

3rd July, 1923

THE
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PART VI

(2nd to 12th July, 1923.)

THIRD SESSION
OF THE
LEGISLATIVE ASSEMBLY, 1923

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LEGISLATIVE ASSEMBLY.

The President.

The Honourable Sir FREDERICK WHYTE, KT.

Deputy President.

“ Sir JAMSETJEE JEEJEEBHOY, BART., K.C.S.I., M.L.A.

Panel of Chairmen.

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° Sardar Bahadur GAJJAN SINGH, M.L.A.

Mr. N. M. SAMARTH, M.L.A.

° Colonel Sir HENRY STANYON, KT., C.I.E., V.D., M.L.A.

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

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

Marshal.

Captain SURAJ SINGH, Bahadur, I.O.M.

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LEGISLATIVE ASSEMBLY.

Tuesday, 3rd July, 1923.

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

QUESTIONS AND ANSWERS.

CHATTER MANZIL PALACE, LUCKNOW.

63. ***Lala Girdharilal Agarwala** : 1. Does the Chatter Manzil Palace in Lucknow belong to the Government of India or the Government of the United Provinces for purposes of maintenance and repairs and receipt of rents and profits ?

2. Is it a fact that the said Palace has been rented to the United Service Club, if so, when does the lease expire ?

3. Will the Government be pleased to state the expenses connected with and income from the Palace during the last 5 years and the profit or loss during that period, also stating to whose account the income was credited and the expenditure debited ?

4. Has it been considered whether that Palace after some alterations can accommodate the United Provinces Legislative Council ?

The Honourable Sir Basil Blackett : (1) The Chatter Manzil Palace in Lucknow is under the control of the Government of the United Provinces for purposes of maintenance and repairs and receipt of rents and profits.

The Government of India are not concerned with parts (2) to (4) of the question, and have no information.

CONCESSIONS TO CIVIL SUB-ASSISTANT SURGEONS.

64. ***Dr. H. S. Gour** : (1) Will the Government be pleased to state whether it is a fact :

(a) That the Government invited the Civil Sub-Assistant Surgeons to volunteer their services for general military service as per letter No. II-4509, dated 29th May 1916 ?

(b) That in that letter it was distinctly stated that such volunteers shall get the same field concessions as were granted to military Sub-Assistant Surgeons ?

(c) That a number of Civil Sub-Assistant Surgeons volunteered their services and were employed on military duty for different purposes and on different fields ?

(d) That on the close of the War the Civil Sub-Assistant Surgeons applied for War gratuity, but it was refused on the ground that they had received additional privileges and concessions whilst employed on military duty, and were not therefore eligible for the gratuity ?

(2) Will the Government be pleased to state whether this condition was ever disclosed to them before or during the continuance of their employment ?

(3) Will the Government be pleased to state as to when was this condition laid down and when it was communicated to the Sub-Assistant Surgeons already employed on military duty in accordance with the terms of letter No. H.-4509, above referred to ?

Mr. E. Burdon : (1) (a) and (b). In the Army Department letter quoted, civil sub-assistant surgeons on military duty who were willing to undertake liability for field service out of India and on expeditions on the frontier, were offered certain special terms, which included the grant of field service concessions, "as applicable to military sub-assistant surgeons of corresponding standing."

(c) Yes.

(d) In April 1920, claims to war gratuity were preferred by two civil sub-assistant surgeons on military duty. The matter was then taken up generally and it was decided that the gratuity should not be granted to this class of sub-assistant surgeons on the grounds stated in this part of the Honourable Member's question, and on the further ground that a war gratuity is not a field service concession.

(2) and (3). The grant of a war gratuity was not one of the conditions of service on which civil sub-assistant surgeons volunteered for and were employed by Government on military duty during the Great War. In fact, the grant of such a gratuity was not contemplated until after the armistice, and then only when a gratuity had been granted by His Majesty's Government to British troops.

WAR GRATUITY FOR CIVIL SUB-ASSISTANT SURGEONS.

65. ***Dr. H. S. Gour :** Is it a fact that the Government of India have granted War gratuity in the case of some Civil Sub-Assistant Surgeons employed on military duty, as for instance, in the case of one Mr. V. G. Kamat, while it was refused in the case of other Civil Sub-Assistant Surgeons though both had volunteered under exactly identical conditions embodied in letter No. H.-4509 ?

Mr. E. Burdon : The Government of India have no information of the cases to which the Honourable Member refers.

REFUSAL OF WAR GRATUITY TO CIVIL SUB-ASSISTANT SURGEONS.

66. ***Dr. H. S. Gour :** Is it a fact that some of the Civil Sub-Assistant Surgeons applied for War gratuity and that the Government of India declined to grant it on the general ground that it was not admissible in the case of Civil Sub-Assistant Surgeons because they had received additional privileges and concessions, but that when the attention of the Government of India was drawn to the fact that they had themselves granted War gratuity to some Civil Sub-Assistant Surgeons whose case was in no way distinguishable from those of the applicants, the Government of India merely said that they did not wish to reconsider their previous order ?

Mr. E. Burdon : The answer to the first part of the question is in the affirmative. The Government of India have no information of the

cases referred to in the second part of the Honourable Member's question. There was however only one general decision of the Government of India, namely, that war gratuity should not be granted to Civil Sub-Assistant Surgeons and if the gratuity was paid in any individual instance, it must have been in error.

Mr. K. Ahmed : Do Government propose to revise their orders if they were illiberal, irregular and wrong on principle ?

Mr. E. Burdon : The orders of the Government of India were not irregular and it is not proposed to revise them.

Mr. K. Ahmed : In view of the question put with regard to one Mr. V. G. Kamat—Question No. 65, I think—and the answer already given

Mr. President : We have passed No. 65.

Mr. K. Ahmed : We have passed that question, Sir, but the reference is there. If it is obvious that the Government have committed wrong, do they propose to revise their order ?

CLASSIFICATION OF SUB-ASSISTANT SURGEONS FOR WAR GRATUITY.

67. ***Dr. H. S. Gour :** (a) Is it a fact that all Sub-Assistant Surgeons whether Civil or Military were for the purpose of War gratuity to be treated as Subedar, Jamadar and Warrant Officers according to the length of their service and that in India Army Instruction No. 689 of 1919, dated 12th August 1919, it was distinctly stated that Sub-Assistant Surgeons will rank as Subedars, Jamadars and Warrant Officers according to the length of their service in accordance with the terms of that Gratuity Order ?

(b) If so, on what ground do the Government now refuse to pay gratuity to the Civil Sub-Assistant Surgeons, who come within the terms of the Army Instruction No. 689, above referred to, and who have complied with all its terms and of the terms of their bond in which the Government had agreed to give them the same field concessions as were granted to Military Sub-Assistant Surgeons ?

Mr. E. Burdon : (a) The answer is in the negative.

The decision to grade sub-assistant surgeons in military employ as Jamadars, Subedars, etc., had no connexion with the decision to grant a war gratuity.

(b) The war gratuity was authorised primarily for certain classes of individuals in permanent military employment : it was not a field service concession : Sub-assistant surgeons temporarily drafted from civil to military employ had no claim as of right to it : and Government, in the exercise of their discretion, decided that the gratuity should not be extended to this class.

DISABILITIES OF INDIANS IN NATAL.

68. ***Dr. H. S. Gour :** (1) Will the Government be pleased to state whether it has received any cablegrams from the Natal Indian Congress on the subject of new disabilities imposed upon the Indians there ? If so, what action did the Government take ?

(2) Will the Government be pleased to lay on the table a copy of the four Natal Ordinances affecting Indians ?

(3) Did the Government make any representation in the interest of Indians ? If so, will the Government be pleased to lay on the table a copy of its representation made to the Union Government and of the replies, if any, received therefrom ?

Mr. M. S. D. Butler : (1) The Government of India received both letters and cablegrams from the Natal Indian Congress in regard to the four ordinances recently introduced in the Natal Provincial Council. They at once made telegraphic representations to the Government of the Union of South Africa regarding all provisions which appeared likely to affect Indian interests adversely.

(2) Copies of the four Natal ordinances in the form in which they were published in the Natal Official Gazette, dated the 15th March 1923, will be supplied to the Honourable Member. The final text of the three ordinances that have been passed and have received the assent of the Governor General is not yet available.

(3) The Government of India do not consider that it would be in the public interest to lay either their representations or the replies of the Union Government on the table. The Honourable Member may, however, rest assured that the Government of India are and have been fully alive to the importance of the interests at stake.

Mr. T. V. Seshagiri Ayyar : May I ask a supplementary question, Sir ? Is there any objection to the representation made by the Government of India to the Natal Government being circulated among the Members of this House ?

The Honourable Sir Narasimha Sarma : The matter will be considered.

Dr. H. S. Gour : This is a question on which the public in this country feel strongly, and in view of the strength of public feeling, will the Government be pleased to state to the Members of this House, either individually or collectively, the course of negotiations that are proceeding in the direction of combating the Ordinances which have been passed and have received the assent of the Governor General.

The Honourable Sir Narasimha Sarma : Government will be able to make as full a statement as possible when some of the Resolutions on this subject come up on the 10th.

Dr. H. S. Gour : Will the Government in the meantime take measures that the South African Government does not hurriedly legislate so as to cause disabilities to Indians in South Africa and further that action under the Ordinances is suspended in the interval ?

The Honourable Sir Narasimha Sarma : There is no likelihood of any action under the Ordinances being suspended but with regard to future legislation contemplated, there is no likelihood of its being proceeded with in the immediate future.

Sir Deva Prasad Sarvadhikary : In view of what the Honourable Sir B. N. Sarma has just been good enough to tell us, does he not consider that it would be useful for the purpose of the debate on the 10th July and for economising time in that connection that the announcement that he proposes to make then should be made earlier. The ground may be thus

cleared and the House may be in a position to come to a decision on considered materials. If the announcement is delayed, it would be rather difficult for the House to come to any conclusion with regard to the points that are likely to be raised in the debate.

Mr. K. Ahmed : Is that not a matter of opinion, Sir ?

The Honourable Sir Narasimha Sarma : I do not think that any disclosure with regard to the nature of the negotiations between the South African Government and the Government of India would very materially affect the course of the discussion on the 10th. The Ordinances have been passed and have received the assent of the Governor General and are actually law of the land. With regard to the question of segregation, it is engaging the attention of the South African Government. We have made representations and we propose to make representations and we shall try our level best to see that the Ordinance is not passed in a way detrimental to the interests of the community.

Dr. H. S. Gour : May I inquire of the Government, Sir, if they have received a cablegram yesterday, as I did, from the South African Indians stating that the Ordinances have been put into operation with all their vigour in the case of Indians and that they are suffering from disabilities which are intolerable in the present circumstances ?

Mr. President : In a matter of that kind, the Honourable Member had better give notice.

RESULTS OF O'DONNELL CIRCULAR.

69. ***Mr. B. Venkatapatiraju :** 1. Will the Government be pleased to state the result of the O'Donnell circular about the Indianization of services and the recruitment of I. C. S. Officers ?

2. Whether the Government of India received any replies from the Provincial Governments and to what effect ?

3. Whether the Government of India changed its policy since the issue of that circular ?

4. Whether the Secretary of State expressed any opinion regarding the circular and whether it would be published ?

5. Will the Government be pleased to place on the Editor's table the circular and the replies of the Provincial Governments thereto ?

The Honourable Sir Malcolm Hailey : The correspondence will be considered by the Royal Commission, and the Government of India do not propose to make public the opinions of any of the authorities mentioned or to lay the papers on the table.

REDUCTION OF IMPERIAL SERVICE CADRE.

70. ***Mr. B. Venkatapatiraju :** Will the Government be pleased to state whether any Provincial Government recommended the reduction of the number of Imperial Service cadre serving in the Provinces and, if so, the result thereof ?

The Honourable Sir Malcolm Hailey : I feel some difficulty in answering this question as it is rather vague. If the Honourable Member will kindly state more definitely what information he requires, I shall endeavour to obtain it for him ; but if his enquiry refers to the replies to

what is known as the O'Donnell circular, I would invite his attention to the answer I have just given to his Question No. 69.

STRENGTH OF IMPERIAL SERVICE CADRE.

71. ***Mr. B. Venkatapatiraju** : Will the Government be pleased to state the number of persons serving in India of the Imperial service cadre in 1916 and in 1923 and of whom how many are Europeans and Indians respectively ?

The Honourable Sir Malcolm Hailey : In view of the labour and expense involved Government regret that they are not prepared to supply these statistics, but the Honourable Member will obtain some information from the answer to Mr. N. M. Joshi's unstarred Question No. 44.

INCREASE IN PAY, ETC., SINCE REFORMS.

72. ***Mr. B. Venkatapatiraju** : Since the date of Reforms what increases have been made in pay, allowances and pensions and on what date or dates ? Whether it is correct to state that the emoluments are increased by 50 per cent. in the civil and 100 per cent. in the military ?

The Honourable Sir Basil Blackett : I regret that I cannot undertake to give a reply to a question so vague and general in its terms. There has been no general revision of pay, allowances, and pensions since the date of the Reforms in the case of Government servants paid from Central Revenues. The statement in the last part of the question is certainly not correct in the form in which it is made.

Mr. B. Venkatapatiraju : Is the Honourable Member aware that in the Incheape Committee Report they have stated that there is an increase in civil expenditure of about 50 per cent. and in the military of about 100 and odd per cent. since 1913-14 ?

The Honourable Sir Basil Blackett : The answer is in the affirmative.

INDIANIZATION OF THE ARMY.

73. ***Mr. B. Venkatapatiraju** : 1. Will the Government be pleased to state whether the Government of India sent any despatch on the Indianization of the army in India to England and if so, to what effect and whether it would be published ?

2. Whether the present proposal to Indianize 8 units is in conformity with the views expressed in the above despatch ?

3. Whether there was any difficulty in securing Indian Officers to the aforesaid 8 units and if so, the reasons therefor ?

4. How long would it take to Indianize the whole army in India at this rate ?

5. Is the Government taking any steps to make India self-reliant and self-dependant in the military defence of the country and if so, whether it would be published ?

Mr. E. Burdon : 1 and 2. The Government of India corresponded with the Secretary of State by despatch on the subject of the Indianisation of the Indian Army but they do not propose to publish the correspondence or to disclose details of its contents.

3. The attention of the Honourable Member is invited to the reply which I gave yesterday to the question asked by Sir D. P. Sarvadhikary. No other difficulty has, so far, been experienced.

4. In the statement which I laid on the table of this Assembly on the 14th March last, it was explained that the earliest date by which the 8 units could be completely officered by Indian officers who had the same career and promotion as British officers would be approximately 22 or 23 years, this being roughly the time which it takes for a subaltern with a few years' service to become a Lieutenant-Colonel and qualify for command. It will be obvious that it would take approximately the same time to Indianise every other unit, once Indianisation had been decided upon and suitable officers were forthcoming. Attention is invited, however, to the last paragraph of the statement which I made on the 14th March.

5. In the past few years, steps have been taken by Government to improve the capacity of Indians to defend their country and to increase their opportunities of doing so. The measures undertaken for this purpose have invariably been published either within the Legislature or outside it. At the present moment, Government have nothing new to announce.

EDUCATION OF STUDENTS.

74. **Mr. B. Venkatapatiraju** : In the matter of Budgetary provision of one crore and 28 lakhs and odd for Educational and Instructional establishments (A), will the Government be pleased to state how many students are being educated and how many of them are Indians and how far this education would enable Indians to get into the commissioned ranks in the army ?

Mr. E. Burdon : The total number of students under training is approximately 7,500 ; of these rather more than 4,000 are Indians. These figures include 601 medical pupils at medical colleges and schools, of whom 505 are Indians. Apart from the medical pupils, the students under training are all personnel already employed in the army, and the education which they are receiving is technical and professional. The education is not designed primarily for the purpose of enabling the students to become commissioned officers but the qualifications which are given by certain of the courses are required for promotion, for example, to a Viceroy's commission. The army educational and instructional establishments referred to in this reply are entirely different from the Royal Indian Military College, Dehra Dun, and from Sandhurst, where boys are educated for the purpose of qualifying for a King's commission, and entering the army as officers.

SCHOOL OF COOKERY.

75. **Mr. B. Venkatapatiraju** : In the school of cookery costing 34,890 how many students are being trained and whether a King's commissioned officer on 1,000 Rs. per mensem is employed to be in charge and whether he is an expert on cookery ?

Mr. E. Burdon : The answer to the first part of the Honourable Member's question is that 5 ordinary courses of instruction are held every year, each course lasting for a period of six weeks. 60 British and 50 Indian cooks are trained at each class. In addition, two courses, each lasting for

a period of 12 weeks, are held for master cooks. The number of master cooks in each class is 20.

To the second and third parts of the question the answers are in the affirmative.

ARMY EDUCATION.

76. **Mr. B. Venkatapatiraju** : Regarding army education costing 33 lakhs 79 thousand and odd will the Government be pleased to state whether the British War Office is contributing anything for educating British Troops ?

Mr. E. Burdon : No monetary contribution is made by His Majesty's Government for the purpose mentioned by the Honourable Member. Each British unit proceeding to India is, however, provided (free of cost to India) with a "Unit Library".

INDIAN AND ANGLO-INDIAN NURSES.

77. ***Mr. B. Venkatapatiraju** : Out of 266 nurses employed at a cost of 8½ lakhs whether any of them are Indians and Anglo-Indians and whether none are available ?

Mr. E. Burdon : Of the 266 nurses 55 are Anglo-Indians and none is Indian.

So far as the Government of India are aware, no Indian nurse has ever applied for employment in an Army hospital, while the number of Anglo-Indians applying for employment barely meets requirements.

INCREASE IN ROYAL ARMY MEDICAL CORPS.

78. ***Mr. B. Venkatapatiraju** : Will the Government be pleased to state why an increase of one officer of Royal Army Medical Corps from 293 to 294 increased the expenditure from 37 lakhs to 39 lakhs and 15 thousand ?

Mr. E. Burdon : The establishment of officers of the R. A. M. C. in India has not been increased by one officer. The difference detected by the Honourable Member is due to the omission, through inadvertence, of one officer in the budget for 1922-23. The increase in expenditure is accounted for, apart from the inclusion of the officer referred to, by the higher proportion of senior officers on duty in India in 1923-24.

INDIANS IN INDIAN MEDICAL SERVICE.

