10th February,1926

THE

LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

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(10th February to 1st March, 1926)

FOURTH SESSION

OF THE

SECOND LEGISLATIVE ASSEMBLY, 1926

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Legislative Assembly.

The President :

THE HONOURABLE MR. V. J. PATEL.

Deputy President :

DIWAN BAHADUR T. RANGACHARIAR, M.L.A.

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MR. ABDUL HAYE, M.L.A.

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COLONEL J. D. CRAWFORD, M.L.A.
MR. JAMNADAS M. MEHTA, M.L.A.
MR. ABDUL HAYE, M.L.A.

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LEGISLATIVE ASSEMBLY.

Wednesday, 10th February, 1926.

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

QUESTIONS AND ANSWERS.

EMPLOYMENT OF NEW MEN IN PREFERENCE TO EX-STRIKERS BY THE NORTH WESTERN RAILWAY.

728. ***Mr. M. K. Acharya:** Will Government be pleased to state:

(*a*) whether it is a fact that since the last North Western Railway strike several new men have been employed on that Railway in preference to *ex*-strikers; and if so, how many have been so employed: and

(*b*) whether, with reference to the answer given by the Honourable the Commerce Member last September to question No. 694 (2), (3) and (4), Government propose to give better consideration to men who lost their appointments during the strike?

The Honourable Sir Charles Innes: The Agent assures me that he is working to the assurance given by me in this House last September, namely, that in filling vacancies consideration will be given to men who lost their jobs in the strike and who apply for re-employment. Naturally he exercises his discretion in individual cases and there have been new men taken on. But the Agent knows of no case in which in filling vacancies new men were taken on in preference to ex-strikers who were good and efficient servants and who applied for those vacancies. No actual statistics are available, and I doubt whether they can easily be collected. But I am making further inquiries on this point.

WITHHOLDING OF THE PASSES OF MEN WHO JOINED THE LAST STRIKE ON THE NORTH WESTERN RAILWAY.

729. ***Mr. M. K. Acharya:** Will the Government be pleased to state if the passes of the men who joined the last North Western Railway strike have been withheld; if so, for what length of time; and whether Government propose to adopt a more sympathetic attitude?

The Honourable Sir Charles Innes: Yes, for 3 years subject to reduction in individual cases. I am aware that the Agent has the question raised by the Honourable Member periodically under his consideration and I am sure that he will take a sympathetic view of the matter.

GRANT OF GRATUITIES TO MEN WITH UNDER 15 YEARS' SERVICE DISCHARGED DURING THE LAST STRIKE ON THE NORTH WESTERN RAILWAY.

730. ***Mr. M. K. Acharya:** Will the Government be pleased to state if the gratuity rules on Railways provide for any compassionate gratuities to men under 15 years' service, and if so, whether Government propose to grant such gratuities to men under 15 years' service on the North Western Railway, who were discharged and whose places were filled up during the strike?

Mr. G. G. Sim: The State Railway Gratuity Rules provide for the payment of compassionate gratuities to the dependent members of the family of a deceased employé, who are left in straitened circumstances but they do not provide for the grant of any gratuity to an employé who has been discharged with less than 15 years' service for reasons other than medical unfitness or abolition of the appointment.

The grant of gratuities to the employés of the North Western Railway with less than 15 years' service who were discharged and had their places filled during the strike is not admissible under the rules.

GRANT OF AN EXTRA ALLOWANCE FOR WORK ON SUNDAYS AND GAZETTED HOLIDAYS TO THE INDIAN SUBORDINATES OF THE EAST INDIAN RAILWAY.

731. ***Mr. M. K. Acharya:** Will Government be pleased to state whether it is a fact that the Anglo-Indian and European subordinates of the East Indian Railway are granted an extra allowance for working on Sundays and gazetted holidays? If so, do Government propose to extend the same privilege to the Indian subordinates also?

Mr. G. G. Sim: The Honourable Member is referred to the reply given to a similar question No. 559 asked by Maulvi Muhammad Yakub on the 2nd February, 1926.

HOUSE RENT ALLOWANCES OF SUBORDINATES ON THE EAST INDIAN RAILWAY.

732. ***Mr. M. K. Acharya:** (*a*) Will Government be pleased to state whether it is a fact that the employees of the Oudh and Rohilkhand sections are granted house rent according to their pay as per Government rule?

(*b*) Is it a fact that the employees of the East Indian Railway are granted fixed house rent of Rs. 3 a month irrespective of pay? Is it a fact that the guards on the East Indian Railway are granted a house rent of Rs. 3 when they are not provided with quarters? Is it also a fact that when the quarters are provided for the guards, a rent is deducted from them according to their pay instead of the fixed sum of Rs. 3 only?

(*c*) If so, will the Government please state the reason for such an anomaly on one and the same Railway? Do Government propose to extend the privileges enjoyed by the State Railway servants to the servants of the late East Indian Railway now taken over by the State? If not, why not?

Mr. G. G. Sim: (*a*), (*b*) and (*c*). The Honourable Member is referred to the answer given to a similar question No. 718 in the Legislative Assembly on the 8th February, 1926.

TREATMENT OF STRIKERS ON THE EAST INDIAN RAILWAY.

733. ***Mr. M. K. Acharya:** 1. Will Government be pleased to state:

(*a*) if it is a fact that several strikers of the East Indian Railway in 1922 were not allowed to resume duty although they attended their offices in time: and

(*b*) if it is a fact that they were forced to resign by threats of dismissal?

2. Is it a fact that their gratuity has also been forfeited for this very reason? If not so, will the Government please state the reason for the forfeiture of the gratuities of these servants?

3. If the replies to (*a*) and (*b*) in part 1 be in the affirmative, do Government propose to reinstate these men to their former posts and pay? If not, why not? Do the Government propose to grant gratuities to these men for their services till they joined the strike? If the answer be in the negative, will the Government please state the reason?

The Honourable Sir Charles Innes: The Honourable Member is referred to the reply given to question No. 719 asked by Mr. Amar Nath Dutt on the 8th February, 1926.

CASE OF HARI PADA DEY, LATE WRITER OF P. W. I., IKRAH, ON THE EAST INDIAN RAILWAY.

734. ***Mr. M. K. Acharya:** Will Government be pleased to state:

(*a*) if it is a fact that one Hari Pada Dey, writer of P. W. I., Ikrah, East Indian Railway, was discharged after putting in 18 years' service under paragraph 2 of his agreement?

(*b*) if it is a fact that the S. D. E., Ondal, entered into the quarter of this man in his absence on the 17th August 1925, where his family was stopping, and that he reported the matter to the Chief Engineer for necessary action?

(*c*) if it is a fact that for this very reason the man was discharged by the Divisional Superintendent, Asansol, on the recommendation of the S. D. E.?

(*d*) if it is a fact that the Chief Engineer ordered the reinstatement of this man in his letter No. 26828-G. E.-36, dated 13th October, 1925, but the Divisional Superintendent was not disposed to carry out the orders of the Chief Engineer as per S. W. W., Asansol, letter No. 14216-P. F., dated 4th November 1925?

(*e*) if it is a fact that his gratuity has also been forfeited? If it is a fact, do the Government propose to reinstate the man and call for an explanation from the Divisional Superintendent for ignoring the orders of the Chief Engineer? If not, will Government please state the reason?

Mr. G. G. Sim: I would refer the Honourable Member to the reply given to a similar question No. 624 asked by Khan Bahadur Sarfaraz Hussain Khan on the 3rd February, 1926.

TRAIN CONTROLLERS ON THE EAST INDIAN RAILWAY.

735. *Mr. M. K. Acharya: Will Government be pleased to state:

(a) how many train controllers there are on the East Indian Railway? What is the proportion of Indians, Anglo-Indians and Europeans on these posts? What are the scales of pay for the Anglo-Indians, Europeans and Indians? Are the nature of duties the same as performed by Indians and non-Indians? Are the Indians provided with an equal type of quarter to that supplied to non-Indians?

(b) if it is a fact that the scale of pay of Indian controllers on the Oudh and Rohilkhand section is Rs. 200 *plus* Rs. 20 house rent rising to Rs. 300?

(c) if it is a fact that the traffic on the East Indian Railway is heavier than the traffic on the Oudh and Rohilkhand section and that the controllers have to perform more tedious and responsible work than any other on the Oudh and Rohilkhand section? If so, do Government propose to extend the same pay and privileges to the Indian controllers employed on the East Indian Railway?

Mr. G. G. Sim: I would refer the Honourable Member to the reply given to a similar unstarred question No. 89 asked by Maulvi Muhammad Yakub on the 2nd February, 1926.

PAY OF STATION MASTERS AND ASSISTANT STATION MASTERS ON THE OUDH AND ROHILKHAND SECTION OF THE EAST INDIAN RAILWAY.

736. *Mr. M. K. Acharya: Will Government be pleased to state whether it is a fact that the maximum pay of "A" class station masters and assistant station masters on the Eastern Bengal, North Western and East Indian Railways is Rs. 80 and Rs. 75, respectively, whereas on the Oudh and Rohilkhand section of the East Indian Railway the pay of station masters and assistant station masters has been revised to Rs. 75 and 55, respectively? If so, do the Government propose to raise the scale of the Oudh and Rohilkhand Railway staff also according to the scale on the sister Railways?

Mr. G. G. Sim: The Honourable Member is referred to the reply given to a similar unstarred question No. 90 asked by Maulvi Muhammad Yakub on the 2nd February, 1926.

ABOLITION OF THE POSTS OF BRAKESMAN ON THE OUDH AND ROHILKHAND SECTION OF THE EAST INDIAN RAILWAY.

737. *Mr. M. K. Acharya: Will Government be pleased to state if it is a fact that many posts of brakesman have been abolished on the Oudh and Rohilkhand sections and that the guards alone are working the passenger trains? Do Government propose to re-introduce the practice of engaging brakesmen for the safety of the travelling public? If not, why not?

Mr. G. G. Sim: The Honourable Member is referred to the answer given to question No. 617, asked by Khan Bahadur Sarfaraz Hussain Khan in the Assembly on the 3rd February, 1926.

SANCTION TO THE FILING OF A SUIT BY MR. C. S. SITARAMA AIYER AGAINST THE SWISS CONSUL GENERAL AT BOMBAY.

738. *Mr. M. K. Acharya: With reference to my starred question No. 472, dated 2nd September, 1925, and the reply thereto regarding Mr. C. S. Sitarama Aiyer's filing of a suit against the Swiss Consul-General at Bombay, will the Government be pleased to say:

(a) whether it is a fact that no sanction signed by a Secretary to the Government of India was given to him as required by section 86 of the Civil Procedure Code and if so, why:

(b) whether it is a fact that pressure was privately brought to bear upon Mr. Sitarama Aiyer to give up his claims for damages against the Swiss Consul-General, and whether it is a fact that he was threatened by the District Magistrate of Chingleput with prosecution in this connection:

(c) whether it is a fact that his house was searched in August last by the police, and records bearing on the case were taken away: and

(d) whether it is a fact that Mr. Sitarama Aiyer was refused a passport to go to Switzerland in connection with this case; and if so, for what reasons?

Sir Denys Bray: Consular Officers do not come within the purview of section 86 of the Civil Procedure Code as they are not diplomatic agents in any sense. There is nothing to debar Mr. Sitarama Aiyer from filing a suit against the Swiss Consul General or indeed any other Consul or Consul General in India, as he has already been informed more than once. And it would be a kindly act on the part of the Honourable Member, both to me and Mr. Aiyer, if he could dispel some of the delusions under which Mr. Aiyer is suffering. As regards the rest of the question Government have no information and no reason to believe that the allegations have any substance at all. In any case the whole matter is within the competence of the Local Government to whom questions would be more suitably addressed.

Mr. A. Rangaswami Iyengar: May I ask whether the Honourable Member would see his way to make inquiries from the Local Government, because this is a matter in which this man has had to go through all this trouble.

Sir Denys Bray: I feel pretty sure that, if the Honourable Member would let me show him some of the correspondence of the case, he would agree with me that it would be an act of great kindness to me if he would dispel some of Mr. Aiyer's delusions. He wants to bring a case against the Swiss Consul General and Government have said, " You can do it without any let or hindrance from us ".

Mr. A. Rangaswami Iyengar: My question was not directed with regard to the Swiss Consul General business, and I am sure if I meet my friend Mr. Sitarama Aiyer I shall disillusion him; but so far as this question is concerned, I know he has been harassed, and it would be a mercy on the part of the Government if they would instruct the Local Government not to pursue this course against him.

Sir Denys Bray: I will gladly send the questions and answers to the Local Government.

RUNNING OF A FAST TRAIN BETWEEN DELHI AND MORADABAD, ETC.

739. ***Maulvi Muhammad Yakub:** (*a*) Are Government aware that it takes about 6 hours from Delhi to Moradabad and *vice versa*, a distance of only 100 miles?

(*b*) Do the Government propose to issue orders for running at least one fast train on each side between these two important stations?

(*c*) Which is the shorter route from Howrah to Delhi? Is it *via* Cawnpur and Aligarh or *via* Lucknow and Moradabad?

(*d*) Now that the East Indian Railway is amalgamated with the Oudh and Rohilkhand Railway, why does the mail train from Howrah to Delhi not run *via* Lucknow and Moradabad?

Mr. G. G. Sim: (*a*) No. 3 Up passenger takes 4 hours and 55 minutes from Moradabad to Delhi and 4 Down passenger 5 hours and 5 minutes from Delhi to Moradabad.

(*b*) The existing services are considered adequate for the requirements of the line.

(*c*) *Via* Cawnpore and Aligarh.

(*d*) Because the present route is considered more suitable.

MONTHLY AVERAGE OF SECOND CLASS ORDINARY RETURN TICKETS ON ALL THE STATIONS BETWEEN MOGHALSARAI AND SAHARANPUR DURING 1925.

740. ***Maulvi Muhammad Yakub:** What was the monthly average of second class ordinary return tickets on all the stations between Moghalsarai and Saharanpur during the year 1925?

Mr. G. G. Sim: I am sorry that the information asked for is not available in my office and I am not aware what purpose would be served by collecting it.

Maulvi Muhammad Yakub: Will the Government be pleased to collect the information asked for?

Mr. G. G. Sim: If the Honourable Member can mention any purpose which it will serve, I shall be glad to consider it.

Maulvi Muhammad Yakub: My purpose, Sir, is that, in reply to a question of mine about return tickets, the Government answered that they were not taken by a large number of passengers, and therefore I want this information to justify the issue of return tickets.

Mr. G. G. Sim: I would suggest, Sir, that if the Honourable Member would come to my office and tell me exactly what he wants this information for, I shall be glad to consider the matter.

NEW LEGISLATIVE CHAMBERS AT RAISINA.

741. ***Maulvi Muhammad Yakub:** (*a*) When will the new Legislative Chambers at Raisina be ready for occupation?

(*b*) What is the number of the Chief Engineers, Engineers, Divisional Officers, Overseers and Sub-overseers working on these Chambers, and what is the amount of their monthly salaries?

(*c*) How long is it since the construction of the new Chambers was taken in hand?

The Honourable Sir Bhupendra Nath Mitra: (*a*) In time for the session of January, 1927.

(*b*) The engineering establishment employed exclusively on the Legislative Chambers is:

1 Temporary Engineer,

3 Temporary Subordinates.

Their salaries aggregate Rs. 823 per mensem.

In addition the greater part of the time of one Executive Engineer whose salary is Rs. 1,275 *plus* £30 per mensem is occupied by the work on the Legislative Chambers.

The Chief Engineer, Superintending Engineer and various specialist officers (electrical and sanitary) also are concerned but are not employed exclusively on the Chambers.

(*c*) The work was started early in 1922.

Khan Bahadur W. M. Hussanally: May I inquire when the Government expect the Secretariat to be removed to Raisina?

The Honourable Sir Bhupendra Nath Mitra: No final decision has yet been arrived at on the subject.

LETTER IN *THE STAR OF UTKAL* HEADED "A RAILWAY GRIEVANCE".

742. ***Pandit Nilakantha Das:** (*a*) Has the attention of the Government been drawn to the letter headed "A Railway Grievance" in *The Star of Utkal*, dated 18th January, 1926?

(*b*) Do the Government propose to take early steps to remove the grievance?

(*c*) If so, what action are they going to take?

Mr. G. G. Sim: I am sorry that I have not been able to get hold of the paper in question.

PRINTING OF THE FARES IN ORIYA ON THIRD CLASS TICKETS ON THE BENGAL NAGPUR RAILWAY.

743. ***Pandit Nilakantha Das:** (*a*) Are the Government aware of the great disadvantages to the many Oriya third class passengers as the Bengal Nagpur Railway authorities do not print fares, etc., in Oriya on the tickets?

(*d*) Do Government propose to take such steps as to make the railway authorities remove this disadvantage as soon as possible?

Mr. G. G. Sim: (*a*) and (*b*). The Government are not aware of the disadvantages complained of but they will take steps to bring the Honourable Member's suggestion to the notice of the railway administration.

STOPPAGE OF THE EXPORT OF OPIUM TO MACAO.

744. ***Mr. N. M. Joshi:** (*a*) Has the export of Indian opium to the Portuguese Colony of Macao been recently stopped? If so, when and why?

(*b*) Has any other exporting country also stopped the export of opium to Macao?

(*c*) Have Government any information if Macao is importing larger quantities of opium from elsewhere to make up for the stoppage of the Indian supply?

(*d*) (i) Was the stoppage of Indian opium to Macao due because import certificates were not forthcoming?

(ii) If not, did the Government go behind the import certificates from Macao to investigate the use to which the opium was being put?

(*e*) Are Government aware of any other country exporting opium or its derivatives going behind the import certificate from any importing country to investigate the use to which they were being put?

STOPPAGE OF THE EXPORT OF OPIUM USED FOR SMOKING.

745. ***Mr. N. M. Joshi:** (*a*) Are Government aware that most, if not all, the opium exported from India is used for smoking purposes?

(*b*) Do Government propose consistently to go behind all import certificates, and to the extent to which they are satisfied that the opium was being used for smoking, stop the export?

The Honourable Sir Basil Blackett: I will answer questions Nos. 744 and 745 together. It is, I think, undesirable for me to answer the detailed questions regarding Macao. The policy of the Government of India in regard to the use of opium for smoking and the export of opium to countries where the use of prepared opium is temporarily authorised is determined by the Hague Convention and the instruments executed by the Geneva Opium Conference of 1925. In this connection, I take the opportunity of informing this House that, as was announced by His Excellency the Governor General in his speech before the Council of State yesterday, after giving very careful consideration to the new obligations undertaken by them under Article 1 of the Protocol to the Convention of the Second Opium Conference at Geneva, " to take such measures as may be required to prevent completely within five years from the present date the smuggling of opium from constituting a serious obstacle to the effective suppression of the use of prepared opium ", the Government of India have come to the conclusion that in order at once to fulfil their international obligations in the largest measure and to obviate the complications that may arise from the delicate and invidious task of attempting to sit in judgment on the internal policy of other Governments, it is desirable that they should declare publicly their intention progressively to reduce the exports of opium from India so as to extinguish them altogether within a definite period, except as regards exports of opium for strictly medical purposes. The period to be fixed has not yet been finally determined, as before arriving at a decision the Government of India desire to consult the Government of the United Provinces regarding the effects that the resulting reduction in the area cultivated with opium would have on the cultivators in that province.

The Government of India further propose to discontinue altogether the system of auction sales of opium in India as soon as the agreement for direct sale now being negotiated with the Government of French Indo-China is concluded. The Government of India hope at an early date to move a Resolution in this House and in the Council of State in order to give the Members of the Legislature an opportunity of expressing their views on those important steps which the Government propose to take in the matter of exports of opium.

Mr. N. M. Joshi: Is it a fact that the revenues of the Government of India have fallen off recently? Are the revenues from opium decreasing?

The Honourable Sir Basil Blackett: It depends from what date you begin. There is no special decrease this year.

VISIT OF A COMMITTEE OF THE LEAGUE OF NATIONS TO INDIA TO INVESTIGATE THE OPIUM PROBLEM.

746. ***Mr. N. M. Joshi:** Is a Commission under the auspices of the League of Nations visiting India to investigate the opium problem in India? If so, when is it expected and what is its personnel and programme?

The Honourable Sir Basil Blackett: So far as the Government are aware, no arrangements have been made for a Committee of the League of Nations to visit India to investigate the opium problem.

NET REVENUES DERIVED BY THE GOVERNMENT OF INDIA AND THE PROVINCIAL GOVERNMENTS FROM OPIUM FOR EACH OF THE LAST 10 YEARS.

747. ***Mr. N. M. Joshi:** What have been the *net revenues* which the Government of India and the Provincial Governments have severally been getting from the export and internal consumption of opium for each of the last ten years?

The Honourable Sir Basil Blackett: The revenue and expenditure accounts of both Central and Provincial Governments are published in the Finance and Revenue Accounts of the Government of India (copies of which are in the Library). The net revenue of the Provincial Governments from opium cannot be exactly ascertained because there are not separate establishments to collect it.

RESTRICTION OF THE USE OF OPIUM TO SCIENTIFIC AND MEDICINAL PURPOSES.

748. ***Mr. N. M. Joshi:** (*a*) Are the Government of India aware if any of the Provincial Legislatures has since the last six years attempted to confine by legislation the use of opium to scientific and medicinal purposes? If so, with what results?

(*b*) In view of the ineffectiveness of isolated action in opium control do the Government of India, in consultation with the Provincial Governments, intend to explore the possibilities and methods of confining the use of opium in India to scientific and medicinal purposes; and do the Government propose to appoint a committee for that purpose, with representatives of the indigenous system of medicine also on it?

The Honourable Sir Basil Blackett: (1) No.

(*b*) The Honourable Member is referred to my answer to Dr. Datta's question No. 315, dated the 27th January last.

OPIUM AND COCAINE SMUGGLING.

749. ***Mr. N. M. Joshi:** What is the extent and nature of smuggling into and out of British India of opium and its derivatives and of cocaine?

The Honourable Sir Basil Blackett: The Honourable Member's question is so wide and vague that it is impossible to give him an answer within a brief compass. I would refer him to the Excise Administration Reports of the various Provinces and the annual reports of the various Custom Houses.

STOPPAGE OF THE EXPORT OF OPIUM TO FOREIGN COUNTRIES.

750. ***Mr. N. M. Joshi:** (*a*) Have the Government of India recently stopped the export of opium to any country other than Macao? If so, which, when and why?

(*b*) How much do the Government lose in net revenue by the stoppage of the supply of opium to Macao and other countries if any?

The Honourable Sir Basil Blackett: (*a*) The Government of India decided to stop exports of opium to non-Asiatic countries other than the United Kingdom in 1924, and to Persia in 1925. The Government are not prepared to state the reasons for these decisions.

