** The Honourable Member need be under no apprehensions in regard to Germany as there are no Germans in India, and they are restricted from entering.

**Dr. H. S. Gour:** Russians?

**The Honourable Sir Malcolm Hailey:** Russians would have the rights. I would go so far as to say it is difficult to withdraw from any of the big European nations rights which you give to Italians or to Swiss. That is the sole argument and I give it to the House for exactly what it is

worth. I think it is worth a good deal. You might pick out your undesirable nations, but it would be difficult to withdraw from the European nations as a whole rights which the Swiss and Italians already possess under section 460. If we withdraw those rights, we should obviously have immediate applications for special treaties and it would be difficult to resist those applications. However, those are the grounds.

But, Sir, we have also to consider the case of Americans. Now, with some of the less known States in America, namely, Venezuela, Costa Rica, Columbia, and so forth, we have these treaties. Now, here again, you must therefore maintain section 460 Rights in their favour; and is it at all reasonable that we should exclude the citizens of the United States from a similar privilege? It is not, therefore, merely for the sake of easy drafting as Dr. Gour suggests, but on sound grounds of reason that we have made those rights applicable to Europeans and Americans. (*Dr. H. S. Gour*: "Why don't you extend them to China by a parity of reasoning?") (*Mr. N. M. Samarth*: "They are not Europeans.") If the House wishes to give those rights to the Chinese, I should have no particular objection, but I do not see that the parity of reasoning applies in this case in any way. Dr. Gour accused us of a great and unnecessary extension of the rights secure to some countries by treaty. He refuses to believe that it is reasonable on our part to give 460 Rights, if I may so describe them, to all European nations and to Americans merely because we have given them to the Swiss or the Italians. I have attempted to justify this—whether I have done so or not, I leave it to the House to judge. What Dr. Gour has not justified, I think, is the definite proposal, contained in his amendment, namely, that, while admitting all Europeans without distinction to these rights, for that is the effect of his amendment, we should withdraw them from the citizens of the United States of America. Incidentally his amendment, I may add, would withdraw them also from the treaty countries in America, though perhaps he does not intend to do so. He cannot guide himself on his consistency for he has all along said specifically that he wishes to maintain treaty rights, but the effect of his amendment, which he supported with such fervour and force, is actually to admit to these 460 Rights all the countries of Europe and to withdraw them from the treaty states of America. And now finally, what are these extension rights, for the abolition of which Dr. Gour has invoked the assistance of the House? What are these very exceptional privileges? Let me take Dr. Gour's own amendment. In the first place, he would withdraw the word "American" from sub-clause (1) of section 275. The effect of this clause is that, if a European British subject is being tried, the jury must consist of Europeans or Americans, and, therefore, so strong are his feelings on the subject, that he would not allow even an American to sit as a juryman to try a European British subject. Secondly, he would withdraw the rights given to Americans by sub-clause (2). But the single right that they have is this, that, if they do happen to be tried by jury—and, of course they can claim no special jury trial—then, that jury shall consist of Europeans and Americans. That, Sir, is the sole right; that is the right which you wish to take away from them on the ground that we have given an unreasonable extension of treaty rights. It is not, I think, worth while, all the trouble that Dr. Gour has taken in putting his case to the Assembly, and I regret I myself have equally had to take up the time of the Assembly, on so comparatively trivial a matter.

(*Some Honourable Members*: "Let the question be now put.")

The motion was adopted.

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

"That for clause 13 substitute the following clause:

'13. Section 275 of the said Code shall be omitted'."

The motion was negatived.

**Bhai Man Singh:** I move, Sir:

"That in the proposed new section 275 for the words 'a majority' wherever they occur substitute the words 'In the case of a trial before a Court of Session at least one, and in the case of a trial before a High Court at least three persons."

