2nd February 1927

THE

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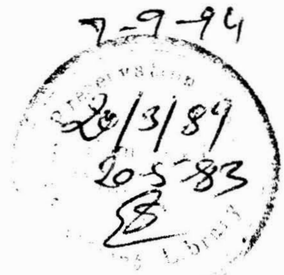
(Official Report)

Volume I

FIRST SESSION

OF THE

THIRD LEGISLATIVE ASSEMBLY, 1927



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LEGISLATIVE ASSEMBLY.

Wednesday, 2nd February, 1927.

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

QUESTIONS AND ANSWERS.

INACCURACY OF SIND ELECTORAL ROLLS.

249. ***Mr. Harchandrai Vishindas:** (*a*) Are Government aware that the electoral rolls of Sind for the Assembly were prepared with complete disregard of accuracy, many names being oft repeated and many omitted and those of persons long dead being inserted?

(*b*) Is it true that this defect was said to be due to want of establishment requisite for preparing the rolls and Government refused to sanction expenditure for such establishment though asked for?

(*c*) Do Government propose to remedy this drawback so as to ensure accuracy in future?

Mr. L. Graham: (*a*) and (*b*). Elections for Indian and Provincial Legislatures constitute a Provincial Subject and the Electoral Regulations assign the responsibility for the preparation of electoral rolls to officers of the Local Government. In these circumstances, the Government of India have no information regarding these parts of the question.

(*c*) The Government of India will forward the Honourable Member's question to the Bombay Government with a view to the taking by them of such action as they may consider to be appropriate.

INACCURACY OF BHAGALPUR, PURNEA AND SANTHAL PARGANAS ELECTORAL ROLLS.

250. ***Kumar Ganganand Sinha:** Are the Government aware of the fact that the electoral roll prepared for the Bhagalpur, Purnea and Santhal Parganas constituency of the Legislative Assembly is full of mistakes in descriptions and double entries? If so, how do Government propose to remedy the defects. If they do not propose to do anything in the matter will they state reasons for the same?

Mr. L. Graham: The Honourable Member is referred to the reply which I have just given to the last question. The Government of India will forward the Honourable Member's question to the Government of Bihar and Orissa with a view to the taking by them of such action as they may consider to be appropriate.

CONSTRUCTION OF MUZAFFARPUR-SITAMARHI RAILWAY.

251. ***Mr. Gaya Prasad Singh:** (*a*) With reference to my question No. 1066 of the 8th March, 1926, regarding the construction of a direct

Railway line between Muzaffarpur and Sitamarhi on the Bengal and North-Western Railway, are Government aware that in reply to a question in the Bihar and Orissa Legislative Council on the 25th July, 1921, the local Government stated that "the necessity for the proposed line has been brought to the notice of the Government by the Commissioner of the Division, and it has been included in the list of Railway projects recently prepared for early construction"?

(*b*) Are Government aware that in reply to a question in the Bihar and Orissa Legislative Council on the 17th August, 1926, the local Government laid on the table a "list showing in order of urgency, the new lines of Railways in Bihar and Orissa, which should take an early place in the programme of construction for the year 1927-28", and that in this list the proposed Muzaffarpur-Sitamarhi Railway, (Bengal and North-Western Railway) has been given the first place "to show its importance"?

(*c*) Will the Government be pleased to state what is the latest communication which they have received on this subject from the local Government, and from the Agent, Bengal and North-Western Railway, and also indicate what progress, if any, has been made towards the construction of the proposed Railway?

Mr. A. A. L. Parsons: (*a*) Yes.

(*b*) Yes.

(*c*) No further communication has been received from the Government of Bihar and Orissa or the Agent, Bengal and North-Western Railway since the reply given to the Honourable Member's question No. 1066 of 8th March, 1926, regarding the railway in question.

INDIAN REPRESENTATION ON FIJI LEGISLATIVE COUNCIL.

252. ***Mr. Gaya Prasad Singh:** (*a*) Is it not a fact that out of twelve non-official seats in the Legislative Council of Fiji, only 3 seats are proposed to be provided for the representation of the Indian settlers, and that as many as 6 seats are to be given to the Europeans, who number only about 3,878, while the Indian population in the Colony is about 65,500?

(*b*) Is it a fact that the Indian Deputation to Fiji, as well as the Colonies' Committee strongly urged that the Indians should be conceded an equal number of seats in the Legislative Council, with the non-official European community, and that this view was accepted by the Government of India? If the answer be in the affirmative, will the Government be pleased to say why "they are prepared to acquiesce in the proposals" which seek to restrict the right of representation of the Indians in Fiji?

The Honourable Mr. J. W. Bhore: The answer to (*a*) and the first part of (*b*) of the question is in the affirmative. As the Honourable Member will observe from the correspondence which was published in the Government of India Resolution No. 24-Overseas, dated the 12th January, 1927, while the Government of India have not modified their opinion that the number of seats offered to Indians in the Fiji Legislative Council is inadequate, they consider that in the circumstances it was undesirable by continuing to press their full claim at the present juncture to cause further delay in the grant of increased representation to the Indian community and to incur the risk of the offer being withdrawn.

Mr. Gaya Prasad Singh: Is it not a fact that, before the appointment of the Indian deputation, the Fiji Government gave a pledge that the position of Indians in Fiji would in all respects be equal to that of any other class of His Majesty's subjects?

The Honourable Mr. J. W. Bhore: I must ask for notice of that question because it is essential that I should compare the actual words of the pledge given, if any.

Mr. Gaya Prasad Singh: Is it not in the Fiji *Royal Gazette* of 27th June, 1921?

The Honourable Mr. J. W. Bhore: I cannot say.

Mr. R. K. Shanmukham Chetty: Do Government propose to pursue this matter or have they acquiesced in the conditions?

The Honourable Mr. J. W. Bhore: If my Honourable friend had read carefully the correspondence that has been published, he would have seen that our acquiescence is for the present only. I do not expect my Honourable friend to acquiesce in the policy of take what you can get at once and ask for more at the proper time, but I can assure him that that appears to be the most practical policy.

Mr. R. K. Shanmukham Chetty: But when do they intend to pursue the matter and to press for more representation for Indians?

The Honourable Mr. J. W. Bhore: In due course, at the most seasonable and suitable opportunity.

APPOINTMENT OF PERMANENT AGENT OF GOVERNMENT OF INDIA IN FIJI.

258. ***Mr. Gaya Prasad Singh:** (*a*) Will the Government kindly state the reasons which led to the abandonment of the proposal to appoint a permanent Agent of the Government of India in Fiji, to look after the interests of the Indians?

(*b*) With regard to the question of the addition to the Fiji Government service of "an officer possessed of special Indian experience and language qualifications", will the Government kindly state the reasons as to why the appointment of such an officer is restricted only to "a retired officer of the Indian Civil Service"?

The Honourable Mr. J. W. Bhore: (*a*) If the Honourable Member will refer to the correspondence about the position of Indians in Fiji recently published, he will see that the proposal to which he refers was abandoned because the Colonial Office would not accept the necessity for such an appointment in view of the representation upon the Legislative Council now offered to Indians and in view of the fact that they have agreed to occasional visits to Fiji by authorised representatives of the Government of India.

(*b*) The appointment in question is not expressly restricted to a retired officer of the Indian Civil Service. The Colonial Office desired to obtain an officer possessed of special Indian experience and language qualifications who would be competent to act as special adviser to the Governor of Fiji on matters affecting Indians in the island. The Secretary of State evidently thought that such an officer might be available amongst retired officers of the Indian Civil Service.