79. ***Mr. B. Venkatapatiraju** : Are there any Indians, in the Indian Medical Service of 448 officers costing 47 lakhs and odd, employed ? Is there time scale of salaries fixed to increase the expenditure by Rs. 30,000 after reducing 4 officers ?

Mr. E. Burdon : Of the 448 I. M. S. officers in military employ 260 are Indians. The increase in expenditure in this year is due to the higher proportion of senior officers to the total number employed.

Pay is regulated by a time scale.

INDIANS AND ANGLO-INDIANS AS ASSISTANT SURGEONS.

80. ***Mr. B. Venkatapatiraju** : How many Indians and how many Anglo-Indians are employed out of 394 assistant surgeons and 739 sub-assistant surgeons in the army ?

Mr. E. Burdon : All the assistant surgeons are Europeans and Anglo-Indians, while the sub-assistant surgeons are all Indians.

DUTIES OF ROYAL ARMY MEDICAL CORPS.

81. ***Mr. B. Venkatapatiraju :** What duties were being performed by 450 Royal Army Medical Corps ranks costing nearly 6 lakhs in 1922-23 and how is that work arranged without costing anything in 1923-24 ?

Mr. E. Burdon : The R. A. M. C. other ranks in India perform the recognised duties of that Corps which are connected with the care and nursing of the sick of British troops. The estimated expenditure on account of the pay and allowances of these other ranks for the year 1923-24 will be found under head I, page 22 of the budget estimates.

LOSS OF CASH, STORES, ETC.

82. ***Mr. B. Venkatapatiraju :** Will the Government be pleased to state (a) the actual losses entertained under separate heads, loss of cash, Stores in transit, Stores in charge, fluctuations in prices of stores, issue of stores at concession rates and sale of surplus stores for the years 1920-21, 1921-22, 1922-23, and why increased amounts are budgetted for 1923-24, namely, 17 lakhs for supply depot losses, 3 lakhs for mechanical stores, 17½ lakhs clothing and book depots, 20½ lakhs on ordinance depots and why the loss on turnover of maintenance of mobilization reserves amounted to 23 lakhs in 1922-23, and only 1.3½ lakhs in 1923-24 ? (b) Whether any or what steps are being taken to minimise the losses incurred year after year ?

Mr. E. Burdon : (a) and (b). The Honourable Member's question apparently refers to certain entries in the Army Estimates under Head II. Previous to 1921-22 the Army accounts were not maintained on a costing basis, and it is, therefore, not possible to say from the accounts what the losses were under the various heads mentioned by the Honourable Member in the years previous to 1921. The budget for 1921-22 was the first one prepared under the costing system, and in the absence of data, generally speaking, no provision was made in it for losses of the various classes ; and the same procedure was repeated in the budget for 1922-23, for at the time when that budget was prepared also, sufficient data was not available to allow of the necessary provision being made. The accounts for 1921-22 show the following losses under Head II :

| | Rs. |
|---|------------|
| Loss of cash | 19,032 |
| Loss of stores in transit | 18,34,118 |
| Loss of stores in charge | 13,40,194 |
| Loss by fluctuation in prices of stores | -12,32,866 |
| Loss in issue of stores at concessional rates | 3,27,225 |
| Loss on sale of surplus stores | 3,76,670 |

These figures may not, however, be absolutely complete as 1921-22 was the first year in which the accounts were prepared on the costing basis. The accounts for 1922-23 are not yet complete ; but, when published later on, they will give similar information for that year.

In the budget for 1923-24 provision has been made for normal losses arising out of the ordinary course of business at the various military store depots, as well as for special losses arising out of the sale of surplus stores to give effect to certain recommendations of the Inchcape Committee. These special losses will arise from the fact that it will not be possible to dispose of the articles at the Stock Book rates at which they are held on charge in the military store depots of various classes. The amounts are separately shown in the Army budget for 1923-24.

The reason why the loss on turnover of maintenance of mobilization reserves in Supply Depots in 1923-24 is expected to be much less than in 1922-23 is that with reference to a recommendation of the Inchcape Committee it is contemplated to make large reductions in the bulk of the mobilization reserves themselves. One of the objects of introducing the costing system of accounts in the Army was to bring these various losses prominently to the notice of the administrative and financial authorities, so that action might be taken to minimise them. Action in this direction has already been taken; and it may be mentioned that, apart from special losses likely to arise from the sale of surplus stores, the provision in the budget for 1923-24 is mainly based on the allowance passed by the Inchcape Committee for normal losses which are bound to arise in the ordinary course of business at the various military store depots.

Mr. B. Venkatapatiraju : May I know what the actual loss is? Was there a defalcation committed in office?

Mr. E. Burdon : That is one of the causes. (*The Honourable Sir Malcolm Hailey :* "The Rs. 19,000?") Yes, the Rs. 19,000.

TRAINING OF INDIANS FOR AIR FORCE.

83. **Mr. B. Venkatapatiraju :** Will the Government be pleased to state whether any arrangement is made to train Indians for the Royal Air Force when they are spending one crore and 83 lakhs for it, having provided specially a Royal Air Force School in India?

Mr. E. Burdon : The Royal Air Force school to which the Honourable Member refers no longer exists. It was established for the purpose, merely, of completing the flying education of pilots already commissioned in the Royal Air Force; but it was abolished last year as being uneconomical; and only fully trained pilots are now sent to India.

Indians are not yet eligible for admission to the Royal Air Force, as such. A proposal to make them eligible for admission which was set on foot some time ago has not been agreed to. At present Indians are only employed in connexion with the Royal Air Force in the Indian Technical Section, Royal Air Force, India.

REDUCTION OF RAILWAY WORKING EXPENDITURE.

84. **Mr. B. Venkatapatiraju :** Will the Government be pleased to state the steps taken by the Government of India in securing the reduction of working expenditure of railways in the light of the Inchcape Committee's criticism that the present scale of expenditure is not essential to the efficient and safe working of the lines?

Mr. G. G. Sim : The Honourable Member is referred to the reply given yesterday by the Honourable the Finance Member to Question No. 15 by Dr. Sir D. P. Sarvadhikary.

IMPORTED COAL ON G. I. P. RAILWAY

85. ***Mr. B. Venkatapatiraju** : (a) Will the Government be pleased to state whether the Government sanctioned the transaction of Great Indian Peninsula Railway in importing coal at Rs. 52.3¼ per ton when Indian coal at 14½ Rs. per ton was available at the time ?

(b) Who is responsible for long term contracts entered into for the supply of coal at high prices condemned by the Incheape Committee as being absurd and undesirable and whether any tenders were called for before entering into this transaction ?

***The Honourable Mr. C. A. Innes** : (a) The Honourable Member is referred to the answer given to a similar Question No. 27 by Mr Joshi on the same subject.

(b) The Railway Board was responsible for placing the three years contracts for the supply of coal to the State Railways. It is not considered that the prices are disadvantageous to Government and the Honourable Member is not correct in stating that the Retrenchment Committee condemned the long term contract as absurd and undesirable.

The contracts were placed by the Railway Board on offers made by the Collieries after negotiations ; before conclusion they were carefully considered in consultation with the Company railways who placed similar contracts at the same time.

Mr. B. Venkatapatiraju : Have the Incheape Committee approved of these long term contracts ?

The Honourable Mr. C. A. Innes : The actual words of the Incheape Committee are that it is open to question whether long term contracts are desirable. That is not the same thing as saying that long term contracts are absurd and undesirable.

COMPENSATION FOR ARTICLES LOST ON RAILWAYS.

86. ***Mr. B. Venkatapatiraju** : What steps were taken for reducing the charges for compensation for articles lost or damaged in railway transit and more especially in the B. B. and C. I. Railway ?

The Honourable Mr. C. A. Innes : Apart from the improvement of general transportation conditions which affect this particular item of expenditure, investigation is being made on the following general lines :

- (a) Adoption of a system of lock-rivetting wagons.
- (b) Reorganisation and improvement of the watch and ward staff on railways.
- (c) Improvement of police and detective organisation.
- (d) Improvement in lighting station yards and sheds.
- (e) Surprise checks of wagons *en route*.
- (f) Increased provision of closed goods sheds and cages for parcels.
- (g) Particular attention to the marking and addressing of goods tendered for despatch.

2. Detailed information as regards the Bombay, Baroda and Central India Railway is not available.

TRAINING OF INDIANS IN RAILWAYS.

87. ***Mr. B. Venkatapatiraju** : Whether any and what steps are being taken in the systematic training of Indians as Railway Officials and subordinates to secure the maximum of efficiency with a minimum of cost ?

The Honourable Mr. C. A. Innes : The information desired will be found in paragraph 34, Volume I of the Indian Railway Administration Report for 1921-22.

PURCHASE OF RAILWAY MATERIALS IN LONDON.

88. ***Mr. B. Venkatapatiraju** : (a) Whether it is a fact that the company-worked Railways purchase their Railway requirements in London through their Board of Directors with funds provided by the Government of India and (b) whether the Government exercise any, and if so what control to see that the articles are purchased in cheap markets at fair market value ?

The Honourable Mr. C. A. Innes : It is a fact that the Company-worked Railways purchase the stores they require from London through their Boards of Directors with funds provided by the Government of India.

Economy in such purchases is in the interests of both the Company and Government.

Government do not exercise control in detail over such purchases.

ALLOCATION OF RAILWAY CHARGES.

89. ***Mr. B. Venkatapatiraju** : Whether it is a fact that the Home Office charges of Companies were borne by the Railway Revenue (gross receipts) while the Government supervisory charges were not wholly debited to the same and if so, what steps will be taken to recover the whole amount from the gross receipts of Railway Revenue ?

Mr. G. G. Sim : The answer is in the negative. Under the terms of the contract, London Office expenses as well as the charge on account of audit, supervision and control by the Secretary of State which is recovered at a fixed rate per half year per mile worked are alike included in the working expenses of a company-worked railway. The attention of the Honourable Member is invited to the reply given to Rai Bahadur G. C. Nag's Question No. 38 on the 6th September 1922.

REVISION OF INDIAN RAILWAYS ACT.

90. ***Mr. B. Venkatapatiraju** : Whether the Government propose to introduce a measure to modify the Indian Railways Act, 1890 at an early date with a view to remedy defects in the existing Act ?

The Honourable Mr. C. A. Innes : The Government do not propose at present to introduce a Bill to amend the Indian Railways Act. They are at present formulating provisional proposals for the establishment of a Rates Tribunal. If such a Tribunal is established, they will consider the suggestion in paragraph 157 of the Acworth Committee's Report.

TRAINING OF MECHANICAL ENGINEERS.

91. ***Mr. B. Venkatapatiraju** : In view of the statement that extensive schemes for the training of Mechanical Engineers is under consi-

deration whether the Government will be pleased to state the number of persons under training and how many of them are Indians and how many Anglo-Indians ?

The Honourable Mr. C. A. Innes : The total number of apprentices in Mechanical Engineering of all grades under training in the Locomotive and Carriage and Wagon Departments of the State and Company-worked railways at the end of December 1922 was 3,155 of whom 2,340 were Indians and 815 Europeans and Anglo-Indians.

STIPENDS OF RAILWAY APPRENTICES.

92. ***Mr. B. Venkatapatiraju :** Is it a fact that stipends paid to apprentices are 30 to 50 Rs. per mensem to European and Anglo-Indian and for Indians 1st Class 10 to 15 Rs., Second class 4 to 9 Rs. ? Whether Indians of better classes are not available and when the Government propose to abolish racial distinction in this matter ?

The Honourable Mr. C. A. Innes : I would refer the Honourable Member to the reply given in this Assembly to a somewhat similar question asked by Mr. K. B. L. Agnihotri on the 7th September 1922. The whole question of the training of apprentices and of the best way to attract Indians of the better class is now under consideration.

PROFIT AND LOSS ON RAILWAYS.

93. ***Mr. B. Venkatapatiraju :** Will the Government be pleased to furnish an account showing the amount of profits realised by the Government on account of Railways and the loss incurred from time to time and how was this loss met ? How much from Government Revenue and how much by borrowing otherwise than by the railway debt as far as accounts are available ?

Mr. G. G. Sim : The annual Administration Report and the Revenue and Financial statement published annually give information regarding the profits and losses from railways. Profits from railways have been absorbed in, and losses met by, the general revenues and no account has been kept showing how far the losses from railways in a particular year have had to be met from a general loan or from balances.

LOSS ON RAILWAY COMPANIES.

94. ***Mr. B. Venkatapatiraju :** Is it true as stated by Mr. C. P. Tiwari in his book on Indian Railways that the Company Railways caused loss of 300 crores to Indian Government besides standing liability of 50 crores exacted by the companies as premiums on their share capital without including the Railway debt at all ?

Mr. G. G. Sim : The losses or gains from Indian Railways are shown in the Administration Reports issued from time to time and in other publications. The premia paid on purchase of certain railways may be seen on page 15 of the Administration Report, Volume II, for 1919-20. There has been no time to check the voluminous figures referred to in the question which go back to the year 1848.

Mr. B. Venkatapatiraju : It is suggested that there is a loss of 300 crores. Can it be stated approximately what the total loss sustained till now is ? It may be ten crores more or less. That does not matter. Is Government aware of the loss already incurred ?

Mr. G. G. Sim : I have already said that I have not had time to examine the figures for the last 80 years.

ALLOCATION OF RAILWAY CHARGES.

95. ***Mr. B. Venkatapatiraju** : Will the Government be pleased to state whether the Government is including the interest on Railway capital construction in the capital cost as well as debiting any deficits of interest as charge against capital amount and if not, why not ?

Mr. G. G. Sim : Interest on capital outlay during construction is not charged to capital on State-managed lines or on other lines unless specially provided for in the terms of the contract ; the second portion of the question is not understood but if the Honourable Member means that if the net earnings of an open line are insufficient to meet the interest charges on the capital sunk in the line the deficit should be debited to capital, the Government are not prepared to accept such a proposal.

RAILWAY CAPITAL.

96. ***Mr. B. Venkatapatiraju** : Has the Government been treating as capital expended on Railways all accumulated losses with interest minus profits ?

Mr. G. G. Sim : The question is not understood.

LOSSES ON RAILWAYS.

97. ***Mr. B. Venkatapatiraju** : (1) Is it a fact that as early as 1884 the Financial Secretary of the India Office admitted that 71 crores was the loss up to then sustained on Railways without including interest thereon and was this financial loss shown in any Railway account of the Government of India ?

(2) Is it also a fact that Lord Lawrence suggested as early as 1869 that the Railway losses might be debited against the capital account of the Railway and why was it not done till now ?

Mr. G. G. Sim : Search is being made for the papers of 1869 and 1884 referred to in the question and when they are found the result will be intimated to the Honourable Member.

REDUCTION OF RAILWAY WORKING EXPENDITURE.

98. ***Mr. B. Venkatapatiraju** : Has the Government of India approved the declaration of inflated profits to the companies by reducing working expenditure by suspension of repair and renewal work which was subsequently met with by the Governments in succeeding years ?

Mr. G. G. Sim : During the period of War, the repair and renewal work on railways had to be heavily curtailed owing to difficulty in obtaining materials, the result being an increase in surplus profits available for division between the Companies and Government in accordance with the terms of the respective contracts.

CONCESSIONS TO RAILWAY COMPANIES.

99. ***Mr. B. Venkatapatiraju** : Has the Secretary of State ignored the protests of the Government of India in the matter of undue concessions to the companies and modifications of contracts and even extensions with

favourable terms to the companies working the State Railways in India and if so, when and on what occasions and for what reasons ?

Mr. G. G. Sim : The question is so general that the Government regret that they are not in a position to give any answer.

Mr. B. Venkatapatiraju : Are there any instances in which the Secretary of State over-ruled the Government of India with reference to the concessions granted to the companies ?

• **Mr. G. G. Sim :** I may be able to answer if the Honourable Member will give particulars of any individual case ?

Mr. B. Venkatapatiraju : I may mention the Bengal Nagpur Railway latest contract.

Mr. G. G. Sim : I am unable to answer that without notice.

PURCHASE OF RAILWAY STORES.

100. ***Mr. B. Venkatapatiraju :** (a) Has the Government ever insisted on the companies working State Railways in the purchase of stores with Government funds to buy locally when any suitable article at reasonable price was locally available, instead of leaving them as free agents to purchase stores wherever they liked and at whatever price they chose to pay ? (b) Is it a fact that the administration of the Company is subject to the controlling authority of the Government and purchases are subject to confirmation by the Government ?

The Honourable C. A. Innes : The Government is not in a position, under the terms of the Company Railway Contracts, to dictate the source of purchase of stores. Economy in such transaction is in the interests of both the Company and Government and general supervision is exercised through financial control and examination of estimates.

INDIANS IN HIGHER RAILWAY POSTS.

101. ***Mr. B. Venkatapatiraju :** (1) Has the Secretary of State impressed on the Government of India as early as in 1879 the expediency of employing Indians in posts of importance and of making determined and immediate efforts to provide better educational opportunities so as to make it possible to recruit in India the staff needed to meet all normal requirements of Railways ? What steps were taken since then and with what results ?

(2) Is it not a fact that the Industrial Commission complained of the paucity of Indian employees in the Railway workshops and has any improvement been made since ?

The Honourable Mr. C. A. Innes : I would refer the Honourable Member to the replies given to Mr. P. L. Misra in this Assembly on the 6th September last and to Mr. K. C. Neogy on the 7th idem. I would refer him also to serial No. 14-B-2 of the statement furnished in reply to a question by Dr. H. S. Gour asked on the 16th January 1923 ; to the reply given by Mr. Hindley on the 13th March 1923 in connection with the List of Demands (*vide* page 3358 of Legislative Assembly Debates, Volume III, No. 55) ; and the paragraphs 33 and 34 of Volume I of the Administration Report on Indian Railways, 1921-22.

PREPARATION OF RAILWAY PROFITS AND LOSSES.

102. ***Mr. B. Venkatapatiraju :** Is it a fact that half-yearly accounts are taken in arriving at Railway companies' profits while losses in the other half-year are wholly debited to the Government and is it a fact that sometimes expenditure was curtailed in one half-year to earn profits? What is the difficulty in calculating profits on the results of the whole year though advance payments may be made each half-year towards profits?