(*b*) It is difficult to estimate the loss sustained by the Government, as the quantities taken from year to year by the countries affected fluctuated considerably.

INTERNATIONAL CONVENTIONS RELATING TO DRUGS.

751. ***Mr. N. M. Joshi:** In view of Excise being a transferred subject in the Provinces is it necessary for the Provincial Legislatures to re-ratify, as it were, such of the conventions on drugs as the Government of India become parties to and as are ratified by the Indian Legislature?

The Honourable Sir Basil Blackett: No international conventions relating to drugs have been ratified by the Indian Legislature. The question that the Honourable Member asks, therefore, does not arise.

UNSTARRED QUESTIONS AND ANSWERS.

GRANT OF PROMOTION TO MR. C. V. RANGASWAMI IYER, A POSTAL OFFICIAL, FOR SERVICES RENDERED WITH THE MESOPOTAMIA EXPEDITIONARY FORCE.

140. **Mr. R. K. Shanmukham Chetty:** (*a*) With reference to question No. 485 answered on Wednesday, 2nd September, 1925, will Government be pleased to state whether the papers relating to Mr. C. V. Rangaswami Iyer have been examined, and if so, with what result?

(*b*) Is it a fact that certain postal officials of the Nilgiri Division who had served in Mesopotamia but were not mentioned in the despatch for meritorious services have been given special promotion? If so, do Government propose to direct that Mr. Rangaswami Iyer who has put in more service and whose name has been mentioned in the despatch may be given promotion?

(*c*) Did the Government in their letter No. 2321, dated 20th May, 1920, issue instructions to the Director General of Posts and Telegraphs, Simla, to adopt some forms of reward in lieu of special promotion in recognition of the services of the officials who have rendered good work in the field? If so, will the Government be pleased to state why this alternative course also was not followed by the Director General of Posts and Telegraphs in dealing with the case of the above-mentioned official?

GRANT OF PROMOTIONS TO POSTAL OFFICIALS WHO VOLUNTEERED FOR FIELD SERVICE.

141. **Mr. R. K. Shanmukham Chetty:** Is it a fact that a Postmaster General of the Madras Circle, Mr. Montieth, I.C.S., issued circulars to the effect that outsiders volunteering for field service would be given a permanent footing in the Department and that those officials who were already in service and wishing to go on field service would be given promotion by one grade?

The Honourable Sir Bhupendra Nath Mitra: I would refer the Honourable Member to part (*c*) of my answer to his question, No. 485, on the 2nd September, 1925. I have examined the case of Mr. C. V. Rangaswami Iyer. The orders of the Postmaster-General referred to in the question did not actually apply to his case as he had gone on field service prior to the issue of those orders. It has, however, been decided that, in recognition of his services in the Mesopotamia Expeditionary Force, he should be given four advance increments of pay with effect from the 1st February, 1926 and in addition, in view of the delay which has occurred in dealing with his case, a lump sum payment of Rs. 500.

NUMBER OF OFFICIALS SENT ON FIELD SERVICE FROM THE COMMENCEMENT OF THE WAR TO THE END OF THE YEAR 1919, ETC.

142. **Mr. R. K. Shanmukham Chetty:** Will the Government be pleased to place on the table a list showing:

(1) the number of officials who were sent on field service from the commencement of the War to the end of the year 1919, in each of the following classes:—Brahmins, non-Brahmins, Muhammadans, Anglo-Indians and Europeans,

(2) the particulars of the officials in each of the five classes who were brought to notice for distinguished service by the General Officer Commanding-in-Chief, Indian Expeditionary Force " D," with the duration of their services,

(3) how many of them were given special promotion or rewards,

(4) how many of them were not given special promotion and reasons for not giving them promotion,

(5) the number of officials in each of the five classes above who were not brought to notice by means of despatches of the General Officer Commanding-in-Chief and who were given special promotions, with reasons for giving them such promotions?

Mr. E. Burdon: (1)—(5). The information desired by the Honourable Member is not available, and, it would, I am afraid, be impracticable to attempt to collect it.

INCREMENTS OF POSTAL CLERKS PROMOTED FROM DEPARTMENTAL POSTMASTERSHIPS.

143. **Mr. R. K. Shanmukham Chetty:** (*a*) Will the Government be pleased to state whether they have received any memorials from a section of the postal clerks who were promoted from departmental branch postmasterships praying that the concession allowed to direct recruits for the clerical line, of counting officiating service rendered as departmental branch postmasters, for increments in the time-scale, be also extended to them; and if so, whether the Government intend to accede to their request?

(*b*) Is it a fact that the departmental test prescribed for direct recruits to the clerical line is the same as for branch postmasters to be promoted to the clerical line?

(*c*) Is it a fact that before the introduction of the time scales of pay recommended by the Postal Committee of 1920, the appointments of departmental branch postmasters and clerks or sub-postmasters were interchangeable?

(*d*) If the answer to (*c*) is in the affirmative, will the Government be pleased to state whether the officials promoted from departmental branch postmasterships as clerks are not entitled to all the concessions granted to clerks? If so, what is the justification for denying them those concessions?

The Honourable Sir Bhupendra Nath Mitra: (*a*) The reply to the first part of this question is in the affirmative. With respect to the second part, the Honourable Member's attention is invited to the reply given by me to part (*a*) of his starred question No. 586 on the 3rd September, 1925.

(*b*) No.

(*c*) No.

(*d*) Does not arise.

THE HINDU RELIGIOUS AND CHARITABLE TRUSTS BILL.

PRESENTATION OF THE REPORT OF THE SELECT COMMITTEE.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): Sir, I beg to present the Report of the Select Committee on the Bill for the better provision for the management of Hindu religious and charitable trusts.

STATEMENT LAID ON THE TABLE.

EXPENDITURE INCURRED ON THE VISITS OF HIS EXCELLENCY THE VICEROY TO CALCUTTA.

The Honourable Sir Alexander Muddiman (Home Member): I beg to lay on the table the information promised in reply to a question by Kumar Ganganand Sinha asked on the 1st February, 1926, regarding the expenditure incurred on account of His Excellency the Viceroy's visit to Calcutta.

(*a*) The visits of His Excellency the Viceroy to Calcutta during the years 1921-25 cost Rs. 2,04,600 in all. The expenditure was debited to 22B—General Administration—Heads of Provinces and Tour Expenses and Army Estimates.

(*b*) The average amount payable by Government towards His Excellency the Viceroy's establishments is Rs. 8,000 per mensem. For the Calcutta visits the establishments receive in addition an allowance of Rs. 2,500 per mensem.

(*c*) The expenditure incurred would be on account of the haulage of Honourable Members' saloons from Delhi to Calcutta and back and a meeting of the Executive Council on the assumption that it was called when all Honourable Members were in Delhi and only Honourable Members were called to attend the meeting the expenditure which would be incurred would be Rs. 9,481. No such expenditure is incurred when meetings of the Executive Council are held in Delhi or Simla."

ELECTIONS OF PANELS FOR STANDING COMMITTEES.

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

"That this Assembly do proceed to elect in the manner described in the rules published in the Home Department notification No. F.-49, dated the 22nd August, 1922, as amended by the Home Department notification No. D.-794-C., dated the 30th January, 1924, 4 panels consisting of 9 members each, from which the members of the 4 Standing Committees to advise on subjects in the Home Department, the Department of Commerce, the Department of Education, Health and Lands and the Department of Industries and Labour respectively, will be nominated."

Mr. A. Rangaswami Iyengar (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural): Sir, may I request the Honourable the Leader of the House to enlighten the House as to what happened to the panels of Committees elected last year, which of them met, how often they met or were consulted and what was the work they did?

The Honourable Sir Alexander Muddiman: I cannot answer for the other Departments, but there were not many meetings of my own Standing Committee because the Council of State, as the Honourable Member knows, had to be dissolved. As regards my own Department, I think I did lay a statement on the table the other day.

Mr. K. C. Neogy (Dacca Division: Non-Muhammadan Rural): Sir, it may be in the recollection of this House that, when a similar motion was brought forward by the Honourable Member in charge last year, I raised my voice in opposition to it. It was on the ground that the Government had no desire to utilise these Committees for the purposes for which they were intended by the Joint Parliamentary Committee; and I am surprised that the Honourable Member has taken shelter under a specious plea in saying that the Committee attached to the Home Department could not be summoned as the Council of State had to be dissolved. I suppose the Council of State was prorogued only a few months back, but

[Mr. K. C. Neogy.]

what happened to the Committee during the rest of the period? I have it on good authority that only one meeting of the Committee attached to the Home Department was summoned during that period and only a few non-official Bills were referred to the members for opinion. I certainly think that this was not the intention of the Joint Parliamentary Committee. We are always reminded by Government that they expect us to co-operate with them in carrying out the Reforms. I do not know whether my Honourable friend will contend that they are carrying out the spirit of the Joint Parliamentary Committee's recommendations in regard to these Standing Committees. Sir, until I am satisfied that the Government have any real intention of making a proper use of these Committees, and giving the members thereof sufficient opportunities to study questions of administration, I cannot be any party to this motion.

Mr. A. Rangaswami Iyengar: Sir, I desire seriously to ask the Leader of the House if the Government are of opinion that this is all a farce, why they should not say so and be done with it? For my part, I do not propose to take part in the election of these Committees.

The Honourable Sir Alexander Muddiman: Sir, speaking for myself, nothing would give me greater pleasure than to consult my Standing Committee on many subjects. There are of course, however, many subjects in the Home Department which are obviously not susceptible of being laid before a Standing Committee which meets very rarely. We have often to take decisions on matters of administration which cannot brook delay. I personally should welcome the opportunity of consulting my Standing Committee much more frequently than I do. The difficulty is this. This House sits long and continuously and during the Session we are occupied the whole of the day and far into the night either in this House or in the Executive Council or in our own offices. We sit four days in the week, we have Select Committees meeting, and it is almost impossible to arrange for any consultation in that period. I may tell the Honourable Member and the House that the burden of administration on those of us who sit on these Benches is at such times almost intolerable and that is the only reason why I am unable to consult my Standing Committee as often as I should like.

Mr. A. Rangaswami Iyengar: Then why do you make the motion?

Mr. N. M. Joshi (Nominated: Labour Interests): Sir, I wish to make one remark on this motion. The Committees are appointed and the panels elected by this House. Therefore the Committees are Committees of this House. It is therefore necessary that a report of the work of these Committees should be presented to this House, so that the House may be in a position to know what work these Committees have done. I therefore propose that the Government of India should annually prepare a report of the work done by the Standing Committees so that the House may know what work these committees do during the course of the year.

Mr. President: The Honourable Member may raise the question by way of a Resolution; it cannot be done under this motion.

Mr. N. M. Joshi: It is only a suggestion, Sir.

Mr. President: The question is:

"That this Assembly do proceed to elect in the manner described in the rules published in the Home Department notification No. F.-49, dated the 22nd August, 1922, as amended by the Home Department notification No. D.-794-C., dated the 30th January, 1924, 4 panels consisting of 9 members each, from which the members of the 4 Standing Committees to advise on subjects in the Home Department, the Department of Commerce, the Department of Education, Health and Lands and the Department of Industries, and Labour, respectively, will be nominated."

The Assembly divided:

AYES—46.

Abdul Qaiyum, Nawab Sir Sahibzada.
Ahmed, Mr. K.
Ajab Khan, Captain.
Bajpai, Mr. R. S.
Bhore, Mr. J. W.
Blackett, The Honourable Sir Basil.
Bray, Sir Denys.
Burdon, Mr. E.
Calvert, Mr. H.
Carey, Sir Willoughby.
Clow, Mr. A. G.
Cocke, Mr. H. G.
Crawford, Colonel J. D.
Dalal, Sardar B. A.
Donovan, Mr. J. T.
Gidney, Lieut.-Col. H. A. J.
Gordon, Mr. R. G.
Graham, Mr. L.
Hezlett, Mr. J.
Hira Singh Brar, Sardar Bahadur Captain.
Hudson, Mr. W. F.
Hussanally, Khan Bahadur W. M.
Innes, The Honourable Sir Charles.
Jatar, Mr. K. S.
Lindsay, Sir Darcy.
Lloyd, Mr. A. H.
Macphail, Rev. Dr. E. M.
Mitra, The Honourable Sir Bhupendra Nath.
Muddiman, The Honourable Sir Alexander.
Muhammad Ismail, Khan Bahadur Saiyid.
Naidu, Rao Bahadur M. C.
Neave, Mr. E. R.
Owens, Lieut.-Col. F. C.
Rahman, Khan Bahadur A.
Raj Narain, Rai Bahadur.
Reddi, Mr. K. Venkataramana.
Roffey, Mr. E. S.
Sim, Mr. G. G.
Singh, Rai Bahadur S. N.
Stanyon, Colonel Sir Henry.
Sykes, Mr. E. F.
Tonkinson, Mr. H.
Vernon, Mr. H. A. B.
Vijayaraghavacharyar, Sir T.
Willson, Mr. W. S. J.
Yakub, Maulvi Muhammad.

NOES—25.

Aiyangar, Mr. C. Duraiswami.
Aiyangar, Mr. K. Rama.
Ariff, Mr. Yacoob C.
Chaman Lall, Mr.
Das, Mr. B.
Duni Chand, Lala.
Dutt, Mr. Amar Nath.
Ghose, Mr. S. C.
Gour, Sir Hari Singh.
Iyengar, Mr. A. Rangaswami.
Kidwai, Shaikh Mushir Hosain.
Lajpat Rai, Lala.
Lohokare, Dr. K. G.
Majid Baksh, Syed.
Mehta, Mr. Jamnadas M.
Mutalik, Sardar V. N.
Narain Dass, Mr.
Neogy, Mr. K. C.
Piyare Lal, Lala.
Rangachariar, Diwan Bahadur T.
Ray, Mr. Kumar Sankar.
Sarfaraz Hussain Khan, Khan Bahadur.
Singh, Mr. Gaya Prasad.
Tok Kyi, U.
Venkatapatiraju, Mr. B.

The motion was adopted.

Mr. President: As a result of the decision just made, I have to announce that nominations for the panels will be received in the office of the Assembly up to 12 NOON on Friday, the 12th February. The first two elections for the panels for the Home and Commerce Departments will be held in this Chamber on Monday, the 15th February, and the other two elections on Wednesday, the 17th February.

Mr. President: The House will now proceed to consider the Naturalization Bill clause by clause.

Clause 2 was added to the Bill.

Mr. Kumar Sankar Ray (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, the main object mentioned by the Honourable the Home Member for excluding Europeans and Americans from the operation of this Act was that inasmuch as they came here *via* Great Britain after having been naturalised there, they come here as British subjects and do not require to be naturalised over again . . . .

Mr. President: The Honourable Member ought to know that the House is now considering clause 3 of the Bill. He perhaps thinks that the House is discussing the motion for the consideration of the Bill. That motion has already been passed by the House on the last occasion.

Mr. Kumar Sankar Ray: Sir, I am moving my amendment.

Mr. President: Will the Honourable Member move his amendment?

Mr. Kumar Sankar Ray: I beg to move:

"That in sub-clause (*1*) (*b*) of clause 3 for the word 'neither' the word 'not' be substituted and the words 'nor a subject of any State in Europe or America' be omitted."

Sir, the main object mentioned by the Honourable Home Member for excluding Europeans and Americans from the operation of this Act was that inasmuch as they came here *via* Great Britain after having been naturalised there, they come here as British subjects and do not require to be naturalised over again. This may be true at present and is perhaps due to the fact that all appointments are now made in England by the Secretary of State and the centre of gravity of industrial and commercial activity is now placed in England. But by the gradual development of the commerce and industries of India and the shifting of the powers of appointment from the Secretary of State in England to the Government in India, this state of affairs is sure to change, and it is therefore necessary that we should enact laws allowing and regulating immigration and naturalisation of Europeans and Americans direct into India, instead of compelling them to come *via* England. I therefore move this amendment.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, when I first saw the notice of this amendment on the paper, I am afraid I was under the impression that my Honourable friend's intention was quite different from that which he has just announced. I assumed that he wished to prevent us from issuing certificates of naturalization to Americans. I find that he wishes us to issue certificates of naturalization to subjects of States in Europe and America. In regard to that point, I think that my Honourable friend has failed to notice the provisions of the British Nationality and Status of Aliens Act of 1914. That Act was passed just before the war—it came into force I think on the 1st of January 1915—with the object of providing a uniform Naturalization law for the British Empire. Obviously, Sir, when you have British subjects to be looked after in all countries throughout the world, it is desirable that you should have a uniform law so as to enable His Majesty's representatives in various countries to look after them. We can in India now issue certificates of naturalization under that Act. There is, therefore, no necessity for the

amendment proposed by my Honourable friend if that is his sole object. Further, the intention of this Bill is to provide for only local certificates of naturalization to meet the special circumstances of India, and this Bill will therefore enable us to issue certificates to people who could not be naturalized under the Act of 1914. In these circumstances, Sir, I submit that the amendment of my Honourable friend is entirely unnecessary, and I trust he will withdraw it.

Mr. C. Duraiswami Aiyangar (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, what we have been unable to understand from the very beginning is the distinction that is made here between Asiatic subjects and non-British subjects of Europe and America. Why these two are not included in this is yet not clear to us. It is true that an American or European alien may get a certificate of naturalization under the British Nationality and Status of Aliens Act of 1914. If so, Sir, it is equally open for an Asiatic also, who is a non-British Asiatic, to go to England and live there for five years and get a certificate of naturalization and come to India. What we therefore fail to understand is why a distinction is made here by providing that he should declare that he is not a subject of any State in Europe or America. Now, Sir, there may be cases in which an American or a German may come directly to India, and I know there are several American and German missionaries who have come directly to India, and they can stay here for five years and obtain a certificate of naturalization under this Bill if you permit them to do so. Now, if that power of granting certificates of naturalization is in our hands, it is equally open to us to lay down our conditions so that their country may reciprocate in this matter. Therefore, Sir, we also want to retain in our own hands the power to give certificates of naturalization even to those subjects of Europe or America who might not have got similar certificates in Great Britain. Is it that you do not want these Americans or Europeans here on political grounds, on grounds of commercial jealousy, of which you are not afraid in the case of Asiatics? Is that the ground why you do not want to extend that privilege so far, or is there any other special ground why you want that a European or an American must only obtain a certificate of naturalization direct from the United Kingdom, whereas others alone may get their certificates here? An Asiatic, for instance, lives here for four or five years and goes to England for one year; he can still get a certificate of naturalization there. What special distinction you draw is not clear to me. For my part I am anxious neither for this motion nor for the amendment, because I am opposing this Bill altogether.

The Honourable Sir Alexander Muddiman (Home Member): Sir, I nearly despair of making some parts of the House understand the position. I explained at very considerable length when I introduced the Bill that this is a Bill which is intended to give a form of naturalization to persons who cannot be naturalized under the English Act. The English Statute gives the status of a British subject throughout the British Empire. That is a status which can only be given by or under an Act of Parliament. It is not open to our Legislature to legislate beyond our territorial limits. As regards the British Statute, it is open to an American or a subject of a State in Europe to get naturalized in India under that Act, and the effect of doing so is to give him a status throughout the Empire. We do not, therefore, desire to grant, nor do I think, anybody would wish in those circumstances to obtain a certificate under this Bill which gives naturalization to such a limited extent. We are unable under any Act of ours to naturalize beyond our territorial jurisdiction, that is to say, the

[Sir Alexander Muddiman.]

naturalization certificate is valid as regards India, but it is not valid in any other part of the British Empire. The class of persons we do desire to assist are mainly Asiatic traders from other parts of Asia who come here and settle down and desire very often, not having any definite nationality at all, to get some form of naturalization which may be useful to them, and which we have in fact been giving them for many years. If you oppose this Bill altogether, the only result of it will be that you will withdraw from a very deserving class of persons a form of naturalization which already exists in the law. I will give the House an example. Take the case of a Tibetan in Darjeeling. He came and settled down in Darjeeling and married a hill girl of the place. He carried on rather an extensive curios business and became a man of considerable wealth. He desired to make his home in British India. Now, he was an ignorant man who could not come within the British Statute, but under the old Act which my Honourable friend desires to repeal, he was given the local protection which he desired, and to which he was entitled. That is the whole point in this Bill. I therefore do trust that, after this explanation he will not only withdraw his amendment but his opposition to the Bill.

Khan Bahadur Sarfaraz Hussain Khan (Patna and Chota Nagpur *cum* Orissa: Muhammadan): Sir, I rise to move my amendment which reads:

"That in sub-clause (*1*) (*b*) of clause 3, the words 'or America' be omitted."

Mr. President: Does the Honourable Member speak on the amendment of Mr. Kumar Sankar Ray or does he move his amendment?

Khan Bahadur Sarfaraz Hussain Khan: I speak on the amendment, Sir. So far as the amendment of my Honourable friend goes, I oppose it chiefly on the ground that no Indian has been refused a certificate of naturalization in Europe. Therefore, instead of moving my amendment, which I shall move at a later stage, I oppose the present amendment which includes Europeans.

Mr. President: The question is:

"That in sub-clause (*1*) (*b*) of clause 3 for the word 'neither' the word 'not' be substituted and the words 'nor a subject of any State in Europe or America' be omitted."

The motion was negatived.

Khan Bahadur Sarfaraz Hussain Khan: Sir, I beg to move:

"That in sub-clause (*1*) (*b*) of clause 3, the words 'or America' be omitted."

I wish to move this amendment simply with a view to see that America which has so far offended in this matter be included. The Americans have the power of coming over here and being naturalized. They have not only the power of coming over here but of going to the United Kingdom and there becoming subjects of the British Empire and then coming here. So they have the power in both ways of having an opportunity of coming over here and naturalizing. They have got the power so far as England is concerned and so far as our own country is concerned, they also have the same power.

Mr. President: Will the Honourable Member show how the omission of these words will hit them?

Khan Bahadur Sarfaraz Hussain Khan: They will not be allowed to have their naturalization here in India without going to England.

Mr. President: His amendment will have the contrary effect.

Khan Bahadur Sarfaraz Hussain Khan: I withdraw my amendment, Sir.

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

Mr. Kumar Sankar Ray: I beg to move:

"That to sub-clause (*1*) (*c*) of clause 3, the words 'of India' be added at the end."

The object of my amendment is that if a person is under the service of the Crown in India and wants to be naturalized here, he should be a servant of the Crown under the Government of India. I therefore move this amendment.

Mr. H. Tonkinson: Sir, I think that my Honourable friend has omitted to notice the definition of the word "Government" in the General Clauses Act. Under that Act, "Government" includes the Local Government as well as the Government of India. That is to say, the word "Government" here does mean the Government of India and includes also the Local Government. In these circumstances I hope my Honourable friend will withdraw his amendment.