CONCESSIONS FOR OFFICERS OF INDIAN AND NON-INDIAN DOMICILE ON STATE RAILWAYS.

254. ***Mr. M. S. Sesha Ayyangar:** Will the Government be pleased to state:

(*a*) whether, when the new scales of pay with overseas allowance were sanctioned for superior officers on State Railways in 1920, it was ruled that Indian officers already in service should get an increase of pay in lieu of and equal to overseas pay drawn by officers of Non-Indian domicile:

(*b*) whether the above rule applies also to a cadre divided into grades or incremental scales of pay with separate scales of overseas allowance applicable to each grade; and whether Indian officers already in service are to receive on promotion to higher grades, increase of pay in lieu of overseas allowance applicable to the respective grades; and

(*c*) whether on Company's Railways on which similar conditions prevailed, *i.e.*, on which Indian officers were appointed to the old grades on the understanding that no discrimination was to be made in respect of emoluments between officers of Indian and Non-Indian domicile, Indian officers are not as on State Railways entitled to increase of pay in lieu of the overseas allowance applicable to their grade or to the grades to which they may be subsequently promoted?

Mr. A. A. L. Parsons: (*a*) New scales of pay with overseas pay were sanctioned in 1920 and 1921 for the Imperial Service of Engineers, and the Superior Revenue Establishment (excluding the Stores, Medical and Coal Departments). Indian Officers in service on the date of introduction of the new scales of pay were granted additional pay equivalent to the overseas pay: Engineer officers in service at the time who had been appointed by the Secretary of State in England were granted the overseas pay.

(*b*) On the introduction of the new scales of pay on the State Railways the division of the services into grades, where they existed, was abolished; but, for appointments below the administrative ranks, a dual scale of basic pay based on the total length of service was introduced for District and Assistant Officers, overseas pay being the same for each class according to the length of service. There is no longer therefore any grade promotion of officers, either Indian or Non-Indian.

(*c*) Except the Burma Railways, on which special rates of pay were in existence, other Company-worked Railways were authorised to grant to their officers scales of pay and overseas pay not exceeding those granted to the State Railway Officers. Except the South Indian Railway all other Company-worked Railways, who were so authorised, adopted a dual scale similar to that referred to in clause (*b*) above. But the South Indian Railway while abolishing the grades amongst the classes of District and Assistant Officers, fixed separate rates of pay for the two classes.

On the South Indian Railway, Indian Officers, in service, on the date on which the new scales of pay were brought into force, were granted the equivalent of overseas pay admissible to their class, but as the acting

allowance rules of that Railway are more liberal than on the other Company-worked Railways the Board of Directors decided that it was not necessary to continue the additional pay on promotion to a higher class.

Mr. A. Rangaswami Iyengar: May I know whether the Government are satisfied with the arrangement that the South Indian Railway have made in giving effect to these concessions granted to them by the vote of this House which are just the same as have been given on the State Railways?

Mr. A. A. L. Parsons: May I explain? As I understand it, the objection taken to the action of the South Indian Railway by the Honourable Member and others is not in any way connected with the grant of the Lee Commission concessions. The objection is in regard to the provision which was made by the Board of Directors in, I think, 1921 when overseas pay was originally granted, that Indian officers, though they were given allowances equivalent to overseas pay, lost those allowances when they were promoted to higher rank. The grounds on which the Board of Directors decided that allowances should not be continued to any officer in the service when promoted to a higher rank were that their acting allowance rules were more liberal than those of other railways. It is not a matter in which it is possible for the Government of India to interfere with the discretion of the Board of Directors in dealing with their establishments.

Mr. A. Rangaswami Iyengar: Is it not a fact that the expenditure which the South Indian Railway incurs in working expenses on account of these rates of pay will directly come into the question of the division of the profits between the State Railway and the Government?

Mr. A. A. L. Parsons: I am afraid I have not quite caught the Honourable Member's question.

Mr. A. Rangaswami Iyengar: Is it not the case that the working expenses of the South Indian Railway in respect of these establishments is a matter which directly affects the return and the division of profits between that Company and the Government?

Mr. A. A. L. Parsons: Yes, Sir.

Mr. A. Rangaswami Iyengar: Then is it not the duty of the Government to see that in the matter of working expenses the establishment is justly dealt with?

Mr. A. A. L. Parsons: It is a question of the contractual relations between the Government of India and the Company.

DEPRIVATION OF INDIAN OFFICERS ON SOUTH INDIAN RAILWAY OF ADMISSIBLE CONCESSIONS.

255. ***Mr. M. S. Sesha Ayyangar:** Will the Government be pleased to state:

(a) whether it is a fact that on the South Indian Railway, the Indian officers are denied the additional pay referred to in the preceding question, though both their own Chief Auditor and the Government Examiner of Accounts have advised against this action;

(*b*) whether it is a fact that in the statement of Lee concessions which the Government of India sanctioned to the South Indian Railway and which the Home Board of that Railway accepted in their entirety, it is stated that existing Indian officers are to get the scales of pay, overseas pay, etc., but future entrants are to receive basic pay only, and

(*c*) whether it is a fact that in spite of the above, the South Indian Railway still deny to their Indian officers, what they are entitled to, under existing orders and under the undertaking given by them and referred to in part (*a*) above?

2. If the answer to part 1 (*c*) above is in the affirmative, are the Government of India prepared to insist on the South Indian Railway to rectify at once the injustice meted out to the Indian officers with retrospective effect from the date the Lee concessions came into force?

Mr. A. A. L. Parsons: (*a*) I would refer the Honourable Member to my reply to part (*c*) of his previous question.

Government have no information about the views held by the Chief Auditor and Government Examiner of Accounts of the South Indian Railway.

(*b*) When the concessions recommended by the Lee Commission were extended to the officers of the South Indian Railway, it was ordered that the existing incumbents of Asiatic domicile should continue to draw the pay and allowances admissible to them under rules in force at the time. The question of granting such officers any overseas pay did not arise.

(*c*) Does not arise nor does point 2 of the question.

INADEQUATE RECRUITMENT OF MINORITIES TO AUDIT AND ACCOUNTS OFFICES.

256. ***Maulvi Muhammad Yakub:** (*a*) Will the Government be pleased to state:

(i) the total permanent strength of accountants and senior accountants separately and the number of the Musalmans permanently employed as such in each of the Civil, Military, Railway and Post and Telegraph Accounts, and Audit Offices respectively;

(ii) the methods of recruitment to the above posts in the various offices; and

(iii) the measures, if any, taken to secure the appointment of minorities, in pursuance of the Government of India, Home Department memorandum on the subject?

(*b*) Do Government propose to reserve at least ⅓ of the posts mentioned in part (*a*) above with a view to adjust the claims of minorities as is done in the case of several other All-India services to which recruitment is made by means of competitive examinations, *e.g.*, the Indian Civil Service and the Indian Audit and Accounts Service?

INADEQUATE RECRUITMENT OF MINORITIES TO AUDIT AND ACCOUNTS OFFICES.

257. ***Maulvi Muhammad Yakub:** (*a*) Are Government aware that the number of the Musulman accountants and senior accountants in the various

Audit and Accounts offices is extremely small, and that, for instance, on the Railway Audit side there are only 8 Musulmans out of 122 accountants?

(*b*) Are Government aware that this position is the natural consequence of unequal and inadequate recruitment of the Musulmans in the direct grades from which accountants are generally recruited?