Mr. G. G. Sim : Except in the case of two railways, the surplus profits on all State railways in India worked by Companies are payable annually determined with reference to the results of working for a whole year. Of the two railways on which the surplus profits are paid half-yearly there is one of importance and on this the deficit in any half-year is carried forward and deducted from the divisible profits of the following half-year or years. The answer to the first two points of the Honourable Member's question is, therefore, in the negative and the third point does not arise.

INCLUSION OF LAND VALUES IN RAILWAY CAPITAL ACCOUNT.

103. ***Mr. B. Venkatapatiraju :** Is it a fact that land values are not included in the capital account of Railways at all and if so, do Government propose to change the old system to more businesslike methods?

Mr. G. G. Sim : The Honourable Member is referred to the answer given to Mr. N. M. Joshi, on 6th September 1922, in reply to Question No. 19.

LOSSES ON ASSAM-BENGAL RAILWAY.

104. ***Mr. B. Venkatapatiraju :** Regarding the Assam-Bengal Railway, will the Government be pleased to state the total loss sustained till now, the total outlay and the return we are getting and whether cheaper River Transport is not available and whether the hill section is subject to constant damage by floods and the expense of upkeep is prohibitive and whether any additional capital outlay is proposed to be spent this year?

Mr. G. G. Sim : Information regarding capital outlay on the Assam-Bengal Railway and the return thereon and loss to State will be found on page 153 of the History of Indian Railways for 1921-22, copies of which are available in the library.

As river transport is not available at all points of the Assam-Bengal Railway it is not possible to give a reply applicable to the whole line.

The Hill Section has been frequently subjected to damage by floods and its up-keep is expensive.

The capital grant of the Assam-Bengal Railway for the current year is given in the Appendix C to the demands for grants presented to the Legislature.

Mr. B. Venkatapatiraju : Is it a profitable concern?

Mr. G. G. Sim : No,

SALARIES ON RAILWAYS.

105. ***Mr. B. Venkatapatiraju** : Will the Government be pleased to state whether the salaries fixed by the Railway companies on State-owned Railways are higher than the corresponding salaries on the State-worked Railways and whether the State from time to time increased the salaries to keep pace with those of company-worked Railways and what proportion does the highest salary bear to the lowest salary paid to Railway Officials and whether it exceeds 100 to 150 times or more and whether it is a fact that nowhere in the world either on Railways or in Public service does the salary of the highest official exceed more than 25 times the salary of the lowest paid official in the same department except in India ?

Mr. G. G. Sim : The reply to the first part of this question is in the negative. As regards the latter part of the question, Government are unable to see what useful purpose would be served by effecting the comparison suggested by the Honourable Member.

Mr. B. Venkatapatiraju : Has not Government seen any utility in understanding the different proportions of salaries paid to persons employed in the same Department which in India in the higher paid posts are 100 to 150 times greater than the lower paid posts of the same Department while in other countries the difference is not more than 25 times ?

Mr. G. G. Sim : The reply is in the negative.

INDIAN POINT OF VIEW ON RAILWAY POLICY.

106. ***Mr. B. Venkatapatiraju** : Will the Government be pleased to state whether any Indian is appointed to a post of importance to present the Indian view point in the matter of enunciation and direction of Railway Policy ? If not, whether the Government propose to remedy the defect ?

The Honourable Mr. C. A. Innes : If the Honourable Member wishes to know whether any Member of the Railway Board is an Indian, the answer is in the negative.

With reference to the last part of the Honourable Member's question, the Government must adhere to the position that the sole criterion for promotion to the Railway Board must be experience in and knowledge of the special subjects with which the Members have to deal.

Mr. B. Venkatapatiraju : Is there no Indian acquainted with railway matters who could be employed by the Government to present the Indian point of view ?

The Honourable Mr. C. A. Innes : Not so far as I am aware in regard to the very technical subjects dealt with by the Railway Board.

TAXES ON INDIAN SETTLERS IN FIJI.

107. ***Mr. B. Venkatapatiraju** : (1) Will the Government be pleased to state :—

- (a) Whether the Government of Fiji Islands introduced a residential Tax Bill imposing a tax of £1 annually on every male between the ages of 16 and 60 years excepting Fijians and Rotumans ?

- (b) Whether the major portion of the tax roughly about £23,000 out of £28,000 has to be paid by Indians, mostly labourers ?
- (c) Whether Indian settlers and labourers are protesting against this new proposed imposition ?
- (d) Whether a clause is inserted in the Bill that every male should get himself registered as a prospective payer of tax with heavier penalty for non-compliance than even for non-payment of tax ?

(2) Will the Government be pleased to state whether the Government of India protested against this proposed imposition and what reply was received from England ?

(3) Whether the hut tax imposed on Indians some years back at 10s. per hut has been removed as it was found too heavy on Indians on account of the bad economic condition ?

(4) Will the Government be pleased to state whether the Government proposes to insist on the withdrawal of the new proposal ?

Mr. M. S. D. Butler : (1) (a) The amount of the tax proposed is such sum not exceeding £1 as may be determined from time to time by the Legislative Council by Resolution in that behalf. A telegram dated the 21st June 1923, from the Government of Fiji states that the Residential Tax Bill has not yet been introduced into the Legislative Council of Fiji.

(b) The majority of persons liable to the tax will be Indians, most of whom are labourers.

(c) and (d). Yes.

(2) Representations have been made by the Government of India to His Majesty's Secretary of State for India on the subject. The reply of the Secretary of State to the representations has not yet been received.

(3) The hut tax has been abolished. The Government of India understand that it was abolished on account of the economic condition of the Indians at the time.

(4) The Government of India are not in a position to insist on the withdrawal of the proposed new taxation. They can point out that the imposition of excessive taxation on Indians is bound to affect their attitude regarding the re-opening of emigration to the Colony. The Honourable Member may rest assured that the matter will not be lost sight of in the negotiations with the Colonial Government.

Mr. S. C. Shahani : Will the Government be pleased to state if at any time they contemplate similar impositions by way of retaliation ; and if the reply be in the negative, will Government be pleased to state the reasons ?

The Honourable Sir Narasimha Sarma : I do not think there are any residents of Fiji who are domiciled in India, so there cannot be any question of retaliation. I do not think there is any question here of imposing a poll tax and I do not think that would be an effective remedy.

Mr. K. B. L. Agnihotri : May I know in this connection as to when the Government would publish the report of the Fiji deputation ?

The Honourable Sir Narasimha Sarma : They hope to be able to at a very early date.

Mr. K. B. L. Agnihotri : Within this month ?

The Honourable Sir Narasimha Sarma : I am not in a position to state that.

Mr. N. M. Joshi : Will Government explain the difficulty in the way of publication ?

The Honourable Sir Narasimha Sarma : Communications are passing between the Government of India and the Secretary of State on the subject and I am not in a position to disclose them.

Mr. N. M. Joshi : Is not the report ready ?

The Honourable Sir Narasimha Sarma : Not for publication.

PAYMENT BY IMPERIAL BANK OWING TO ALLIANCE BANK'S FAILURE.

108. * **Mr. Manmohandas Ramji :** Will the Government be pleased to inform :

- (1) whether it is true that the Imperial Bank of India had consulted them before undertaking to pay 50 per cent. to the depositors and creditors of the Alliance Bank of Simla, in liquidation,
 - (2) if so, whether they gave their assent to the proposal,
 - (3) if not, whether initially the proposal of paying 50 per cent. originated from the Government of India and was communicated by them to the Imperial Bank of India ?
 - (4) If reply to (3) is in the affirmative, what were the reasons which induced the Government to take such action ?
 - (5) If reply to (1) is in the affirmative, whether it is usual for the Imperial Bank of India to consult the Government before they undertake such huge dealings ?
 - (6) On what terms did the Imperial Bank of India undertake payment of 50 per cent. ?
 - (7) To what extent will the Imperial Bank of India be profited by this business,
- and (8) whether the Government of India are assured that the Imperial Bank of India is not likely to lose anything in this undertaking ?

The Honourable Sir Basil Blackett : The Government of India welcome this opportunity, immediately after the opening of this session of the Assembly, of making a public statement in regard to the action taken by, or on behalf of, the Government in connection with the failure of the Alliance Bank of Simla. The initial proposal for the payment by the Imperial Bank of India of 50 per cent. of the amounts standing to the credit of depositors of the Alliance Bank of Simla originated from the Government of India and was agreed to by the Imperial Bank of India as being most desirable in the interests of Indian finance and Indian banking. It was regarded as most important that immediate steps should be taken to restore public confidence and to prevent the consequences of the failure of the Alliance Bank from causing inconvenience, and possibly danger, to other sound institutions. It was further desirable to minimise the hardship which would be caused to depositors and creditors of the Alliance Bank. In addition to these considerations, the Government of India were most

anxious that the favourable conditions in the money market, both in London and in India, for borrowing the sums needed by the Government in both markets on better terms than had recently been possible, and the good effects which the balancing of the Indian budget had created, should not be upset by the consequences of this unfortunate banking failure. In particular, the advices obtained from England were causing the Government much anxiety, as it was feared that, as a result of the failure of the Alliance Bank and the reactions of that failure in London, the loan about to be issued in London might have to be indefinitely postponed. The action taken by the Government fortunately averted these dangers and, as the House is aware, a big loan was issued in London in May on favourable terms. It is also true that the action taken by the Government prevented such collapse of credit in India as might have made the issue of the rupee loan just about to be opened impossible. The information in the possession of the Government and of the Imperial Bank satisfied them that 50 *per cent.* of the claims could be paid without incurring financial risk, provided that the liquidation were properly supervised. The Imperial Bank could not, however, of itself take action, under the terms of the Imperial Bank of India Act, without the intervention of the Government. The Government, therefore, took the steps which they were advised were necessary in order to enable the Imperial Bank to fulfil what they regard as its legitimate function as a Central Bank. The Government considered that action by the Imperial Bank was more likely to localise the trouble at the time when the Alliance Bank closed than any overt action on the part of the Government.

The above statement answers parts 1—5 of the question. In regard to part 6, the Imperial Bank undertook the payments on the guarantee of the Government that they would be compensated for any loss incurred thereby. As I have already stated, no loss is anticipated.

In regard to parts 7 and 8, the Imperial Bank will make no profit by this business, and are assured against loss.

Mr. Harchandrai Vishindas : Can Government inform this Assembly whether they have taken similar action on any previous occasion on the collapsing of banks and gone to their assistance in the manner they have done now ?

The Honourable Sir Basil Blackett : So far as I am aware no such action has previously been taken.

Sir Deva Prasad Sarvadhikary : Did such a situation, or a situation nearly equal to it, arise when Government action would have been useful, in 1913 ?

The Honourable Sir Basil Blackett : The Honourable Member no doubt refers to the collapse of the Peoples' Bank and other banks. On that I should like to say that the present Government of India was not then in power. What happened in 1913 does not seem to me to be altogether relevant to what happened in 1923. I do not know in detail the circumstances in 1913, and for what reason action was not taken. The question whether it ought or ought not to have been taken is a matter of historical interest on which I do not think question and answer in this

House can elicit any facts. As regards the position now, Government were clearly of the opinion that the interests of everybody in India, especially those of the Indian tax-payer, and of all concerned in Indian banking right throughout India, and not of the individual depositors of the Alliance Bank only, were all concerned, and that action of the sort that was taken was not only justified but amply justified; and the Government would I think have been open to very serious criticism had they not taken such action. I should like to take this opportunity of adding one other point. A good deal of suspicion has been brought into this subject by the events that have taken place in the Courts and elsewhere since the Alliance Bank closed. I am not in a position to say anything about the result of the action in the Courts because that is still *sub judice*, but I should like to say this. The Government have not and have never had any desire whatsoever to shield anybody from the consequences of fraud or wrong-doing. Their action in this matter was entirely concerned with the interests of India as a whole. It was necessary, obviously, before the Imperial Bank was to undertake either on its own behalf or on behalf of Government the payment of a proportion of the deposits, that it must be in some way insured against such action by the liquidator as would fritter away or otherwise get rid of the assets of the Bank available for the payment of the 50 per cent. The Government were not concerned as to who the liquidator was. They asked the Imperial Bank to make arrangements that the liquidator should be someone in whom the Imperial Bank had confidence. I understand that what the Imperial Bank did was in the ordinary course of procedure. As it was a bank in the Bengal circle, they nominated the Bengal liquidators. Government have never at any time had any objection to any other firm of liquidators satisfactory to the Imperial Bank being appointed. That question has been imported from outside. The sole object of the Government throughout this very unfortunate and difficult affair was to ensure that the consequences of a very unhappy failure should not be such as to damage the country more than necessary.

Sir Deva Prasad Sarvadhikary : Would the Government please state what steps they took, as has been stated by the Honourable Member, in order to enable the Bank to take the steps that it subsequently did? Of course we cannot refer to what has happened in Court as the matter is *sub judice*, but I am asking as to what definite steps the Government took in order that the Bank might take the action that it did.

The Honourable Sir Basil Blackett : I have already really answered that. Government guaranteed the Imperial Bank against any loss that might be incurred, any contingent loss, as the result of the Imperial Bank's paying 50 per cent. of the deposits in the Alliance Bank.

Sir Deva Prasad Sarvadhikary : Under what authority, and under what law, was that guarantee given?

The Honourable Sir Basil Blackett : As the Honourable Member is aware, he is raising a question which is to some extent *sub judice*; so I think the only answer I ought to give under these circumstances is that the Government of India are advised that they have power to give such a guarantee.

Captain E. V. Sassoon : Sir, in view of the fact that the Government of India have taken up a liability however remote, would it not be advisable for the liquidation to be suitably supervised by the Government of India, instead of being left to liquidators appointed by the majority of the shareholders with a strong dissenting minority ?

The Honourable Sir Basil Blackett : The appointment of the liquidators is, as the Honourable Member is aware, a matter for the shareholders and the creditors, subject to this that it was made a condition of the offer of the Imperial Bank that the liquidators should be satisfactory to the Imperial Bank. The Government of India in this matter are so to speak using the Imperial Bank as their agents, and they have no reason to suppose that the liquidators approved by the Imperial Bank, who are in fact people who regularly work for the Imperial Bank in Calcutta, are other than satisfactory.

Sir P. S. Sivaswamy Aiyer : Will the Honourable Member tell us whether in England there have been any instances in which the British Government has come to the rescue of any Banks which failed ?

The Honourable Sir Basil Blackett : Yes, Sir, the answer is in the affirmative. I can myself recall more than one case. I should like to say that fortunately in England such intervention, direct intervention, by the Government is not so necessary as it was in this case here, because the Bank of England and the other Banks have ample powers to take on their own account the action which is considered necessary in the interests of English banking and English business in general. I do think that it is one of the lessons of this case that the question whether the Imperial Bank ought to be put in a position in future to take similar action on its own account is one which ought to be discussed, and I should like to say, arising out of the Honourable Member's question, that in England the Banks have a habit of working together which would have met this difficulty probably without any intervention from higher quarters. It is very much to be hoped that, with the development of banking in India, there will come a spirit of co-operation between the various Banks in India which will enable them to face crises on their own account.

Sir P. S. Sivaswamy Aiyer : I know the Bank of England might come to the rescue of other Banks. What I wanted to know was whether Government itself had ever come to such rescue.

The Honourable Sir Basil Blackett : Yes, the answer is in the affirmative.

Mr. K. C. Neogy : Was action by Government in the present instance taken on its own initiative or at the instance of the Secretary of State ?

The Honourable Sir Basil Blackett : It is very difficult to say where the initiative came from. Government have been in correspondence with various people on this matter. I myself had heard much about the case even before I came out to India. At that time of course it was hoped that the Bank was going to survive. But I knew a good deal about it from the English end at that time. Whether the initiative in this particular case came from the Secretary of State or the Government of India, I think

it is impossible to say, because if the correspondence is carefully studied, one will come to the conclusion that it came from both ends.

Sir Deva Prasad Sarvadhikary : Having regard to the very interesting statement just made that Sir Basil Blackett before he came out to India had an inkling of what was going to happen, I desire to ask a supplementary question as to when the Government had the earliest intimation of the catastrophe that was likely to happen and what action did it take to warn the public of the danger ahead.

The Honourable Sir Basil Blackett : I think my Honourable friend has slightly misunderstood my statement. I was aware in England of the difficulties in which the Alliance Bank was at least a year before I came out to India, and so were a great many other people ; it was indeed common talk in the City of London. The Alliance Bank themselves took steps which, as the House is aware, eventually resulted in the appointment of Sir David Yule as Chairman and made an arrangement, with which I may say the Government of India were not concerned, with the Imperial Bank which was hoped would tide the Bank over its difficulties. It was hoped for a very long time that those arrangements and Sir David Yule's prestige would tide the Bank over. Unfortunately in the spring of this year withdrawals became so severe that it became obvious that the Alliance Bank could no longer on its own assets justify itself in remaining open.

Mr. President : The more importance Honourable Members attach to this subject, the more essential it is to put their questions on the paper to give the Finance Member an opportunity for mature consideration. He has undergone a severe examination. Honourable Members will perhaps not pursue the subject further.

Sir Deva Prasad Sarvadhikary : May I be permitted one supplementary question ? Having regard to the strong public opinion regarding the appointment of liquidators and having regard to the influence the Government has with the Imperial Bank, would not the Government consider the desirability of supplementing that liquidation by associating those that may be acceptable to the minority of shareholders ?

The Honourable Sir Basil Blackett : I should like to say, Sir, that I have no objection to supplementary questions.

The point that is put by my Honourable friend is one of the difficulties of this case, but he must remember that the Alliance Bank is in voluntary liquidation. The appointment of liquidators rests with the shareholders and creditors of the Alliance Bank. Reference has been made to strong feeling on the subject. I am not quite sure whether the shareholders and creditors of the Alliance Bank are not satisfied with the position as it stands at present. At any rate it is not possible for the Government to intervene and insist on the appointment of a different set of liquidators or an increase in the number of liquidators contrary to the wishes of the shareholders and depositors of the Alliance Bank and possibly at the expense of the depositors.

Mr. President : On a question like this, which is degenerating into a debate, my intervention was not to protect the Finance Member from cross-examination, but to prevent question time being used for the purpose of debate.

RECONSTITUTION OF CALCUTTA UNIVERSITY.

109. ***Sir Deva Prasad Sarvadhikary** : (a) Has the attention of the Government of India been called to the Resolution of the Senate of the Calcutta University passed at the meeting of the Senate held on Monday, the 11th day of June 1923, regarding the reconstitution of the University of Calcutta ?