Mr. Kumar Sankar Ray: If that is so, I beg leave to withdraw the amendment.

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

Mr. Kumar Sankar Ray: Sir, I beg to move:

"That in sub-clause (*1*) (*f*) of clause 3, for the word 'reside' the word 'settle' be substituted."

The other part of the amendment has already been disposed of.

The object of this amendment is this. The word "reside" is rather vague and the word "settle" is more definite and this was the word used in the old Act of 1852. I therefore suggest that it ought to be substituted for the word "reside".

Mr. H. Tonkinson: Sir, with regard to this amendment I would merely point out that the word "reside" is the word used in the British Nationality and Status of Aliens Act, I admit that in the old Act of 1852 we had the words "settled in the said territories or is residing within the same with intent to settle therein". I do not think, Sir, that there is really any point in the proposed change. The Bill has been considered by two Select Committees and therefore I hope my friend will not press his amendment. We have used exactly the same word as that used in the British Nationality and Status of Aliens Act.

The motion was negatived.

Mr. B. Das (Orissa Division: Non-Muhammadan): Sir, I beg to move the following:

"After sub-clause (*1*) (*f*) of clause 3 the following be inserted:

'(*g*) that his country of origin does not exclude from naturalization persons of Indian origin.'"

Sir, I listened very attentively to the speech of the Honourable the Home Member just now in reply to my friend Mr. Kumar Sankar Ray. Sir, I am not a lawyer. I cannot understand the legal aspect of the thing. But

[Mr. B. Das.]

I take a common sense point of view. I thought that the Honourable the Home Member while replying to my friend Mr. Kumar Sankar Ray would say something as to the removal of disabilities of Indians in countries such as America and certain parts of the British Empire where Indians cannot obtain naturalization. If Government are so anxious to bring this law to a clear position to give a certain number of Asiatics residing in India naturalization in India, what about the numerous Indians residing in America, in South Africa and elsewhere, who do not get equality of status? The British Nationality and Status of Aliens Act of 1914 might give certain advantages to Europeans and British subjects but I cannot see how it gives a certain status to the Americans. Americans are not British subjects. They were so before the great war, the war of American freedom. How can they be excluded and how can they claim the privileges of British subjects to get naturalized in British India? Sir, the position of Indians in the Empire is becoming worse every day. While tall words are spoken to us in this House and we are told that we are part of the Empire, we are members of the League of Nations and we are in the brotherhood of the Imperial Conference, we are nowhere. The Imperial Conference in 1921 passed a very pious resolution as follows:

"The Conference while re-affirming the resolution of the Imperial War Conference of 1918 that each community of the British Commonwealth should enjoy complete control of composition of its own population by means of restriction of immigration from any other communities recognises there is an incongruity between the position of India as a member of the British Empire and of the existence of disabilities upon British Indians lawfully domiciled in some other parts of the Empire."

In 1924, I think it was Sir Tej Bahadur Sapru who, while he was a member of the Imperial Conference, raised this very question of the status of Indians. Well, at that time India's position in the Empire was not so much thought of by the British Ministers as it was just after the war in 1921 . . . . .

The Honourable Sir Alexander Muddiman: I am unwilling to interrupt the Honourable Member, but I must point out that these arguments are entirely irrelevant.

Mr. B. Das: Sir, my contention is this. If this particular legislation means to carry out certain minor reforms it need not be introduced. Yesterday only a question was asked and my Honourable friend Sir Denys Bray replied that Indians are not allowed to be citizens of the United States of America. I asked whether these Indians having lost their American nationality retain their British Indian nationality. My friend asked me to put down a question and that he would go into it. Of course I have put down a question to that effect. But I know that the British or American wives of these Indians living in America and on the Continent do not get passports from British Ambassadors to join their husbands in India or to go back to America to join their husbands.

Mr. President: The Honourable Member is entirely irrelevant. The amendment which he is now moving will not in the slightest degree hit the Americans and therefore his arguments regarding them are out of order.

Mr. B. Das: I bow to your ruling. As I have told you before, I am not a lawyer and I am just telling you what I feel on the subject. My submission is that if a Chinese or a Japanese wants to get settled in India we have to see whether Japan or China, or the particular country from which the man who wants to come and settle here hails, grants equal status to

Indians. Of course, I leave for the time being questions about Indians not being recognised as equals in America, South Africa and other Dominions and we shall bring up that question before the House on another occasion. Though the Honourable the Home Member may say that Indians have got equality of status in those countries of Asia which we are going to recognise, even then there is no harm in accepting my very harmless amendment. Probably the Honourable the Home Member might feel that we might bring in an amendment to apply to Americans, South Africans and others. I can assure him that I have no such idea in my mind, but at the same time I would ask him and the Government of India to move the Parliament to remove such incongruities which allow Tom, Dick and Harry to get naturalised in India while Indians are debarred from getting naturalised in those countries and are treated as pariahs. I particularly object to the way in which Indians are being treated in America. I hope the Honourable the Home Member will accept this amendment and at the same time give us an assurance that he will move the Parliament to legislate in order to remove the incongruities to which I have referred.

The Honourable Sir Alexander Muddiman: I have very little to say on this amendment. I am in profound agreement with one statement of my Honourable friend, and that is that he is not a lawyer. On the question of South Africa, if a man is a British subject you cannot make him the less a British subject, and on the question of America, the House by passing a previous clause has excluded Americans from the purview of this legislation. I need not say anything in particular as regards the Chinese and the Japanese, but as regards Asiatics the amendment, of course, has some point. Whether the House really wants to do anything in that matter, is a matter for its consideration. I would like to point out to the House, that a great many of these countries have really no law of nationality at all. I very much doubt if a Kirghese from Central Asia has any law of nationality at all in his own country and I think the House should be careful in passing this amendment that it should not exclude people whom it would not desire to exclude. Then, again, I have never heard any complaint so far that naturalisation is not granted freely in these Asiatic countries which have such a law or that there is any serious bar against Indians in that respect. I think the House might, by passing the amendment which is not in itself open to great objection, take a step which it might regret later. You do not, I am sure, want to prevent us naturalising people who might have some difficulty in showing that they have any law of nationality at all. I therefore hope that the House will reject the amendment.

Mr. C. Duraiswami Aiyangar: Sir, the question is not whether China or Japan or any other country has its own laws of naturalisation or not. That is not the question now. The amendment says that if at any time any country takes it into its head to pass legislation by which it does not want to give certificates of naturalization to Indian immigrants there, it must be open to us also to retaliate by saying that in this country we shall not give any certificates of naturalization to men proceeding from such country. There may or there may not be laws of naturalization in other countries, but now times are changing. Every country will hereafter allot its own country to its own people and everywhere, even in places where Indians were once welcome they are now shunned, and it is not unlikely that China might reject Indians, Japan might reject Indians and any other State might reject Indians. If they pass a law like that, let us be forearmed by a law here which will say, " If you are going to pass a law that

[Mr. C. Duraiswami Aiyangar.]

you are not going to give certificates of naturalization to Indians we are going to refuse similar certificates of naturalization to your countrymen in this country." Whether or not we have got power to place any restriction on America and South Africa at present, let us establish in this Bill a principle by which Indians will be guided in the future that they will give certificates only to such people in whose countries similar privileges are accorded to Indians. For this no Act of Parliament is necessary and no permission is necessary at present because we have got the power in ourselves. When we pass a law of naturalization we can also place provisions of restrictions. To the extent to which we have got power to give we have got a right to place restrictions and also to insist on terms of revocation. Therefore, for this limited purpose for which my Honourable friend Mr. Das is now asking the vote of the House, no special permission of Parliament is necessary because we have power already in our hands. If we are entitled to pass a law of naturalization in the manner in which it has been presented to the House by the Honourable the Home Member this amendment which has been moved by my Honourable friend Mr. Das, is also perfectly in place and will establish the principle which will make countries outside India know that Indians are also prepared to stand on their self-respect, that they are prepared to safeguard the interests of their countrymen by saying that they will grant certificates of naturalization only to those people whose countries grant similar privileges to Indians.

Mr. H. Tonkinson: It must have been clear from the speech of the Honourable the Home Member that Government are in sympathy with this amendment. We are, in fact, prepared to accept it except that we wish to safeguard the position in regard to the naturalization of refugees from Asiatic countries who have probably no proper naturalization law of their own. If, therefore, the House wishes to pass this amendment I shall endeavour to substitute for it an amendment at the passing stage, which will be merely a drafting one, so as to secure the position which I have just mentioned.

Mr. B. Das: I accept that.

Mr. President: The question is:

"That after sub-clause (*1*) (*f*) of clause 3 the following be inserted:

'(*g*) that his country of origin does not exclude from naturalisation persons of Indian origin' ".

The motion was adopted.

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

Clauses 4, 5 and 6 were added to the Bill.

Mr. Kumar Sankar Ray: I beg to move:

"That to clause 7 the following proviso be added:

"'Provided that the grant of any certificate of naturalization by any authority whatsoever to any person who was a natural born or naturalized subject of a state which does not grant a certificate of naturalization to any natural born or naturalized British Indian subject shall not operate so as to

(1) confer any right on such a person, or his wife, or children to hold real property situate in British India; or

(2) qualify such a person, or his wife, or children for any office, or any municipal, parliamentary or other franchise; or

(3) qualify such person, or his wife, or children to be the owner of a British Indian ship.' ".

I am sorry I am unable to agree with the view given expression to by the Honourable Members who formed the Select Committee in so far as what some of them say in the appended note about other countries which do not grant certificates of naturalization to Indians is concerned. In order to decide the question it is necessary to go a little into the history of the matter. Previous to the British Naturalization Act of 1914 and even previous to the British Act of 1870, we had our Act XXX of 1852 which regulated naturalization in India. Then came the British Act of 1870 which was confined in its operation to the United Kingdom and it left the powers of the Indian Legislature intact. Section 16 of that Act provided that:

12 Noon.

"all laws, statutes and ordinances which may be duly made by the legislature of any British possession for imparting to any person the privileges or any of the privileges of naturalization to be enjoyed by such person within the limits of such possession shall within such limits have the authority of law but shall be subject to be confirmed or disallowed by Her Majesty in the same manner and subject to the same rules in and subject to which Her Majesty has power to confirm or disallow any other laws, statutes or ordinances in that possession."

The Government of India Act no doubt generally provides that the Legislatures in India cannot override the provisions of any British Statute and section 65, sub-section (2) of the present Government of India Act provides that the Indian Legislature has not, unless expressly so authorised by Act of Parliament, any power to make any law repealing or affecting any Act of Parliament. Before the British Naturalization Act of 1914 was passed there was no British Statute which in any way interfered with the law of naturalization as passed in British India. Then came the British Act of 1914 which enacted for the first time the law of naturalization for the British possessions, but section 26 thereof runs as follows:

'Nothing in this Act shall take away or abridge any power vested in or exercisable by the legislature or Government of any British possession or affect the operation of any law at present in force which has been passed in exercise of such power or prevent any such legislature or government from treating differently different classes of British subjects."

The law is laid down here clearly. It cannot therefore be said that by passing any discriminating legislation we violate or in any way affect or modify the British Statute. I may rather say that we are acting under the express authority of this Statute as contemplated by section 65 of the Government of India Act because that says that the Indian Legislature has no power to affect or repeal any Act of the British Parliament unless expressly so authorised by an Act of Parliament, and I would submit that this section 26 of the British Naturalization Act, if not in exact words, expressly permits this Legislature to make their own laws and make discrimination between different classes of British subjects. I therefore submit that we have ample power to pass laws treating differently different classes of British subjects and thus to revoke a certificate granted to any one on the ground that his country does not grant naturalization to Indians so far as residence within our country is concerned. I therefore submit that it is within the power of the Indian Legislature to make this discrimination amongst the different classes of British subjects and to limit the power to acquire property as suggested in my amendment.

Mr. H. Tonkinson: Sir, if one thing is clear, it is that this amendment, for, as I now understand my Honourable friend to intend, it is to apply to all persons naturalized as British subjects who happen to be in India, would be quite outside the scope of the Bill. It would be an amendment which has nothing to do with persons naturalized under this Bill. Now to turn to another point. I find that the words used in this amendment are

[Mr. H. Tonkinson.]

taken practically verbatim from section 17 of the British Nationality and Status of Aliens Act. They indicate not the capacity of people who are naturalized, but the capacity of aliens who are not naturalized at all, that is to say, these words relate to the rights of aliens throughout the Empire whether they be naturalized or not. I submit that it is therefore quite inappropriate to provide that people who are naturalized under this Act should not get these rights which by the way under clause 5 it is intended they shall get, and further, as I understand it, my Honourable friend wishes it to apply not only to certificates under this Act but, say, the British Act or any other Act. I submit, Sir, the amendment is outside the scope of the Bill and it is also inappropriate.

The Reverend Dr. E. M. Macphail (Madras: European): As a member of the Select Committee, I should like to oppose this amendment. The Select Committee entirely sympathised with the idea that is at the back of the minds of the gentlemen who have moved the amendments that have been made to-day; that is to say, we quite sympathised with the position which has already been accepted by Government, namely, that there should be reciprocity in this matter of naturalization. I am not a lawyer also but I have had the benefit of hearing some lawyers on the subject, and these gentlemen all agreed that it was quite impossible for us in connection with this Bill to do what is desired by a number of Members in this House. It is quite impossible to do what is proposed here, for what does it amount to? It simply amounts to this—that you shall at the same time confer naturalization and not confer it. That is to say, we are saying to the Parliament "You may confer naturalization as much as you please but the persons who are naturalized by your Act shall not have the privileges of British subjects." That seems to me an impossible position for us to take up and however much I sympathise with the idea that there should be reciprocity in this, I must oppose the amendment.

Mr. Kumar Sankar Ray: The Honourable Member has given us no reasons why section 26 does not give us the power. I submit that section is quite clear because it says:

"Nothing in this Act shall take away or abridge any power vested in or exercisable by the legislature or Government of any British possession or affect the operation of any law at present in force which has been passed in exercise of such power or prevent any such legislature or Government from treating differently different classes of British subjects."

The law is quite clear and if the Government of India Act says that we can pass any law which does not vary any British Statute and if the British Statute expressly leaves the way open to us to make such laws, I do not see what bars us from passing any such legislation.

Mr. President: The question is:

"That to clause 7 the following proviso be added:

'Provided that the grant of any certificate of naturalization by any authority whatsoever to any person who was a natural born or naturalized subject of a state which does not grant a certificate of naturalization to any natural born or naturalized British Indian subject shall not operate so as to

(1) confer any right on such a person, or his wife, or children to hold real property situate in British India; or

(2) qualify such a person, or his wife, or children for any office, or any municipal, parliamentary or other franchise: or

(3) qualify such person, or his wife, or children to be the owner of a British Indian ship'."

The motion was negatived.

Clause 7 was added to the Bill.

Mr. President: The question is:

"That clause 8 do stand part of the Bill."

Mr. Kumar Sankar Ray: In view of the fate of my other amendments, I do not propose the amendments to this clause.

Clauses 8 to 10 were added to the Bill.

Mr. President: The question is:

"That clause 11 do stand part of the Bill."

Mr. Kumar Sankar Ray: I do not move my amendment to this clause.

Clauses 11, 12, 13, 14 and 15 were added to the Bill.

The Schedule was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

The Honourable Sir Alexander Muddiman: Sir, I move that the Bill be passed.

I do not think I need detain the House with any remarks at this stage. I should have liked to have moved the amendment which I agreed to accept, but, as it is not ready, I will move it in another place.

Mr. B. Das: Sir, I do not wish to oppose the passing of this Bill at this last stage, but I am glad that at last common sense has got over the legal aspect of the question and a small amendment of mine was accepted by my friend Mr. Tonkinson. Sir, I would have very much liked to see my friend Mr. Kumar Sankar Ray's amendment on clause 7 accepted. It ought to have been accepted by the Government and I do not know why they are so chary. Sir, turning to the short note that has been written by three members of the Select Committee, Messrs. Ramachandra Rao, K. C. Neogy and B. Venkatapatiraju, the Government have not taken the pains to say anything on the subject for the information of the House. I will just read out the note of dissent that they wrote on this Bill:

"We should like to invite the attention of Government to the difficulties that have arisen in regard to naturalization of Indians in the United States. These difficulties have been referred to several times in the Legislative Assembly and need not be again set out in detail. While certificates of naturalization of Indians in some of the States have been withdrawn in consequence of the decision of the Supreme Court of the United States, it is open to an American citizen to obtain a certificate of naturalization under the British Nationality and Status of Aliens Act, 1914. A certificate granted under the Act confers on the person concerned the status of a natural born British subject. The Legislature of this country cannot legislate so as to amend an Act of Parliament. The result is that an American is free to come to India with the status of a natural born British subject and the Government of India cannot deal with the problem on any principle of reciprocity. We suggest that steps should be taken to place India on the same footing as the self-governing Dominions in granting or refusing a certificate of naturalization to American citizens and other foreigners from outside India."

Sir, I may assure you that we on this side of the House are in entire agreement with this note, and I in my halting way ask the Honourable the Home Member to give the House an assurance that he will move the Parliament and the British Cabinet to remove these incongruities and disqualifications in regard to British Indian subjects in the British Empire and other countries.

Mr. C. Duraiswami Aiyanger: Sir, in spite of what the Honourable Member advised me to do, that is, not to oppose the passage of this Bill, I feel that I am bound to say a few words by way of opposing the motion that the Bill be passed into law. Sir, it has been already admitted by my Honourable friend Mr. Tonkinson himself that they have framed the Bill in such a narrow manner that it is impossible to make the slightest amendment in this Bill, either to take away a comma or put in a full stop anywhere. That is the narrow and limited scope which they have given to this Bill. It looks as if a man is asked to go through a thoroughfare in a reserved forest where a foot on this side or on that side would constitute a criminal trespass. That is exactly the situation in which Honourable Members find themselves to-day in proposing any amendment to this Bill. And my Professor, the Reverend Mr. Macphail—a Professor I am proud of—has himself pointed out how he also sympathises a great deal with the ideas that pervade the minds of several Members in giving notice of these motions, but yet he found in Select Committee that it was impossible to do anything by way of amending the present Bill so as to accommodate those things.

Mr. President: The House had full opportunity to amend the Bill as it liked. The Honourable Member knows that the Chair did not disallow or overrule Mr. Kumar Sunkar Ray's amendments.

Mr. C. Duraiswami Aiyangar: May I submit to the Chair that it is not to the amendments of which notice was given that I am referring. I am now referring to the amendment of the Bill in such a manner as to make the provisions suitable to a proper Act, based on the Nationality and Status of Aliens Act, and I say what the dissenting members in the Select Committee have stated, that it is impossible for us here to enforce the law of reciprocity with reference to other countries. That is what I submit in the first instance by saying that the Bill itself is framed in such a narrow manner that it refers only to a certificate of naturalization, unlike the parent Act, the British Nationality and Status of Aliens Act. That, Sir, was also a consolidating Act, consolidating nearly eight statutes on the subject beginning from 25 Edward III Stat 1 and going up to 58 and 59 Victoria, ch. 43, which were all brought together in one Act, the British Nationality and Status of Aliens Act, 1914. I would have very much liked the Government of India also, instead of bringing in such a narrow Bill as this certificate of naturalization Act, if they wanted to consolidate all the naturalization Acts of this country, to have brought in an Indian Nationality and Status of Aliens Act, in which it would have been possible for us to introduce measures which are at present not within the scope of the present Bill. It is on that ground, Sir, that I am raising this objection that the Government of India were not fair to this Assembly in that when they brought in a consolidating Bill they should have brought in a Bill purely for one purpose which does not include the kindred purposes which the similar Act in Great Britain has done by making it the British Nationality and Status of Aliens Act. I can very well understand why there is some difficulty in bringing in such an Act here as the Indian Nationality and Status of Aliens Act, because the Government of India and those who sit on that side have not come to recognise that there is any Indian nation, and therefore they cannot bring in an Indian Nationality Act. At any rate they will concede that, whether we are an Indian nation or not, we are

considered as the British nation within the meaning of the British Nationality and Status of Aliens Act. The British Nationality and Status of Aliens Act by sections 1 and 13 to 16 made us part of the British nation and therefore I would have liked here that the Government should have brought in a Bill called the British Indian Nationality and Status of Aliens Bill, which would give us our rights to give certificates of naturalization and our rights to enforce certain rights and duties on the part of different classes of British subjects and also to enforce restrictions on the aliens who are present in this country. That is the kind of Bill which the Government should have brought in the place of the present Bill, and I submit therefore the Government must, if they want to be fair to this House, withdraw this Bill and bring in another Bill of that kind in order to give this House an opportunity of maintaining and securing the rights of Indians both in this country as well as in other countries where Indians have to go.

Now, Sir, another difficulty that the members of the Select Committee felt was that we have to apply for further rights, the rights which are possessed by Scheduled Dominions under the British Nationality and Status of Aliens Act, and we want our rights also to be placed on a par with those of the British Dominions. Now as my friend Mr. Kumar Sankar Ray brought to the notice of this House, this House already possesses, under section 26 of the British Nationality and Status of Aliens Act certain powers by which they can regulate the rights and privileges of each class of British subjects, but Mr. Tonkinson has said that we have not got the power, at any rate it is not included in this Bill. That is exactly my point. Under section 65 of the Government of India Act we have powers vested in this Legislature for legislating for all classes of subjects. . . . . .

Mr. President: Order, order. Mr. Kumar Sankar Ray gave the House an opportunity to exercise those powers and, as the Honourable Member knows, the Chair did not rule out that particular amendment; and yet the House chose to reject it. The Honourable Member should have used his skill to persuade the House to accept that amendment but he did not even speak on it. It is, therefore, too late for the Honourable Member now to refer to these powers at length.