The effect of my amendment, Sir, is instead of a mixed jury wherein the majority of the jurors are of the same nationality as that of the accused, I only substitute that in cases where there appears a lesser number of men of his nationality, he should make it up in the case of a Sessions trial by one and in the case of the High Court by three persons. The only objection that can be raised against the ordinary jury will be that the jurymen in certain cases may not be able to understand the ways and customs of the accused, and may not be able to know the temperament of the accused. Therefore it is necessary that he should have men of his own nationality on the jury. That is one reason why men of the same nationality as the accused should be retained on the jury. Keeping this point in view, I am suggesting this milder amendment to the so-called compromise. Of course it is rather an unpleasant task for me to voice a note of discord on this "all-thanks-giving day" on the compromise, of which we have been talking so much. But, Sir, it is more of a compromise than we had this morning. I compromise in the real sense of the word. A compromise, really speaking, is no compromise if it does not remove the real cause of grievance and perpetuates the very evil against which the public has been agitating. I hope to be excused, Sir, at this stage, if I point out that really speaking, the greatest cause of complaint against the present procedure has been the mixed jury system. I cannot describe its evil in a better way than has been done by my learned and Honourable friend Mr. Rangachariar who of course, I am really sorry to say, has not yet agreed to it. My friend says: "It is perpetuating the racial distinction whether it be for the Indian or for the European. The juryman would go into the witness box as if he was representing a particular community. The chances of securing even limited justice will be greatly diminished." Further on, on the same page, 18, in the next column he goes on to say: "I doubt if it will afford any satisfaction to responsible public opinion in the country if the privilege of a mixed jury were to be acceded to Indians charged with crime."—I am really sorry to say that after all, he himself being one of the most responsible men has agreed to that,—"for it is difficult to conceive how failure of justice in the case of European accused would be compensated for by an enactment which is not calculated to advance further the ends of justice." I would request Honourable Members just to mark those words very carefully. I will request Honourable Members of this House to mark these words carefully:

"It is not calculated to advance the further ends of justice, but might possibly lead to a miscarriage of it in the case of Indian accused persons. Indians do not want equality in injustice and any attempt or compromise of that sort is likely to undermine all respect for the administration of criminal justice and for criminal courts in this country."

This, really speaking, gives in an epitome the very strong argument against the present proposals of the Bill. If we want equality with the British

European subject, this should be done away with. You say you do away with the discrimination. We said that mixed juries have not been doing justice to the accused. You say, " All right. If you want to do away with discrimination, you also have mixed juries " so that the accused person may also be let off by a majority of the jurymen who are of his own nationality and who go there as men of his own nationality. It is one thing if a juryman is selected as an ordinary functionary, but when I am selected as an Indian as against an European the position becomes different. I may draw the attention of the House not only to what my Honourable friend, Mr. Rangachariar has said, but to a good many other opinions expressed by very responsible authorities in India. First of all, I would draw the attention of the House to page 43 of this correspondence. This is the opinion of the Judges of the Lower Burma Court:

" The Honourable Judges are strongly of opinion that a provision whereby an accused, whether Indian or European, shall be entitled to claim a mixed jury, will inevitably increase the antagonism between the races. They can see no advantage whatever in the provision and consider that it will tend to create and perpetuate racial feeling. Jurymen, both European and Indian, in the circumstances will come to regard themselves merely as champions of their own race."

Not only that, Sir, but I may draw your attention to page 9 where you find the opinion of Mr. Justice Kumaraswamy:

" My view has always been that racial discrimination as regards criminal trials not only has no justification but has been the cause of a great deal of miscarriage of justice."

If men of eminence, if men of experience, men of light and learning like the Judges of the High Courts definitely hold the opinion that this sort of jury system has been the cause of a great deal of miscarriage of justice, I would ask the Honourable House to see how far they are prepared to stick to the so-called compromise or how far they have or have not a right to accept or refuse to ratify it. In this particular case I would request my Honourable friends not to ratify the compromise *in toto*, but to accept it only partially as I have submitted to the House. There has been a miscarriage of justice by this system up till now. Not only now, but for a long time the whole of the Indian population has been crying with one voice against this evil, and there is absolutely no reason why, when we want to do away with one evil, we should want to extend that evil to the Indians also. Personally, if my opinion were to be asked, I would say, " If you want to keep up the system of a mixed jury for the Europeans, if you say that the agitation would be so strong that Government, would be incapable of handling the situation, give it to them, but for God's sake, do not extend the evil to the case of the Indian accused." (*A Voice*: " They have got it now.") In certain cases we have not got it. We have got it only in the case of trial in Session Courts when the trial is by jury. I think at present a mixed jury in the case of Indians is practically negligible. Then again, Sir, if I were allowed to read other quotations given in this book, Honourable Members would see that times without number Judges of the High Courts, Judicial Commissioners, especially the Judicial Commissioner of Oudh and a good many other responsible persons have declared that the mixed system of juries has caused a good deal of miscarriage of justice and I see no justification absolutely why we should keep up the same evil which has given us so much trouble for such a long time. If a compromise is to be arrived at, it should be a fair compromise to remove the evil. I say if a European gentleman finds that the jury consists of all Indians, he can claim to have one or two Europeans in the jury

[Bhai Man Singh.]

in the Sessions Court, so that he may be able to give proper directions to other colleagues in the jury. The other point about this is that the terms of the Bill are not in accordance with the Committee's report. I do not know if I am right or wrong. My friend, Mr. Chaudhuri, says I am wrong. He says that in the Statement of Objects and Reasons . . . .