(b) What action, if any, does the Government of India propose to take having regard to the points raised in the Resolution about :

- (1) Constitution of a Committee for investigation of the situation.
- (2) Legislative action for reconstitution of University.
- (3) Financial assistance to the University of Calcutta ?

Mr. M. S. D. Butler : (a) The Resolution referred to has not been communicated officially to the Government of India, but they have seen it in the press.

(b) The initiative in the matter rests with the Government of Bengal.

Sir Deva Prasad Sarvadhikary : Would the Government inform this House as to what action, if any, has been taken with regard to the Bill submitted by the Government of Bengal to the Government of India regarding the reconstruction of the University ?

The Honourable Sir Narasimha Sarma : The matter is under correspondence between the two Governments ; no final orders have been passed yet.

Mr. K. N. Mitra : Is the Government aware that the Government of Assam who have hitherto contributed little or nothing towards the maintenance of the Calcutta University desire to have a voice in the constitution of the Committee ? In view of this what action does the Government propose to take in this matter ?

The Honourable Sir Narasimha Sarma : The actual contribution of the Assam Government to the Calcutta University is a matter with which the Government of India has no concern and it is not in a position to make any statement. The Government of Assam have made certain representations to the Government of India on the subject and the whole question is under consideration.

CONSUMPTION OF SALT.

110. ***Mr. J. N. Basu** : Will the Government be pleased to state the average consumption of salt from March to end of June 1923, as compared with the average for the corresponding period in 1922 ?

The Honourable Sir Basil Blackett : In the absence of any information as to stocks of salt held in the country by private dealers on March 1st, it is not possible to give figures for average consumption during the period from March to end of June 1923. The average of actual issues of salt during the first four months of the year 1923 was 45,98,705 maunds, as compared with 45,94,120 maunds for the corresponding period of 1922. Figures for May and June 1923 are not yet available.

SALT MANUFACTURE IN BURMA.

111. *Mr. J. N. Basu : Will the Government be pleased to state :
- (a) different places where salt is manufactured in Burma,
 - (b) the total output in each of such places, and the cost of production thereof from 1914 to 1922,
 - (c) the quantity of imported salt into Burma from 1914 to 1922,
 - (d) comparative table of imported and manufactured salt in Burma from 1908 to 1922 ?

The Honourable Sir Basil Blackett : (a) and (b). The Honourable Member is referred to Statements Nos. IV and V appended to the " Report on the Administration of Salt Revenue in Burma " for the calendar years 1914 to 1919 and official years 1920-21 and 1921-22, which give the places where salt is manufactured and also the output in each place. In regard to the cost of production, the Honourable Member's attention is invited to the answer given him by Mr. Ley on the 10th March last in which it was stated that Government had no information regarding the expenditure incurred in manufacture, as the salt is not manufactured by Government.

(c) The quantity of imports of foreign salt into Burma is given in Statement No. VII appended to the Administration Reports above mentioned.

(d) The Honourable Member will also find the required information in the three Statements referred to.

Copies of the Administration Reports from 1908 onwards are in the Library. The Report for the year 1922-23 has not yet been received.

OFFICERS AND CADETS FOR 8 ARMY UNITS TO BE INDIANISED.

112. *Mr. J. N. Basu : (a) Will the Government be pleased to state how many officers and cadets have been found for the 8 units to be Indianized ?

(b) How long will it take to get the required number ?

(c) What steps His Excellency the Commander-in-Chief is taking to secure the full number ?

(d) Is it a fact that boys who pass out of Dehra Dun School and not those who pass out of Sandhurst College, are to be grafted to these units ?

Mr. E. Burdon : (a), (b) & (c). The attention of the Honourable Member is invited to the reply which I gave on the 2nd July to the question asked by Sir D. P. Sarvadhikary.

For the first stage of Indianization, eight officers were required. Of these three have been obtained and the rest will be obtained in October and January next. In future years also vacancies will be filled by Indian officers as they join the Indian Army from Sandhurst and the Unattached List.

(d) I am afraid the Honourable Member is under a misapprehension as to the part played by the two institutions he mentions. Dehra Dun is merely a preparatory school for Sandhurst. It is at Sandhurst and Sandhurst alone that Indians can qualify for His Majesty's commission.

INDIAN STORES DEPARTMENT.

113. ***Mr. J. N. Basu** : With reference to the communiqué relating to the Stores Department issued in May last, will the Government be pleased to state :

- (a) Whether the charges for Inspection and Purchases would be reduced and if so, what is the percentage of such reduction ?
- (b) Whether the personnel of the Department has been determined and whether it will be wholly Indian, if not, what is the proportion of the Indian appointment ?

The Honourable Mr. A. C. Chatterjee : (a) The charges to be made by the Indian Stores Department for inspection and purchase have not yet been finally decided. The rate that is fixed will be fixed tentatively only, and will be liable to reconsideration when more experience has been gained of the cost of the work involved.

(b) The personnel of the department has not yet been finally determined. As appointments require to be filled, the ordinary procedure is to advertise for candidates and to recruit the most suitable applicant. The claims of Indian candidates possessing the qualifications required, receive particular consideration. Since the constitution of the Indian Stores Department five statutory natives of India have been appointed to superior gazetted posts out of the eleven appointments that have been made up-to-date.

I may add that the notice relating to the Indian Stores Department which appeared in the Press last May was not a communiqué, but was an article written by a press correspondent.

DISCUSSION OF FISCAL REPORT.

114. ***Mr. J. N. Basu** : (a) Will the Government be pleased to state whether opportunity for discussing the Fiscal Report will be given to the Assembly in the July Session ?

(b) What steps have been taken, or is intended to be taken, and when, to give effect to the view of the minority Report—that Tariff concessions be withdrawn from the Dominions that treat Indians as inferiors ?

The Honourable Mr. C. A. Innes : (a) The Government do not propose to allot during the current session any time for further discussion of the Report of the Fiscal Commission.

(b) There are no concessions in the Tariff at present to any Dominion.

AGRICULTURISTS IN INDIA AND BURMA.

115. ***Mr. J. N. Basu** : Will the Government be pleased to state what is the average income of agriculturists in Burma and India proper, and what is the incidence of taxation per head ?

Mr. M. S. D. Butler : The Government of India consider it impossible to frame a reliable estimate of the ' income ' of the agricultural population of India and Burma in the economic sense of the word. An attempt to estimate the gross agricultural produce of British India by provinces based on the statistics of 1911 was made by the Director of Statistics in

1917, and was referred to Local Governments for examination. The replies received show that the methods followed stand in need of considerable revision and leave a wide opening for error. The matter is being further investigated and in the meantime the Government of India are not in a position to furnish an estimate of the value of agricultural produce per head of the population.

It is not possible to determine the incidence of taxation per head for agriculturists.

RELEASE OF LALA LAJPAT RAI.

116. ***Rai Bahadur Pandit J. L. Bhargava** : Has the attention of the Government been drawn to the question put by Mr. Saklatvala and the reply given by Earl Winterton in the House of Commons regarding the release of Lala Lajpat Rai from prison on account of his reported tubercular illness, age and his past great services to India ?

The Honourable Sir Malcolm Hailey : The answer is in the affirmative.

Dr. Nand Lal : Will the Honourable the Home Member enlighten the House whether he is aware of the fact that the population in India is demanding, as far as we can gather from some of the Resolutions passed and from various opinions expressed in the newspapers that Lala Lajpat Rai may be released ? Is he aware of this fact ?

The Honourable Sir Malcolm Hailey : I am not quite sure as to the exact tenor of the Honourable Member's question, but I gather that he wishes me to tell him whether we are aware of the fact that the population of India has been passing Resolutions for the release of Lala Lajpat Rai. I have seen some references in the newspapers to the hardship of keeping this gentleman in prison, but beyond that I am not aware that the population of India at large feels deeply on the subject.

Mr. K. Ahmed : Do Government propose to release Lala Lajpat Rai on the grounds of his ill-health and of the good works and other great services rendered by him to the country ?

The Honourable Sir Malcolm Hailey : I think that the ill-health of Lala Lajpat Rai, although from the medical reports I have read there is considerable doubt as to the nature of that ill-health, is perhaps a more certain fact that the great services which Lala Lajpat Rai has conferred on the country. But the question whether Government propose to release him should of course be addressed to the Punjab Government and not to the Government of India.

Rai Bahadur Pandit J. L. Bhargava : Are the Government of India prepared to take action under section 401 (1) of the Code of Criminal Procedure to remit the unexpired portion of Lala Lajpat Rai's sentence on account of his ill-health ?

The Honourable Sir Malcolm Hailey : We have not yet received any memorial from Lala Lajpat Rai on the subject.

Rai Bahadur Pandit J. L. Bhargava : There is an insistent demand of the public of the Punjab on that account.

The Honourable Sir Malcolm Hailey : That also has not reached me ; but may I point out that we generally take action under section 401 on receipt of memorials from the persons affected.

Mr. K. Ahmed : Was not a copy of the Resolutions passed on the subject by the people of Lahore and Multan last week received by the Honourable the Home Member ?

The Honourable Sir Malcolm Hailey : The Honourable Member is apparently not very certain of the details of these Resolutions, if he will ask his friend beside him to tell him the name of the bodies which passed these Resolutions and the date they were passed, I will ascertain if a copy has reached my office.

Dr. Nand Lal : May I point out to the Honourable the Home Member ?

Mr. President : That is not a question.

Dr. Nand Lal : The question is that under section 401 (1) of the Code of Criminal Procedure the receipt of a memorial is not necessary. It is the prerogative of the Governor General in Council to remit the unexpired portion of the sentence. May I ask the Honourable the Home Member if that is not a fact ?

The Honourable Sir Malcolm Hailey : The Honourable Member has quoted the law perfectly correctly and I have quoted our practice with equal correctness.

Mr. W. M. Hussanally : Is it a fact that Lala Lajpat Rai is ill, and, if so, what is the nature of his illness ?

The Honourable Sir Malcolm Hailey : I am glad to have a question asked of a somewhat more serious nature, to which I can give a more serious reply. I have seen many references in the newspapers to the anxiety felt by their readers regarding the ill-health of Lala Lajpat Rai, and, anticipating that I might be asked some questions on the subject, I have here certain information received from the Superintendent of the Jail on the matter. I may say that it shows that the Superintendent of the Jail has exercised the very greatest care in attempting to arrive at the nature of this prisoner's malady. A very full and careful medical examination has been made, not only by the Superintendent of the Jail himself, who, of course, is a medical officer, but by three independent medical practitioners, of whom one is the family doctor of Lala Lajpat Rai. They have so far been unable to determine what is the exact nature of his malady, but at the moment there seems good reason to suppose, though the diagnosis has not yet been completed, that the disease is not, as has been alleged, tuberculosis. On that point naturally one has to speak with reserve until the doctors themselves have made up their minds. With regard to other details, I find that his weight has increased by four pounds since he has been in jail and that he is allowed all necessary medical comforts. He is in the civil ward ; the scale of his diet is given and seems to me liberal ; he is also allowed a fan ; so that I think that Honourable Members who have shown solicitude on his behalf may be thoroughly satisfied that his case is receiving every care and attention from the medical authorities.

Mr. K. Ahmed : Was not there a recent reference from the House of Commons through the Secretary of State to the Government of India which will satisfy section 401 of the Code of Criminal Procedure for the Government to remit the sentence of Lala Lajpat Rai as he is respected by the people of this country and is held in great esteem ?

The Honourable Sir Malcolm Hailey : I have here the question and the answer in the House of Commons. If the Honourable Member wishes to refresh his memory with regard to its details I am prepared to hand it to him, and will then answer any further supplementary questions that he may desire to put, when he has learnt what that question and answer really were.

HIS EXCELLENCY THE GOVERNOR GENERAL'S ASSENT TO BILLS.

Mr. President : I have to acquaint the Assembly that His Excellency the Governor General has been pleased to give his assent to the following Acts passed by both Chambers of the Indian Legislature :

The Code of Criminal Procedure (Amendment) Act, 1923.

The Indian Official Secrets Act, 1923.

The Malkharoda and Gaontia Villages Laws Act, 1923.

The Legal Practitioners' (Women) Act, 1923,

The Indian Penal Code (Amendment) Act, 1923,

The Indian Merchant Shipping Act, 1923.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

Dr. H. S. Gour (Nagpur Division : Non-Muhammadan) : Sir, I beg to move :

“ That the Report of the Select Committee on the Bill further to amend the Code of Civil Procedure, 1908, be taken into consideration.”

Honourable Members will recall the long discussion that took place at the Committee stage of this Bill on the 20th September last year, when I brought forward the motion for the reference of the Bill to a Select Committee. The Select Committee have unanimously decided to recommend the Bill as redrafted by them for the acceptance of this House and I have nothing to add to what has been stated by the Members of the Select Committee in their note appended to this Bill.

I move, Sir, that the Bill be now taken into consideration.

The Honourable Sir Malcolm Hailey (Home Member) : As Dr. Gour has said that the Members of the Select Committee unanimously advised the House to adopt a certain course, I think it is necessary, as I was a

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Member of the Select Committee and also am a Member of Government, that I should make perfectly clear that Government itself has not departed from the attitude that was taken up by Sir William Vincent when this Bill was first introduced.

It will be remembered that on that occasion Sir William Vincent stated that the attitude of Government on this question will be that "whatever may be the personal views of Members of the Governor General's Council, they will not vote on it. Other official members will have full opportunity of voting and speaking exactly as they like. Their discretion is completely unfettered." That was the attitude of Government at the time, and it remains exactly the same to-day. We do not desire to fetter the discretion of official members in respect to this measure, which is perhaps of small importance in some parts of India but in other parts of India is, I know, one which has attracted considerable attention and to which considerable importance is attached. I shall not repeat the arguments that Sir William Vincent used on a previous occasion as to the danger of removing the only sanction which lies behind the procedure for obtaining a decree for the restitution of conjugal rights. He said—and I think it still holds good—that it might be better to remove entirely the procedure for obtaining a decree for restitution rather than deprive the Court itself, as the present Bill will apparently do, of all power of execution. I say this simply because although the Government was then neutral and is now neutral, we felt that in many parts of India decrees for restitution of conjugal rights are necessary in order to assist in preventing acts of violence arising out of matrimonial cases. We were at the time thinking of the numerous cases which arise in which wives are taken away possibly for sale elsewhere or in which wives are led away by seducers and so forth. But as the legislation is of a type which has some social aspects, we did not desire to vote as a Government on the subject.

Bhai Man Singh (East Punjab : Sikh) : Sir, I oppose the Bill and would advise all Honourable Members to give very serious consideration to it as it is before the House. The object of the Bill is to do away with the discretion that now lies with the Judiciary of ordering the imprisonment of the wife if she refuses to obey a decree for restitution of conjugal rights ; and the only remedy that it provides is that it gives the power of realising something from her property. I do not think that would be of any help. In the first place, 90 per cent.—I might almost say, cent per cent.—of women have no property. When a woman leaves her husband's house and goes to live with her seducer, she has not got anything of her own.

But that is not the only phase of the question at which I want to look now. The main point is whether there should or should not be real power of ordering the imprisonment of the wife in such cases. If you have no suits for restitution of conjugal rights, you do away with this difficulty. That is quite a different question. But so long as this law exists, so long as a decree can be passed for restitution of conjugal rights, there must be some effective means of executing it.

I oppose the Bill most strongly because the Government of my Province has most strongly opposed it ; and not only has the Government

of the Punjab opposed it but I might say that practically the whole of the Punjab community, with one or two exceptions, is unanimous on the point.

Mr. N. M. Joshi (Nominated : Labour Interests) : Do you represent the Punjab Government ?

Bhai Man Singh : At least, it is the Government of my Province, and the Punjab Government knows the views of the Punjab people much better than outsiders.

I think, Sir, it is generally known that suits for restitution of conjugal rights are extremely rare among the upper class. Nearly every respectable man, when he knows that his wife has gone wrong with another person and does not want to live with her husband—ninety per cent. of respectable people would turn her out rather than go to court for the restitution of conjugal rights. Such suits of course are more common among the lower classes, and often occur in the rural classes of the Punjab. But the way this evil traffic goes on is that sometimes women are sold to their would-be husbands at a price ; they are sometimes taken from their husbands. The woman is again seduced by her guardians or those who are her custodians, who manage to take her away from her husband's house and sell her again to somebody else. In such a case the poor husband will have no civil remedy to reclaim his wife if this power from the Court is taken away. This is a very great evil and I think those who have got any experience of the rural population of the Punjab will agree with me that if this Bill is passed it will have a very bad effect on the society of rural Punjab. At present we do not find any serious defects in the existing law. The existing law leaves the Court discretion to order the imprisonment of a wife against whom a decree has issued. That discretion being with the Court, we have not got before us any material to show that that power has not been properly used or that any of the highest Courts have thought this discretion insufficient, so that we went to take away the whole discretion from them or reduce them to a position of practical impotence in the execution of such decrees.

Instead of arguing the case myself I would rather like to draw the attention of this Honourable House to the opinions received from different Provinces. The Punjab is sometimes said to be a backward Province. Its rural population is said to be backward. Well, as regards the rural population of the Punjab, steps may be taken later on. But what about the Bombay Government, which is also opposed to the Bill? Now Bombay is a Province where female education is very advanced, and I think Bengal and Bombay top the list. But I should like to draw the attention of the Honourable House to the fact that both the Bombay and Bengal Governments oppose the Bill. At page 3 of the opinions supplied to us, the Bombay Government says :

“ With reference to Mr. Tonkinson's letter No. F-478-Judl. dated the 2nd November, 1921, on the subject noted above, I am directed to forward herewith copies of the correspondence noted below and to state that the Governor in Council agrees with the opinion expressed by the High Court, Bombay, that the power of the Court to detain the judgment-debtor in jail under rules 32 and 33 of Order XXI in the First Schedule to the Civil Procedure Code, 1908, in execution of a decree for restitution of conjugal rights should be preserved.”

[Bhai Man Singh.]

Of course as my Honourable friends would have seen the same is the opinion of the Bombay High Court. Then coming to the Bengal Government, on page 10, paragraph 2, we find the following :

“ In reply I am to say that in the opinion of His Excellency in Council, the proposed legislation is unnecessary as there appears no real demand for it, and chiefly because the existing provision being an order under the First Schedule of the Code, if any High Court finds that an alteration is needed, it can, under part X of the Code (section 122 *seq.*) by rule on the recommendations of their Rules Committee, alter the law itself.”