(*c*) Will the Government be pleased to state what action it proposes to take:

(i) to ensure the recruitment of an adequate number of the Musulmans to the clerical posts; and

(ii) to ensure recruitment of an adequate number of Musulmans as accountants, both from departmental men and from amongst the outsiders?

RESTRICTION OF CLERICAL APPOINTMENTS TO FIRST DIVISION MATRICULATES BY CHIEF AUDITOR, NORTH WESTERN RAILWAY.

258. ***Maulvi Muhammad Yakub:** (*a*) Are Government aware that the Chief Auditor, North Western Railway has for some years past restricted appointments to clerical posts only to those matriculates who have passed in the 1st Division, exception being made in the case of men who can bring strong recommendations?

(*b*) Are Government also aware that no such restriction exists in any of the offices under the Government, when the starting pay is so low as Rs. 39 per mensem?

(*c*) If the answer to the above is in the affirmative, do Government propose to instruct that officer to remove the restriction?

PROPORTION OF MUSSALMANS IN CHIEF AUDITOR'S OFFICE, EAST INDIAN RAILWAY AND EASTERN BENGAL RAILWAY.

259. ***Maulvi Muhammad Yakub:** Will the Government be pleased to state the *permanent* sanctioned strength of Assistant Superintendents, sub-heads, clerks, classes I and II separately, and the number of Musulmans *permanently* holding each of these posts, separately, in the office of the Chief Auditor, East Indian Railway and Chief Auditor, Eastern Bengal Railway?

MUSSALMAN AS EXAMINER FOR ACCOUNTS EXAMINATION.

261. ***Maulvi Muhammad Yakub:** Will the Government be pleased to state if any Mussulman has ever been appointed as examiner for accounts examinations held for the recruitment of accountants?

The Honourable Sir Basil Blackett: I propose to reply to questions Nos. 256 to 259 and 261 together.

The information required by the Honourable Member is being collected and will be furnished to him as soon as possible.

PROPORTION OF MUSSALMANS IN DIVISIONAL SUPERINTENDENT'S OFFICE AND DIVISIONAL AUDIT OFFICE, NORTH WESTERN RAILWAY.

260. ***Maulvi Muhammad Yakub:** (*a*) Will the Government be pleased to state separately the total number of appointments made to the clerical establishment of the Divisional Superintendent's office and the Divisional

Audit Office of the North Western Railway at Delhi from April 1925 up to date, giving the number of non-Muslims and Muslims separately and the province to which each of them belongs?

(b) Is it a fact that during the last one year and a quarter about 15 clerks have been appointed in the Divisional Superintendent's Office, Delhi and that all of them are Bengalee Hindus?

The Honourable Sir Charles Innes: (a) and (b). With regard to appointments in the Clerical Establishment of the Divisional Superintendent's Office and Divisional Audit Office, Delhi, the Honourable Member is referred to the reply given to a similar unstarred question No. 3 asked by him on the 27th January last. I will enquire and let him know whether the facts are as stated in the second part of the question.

BETTER POLICE SUPERVISION FOR NEW DELHI.

262. ***Maulvi Muhammad Yakub:** (a) Is the statement published in the *Hindustan Times*, dated the 21st January, 1927, on the first page to the effect that dacoits and assassins are having the upper hand in New Delhi, that the inhabitants in the new city are living in perpetual fear and that the honour of their families as well as their property are in imminent danger, substantially correct?

(b) If so, what steps do Government propose to take immediately in order to safeguard the honour, lives and property of the inhabitants of the new capital?

(c) Do Government contemplate the posting of a strong armed police force on patrol duty in Raisina specially at night?

The Honourable Sir Alexander Muddiman: The Honourable Member is referred to the reply which I gave to question No. 224 yesterday.

PROHIBITION OF ARTIFICIAL GHEE FOR THE ARMY.

263. ***Pandit Thakar Das:** (a) Will Government be pleased to state if His Excellency the Commander-in-Chief has been pleased to prohibit the use of artificial ghee for the Army?

(b) If the answer to part (a) is in the affirmative, will Government be pleased to state the reasons for doing so?

Mr. G. M. Young: (a) The answer is in the affirmative.

(b) The attention of the Honourable Member is invited to the statement made by His Excellency the Commander-in-Chief on the 23rd August last in the Council of State in reply to question No. 43.

LUGGAGE CONCESSION ON THIRD CLASS TICKET.

264. ***Pandit Thakar Das:** (a) Will Government be pleased to state in what year the quantity of 15 seers luggage free per one third class ticket was fixed for the first time in India?

(b) Is this quantity not uniform all over the railways in India?

Mr. A. A. L. Parsons: (a) It is not possible to ascertain how long ago the quantity of luggage allowed free per 3rd class ticket was fixed at 15 seers. It was over 30 years.

(b) Yes, with the exception of a few Railways which allow 20 seers by mail train.

Grievances of Subordinate Employees of the Bengal-Nagpur Railway.

265. ***Mr. M. K. Acharya:** (*a*) Has the attention of Government been drawn to the serious discontent among the workmen and subordinate employees of the Bengal-Nagpur Railway?

(*b*) Is it a fact that the discontent is alleged to be due to the main causes—namely, insecurity of service, insufficiency of wages, and ill-treatment by the supervising staff?

(*c*) What steps are being taken to find out how far these grievances are well-founded, and how they may be satisfied?

(*d*) Is it a fact that a large number of labourers from the Khargpur workshops, and a number of Station Committee chowkidars have been recently dismissed in an arbitrary manner, and that appeals made to the officers concerned have not yet been seriously considered?

The Honourable Sir Charles Innes: The Honourable Member has no doubt seen the very full press communiqué published by the Agent on January 23rd last. If he has not, I will gladly show him a copy of it.

Mr. N. M. Joshi: May I ask, Sir, what steps the Government of India propose to take to make enquiries into this matter?

The Honourable Sir Charles Innes: I have already discussed the matter fully with the Agent of the Bengal-Nagpur Railway and I am entirely satisfied that he has taken a very reasonable and conciliatory attitude in regard to the matter.

Mr. N. M. Joshi: May I ask, Sir, what is the remedy for those workers who are not satisfied with the Agent's decision so that their grievance may be considered by an impartial body?

The Honourable Sir Charles Innes: They can resign their appointments, Sir.

Inadequate Pay of the Lowest Staff on Bengal Nagpur and South Indian Railways.

266. ***Mr. M. K. Acharya:** (*a*) Is it a fact that the pay of the lowest workers in the Bengal Nagpur workshops ranges from Rs. 11 to Rs. 15 per month, and of the lowest clerical staff from Rs. 20 to Rs. 28?

(*b*) Is it a fact that on the South Indian Railway similarly the starting pay of clerks ranges from Rs. 15 to Rs. 20 only?

(*c*) Have Government considered whether the above scales are sufficient to maintain the families of the men concerned?

The Honourable Sir Charles Innes: (*a*) The minimum rates of pay of the lowest paid non-skilled workers in the Bengal Nagpur Railway workshops are Rs. 9 a month for women and boys and Rs. 13/8/0 a month for men. The minimum pay of the lowest paid clerical staff is Rs. 28 per mensem.

(*b*) The starting pay of junior clerks on the South Indian Railway is Rs. 20/8/0 per mensem. Revision of this rate is under the consideration of the South Indian Railway Company.

(*c*) The Government have no reason to think that the scales of pay on the Bengal Nagpur Railway are insufficient, but they understand that the Agent has undertaken to examine cases where for special reasons the minima may be considered low.