**Mr. President:** The Honourable Member had better leave the Statement of Objects and Reasons alone. He must confine his remarks to the substitution for the words " a majority ' the words " In the case of a trial before a Court of Session at least one and in the case of a trial before a High Court at least three persons ".

**Bhai Man Singh:** I am pointing out that the Bill as drafted is not on the lines of the report with proper safeguards. The report of the committee was:

" We recommend that in all jury trials in which the jury are not unanimous or in which the jury are unanimous but the Judge does not agree with the verdict of the jury both in the High Court and the Sessions Court an appeal should lie on facts as well as on law."

Further on they wanted a change in sections 418 and 423 but I find that in the Bill no change has been effected.

**Mr. President:** The Honourable Member is going now much wider than he did before. He is discussing the question of appeals. I asked him to confine his remarks to the terms of his amendment.

**Bhai Man Singh:** I want to show that the principle of a mixed jury should not be adopted by this House. Therefore the House should adopt the amendment as it stands. I would request Honourable Members to see whether they are going to leave the law of a mixed jury as it stood before and be simply satisfied with the extension of the principle to the Indians as well, or whether, seeing the evil which has resulted from these mixed juries, they are going to adopt my amendment. With these remarks, I commend my amendment.

**Mr. President:** Amendment moved:

" That in the proposed new section 275, for the words ' a majority ' wherever they occur substitute the words ' In the case of a trial before a Court of Session at least one, and in the case of a trial before a High Court at least three persons ".

The motion was negatived.

**Mr. President:** The question is that clause 13 stand part of the Bill.

**Dr. H. S. Gour:** Sir, I have to speak on clause 13.

**Mr. R. A. Spence** (Bombay: European): It has already been talked about.

**Dr. H. S. Gour:** I am rather surprised that my friend, Mr. Spence, who has been vouchsafed all the privileges which he asked for, should now try to muzzle me and to extend to the non-British Americans the privileges for which I at any rate hope . . . .

**Mr. R. A. Spence:** I ask the House if I tried to muzzle Dr. Gour to-day.

**Dr. H. S. Gour:** I think my friend does not know the meaning of words. When I gave notice of my amendment, Sir, I immediately asked the Home Department to let me see the treaties or copies thereof, so that I might see as to what were the treaty obligations which were entered into with America and the other European States.

**Mr. N. M. Samarth:** On a point of order, Sir. No. 26 is the amendment on which he is speaking, and in that he only asked for the omission of the words ' or Americans ' and 'or an American ' wherever they occur, so that he retains Europeans who are not British subjects in the section.

**Dr. H. S. Gour:** I do not think my friend is the best judge of my intentions; he had better let me speak as to what I intended and then interrupt me if I am out of order. As I have pointed out, I wanted to examine all the treaties for myself and to see how far those treaties justified the preferential treatment accorded to the nationals of those nations mentioned in the Bill. I was equally clear that apart from the treaties entered into with these States, all Europeans and Americans outside the British Islands could not claim preferential treatment which has been given to them in the Bill. I say . . . .

**Mr. President:** I consider that that subject had been exhausted in the Honourable Member's previous speech. I do not quite see how he can bring forward a new argument relating to this subject which he has not already used, but perhaps he is ingenious enough to be able to do so.

**Dr. H. S. Gour:** I will do so, Sir, if you will give me the indulgence. I was told that these treaties were not available in India and that nobody in India had seen them. Fortunately, one such treaty has been unearthed, and the Honourable Home Member has read portions of it, and, you will remember, Sir, he said that other treaties might also be found. Now in view of the fact that these treaties are still being hunted for and are not available, I move, Sir, that you will allow me to move this motion which stands against my name to-morrow instead of to-day. It is 6 o'clock, and it will give me the time to read the Italian Treaty and the other Treaties which may be available to me. And I also beg to give notice to the Honourable the Home Member that I shall be at liberty to move for the deletion of the whole of clause 2 of the proposed section 275. That will be in consonance with my speech which I have already delivered and with the arguments I then advanced. I do not see why any European not being a European British subject or American with whom we are not under any treaty obligation should have preferential treatment accorded to him.

**Mr. President:** The Honourable Member is taking a line of argument which I told him he is not entitled to do. The Honourable Member knows that repetition comes under the Standing Order and this case seems to me to be a peculiarly flagrant one.