So much for the so-called most advanced provinces in female education. Now, coming to the Punjab, which I think will feel the passage of this Bill most keenly I should like to draw the attention of Honourable Members to a good many opinions where we find that nearly every authority is against it. There is only one single opinion in favour of it—that of His Lordship the Chief Justice of the Punjab High Court—and that with no arguments in support of it. I am reading from page 14, paragraph 1, last sentence :

“ The Governor in Council therefore is of opinion that it is undesirable that the Bill should receive any support from Government, which should either resist it or maintain an attitude of neutrality.”

The Government of my province wants the Government of India in the first place to resist the Bill, and in the second place to remain neutral at least ; but in no case to support it. Further on, if we take the opinions received from the different districts, we find strong opposition to the Bill. The Deputy Commissioner of Sheikhpura says :

“ The Sheikhpura Bar Association are strongly opposed to the proposed amendment. The Secretary writes ‘ popular feeling in this part of the country is not in favour of the proposed amendment. It is most revolting to the public sentiment that the only remedy which now exists to persuade the wife to return to her husband should be abolished.’.....The rural districts in the Punjab, however, are very much more backward, and I do not think that the time has yet arrived when this reform could be introduced with advantage.”

Both the Financial Commissioners in the Punjab are against it. I have read out to Honourable Members the opinion of the Deputy Commissioner of Sheikhpura which is in the Central Punjab. Now I come to the opinion of the Senior Sub-Judge, Ludhiana, which is in the East Punjab. He says at page 16 :

“ Imprisonment in the civil jail in execution of the decree thus serves a double purpose. In the first place it removes her for a time from the influence of the seducer, and in the second place it affords the husband an opportunity to work up and try to win her back to himself.”

Again, the opinion of the Bar Association of Ludhiana is :

“ All the Members are opposed to the Bill to amend the Civil Procedure Code on the ground that this will strike at the root of the restitution of marriage, render all decrees for restitution of conjugal rights passed in favour of husbands useless and would probably increase crime in the Punjab.”

We have also got the opinion of the Senior Sub-Judge of Hoshiarpur, a Judge of long standing ; Hoshiarpur is in the Doab, a very important portion of the Punjab. He is also very strong on the point. He says :

“ I am afraid I cannot support the Bill. Decrees for restitution of conjugal rights are already discretionary and Order 21, rule 33 of the present Code further allows the course to make an order at any time that the decree shall not be executed by detention in prison. The Legislature has thus already vested large discretionary

powers in courts in the matter.....In England society has considerably advanced from a state of 'status to that of contract'. The same thing cannot, however, be said of India.....Among higher classes these suits are very rare and the abolition of imprisonment will further loosen the matrimonial tie which is unfortunately already loose among the lower classes. I cannot agree that a woman who casts her dignity or self-respect to the winds by openly living with a paramour is entitled to exemption from detention on any ground whatsoever."

Then I would draw the attention of Honourable Members to the opinions of the Honourable Judges of the Punjab High Court, excepting Mr. Justice Shadilal. We have his opinion on one side and that of all the other Judges on the other side. Here is the opinion of the Honourable Mr. Justice Chevis, who has very lately retired and who was perhaps of the oldest standing in the High Court at the time when he gave this opinion :

"I strongly object to the proposed change as regards execution of decree against the wife. What suits England will not necessarily suit India at the present time. If, however, the proposed change is to be made I think it useless to waste the time of the courts in trying such suits and I would do away with such suits against the wife."

As regards suits brought by the wife against the husband, he says that he has come across only one instance throughout his life. Mr. Justice Chevis is supported by Mr. Justice Scott-Smith who, I think, is at present of the oldest standing on the High Court Bench. Mr. Justice LeRossignol also supports this view, and Mr. Justice Broadway, Mr. Justice Martineau and Mr. Justice Raof are also of the same opinion ; and so is Mr. Justice Abdul Qadir. So, excepting the Chief Justice, all the other Judges are against the Bill.

I need only read out to Honourable Members an extract from the opinion of Mr. Kennaway, District Judge of Ferozepur. He says :

"I would deprecate the further emasulation of our courts ; the present proposal would merely render them more impotent to execute their decrees than they already are, without in my opinion any adequate necessity being shown."

Again, Mr. Dundas, District Judge of Sialkot, says :

"I am not aware of any single instance in which an order for the imprisonment of a recalcitrant wife has been passed without full consideration and ample justification, inasmuch as courts are rightly allowed complete liberty to refuse to pass such an order, and I cannot at the moment recollect an instance where any such order has actually been carried into effect.

But amongst the lower rural and also the menial classes, threat of such an order obviously has some moral effect, and aggrieved parties do come to the courts to seek their remedy."

This further shows that this provision has some preventive effect. I am sorry I cannot lay my finger on the exact sentence, but in one of the opinions it is stated that the effect of this provision has been very excellent, namely, after the order of imprisonment was passed, it has resulted in a happy union between the husband and the wife. There are instances which show that the wives who went to their husbands for fear of imprisonment have afterwards lived quite happily with their husbands. Therefore, Sir, I do not think that we should take away such a happy provision from the Statute Book. I do not think I need take up the time of the House by reading out further extracts from the opinions received, but I will draw the attention of Honourable Members to the fact that the Government of the Central Provinces is against it, and they have discussed the question in great detail. Similarly, there is my sister province, which I feel is only a part of my own province, I mean the North-West Frontier Province,

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which has unfortunately been separated from us, and this province is also against it. The Honourable the Chief Commissioner of this Province says that :

“ the opinions consulted on the subject by this Administration are unanimously opposed to the enactment of the amendments under consideration. So far as the North-West Frontier Province is concerned, I am disposed to concur in the opinion expressed by the Secretary of the Bar Association of Peshawar that the abolition of the power to inflict imprisonment in default of fulfilment of a decree for restitution of conjugal rights would render the decree in such cases almost valueless. While sympathising with the general object of the proposed amendments I am doubtful whether the country is sufficiently advanced either educationally or socially to justify the removal of the penalty. In a proportion of cases the mere threat of its application is sufficient to induce a compromise, leading to adjustment of a temporary estrangement, and there can be no doubt that enactment on the lines proposed would remove a wholesome and effective deterrent.”

Therefore, the House will see that the Honourable the Chief Commissioner of the North-West Frontier Province thinks that this provision should not be removed from the Statute Book. Another neighbouring province of mine, namely Delhi, is also very strongly in favour of its retention. Therefore, I would beg Honourable Members to pay more serious attention to this motion and throw out the Bill.

Colonel Sir Henry Stanyon (United Provinces : Europeans) : Sir, I have a very few words to say in regard to this Bill. Restitution of conjugal rights is a social matter, a customary matter, as to which legislation has always been difficult. My Honourable friend the last speaker very obviously looked at the matter only from the point of view of the husband and not from that of the wife. He has not perhaps, quite naturally in this country, given it consideration from the point of view of the wife so far as a decree for restitution of conjugal rights obtained by her is concerned. This Bill will also relieve the husband from being sent to imprisonment on the decree of an importunate wife. But the absurdity of it was illustrated long ago in England in the well known cases of *Weldon* *vs. Weldon*. In those cases Mrs. Weldon periodically sued for restitution of conjugal rights. She got decrees and Mr. Weldon in order to comply with each such decree used to go and live with her for an hour and then leave her again giving a fresh cause of action for another decree. In course of time, as education advances, that may become a practice in India. After all, legislative interference with matters of this kind is always bound to be infructuous. You can get your decree easily enough, but the execution presents insuperable difficulties. How does it help restitution of conjugal rights to send a wife to prison ? No doubt, there are husbands who would gladly go to prison rather than live with some wives. That is hardly the point. The Honourable the Home Member has touched the real question at issue when he says that legislation like this would be an improvement if it did away with suits for restitution of conjugal rights altogether. I do not know how far the retention of suits in that form is necessary in the interests of this country, because the feeling in the matter varies with each province, possibly with each district of a province, with each community and so on. But, at all events, I do not see that this Bill

will in any way weaken the legislative power so far as it exists for restoring conjugal relations between a husband and wife. It will still be possible for the husband to sell his wife's "slave-bangle," or gold nose-ring, or some other trinket which probably she would rather keep than her liberty, and in that way he will have some effect. But the fact has to be faced that we cannot by any form of legislation bring about conjugal happiness and reconciliation. That is a matter for religion, for the people themselves and for education. This Bill in its way is harmless. All it does is to commit this Assembly to legislation of a more or less useless kind, but inasmuch as it is harmless, I think that it might have the support of the Assembly:

Mr. Muhammad Yamin Khan (Meerut Division : Muhammadan Rural) : Sir, I opposed this Bill at the previous stage, and I oppose it now. I think my Honourable friend Sir Henry Stanyon has missed some points of Bhai Man Singh when he said that Bhai Man Singh did not see the view point of the wife. He gave a specific illustration about this, but we hardly see such a case in a district even in a decade in our society. Suits which appertain to conjugal rights mostly come from the lower classes of people, and the view point of the wife in the lower classes of people can hardly be conceived by this House. The wife in these classes has absolutely no idea of her rights. She only lives with a man who is supporting her for the time being or is getting something better than she was getting at her husband's house. Now let us see what are the causes that lead to such cases? Generally, we find that the woman is living at the house of her parents because she is induced by them not to go and live with her husband, or she is living with her paramour. Now, Sir, my Honourable friend Sir Henry Stanyon must have noticed in his long experience both at the Bench and the Bar that when a woman is living at the house of her parents, the reason obviously is that they are trying to extort something from her husband which he is not willing to pay, and therefore they are inducing the girl, who has not got very much sense and who is practically under their control not to go to her husband. This is generally the cause when a girl is living with her parents, or the parents may be trying to induce the husband to relinquish his rights over his wife so that they may sell her to somebody else for some monetary gain to themselves. You will find that this is very common among the sweeper class, the Chamars, Kolis, Jats and other low class of people.

When a woman is living with her paramour, you find there are generally two causes why she has run away. Either the husband is poor and has not got sufficient means to keep her up in the style in which she wants to live, or she is generally an immoral woman, or the husband is an old man and the wife is quite young. (*Colonel Sir Henry Stanyon* : "Cruelty.") That is cruelty. If the husband is old, and the wife is young, that is generally a case of cruelty. These evils cannot be removed by the measure which is at present under consideration. For these purposes we require certain social improvements. For this purpose I think it would be better if the advocates of this Bill go about and organise some bodies who will go about and tell people not to marry their young daughters of about 10 or 12 years to old men of 60. If they go about and remove this evil in this way, that would help to remove many of the grievances that we come across in the district. In the other case, viz., where the hus-

[Mr. Muhammad Yamin Khan].

band is poor and cannot keep his wife in luxury and she runs away, will this House allow that all poor men's wives should run away with richer people without any remedy to the husband? I think this will place a great hardship on the poor husband. Taking the other case where she is living with her parents and the parents want to sell her to some rich man for some monetary gain, I think it will be a great revolution against the established morals of the country if this Legislature helps that to be adopted by the parents of the girl. Every measure which comes before this House to be passed requires the existence of some evil which is to a certain extent prevalent in the country. My Honourable friend who has brought this Bill before the House has not given any instance that in any particular district many women have gone to jail during any period in default of their returning to their husbands. Unless he can show that the Courts have been so very hard upon poor women as to send every woman against whom an order has been passed indiscriminately to jail, this measure becomes absolutely useless. I also agree with the suggestion that if the decree for restitution of conjugal rights had been absolutely done away with, that would have much better helped my Honourable friend's ideas than the present Bill which has the effect of keeping up a decree without any effect. If a woman is not sent to jail, how is the decree to be executed against her? A decree is passed by the Court. In most cases, a woman does not possess any property—at least among the Hindus. A Hindu woman has not got property unless she has got *Stridhanam* or some property which she has got from her parents as a life interest. That is property which is possessed in very rare cases.

But in most of the cases we find the woman does not run away if she has got some money inherited from her parents, if she is rich enough to keep herself properly if her husband cannot keep her in proper style. Then, if she has not got any property there can be no attachment of the property. The parent's property cannot be attached. The property of the parents cannot be attached if she has been induced by the parents not to go. And what is the effect? The Court's decree becomes absolutely impotent and I think it is taking a great deal of dignity from the Courts that they should pass a decree which becomes absolutely useless. I need not go and repeat all the arguments that have been advanced by Bhai Man Singh. But if we look at the circumstances we find that the poorer people are quite glad to receive back their wives who have been living with other men for years and years—they are quite happy. Well, for those persons this decree must be made effective and they should come back, because they have got no will power. It does not make any difference to them where they are living. I have seen myself in many cases, under section 498, that a woman who had eloped with another man and had been living with her paramour, if she came as a witness before the Courts, she gave evidence absolutely against her husband, but, if she had been taken away from her paramour and had been entrusted to somebody else and she came after a week or so, she gave all the evidence in favour of the husband and she accused the man who had run away with her, saying this man induced me in such and such a way, my sister or my daughter had been ill and he took me to such and such a place. This shows that the

woman has no will power and has no idea where she will be living and where she will be happy, but goes under the influence of a temporary idea that she will be happy. Of course, in a case where the husband is very old and the woman is quite young, it is different. In such cases I have seen many murders committed. But this is a social evil which can be removed as necessitated by social improvements in other ways and not by passing this measure and taking away the power from the Courts. So, with these few words, I oppose this measure and I think it is most unnecessary and not required at all to be put on the Statute Book.

• **Mr. J. N. Mukherjee** (Calcutta Suburbs : Non-Muhammadian Urban) : Sir, it becomes my unpleasant duty at this stage to say a few words on this Bill. At its early stages I opposed it, and I do so again, not because I am labouring under any particular fear—any personal fear—of my own, but because I think there is an inherent inconsistency in the Bill itself which is about to become substantive law. The present is also another instance of a Bill which furnishes a very clear example of the mischief of allowing public Bills to be introduced by private persons before the state of public feeling on the subject has been ascertained. It was my privilege to point out to the House on another occasion, that if a Bill of this kind was to be treated as a public Bill in England, no private individual would be allowed there to put forward a Bill of this kind. If there was a sufficient momentum of public opinion behind it, Parliament would take it up and originate a Bill of this kind ; and then, of course, it would go again to the country and public opinion on the matter as formulated in the Bill, would be ascertained. Now, what is the state of things, so far as the present Bill is concerned ? Here, it was only after the introduction of this Bill, we find that public opinion was taken, but the Bill itself was introduced on the initiative of a Member without any outstanding demand for it by the public ; and the public opinion that was collected after its introduction, and which has been read out to us by my Honourable friend, Bhai Man Singh, is perhaps practically unanimous in expressing surprise that whereas machinery is provided in the Statute Book for a decree to be passed for the restitution of conjugal rights, that that decree after being passed should remain ineffectual and the opinion thus collected does not seem to count at all. This is a position which is difficult to understand. One can understand that all suits for restitution of conjugal rights should be done away with. One can understand that. Let society find out other means for protecting husbands against the machinations of lovers or against unfaithfulness of wives and so forth. But what we forget now is this that the law allows, in a proper case, for a decree for restitution to be passed. That there may be extreme cases, there can be no doubt ; but whether a decree should be passed or not, in a particular case, is a matter which rests and rests alone with the Courts. If a sufficiently strong case for a decree for restitution of conjugal rights has not been made out, the Court will hesitate to pass a decree, and no decree for restitution would come into existence at all. It is only in cases of an outrageous character, where it is found that the Court is justified in passing a decree upon the merits of the case, that this rule as to execution will apply not to a case of cruelty, as was argued by my Honourable friend

[Mr. J. N. Mukherjee.]

opposite me, who is generally very very correct in his statement of facts ; in this particular instance, he unfortunately omitted to notice the fact that, if there was a case of cruelty, no Court would pass a decree for restitution of conjugal rights. Therefore, it is only in extreme cases that a decree for the restitution of conjugal rights would be passed, and, if there was justification for such a decree,—and every decree must be taken to be a fair, and just and honest decree—will the House take it that such a decree, when passed, should remain a scrap of paper, that no effect should be given to the decree ? Even in the matter of execution of the decree, the discretion of the Court comes in. The Court may order enforcement of a decree by personal imprisonment or it may not, so that, the question of enforcement is one which stands apart from the question of hardship. It is only where we allow that no decree for restitution of conjugal rights should be passed, that freedom of personal choice in a matter of this kind can be left absolutely unfettered ; it is only in such cases that we can contemplate a real exemption from the operation of the proposed Statute. Therefore, Sir, that is a point which we should never forget. Now, it has been pointed out by my Honourable friend, Bhai Man Singh, very ably, to my mind, at any rate, having his arguments upon the answers collected, that the existence of the present law operates as a deterrent. It is not necessary that in every case a person should be sent to prison for enforcing restitution of conjugal rights, but the present law operates as a deterrent, and, if the Statute Book contains a sanction of that kind, very often misguided persons might think twice before taking any decisive step in the matter.

Now, Sir, this is not a question purely and simply for the social reformer, but it is a question which affects the whole country at large, and, therefore, Sir, I may submit that I do not see the necessity of doing away with that portion only of the law which enables a Court, upon a sufficient case being made out, to detain a person in prison, to compel obedience to an order for restitution and which is something which does not affect freedom of individual choice and things of that kind in any way. Therefore, Sir, I must oppose the passing of this Bill—I am so sorry I am disobliging my friend, Dr. Gour, in a pet matter of his, but, taking all the points into consideration, I think, Sir, I ought to oppose the consideration of the Bill.