Mr. C. Duraiswami Aiyangar: What I am submitting to the House is that, if instead of being a narrow Bill which deals only with certificates of naturalization, it was a Bill which was based on the same lines as the British Nationality and Status of Aliens Act, then we could exercise all these powers, and the Government of India, by bringing in a narrow Bill, shuts us out of these provisions. That is why I ask the Government of India to withdraw this narrow Bill and put before us a broader Bill than that. That is exactly what I am suggesting to the Government of India. And, now, Sir, you will also see that even the British Nationality Act is not respected here. The status of aliens as described there prohibits an American from enjoying any extra privileges, which are granted under the Criminal Procedure Code here and we have no power to enforce such rights by any enactment in this country. We cannot therefore define what is the status of aliens here. The status of aliens, according to section 17 of the British Nationality Act, implies that an alien shall be tried in the same manner as if he was a natural-born British subject, whereas under section 528A of the Criminal Procedure Code he is entitled to a special kind of trial, special juries, and he is also entitled to sit as a junior for an Englishman even though he has not got a certificate of naturalization and is

[Mr. C. Duraiswami Aiyangar.]

an alien in this country. Instead of a Statute by which we can prescribe the restrictions which should be placed upon aliens, our Bill is of a purely limited nature. It is a certificate of naturalization Bill which has been placed before this House. I therefore claim that it is the right of this House that, if a Bill is brought forward, a Bill of this narrow type should not be brought in, but the Bill must be so framed by the Government that all subjects which are kindred to it can be discussed by the House at one stretch. That, Sir, is my principal objection. Further, Sir, I object to this Bill upon economical grounds. In South Africa the Government consider that Indians are economically unsuited to that country. There are several other countries which consider that Indians are economically unsuited to those countries I therefore say, Sir, that all foreigners coming from outside India are economically unsuited to this country. Why then should we try to give certificates of naturalization to persons who are not already in India? India is already poor; it is full of beggars. The other day a Resolution was brought in on that subject. Yesterday my Honourable friend, the official Member from Burma, said it was open to us to pass a regulation by which, upon economical grounds, we could keep all Indians to the west of the Bay of Bengal and all Burmans to the east of the Bay of Bengal; and I say those who are not already here in this country may be kept beyond the Himalayas or beyond the Arabian Sea. . . .

Lieutenant-Colonel F. C. Owens (Burma: Nominated Official): May I say, Sir, that I did not make any such statement? I said nobody thought separation meant, if it became an accomplished fact, that all Indians should live on one side of the Bay of Bengal and all Burmans on the other.

Mr. C. Duraiswami Aiyangar: Sir, the question of giving certificates of naturalization to other people, Asiatic or non-Asiatic, can arise only when India is economically suited to admit other people, and at this stage, Sir, I would not like any such certificate to be extended on economic grounds. Also I submit that at present it is economically unsuited to the interests of this country that certificates of naturalization should be extended until this country improves in industry, removes the problem of unemployment, and makes provision for those who are already here; and also we shall have to make provision for those Indians who may be repatriated from South Africa or from other Colonies to-morrow, or from Burma the day after to-morrow. The country therefore cannot economically also find itself in a proper condition to extend an invitation to other traders asking them to come and settle here with all the rights and privileges of British subjects. Therefore, Sir, both on economic grounds and also on the ground that the Government of India have not treated us fairly in bringing a limited and narrow Bill like this, I oppose the passage of this Bill.

Lala Lajpat Rai (Jullundur Division: Non-Muhammadan): Sir, I just rise to make a confession of a mistake. I am sorry that this part of the House did not realise the importance of Kumar Sankar Ray's amendment and therefore treated it rather lightly. Nothing can be done now. It is perfectly right that no provision of this Bill can override any provisions of the British Parliamentary law, but surely we could accept that amendment and provide against the acquisition of property in India by people whose countries of origin impose limitations of this character on our nationals. I know that limitations of that character did exist in Japan. They do not

allow their naturalized subjects, who are not of Japanese origin, to acquire real property in that country, and I think we ought to have accepted Kumar Sankar Ray's amendment. He has devoted a great deal of time to the study of this subject and his plea deserved a better fate than was accorded to it. Now, I can only ask the Government to see if this part of my statement is correct. I cannot vouch for it because my impression was got from a visit which took place as long back as 1915. If that impression is correct, I would ask them to bring in an amending Act to provide that the nationals of those countries which prohibit the acquisition of real property by Indians, even after they had become naturalized subjects of that country, shall be treated in a similar way in this country also.

Mr. H. Tonkinson: Sir, I do not think that the remarks made in the debate call for any observations. I must, however, refer to the remarks made by my Honourable friend Lala Lajpat Rai. On that point, Sir, we are quite prepared to look into the question which he mentions; but I must point out that if it is necessary to take action, if it is decided to take action on those lines, it will not I think be done by an amendment of this Bill, it will be done by a separate Bill altogether. In these circumstances, Sir, I propose now with your permission to proceed to move the amendment of which I think you have a copy. It is an amendment consequential upon that passed by the Assembly on the motion of my Honourable friend Mr. B. Das. On his motion a sub-clause (*g*) was added to clause 3(*1*) of the Bill. I propose, Sir, in lieu of that amendment that the following amendments be made:

1. " That the following words be added to sub-clause (*1*) (*b*), namely:
'or of any State of which an Indian British subject is prevented by or under any law from becoming a subject by naturalization.' "

In the second place, I propose, Sir:

2. "That sub-clause (*1*) (*g*)"—that is, the sub-clause added by my Honourable friend—"be deleted".

If clause (*b*) is amended as proposed in this amendment it would read as follows:

" that he is neither a British subject nor a subject of any State in Europe or America or of any State of which an Indian British subject is prevented by or under any law from becoming a subject by naturalization."

That is to say, a person applying for a certificate of naturalization under the Bill must satisfy the Local Government that this condition is fulfilled in his case. It meets I think the point which was made by my Honourable friend and it further also I think safeguards the position of persons who have come here from places in Central Asia which may have no naturalization law. Sir, I move.

Mr. B. Das: Sir, I am very glad to accept the alteration made by my Honourable friend Mr. Tonkinson.

Mr. President: Order, order. It is not for the Honourable Member to accept or reject anything. It is entirely for the House to decide.

Mr. B. Das: I was going to say, Sir, that this amendment takes us a very small way and not a long way, but I am very glad about it, and I hope the Honourable the Home Member when he makes his final reply will give me that assurance. . . . . .

Mr. President: Order, order. The Chair must warn the Honourable Member against repeating the same argument during the course of his speech. He has repeated it several times!

Mr. Devaki Prasad Sinha (Chota Nagpur Division: Non-Muhammadan): Sir, may I know how the amendment of my Honourable friend reads?

Mr. President: The motion is that the following words be added to sub-clause (*1*) (*b*):

"or of any State of which an Indian British subject is prevented by or under any law from becoming a subject by naturalization ".

It is exactly the same thing as was passed by this House on the motion of Mr. B. Das. The question is:

1. " That the following words be added to sub-clause (*1*) (*b*), namely :
'or of any State of which an Indian British subject is prevented by or under any law from becoming a subject by naturalization;' "

and

2. " That sub-clause (*1*) (*g*) be deleted."

The motion was adopted.

The Honourable Sir Alexander Muddiman: Sir, I move that the Bill, as amended, be passed.

The motion was adopted.

THE INSOLVENCY (AMENDMENT) BILL.

The Honourable Sir Alexander Muddiman (Home Member): Sir, I move that the Bill to amend the Presidency-towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920, as reported by the Select Committee, be taken into consideration.

Sir, the Report of the Select Committee is a unanimous one; I have received no amendments and therefore I think at this stage I need say no more. Sir, I move.

Mr. S. C. Ghose (Bengal: Landholders): Sir, may I put one question to the Honourable the Home Member, namely, whether it is the intention of the Government to give notice to the insolvent when the court makes its preliminary inquiry before the court makes a complaint to the magistrate.

The Honourable Sir Alexander Muddiman: I leave it to the court to authorise such preliminary inquiry as it thinks necessary.

Mr. S. C. Ghose: The court should give notice to the insolvent before the insolvent is committed.

The Honourable Sir Alexander Muddiman: I am afraid I have not understood the point.

Mr. S. C. Ghose: I want to know whether it is the intention of the Government to give notice to the insolvent when the court makes its preliminary inquiry and before it commits him to the magistrate.

The Honourable Sir Alexander Muddiman: No, Sir.

The motion was adopted.

Clauses 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Sir Alexander Muddiman: Sir, I move that the Bill, as amended by the Select Committee, be passed.

Mr. C. Duraiswami Aiyangar (Madras ceded districts and Chittoor: Non-Muhammadan Rural): Sir, I wish to say one word. I do not oppose the passage of the Bill but I wish to ask the Government why, when the Civil Justice Committee after such an elaborate inquiry has made some 7 or 8 suggestions with reference to the amendment of the Provincial Insolvency Act, the Government wish to take them only one at a time and carry out the amendments by piecemeal legislation. Are we to understand that eight separate Bills will be introduced for making eight amendments to one Bill and that Government have not made up their mind to consider once for all all the suggestions which the Civil Justice Committee has made? Will the Government tell us once for all whether the provisions of the Insolvency Act are to be amended only in one respect or whether the other amendments are to be taken up later on or whether they do not approve of the other recommendations of the Civil Justice Committee and approve only of this one suggestion made by that Committee? That, Sir, will be saving Government time and paper as well as the time of the Assembly if we were to have in one view all the various amendments that will be made in one enactment. It is not necessary that we should have eight Bills to carry out eight amendments.

The Honourable Sir Alexander Muddiman: Sir, I do not know if that really arises on this motion. But I may inform the Honourable Member that the Civil Justice Committee have made an enormous number of recommendations and we are gradually working our way through them. If I could have brought all the suggested amendments into one Bill, nobody would have been better pleased than myself.

Mr. C. Duraiswami Aiyangar: I am only speaking with reference to this one Act, the Provincial Insolvency Act.

Mr. President: The question is:

"That the Bill to amend the Presidency-towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920, as reported by the Select Committee, be passed".

The motion was adopted.

Mr. President: I understand that Sir Basil Blackett is not going to move the next motion which stands in his name. Sir Alexander Muddiman.

Mr. Devaki Prasad Sinha (Chota Nagpur Division: Non-Muhammadan): What about the last Bill?

Mr. President: What Bill?

Mr. Devaki Prasad Sinha: The Income-tax Act (Amendment) Bill.

Mr. President: The Chair has already announced that Sir Basil Blackett is not going to make the motion.

THE CODE OF CRIMINAL PROCEDURE (SECOND AMENDMENT) BILL.

The Honourable Sir Alexander Muddiman (Home Member): Sir, I move that the Bill further to amend the Code of Criminal Procedure, 1898, for a certain purpose, be taken into consideration.

If I depart from my usual practice and inflict on the House rather a long speech on a small Bill, and if I refer in considerable detail to some facts which, I am afraid, are within the recollection of many Members of this House, it is because the Bill is in itself both of administrative importance and because the question of the way the House deals with it may have important implications on matters far beyond its actual provisions.

The history of the measure is well known. But I must restate it in some detail. The Bill involves the consideration of two sections of the Criminal Procedure Code. I will read the relevant passages here. The first section is section 109 which runs as follows:

"Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or a Magistrate of the First Class receives information:

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction and that there is reason to believe that such person is taking such precautions with a view to commit any offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence or cannot give a satisfactory account of himself,

such Magistrate may in the manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond with sureties for his good behaviour for such period not exceeding one year as the Magistrate thinks fit to fix."

Section 123 makes provision for imprisonment in default of security taken in virtue of the provisions of section 109; and I need only trouble the House by reading sub-section (*6*) of that section which runs as follows:

"Imprisonment for failure to give security for good behaviour shall, where the proceedings have been taken under section 108 or section 109 be simple and, where the proceedings have been taken under section 110, be rigorous or simple as the Court or Magistrate in each case directs."

When the Criminal Procedure Code was under the consideration of this House in 1923, section 123 was amended to take away the discretion of the Court to inflict rigorous imprisonment with the result that under the existing law a sentence of simple imprisonment only can be imposed in default of security under section 109. That is how the matter stands. But, as the House knows, I brought in a Bill last September which included a clause which in fact is the substance of the actual Bill I am now seeking to secure consideration of. The House passed the remainder of the Bill in September but rejected the clause in question by a vote of 52 to 51, that is to say, by a majority of one. Now, Sir, that majority has at any rate disappeared; for it is perfectly clear that one at least of the Honourable Members who did not vote on the last occasion must vote with me on the present motion. I refer to my Honourable friend, Maulvi Abdul Haye. He has by his Resolution on beggary made it quite clear that his views regarding vagrants and vagabonds are far more drastic than mine. He wanted legislation on the lines of the English Vagrancy Act. Now, I will tell the House what this Vagrancy Act says.

Under the Vagrancy Act of 1824 (section 3, I think it is), idle and disorderly persons who are defined to be people who refuse to work and maintain their family, pedlars trading without licenses, beggars in public places, persons in workhouses who refuse to perform their tasks and certain women who fail to maintain their children can all be dealt with and sentenced to one month's hard labour. There is no question of security, and, as I have said, it is hard labour. This is under section 3 of the Act. Under section 4, rogues and vagabonds, that is, persons who have been previously dealt with under the provisions of section 3 which I have just read to the House, fortune tellers, people without any visible means of subsistence or unable to give a good account of themselves, people exposing indecent pictures, people who run away and leave their wives and children chargeable to the parish, suspected persons and reputed thieves and many others of this class can be dealt with and are liable on conviction to three months' hard labour.

Incorrigible rogues are dealt with under section 5 of the Act. They are persons who have been dealt with previously under the provisions I have just read to the House. They are also persons escaping out of legal confinement, persons resisting apprehension and many others. They are very severely dealt with. The position of the incorrigible rogue must be most unpleasant; he can be sentenced to one year's hard labour and may also be whipped.

Subsequent Acts have extended these provisions to other classes, but I need not weary this House further. I have quoted these to prove my proposition that Maulvi Abdul Haye's way of dealing with incorrigible rogues is even more stringent than my own and certainly much more stringent than the existing law in India.

Now, since I last addressed this House I have obtained figures from Local Governments in regard to persons confined under this section; and they will be found in a long statement, statement No. 3, in the White Paper which I have had circulated to the House and which I hope every Member has read. That White Paper contains very interesting information. I do not desire to go in great detail into the figures, but I may point out that 3,134 persons were in jail on the 1st of October for failure to furnish security under section 109. 1,113 of these were persons with previous convictions and 1,085 had previous convictions for offences including an element of theft. As regards these figures there seems to be some slight discrepancy and there ought to be a slight increase as the Punjab figure of 140 should obviously be added to 1,113 in order to arrive at the right figure. However, it is not essential to the success of my argument whether there are 1,200 or 1,300 of these gentlemen. In the United Provinces report, I notice that two persons had no less than 17 convictions for theft. I will take a leading instance from the correspondence with Madras of an incorrigible rogue—I think I am so justified in referring to him in view of his character. This man had six previous convictions for theft, he had been convicted four times under section 110 and had several other convictions. More than 33 per cent. of the people in jail under this section had previous convictions for offences including an element of theft. Many of the persons now held under section 109 would, in England, have been liable to conviction under section 7 of the Prevention of Crimes Act and to a sentence of imprisonment with hard labour.

[Sir Alexander Muddiman.]

My Honourable friend, Mr. Rangaswami Iyengar, in the last debate apparently wanted to know how we deal with European vagrants. Under the European Vagrancy Act, European vagrants would be sent to places where they are made to work and they could be removed from the country. Moreover, under the amendment made by the Criminal Law Amendment Act of 1923 European British subjects can be dealt with under section 109 of the Code. It was one of the racial distinctions removed by the Racial Distinctions Act, and I do not suppose there is any European Member in this House who would have the slightest objection to this provision.

Well, Sir, one of the points made against my Bill on the last occasion was that the section had only recently been amended and there was little to show that a further amendment was necessary. Now this is a cogent argument and I must meet it in detail. I must ask the indulgence of the House for a short time to enable me to put before it some extracts from the opinions of the various Local Governments. They are all before the House in the White Paper, but I will take a selection from the opinions. This is the opinion of the Government of Madras:

"*Sections 109 and 123* (*6*).—The substitution of 'simple' for 'rigorous' imprisonment in sub-section (*6*) of section 123 for failure to give security for good behaviour under the provisions of section 109 has provoked criticism as in some cases the persons bound over belong to a class of criminals for whom simple imprisonment is entirely unsuitable. The form of imprisonment to be awarded might well be left to the discretion of the Court as in the old section".

That is the considered opinion of the Government of Madras.

The Government of Bombay give their opinion as follows:

"The provision of section 123 limiting imprisonment under section 109 to simple has been noticed by several officers as providing an entirely inappropriate punishment for the majority of the persons concerned".

The Government of Bengal write as follows:

"Under this section as amended by Act XVIII of 1923, it is now obligatory on Magistrates to pass a sentence of simple imprisonment, where proceedings have been taken under section 109. Such a sentence is very lenient with regard to old offenders. Many persons dealt with under this section are habitual criminals and to confine them in company with persons undergoing simple imprisonment for minor offences is, on the one hand, no deterrent and there is, on the other hand, the danger of their exerting a bad influence on persons guilty of misdemeanours only with whom they would associate in Jail. His Excellency in Council is accordingly of opinion that imprisonment under this section in proceedings under section 109 should be simple or rigorous at the discretion of the Magistrate as under the old law, so that a professional criminal caught under suspicious circumstances may be given rigorous imprisonment, while a homeless vagabond may be sentenced to simple".

The United Provinces Government in their considered opinion write as follows:

"There are certain other amendments in the Act which are adversely criticised by most of the District Magistrates. They are unanimous that the amendment in section 123 (*6*) substituting simple for rigorous imprisonment in default of security under section 109 makes that section ineffective. The Governor in Council feels no doubt that the amendment is most ill-advised and robs the section of much of its utility. He considers that magistrates should be given discretion to award either rigorous or simple imprisonment under this section".

I will not quote the whole of the opinion of the Government of Burma as it is long, but I may say that they are strongly in favour of this Bill

The Government of Bihar and Orissa write as follows:

"As to the working of the rest of the new Code, the following important features have been brought to the notice of the Local Government:

Several district officers are against the substitution of 'simple' for 'rigorous' imprisonment under sections 108 and 109, and recommended that the Court should be given discretion to impose simple or rigorous imprisonment. The Inspector General of Prisons has also referred in his annual report to the undesirability of having hardened criminals sitting idle in the jails".

The Government of the Central Provinces write as follows:

"The punishment of simple imprisonment is usually confined to cases where the accused by reason of age or infirmity is unable to work, and it is also imposed in cases involving a lesser degree of moral turpitude, or where the offence is of a technical nature. It is undesirable in the opinion of His Excellency in Council that persons sentenced to simple imprisonment on these grounds should be herded with vagrants belonging to a low stratum of society and of filthy personal habits. To the latter, simple imprisonment means no imprisonment at all—it merely means free board and lodging at the expense of Government. His Excellency in Council is, therefore, of opinion that the section should be amended by restoring the discretion to make imprisonment rigorous or simple".

Now, these are the considered opinions of the Local Governments. and this House cannot disregard them. I have so far dealt with the opinions of the Local Governments. Let us now look at the problem from another point of view. from the jail point of view. I will now give the House a few extracts from the Jails Reports.

Bombay writes as follows:

"Many of these prisoners are habituals with several previous convictions and it is clearly wrong that such persons should be maintained for months or years in entire idleness at the public expense".

The United Provinces jail authorities write as follows:

"The number of prisoners sentenced to simple imprisonment continues to increase, due to the fuller effect of the changes in the Criminal Procedure Code under which prisoners detained in jails under section 109, Criminal Procedure Code, are sentenced to simple imprisonment. A very undesirable burden has been thrown on the finances of the country, as these prisoners receive free food and do no work, and in addition some injury is inflicted on these vagrants, who are sent to jails to spend their whole sentence in idleness, as very few of them elect to labour. The presence of these idle prisoners in jails, as the Jails Committee pointed out, is bad for jail discipline".

The Bihar and Orissa jail authorities write as follows:

"there were 95 prisoners in our jails on the 1st January 1924 who were undergoing simple imprisonment under section 109, Criminal Procedure Code, of whom 33 had previous convictions, some as many as seven times. Simple imprisonment has little to commend it at any time; to give it to habitual criminals of the worst type is distinctly dangerous. Being illiterate, and not of the type who will volunteer to work, it will be strange if they do not in many cases indulge in behaviour subversive of jail discipline, and also lay their plans for future crimes after release".

This is from their second Report:

"The number of simple imprisonment prisoners in our jails is becoming quite an embarrassment, and at least one experienced Superintendent thinks a danger, and I agree with him".

[Sir Alexander Muddiman.]

The Central Provinces jail authorities write as follows:

"As has been mentioned in the reports for previous years, this form of punishment works adversely on jail discipline. It is also unfair on the prisoners as a life of idleness in jail surroundings is bound to produce both moral and physical deterioration.

Major Warwick gives the following description of the life of a prisoner in jail:

'He is fed and clothed at Government expense and he spends his day loafing on his cot or chatting to his fellow prisoners. Often dressed in private clothing, he wears an expression of superiority and independence over his fellow prisoners. It gives him great satisfaction to be able to tell the Superintendent that he does not intend to work. Although there have been no acts of insubordination amongst these prisoners, who on the whole have given little trouble, there is always a feeling that this class of men is out of place in a jail, where discipline is so closely associated with various tasks and forms of labour, and on which it is so dependent.' "

The United Provinces Criminal Justice Report for 1924 says:

"The District Magistrate of Saharanpur writes: 'At my recent inspection of the jail I found one man with thirteen previous convictions thoroughly enjoying simple imprisonment at Government expense. If our legislators had known the type of men proceeded against under this section, they would hardly have ruled out rigorous imprisonment in all cases'. "

The Central Provinces Criminal Justice Report writes as follows:

"The results of revision of the Code have not been entirely for the best. The prisoner is living at Government expense and being confirmed in habits of idleness. I cannot but feel that it was a mistake to take away the Magistrate's discretion to award the kind of imprisonment best suited to the circumstances of the particular case. Mr. Findlay, the Deputy Commissioner, I believe, fully concurs in this opinion."

Now, Sir, these extracts which I have read to the House will show you that every executive Government in India, every jail authority, everybody who is in touch with these prisoners, supports the view that I have put before the House. These Reports seem to me to make out an absolutely clear and convincing case. I want to remind the House that I am only asking that the magistrates should have discretion to pass a sentence of simple or rigorous imprisonment in these cases. I do not ask that the sentence should necessarily be rigorous imprisonment. I am quite prepared to give the magistrate the discretion. And here may I pause for a moment to read an extract from a letter I received this morning from a gentleman who was a magistrate, whom I do not know personally and who was not a member of any of the services. He writes:

"Under the Indian Penal Code, Magistrates are given the option of sending a man to imprisonment or imposing a fine. Do Magistrates thereby send every accused person to imprisonment? Take the ordinary offence for criminal force and assault—sections 352 to 358 I. P. C. I think Magistrates very rarely send accused persons under these sections to undergo simple imprisonment. The accused person is only fined. The Magistrate exercises his option wisely. Why should he not exercise it wisely in these cases?"

That is what he writes. That is a view I must ask the House to consider.