Mr. N. M. Joshi: May I ask, Sir, on what principle the minimum rates of pay of railway servants are fixed?

The Honourable Sir Charles Innes: Perhaps the best answer I can give the Honourable Member is that we can get, for every vacancy we have on the railway, a great many applicants.

Mr. N. M. Joshi: May I ask, Sir, whether the Government of India will not get, for high salaries, people for the superior services, if they advertise for them?

The Honourable Sir Charles Innes: I do not think that question arises, Sir.

Mr. Jamnadas M. Mehta: Does the Honourable Member regard Rs. 9 as a human wage for any human being in this country?

The Honourable Sir Charles Innes: I imagine, Sir, that a very large proportion, at any rate of the agricultural workers in this country, get a great deal less than Rs. 9 a month.

Mr. Chaman Lall: Does the Honourable Member consider that a living wage, or a just wage, for any worker?

The Honourable Sir Charles Innes: The answer is that a great many people live on that wage.

Mr. Chaman Lall: But does the Honourable Member consider that an honest, a just and a proper wage to give any worker?

The Honourable Sir Charles Innes: The Honourable Member is entitled to ask me questions of fact, not of opinion.

Mr. Chaman Lall: May I ask the Honourable Member, Sir, whether he himself has ever tried to live on Rs. 9 a month?

ACTION ON INDIAN TRADE UNION ACT.

267. ***Mr. M. K. Acharya:** When do Government propose to bring the Indian Trade Union Act into operation? Have any Registrars of Trade Unions as contemplated in the Act been appointed in any province? What steps do Government propose to take to put into effect the provisions of the Act for affording facilities for the organisation and registration of Trade Unions in India?

The Honourable Sir Bhupendra Nath Mitra: As regards the first part of the question, the attention of the Honourable Member is invited to the reply given to a similar question asked by Mr. V. V. Jogiah on 31st January last. The Government of India have no particulars of the appointment of Registrars but they will draw the attention of Local Governments to the necessity of appointing Registrars before the Act is brought into force. All the provisions of the Trade Unions Act will become operative on the issue of the notification required by section 1(3) of the Act.

GOVERNMENT ACTION *RE* TANJORE DISTRICT BOARD RAILWAY EXTENSIONS.

268. ***Mr. A. Rangaswami Iyengar:** 1. Will the Government be pleased to state whether they have examined the legal position as regards the

right of the Government of India to terminate the ownership of the Tanjore District Board of:

(a) the Mayavaram-Mutupet section of the Tanjore District Railway which was originally owned jointly by that Board and the Local Government and which is being subsequently solely owned by that Board after payment in full to that Local Government of the price for the half-share owned by it;

(b) the extensions of the said line to Arantangi, Vedaranjam and the Nidamangalam-Manangudi section constructed wholly out of the funds of the Board under the Branch line terms; and

(c) the Mayavaram-Tranquebar line just constructed, for which a concession had been granted to the Board and capital had been advanced by the Board for such construction?

2. Will the Government be pleased to say whether any agreement has actually been executed in terms of the concession with special reference to the purchase clause of the Branch line terms in respect of the above extensions? If not, is it proposed to enforce the purchase clause legally or equitably?

3. Have the Government given notice to the Board of their desire or intention to use the purchase clause? If so, is it the special purchase clause or the ordinary purchase clause that is contemplated to be used?

4. Will the Government be pleased to state whether it is not a fact that when the Madras Government was asked to insert a purchase clause for the first time when sanction was asked for the construction of the extension, it gave an assurance to the Madras Government that under ordinary circumstances it was not intended to enforce this clause, and asked that Government to obtain the assent of the District Board to it in respect of the construction and working of that extension?

5. Will the Government be pleased to state whether it is not a fact that the South Indian Railway Company repeatedly desired them to use their power of purchase against the District Board to compel its concurrence to a scheme for the absorption of its profitable lines into the system of the main line company and whether similar efforts are being made now at the instance of the Railway Board?

Mr. A. A. L. Parsons: 1, 2, 3 and 5. No.

4. No. The facts are that, when the Government of Madras in 1898 proposed that the District Board of Tanjore should be allowed to raise funds for the construction of certain extensions of the Mayavaram-Mutupet Railway, the Government of India informed them that they were prepared to recommend to the Secretary of State that the extension of the Tanjore District Board Railway to Avadayarkoil should be undertaken by the District Board, the Government of India reserving the right to take over the extension at any time on 12 months' notice by assuming any liabilities in the form of debentures which the Board might have undertaken in order to raise the money, and on repayment of any further amounts which the Board might have spent out of the balances at their disposal. The Madras Government was told that it was not intended to enforce this condition under ordinary circumstances for a period of 20 years at least, but in the progress of railway construction a time might arrive when it would become inconvenient to maintain a short line of this kind as a separate

interest, and it was necessary for the Government of India to reserve the power of extinguishing this separate interest if at any time it became, in their judgment, inexpedient to maintain it. Subsequently in 1900 it was proposed to allow the Tanjore District Board to acquire the Madras Government's share in the Mayavaram-Mutupet Railway itself on similar conditions, and these conditions were accepted both with regard to the original Mayavaram-Mutupet line and its subsequent extensions by the Tanjore District Board.

Mr. K. V. Rangaswami Ayyangar: Am I to take it, Sir, that the Government of India's sanction was sought in the year 1900 to the making over of the Madras Government's share in the Tanjore District Board Railway and that the Government of India reserve to itself the power of purchase at that time?

Mr. A. A. L. Parsons: That is so, Sir.

GOVERNMENT ACTION *RE* TANJORE DISTRICT BOARD RAILWAY EXTENSIONS.

269. ***Mr. A. Rangaswami Iyengar:** Will the Government be pleased to lay on the table of the House:

(*a*) all the correspondence between the Local Government, the Railway Company and the Railway Board on the subject of the Tanjore District Board Railway extensions and the proposals for forcibly buying up this Railway system?

(*b*) all the correspondence between the Local Government, the Railway Company and the Railway Board regarding the revision of the working contracts for the working of District Board lines in Madras and the attempt to use the right to terminate the working contract as a means of 'peaceful persuasion' on the boards to part with their lines?

Mr. A. A. L. Parsons: (*a*) Government are not prepared to lay the correspondence on the table, but I place on the table a statement giving a resume of the events which led up to our recent negotiations with the Tanjore District Board and a copy of a memorandum containing the offer which I made on behalf of the Government of India to the District Board when I met them last November. We have not yet heard whether they have accepted this offer, which remained open until the 31st of January, and until we do so, it is not proposed to consider whether we should take action to acquire the District Board Railway in accordance with the conditions accepted by the District Board at the time its construction was entrusted to them, as mentioned in my reply to the Honourable Member's previous question.

(*b*) Government are not prepared to lay the correspondence on the table, but I should like to explain that there is no ulterior motive of inducing the District Boards in Madras to part with their lines, underlying the revision of the working terms of some of the District Board lines in Madras. The position is that the present working terms in some instances do not give to the working agency a sufficient proportion of the gross earnings to cover the expenditure actually incurred in working the lines, and it is therefore necessary to revise them. Any revision must of course lower the profits which the District Boards concerned at present derive from their lines, and is therefore unpalatable to them. The Government of India are therefore considering whether, in order to meet the wishes

of the District Boards, they should not offer them the option of transferring the ownership of their railways to the Government of India and accepting in lieu an investment in the South Indian Railway undertaking as a whole, much on the lines of the offer which I made to the Tanjore District Board.