Mr. W. M. Hussanally (Sind : Muhammadan Rural) : Sir, I have had occasion to disagree with my friend, Dr. Gour, in a very important measure some time ago, but in this matter, I think I entirely agree with him that this Bill should be passed. The chief object of a marriage, as I understand it, is the conjugal happiness of the wife and the husband, and if that cannot be secured by the husband and wife living together I do not see why the law should compel the wife and the husband to live together in this manner by imprisoning the husband or the wife as the case may be. Imprisoning the wife and compelling her by that means to go to the husband, as was pointed out by my learned friend Sir Henry Stanyon, improves the matter in no way. On the contrary, so long as the woman remains in the civil jail,

she is entirely at the mercy of her captors there and she may be spoiled all the more. If the wife has gone wrong with another person, imprisoning her for a short time in the civil jail—it may be for a month or two or three—will not make her in ordinary circumstances think that she should go back to her husband. On the contrary, I think it will exasperate her and cause her not to go to the husband at all. My learned friend Mr. Mukherjee said that if there has been no cruelty proved, there is no reason why the wife should not be compelled to go back to her husband. Ordinarily, in cases of this kind, cruelty on the part of the husband towards his wife can seldom be proved because so long as she is under the roof of the husband she will hardly get any evidence of any cruelty that may be exercised against her by the husband. Therefore, if she has not been able to prove cruelty on the part of the husband towards herself, I do not think in ordinary circumstances she is to blame. Again, such cases as these—I mean cases of restitution of conjugal rights—are not very common in the country, and therefore if this punishment is removed I do not think it will be any hardship at all. So far as the Muhammadans are concerned, they generally have got the remedy of divorce in cases where the husband and wife do not agree, and though in India divorce among Muhammadans, and especially among the higher classes of Muhammadans is not very common, in Arabia and Persia for this reason divorces are very common and I think the divorce law is based upon very good reason. It is no use putting the wife and husband together if they cannot agree and they cannot live happily. So far as the Hindus are concerned, the case is a little more difficult, but even then, if the wife and the husband cannot agree and if the law will not compel the wife to go back to the husband, the husband, at any rate, is not prevented by the Hindu law to marry again under special circumstances of this kind. Therefore, so far as the husband is concerned, there is no hardship to him. He can have another wife whereas it may be a difficult thing for the poor wife because she cannot have another husband so long as the first husband is living. She must be taken to have very good reason not to go to her husband. Even at present, if I mistake not, under the civil law it is within the discretion of the Judge to send her to prison or not. And so far as I am aware there have been very many cases in which courts have declined to send the woman to prison. If that be so, then there is all the more reason I say for not keeping this punishment on the Statute Book. Ordinarily we find civil courts of law decline to send a woman to prison for declining to go back to the husband. If that be so, I do not see the good of allowing this punishment to remain on the Statute Book. For these reasons I think there is no reason why this punishment should remain; and whether you pass this law or not, the matter remains discretionary with the Judge all the same. There is, therefore, all the more reason why we should do away with it.

Mr. K. G. Bagde (Bombay Central Division : Non-Muhammadan Rural) : I move that the question be put.

Mr. Pyari Lal (Meerut Division : Non-Muhammadan Rural) : I support the motion before the House. It is bad enough, as has been observed by one Honourable Member, to have suits for the restitution of

[Mr. Pyari Lal.]

conjugal rights, but it is worse to send either a husband or a wife to prison. Now marriage is a very sacred relation and it is a tie that depends for its subsistence on the mutual harmony and goodwill between husband and wife. No self-respecting man or a man with any refined feelings would ever care to see his wife sent to jail, and if she has committed any offence and if they do not agree, they live apart and that is quite enough ; but to be vindictive, to go to court and send her to jail—I think very few people would care to do that and for that very reason you find in this country, people of the upper classes rarely go to court or bring suits for the restitution of conjugal rights. I do not know of a single case where a wife has gone to court in a case of that character or where a man of the upper classes has gone to court if his wife has gone wrong or has run away or her parents do not send her to him. It is looking at the tie of marriage in a sordid way to insist that when you lose a thing you must get it back. Imprisonment of a wife is a relic of the old barbarous days when you treated wives as goods or chattels. Dr. Gour has done a service, if he cannot in the present state of the law altogether abolish suits for the restitution of conjugal rights, in doing the very best thing that was possible, at least, to abolish imprisonment as a result of such suits, and in that view I support him heartily.

Mr. Harchandrai Vishindas (Sind : Non-Muhammadan Rural) : My experience has shown that so long as the provision for the imprisonment of wife remained, it turned out to be a dead letter. Now of course the primary object of providing this mode of execution for restitution of conjugal rights is that it should serve as a pressure upon the wife to go back to her husband to avoid the penalty of going to jail. What does experience show ? In many cases, probably in all cases that have come under my observation, wherever any such decree is passed against a wife and the execution is applied for, the wife has preferred to go to jail, which is after all a civil jail, rather than go to her husband. Now it appears, almost every speaker has told us, that such decrees or suits for the restitution of conjugal rights are few and far between in the upper classes and I have not within my experience come across a case where a member of the upper classes went to court for the restitution of conjugal rights. In certain cases a girl at an early age is tied down to a husband and eventually there is a feeling of repulsion between the two parties. Well, the girl is not willing to remain with the husband : the husband wishes to have her back and he files a suit for restitution of conjugal rights ; that is one class of cases. The other class of cases is where there comes on the scene a guardian or a parent who has his own axe to grind. In either case, whenever there is a decree of restitution and an execution, application is made for sending the wife to jail, the result has been the same ; she has refused to go back to her husband. There was one very celebrated Bombay case, more than 30 years ago, of Rukman Bai. She was a very well educated girl who had been tied down to her husband at a very early age ; when she grew up it was very repulsive to her to go to her husband and she declined to go. The Court eventually decided that she should not go to jail. In another case in which I myself appeared as a pleader, the woman when

directed to go to jail or else to go back to her husband said that she was willing to go to jail. The Judge in that case was however merciful enough not to pass the sentence of imprisonment upon her. So that, even if you do not amend the law, that portion will remain a dead letter. Therefore I think it is in the interests of society that this Bill should be passed.

Dr. H. S. Gour : Sir, I did not think that the debate on this subject would have been protracted to the length to which it has been after the unanimous recommendation of the Select Committee. So far as the Honourable the Home Member is concerned, he seems to lead a dual existence. As Sir Malcolm Hailey he has subscribed to the Bill and recommends that it be enacted into law.....

The Honourable Sir Malcolm Hailey : I must correct the Honourable Member. Our recommendation was that if the Bill was passed it should be passed in a particular form and nothing else.

Dr. H. S. Gour : As a Member of the Government he says he will abstain from voting and ask the other Members of the Executive Council to do the same. Now, Sir, the Honourable Member said that my Bill would be more logical if I abolished the suit for restitution of conjugal rights, and several Honourable Members, taking the cue from him, have repeated that argument. But have they for a moment adverted to the fact that the Civil Procedure Code which my short Bill is intended to amend applies not only to Hindus and Muhammadans but equally to all ? And in the case of Christians it is a well known fact that a suit for restitution of conjugal rights is a prelude to a subsequent suit for divorce. Therefore, in the case of Christians the necessity for such a suit exists and in the case of Hindus and Muhammadans the necessity for such a suit is equally obvious, for it is a well-known fact that if the wife contumaciously refused to obey the decree passed against her for restitution of conjugal rights, she forfeits her claim for maintenance. I therefore submit that that is not a sound argument, though it has been repeated from the Government Benches and by Honourable Members on this side of the House, that I should be more logical if I swept out of the Code of Civil Procedure suits for restitution of conjugal rights. I have demonstrated to the House that such suits are necessary, and I therefore submit that that argument goes by the board. I now pass on to the arguments addressed against my Bill from the non-official Benches. My friend, the Honourable Sir Henry Stanyon, has pricked the bubble when he said that every one of these arguments is an argument on the side of the husband, but it entirely overlooks the arguments of the wife ; and I am surprised to hear Members after Members taking it for granted that refusal on the part of the wife to cohabit with her husband is due to the influence of or the existence of a seducer and a paramour. Sir, I regard this as a libel upon the womanhood of this country. It is not always because a woman is seduced by a paramour that she refuses to live with her husband. It is also often because it goes against her conscience to live with her husband, who torments and tortures her, and she prefers to live a life of single blessedness to a life of servility and humility, confinement and misery in the house of her husband. Honourable Members have not referred to the common practice of infant marriages in this country. We have been told, and it is a fact, that girls of 5, 6, 7, 8, 10 and 12 are married and

[Dr. H. S. Gour.]

pass into the family of their husband. When they attain to years of discretion, they find that either the husband is ill-suited to them or that, either on account of temperamental differences of any kind, or of the cruelty of the husband, their life in the husband's house is intolerable. Who has not heard of the well-known case of the mother-in-law? I submit therefore that it is not merely a case of seduction as assumed by the Honourable Members but it is a case of conscience and individual liberty which guides the wife in refusing to live with her husband. Now opinions have been cited by my Honourable friend, Bhai Man Singh, who has told us of what certain learned Judges and learned pleaders think of the subject. But have they not one and all assumed that the wife leaves the protection of her husband because she has been seduced to do so by her paramour? And my friend, Mr. Yamin Khan, uses that argument as if it could admit of no contradiction. Sir, then it has been said that it is some protection against the seduction of the wife. I ask, Sir, if the wife is seduced by a paramour, a decree for the restitution of conjugal rights is no relief to the husband. The Indian Penal Code provides the relief. The husband can prosecute the seducer, and he can be imprisoned for the seduction of his wife. My submission, therefore, is that in the case of immorality, the husband is sufficiently and amply protected. I therefore submit that a very clear case has been made out for the enactment of this Bill. The Select Committee are unanimously of opinion and I should be wasting the time of this House if I harked back to the threadbare arguments used and replied to on the previous occasion. In my opening speech when asking this House to take this Bill into consideration I pointed out that this subject had been debated at great length on a previous occasion, and I hope, Sir, that this House will now pass this Bill into law with the self same strong majority with which it consented to the Select Committee. Let me remind the House that my motion for referring this Bill to the Select Committee was supported by 39 votes against 23—a majority of 16—and I hope, Sir, that this Bill will be enacted into law by even a stronger majority.

Mr. President : The question is :

“ That the Report of the Select Committee on the Bill further to amend the Code of Civil Procedure, 1908, be taken into consideration.”

The motion was adopted.

Clauses 2 and 3, as amended by the Select Committee, Clause 1 and the Title and the Preamble were added to the Bill.

Dr. H. S. Gour : I move, Sir, that the Bill be now passed.

Bhai Man Singh : I oppose the motion, Sir, and have given my arguments before. I would not therefore like to take up the time of the House. I only beg the Members who are with me to see up to the final stage and, in particular, to vote in any way they like. I have only to draw attention to two points raised by Dr. Gour. One was that there are some cases of infant marriages and of tyranny in which case of course Dr. Gour is justified. So far as tyranny is concerned I think my learned friend fully well knows that tyranny is a very good defence in a suit for restitution of conjugal rights and that matter can very well be gone through under the present law. So far as infant marriages are concerned, there is more

than enough discretion in the Court not to allow any imprisonment under the Rules. My friend the Honourable Dr. Gour laid much stress on the point that those gentlemen who have spoken on my side have supposed that the wife leaves the protection of her husband because she has been seduced to do so by her paramour; and the learned Doctor has said that I have quoted the opinions of learned judges and learned members of the Bar who have practically assumed this state of affairs. I submit that if so many eminent lawyers and so many learned judges have presumed this, it shows from their experience they have found that, in 99 cases out of 100, if not invariably, the woman refuses to go to her husband's house, because she is under the influence of her paramour. So, for the sake of 1 per cent., we have given enough discretion under the present law to the courts and there is absolutely no reason why for the sake of so few cases we should make this new law which would be so harmful.

The motion was adopted.

THE PREVENTION OF DEFERRED REBATES BILL.

Mr. T. V. Seehagiri Ayyar (Madras : Nominated Non-official) : I am sorry, Sir, that I am not in a position to move that my Bill be referred to a Select Committee. Government have informed me that many opinions have not yet been received and some of the Local Governments have not yet replied. In these circumstances, Sir, I cannot now ask that this Bill be referred to a Select Committee. I am not making the motion to-day.

THE INDIAN EVIDENCE (AMENDMENT) BILL.

Lala Girdharilal Agarwala (Agra Division : Non-Muhammadan Rural) : Sir, I beg to move :

"That the Bill further to amend the Indian Evidence Act, 1872, be referred to a Select Committee consisting of the Honourable Home Member, Mr. T. V. Seehagiri Ayyar, Dr. Nand Lal, Sir Henry Stanyon, Bhai Man Singh, Mr. Bagde and myself."

Sir, Honourable Members will remember that, when introducing the Bill, I had stated that it was only to alter one word in Section 63 of the Evidence Act. The Evidence Act provides that documents should either be proved by primary evidence, or by secondary evidence if primary evidence is not available; a document may be proved by secondary evidence—and Section 63 provides several instances of secondary evidence, for example, certified copies, copies made by mechanical process and copies made and compared with the original and counterparts of documents, and the last one is oral evidence of the contents of a document given by some person who has himself seen it. Now, it is this last clause which I wish to amend by the substitution of the word "read" for the word "seen". Now, what happens is this. As the clause at present stands, a man who is illiterate, that is to say, blind so far as the writing is concerned, who sees a document written in his presence which he cannot read, can give evidence as to the contents of that document. There was a case in the Allahabad High Court, in

[Lala Girdharilal Agarwala.]

which I had the honour to appear, in which it was held that the word "seen", as used here, does not mean seen like a toy, but it means seen with the mind's eye. The object with which I want this to be amended is to clear the law, so that the literal meaning of the law should be the same as the proper interpretation.

With these few words I commend my motion for the acceptance of the House.

The Honourable Sir Malcolm Hailey (Home Member) : Although the change in the Act which is now proposed consists only of one word, I must oppose the motion. The House will remember that when this Bill was introduced by a most unfortunate accident it could not be opposed. I need not perhaps recall the events to the recollection of the House, if only for the reason that they cast some discredit on my conduct of Government business ; but the omission was accidental and, had I not been prevented from appearing on that occasion, I should have made the same objection that I make now.

Lala Girdharilal Agarwala has referred to the case out of which this proposal has arisen. There was a mortgage, a somewhat ancient mortgage, on which certain persons took action in court. The plaintiffs could not produce the mortgage ; they attempted to give secondary evidence of it under Section 63 of the Evidence Act and they produced a man who said he was a marginal witness to the document. But he could not read. The two lower courts, though they held differing views as to the existence of a mortgage, did not enter into the point whether this witness was a competent witness or not ; but I have no doubt that, if, at this stage, counsel had called the attention of the courts to the wording of the Act, they could have had no doubt whatever on the subject. The words of the Act are, that an oral account of the contents of a document shall be given by some person who has himself seen it. Now it is very natural—the High Court agreed and everybody must agree—that a man who cannot read a document cannot give an oral account of its contents ; and so far therefore we need have no difference with Lala Girdharilal Agarwala. But two questions arise.—Is an amendment of the Act necessary, and is the kind of amendment which he proposes a suitable one ? I maintain that no amendment of the Act is necessary at all. Here we have a solitary instance in which two subordinate Courts have improperly admitted evidence. Had their attention been called to the wording of the Act, they could have had no doubt whatever that the evidence was inadmissible. They were, in other words, guilty of sheer inattention to the wording of the Act. I think it unlikely, specially with this case before them, that Courts will make a similar mistake again ; but I think the House will agree with me that the fact that the Courts have on one occasion paid improper attention to the wording of an Act does not in itself constitute sufficient reason for asking the Legislature to alter the Act itself.

This objection is reinforced by the difficulties which arise from the attempt of Lala Girdharilal Agarwala to amend the Act. He

proposes to change the word "see" into "read". Now if anyone will glance at Section 3 of the Evidence Act they will see that the word "document" has a somewhat wide meaning—that is to say, that a map or plan is a document. You could not pretend that you had read a plan. Again a picture is a document, and you could not pretend that you had read a picture. His change of the Act, therefore, would in itself make a requirement in regard to secondary evidence that could not be carried out at all in many respects. Then again, another difficulty arises. If all documents were short written documents—and I have shown that all documents are not written documents, and it is also perfectly obvious that all written documents are not short written documents—then you might put it to the witness that he had not only seen but had read a document, but it is perfectly competent for a witness to give an oral account of the contents of a somewhat long document, although he has not necessarily read the whole.

Now these are the objections to amending the Act. I say, in the first place, that no change is necessary because we have only one solitary case of inattention on the part of the Courts. My second point is that we have had no conflict of judicial rulings such as necessitates legislation. My third point is that if you amend the Act, as is suggested by the Honourable Member, you will produce complications which I am sure that he himself could not have foreseen but which are sufficiently serious.

The Honourable Dr. Mian Sir Muhammad Shafi (Law Member) : Sir, I would like to add a few words to what has fallen from the lips of my Honourable friend Sir Malcolm Hailey. It seems to me that the very case to which Mr. Agarwala has made reference is in itself an authority for the proposition that the proposed amendment is entirely unnecessary. Let me invite the attention of the House to a discussion contained in the body of the judgment on the point of law which is raised by my Honourable friend opposite in the amendment which he proposes. This is what the Judge says, at page 241 of the judgment :

"The point taken is that the witness, Neka, as his evidence shows is an illiterate person, who is unable to read and to write, that his evidence, if anything, falls within clause (5) of section 63 of the Evidence Act, which lays down that secondary evidence means and includes 'an oral account of the contents of a document given by some person who has himself seen it,' and that as he, Neka, was illiterate and could not read, he is not one of that class of witnesses which is contemplated by clause (5) of section 63."

And note what the learned Judge says with regard to this contention :

"There is considerable force in this argument. An oral account of the contents of a document given by some person who has merely seen it with his eyes but is unable to read it is merely the repetition of what was told or read out to him as to the terms of the document by somebody else. I am clearly of opinion that the word 'seen' in this clause of section 63 means something more than the mere sight of the document."

It is clear, therefore, that the learned Judge in this very judgment held that the word 'seen', as used in this provision—which my Honourable friend seeks to amend—means something more than seen, that is to say, the witness must have actually read it. Therefore, where is the necessity upon this judgment for the change of law which my Honourable friend seeks to bring about ?

The motion was negatived.

THE INDIAN LIMITATION (AMENDMENT) BILL.

Lala Girdharilal Agarwala (Agra Division : Non-Muhammadan Rural) : I beg to move :

“ That the Bill further to amend the Indian Limitation Act, 1908, be referred to a Select Committee consisting of the Honourable the Home Member, Mr. T. V. Seshagiri Ayyar, Sir Henry Stanyon, Dr. Nand Lal, Bhai Man Singh, Mr. Bagde and myself.”