Now, Sir Hari Singh Gour in his speech on the last debate purported to explain to the House why the change was made in 1923. I confess he did not, to my mind, succeed in doing so. The arguments he used are as appropriate to section 110 as they are to section 109. I agree with him that the amendment made in the case of section 108 by the substitution of simple imprisonment stood on quite a different footing, but the

analogy between section 108 and section 109 is a false one. If you are going to draw analogies between these sections and if there is any argument to be deduced from those analogies, the analogy is between section 109 and section 110.

1 P.M.

Now, Sir, if I did not think I had an amazingly strong case I should not have brought in a Bill at such short notice after the House even by a majority of one had rejected my proposal. But I do feel that I have an astonishingly strong case. I do feel that the facts I have read to the House cannot fail to impress Members on all Benches. I feel, moreover, that my action may be criticised in other quarters in this respect. It is often said by non-official Members of this House that they have no power, and that the administration proceeds like a steam roller regardless of arguments, deaf to appeals and never modifies anything. What has been the result in this case? The single vote of one non-official Member has for three months continued a state of affairs such as appears from the opinions I have read to the House, and that should be a very definite imposition of responsibility upon the Members of this House as to how they exercise their vote. The proposition I am bringing before you is supported by every executive Government in India. It is supported by all the jail authorities and it is brought before you with the full weight of the Governor General in Council. This House must really consider before it votes on proposals such as these, remembering as it must that a single vote on a question like this decides a matter which is of the greatest importance to the administration of the jails and to our criminal administration. I do hope the House will, in considering this Bill, bear that in mind throughout. Sir, I move. (Applause.)

Mr. Amar Nath Dutt (Burdwan Division: Non-Muhammadan Rural): Sir, I had occasion to oppose the amendment of this particular section, when it was introduced at Simla during the last Legislative Session, and I am sorry that I have to oppose it again as the Honourable the Home Member has thought fit to bring it back again in this House in this Session. Now, Sir, we did not oppose the introduction of this Bill owing to a convention that has been established in this House that no leave to introduce a Bill should be objected to, but it was then distinctly given out by my Leader in this House that we would oppose this Bill at a later stage, that is, at the time of consideration. I thought there were materials which would induce us to vote this time in favour of the Bill that has been brought by the Honourable the Home Member after due and mature consideration and in that hope I patiently heard all that he had to say in support of this Bill, but the painful impression that was created in my mind when listening to his arguments was that I was in the court room of a Deputy Magistrate hearing the arguments of a prosecuting counsel in favour of the conviction of the accused. If he has pleaded for the conviction of the accused, it is my duty in this House to plead for the acquittal of the accused, and I shall do so.

Now, Sir, it was said by the Honourable the Home Member that the motion was carried only by a majority of one last time and that that majority has now been reduced as Mian Abdul Haye moved a Resolution about beggary and vagrancy. I do not know how far that anticipation with regard to my Honourable friend will come to be real. He has appealed to us by saying that the fact that they did not get this Bill certified by

[Mr. Amar Nath Dutt.]

the Governor General shows that much respect is paid to what we do and say here, (*Mr. M. A. Jinnah*: " Question") and that this is a responsible Legislature. Sir, I wish it were so, and if it were so, I think it was hardly befitting on the part of the Honourable the Home Member to bring this Resolution in three months again. But, Sir, he pleaded that out of deference to public opinion in this country as also to the opinion of the Members of this House which is said to be a responsible body, he allowed the country to be run without these provisions for three long months. He has waited for three long months and as a reward for this he has asked us to vote for this Bill, which I am sure we will not be able to do. He has quoted a certain section from the Vagrancy Act with which I am not familiar. But this much I can say that upon a reading of section 109 to which rigorous imprisonment is asked to be applied, you will find that this section makes a very wide provision for detaining anybody and everybody whom the Executive thinks proper to detain. Sub-section (*b*) of section 109 runs thus:

"That there is within such limits a person who has no ostensible means of subsistence"—*mark the words, Sir,* "who has no ostensible means of subsistence or who cannot give a satisfactory account of himself."

Supposing a man goes on a pilgrimage to Dwarka or any other distant land. He certainly will have no ostensible means of living there, and may I be permitted to say that many of the Honourable Members here, who have come to Delhi from their distant homes, have not also any ostensible means of livelihood here . . . . .

Maulvi Muhammad Yakub (Rohilkund and Kumaon Divisions: Muhammadan Rural): Probably only the speaker and none else.

Mr. N. M. Joshi (Nominated: Labour Interests): They receive Rs. 20 a day.

Mr. Amar Nath Dutt: "Or who cannot give a satisfactory account of himself ". Now, Sir, what is a satisfactory account? It will be for the Executive to judge. We know for certain that this sub-section was applied against young men who were engaged in political work and who happened to go away from their homes to distant places. The Honourable the Home Member in the last September Session challenged me asking me whether I could cite a single instance in which a political worker was convicted under this section or asked to give security under this section. He apparently forgot what had recently happened in Nagpur during the Satyagraha days when several hundreds of young men were hauled up under this section and were asked to give security or sent to jail. Now, Sir, the Honourable the Home Member has read extracts of opinions from Local Governments which generally contained opinions of the jail authorities and executive authorities. Our objection is that they should not be the judges about detaining people because it is in their charge that these people are placed and they will be only too glad to have so many labourers under them. The Honourable the Home Member has also quoted from the opinion of a magistrate that as the magistrates are given power and discretion when awarding punishment under the Indian Penal Code, to award a sentence of simple imprisonment, or rigorous imprisonment or fine, they should also be allowed to have this discretion

in the case of the security section. Of course, he places much weight upon the opinion of this magistrate, but we do not know who this magistrate is and what his antecedents are. Whatever that may be, I submit that he has forgotten the fundamental distinction between a punitive section of the Indian Penal Code and a preventive section of the Criminal Procedure Code. That being so, I submit that in cases when a man commits a substantive offence he may be convicted and the magistrate who was trying him may be a judge as to whether he ought to be awarded simple imprisonment or rigorous imprisonment or fine, and that will meet the ends of justice. But in cases where you only want to prevent crime, apprehending that a person might commit crime, I think that unless you find him such a dangerous character and a habitual criminal as is contemplated under section 110, you have no right to inflict this punishment in the nature of rigorous imprisonment and it should suffice if you merely detain him. With these few words I oppose the consideration of this Bill.

Khan Bahadur W. M. Hussanally (Sind: Muhammadan Rural): I have listened to my Honourable friend Mr. Amar Nath Dutt with considerable attention. The Honourable the Home Member quoted from the opinion of a magistrate which he read to us a little while ago, and I, another magistrate, am here to lay before the House my experience of over twenty-five years as a magistrate. The class of people that are hauled up under this section 109 or section 110 are generally ruffians and dangerous characters, and, so far as my province is concerned, these people generally hide themselves in forests and jungles where they cannot be traced, much less can we get any evidence as to their antecedents. Such people are extremely dangerous in my part of the country and cattle lifting is so rife in my province that your Criminal Procedure Code and Indian Penal Code have failed so far to stop it so much so that the Government of Bombay have recently appointed a Committee which is sitting at the present moment to devise further means to stop cattle lifting in my province. This is the class of people that we get under these two sections 109 and 110. So far as section 110 is concerned, we may be able to get some evidence against them, but so far as section 109 is concerned, it is very difficult to find out the antecedents and means of subsistence of these people at all. My Honourable friend, Mr. Dutt, said that we, who are here, will also be said to have no means of subsistence; and my Honourable friend, Mr. Joshi, exclaimed that we are getting Rs. 20 a day, so that the argument put forward by my Honourable friend Mr. Dutt is, he will pardon my saying so, puerile. It is easy to find out whether a man has any means of living, whether he has got any occupation or not, and yet the class of people that we generally get, who go about the country, are almost beggars and they have nothing to live upon. Their profession is theft and particularly cattle lifting, in my province. To commit these men to jail and make them stay there and enjoy themselves is certainly against all canons of propriety and is an unnecessary burden laid upon the tax-payer. Moreover, these people have not the slightest fear of remaining in jail for a year or even more for the matter of that. They do not come out in the slightest degree corrected in their habits. So what do you gain by keeping them in jail so long? Absolutely nothing. On the contrary, the tax-payer has to support them all the time. The only objection, so far as I can see and gather from my Honourable friend Mr. Dutt, is that sometimes—recently at Nagpur—

[Khan Bahadur W. M. Hussanally.]

certain people were convicted under this section who were engaged in political work. If it is a fact that in certain places or in certain provinces political workers are condemned under this section, the best thing would be to propose an amendment to the Criminal Procedure Code excluding section 124-A and similar other sections from the operation of this section 109.

Mr. A. Rangaswami Iyengar (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural): You do not understand it at all.

Mr. Amar Nath Dutt: As a magistrate he will not understand.

Khan Bahadur W. M. Hussanally: I will go to Mr. Rangaswami Iyengar for him to explain to me what Mr. Amar Nath Dutt meant. I am laying before the House my view as I understand Mr. Amar Nath Dutt's argument. I can understand very well no action being taken under this section against people engaged in political work. They could be excluded from the operation of the section. That would be a perfectly legitimate thing to do. Surely, I for one will oppose any person being condemned under section 109 if he is hauled up only for his political doings. But for that purpose to prevent magistrates from using their discretion to give a condemned man simple or rigorous imprisonment is certainly wrong. The first duty that is imposed upon us is to look to the well-being of society and its safety, and to secure that, we must take all precautions possible. It is not the interests of individuals that we have to take into consideration first. The first duty cast upon us is to take the safety of the populace into our consideration and for that purpose we are bound to take all steps in our power to secure that end. The interests of individuals are quite a secondary thing altogether. I have therefore great pleasure in supporting the motion brought forward by the Honourable the Home Member.

Mr. Chaman Lall (West Punjab: Non-Muhammadan): I rise to oppose the motion, and the grounds on which I propose to do so are these. The Honourable the Home Member has read out various opinions of Local Governments in regard to this Bill. But I consider that all those opinions simply reinforce the argument that this measure is meant for the purpose of inflicting a hardship upon a class of persons upon whom hardships should not be inflicted. If you were to confine it to the inflicting of rigorous imprisonment under 109 (*a*) I could understand your position. But you want to apply it under 109 (*a*) and 109 (*b*). What is section 109 (*a*)? It says:

> "That any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence."

Section 109 (*b*) is of a different nature. It says:

> "That there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself."

Now, Sir, it is a very wide section and in actual working it inflicts a terrific hardship upon the poor and upon those who have no means of subsistence. If you were to widen the scope of this interpretation I dare say many a millowner would come under the clutches of this law. Many a millionaire would come under this law, as being a person with no

ostensible means of subsistence and who cannot give a satisfactory account of himself. (Laughter.) Our experience has been that these people cannot give a very satisfactory account of themselves. (Laughter.) But joking apart, the position is this. First of all we have to consider the class of persons who would come within the scope of this measure. This is the class of persons to whom the weapon of imprisonment should not be applied but to whom some sort of preventive treatment should be applied. It is not a case for the prison house but for the poor house. The man who has no ostensible means of subsistence is not the person that you want to send to prison. My Honourable friend Mr. Majid Baksh says that he will learn the method of subsistence there. That is exactly the attitude of the magistracy and of the Government. They want him to go there and work for his living. Why should he not only work but become a prisoner as well? Why should you inflict this hardship upon the poor of this country? Why do you not create poor houses and do the right thing for these people. In other civilised countries, a man who has no ostensible means of subsistence is not sent to prison because he has no ostensible means of livelihood. You can do that in India too, but you do not want to do it. What did you do in Nagpur? Hundreds of men who, according to the executive authorities, had, it was alleged, no ostensible means of subsistence or were "concealing their presence with a view to committing an offence" were hauled up before the magistracy. They were sent to prison although they had committed no crime. They were not guilty under any circumstances. You stretched the law and you included even those who had proper means of subsistence. I do not stand here merely on the ground that political agitators would be included under this section. My point is that the people who would be convicted under this section would be the poor class of people who have no means of subsistence and who have no chance of defending themselves. They cannot get any legal advice. They come of a class which is not supported generally or generously by people who have fared better in this world; and which cannot get such people to stand security for them. It is these people who need your protection. They are not subjects for your persecution. On the last occasion we voted against you and we defeated you on this measure for this very reason. If you pass this law you will not be providing protection for society but you will be persecuting a class of people whom it is your duty to protect. Here is the opinion given by the Government of Bombay:

> "These persons are ordinarily loafers who have no ostensible means of subsistence. They dislike regular work and prefer to beg, borrow or steal for a living. Simple imprisonment has no terrors for persons of this sort."

Now, I ask: do you want to terrorise these people? Your object should be reformation. Your object is not deterrent. If they have no ostensible means of livelihood, it is for you to provide some means of subsistence. You are not going to provide that by merely locking them up in prison and making them do hard labour. That is not the way to provide work for these people. Another argument that has been raised is this. It is stated by the Commissioner of the Rohilkhand Division (Mr. Ranga Iyer's constituency) that when he visited one of these prisons, he said: "I thought I had slipped into a poor house when I entered the enclosure in which they were basking in the sun". That is exactly our point. These people are fit subjects for treatment under the administration of the poor law. You ought not to bring about a state of affairs under which

[Mr. Chaman Lall.]

you persecute these people and send them to prison under section 109 and give them rigorous imprisonment. What you should do is to find out other cures, other remedies for the social treatment of these people. The last argument that has been raised is this, namely, that Governments think that this class of persons should not be sent to prison and should not live with other prisoners because of their attitude of superiority. The prisoner, it is said, says: "I have been sent to prison, but I am not going to do any work for you. It is simple imprisonment". Therefore the authorities say they are not willing that these people should mix with those who are compelled to do work. Now, Sir, that is an important argument, but has it any foundation? What are you trying to do? I could understand your position if you were to turn round and say there is no discretion to be left to the magistrate whether it is to be simple imprisonment or rigorous imprisonment. Here you are actually giving discretion to the magistrate to award either simple or rigorous imprisonment. There will necessarily be some cases of persons who are sitting idle, who are not doing work, who are putting on airs of superiority in cases where the magistrate does not award rigorous imprisonment. Suppose simple imprisonment is awarded to a particular person. What would be the result? The result would be exactly the same as it is and besides this argument is of very little value. Far better for you to reform your prisons and bring them up to date not as criminal settlements but as criminal hospitals. What you want to do is not to treat these people as if they were criminals, the worst creatures under the sun, but what you want to do is to treat them as unfortunate human beings who want your assistance and your protection. The attitude that you are adopting will not redound either to your credit or to the good of the country.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): I must confess that I have been greatly impressed by the speech of the Honourable the Home Member but unfortunately he has not replied to the two objections I raised to his measure in September last. These were first that a preventive action should not be converted into a punitive action and, secondly, what safeguards have you provided against the abuse of this section, as it has led to glaring abuse in that political prisoners were incarcerated under the provisions of this section 109. The Honourable the Home Member has quoted the opinions of the Local Governments and the Inspectors General of Prisons. I have the very greatest respect for both of them but I should have expected the Honourable the Home Member to ask two questions of these Local Governments and Inspectors General of Prisons. He should have said that this Bill has been thrown out by the Legislative Assembly because an allegation has been made against the magistracy in India and particularly against the magistracy in Nagpur that flag agitators numbering not dozens but hundreds were incarcerated under the provisions of section 109. Is this right or is this wrong? If it was wrong, what action have you taken against those who were responsible for imprisoning these people under the provisions of section 109? What action have you taken against the Government that has prostituted the use of this section? It is against that that this House entered its emphatic protest and I should have expected the Honourable the Home Member to come here, at any rate, and assure this House that whatever may have happened in the past, the Government should be placed upon a *locus penitentiae* and this section will no longer be used

in the future as it has been in the past for imprisoning persons who certainly never came within the widest four corners of that section. I ask the Honourable the Home Member: does he justify the action of the Local Government? Does he justify the action of the local magistracy, which tolerated the abuse of this section, not in individual cases but in cases after cases after a solemn protest and warning was given to the Government by the Local Bar Association that this section was being abused in the name of the law? What action did the Local Government take? The Honourable the Home Member knows all the facts. The Governor of the provinces came to consult him. What advice did he give him on the gross abuse of section 109 of the Criminal Procedure Code?

The Honourable Sir Alexander Muddiman: Who was the Governor?

Sir Hari Singh Gour: Sir Frank Sly. What action, I submit, did the Home Member take against, as I have said, the gross abuse of this section 109 and what guarantee, Sir, are you prepared to give to this House that this section will not be abused in future as it has been in the past? If such an assurance is forthcoming, be sure we are not here to obstruct the Government; we are here to support them so far as we are able to support them reasonably. I submit, Sir, that what is passing through my mind is that in a case of political disturbance and unrest in the future there may be a recurrence of this glaring abuse and it is to safeguard against that contingency that many of my friends are reluctant to vote for this measure. I would like to have a statement from the Honourable the Home Member on that subject.

My next submission is, I have not the slightest doubt that in normal times this section is reserved for rogues and vagabonds and I do not agree with my friend the Honourable Mr. Chaman Lall that the proper place for these rogues and vagabonds is a workhouse. They do not want work; they are thieves. Well, so far as these people are concerned this section, I submit, has never been abused; in normal cases the section has never been abused; it is only in cases of political unrest and on sporadic occasions when the Local Government loses its head and inspires the magistracy to convict these people under section 109, that the local magistracy feel justified and convictions by dozens are had every day. It is, I submit, against the abuse of that section that we require an assurance. Well, Sir, the Honourable the Home Member has told us nothing as to what the view of the Local Government is on this very important question which was brought to his notice. He has said nothing at all as to what action he himself, possessing the power as he does of supervision, direction and control, took in the interests of public liberty against the erratic action of a Local Government and a local magistracy in imprisoning people by dozens . . . .

Mr. President: Order, order. The Honourable Member is repeating the same argument over and over again. I must warn the Honourable Member against such repetition.

Sir Hari Singh Gour: I do not quite remember how many times I repeated it, but it seems that I have been repeating it from September last, and have not had a reply yet. I await the reply. . . .

Mr. President: The Honourable Member is not justified in using the same argument again and again in the same speech.

Colonel Sir Henry Stanyon (United Provinces: European): Sir, as pointed out by the Honourable the Home Member when this motion was before the House as part of another Bill on the 14th September last, the evidence which has now been placed in the hands of Honourable Members was not available. The Statement of Objects and Reasons in the former Bill set out as a ground for this measure that most of the persons against whom proceedings are taken under section 109 are persons for whom simple imprisonment is quite unsuitable. We are tied by section 36 of the Prisons Act. Simple imprisonment means imprisonment without any work whatever which the prisoner does not wish to do. Unfortunately we have not in legal phraseology any division of rigorous imprisonment into various divisions—Divisions 1, 2 and 3 as imprisonment with hard labour is divided in England. But in jail practice I think it is well known (*An Honourable Member*: "That politicians are ill-treated.") that work is suited to the criminality and to the physical ability of the prisoner.

Mr. Bipin Chandra Pal (Calcutta: Non-Muhammadan Urban): Not always. (Laughter.)

Colonel Sir Henry Stanyon: My friend Mr. Bipin Chandra Pal says, "Not always". There is nothing in this world of which you can say that it always follows a rule and never makes an exception. At Simla the House was of two minds, about as evenly divided as it could be. 51 voted one way and 52 the other way. Now this White Paper has placed in the hands of Members information which those who voted at Simla did not then possess. The truth and accuracy of these reports cannot I think be reasonably questioned in this House. If we question everything that is brought up to us in this form I do not know where we shall find ourselves. Well, in the face of such facts as are revealed by this White Paper it is the clear duty of this Assembly to restore to the courts the discretion which they had in dealing with cases under section 109 before the amending Act of 1923 took it away from them. The question, Sir, is one of trust of our tribunals. We hear of the action of executive officers and we hear of the action of Local Governments in times of unrest and so forth. But we must remember that standing between is the judiciary. My friend Sir Hari Singh Gour has not informed the House whether what he has called a misuse by the magistracy of section 109 in the Central Provinces was ever made a matter for revision by the High Court of that province. If it had been, I am confident that in every case where section 109 had been obviously misapplied that court would have interfered and set it aside. That our High Courts do look after the liberty of the subject in matters of this kind is obvious even to me whose legal knowledge, according to my friend Mr. Chaman Lall, is rusty from disuse. I will quote only one case. It is a judgment of the Chief Justice of the Allahabad High Court, the Honourable Sir Grimwood Mears. He had before him a case under section 110 in which in default of finding two sureties for Rs. 200 to be of good behaviour for a period of three years the accused was ordered to be rigorously imprisoned for that period. Sir Grimwood Mears made this pronouncement:

> "The only matter of importance in this revision is whether or not the imprisonment should be rigorous or simple. I am of opinion that in this case it should be rigorous and therefore the revision of Gandharp Singh fails. This case, however, raises a point of interest, because it would appear that there is, I might say, a general practice, automatically to award imprisonment of a rigorous character instead of balancing the question of rigorous or simple imprisonment."

Mr. A. Rangaswami Iyengar: That is our trouble.

Colonel Sir Henry Stanyon: I am pointing out how the High Court looks at these things.

He goes on to say:

"Section 110 is a most necessary section in our Code of Criminal Procedure, but it is essentially a preventive section and is designed to make people keep within the bounds of law by providing sureties when it is evident that they are people of criminal tendency. A failure to provide sureties involves imprisonment. As section 110 is preventive rather than punitive,"

I do not know whether my friend Sir Hari Singh Gour has seen this case:

"it would appear that in ordinary cases the imprisonment should be simple, and indeed under section 123, sub-section 6, the Magistrate in each case has to exercise his discretion and decide whether on the facts of each case the imprisonment should be simple or rigorous. I have made these observations on this section because I think there may be cases in which it would be sufficient to restrain a man by keeping him in prison and ordering such imprisonment to be simple. In the present case, however, as I have said above, I think the Magistrate's order was proper and the application for revision is rejected."