Statement giving a resumé of the events which led up to the recent negotiations with the Tanjore District Board for the transfer of the Tanjore District Board Railway to the Government of India.

1. Early in 1923 the Railway Board learnt that the then Agent of the South Indian Railway, in dealing with the proposals for the development of railway communications in Southern India, which included the construction of an extension of the Tanjore District Board from Arantangi to Karaikudi as an integral part of the South Indian Railway, had pointed out that this proposal would raise very troublesome short-circuiting and routing controversies, and suggested that Government should take over the whole of the Tanjore District Board Railway. In October, 1923, the Government of India consulted the Madras Government on that proposal, and in June, 1924, they learnt that the District Board were not in favour of it, but that the Madras Government supported it on grounds of public policy. In July, 1925, the Financial Commissioner, Railways, met the Madras Government and the Chairman of the Tanjore District Board, and in order that the District Board should not be the loser by parting with its railway, while at the same time the difficulties which stood in the way of the construction of the Arantangi-Karaikudi link should be overcome, put forward tentatively the proposal which, with the approval of the Government of India and the Secretary of State, has now definitely been offered to the District Board and is contained in the memorandum discussed with the District Board, a copy of which is also laid on the table.

Memorandum prepared by Mr. A. A. L. Parsons, C.I.E., I.C.S., Financial Commissioner, Railways, for discussion with the Tanjore District Board.

It is, I think, unnecessary for me to recapitulate the previous history of the negotiations for transferring the ownership of the Tanjore District Board Railway from the District Board to the Government of India. This proposal arose, as is known, because the Railway Board are anxious as an important item in their policy of developing railway communications in Southern India, to construct a line from Arantangi *via* Karaikudi to Manamadurai, thereby converting the railway from Mayavaram to Arantangi into a through route. Since my predecessor met the Madras Government and the President of the Tanjore District Board on this question, this project has been fully worked out and examined; and now the only obstacle to its immediate inception is that the negotiations with the Tanjore District Board for the transfer of their railway have still to be completed. It is in the hope that we may be able to bring them to a mutually agreeable conclusion, and because I can now put in concrete terms for the consideration of the District Board a suggestion made by Mr. Sim fifteen months ago, that I should welcome an opportunity of meeting them during my present visit to the Madras Presidency.

2. In putting this proposal to them, I wish to make it clear that both the Government of India and the Railway Board fully recognize the obligations which the Railways in Southern India owe to the enterprise of the Tanjore District Board in having—as pioneers among the District Boards, I believe—raised substantial sums for the development of railway communication in their district; and they also realize that in doing so the Board looked forward quite properly and prudently to obtaining a sound financial investment for these funds. It is because of this that the Government of India and the Railway Board have been at pains to seek a solution which will not deprive the District Board of the fruits of their successful enterprise.

3. The definite offer which I have to make is as follows:

(i) The ownership of the Tanjore District Board Railway should be transferred to the Government of India.

(ii) The capital expenditure on the railway on the date of transfer of ownership should be brought into the accounts of the South Indian Railway undertaking as capital of the District Board, and should rank equally with the Secretary of State's capital and the South Indian Railway Company's ordinary capital for the purposes of dividents: that is to say the District Board will receive on its capital an annual return at the same rate as the annual return which the South Indian Railway receives on its ordinary capital.

(iii) It is necessary to stipulate that the District Board will not part with its interest or any part of its interest in the South Indian Railway line except to the Government of India. The position will be as follows. The District Board will be under no obligation to sell its interest in the line at any time, nor will the Government of India be under any obligation to buy it; but if they mutually agree to a transfer of the interest in the line to the Government of India, the terms of the transfer will ordinarily be based on the average return received during the three preceding years by the District Board on its capital as contrasted with the rate at which the Government of India is borrowing at the time of purchase. For example, if the average return to the District Board had been 7 per cent. and the Government of India rate of borrowing 5 per cent., the purchase price will be the equivalent of 1 2/5ths of the capital of the District Board.

(iv) The South Indian Railway Company are guaranteed a minimum dividend of 3½ per cent. per annum. It is not in the least likely ever to come into play, but, if the District Board of Tanjore so desires, the Government of India are willing to extend this guarantee to their capital.

4. The District Board will naturally wish to know what the results to them of accepting this offer are likely to be. I give them for the last five years in the following table:

Year.	Capital outlay.	Net receipts of the Tanjore District Board.			Return on capital.		
		Actual.	On the basis of the return received by the South Indian Railway Company.	Difference.	Actual.	On the basis of the return received by the South Indian Railway Company.	Difference.
	Rs.	Rs.	Rs.	Rs.	Per cent.	Per cent.	Per cent.
1921-22	66,55,461	2,80,841	3,17,465	+36,624	4·22	4·77	+·55
1922-23	67,02,879	3,41,502	3,69,329	+27,827	5·09	5·51	+·42
1923-24	67,11,909	5,71,058	5,47,629	—23,366	8·51	8·16	—·35
1924-25	67,72,918	5,65,711	5,68,248	+2,037	8·35	8·39	+·04
1925-26	68,05,241	5,15,393	5,61,432	+46,039	7·57	8·25	+·68

In 1923-24 cyclone damage caused the diversion of a considerable amount of traffic over lines in the Tanjore District, which normally they would not receive, thus fortuitously increasing the net receipts of the District Board and reducing those of the South Indian Railway. Apart from this year, the Tanjore District Board would have been better off by about Rs. 28,000 a year on average had they participated in the earnings of the South Indian Railway as a whole on the terms proposed instead of getting only the net receipts of their own lines.

5. The President and members of the District Board will, I venture to hope, realize that under this offer there is no question of their being asked to part with their line for book value instead of what may be called market value. For it will entitle them to transfer at par from their existing investment into an investment which, as the figures above show, holds out the prospect of an improved return of between one-third and half per cent. with smaller chances of fluctuation owing to the wider area covered. And at the same time it secures to them at least the full market price and if anything more than the full market price, for their investment, should it some day in the future be agreed to transfer it to the Government of India. For the real effect of the proposal described in paragraph 3 (iii) of this memorandum is to allow the capital invested by the District Board in the South Indian Railway to be treated, for purposes of transfer, as the equivalent in safety, etc., of securities of the Government of India. This is not the view taken by the market.

6. There is one other matter which also requires settlement. The District Board have spent about 4 lakhs—I do not know the exact figure—on the Mayavaram-Tranquebar Railway; the remaining capital expenditure on this line has, for the time being, been put up by the Government of India, pending a settlement of the general question. I am ready to allow the District Board to increase their investment in the South Indian Railway undertaking by an amount not in excess of either of the following limits, should they wish to do so—

(i) The accumulated balance of their Railway Cess fund on the date on which ownership of their existing lines is transferred to the Government of India;

(ii) the capital cost of the Mayavaram-Tranquebar Railway.

Alternatively the sum already supplied by the District Board could be returned to them with interest thereon from the date or dates on which it was advanced at the rate or rates at which the Government of India were then borrowing.

A. A. L. PARSONS,
Financial Commissioner, Railways.

MADRAS,
12th November, 1926.

Mr. A. Rangaswami Iyengar: How would my Honourable friend describe it? Is it peaceful persuasion or is it coercion that is proposed by which these district boards are asked to hand over the railway?

Mr. A. A. L. Parsons: I should describe it, Sir, as a fair business offer.