**Dr. H. S. Gour:** My object, Sir, is to ask for the adjournment of the House in order to enable me to read the treaties which might be made available to the Members. Not only have I the right to look at the treaties, but I expect there are other Members who would like to see the treaties. I therefore suggest that in view of the lateness of the hour you may be pleased to adjourn the debate till to-morrow. That is my motion. All that I have said was in support of the motion for the adjournment of the House.

**Mr. J. Chaudhuri** (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): I rise to a point of order, Sir. Dr. Gour refers to the Americans only and we understood that when he was speaking on Bakshi Sohan Lal's amendment he spoke on his own amendment and his amendment was practically exhausted . . . .

**Mr. President:** I do not need the Honourable Member's assistance to explain that to the House. The House is well aware of it already. There is no question before the House except that clause 13 stand part of the Bill.

Clause 13 was added to the Bill.

**Mr. B. Venkatapatiraju:** I suggest, Sir, that it would be better if we adjourned now, because it is very late.

**Mr. President:** Is the Honourable Member feeling tired?

**Mr. B. Venkatapatiraju:** Yes, Sir.

**Mr. President:** If I do adjourn the House, and I have not yet said that I propose to do so, I must draw the attention of the House to the fact that in the last two hours a great deal of time has been wasted on amendments on which no other speeches were made except those by the Movers of the amendments, and on which none of the Movers of the amendments asked that the vote of the House should be taken. I warn Members that if they continue that I shall have to treat that proceeding as obstructive.

**Mr. K. B. L. Agnihotri:** On the point, Sir, which you have just been pleased to warn us, that is about the amendments which take up much of the time of the House, may I know, Sir, how it is possible for a Member —like myself for instance—who has certain amendments standing in his name, to know before he moves his amendment how the House will treat it.

**Mr. President:** Unless the Honourable Member is very hard of hearing he will easily learn the sense of the House. As far as the moving of his amendment is concerned I am not going to prevent it, and I shall give even a minority of one its full rights; but I must warn the House that I cannot allow individual Members to continue for long to take up the time of the House on matters in which apparently the House takes no interest.

**Mr. B. Venkatapatiraju:** Sir, the amendment which I propose to place for your consideration is ' to omit clause 14.'

The original section 284 in the Criminal Procedure Code says:

" When the trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such."

What the present Bill proposes is to make it compulsory that there should be not less than three assessors and if practicable there should be more. Now, it is not quite easy, Sir, in the mofussal to secure three assessors in every case. That difficulty was pointed out by two European civilians who are Commissioners. Now, you have got 2 assessors or more and this is elastic enough to secure more, when necessary, but to compel in every case that there should be three is unnecessary and undesirable. Perhaps, Sir, if the House thinks otherwise, I am not at fault, because I feel that it is undesirable.

**Mr. President:** Clause 14. Amendment moved:

"Omit clause 14."

The question is that that amendment be made.

The motion was negatived.

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

"In clause 14 omit the words 'not less than three and if practicable."

In clause 14, Sir, we provide the number of assessors to be fixed and we provide that they shall not be less than three, and if practicable four. I do not understand, why these two numbers have been given there. Why should it not be that 4 assessors be selected? There is not much difference between 3 and 4. I therefore propose that it is better to drop the clause "not less than three and if practicable" and propose that in all the cases that are to be tried before the Sessions Judges with the aid of assessors, the number should be fixed at 4 definitely.

The amendment was negatived.

Clause 14 was added to the Bill.

**Rai Bahadur Bakshi Sohan Lal:** Sir, I move the following amendment which stands in my name:

"Omit clause 15."

Clause 15 adds another section after section 284 and the added section is proposed to be numbered as section 284-A. It is as follows:

"(1) In a trial with the aid of assessors of a person who has been found under the provisions of this Code to be an European or Indian British subject, if the European or Indian British subject accused, or, where there are several European British subjects accused or several Indian British subjects accused, all of them jointly, before the first assessor is chosen so require, all the assessors shall, in the case of European British subjects be persons who are Europeans, or Americans or, in the case of Indian British subjects, be Indians.

'(2) In a trial with the aid of assessors of a person who has been found . . . ."

**Mr. President:** I think the Honourable Member may assume that we know the clause.

**Rai Bahadur Bakshi Sohan Lal:** The object of the amendment is to omit this provision altogether. I have been met in almost all the amendments by a statement on behalf of the Government that all these provisions have been framed in pursuance of the compromise effected, but I want to know who the persons effecting the compromise were. Were this Assembly as a body or persons specially selected by the general public of British India or were persons nominated by Government?