Now, Sir, I do not say that the Allahabad High Court, or the Chief Justice of the Allahabad High Court stands alone in this supervision, this protection of the rights and liberties of the subject. Are not all the High Courts to be trusted to do the same thing? That is the question here. Some of the arguments which have been advanced might almost suggest to one who did not know any better that the question before the House was whether under section 109 imprisonment, on failure to provide securities, should be rigorous or simple. It is nothing of the kind. The question is whether or not a magistrate dealing with a case under section 109 should have discretion. The Legislature does not say that in cases under section 110 the imprisonment must be rigorous. Why then should the Legislature say that in cases under section 109 the imprisonment must be simple? That is what the Legislature says at present, and that is the error which the Bill before the House seeks to correct. If only one per cent. of the cases dealt with under section 109 were cases of previous convicts, it would be sufficient to justify a discretion being left with our courts. But, from the figures which have been given to us, we find that, out of 3,134 people who were in Indian jails on the 1st October 1925, no less than 1,085, or if we add the Punjab, 140 *plus* that figure, had standing against them convictions including an element of theft. Now it might short-sightedly be argued, if these people were previous convicts or if they were habitual thieves, why did you not deal with them under section 110? The answer is obvious. A man is proceeded against because he has no ostensible means of livelihood, but nothing else is known against him. He may have half a dozen aliases; he may have changed his name. He is proceeded against under section 109 because nothing more is known about him. He is called upon to give security and in default sent to prison. His antecedents are then discovered and it is found from finger prints and otherwise, that he has anything from one to 13 convictions for theft standing against him. Now will any Member of the House say that a man of that kind should be given what is at present in India simple imprisonment, that is imprisonment without work? Surely the fact that over 30 per cent. of people have been found to be previous convicts or were previous convicts of those that were in jail on the 1st October, only shows how correct was the estimate which the authorities arresting and the courts sending them to jail had of their real characters. If a magistrate

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has no discretion in this matter, the whole administration is paralysed in dealing with people of this class. It is very difficult to find out the antecedents of a man who has changed his name and who is trying to hide himself and who has no ostensible means of livelihood. Extreme cases were put forward of the poor unfortunate man who has no means of livelihood because fortune has gone against him, who is simply hard up and who is run in. Surely the magistrate, under the supervision of the High Court, must be trusted to distinguish such cases from the cases of the obvious potential criminal who is before him, and to award simple imprisonment in cases where rigorous imprisonment is not called for? It is a matter for trusting the judiciary. A Legislature which does not give a reasonable amount of trust to its judiciary can never hope to succeed. I say that, by accepting this Bill, all this House will secure will be to give a reasonable discretion to the magistrates, and it will prevent a large number of the people who are the dregs of society being, as they now are, the *elite* of the jail communities.

The Assembly then adjourned for Lunch till a Quarter to Three of the Clock.

The Assembly re-assembled after Lunch at a Quarter to Three of the Clock, Mr. President in the Chair.

Diwan Bahadur T. Rangachariar (Madras City: Non-Muhammadan Urban): Sir, the Honourable the Home Member has made a responsible appeal to us with all the earnestness and sincerity which we always associate with him; and I felt it my duty to examine the materials which he has placed before us in asking us to revise the decision that we have twice given on this subject. The Honourable the Home Member, if he had examined the materials placed before him in that judicial frame of mind which I expect he should show on an occasion of this sort, would have found that the conclusion he should have come to lies in a different direction to the one which he has adopted. I have examined those materials and wish to draw his attention to the gross defects which apparently exist in the administration of section 109 of the Criminal Procedure Code. May I draw his attention to the remarks made by different Governments and other people, for instance at page 1 of this White paper. I find this statement made by the Government of Bengal:

"Many persons dealt with under this section are habitual criminals."

I find also at page 3 an extract from the Government Jail Report:

"Many of these prisoners are habituals with several previous convictions";

and at page 4 also—that is from the Bihar and Orissa Jail Report:

"Simple imprisonment has little to commend it at any time; to give it to habitual criminals of the worst type is distinctly dangerous."

I find also at page 6:

"On my recent inspection of the jail I found one man with 13 previous convictions thoroughly enjoying simple imprisonment at Government expense."

Note 13 previous convictions! And I find also in another place at page 4:

"There were 95 prisoners in our jails on the 1st January 1924 who were undergoing simple imprisonment under section 109 of whom 33 had previous convictions, some of them as many as 7 times."

Did it strike the Honourable the Home Member that there is something wrong with his magistracy and police? Is this the proper section to apply to cases where you have to deal with habitual criminal offenders? I think, Sir, section 110 may stand repealed if section 109 is to be used against habitual offenders. If Honourable Members have the Criminal Procedure Code before them they will find that for this serious class of cases of habitual offenders section 110 provides a more serious procedure. It calls upon them to show why they should not give security for a period not exceeding three years; and section 123 provides that in case of failure of security they may be given rigorous imprisonment. And who are the class of people so dealt with? Any person who is:

"by habit a robber, house breaker, thief or forger, who is by habit a receiver of stolen property knowing the same to have been stolen, who habitually protects or harbours thieves or aids in the concealment or disposal of stolen property, or habitually commits or attempts to commit or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, etc., etc., or who habitually commits or attempts to commit, or abets the commission of, offences involving a breach of the peace, or is so desperate and dangerous as to render his being at large without security hazardous to the community."

Sir, that is the class of persons for whom a more serious procedure is provided. May I ask if it is right to deal with persons who have had 7 previous convictions, habitual criminals of the worst type—that is the language used on which my Honourable friend has relied in support of his motion to-day; is it right to apply section 109 at all to such people? I am not now complaining of the use of section 109 in the case of political offenders. I complain, Sir, that there is something in the administration of criminal justice vitally wrong if the Home Department do not take notice of this grave abuse of section 109 for habitual offenders.

The Honourable Sir Alexander Muddiman: Why?

Diwan Bahadur T. Rangachariar: For section 109 deals with the case of a person who within such limits takes precautions to conceal his presence or there is reason to believe that such person is taking such precautions with a view to committing any offence or within such limits of a person who has no ostensible means of subsistence or who cannot give a satisfactory account of himself. When you have a different class of people dealt with in this section 109, and when you have a separate section for habitual offenders, how you can justify the use of section 109 against the latter I fail to see. Either he is by habit a robber or thief or one of those offenders referred to in section 110, or he is not. If he is, what is the use of these executive people complaining that simple imprisonment is not an adequate punishment for such habitual criminals of the worst type. I agree with, I endorse every word of what they say in regard to these habitual criminals. But what is the remedy? The obvious remedy is for the District Magistrate and the Home Department to issue instructions to the magistracy and the police to deal with people like that under the proper section of the Code. Sir, the United Provinces Government say:

"If our legislators had known the type of men proceeded against under this section they would hardly have ruled out rigorous imprisonment in these cases."

Sir, may I, adopting their remark, say that if our magistracy and if our police and if our Home Department knew their duty they would have known that the type of men they describe should not be proceeded against under section 109; if they had proceeded under the proper section they would not have complained against the Legislatures. Sir, I am glad to

[Diwan Bahadur T. Rangachariar.]

note that the Bombay Government have taken the right remedy in this matter. What do they say? Having said that many of these prisoners are habitual offenders with several previous convictions, they say:

"It is clearly wrong that such persons should be maintained for months or years".

What ignorance of law by the way, because you cannot deal with a person under section 109 for years, in fact for not more than one year; he cannot be called upon to give security for more than a year . . . .

The Honourable Sir Alexander Muddiman: He can be called upon to give security twice or more.

Diwan Bahadur T. Rangachariar: That is not the proper procedure I take it. However, having mentioned that, what do they say?

"It is suggested that instructions might be issued to the police that wherever possible prisoners should be charged under section 110 instead of section 109."

That is the proper remedy to adopt. I endorse the view that habitual criminals should not be dealt with under this simple imprisonment section, specially certain habitual criminals of the worst type. May I ask the Honourable the Home Member to adopt the obvious remedy which lies in his hand of issuing strict instructions so that the provisions of the Criminal Procedure Code may be more carefully read and applied and not misapplied. Sir, we have a suspicion that these sections are used for political offenders and we have it in the Central Provinces and Berar Criminal Justice Administration Report for 1924. What does it say?:

"The previous year's figures were particularly inflated by the Flag Agitation in Nagpur and the fall is the natural result of a more calm political atmosphere."

So, whenever you have got a calm political atmosphere, the figures go low. If you have a slightly agitated political atmosphere the figures rise. I do not know if my Honourable friend Sir Henry Stanyon has noticed it, but these gentlemen who speak in these reports have a deep-rooted aversion to simple imprisonment as such. Did my Honourable friend read the remarks of these executive officers who have got that view? Here are two or three extracts which I will read:

"Simple imprisonment is of little value from a penal point of view."

That is what the Bihar and Orissa Jails authority says. Another man says:

"As has been mentioned in the report for previous years, this form of punishment (*that is, simple imprisonment*) works adversely on jail discipline."

And long before we made the amendment, this is what the Central Provinces and Berar Jails authority says:

"I have already commented—(*this was written in 1924 and we passed our amendment only in 1923*)—upon the unsuitability of such sentences (*namely, simple imprisonment*) in my previous annual reports, and it is unnecessary to say anything now."

So, Sir, the mentality of the persons who write these reports is quite different from the mentality of legislators. Legislators have to look at it from the broad point of view of civilising influence. Here the executive look at it from the broad point of view of executive highhandedness and of maintaining terror and discipline. If left to them, what will they do? They will abolish simple imprisonment *en bloc* for any offence, whether it

be for defamation or for anything else. "Simple imprisonment is unsuited to jail discipline in this country. This form of punishment works adversely on jail discipline." So with this horror of simple imprisonment these authorities make these reports.

There is one sentence to which I may call the Honourable the Home Member's attention. Apparently some of these reports were made on a general requisition from the Home Department, Judicial, dated 31st August, 1923, inquiring how the new amendments of the Criminal Procedure Code were working. I may be mistaken but this is what the Government of Bombay says:

"With reference to your letter, No. F.-2623-Judicial, dated the 31st August, 1923, I am directed by the Governor in Council to state for the information of the Government of India that the amended Code of Criminal Procedure has not been in operation long enough to enable any decided opinion to be given on its actual working. Minor defects have been brought to notice."

—and this is one of those minor defects!—

"The provisions of section 123 limiting imprisonment under section 109 to simple imprisonment has been noticed by several officers."

—within a few months, mind you; this letter asking for information goes in August, 1923, and writing on the 5th February, 1925, this is what the Government of Bombay says:

"as providing entirely inappropriate punishment for the majority of the persons concerned."

May I say that we have not tried this change long enough to attempt to mend it now? Sir, we are familiar in courts that there can be no application for a review of a review. This motion before the House is really in the nature of an application for a review of a review. Has this Legislature not deliberately come to a conclusion twice on the matter? Sir, we know what sort of persons should be dealt with under section 109. If the magistracy and the police deal with other classes of persons who should have been dealt with under section 110, we cannot help that. Let them apply the proper section and then they will have the right remedy. There is no use complaining and trying to mislead a lay House and saying "Habitual criminals of the worst type have been dealt with under section 109." That is your fault and not our fault. Your fault was in dealing with these persons under section 109 instead of section 110; and then to come forward and make quotations from these reports saying that this is not an adequate form of punishment for such persons—we agree—but the fault lies with you and not with the Legislature.

Sir, I therefore say that no case has been made out on the materials placed before us. This is the paper on which the Honourable the Home Member has asked us to revise our decision. I would be the first to revise my decision if I was really satisfied that there was a case for revision. I entirely agree with the remarks made that habitual criminals should not be let off with simple imprisonment. But, Sir, apply the proper section and you will not have reason to complain.

3 P.M.

My Honourable friend, Sir Henry Stanyon, referred to cases where it was discovered after the persons were sent to jail that they had been previously convicted. Sir, how is the magistrate to have the prescience to know that they had been previously convicted, if the police themselves did not know it? Does my Honourable friend expect the magistrates to give rigorous imprisonment on the offchance that they may have been previously

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convicted? Either the police knew their duty or they did not. If they did not know this man had previous convictions, it is their fault. We cannot help them. Employ better policemen who know their business. We pay them amply and we expect them to apply the proper section. We expect them to collect the materials and place them before the magistrate. On the offchance that a man may have been previously convicted, to give a discretion to these magistrates is a dangerous thing. My Honourable friend says: "After all we are only giving a discretion to magistrates." Sir, who are the magistrates? May I read just one passage?

Khan Bahadur W. M. Hussanally: Is previous conviction evidence under section 110?

Diwan Bahadur T. Rangachariar: Most certainly. I am surprised at my Honourable friend, a retired magistrate, putting me that question. Sir, what does it say? May I draw my Honourable friend's attention to what the Magistrate of Benares says on page 6? He says that he and his sub divisional officers consider—and these are the persons to be entrusted with the discretion—that from the executive point of view the curtailment of their discretion to award rigorous imprisonment is unfortunate. Are we to entrust these unfortunate magistrates who now suffer under the combined executive and judicial functions in their hands, who have their executive bias now, with this discretion? Sir, the Legislature has done wisely in taking away the discretion from these sub-divisional magistrates. By all means bring these people under really strictly judicial officers. Separate the executive and judicial functions. I am willing to entrust them with any amount of discretion. But so long as the present system continues of combining executive and judicial functions, the sub-divisional magistrates will complain that their executive discretion has been taken away. Sir, it will be dangerous on the part of the Legislature to entrust them with this discretion, and I appeal to the House to reject this motion.

Mr. H. Tonkinson (Home Department: Nominated Official): Sir, even at this late stage I propose to apply the test given by my Honourable friend, Diwan Bahadur Rangachariar, and to appeal to him for his vote.

Mr. M. A. Jinnah: Too late.

Mr. H. Tonkinson: He says that section 109 has been an entirely incorrect section to use against a habitual criminal of the worst type. Well, Sir let us take a case. Suppose you have a man who has been sentenced to imprisonment for theft four, five or six times and then in certain circumstances, which I will refer to later, he is proceeded against once more. My Honourable friend says that man is a habitual criminal, and he should be dealt with under section 110. Well, Sir, speaking as a District Magistrate who in time gone by has had to deal with many appeals of persons ordered to furnish security under these sections,—I would inform my Honourable friend that I would have admitted the appeal and released the prisoner who was merely proceeded against under section 110 on account of previous convictions. Suppose the circumstances are as follows. He is found taking precautions—I am reading from section 55:

"to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognisable offence."

Under that section, Sir, an officer in charge of a police station is empowered to arrest that man. He arrests him. He finds that he has had previous convictions. He is possibly in possession of house-breaking implements provided for in another section, section 54. The section under which it was intended that he should be proceeded against is 109. You have got here a habitual offender. You cannot at once prove, at the time of proceeding against him, that he is actually obtaining his livelihood by thieving. You have definite evidence under section 109, clause (*a*), and you proceed against him under that provision. Sir, you have here therefore a definite case of a habitual offender of the worst type who certainly should be proceeded against under section 109, a person who was intended to be proceeded against under section 109. I therefore appeal, Sir, to my Honourable friend the Deputy President for his vote.

Khan Bahadur A. Rahman (Bengal: Nominated Official): Sir, I confess that when I came here I had not the least intention of speaking, because I was not aware that this simple measure would create so much commotion in the House. But after hearing my Honourable friends Mr. Amar Nath Dutt and Sir Hari Singh Gour, I think I should be failing in my duty if I do not raise my voice against the vituperation which has been levelled by Sir Hari Singh Gour against the magistracy. In this connection I would ask the indulgence of the House for a few minutes to say that, from my personal experience extending over 20 years as a first class magistrate and a magistrate exercising powers of appeal over the subordinate magistrates in cases under section 109, I have not come across a single case in which this much maligned section has been abused by the magistrates under me or to my knowledge, and I can assure the House that only persons of the worst type have been convicted.

Now, Sir, turning to the section itself, let us see who are the persons who can be held liable under this section. Any person who is taking precautions to conceal his presence within the local limits of such magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence. I lay stress on the word "offence". If the intention is to comit an offence, then the man must be hauled up under section 109. Then the section further on says:

> "that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself."

This is probably the section to which my Honourable friends in the Opposition Bench raise objection because they think that probably political volunteers going from one province to another and creating a row and breaking the law might be dealt with under this section. I will deal with it later. It may refer to the volunteers or it may refer to the vagrants,—I do not mean the class of vagrants whom my friend Mr. Abdul Haye wanted to bring under legislation by means of his Resolution the other day, because these vagrants are not to be considered here at all as they merely claim alms.

Then the second point in the section is "who cannot give a satisfactory account". If a man cannot give a satisfactory account of himself, of course he is liable. Now, Sir, from the list which has been supplied to the Members, we find that there are 1,100 persons who have been convicted under section 109, some of them have been convicted 7, 10 or even 11

[Khan Bahadur A. Rahman.]

times. Now I ask the House if such persons with so many previous convictions can be treated as ordinary vagrants fit to be sent to a work house instead of their being sent to jail?

Then, as regards the point which has been very much laid stress upon by my friend Sir Hari Singh Gour, that people like the volunteers who had been convicted in Nagpur might be dealt with under section 109. He has the apprehension that magistrates might give them rigorous imprisonment instead of simple imprisonment. But, I think, Sir, when discretion is given to magistrates, they can be relied upon when dealing with people of the *bhadralog* class to give them simple imprisonment in such cases.

Then as regards the volunteers, I ask the Honourable Member who raised objection to this section, what business had the volunteers from other provinces to go to Nagpur and create a row there? If such persons are found in another province breaking the law, is there any reason why they should not be dealt with under clause (*b*) of section 109? Then, I ask, is that the reason, because a couple of hundred volunteers had been convicted in Nagpur and that another couple of hundred volunteers might be convicted in Nagpur or in any other place, why objection should be taken to this section? Is there any reason why thousands of the worst characters should be allowed to enjoy the hospitality of His Majesty's jail? I do not think it logically follows. Then what will be the effect of convicting them and giving them simple imprisonment? What will be the effect on these bad characters and vagrants who have been found loitering somewhere with a view to committing an offence and who had no ostensible means of subsistence and who could not give a satisfactory account of themselves? Will it not create a habit of laziness in them and will they not exercise an evil influence on the other inmates of the jail? Sir, it has been said that these persons should be sent to workhouses instead of being sent to jail with rigorous imprisonment. I ask the Honourable Member who urged this, "Are these able-bodied men to be sent to workhouses and should the State provide for their maintenance simply because they would not live an honest life?" It has already been explained by the Honourable the Home Member that even in England vagrants are convicted to rigorous imprisonment, and it cannot be contended that vagrants in India who have had previous convictions, should not be treated as such. Magistrates have got discretion to deal with criminals and I think you can safely rely on magistrates dealing with section 109 to exercise their discretion and give simple imprisonment where this would meet the case and not rigorous imprisonment as apprehended by some of the Members opposite.

Sir, it has been said that this section is not appropriate for dealing with habitual offenders. Is it not too late in the day to say that? The question now is whether it should be simple imprisonment or whether a discretion should be given to the magistrate to give simple or rigorous imprisonment. I do not think that the question whether this section is applicable to a habitual offender or not can be raised at this stage. With these words, Sir, I support the motion.

Mr. K. Venkataramana Reddi (Guntur *cum* Nellore: Non-Muhammadan Rural): Sir, I do not want to record a silent vote on this question. I very much deprecate the use of section 109 in connection with the Nagpur Satyagraha Flag case and I should be the first person to welcome the statement of the Honourable the Home Member that this section will not be misused or applied to suppress political agitation.

Mr. Amar Nath Dutt: Is the Honourable the Home Member competent to give an undertaking like that?

Mr. K. Venkataramana Reddi: I only said, Sir, that I would welcome such an undertaking if he could give it. If one looks at section 109, clause (*b*), which runs:

"that there is within such limits a person who has no ostensible means of subsistence or who cannot give a satisfactory account of himself".

It is plain that the prosecution cannot, by mere proof of the fact that the accused has no ostensible means of subsistence or of the fact that he was unable to give a satisfactory account of himself, get him convicted, because, according to the ruling in 39 Calcutta, page 462, the whole object of this part of the clause is:

"to enable Magistrates to take action against suspicious strangers lurking within their jurisdiction. The greatest criminal in the world is not liable to be questioned in his own home unless there is some specific outstanding charge against him."

So that, it is not possible for a magistrate to convict a person simply because he has not got ostensible means of living or simply because he cannot give a satisfactory account of himself. The prosecution must prove that he was lurking in the place under suspicious circumstances and that he had the intention to commit a crime. I do not think that people who go about begging, for instance sadhus, can come under this section, because, beggary is for the most part a recognised profession in this country and section 109 cannot be applied to get in such people. It is only vagrants and persons who show criminal tendencies and who have developed criminal tendencies that can be brought under this section, surely these should not be allowed to feed at the cost of the tax-payer in the jail. Those of us, who have lived in villages, have seen that persons belonging to criminal gangs enter a village as beggars not with a view to get some food but with a view to see in which house they can bore a hole with impunity and with advantage, and this is the proper section, I believe, to get such of them under the purview of the law. Section 110 does not apply, because, you cannot say that they are habitual robbers or house breakers. To prove that a man is a habitual robber, you must prove that he belongs to a criminal gang who by habit live on robbery or house breaking or who by habit receive stolen property knowing the same to have been stolen. Those who belong to a criminal gang and who have not yet been convicted but who have got a tendency to develop criminal faculties could not be brought under section 110 but only under section 109.

Now, Sir, my Honourable friend Mr. Amar Nath Dutt said that pilgrims who go to Dwarka can come under this section. I can only say in reply that my Honourable friend has not read the section properly. People who go to Dwarka and who cannot give a satisfactory account of themselves cannot be brought under this section, and my Honourable friend need entertain no fear on that account. The section gives a discretionary power to magistrates either to convict with simple imprisonment or rigorous imprisonment and the magistrates, if they use their discretion properly, cannot convict ordinary persons with rigorous imprisonment. I say, Sir, with regard to the Nagpur Satyagraha agitation that it was unfortunate that the Satyagrahis did not defend themselves. If they had only defended themselves and taken the cases to the High Court, on revision, the High Court would have had no hesitation in quashing the

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sentences in all the cases. (*An Honourable Member*: "There is no High Court in the Central Provinces".) I mean the Chief Court.

Mr. C. S. Ranga Iyer (Rohilkund and Kumaon Divisions: Non-Muhammadan Rural): Satyagrahis do not believe in High Courts.

Mr. K. Venkataramana Reddi: My Honourable friend says that they do not believe in High Courts, but they believe in Legislatures and have come here. My own opinion is that there is no great danger in allowing magistrates under section 109 to award either simple or rigorous imprisonment.

Pandit Shamlal Nehru (Meerut Division: Non-Muhammadan Rural): Sir, my Honourable magistrate friend over there has just said that magistrates have not been abusing their powers under section 109. I do not know much about court work and I am not here to contradict what the speaker has said. I only stand to tell you how people are being sent under section 109 to jails, not for one year but for years and years. Year after year they are reconvicted—and in what way? I am going to give you four instances. One is a Burma case. There was a prisoner there under section 109. He was released about 8 or 9 o'clock in the morning after serving out his term of rigorous imprisonment. At 3 o'clock of the afternoon of the same day he was back again to the same jail convicted for another year.

The Honourable Sir Alexander Muddiman: What had he done?