Mr. A. Rangaswami Iyengar: May I know whether the Government will be prepared to give me access to the correspondence on this matter, so that I may know exactly what the position is now?

Mr. A. A. L. Parsons: I am quite prepared to show the Honourable Member any correspondence on the subject that he wants to see. There is nothing secret about it at all, and it appears to have been the subject of a good deal of misapprehension.

DISTRICT BOARD FEEDER RAILWAY OR TRAMWAY DEVELOPMENT.

270. ***Mr. A. Rangaswami Iyengar:** (*a*) Will the Government be pleased to state whether any attempt has been made either by itself or by local Government to lay down a policy or offer any expert or financial assistance to local Boards in the construction of "light feeder railways and extra-Municipal tramways", which are among the specific functions assigned to them under the Devolution Rules to be dealt with by provincial legislation promoted in this behalf, and when ministries in local Governments were encouraged or discouraged in the initiation of any such policy?

(*b*) Will the Government be pleased to state whether all or any of these aspects of District Board Feeder Railway or Tramway development were ever brought before the Standing Railway Finance Committee or the Central Railway Advisory Committee at any time?

(*c*) Will the Government be pleased to state whether they propose to bring up all the questions now under discussion in regard to the District Board Railways in Madras before this Committee and before the Assembly for its approval before taking any decisions on the matter?

Mr. A. A. L. Parsons: (*a*) and (*b*). The policy of the Government of India with regard to light feeder railways is laid down in their Railway Department's Resolution No. 2181-F., dated the 19th February, 1925, which was issued after consultation with the Central Advisory Council. I would particularly invite the Honourable Member's attention to paragraphs 12 to 15 of that resolution. As he is aware, light feeder railways and extra municipal tramways are provincial transferred subjects; and it would not be proper for the Government of India to take the initiative in laying down the policy for their construction by Local Boards, for that would involve interference with the duties and responsibilities of the Ministers of the various provinces. On the other hand they, and the Railway Board, will always be prepared to give advice both with regard to any individual project or with regard to the general development of light railways if they are asked to do so. So far they have received no such request. They do not know whether any Provincial Government has hitherto laid down any policy in the matter.

(*c*) If it is proposed to proceed with the transfer of the Tanjore District Board Railway to the Government of India, the matter will be laid before the Standing Finance Committee for Railways. That Committee will also be consulted when, and if, proposals are put forward for the transfer to the Government of India of any other District Board line in Madras.

Mr. A. Rangaswami Iyengar: Am I to understand, Sir, that no ministers under the dyarchic scheme have availed themselves of these provisions in regard to the development of feeder railways and tramways, or submitted any proposals about these to the Government of India?

Mr. A. A. L. Parsons: Not that I can remember, Sir; but I cannot be quite certain.

LAND REVENUE LEGISLATION IN THE PROVINCES.

271. ***Mr. A. Rangaswami Iyengar:** (*a*) Will the Government be pleased to state whether there are any provinces, and if so, which, in which land revenue legislation, in accordance with the recommendations of Parliamentary Joint Committee, has been completed?

(*b*) Will the Government be pleased to say whether they have yet any intention of carrying out fully these recommendations or any desire of fulfilling all the instructions expressed by the Parliamentary Committee of 1919 in this behalf?

(*c*) Will the Government be pleased to state whether the degree to which this recommendation has not been carried out will form the subject of inquiry by the Statutory Commission?

(*d*) Will the Government be pleased to state whether it is true that the Government of India have twice returned the proposals of land revenue legislation sent up by the Madras Government and refused to sanction them in the form sent up? If so, will they make a statement as to why this was done, and also state what exactly is the policy which they want to lay down for provincial Governments in this matter?

(*e*) Will the Government be pleased to state whether there are any rules or instructions of the Secretary of State which have to guide them and the local Governments in the matter; whether there has been any correspondence between themselves and the Secretary of State on this matter; and if so, whether they will lay the rules, instructions or correspondence, as the case may be, on the table of the House?

(*f*) Will the Government be pleased to state whether they have considered or asked the Local Governments to consider recommendations of the Taxation Enquiry Committee in connection with this matter? If not, whether they propose to do so?

The Honourable Mr. J. W. Bhore: (*a*) Legislation on the subject is pending in certain provinces, but none of the Bills introduced in the local legislatures have yet been passed into law.

(*b*) The Honourable Member is referred to my answer to part (*c*) of his question No. 594, asked in the Assembly on the 2nd February, 1926.

(*c*) Government are not yet in a position to state what matters will be referred to the Commission under section 84-A. of the Government of India Act, to the terms of which I invite the Honourable Member's attention.

(*d*) The Government of India are not prepared to disclose the nature of the communications that have passed between them and the Government of Madras on the subject of Land Revenue legislation. With regard to their general policy in the matter, the Honourable Member's attention is invited to Sir Montagu Butler's answer to his question No. 524, dated February 26th, 1924, in this House.

(*e*) The Honourable Member is referred to the interpellations on the subject in the Assembly on 26th February, 1924, 8th March, 1924, and 6th June, 1924, and to the replies given.

I have nothing further to add.

(*f*) The Government are considering the recommendations of the Taxation Enquiry Committee on the subject and will address the Local Governments at an early date.

Mr. A. Rangaswami Iyengar: May I know, Sir, whether the Government of India is likely to come to any conclusions on the question of this land revenue legislation in the Madras Presidency or in any other province and whether they see any prospect of any land revenue legislation being completed this year?

The Honourable Mr. J. W. Bhore: At the present moment I may inform my Honourable friend that, as far as I know, there is no reference from any Local Government pending with the Government of India.

Mr. A. Rangaswami Iyengar: Is it not the case that the question of land revenue legislation in the Madras Presidency is still pending with the Government of India?

The Honourable Mr. J. W. Bhore: Not to my knowledge, Sir.

Mr. M. S. Aney: May I ask the Honourable Member whether the Berar Land Revenue legislation has been submitted to the Government of India after it has been passed there and is it not pending before the Government of India?

The Honourable Mr. J. W. Bhore: Not to my knowledge.

Mr. M. S. Aney: Will the Honourable Member make further inquiries and give a reply?

The Honourable Mr. J. W. Bhore: Will the Honourable Member put down a question?

Mr. A. Rangaswami Iyengar: May I take it that the Government of India do not propose to take any further action in respect of the initiation of land revenue legislation in any province?

The Honourable Mr. J. W. Bhore: I have already explained to my Honourable friend, in reply to the questions which he has previously asked, that the Government of India have taken all the action they could possibly be expected to take in this matter.

Mr. A. Rangaswami Iyengar: And they do not propose to take any more?

The Honourable Mr. J. W. Bhore: They have brought the recommendations of the Joint Committee to the notice of every Local Government and asked them to take action as soon as possible.

Mr. A. Rangaswami Iyengar: Therefore they do not propose to take any more action?

The Honourable Mr. J. W. Bhore: What further action can the Government of India take?

Mr. A. Rangaswami Iyengar: If the Provincial Governments do not take the necessary steps for legislation, is it not the duty of the Government of India to see that they do so?

The Honourable Mr. J. W. Bhore: I do not see how the Government of India can issue peremptory orders.

Mr. M. R. Jayakar: May I inquire, Sir, what steps have been taken by the Bombay Government to carry out the terms of the Resolution passed in this connection in the Bombay Legislative Council?

The Honourable Mr. J. W. Bhore: I am afraid I cannot give a reply to my Honourable friend; I must have notice of that question.