Sir, I see that there is an amendment on behalf of Government that the Bill may be circulated for eliciting further opinion. If the Government desires to take that action, I have got no objection ; but I want to explain to Honourable Members the object of my proposed Bill. The Indian Limitation Act, in sections 19 and 20, enacts that acknowledgment and payment of interest or principal shall extend limitation. It appears that the principle of acknowledgment which has been embodied in the present Limitation Act of 1908 has been taken from the English law as it then stood ; but the law has since been changed there and I am told that under the present law an acknowledgment to save period of limitation must be a sort of fresh promise to pay. Under the present Limitation Act an acknowledgment need not be clear and definite, it need not be dated ; it might be conditional and may not be addressed to the person affected thereby ; it might be made by a person not authorised in writing. These are things which I should say are now relics of the past and in modern times we should have our law in line with the English law and also in line with common sense. A person who sleeps over his rights for a long number of years cannot take advantage of an indefinite or vague or undated acknowledgment, unless the person who gives the acknowledgment really means that the period of limitation should be given afresh. With these few words I commend my motion for acceptance.

The Honourable Sir Malcolm Hailey (Home Member) : I. beg to move as an amendment that the Bill be circulated for the purpose of eliciting opinions thereon. I understand from what the Honourable Mover said that he is prepared to accept my amendment. But at the same time, I feel it necessary to say on behalf of Government that its acquiescence in the proposal to circulate this Bill must not be held to bind it to an acceptance of its principle. We agree of course that sections 19 and 20 of the Limitation Act are some of the most difficult sections of the Act ; they have given rise to a large amount of case-law ; they have also given rise to a certain number of conflicting judgments. If, therefore, we could get the law clarified on this subject, it would be all to the good. But I must point out that the Legislature must work under certain limitations in clarifying the law. Its work would indeed be simple if it merely had to pass laws which were clear in themselves, and did not have to consider the complexities of the customs or habits to which these laws must apply. Here we have a matter which deeply concerns the business and commercial community, and we must, in any amendment that we contemplate of the law, consider existing commercial custom and practice ; we are not justified in amending our law in such a way that it will be

necessary to modify a commercial practice which is otherwise not open to objection. Let me take first the question of acknowledgment to which the Honourable Member referred. He states that modern practice demands that acknowledgment should be clear and unconditional ; and yet you will find in practice that many acknowledgments of an implied nature have been admitted in the past and are being admitted to-day, and so far from it being certain that acknowledgments must be clear and unconditional in order to set up a fresh period of limitation, I find on examining the question that, while the Madras Courts have held that an acknowledgment must be unconditional or subject only to a condition which is fulfilled, the Calcutta Courts, on the other hand, have held that a conditional acknowledgment is good. Then again, the Honourable Member seeks to clarify the question of acknowledgment by an agent. An acknowledgment by an agent should, he thinks, only be good if the agent is appointed in writing. Now our Courts appear to have held that the agent is not necessarily an agent who derives his authority from contract. We have a recorded case, for instance, of a Diwan who always signed on behalf of an employer who never signed or wrote himself, and it was held that his acknowledgment was good. *Then we have all the difficult cases arising out of the position of a manager of a Hindu Joint family, and his power to make an acknowledgment which would bind the family and thereby set up a fresh period of limitation against the family. We have all the difficult cases arising out of the position of a guardian and a minor. The Honourable Member would introduce by his amendment a change in the practice of our courts and in the custom which has hitherto been held good in this country.

Then again it will be noticed—again this is an important point—that he would entirely neglect the effect of the payment of rent in regard to a mortgage subsisting on land. These are all important points, but it is not necessary that I should go any further into details on the subject. Indeed, it would be improper if I should do so on the present occasion. But there are important points of principle involved, and we could not ourselves agree to accept even in principle the amendments which he proposes. Finally, I think that he has neglected to observe that his amendment of the Act would prejudicially affect a large number of creditors in this country. For he would at one stroke insist on requirements in regard to the establishment of a liability which were not in contemplation previously : liabilities hitherto believed to be good would cease to be so ; and creditors would find that they had run out of limitation when they imagined themselves to be within their periods.

All these points, therefore make it necessary that we should, as a serious Legislature, approaching a very difficult question, seek further opinion on the subject, the opinion not only of High Courts and Legal Associations, but of the business men who are so vitally affected by any amendment in the Limitation Act.

Mr. President : Amendment moved :

“ That the Bill be circulated for the purpose of eliciting opinions thereon.”

The question I have to put is that the Bill be circulated. _

The motion was adopted.

THE GENERAL CLAUSES (AMENDMENT) BILL.

Lala Girdharilal Agarwala (Agra Division : Non-Muhammadan Rural) : Sir, I beg to move :

“ That the Bill further to amend the General Clauses Act, 1897, be referred to a Select Committee consisting of the Honourable the Home Member, Mr. T. V. Seshagiri Ayyar, Sir Henry Stanyon, Dr. Nand Lal, Bhai Man Singh, Mr. Podge, and myself.”

The proposed amendment which I seek to make is in the definition of the term “ sign ” with regard to illiterate persons. As the law at present stands, it says : “ sign ” with its grammatical variations and cognate expressions shall, with reference to a person who is unable to write his name, include “ mark,” with its grammatical variations and cognate expressions : So that at present any mark which is made either in pencil or pen or by any other means is quite sufficient as a substitute for signature. Now, I submit that in modern times, the science of thumb impression has very much advanced, and I know of cases in which persons have been sentenced even to death merely upon the evidence afforded by thumb impressions. I submit that to fix the identity of an illiterate person’s mark on a document, it is very necessary that the law should improve with the advance of society and the improvement of science. It is for this reason and to safeguard illiterate or half-literate persons from fraud, forgeries and perjuries, that I have brought this measure before the House. I am not wedded to the language or the terms used in my Bill, but I raise it as a question of principle, leaving it to the Select Committee to amend the Bill in any way they please. My simple object is that illiterate and half-literate persons should be saved from the effects of marks made by them or for them by somebody. There must be some guarantee and some certainty that the signature of an illiterate person is the mark of that person and nobody else. With these few words, I move this measure for acceptance of the House.

The Honourable Sir Malcolm Hailey (Home Member) : This is another of those Bills on which I was unfortunately prevented from giving advice to the House on a previous occasion, for whatever that advice is worth. It will be noticed that under the General Clauses Act, as it stands, it is merely provided that “ Sign ” shall with reference to a person who is unable to write his name include a mark ; that is to say, a person who is unable to write his name may establish the fact that he has witnessed the document by any manner including a mark. Now, the Honourable Member proposes that in any case in which a man is illiterate, he shall affix his left thumb impression. I leave it as a matter of detail to be attended to by the Select Committee, if a Select Committee is ever appointed, as to what should be done with an unfortunate man who had no left thumb. I merely wish to protest, on a matter of principle. The mover suggested that in modern times, and with the progress of the art of thumb impression, we should utilise the system of thumb impressions in order to secure—what ?—that we should “ have some guarantee and certainty ” that the mark really is the mark of the illiterate person. Now, those who have seen the kind of thumb mark that is made on postal

receipts—the kind of thumb mark that is made by any person, in fact, who does not make it properly, with proper material, after proper preparation and under proper supervision, is absolutely useless, and it could never secure the object at which the Honourable Member aims, namely, a guarantee and a certainty that the mark is the mark of the illiterate person who has witnessed the document. On the contrary, in my opinion, the measure would be distinctly harmful because it would lead to assumptions as to identity which could never be made good. A thumb mark, a mere smudge made on a document by an illiterate person, could not afford any justification for assuming the identity of the person, and the courts might very easily be led into serious mistakes by attaching to such a mark an importance which it does not possess and which they would never attach to an ordinary mark across the line, for, with regard to the latter, they would take it for exactly what it is worth and require evidence—very clear evidence—that it was made by the person who was alleged to have made it. I say, therefore, that so far from being an improvement on the present law, this amendment to the General Clauses Act would likely be prejudicial to the working of justice. We have never adopted this requirement in England. I have no reason to suppose that our thumbs are different from the thumbs of other people. We probably can make as clear marks as other people. But we are sufficiently wise not to attach to a mark of this nature unless made under expert supervision a value which it does not possess from the evidential point of view. I therefore oppose this motion.

Mr. Harchandrai Vishindas (Sind : Non-Muhammadan Rural) : Sir, although by the remarks I am going to make I do not commit myself one way or the other to the measure proposed by Mr. Girdharilal Agarwala, I rise merely to correct the Honourable the Home Member, Sir Malcolm Hailey, in the remarks that he has made with regard to the value of thumb impressions. I am speaking from personal experience. I myself appeared in a case for the accused where the accused was charged with forgery—of having got the thumb impressions of different persons from those from whom he got the bond. Recently there had come out a book on thumb impressions. Witnesses were adduced who were experts in examining thumb impressions, and it was found absolutely impossible to commit any mistake in finding out whose thumb impression was taken.

The Honourable Sir Malcolm Hailey : If taken clearly, that is my point.

Mr. Harchandrai Vishindas : I studied that book. If a witness comes forward, and if you put 40 persons along with him, you can distinguish him over his thumb impression.

The Honourable Sir Malcolm Hailey : If it is taken clearly.

Mr. Harchandrai Vishindas : It is impossible to make any mistake. I wish I had that book before me to show it to Sir Malcolm Hailey.

The Honourable Sir Malcolm Hailey : It is unnecessary to produce it. I have read it.

Mr. Harchandrai Vishindas : If that be the case, my own opinion has been that a thumb impression is a greater guarantee of identifying the

[Mr. Harchandrai Vishindas.]

man than his signature. Whilst you can forge a signature, you cannot forge a thumb impression. Of course, I am making these remarks without committing myself to the view that the measure as introduced is necessarily a wholesome one.

Colonel Sir Henry Stanyon (United Provinces : European) : Sir, I have only a few words to say with regard to the impracticability of this Bill. Those of us who have any experience in finger impressions know the value of them, when properly taken, for the purpose of identifying the person who made them. But they have to be properly taken, taken in a particular way, with a particular kind of ink, and in a manner which it is quite hopeless to expect will be carried out in places where documents and receipts are executed among the general body of the community. Most of the proposed thumb impressions, even though they be *left* thumb impressions, will be absolutely undecipherable. What will be the result if this enactment becomes law ? This Bill asks not only that the thumb impression shall be made, but also that it must be one which is clearly decipherable. Who is to decide that each particular impression is of that kind ? Is the State going to establish offices all over the country like registration offices which will pass each thumb impression as one that is clearly decipherable ? Because, if it is not clearly decipherable then the man who cannot pay his bond may plead that the bond has never been executed,—that it is not signed. That will be one practical difficulty. We do not find in the other part of the proposed definition of “ signed ” that the signature of a literate executant must be a legible signature. Yet in Clause (a) it is proposed that the thumb impression of an illiterate executant must be one which can be clearly deciphered. It is impracticable to hope to secure anything of that kind. I submit that the measure is absolutely impracticable ; it could not be given effect to if enacted ; and for that reason alone I think it ought to be opposed.

Dr. Nand Lal (West Punjab : Non-Muhammadan) : I support this measure. It cannot be denied, and I think there is not a single Honourable Member in this House who can deny the contention that the present measure is decidedly an improvement upon the present law. Will this House allow this word “ mark ” to remain on the Statute-book when it finds that there has been a conflict of judicial decisions with regard to this question ? Sometimes a number of witnesses come forward and say that “ the executant of this bond has made this mark.” There will be a difference in their very camp and on account of this difference the proceedings will be protracted, public time will be wasted and the author of this measure, to my mind, has rendered a great service in removing this ambiguity, which has been proved to be detrimental, so far as judicial proceedings are concerned, and the public interests go. The argument has been advanced that if this measure is very minutely considered, it leads to an impracticability. I do not find any impracticability in it. The author of the measure, however, has frankly made an admission that he is not dogmatic, that he is not wedded to the phraseology of this measure. He has left it to the discretion of the Select Committee. If they want to make any alteration in the phraseology of this measure they are welcome. The other point which could be urged in refutation of the argument centering

round the so-called impracticability is this. Is there not practically the same trouble so far as the question of signature goes. Some people will sign in so bad a manner that it is extremely difficult to decipher it. If he denies it, a number of experts would come, and judicial experience is in support of the contention which I am raising that sometimes experts have failed to come to any definite opinion in regard to the correctness of the signature even. If even the man who has signed has denied his signature, then this so-called impracticability, in regard to thumb impressions, has got no force at all. I should not prolong my arguments. This is a simple point. The proposed Bill is a measure of the greatest possible utility and it need not have any opposition. It has put me to great surprise that there has been opposition to this useful measure from some quarters. With these few remarks I support this measure which speaks for itself, and I hope the whole House will be in favour of it.

Mr. L. Graham (Secretary, Legislative Department) : My friend, Dr. Nand Lal, asks who is bold enough to say that the present Bill is not an improvement on the present Act. I think it requires no great amount of courage to take up that challenge. The present Bill, Sir, if passed into law, would have the effect of preventing a very large amount of illiterate people from executing any document at all. That seems to me a wholly undesirable position. Even if an illiterate person has the good fortune to possess a left hand and on it a left thumb, he has still to find an expert who can take his thumb impression so clearly as to satisfy the author of this measure and the courts—a left thumb impression which can be clearly deciphered. Sir, in my Assistant Collector days, when I was learning many odd things, I was taught amongst other things to take thumb impressions and I know what an extremely difficult thing it is to do. It is an art to put the ink on the plate. It is a greater art still to transfer the ink from the plate to the thumb. Then you have the delicate operation of rolling the thumb over the paper. The rolled thumb impression is a very delicate operation indeed. Now, we train our sub-registrars to perform this operation, but we do not have persons of that capacity in every village. The proposal is impracticable and the only result will be that an illiterate man will not be in a position to execute a document unless he makes a pilgrimage to a sub-registrar. There are two other grounds on which I would oppose this Bill, though no doubt it requires great hardihood. The first is this. In his motion for leave to introduce this Bill, the Honourable Member said : “ We find neither in our law of evidence nor in the General Clauses Act thumb impressions find a place. The main object of my introducing this present measure is to give legality to thumb impressions.” Thumb impressions are perfectly legal now under the existing law. If the man is illiterate he can make his signature by thumb impression. If he is literate, he cannot. That is a question which was decided in a case in the Calcutta High Court as long ago as 1905 in *Sadananda Pal v. King Emperor*. In that case the thumb impression was taken of a man who was literate and the court disallowed it on the ground that he was literate. Had he been illiterate his thumb impression would have been as good as a signature. It is perfectly incorrect to say that it is necessary to legalise thumb impressions, which is the primary object of this Bill. Secondly, Sir, I object to this Bill on the

[Mr. L. Graham.]

ground that it ought not to have a plface, even supposing it was necessary, in the General Clauses Act, because we are enacting not only definitions, we are enacting a bit of substantive law in this Bill, and the General Clauses Act, at any rate Section 3, is of the nature of an index, an index to all the Acts of the Indian Legislature. When you are enacting an index you do not put substantive law into it.

Lastly, Sir, the Honourable Member says he is not wedded to the details of the Bill. I admire his discretion ; he would find this Bill a most uncomfortable consort. But the point is that every single detail of this Bill is bad. All that a Select Committee could do—a Select Committee which did its duty—would be to recommend that in place of this Bill the existing provisions of the Law, which are ample, be maintained.

Mr. President : The question is :

“ That the Bill further to amend the General Clauses Act, 1897, be referred to a Select Committee consisting of the Honourable the Home Member, Mr. T. V. Seshagiri Ayyar, Sir Henry Stanyon, Dr. Nand Lal, Bhai Mau Singh, Mr. Bagde and Lal Girdharilal Agarwala.”

The motion was negatived.

THE INDIAN CRIMINAL LAW AMENDMENT (REPEALING) BILL.

Lala Girdharilal Agarwala (Agra Division : Non-Muhammadan Rural) : Sir, I rise to beg leave of the Honourable House to introduce the Bill which stands in my name, namely :

“ A Bill to repeal the Indian Criminal Law Amendment Act, 1908.”

Honourable Members may be reminded that that Act was passed hurriedly on the 11th December 1908 on the very date of its introduction after the rules of business had been suspended for the purpose. The Honourable Sir Harvey Adamson who introduced the Bill stated that there had been anarchical crimes in certain parts of the country which necessitated the passage of the Act and he cited as examples the Midnapur Bomb Case in which an attempt was made against the life of the Lieutenant Governor of Bengal and other cases against the lives of Sir Andrew Fraser, Mr. Allen, Mr. Hickenbotham, the Mayor of Chandernagore, Mr. Kingsford, Mr. and Mrs. Kennedy, as well as the Maniektolla bomb conspiracy case. The Legislation was in the first instance made applicable to the disturbed provinces of Bengal alone. The Honourable Mr. Dadabhoj made it clear that the Act should not be permanently placed on the Statute-book, but should be repealed as soon as a normal state of things was restored. He suggested that the Act should remain in force for a stated period. The Honourable the Maharaja of Darbhanga sounded a note of warning and hoped that the absolute power under the Act would be used with great discretion by His Excellency the Governor General in Council. The Honourable Dr. Sir Rash Behari Ghosh did not accept the clause which gives the Executive power to suppress associations which they may deem

to be unlawful. He added that anarchism was bound to die out as it was opposed to Divine laws, but it could not be killed by coercive Acts. In reply to the Honourable Mr. Dadabhoj, the Honourable Sir Harvey Adamson said if conditions improved it would be easy to repeal the Act though it may not be enacted for a stated period.

The law was applied to several parts of India from time to time and was withdrawn in several instances when no longer required. On the 4th of February 1921 a Resolution was moved in another place for the appointment of a Committee to examine repressive laws and to report whether all or any of them should be repealed or amended. As a result of that Resolution a Committee was appointed which examined a large number of official and non-official witnesses, and although the statements of those witnesses have not been published, the report has been published and it shows that there was a volume of evidence in favour of repealing the Indian Criminal Law Amendment Act as a whole.

The Committee reported that it was generally accepted that Part I of the Act has failed to achieve in Bengal the purpose for which it was designed. As regards Part II, the Committee reported that the conspiracy sections of the Indian Penal Code might meet the case if, but only if, evidence were forthcoming. But the Committee did not recommend the immediate repeal of Part II of the Act. The recommendation of the Committee was the same as that of the Government of Bihar and Orissa, viz. :

“ Subject, however, to the reservations temporarily made in favour of the Seditious Meetings Act and Part II of the Criminal Law Amendment Act, which cannot be abandoned until the present tension created by the non-co-operation movement has been relieved by the action of its leading promoters, His Excellency in Council desires again to emphasise the importance of removing from the Statute-book as far as possible all special laws of this character so that the Government of India under the reformed constitution may proceed with a clean slate.”