Pandit Shamlal Nehru: Nothing. The police, I suppose, wanted him to be kept there perpetually. The Superintendent of the Jail, I think his name was Major Taraporewala, wrote to the Government informing them of the facts of the case. He said, "Here is a man who was let off just a little before 12 o'clock in the forenoon and he is back again on the same day at 3 o'clock and the man ought not to be there." The man after a few weeks was released. There was another case in Lucknow. I was there in the district jail. There was a fellow prisoner there, a ruined Nawab Sahib. He acknowledged that he was one of the biggest blackguards in his youth. He had been sent to the Andamans for ten years and after serving out his term he had come back. As soon as he came back he was convicted under section 109 and sent to the Lucknow jail on the ground that he had no ostensible means of livelihood. Now, remember that this man was actually in receipt of Rs. 57-8-0 as pension (*wasika*) from the Government and this Rs. 57-8-0 used to be delivered to him in the jail and a part of the money must have gone into the pockets of the jail authorities—inferior authorities. There was another case in Lucknow. A man was in the jail under the same section for 12 months' rigorous imprisonment. He was in the same barracks with me and when he was about to be released, about a fortnight earlier, he asked me if I could tell him any way of running away from section 109. He had Rs. 1,000 cash with him and he wanted to open a shop in Lucknow and remain in Lucknow as he did not want to leave his native place. I told him, "As soon as you are released, go to the Commissioner and tell him that you have got Rs. 1,000 so that the police may not worry you and that you

are going to open a shop which will take a little time in opening." Just a little after, not more than a week after his release, the man was back again in the same barracks.

Diwan Bahadur T. Rangachariar: Under what section were you there?

Pandit Shamlal Nehru: I was there under section 17A, Criminal Law Amendment Act. There was another case. Not one, but a number of them under the same count—I saw a few prisoners there. They had marks of wounds on their legs. I asked them the cause of these wounds. They had just come back from the German war. They said, " We were sent back because we were wounded and this is our reward. We have been sent to jail under section 109." This is the way in which people are sent to jail under section 109. If the Honourable the Home Member wants any particular information about these cases I am prepared to give it to him and he can inquire into them and he will find that they are perfectly correct. There should be no section 109 on the Statute-book, but as it is there and as that matter is not under discussion now I will leave it alone. I do not see how you can possibly make people work for you in jail. And what is the work that they have to do? The work is not one man's work that they have to do. They have to do three bullocks' work. 16 of them are put to a water pump and they have to work for 10 hours continuously with half an hour recess in between, and they have to go round and round and round. When we were there we agitated because we could not tolerate the sight—for 10 hours 16 men going round and round without a break . . . . .

Mr. K. Ahmed: That is good.

Pandit Shamlal Nehru: Try it Sir, try it; it will do *you* good. We agitated. The Superintendent of the Jail, who is now the Inspector General of Prisons, absolutely agreed with us and he put on 32 men instead of 16, 16 for four hours each. That was some consolation. But this reform was made only in one jail. Have you ever thought of the misery you create in the country by sending thousands of people to jail —more than half of which is full with section 109 people. Is it not the Government's bounden duty to find works, to create work for the workless people instead of sending them to jail for doing no work? It is your business, it is the business of the Honourable the Home Member to create work for them and not send them to jail when he finds that they have no work to do.

Mr. Bipin Chandra Pal: I think if my Honourable friend the Home Member were a little older than he actually is, if he had been present somewhere in the last quarter of the last century and if he had brought in an amendment like this to the Criminal Procedure Code he would have met absolutely with no opposition even from a House like this to his proposal. Even the Home Member nods. I thank you for agreeing with me and will you go a little further with me and examine the psychology of the present situation, the psychology of these educated, honest—I hope you will agree they are honest,—and honourable men not in league with criminals—will you examine the psychology of this opposition to a measure which on the face of it seems to be so reasonable? The psychology of it is this. You misused—I do not know if prostitution is parliamentary—(Laughter)—the discretion given to your magistrates,

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which has been prostituted to political ends under this section. Before the last Swadeshi agitation we never heard of respectable people, young educated people, being sent to prison under these sections. It was then that you created the difficulty which you have to face to-day. Now, even as it is, what do you find? I am not a lawyer, and I am not used to legal hair-splitting. I am a plain man from the streets and I use and understand words in their simple obvious meaning. There are two words in this section, " without ostensible means of living ". Before looking into the section I was asking my Honourable friend, Sir Darcy Lindsay if not to have an ostensible means of living is in itself a crime. He said, " No, it is not in itself a crime ". There are unemployed—they are not criminals. They have no ostensible means of living. They do not even try to eke out or pretend to eke out some ostensible means of living by selling laces or matches. They are not criminals and I find that the law distinctly says that any one who has not an ostensible means of living is not to be caught up under this section. There must be something else and I will read—I am gaining a little knowledge—from an extract from the Madras Police Manual. It is a very sensible extract. It says:

" The two sections must be carefully worked. *Care must be taken not to abuse them.*"

That is what the Police Manual says, but the test of the instruction is in the execution. There it is laid down in the Police Manual that care must be taken not to abuse these provisions of the Law. But I ask friends who have any experience of the administration of criminal law in this country—can they honestly say that this instruction is honestly carried out by the general body of our police? What do we find in the villages? It is the Police Sub-Inspector who starts these prosecutions. He sends up a number of men with or without reason, oftentimes for private reasons instead of for public reasons. He sends up a number of men under section 109—that they have no ostensible means of living, and what do we find? Now, my Honourable friend Diwan Bahadur Rangachariar has told you that the abuse of this section as of many other sections of our present criminal law is very largely due to the joining together—not joined by God—of the executive and the judicial functions in the person of the same magistrate. And the magistrates who try these cases are in 90 cases out of every hundred hand and glove with the police. He believes the police evidence. He is led by the police—I do not say against his own conscience, but having to work with the police day in and day out, it is only natural that the magistrate should place more reliance upon the evidence of the police than upon outside evidence. Now this is what happens, and I think 99 per cent. of the abuses of these cases, outside the political group, is due to the intimacy between the police and the magistracy in every part of India. That is one thing.

The Honourable Sir Alexander Muddiman: If my Honourable friend will excuse my interrupting him, will he tell me to whom the appeal lies? (*Some Honourable Members*: " No appeal lies.")

Mr. Bipin Chandra Pal: Let lawyers fight.

The Honourable Sir Alexander Muddiman: Am I to understand that the Honourable Member thinks there is no appeal?

Mr. Bipin Chandra Pal: Let lawyers fight or fall out. I know this, that this intimacy between the magistracy and the police is very largely due to the abuse of this and other sections of the Indian criminal law which on the face of them may not be liable to such abuse. But coming to this particular case, what do I find with regard to section 109? I am thankful to my Honourable friend the Home Member for having placed this weapon in my hand—his White Book. Now, I am proud to be able to accept the honest and reasonable testimony of the Government of Bengal in regard to this matter. What does the Government of Bengal say? It says: "Many persons dealt with under this section are habitual criminals". I was told just a little while ago, by whom I forget, that this section 109 is not meant for habitual criminals—110 is intended to meet the case of habitual criminals. But in the actual working out of the law, on the testimony of the Bengal Government, we find that:

"Many persons dealt with under this section are habitual criminals and—as the Government of Bengal says,—to confine them in company with persons undergoing simple imprisonment for minor offences is on the one hand no deterrent and there is on the other hand the danger of their exerting a bad influence on persons guilty of misdemeanours only, with whom they would associate. His Excellency in Council is accordingly of opinion that imprisonment under this section in proceedings under section 109 should be simple or rigorous at the discretion of the magistrate as under the old law, so that a professional criminal caught in suspicious circumstances may be given rigorous imprisonment while a homeless vagabond may be sentenced to simple."

Now, this is a very frank statement of the case. But in practice is this principle followed? I want my Honourable friend the Home Member to kindly and carefully consider this question: in practice is this principle followed?

The Honourable Sir Alexander Muddiman: It was, as long as the magistrate had option.

Mr. Bipin Chandra Pal: What did this option lead to in Nagpur? What did this discretionary power, given to the magistrate in Nagpur, lead to? Now, unless and until you obliterate that scandalous page from the administration of your criminal justice, it will be impossible for you to lead or induce public opinion in India to accept your proposal and give this discretionary power to magistrates who have not used this power with proper discretion as in Nagpur? What happened there? I am not repeating my own arguments but I am repeating the arguments of others. I speak with greater freedom and with greater emphasis in regard to Nagpur because my intellectual and moral sympathies have always been against that movement. Therefore, I speak with greater freedom and with greater impartiality than some of my friends here. I had no part or lot with that Satyagraha agitation. I do not believe it as either politically wise or even morally right. Yet I could not support the action of the executive in regard to this unwise and foolish agitation. Respectable people, lawyers and others, under a misguided impulse, came from different parts of the country to Nagpur to fight what they believed, I think wrongly, to be a national cause—to fight for the national flag. Now, I do not believe in a national flag until you have a national government. So it was all children's play. I looked upon it in that light. Yet I could not support and justify the outrage committed by the Nagpur magistracy upon these honest people. Were they men without an ostensible means of living? Were they men hiding themselves in the jungles of Nagpur or prowling about in its neighbourhood, with a view to commit crime when darkness overcame the world? They came openly. They announced their arrival

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beforehand and, as soon as they arrived at the Nagpur station, they were taken into custody by the police and locked up and then brought up under section 109 and sentenced under that section. As long as you do not obliterate that scandalous page from the administration of your criminal justice, you will not find it possible to induce any Indian member of this House to support this motion.

Colonel Sir Henry Stanyon: Why did they not find the security?

Mr. Bipin Chandra Pal: Yes, why did they not find security? Why should I find security when I know that you are outraging my honesty, you are outraging my honour and that you are questioning my respectability in this matter. I would deem it beneath contempt if I were in that position to apply for security. (Applause.) You know I am an honest man. You know I am out only on a political job. You know I am not a criminal. And yet when you want to class me with loafers and ruffians, and with habitual offenders, can you honestly ask, can you honourably ask me—would you do it yourself—to give security under these circumstances? (*An Honourable Member*: "Certainly.") No, Sir. It is asked, why did they not appeal to the High Court, the reversionary jurisdiction of the High Court? My counter question would be, why did not the High Court under section (*Sir Hari Singh Gour*: "435") (Laughter) . . . 435, as has been pointed out by my learned friend—why did not the High Court under section 435 send for the records of these cases? They were public scandals. Why did not the Government of the Central Provinces, to preserve the good name of its own magistracy, interfere in this matter and save its own reputation and the character of its own magistracy? Since you did not do it you must thank yourself if you find yourself now in this quandary. Before I leave Nagpur, I would like to invite your attention to page 6 of this precious White Paper and an extract from the Central Provinces and Berar Criminal Justice—Criminal Justice—I put a query there, Sir,—Report for 1924:

> " The previous sentences of imprisonment for 15 days and under rose from 62 to 86, whilst sentences of simple imprisonment fell from 352 to 87. The previous year's figures were particularly inflated . . . "

mark the word!

> " . . . by the flag agitation in Nagpur and the fall is the natural result of a more calm political atmosphere."

Here is the wind that you sowed and you have to reap not yet the whirlwind but something of a depression as the result of it. Again, and to quote my Honourable friend the Home Member,—an official let the cat out of the bag, on this question,—the Magistrate of Benares says:

> " that his subdivisional magistrates consider . . . "

I underline the quotation;

> " . . . that from the executive point of view the curtailment of their discretion to award rigorous imprisonment is unfortunate."

Now, what is the meaning of it? What is the implication of it? What interpretation will any honest man put upon it? That is the executive point of view. The executive want to have all these discretionary powers, not to exercise them with care but to use them to whatever purpose comes handy. That has been the way in which this section has been

worked. Now, Sir, I agree with the general position of my Honourable friend the Home Member if he could detach it from all political considerations, if he could place it upon such a basis that it would not be possible for any magistrate using his discretion or indiscretion to repeat the story of Nagpur in any other part of India. If he could make it absolutely sure that this section would not be prostituted for political ends, then this House might be in a position, in a mood, to consider this question absolutely upon its own merits. But no, Sir, you have made the bed on which you are lying. We are not responsible for it, and in view of the past history of these cases it is impossible for any one who loves the liberty of his people to vote for your motion.

Lala Lajpat Rai (Jullundur Division: Non-Muhammadan): Sir, I listened to the speech of the Honourable the Home Member with great attention and since then I have gone through the White Book which he has so kindly placed at our disposal. I find from the White Book that the opinions quoted there are mainly based on two or three grounds. The first and the most important is that many habitual offenders have been dealt with under section 109 and that it is inexpedient and improper that they should have been awarded simple imprisonment. That part of the Government case has been demolished by my Honourable friend Diwan Bahadur T. Rangachariar, and I should have thought that after his weighty argument and after his almost conclusive speech on the point the Government would have accepted what he said. But I am afraid, just as the Local Governments have complained of hardened criminals being sentenced under section 109 to simple imprisonment, so the Government Members who are hardened executive officers have given ground for complaint that they want more and more power to suit their purposes. Arguments therefore do not appeal to them. I do not want to repeat the arguments advanced by my Honourable friend Mr. Rangachariar, but I consider them to be very very cogent. Section 110 of the Criminal Procedure Code is so exhaustive that one cannot believe that any cases of habitual offenders or of persons having previous convictions against them could possibly be brought under section 109. But assuming that there are some such cases as cannot be brought under section 110 and must be brought under section 109, then the remedy for that state of things is different. It is not the remedy which my Honourable friend is seeking. The remedy lies in the enactment of another clause providing for cases in which the persons brought before the magistrate have previous convictions against them or are habitual offenders. Under the section as it stands I submit he has not made out a case for the change he proposes.

The second argument used, Sir, in the opinion recorded in this White Paper are considerations of jails discipline. I want to ask this House if the law is going to be changed in the interests of justice and order or to help the jail administration in maintaining their discipline. I submit it would be a travesty of justice altogether to go in for a proceeding of that kind, but that is the practical consideration which is prominently kept in view in most of the opinions recorded in this White Book. Sir, you will find officer after officer saying that the presence of simple imprisonment prisoners has a very bad effect on jail discipline, on other prisoners who are there. You will find that in the different opinions quoted, particularly in the extracts given from jail reports, no other argument is advanced except that of discipline. In my judgment the whole of this White Paper makes out a case for a reform of jail administration rather

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than for a change in the direction of providing rigorous imprisonment for persons proceeded against under section 109 of the Criminal Procedure Code. The very fact that very many hardened criminals and persons with a large number of previous convictions were sentenced to imprisonment under section 109 shows that all these previous sentences had had absolutely no effect on their morale and that their residence in jail had not reformed them, which shows that there is something radically wrong with the administration of jails in this country. It all depends on the point of view from which the jail administration is looked at. I am afraid the jail administration in this country proceeds more on the basis of giving deterrent punishment rather than with the object of reform. If the jail administration had been based, and if it were conducted on the principle of effecting reform in the persons sent to jail, you would not have that complaint here to-day that prisoners who had several previous convictions against them were found guilty of such a life as would bring them under section 109 of the Criminal Procedure Code. I submit it is most anomalous that the preventive sections of the Criminal Procedure Code should not be used for the purpose of punishment, for punitive purposes. It cannot be allowed in any country. The whole trouble is that several of these officers who have given these opinions do not like simple imprisonment. Simple imprisonment they say, spoils jail discipline. The remedy then is to abolish simple imprisonment and substitute for it some other kinds of punishment other than imprisonment with hard labour such as are resorted to in other countries where jail discipline does not suffer on account of such substitutes. From the very nature of things most of these persons who are sentenced to simple imprisonment in default of furnishing security for good behaviour under this section must be poor and without any ostensible means of living. That fact alone should prevent this House from making the change which the Honourable the Home Member wants this House to make because I can say from my personal experience, from observation in jail where I was for 20 months, that the poor people have the hardest possible life in the jails. It is this class which will suffer harder if they are sentenced under this section to rigorous imprisonment. As my friend Pandit Shamlal Nehru pointed out, they will be the people who will have to work for others who have money to get themselves excused from hard labour. It will be extremely risky, Sir, to allow the magistrates a discretion of the kind the Honourable the Home Member desires to give them. The jail administration of this country is very very defective. The only preventive section under which it may be proper to award rigorous imprisonment in default of security is section 110 and that deals with hardened criminals. It is so exhaustive, as I have already pointed out, that it is difficult to imagine that there can be any case which remains outside the scope of that section to be brought under section 109. Sir, I want to repeat that it will be very unjust, very anomalous, very unfair to change this law in order to help the jail administration and suit the convenience of those jail superintendents who find it difficult to provide for prisoners sentenced to simple imprisonment in a suitable manner. One of the Local Governments has suggested the proper remedy and that is the Local Government of the Central Provinces against whom so much has been said. They begin by saying in the last sentence of their report on page 3 of the White Paper that in their opinion the section should be amended by restoring the discretion to award imprisonment rigorous or simple; "otherwise special wards will be required for the segregation of persons imprisoned under section 109 of the Criminal Procedure Code."

That is what they say, but it is not a special ward for persons sentenced under section 109, but a special ward for persons sentenced to simple imprisonment that is wanted. That is the proper remedy which ought to be adopted by Government because most of the opinions relied on by him record a complaint that simple imprisonment interferes very much with jail discipline. On page 4 in the extract from the United Provinces Jail Report, it is stated:

"The presence of these idle prisoners in jails, as the Jails Committee pointed out, is bad for jail discipline."

The Jail Committee, Sir, made its report in 1920. There has been no Jail Committee since then, and therefore the objection is not to the new law, but to the existence of simple imprisonment as a form of punishment. That opinion therefore carries no weight so far as the effect of the new law is concerned. The next extract is taken from the Bihar and Orissa Jail Report where it is said:

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"Simple imprisonment is of little value from a penal point of view, and the recent change in the Criminal Procedure Code by which only simple imprisonment can be awarded under section 109 will, I fear, increase the difficulties of jail administration."

That is practically the main consideration present to the Jail authorities. The Report adds:

"Simple imprisonment has little to commend it at any time, to give it to habitual criminals of the worst type is distinctly dangerous."

If so, make a special provision for such cases. Why make a general provision that everybody who is proceeded against under section 109 is liable to rigorous imprisonment at the sweet will of the magistrate? Another extract says that these persons in many cases "indulge in behaviour subversive of jail discipline." There every one harps on jail discipline. There is no question of justice, fairness nor of the interests and safety of society. The only question before these officers is one of jail discipline. Let us take another extract from the Bihar and Orissa Jail Report:

"The number of simple imprisonment prisoners in our jails is becoming quite an embarrassment, and at least one experienced Superintendent thinks it a danger and I agree with him."

Now, Sir, may I ask if these are the grounds upon which a change in the present law can be asked for by the Government simply because the Superintendents of Jails find that the presence of simple imprisonment prisoners in jails is subversive of discipline and that they are a danger according to one at least of the Jail Superintendents of Bihar and Orissa.

You will again find the same thing in the extract from the Central Provinces Jail Report. It is given on page 5:

"As has been mentioned in the reports for previous years,—not after this law was passed,—this form of punishment works adversely on jail discipline."

That is the principle before them. The writer of the Central Provinces and Berar Report adds:

"It gives him, *i.e.*, the simple imprisonment prisoner, great satisfaction to be able to tell the Superintendent that he does not intend to work."

It offends the Superintendent's dignity and his sense of discipline. The Superintendent does not like the idea that any man who has been sentenced to imprisonment should have what he, the Superintendent, considers a happy go-lucky life. Other portions of these Reports have already been read to you. I submit that the complaint that habitual offenders have

[Lala Lajpat Rai.]

been sentenced to imprisonment under section 109 and that this kind of punishment is subversive of jail discipline are absolutely insufficient grounds on which to ask for a change in the law. They are not only insufficient, but I think they are dangerous grounds on which to change the law as proposed. My Honourable friends have shown what a political danger there is in such a course. The case of Nagpur has been quoted so often that it need not be repeated. I was just informed by my Honourable friend Dr. Lohokare of a case where people guilty of picketting had been sentenced to imprisonment under section 109 of the Criminal Procedure Code. So you will see Nagpur does not stand alone; there are other places where this section has been misused. My friend Mr. Bipin Chandra Pal said if he could be assured that this section would not be used for political purposes, he would be ready to consider the proposed change on its merits. I consider that even regardless of political considerations in the general interests of society, it would be absolutely unjust to change the law as is proposed. Section 109 is a purely preventive section and provides for cases which do not come either under section 107 or section 108, and 110. It gives an extra latitude to the police to use their preventive methods for the purpose of preventing people who have no ostensible means of livelihood from lurking about. I submit such a section does not require a provision for rigorous imprisonment. My friend Pandit Shamlal Nehru has given some cases in which this section was misused. I can tell you from my own experience that many times the police have used this section not only for political purposes but also for spreading terror. Under this section they arrest and detain many persons against whom they have a grudge to satisfy, but against whom they cannot proceed under any other section. Knowing as we do that the section is so abused, it would be very dangerous in our opinion to provide that people who are arrested on the merest suspicion, and who cannot at a particular moment give account of themselves which would satisfy the police or who cannot show that they have some means of livelihood should be asked to give security, and if they fail to give security, should be sentenced to a term of rigorous imprisonment for one year. I submit that is not what is required. There have been many cases in my experience where the section was used to get hold of a supposed criminal in order to fish out evidence against him. The idea was that if there was evidence he would be charged, otherwise discharged. This section, Sir, is being used for several miscellaneous purposes. It is a very useful and handy weapon. My learned friends on the other side base their case on reports, but we know how in actual life these sections are worked by the police and the magistracy. I do not want to make any reflections on the magistracy as a class, but here in this House and in this debate we have had two instances of Honourable Members who did not know what the law was although they had been magistrates for several years in their own jurisdictions. The law may be changed when on the evidence of several years' working it is found inadequate or defective; but we have the testimony of the Bombay Government that the law has not been sufficiently long in force to enable them to give a sound judgment as to whether it had failed or succeeded. The opinions of executive officers are always in favour of making the law more stringent. They look only to their difficulties and not to the rights and liberties of the subject. I submit that those opinions should not carry much weight. We cannot be persuaded to change the law at the mere whim of the executive. We should see for ourselves

whether any case has been made out in the general interests of society. The law has only been in force for a short time and the experience of that time certainly does not justify the change proposed. On the contrary it would be extremely dangerous to accept the principle underlying the present Bill. I therefore oppose the motion.

***Mr. M. A. Jinnah** (Bombay City: Muhammadan Urban): Sir, the only reason I have got up to speak is that I thought the Honourable the Home Member might rebuke me, as he did on another occasion, for not taking part in this debate. When this matter was discussed in this House in September I did not take part nor did I vote one way or the other. I remained perfectly neutral when the division was taken last September and the Home Member's Bill was defeated. He has appealed to us to-day that this is an important matter and therefore we must give it careful consideration. Now, Sir, I should have thought that the Honourable the Home Member would have waited a little longer and not taken the advantage which the Government enjoy under the procedure of this House, namely, that any Bill which has been rejected—of course this was not rejected because the Home Member refused to move the consideration of the Bill . . . .