**Mr. President:** I have already told Members previously that matters of that kind are legitimate on the motion that the Bill be taken into consideration. They are not legitimate matters, excepting incidentally, on amendments of the detail.

**Rai Bahadur Bakshi Sohan Lal:** My objection is that if this be made the procedure in the administration of criminal justice, justice will be defeated in almost all the cases; possibly in exceptional cases justice may be done. In almost all the cases injustice will be done, and I respectfully submit that these provisions should be omitted and I do not consider myself bound by any compromise arrived at.

**Mr. President:** Amendment moved:

"Omit clause 15."

The question is that that amendment be made.

The motion was negatived.

**Mr. B. Venkatapatiraju:** Sir, I move:

"In clause 15 in sub-section (1) of proposed section 284A, for the words 'all the assessors' substitute the words 'one of the assessors' and make the necessary consequential changes."

The object of my amendment is this. It is true that European Members have agreed that the Sessions Court can try with reference to certain offences with the aid of assessors even Europeans who are charged before them. But what they want is that they should have a large number of assessors than usual and all of them shall be of the same persuasion. If our friends want miscarriage of justice, that is the surest way of getting it. But if they want justice, Sir, it will not do. I only appeal to them to refer to the opinions furnished, at pages 19, 22, and 29 of the opinions furnished to us. I may mention, Sir, that the Chief Justice of Allahabad remarked:

"In a very small European community this (that is the number of assessors) will not be obtainable and there will always be a danger of their unintentionally misleading the judge or worse still coming in Court full of local gossip and with unjudicial minds already more or less made up."

The opinion of a European is as follows:

"The opinion of assessors, and that is also very pertinent, except in very rare cases is negligible, and I do not think any advantage is to be obtained by increasing their number. It is enough if the accused is given the right of having one assessor of his nationality."

Now, if you want fair dealing, it means very little whether the accused is an European or an Indian. You must get a good idea of the circumstances of the case. Before this, even with reference to Europeans and Americans, whenever they are tried with the aid of the jury, or of assessors, it is enough if half of them are Americans or Europeans. They never said all of them should be of the same persuasion. Why should they in this case say that all of them should be of the same persuasion? It is said "Oh, have you not given the same thing to Indians?" That is no case at all because in India it is impossible in particular cases where accused are tried, to secure Europeans. Almost all of them will be Indians. In the country you will find only Indians who are able to sit in almost all cases as assessors. But if you want to have four, as is suggested by the European gentleman in order to give their opinion, it does not carry any additional weight with the Judge. Therefore I would still recommend that it is enough for a European or an Indian to have one of his persuasion to be on the list of assessors, or as an alternative at least half the number. Therefore I move my amendment, Sir.

6 P.M.

The motion was negatived.

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

"That in clause 15, in the proposed section 284A, for the words 'all the assessors' wherever they occur substitute the words 'two of the assessors.'"

In clause 14 we have already provided the number of assessors to be 3 or 4. In this clause we provide that the accused may ask for all the assessors to be of the same nationality or race to which he belongs. I beg

to propose by my amendment that he may have the right to ask for only half of the number of such assessors to be of the same nationality. The House, by rejecting the amendment of the Honourable Bhai Man Singh, has testified that the mixed trial is not undesirable. It is often necessary that there should be trials by mixed jury or mixed assessors and I therefore propose that only half the number of the assessors should be of the same nationality as the accused. With this object I move that the words " two of the assessors " should be substituted for the words " all the assessors."

The motion was negatived.

Clause 15 was added to the Bill.

**Rao Bahadur T. Rangachariar:** Having regard to the importance of the Bill and the late hour, I appeal to you, Sir, and I hope the Honourable the Leader of the House will join me in my application, to adjourn the House. Speaking for myself, however anxious I may be to stay here, I feel tired and I cannot bestow sufficient thought to the subject before us.

**Mr. President:** The adjournment of the House is, as the Honourable Member knows, in the hands of the Chair, but I must necessarily, in the first place, consult Government as to the amount of business still to be considered, and, in the second place, the general convenience of Members. I must keep in view as the first consideration the state of the programme of public business which, I understand, the House desires to despatch. There is a very small margin of time left between now and the end of March, and, unless Honourable Members wish to sit well into April, they will have to pay some attention to the remarks which I made a little while ago about the time that is wasted in the moving of amendments which fail to receive any support. The Honourable Member (Mr. Rangachariar) has much influence in the ranks of his party, though he may not be its titular and official leader. Perhaps he may be able to use it to good effect in this matter.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 20th February, 1923.