CHANGES IN THE RULES OF THE ASSEMBLY AND PROVINCIAL LEGISLATURES.

272. ***Mr. A. Rangaswami Iyengar:** (*a*) Will the Government be pleased to make a statement showing all the changes in the Legislative Rules of the Assembly and the Provincial Legislatures since the new legislatures were assembled in 1921?

(*b*) Will the Government be pleased to state whether the Presidents of the legislatures concerned or the Presidents' Conference were consulted as to the propriety and desirability of these changes in each case and which of whom approved or disapproved of these proposals?

(*c*) Will the Government be pleased to state whether and if so, how many of these alterations were brought into effect without complying

with the requirements of the proviso to section 129-A. (3) of the Government of India Act? If so, what was the urgency or other cause for the course adopted?

(*d*) Will the Government be pleased to state whether there has been any case or cases and if so, what cases, in which the Government of India satisfied the requirement of previous parliamentary presentation in respect of statutory rules under the Act, ever since the Reforms have been in operation?

(*e*) Has there been any case or cases so far of any Legislative Rules being enacted after consultation of the Houses affected by these rules? If so, what are the cases, and also what are the cases in which Legislative Rules have been promulgated and maintained in force:

(i) without such consultation, and

(ii) in defiance of the expressed intentions of the legislatures concerned?

Mr. L. Graham: (*a*) Two statements, relating respectively to the Indian Legislative Rules and the Provincial Legislative Council Rules, are laid on the table.

(*b*) The Government of India have on occasion informally consulted the Presidents of the two Chambers of the Indian Legislature with reference to proposed amendments of the Indian Legislative Rules and have received very valuable assistance. They are not prepared to tabulate the results of such consultations. They have not consulted the Presidents of local Legislative Councils with reference to proposed amendments of the Provincial Legislative Council Rules, but it is possible that Local Governments have done so. The Government of India have never consulted the Presidents' Conference regarding such amendments, and if the Honourable Member will refer to the account of the rationale and objects of the Presidents' Conference which was given by Sir Frederick Whyte in his reply to Mr. S. C. Ghose's question No. 658 on the 2nd February, 1925, he will, I think, agree that the Presidents' Conference is not a body which Government could appropriately consult.

(*c*) The Government of India observe with regret that the Honourable Member is still labouring under the misconception from which Sir Henry Moncrieff Smith sought to release him in his reply to part (iii) of the private notice question put by the Honourable Member on the 17th March, 1924. The proviso to sub-section (3) of section 129-A. of the Government of India Act does not require any rules or amendments to be treated in accordance with the procedure set forth therein but confers on the Secretary of State a discretionary power to direct the adoption of this extraordinary procedure in lieu of the ordinary procedure set forth in the substantive part of the sub-section. The Secretary of State has not seen fit to give such direction in the case of any of the amendments made in the Indian Legislative or Provincial Legislative Council Rules.

(*d*) The Honourable Member is referred to the information laid on the table by the Honourable the Home Member on the 18th August, 1926, in response to his own question No. 579 asked on the 3rd February, 1926.

(*e*) The answer to the first part of the question is in the affirmative. Detailed information with regard to the amendments of the Indian Legislative Rules, and such information as is in the possession of the Government of India with regard to amendments in the Provincial Legislative Council Rules, will be found in the statements referred to in my reply to part (*a*).

As regards the second part of the question the Government of India are not aware of any case in which amendments to the Indian Legislative or Provincial Legislative Council Rules have been made in defiance of the expressed intentions of the Legislatures concerned. They are aware of one case, that of the amendments in the Indian Legislative and Provincial Legislative Council Rules recommended by the Reforms Enquiry Committee, in which the Legislative Assembly declined to avail itself of the opportunity afforded by the Resolution moved by the Honourable the Home Member on the 7th September, 1925, of expressing its opinion on the amendments to the rules proposed by the Committee by adopting an alternative Resolution which contained no indication of the opinion entertained by the Assembly regarding the desirability or otherwise of the amendments in question.

Statement showing changes made in the Indian Legislative Rules since the Rules were first made.

Serial No.	Notification with which amendment published.	Rule inserted or amended.	Whether Indian Legislature was consulted.
1	No. 15, dated 11th January, 1922.	6	No.
2	No. 80, dated 13th March, 1924.	20A, 36A, 36B, 36C.	No.
3	No. F. 76-I-24 A. C., dated 19th July, 1924.	50(2)	No.
4	No. F. 112—24 G., dated 14th August, 1924.	20A, 36A, 36B, 36C.	No.
5	No. F. 62-I—24 A. C., dated 6th January, 1925.	3(2), 5A.	No.
6	No. 362—24 G., dated 15th January, 1925.	48A.	Yes. The amendment was made in pursuance of clause (7) of the Resolution adopted by the Legislative Assembly on 20th September, 1924, regarding the separation of Railway from General Finances.
7	No. F. 46-I—25 A. C., dated 12th March, 1925.	3(3).	No.
8	No. 198—26 G., dated 27th April, 1926.	48(2).	Yes. These amendments were made in pursuance of recommendations of the Reforms Enquiry Committee which were placed before the Council of State and the Legislative Assembly in resolutions moved on behalf of Government on 11th September, 1925, and 7th September, 1925, respectively.
9	No. 324—26 G.-I., dated 27th October, 1926.	24A.	
10	No. 434—25 G., dated 23rd November, 1926.	51	Yes. The amendment was the outcome of a suggestion made by Diwan Bahadur Ramachandra Rao in the Legislative Assembly on 23rd February, 1925, during the general discussion on the Railway Budget.

Statement showing changes made in the Provincial Legislative Council Rules since the Rules were first made.

<table>
<tr><th>Serial No.</th><th>Notification with which amendment published.</th><th>Rule inserted or amended.</th><th>Provinces affected.</th><th>Whether Legislatures consulted.</th></tr>
<tr><td>1</td><td>No. 108, dated 1st September, 1921.</td><td>14</td><td>Punjab . .</td><td>Yes. The amendment was made in pursuance of a resolution passed by the Punjab Legislative Council.</td></tr>
<tr><td>2</td><td>No. F.-76-I-24 A. C., dated 19th July, 1924. . .</td><td>32 (2)</td><td rowspan="4">All.</td><td rowspan="7">Local Governments were in all cases consulted before the amendment was made and it was open to the Local Government to consult the local legislature if so advised. The Government of India are not aware of any case in which such consultation actually took place.</td></tr>
<tr><td>3</td><td>No. 205-24-G., dated 27th November, 1924.</td><td>20A, 20B, 20C.</td></tr>
<tr><td>4</td><td>No. F. 62-I-24 A. C, dated 8th January, 1925.</td><td>3 (2), 5A.</td></tr>
<tr><td>5</td><td>No. 205-II-24 G., dated 28th January, 1925.</td><td>21 A.</td></tr>
<tr><td>6</td><td>No. 120-25 G., dated 13th August, 1925.</td><td>6</td><td>All, except Central Provinces and Burma.</td></tr>
<tr><td>7</td><td>No. 198-26 G., dated 27th April, 1926.</td><td>30 (2)</td><td rowspan="2">All.</td></tr>
<tr><td>8</td><td>No. 324-26 G., dated 27th October, 1926.</td><td>10A, 12A, 24A.</td></tr>
</table>

Mr. A. Rangaswami Iyengar: I may, Sir, point out that the long answer which Mr. Graham has given prevents me from putting supplementary questions at a stretch, but may I ask whether it is or is not the case that this House passed a Resolution for the amendment of the Rules in regard to the disqualification of persons who had undergone convictions and that nevertheless the Indian Legislative Rules did not provide for them?