Part I of the Criminal Law Amendment Act has already been repealed by Act 5 of 1922. The present Bill is intended to repeal the Act as it now stands.

The laws of England are generally accepted as bases for Indian laws. Look at the law that obtains in England with regard to public meetings. Professor Dicey's well-known dictum may be cited when he says, “ The Government has little or no power of preventing meetings which to all appearance are lawful even though they may in fact turn out, when actually convened, to be unlawful, because of the mode in which they are conducted.”

The Honourable Sir Malcolm Hailey said in reply to a question on 7th September 1922 (page 175) that the Government of India addressed Local Governments in May last on the subject and some replies were still outstanding. I hope the replies have by this time been received from all the Local Governments. The object of my Bill is that the new Legislative Assembly might start with a clean slate. The present condition of the country is quite peaceful, and it is unnecessary to keep this coercive

[Lala Girdharilal Agarwala.]

measure on the Statute-book any longer. We have been told, times out of number that when better times arrive, this Act will be repealed. I now request the Honourable House to grant me leave to introduce this Bill. With these few words, I commend my motion for acceptance.

Mr. President : The question is :

“ That leave be given to introduce a Bill to repeal the Indian Criminal Law Amendment Act, 1908.”

The Honourable Sir Malcolm Hailey (Home Member) : Sir, for some reasons it might suit me better not to oppose this motion. If the Bill were allowed to proceed, and were either referred to a Select Committee or brought up on a subsequent motion for consideration, I should have an ample opportunity both of justifying the retention of this Act and of meeting the charges which have from time to time been made that its provisions have been misused. As it is, the brief time allowed for a motion to reject introduction will allow me only to catalogue my objections and not to expatiate on them. The Honourable Member has referred to the circumstances and the times in which the bill was originally passed. I shall not delay the House by referring to the long series of outrages and attempted outrages between 1906 and 1908 which made the passing of this Act necessary—it was amply admitted at the time that it was essential for the safety of an important province of India that exceptional measures of this nature should be undertaken. But its necessity did not end in 1908. Let me give the barest outline of the course of revolutionary activity in Bengal from 1912 to 1917. I am aware that we met that activity not mainly by this Act, but by the Defence of India Act. My immediate point is that some such exceptional legislation was not only necessary in 1908, but was still required at a later date. In that period, 1912 to 1917, there were 174 serious outrages of an anarchical or revolutionary nature. Taking the period as a whole some 800 persons were apprehended ; two hundred of them confessed to definite complicity in a revolutionary movement ; three hundred were implicated by the confessions of associates or by outside corroborative evidence ; two hundred were implicated by their own statements or finds of arms and other circumstances. There were six discoveries of bombs and some sixty finds of arms. That the revolutionary movement was a reality is therefore certain beyond all doubt, and I further assert that it could only have been met by exceptional measures such as are contained in this Act or in the rules under the Defence of India Act. For it was proved not once but again and again, that a state of terrorism prevailed so great that no one would give evidence against these criminals ; informers were more than once murdered, and the only way open to authority to suppress the movement was to attack these associations as soon as they were known to be engaged in a criminal programme, and before that programme could be carried into execution. We may be told that that state of things has passed ; that it will probably never recur again. But if it were safe to do so, I could give to this House details which would prove to them that there are persons in Bengal who are even now attempting to revive these anarchical conspiracies ; I could give them names of officers, some European, some Indian, whose lives are definitely known to be in danger

from these emissaries of revolution. What is more, those who are acquainted with psychology of such movements will bear me out when I say that the times are favourable rather than the reverse to a recrudescence of this movement. During seasons of intense political agitation, extreme or violent revolutionaries are apt to be absorbed in the agitation itself, or to suspend their activities in the hope that such agitation may bring them some part of that for what they are contending. The agitation in which they were absorbed is now for the moment quiescent ; but if there is anything in the history of similar movements, not only here but elsewhere, then the very fact of its ill-success argues a likelihood that the advocates of a campaign of outrage and violence will resort again to the programme to which they vowed themselves in the past.

So much for the class of crime which this Act was originally intended to meet. But we shall no doubt be reminded that it has been used for other purposes than repressing anarchical and revolutionary conspiracies such as those of Bengal. It has of late years been applied to bodies which are not anarchical in the sense of being committed to anarchical outrages, not revolutionary in the sense that they desire to subvert Government by force, bodies whose avowed object at all events is non-violent. I mean of course the Congress and Khilafat associations of volunteers. Not only has the Act been applied against them, but we shall also be told that it has been misapplied. I suppose that there is no stronger indictment of the use of the Act in this respect than can be found in the Report of the Congress Civil Disobedience Enquiry Committee of 1922. I take it that this is the best documented, even if the most biassed and the most prejudiced statement that could be put together as an indictment against the use of the Criminal Law Amendment Act against associations of this nature. But I also believe that that Report, if studied dispassionately, will afford equal material for the inevitable conclusion that the use of this Act, or something like this Act, is essential. For what was the avowed object of these associations ? I take them at their best and on their most innocent and their least criminal side. Their avowed object was civil disobedience. Civil disobedience is not that mild, sentimental, almost Platonic programme that we have been sometimes led to believe. Let me read the definition of offensive Civil Disobedience. It is well that I should remind the House of it. It was laid down in the Ahmedabad meeting of December 1921 :

“ Offensive civil disobedience means deliberate and wilful breach of non-moral laws, that is laws the breach of which does not involve moral turpitude, not for the purpose of securing the repeal of or to relieve hardship arising from the obedience to such laws, but ”

—and I ask attention to these, the decisive words—

“ for the purpose of diminishing the authority of or overthrowing the State.”

Now, if that was the intention, it does not need much imagination to conceive either what would be the progress of the movement or its inevitable results to law and order or the safety of life and property. Here again remember that I am still speaking of what may be described as the most innocent aspect of the movement. You will find no better analysis of the inevitable course of such an agitation than in the words of one who has certainly been no friend of our administration:

[Sir Malcolm Hailey.]

I will read first what he has written, and I will give you his name afterwards. He says :

“ Long before this final stage of non-co-operation is reached, the people will either get out of hand or the Government, refusing to be paralysed, will provoke violence and revolt and try to crush the rebels by its superior might. No Government can allow a movement like this to proceed to its ultimate stage. If the Government is to be destroyed it would prefer to be destroyed by physical force rather than by the application of so-called soul-force ; non-violent non-co-operation can never go beyond a certain point. It is bound after it has reached this point either to collapse, or, which is more likely, to develop into an armed revolt or revolution.”

The writer of these words is Bepin Chandra Pal. Of the truth of that analysis, as a prophesy of the inevitable conclusion of such a movement, there can be no doubt. But it never really maintained, and never was at any moment able to maintain, the comparatively innocent and peaceful programme to which it pretended. Even the Congress Enquiry Committee had to admit that there were frequent instances of ill-discipline ; they had to admit that in many cases their volunteers had been guilty of actions which had done no credit to themselves or to their movement. The indictment is in all truth a mild one. I wish I had time to give the full story of what lay behind that very qualified confession. I would base my indictment not on the opinions of Local Governments, nor on the statement of any one who could be said to be biassed on political or other grounds against the volunteer organizations. I would base what I should have to say entirely on the opinions of the criminal courts, and mainly the Sessions Courts and the High Courts. I would prove from the judgments of these courts that there had been frequent occasions when volunteers, under the pretence of persuasion, had indulged in intimidation which had ended in arson and riot and even in suspicion of murder. I would prove that under the pretence of assisting the temperance movement, they had hired as associates the scum of the bazars, who utilized the opportunity to raise blackmail from vendors, and were themselves frequently found in the extreme of intoxication. I would, again, appeal to our criminal figures as showing the indirect results of this movement. I would show that while in 1920 there were some 2,928 cases of dacoity and similar serious crime, the number of such cases rose in 1921 to 4,322. I would show from the judgments of the courts that in many cases crimes could definitely be traced to the impetus towards disorder and the feeling of insecurity caused by the operations of these organizations. But I need not dilate on this aspect of the case, because it was admitted in the discussions in this Assembly on Munshi Iswar Saran's Resolution of January 1922 ; our action was endorsed by the vote of a House which had at the time not only in its memory but before its eyes, the evidences of the reign of terrorism and disorder which had been created.

But, here again, Sir, I have no doubt there are those who would hold that, although it might have been justifiable at that time to retain on the Statute-book an exceptional measure for use against organizations of this nature, circumstances have now changed and that it is no longer proper to maintain the law now that the movement has collapsed and the danger has passed. But here again I must warn those who hold that view against an excess of confidence. What,

I ask, is the meaning of the Gaya Resolutions ? What is the meaning of the demand that 50,000 volunteers should be raised, better organized and better prepared than the old volunteers for a programme of civil disobedience ? What is the meaning of the demand that a movement which was at one time largely in the hands of people of some education, however slight, should be extended to the labourers and peasants ? What does it mean when the President of that Congress preaches not only against the Bureaucracy, but against the Scribes and Pharisees, to use his expression, who are sitting in this Legislature ? What does it mean when their own organ openly declares that the new policy must be to spread the gospel among the labouring and agricultural classes with the definite view of promoting immediately a "No tax" campaign ? The mover, in his easy optimism, might well take warning by what happened in his own province ; the facts I shall give should come home to him. He represents a constituency in the United Provinces. I refer him to a debate in the United Provinces Council which took place on the 23rd January 1922. One speaker after another asserted that it was unnecessary to retain this law in force in the districts of that Province. Ten days afterwards occurred the terrible tragedy of Chauri Chaura, and the High Court, in sentencing the persons mainly responsible for that crime directly attributed its occurrence to the action of the local Congress and Khilafat volunteers. I have no doubt that it was a provision of the danger of repealing the exceptional precautions provided by the Act which prompted our own Repressive Laws Committee—a Committee of this House—in deciding in September 1921 that it would not recommend that this particular Act should be withdrawn. The description of their recommendations given by the Honourable Mover did scant justice to their views. Actually they were as follows : on such evidence as was before them they found that many of these organizations were seditious organizations, formed for the purpose of intimidating loyal citizens and interfering illegally with the administration. For that reason they thought that for the present it was necessary to retain the Act.

Now, coming for a moment to the Act itself ; I am aware that it has deficiencies. I am aware that it is an exceptional measure and as such is always open to criticism ; but I maintain that all experience has shown that the ordinary law is not sufficient to cope with intimidation and terrorism on the extended scale to which these organizations have lent themselves. By all means let us use the Act sparingly. By all means let Local Governments avoid its use unless there is good and sufficient reason for holding that there is no other alternative. But it is impossible to contemplate the repeal of this Act until we can find something better or at all events something adequate to take its place. We ourselves have attempted to devise a substitute ; we have failed to do so. If the Honourable Member, instead of attempting to repeal this Act, had applied his ingenuity to devising adequate means to enable the law to cope with organizations of this nature, then we should have been prepared to give it the fullest consideration. But in the meanwhile I must oppose his motion ; and I oppose it, Sir, not because I am careful for the prestige of a bureaucratic government ; I oppose it in the interests of the ordinary citizen, who wants nothing so much as to be left in peace and quiet without intimidation and

[Sir Malcolm Hailey.]

without terrorism, to pursue his ordinary avocations. I oppose it in the interests of that stable atmosphere of order which is so essential to the moral, social and political progress of India.

The Assembly divided :

AYES—20.

Abdul Majid, Sheikh.
Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ahsan Khan, Mr. M.
Ayyar, Mr. T. V. Seshagiri.
Bagde, Mr. K. G.
Basu, Mr. J. N.
Bhargava, Pandit J. L.
Das, Babu B. S.
Dass, Pandit B. K.

Gour, Dr. H. S.
Gulab Singh, Sardar.
Mahadeo Prasad, Munshi.
Man Singh, Bhai.
Nand Lal, Dr.
Neogy, Mr. K. C.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sohan Lal, Mr. Bakshi.
Venkatapatiraju, Mr. B.

NOES—46.

Abdul Hamid Khan, Khudadad Khan,
Mr.
Abdul Rahim Khan, Mr.
Abdulla, Mr. S. M.
Aiyer, Sir P. S. Sivaswamy.
Akram Hussain, Prince A. M. M.
Ayyangar, Mr. R. Narasimha.
Bardswell, Mr. H. R.
Barnes, Mr. H. C.
Bhanja Deo, Raja R. N.
Blackett, Sir Basil.
Bray, Mr. Denys.
Burdon, Mr. E.
Butler, Mr. M. S. D.
Calvert, Mr. H.
Chatterjee, Mr. A. C.
Clarke, Mr. G. B.
Dalal, Sardar B. A.
Faridoonji, Mr. R.
Gaskell, Mr. W.
Graham, Mr. L.
Gwynne, Mr. C. W.
Haigh, Mr. P. B.

Hailey, the Honourable Sir Malcolm-
Holme, Mr. H. E.
Hussanally, Mr. W. M.
Ikramullah Khan, Raja Mohd.
Innes, the Honourable Mr. C. A.
Jamall, Mr. Ashruff O.
Majumdar, Mr. J. N.
Mitter, Mr. K. N.
Muhammad Hussain, Mr. T.
Mukherjee, Mr. J. N.
Nabi Hadi, Mr. S. M.
Nayar, Mr. K. M.
Percival, Mr. P. E.
Rajan Baksh Shah, Mukhdum S.
Richey, Mr. J. A.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Sim, Mr. G. G.
Singh, Mr. S. N.
Sinha, Babu L. P.
Stanyon, Colonel Sir Henry.
Subrahmanyam, Mr. C. S.
Ujagar Singh, Baba Bedi.
Yamin Khan, Mr. M.

The motion was negatived.

THE INDIAN PENAL CODE (AMENDMENT) BILL.

AGE OF CONSENT.

Dr. H. S. Gour (Nagpur Division : Non-Muhammadan) : Sir, I beg for leave to introduce :

“ A Bill further to amend the Indian Penal Code.”

Honourable Members will see that my Bill is a very sharp one but it introduces a somewhat controversial question. The Indian Penal Code prescribes a certain age limit for the protection.....

Mr. President : Order, order. I think it might be for the convenience of the Honourable Member as well as of the House if I were to point out that a point of order will arise on his next motion before he proceeds further with his speech. He is in order in making the motion which he is now making, but, if he were to attempt to move

motion No. 11 on the paper, I should have to draw his attention to the fact that that motion has already been rejected in respect of the Bill which stood in the name of Rai Bahadur Bakshi Sohan Lal in the September session of last year, and, therefore, the motion standing in his name raises substantially the same question as on the motion in the name of the Honourable Member from Jullundur. He is perfectly in order in moving the present motion but that it is entirely nugatory in effect as far as the present session is concerned because the Bill cannot advance beyond the introduction stage.

Sir Deva Prasad Sarvadhikary (Calcutta : Non-Muhammadan Urban) : On a point of order, again, if that is so,—and I am quite sure that that is so—would not it apply to the motion now being moved because the question involved is substantially the same ?

Mr. President : Technically, it is not, because the Honourable Member is asking for leave to introduce a Bill which was introduced in a previous session and not in the present. I admit, from the point of view of pure common sense, the Honourable Member from Bengal is perfectly right, but, from the technical point of view, I cannot rule Dr. Gour out of order on this motion, though I must move him out of order on the next.

Dr. H. S. Gour : Well, Sir, you have not heard me yet on my next motion, namely, to refer the matter to a Select Committee, nor have the Legislative Department taken any objection to it. If you will allow me a little time, I will explain to you why my next motion is in order and is not out of order. I hope you have not made up your mind to decide before hearing me on the subject of my next motion.

Mr. President : As I pointed out to the Honourable Member, the Chair does not prejudge points of order before they arise ; but, foreseeing this point must arise, I have taken some trouble to decide how I should give the ruling when the occasion arose.

Dr. H. S. Gour : After hearing me, I suppose—yes. Well, Sir, I shall resume my speech. The Indian Penal Code prescribes a certain age limit for the protection of minor parents. That age limit was fixed in the Code of 1860 at 10 years. In 1891 the question was forced upon the attention of Government by a case of culpable homicide perpetrated by a husband upon his infant wife and the Government instituted inquiries and found that there were a large number of cases in which the husband, after marriage, hurried to consummation with the result that wives were at times grievously injured. An inquiry from the medical men disclosed the fact that in India the age of puberty was 14 years, but the Government for the time being said : We cannot by one leap raise the age limit from 10 to 14 and we shall therefore raise the age limit from 10 to 12. Consequently, the Age of Consent Bill of 1891 was passed, raising the age of consent from 10 to 12. My friend, Bakshi Sohan Lal in the September session of this House, introduced a Bill for raising the age of consent from 12 to 14. The Bill was introduced but, when the motion came up for its reference to the Select Committee, this House threw out his motion.

When I move my next motion, I shall explain how my motion is different to his, and why my motion cannot be barred by a Resolution of this

[Dr. H. S. Gour.]

House throwing out his motion in the last Session of this House. For the present, I rest content with asking this House to give me leave to introduce this measure, a leave which it has given before, a leave which is justified upon the grounds of public morality and private justice to the individuals directly affected by it. I hope, Sir, that the leave I crave for will be given.

Mr. President : Motion moved :

“ That leave be given to introduce a Bill further to amend the Indian Penal Code.”

The Honourable Sir Malcolm Hailey (Home Member) : For my part, if this matter proceeds to a division, I shall vote against the Honourable Member, for, I conceive, Sir, that it is an abuse of the privileges of this House for a Member to insist on introducing his Bill and making a speech in favour of its introduction when he has been informed by the President, that he cannot proceed any further after the introduction stage.

Dr. H. S. Gour : I rise to a point of order, Sir. Is it the privilege of the House, when introducing a Bill, to take by anticipation an adverse decision though you have ruled that your decision will be after hearing me on the subject ?

Mr. President : I see no reason to quarrel with the Honourable the Home Member over the words he has used. I had expected that the Honourable Member would have taken the warning which I gave him. I told him that technically I could not rule him out of order on the first motion, but that his motion and the debate thereon would be entirely nugatory, because, when we came to the second motion, I should have to give a certain ruling on the subject.

The question is :

“ That leave be given to introduce a Bill further to amend the Indian Penal Code.”

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 4th July, 1923.