The Honourable Sir Alexander Muddiman: I moved the Bill leaving out this clause.

Mr. A. Rangaswami Iyengar: And then brought in a separate Bill.

Mr. M. A. Jinnah: And now we have got this separate Bill. My point is that ordinarily what happens is this, that when a Bill or a Resolution is rejected, you cannot bring it up for a year. But the Honourable the Home Member, instead of waiting for some time and then coming to this House and making out a strong case for the present Bill, has taken the earliest opportunity to bring this very clause again in the shape of another Bill before this House. Well, now, Sir, what is the justification? As far as the Bombay Government are concerned, it has already been pointed out that the Bombay Government say this, that the provisions of section 123 limiting the imprisonment under section 109 to simple imprisonment have been noticed by several officers to provide an entirely inappropriate punishment for the majority of persons concerned. Now the House will note the words " for the majority of the persons concerned ". But we have a very illuminating statement from the Bombay Jails Report and that statement says this:

" The number of prisoners sentenced to simple imprisonment was 1,177 as compared with 1,021 in the previous year. The increase is mainly due to the amendment of the Criminal Procedure Code prohibiting the award of rigorous imprisonment to persons in default of giving security under section 109 of the Criminal Procedure Code. Many of these prisoners are habituals "—

that is to say, the additional number, the difference between 1,021 and 1,177—

" Many of these prisoners are habituals with several previous convictions and it is clearly wrong that such persons should be maintained for months or years in entire idleness at the public expense."

Now the remedy for that is suggested by this very opinion which I am reading:

" It is suggested that instructions might be issued to the police that wherever possible prisoners should be charged under section 110 instead of under section 109. They can then be sentenced to rigorous imprisonment if they fail to produce security."

*Speech not corrected by the Honourable Member.

[Mr. M. A. Jinnah.]

The Bombay authorities therefore observe that the remedy is in the hands of the executive. Now, the Honourable Mr. Tonkinson said that section 109 is intended for and it is the only section under which you can bring habituals.

Mr. H. Tonkinson: That is not what I said at all.

Mr. M. A. Jinnah: I am quite willing that the Honourable Mr. Tonkinson should make a statement as to what he meant. He clearly conveyed this idea that section 109 is the only section under which you can bring habituals, and that is how I understood him.

Mr. H. Tonkinson: The statement that I made was that in certain cases certain habituals can only be proceeded against under section 109; at a particular time they cannot be proceeded against under section 110. That is an entirely different statement.

Mr. M. A. Jinnah: Well, if that is his statement, all I can say is it is as vague as it is irrelevant. What are those certain cases, will the Honourable Member say? What are the circumstances, what are the cases? It is all very well, Sir, to say certain cases under certain circumstances could not be proceeded against under section 110 but must be brought under section 109. Which case is that? I can quite understand if Mr. Tonkinson had said that the clear distinction between section 109 and section 110 is this, that section 110 deals with certain specified offences which are mentioned therein. They are all specified and what is more, another additional condition is laid down under section 110, that that person who can be prosecuted for any of those offences which are mentioned in section 110 (*a*), (*b*), (*c*), (*d*) and so on, must be within the local limits of the magistrate's jurisdiction; but section 109 disregards the question whether that person was within the local limits of that magistrate or not. The person may have come entirely from outside, absolutely from outside; but if he enters the jurisdiction of the magistrate and if the magistrate can be satisfied " that any person "—these are the words of section 109, clause (*a*),—" that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction," —not necessarily resident there " and that there is reason to believe that such person is taking such precautions with a view to committing any offence" he can be prosecuted. It does not necessarily follow that he has committed any offence before that or that he is a habitual offender; if he has gone there and he is concealing himself with a view to commit an offence—it may be it is the very first offence that he desires to commit and that he has committed no offence yet—he can be hauled up under section 109. It is no use therefore saying—and I do not agree with Honourable Members who put forward this argument—that it is wrongly used and that this power is abused. I say if I went to Nagpur . . . . .

Sir Hari Singh Gour: You would be in jail very soon.

Mr. M. A. Jinnah: If I went to Nagpur and if I went to take part in that movement which was going on and I had been taken before the magistrate under section 109, I would have honestly said to him " Yes, I have come here for this purpose." I would not have denied it. I am there with a view to committing an offence and I shall be liable to be bound over under this section rightly.

Mr. C. Duraiswami Aiyangar: May I ask you whether under clause (*a*) or clause (*b*)?

Mr. M. A. Jinnah: Clause (*a*); I am talking of clause (*a*). I shall be liable to be bound over . . . .

Lala Duni Chand: That is a strange exposition of the law.

Mr. M. A. Jinnah: I beg to differ from the Honourable Member who has better knowledge of law than I have, but I say we are now really running away from the real issue. It is no use saying that a magistrate will be abusing that power. It is not for that reason that I am opposing this Bill. My reason is this, that under section 110 if you wish to collar a habitual offender for specified offences which cover a very large area—almost everything that you can imagine is covered—then the magistrate can proceed under section 110. But if you want to collar a man under section 109 (*a*), that is to say, for offences other than the offences specified in section 110, then I say the punishment should not be rigorous imprisonment, but simple imprisonment.

Mr. A. Rangaswami Iyengar: That is the point.

Mr. M. A. Jinnah: That is my point. That is with regard to section 109(*a*); and I say that I would like to have a chance or rather a choice, if I went to Nagpur; and I should certainly prefer simple imprisonment to rigorous imprisonment, because I think it will be more comfortable at any rate.

Well, Sir, we come now to clause (*b*). With regard to clause (*b*) I agree that the words of that clause are very wide, but they have already received judicial interpretation in various courts. Of course it may be abused: that is a clause which I can understand being abused, and it may be abused not merely on the ground of collaring political workers, but it may also be abused on some other ground such as of course to maintain the prestige of the executive, which is very important in a district. I think the Honourable the Home Member will agree with me that it is very important. . . . .

The Honourable Sir Alexander Muddiman: I would not keep any one under 109 on these grounds, you may take it.

Mr. M. A. Jinnah: I mean this: it is very easy to haul up a few people under section 109 (*b*) and of course it has been pointed out that we have a system here where the judiciary is not separated from the executive and therefore there is that risk and that danger. But nevertheless that is not a part of section 109 to which I attach very great importance; and as Mr. Tonkinson himself pointed out in September—and I am inclined to agree there—generally no magistrate will convict a man under section 109 (*b*) and call upon him to give security merely because he has got no ostensible means of subsistence. I agree it must be something more, something more which is contemplated by this section and affirmed by judicial decisions and that something more is very clearly enacted in the English law which Mr. Tonkinson himself pointed out. The English law is:

> "If on his being charged by a constable with getting his livelihood by dishonest means and being brought before a court of summary jurisdiction it appears to such court that there are reasonable grounds for believing that the person so charged is getting his livelihood by dishonest means."

[Mr. M. A. Jinnah.]

That means that there must be some attempt to resort to dishonest means: that is to say, a person who has no ostensible means of livelihood and further cannot give a satisfactory account of himself and is resorting to some dishonest means in order to get his livelihood which may not actually amount to a criminal offence is the class of man that would be liable to be bound over under this section. I have no quarrel with that; it is a much lighter punishment; and after all I think the Honourable the Home Member will agree with me that he will be convicted more or less on suspicion. Now, we are not concerned with cases of beggars and of people who honestly have no ostensible means of subsistence. What is the good of your putting them in jail? Are you going to make them work by passing sentences of rigorous imprisonment? Is that the remedy? That is not the class of people that you want to touch; that is not the class of people you want to improve by sending them to jail and sentencing them to rigorous imprisonment. Therefore, you have really got two classes; both the classes you could bind over under section 109 more or less on suspicion; no definite offence need be proved except a possibility under section 109 (*a*). For that purpose, is not simple imprisonment sufficient? Well, I leave it to the House to decide whether that is not sufficient and I say that, until we get some definite and clear evidence that this amendment which has been made only recently has created serious difficulties in the way of the Government, I am not prepared to support this Bill.

The Honourable Sir Alexander Muddiman: Sir, I have listened to this debate with great interest, as I always do to debates in this House; but I listened to-day with particular interest, for arguments have been brought forward from different quarters so various and based on such peculiar grounds that I feel great difficulty in classing them under any general head. I shall proceed, however, to meet at once what I think is the real source of opposition in this House. It has been said, and it has been argued with considerable force that this section has been abused, that it was so abused at Nagpur in connection with certain incidents in 1923. It has been said that the section was improperly applied, and that it was used against persons to whom it was never intended to be applied, and generally that is made the ground for maintaining simple imprisonment and declining to give the option to the magistrate for which I am seeking in this Bill.

My first observation on that point is this: if the section was abused, then it is equally bad that simple imprisonment even should have been given. You are objecting to the use of the section and not to the sentences that may be imposed. Now, I myself have no hesitation in denying in this House any suggestion that section 109 should be used for political ends and I personally should regret very much if it was so used.

Mr. R. K. Shanmukham Chetty: What did you do at that time?

The Honourable Sir Alexander Muddiman: I was not the Home Member at the time, but I have no doubt that the Home Member at that time was equally as anxious as I am that it should not be so used. However, my point is this, that abuse of a section is no proof in itself that the section is wrong. You may abuse any section. Section 302 may be used. A false case may be brought against my friend Sir Hari Singh

Gour, he may be committed to the Sessions, and he may be sentenced to death, and but for the beneficent intervention of the Home Member he might even be hanged.

Sir Hari Singh Gour: That is very likely.

The Honourable Sir Alexander Muddiman: So the possible abuse of a section is no ground for arguing against the section.

I have been struck very much by the fact,—and I do think that the House is really under a misconception as to these cases. These events took place in Nagpur in 1923. My friend Sir Henry Stanyon put a very pertinent question when he inquired whether these proceedings were taken to the High Court on revision. I did not hear any answer . . . . .

Sir Hari Singh Gour: There was an answer given by Mr. Bipin Chandra Pal. Why did not the High Court proceed under section 435 and call for the records?

The Honourable Sir Alexander Muddiman: My Honourable friend forgets that in High Courts, proceedings are generally taken on petitions. (*An Honourable Member*: "No, no.")

Sir Hari Singh Gour: The High Court may not call for the proceedings always.

The Honourable Sir Alexander Muddiman: That was, as I say, a very pertinent question which Sir Henry Stanyon put. The matter does not rest there. No one in this House has made the slightest observation on the fact that at the time the Criminal Procedure Code was altered in 1923 there was a change in the right of appeal under these proceedings. In fact, one Member was good enough to observe that there is no right of appeal unless a man has given security. That is a very unusual reading of the law.

Mr. Amar Nath Dutt: I think that is reported in 23, Calcutta.

The Honourable Sir Alexander Muddiman: I feel some doubt about it. (Laughter.) Now, may I draw my Honourable friend's attention to section 406 as it appeared in the Criminal Procedure Code of 1898? It was as follows:

"Any person ordered by a Magistrate other than the District Magistrate or a Presidency Magistrate to give security for good behaviour under section 118 may appeal to the District Magistrate."

Therefore, at the time these Nagpur troubles took place, it may be said that the executive authorities were prejudiced, and therefore the persons concerned were not inclined to appeal, although they had the right of appeal; but whether they did appeal or not I do not know. However, it does seem to me a matter that the House should bear in mind that when the revision of that Code was under consideration the Legislature altered the right of appeal in these matters in a very useful way, in my opinion.

Mr. A. Rangaswami Iyengar: I hope you will think it useful.

The Honourable Sir Alexander Muddiman: I am quite prepared to stand by the altered Code in that respect. They inserted this new section 406 which deals with the same matter, and the new section 406 which must be known to every Member of this House or might be known to every Member of this House, runs as follows:

"Any person who has been ordered under section 118 to give security for keeping the peace or for good behaviour may appeal against such order—

(*a*) if made by a Presidency Magistrate, to the High Court;

(*b*) if made by any other Magistrate, to the Court of Session;

Provided that the Local Government may, by notification, exempt appeals in certain cases."

I have not here any information as to the exemptions, but I am perfectly sure if any were made in any special districts, it was because there was a difficulty in giving an appeal to a Court of Session. The House must recognise that it is a very great change in the law. Now, the House has asked for some assurance that cases of abuse of the section will not take place. I will be perfectly frank with the House. I cannot give any guarantee that the section will not be abused, but I do say this that this appeal is in itself a very great protection in that direction. And the very point which my Honourable friend made that there was danger of the executive bias being imported has been met. There has in this matter been a separation between the judicial and executive functions, in that an appeal now lies to the Court of Session. That is one of those things which is really a matter of considerable importance. Now, the real gravamen of the attack on my Bill was based on the idea that the section had been and could be used for improper purposes, to punish political offenders. I have now given, I think, a fairly satisfactory reply on that.

Let me pass on for a moment to another point. It is not every man who says that he is working for political purposes who is actually working for those purposes. I had at one time among the number of my acquaintances an eminent burglar who stood very high in his profession. He was an ardent member of the Primrose League. Thus you see you can combine a profession of a peculiar character with political tendencies. But as I have said, the real thing that the House is anxious about is that this law may be used improperly. I cannot give any assurance, nor can any one do so, that the law will never be used improperly. That is an assurance which I cannot give. There has been, by the very revision of the law which I am endeavouring to get changed in one respect a distinct advance which is calculated, in my judgment, and I trust in the judgment of the House, to avert any improper use of the section.

The next point I should like to make is a small one, hardly worth putting, but I have been supplied with the information. I heard some Honourable Member say that about half the number of convicts in India are under section 109. (*An Honourable Member*: "No, no.") I do not know who said that, but the figures are as follows. There were 115,000 people in jail in India at the end of 1924, and 3,134 were in jail under section 10. That is not half, not even nearly half.

Mr. M. A. Jinnah: Under one section it is quite enough.

The Honourable Sir Alexander Muddiman: I agree, Sir, it is deplorably large, I agree. Now, I do feel some sympathy with Mr. Chaman Lall in

one of the points he made. He said that he did not object to the first part of section 109, but he objected to the second part. Mr. Jinnah gave the answer to him. He pointed out that the term "ostensible means of support" has a technical meaning, and my Honourable friend Mr. Pal also pointed out, when he read an extract from the Madras Police Manual, that instructions have been issued that the police should use their discretion in using the section. I quite agree that discretion should be exercised, nor in my experience is that discretion often wrongly exercised. You have heard in the speeches of those who have been more recently administering these laws than I have that on the whole, they think the executive have not abused these powers. The House generally has taken the line that they are not seriously abused. Of course, it is impossible for me in this House—I never sought to take that position,—it is impossible to say that the police will not sometimes be indiscreet, sometimes act from improper motives; it is impossible to say that. It is not true of any country. All we can ever hope is that the majority of the proceedings will be taken in good faith and in the public interest. There are persons in every walk of life who may not act with the best of motives. Unfortunately we find persons who do not act with the highest motives in every walk in life. If that was not so, I am afraid many of our occupations would be gone. My Honourable friend Diwan Bahadur Rangachariar would no longer get his fees in criminal trials, nor should I be paid for the duties I perform.

Diwan Bahadur T. Rangachariar: No, your system is viciously wrong.

The Honourable Sir Alexander Muddiman: I have heard the word "vicious" many times before. It does not impress me. As I have said, one of the reasons why the House is opposed to this Bill is because they think that the section may be and has been abused and used for political ends. I have definitely stated that I disapprove strongly of any such use being made of the section for this purpose. I am quite prepared to write to Local Governments and express those views. Having said that, I have gone very far to secure the suffrages of the House.

Now, one further point was made that I brought this Bill too soon. It was urged that after all it was only three months ago that this was rejected and I ought to have waited a year or two and seen how things worked. I read out to the House opinions of very great weight—it is idle to deny that they are opinions of very great weight—and very great cogency giving clear proof of the urgency of the matter and of the necessity of taking steps to prevent this system by which these men sit in jail doing nothing, a system subversive of their own character, subversive of jail discipline and in every way undesirable. I could have understood it if it had been argued that we should not have any of these powers at all and that we should not lock a man up at all in default of security. But having those powers, it is really wrong, morally wrong, to send men of this class to jail with nothing to do.

It is also argued that these persons should be dealt with under section 110 and section 110 alone. This is a House of lawyers and nothing has been made more clear time and again by decisions of the High Court than that you cannot run a man in under 110 without giving him a chance of earning an honest livelihood. I fully agree in the view that you cannot use section 110 till you have the man out for some time and really given him a chance.

Mr. A. Rangaswami Iyengar: Therefore you would use section 109.

The Honourable Sir Alexander Muddiman: In circumstances such as these. I am glad the Honourable Member has raised the point. We could use section 109 in these circumstances. A man is released from jail. He is an ex-convict. He comes into your compound with a picklock proposing to break into your house. If you run him in under section 109 . . . . .

Mr. A. Rangaswami Iyengar: "Picklock" is not mentioned in the section.

Lala Lajpat Rai: Section 110 will apply.

Mr. M. A. Jinnah: Section 110 will apply at once.

The Honourable Sir Alexander Muddiman: I do not quite follow whether the Honourable Member objects to the picklock or to the use of this section. It is obvious that he would be there with intent to break into the house but that section 110 would *not* apply.

Now, I have done my very best to bring this matter before the House and to answer them frankly and freely on the issues. The issues are of very considerable importance. I have not brought this into the House lightly. I would not lightly invite another rebuff in this House. It was open to me to take the Bill to another place, to endeavour to secure the reinsertion of this clause and bring it back here again. I did not wish to do that out of respect for this House. I desired that it should be brought as a fair and square issue and on that issue I ask the fair and square decision of the House. The implications of this are far beyond the mere amendment I am moving. I am asking the House to co-operate in making an amendment which has been recommended by every executive authority in India. I am asking this House to say once for all whether they will, in any circumstances, under any conditions, carry any measure which is brought forward with the united force of the executive. This is not brought forward in my interest. This is not brought forward in the interest of any one but the citizen at large. Is this House entirely unmindful . . . . .

Diwan Bahadur T. Rangachariar: No.

The Honourable Sir Alexander Muddiman: . . . of the fact that it is not only the criminals who have rights but the ordinary citizen also have rights? Is this House entirely unwilling to assist the executive in carrying into law measures the executive tell the House are essentially necessary? I have brought it forward as a perfectly fair and defined issue and on that issue, Sir, I invite the verdict of the House.

Mr. President: The question is:

"That the Bill further to amend the Code of Criminal Procedure, 1898, for a certain purpose, be taken into consideration."

The Assembly divided:

AYES—52.

Abdul Qaiyum, Nawab Sir Sahibzada.
Abul Kasem, Maulvi.
Ahmad Ali Khan, Mr.
Ajab Khan, Captain.
Akram Hussain, Prince A. M. M.
Alimuzzaman Chowdhry, Khan Bahadur.
Badi-uz-Zaman, Maulvi.
Bajpai, Mr. R. S.
Bhore, Mr. J. W.
Blackett, The Honourable Sir Basil.
Bray, Sir Denys.
Burdon, Mr. E.
Calvert, Mr. H.
Carey, Sir Willoughby.
Clow, Mr. A. G.
Cocke, Mr. H. G.
Crawford, Colonel J. D.
Dalal, Sardar B. A.
Donovan, Mr. J. T.
Gidney, Lt.-Col. H. A. J.
Gordon, Mr. R. G.
Graham, Mr. L.
Hezlett, Mr. J.
Hira Singh Brar, Sardar Bahadur Captain.
Hudson, Mr. W. F.
Hussanally, Khan Bahadur W. M.
Innes, The Honourable Sir Charles.
Jatar, Mr. K. S.
Jeelani, Haji S. A. K.
Lindsay, Sir Darcy.
Lloyd, Mr. A. H.
Macphail, Rev. Dr. E. M.
Mitra, The Honourable Sir Bhupendra Nath.
Muddiman, The Honourable Sir Alexander.
Muhammad Ismail, Khan Bahadur Saiyid.
Naidu, Rao Bahadur M. C.
Neave, Mr. E. R.
Owens, Lieut.-Col. F. C.
Rahman, Khan Bahadur A.
Rajan Bakhsh Shah, Khan Bahadur Makhdum Syed.
Reddi, Mr. K. Venkataramana.
Roffey, Mr. E. S.
Sim, Mr. G. G.
Singh, Rai Bahadur S. N.
Singh, Raja Raghunandan Prasad.
Stanyon, Colonel Sir Henry.
Sykes, Mr. E. F.
Tonkinson, Mr. H.
Vernon, Mr. H. A. B.
Vijayaraghavacharyar, Sir T.
Wajihuddin, Haji.
Willson, Mr. W. S. J.

NOES—45.

Acharya, Mr. M. K.
Aiyangar, Mr. C. Duraiswami.
Aiyangar, Mr. K. Rama.
Ariff, Mr. Yacoob C.
Chaman Lall, Mr.
Chanda, Mr. Kamini Kumar.
Chetty, Mr. R. K. Shanmukham.
Das, Mr. B.
Das, Pandit Nilakantha.
Datta, Dr. S. K.
Duni Chand, Lala.
Dutt, Mr. Amar Nath.
Gour, Sir Hari Singh.
Gulab Singh, Sardar.
Iyengar, Mr. A. Rangaswami.
Jajodia, Baboo Runglal.
Jinnah, Mr. M. A.
Joshi, Mr. N. M.
Kidwai, Shaikh Mushir Hosain.
Lajpat Rai, Lala.
Lohokare, Dr. K. G.
Majid Baksh, Syed.
Malaviya, Pandit Krishna Kant.
Malaviya, Pandit Madan Mohan.
Mehta, Mr. Jamnadas M.
Misra, Pandit Shambhu Dayal.
Mutalik, Sardar V. N.
Narain Dass, Mr.
Nehru, Dr. Kishenlal.
Nehru, Pandit Shamlal.
Neogy, Mr. K. C.
Pal, Mr. Bipin Chandra.
Piyare Lal, Lala.
Ramachandra Rao, Diwan Bahadur M.
Rangachariar, Diwan Bahadur T.
Ranga Iyer, Mr. C. S.
Ray, Mr. Kumar Sankar.
Samiullah Khan, Mr. M.
Sarfaraz Hussain Khan, Khan Bahadur.
Singh, Mr. Gaya Prasad.
Sinha, Mr. Ambika Prasad.
Sinha, Mr. Devaki Prasad.
Talatuley, Mr. S. D.
Tok Kyi, U.
Venkatapatiraju, Mr. B.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Friday, the 12th February, 1926.