Mr. L. Graham: I must ask notice of that question, Sir.

Mr. A. Rangaswami Iyengar: I think it must be clearly within the knowledge of my friend Mr. Graham. I shall repeat what I have just said. Is it or is it not the case that this House passed a Resolution . . . .

Mr. President: Order, order. The Honourable Member has asked notice of that question.

UNSTARRED QUESTIONS AND ANSWERS.

Cows slaughtered for Food and Cattle Breeding.

65. **Mr. Siddheswar Sinha:** 1. Will the Government be pleased to state:

(a) the number of cows, bullocks and calves slaughtered for military food in the years 1924, 1925 and 1926; and

(b) the number of those slaughtered for export of beef in the aforesaid years?

2. Will the Government be pleased to state number of stud bulls kept by them?

3. What method do they propose to adopt or what action do they intend to take for the improvement of cattle breed in the country?

The Honourable Mr. J. W. Bhore: 1. (a) I would invite the attention of the Honourable Member to the replies given on the 10th of March, 1924, to part (c) of starred question No. 692 and on the 23rd January, 1925, to starred question No. 182. For the reasons stated therein it is not possible to furnish the information desired.

(b) No record is kept of the number of cattle slaughtered for export.

2 and 3. I would refer the Honourable Member to section VI of the chapter on live stock in the Annual Review of Agricultural Operations in India, 1924-25, a copy of which will be found in the Library. Information as to the number of stud bulls maintained at the farms managed by the Imperial Department of Agriculture is being obtained and will be furnished to the Honourable Member in due course.

BETTER POLICE SUPERVISION FOR NEW DELHI.

66. **Pandit Thakur Das Bhargava:** (a) Has the attention of Government been drawn to the news headed Life in Raisina, complaining of insecurity of life and property in Raisina appearing in the *Hindustan Times* in its issue of January 21, 1927, on page 1?

(b) Do Government propose to increase the police and take other suitable steps to secure the safety of person and property in Raisina?

The Honourable Sir Alexander Muddiman: The Honourable Member is referred to the reply which I gave to question No. 224 on the 31st January, 1927.

LOCATION OF REPER RAILWAY STATION.

67. **Pandit Thakur Das Bhargava:** (a) Will Government be pleased to state in what particular direction of Reper Town in the Ambala District (Punjab) the Railway authorities propose to locate the railway station of Reper on the projected Sarhind-Reper Line?

(b) Are Government aware that there is great uneasiness in Reper town at the prospect of the railway station being located in Nalagarh direction at a distance of more than a mile from the City?

(c) Is it a fact that the Railway authorities shall have to construct one mile more if the railway station is to be built in the direction of Nalagarh than if its situation is changed to Sukhrampur side?

(d) Do the Government propose to consider the feasibility of changing the situation of the proposed railway station from the Nalagarh direction to the direction of Sukhrampur?

Mr. A. A. L. Parsons: (a) The direction of the proposed site of Rupar station on the Sirhind-Rupar line, now under construction, is to the north-east of the town just across the canal. This site was selected in consultation with the Deputy Commissioner, Ambala District, the Sub-Divisional

Officer, Rupar, Rai Bahadur Ralla Ram, Chief Engineer of the constructing agency, the Superintending Engineer, Irrigation, and a representative of the North Western Railway Administration, which will work this Railway when opened.

(*b*) The actual distance of this site from the town of Rupar is one mile. The distance of the site desired by local towns-people, which was rejected as it did not permit of room for expansion, is only 400 yards nearer to the town than the site selected.

(*c*) The answer is in the affirmative.

(*d*) The pros and cons of the matter were fully considered when the site was chosen.

COMPLETION OF ROHTAK-BHIWANI RAILWAY LINE.

68. **Pandit Thakur Das Bhargava:** Will the Government be pleased to state by what time the projected railway line between Rohtak and Bhiwani will be completed?

Mr. A. A. L. Parsons: It is estimated that the line will take about one year to complete from the date of commencement of its construction, but it is not possible to say at present when the construction will be put in hand.

PROHIBITION OF IMPORT OF ARTIFICIAL GHEE.

69. **Pandit Thakur Das Bhargava:** Do the Government propose to prohibit the import of artificial ghee in India?

The Honourable Sir Charles Innes: Government do not propose to take the action suggested.

GRIEVANCES OF EMPLOYEES ON THE BENGAL NAGPUR RAILWAY.

70. **Mr. Varahagiri Venkata Jogiah:** (*a*) Are Government aware that there is serious discontent among the employees on the Bengal Nagpur Railway system?

(*b*) Are Government aware that the employees on the Bengal Nagpur Railway system determined to take recourse to direct action if their grievances as set forth in their memorandum presented to the Agent on the 24th November, 1926, were not redressed before the 30th January, 1927?

(*c*) Are Government prepared to inquire from the Agent, Bengal Nagpur Railway Company, as to the causes of the present unrest on the said Railway system?

(*d*) Do Government propose to inquire if the Agent, Bengal Nagpur Railway, has since replied to the deputationists, and if he has not yet replied, do they propose to find out what the cause of the delay is? If he has replied will the Government be pleased to state the nature of the reply?

The Honourable Sir Charles Innes: (*a*), (*b*), (*c*) and (*d*). The Honourable Member is referred to the reply given to a similar question (Starred question No. 265) asked by Mr. M. K. Acharya to-day.

MOTION FOR ADJOURNMENT.

Mr. President: I have received the following notice of motion for adjournment of the House from Pandit Hirday Nath Kunzru:

"I beg to give notice that after questions to-day I shall ask for leave to make a motion for adjournment of the business of the House to discuss a matter of urgent public importance".

I think the Honourable Member means a definite matter of urgent public importance, namely, the decision of the Government of India not to publish the Report of the Indian Deputation to Fiji. I am not sure whether the motion is in order. Does any Honourable Member wish to speak on the point of order?

The Honourable Sir Alexander Muddiman (Home Member): On a point of order, Sir. The matter is no doubt important. The decision not to publish this Report is undoubtedly a matter of public importance, but that it is a matter of urgent public importance, I find it very difficult to believe. This Report was written, I am informed, some three years ago. The matter has been raised practically in every Session by questions by Honourable Members, and I fancy my Honourable friend in charge of the Department has given many replies to it. I suggest for your consideration also, Sir, that there is no urgency about the matter, because there is no action to be taken on the Report. Then my Honourable friend has an opportunity also of raising this in the ordinary way by putting down a Resolution, and, if a sufficient number of Members are interested in the matter, he will probably get it on the paper.

Lastly, Sir, the matter can be discussed at the time of the Budget when my Honourable friend can propose some reduction in the budget charges of my colleague's department.

For all these reasons, Sir, I submit that this is not a motion within the Rules.

Pandit Hirday Nath Kunzru (Agra Division: Non-Muhammadan Rural): Mr. President, I submit that the motion should be treated as dealing with a definite matter of urgent public importance for several reasons. While it is true that the Report of the Deputation to Fiji was published several years ago. (*A Voice*: "Not several years ago"),—while it is true that it was submitted to the Government of India several years ago, the correspondence relating to that Report has been published very very recently, and it appears from it that, even on matters which have been agreed to by the Government of India and the Colonial Office, no action has been taken. Sir, if we know the full contents of the Report, if we know what all its recommendations are, this would be just the time for making further representations. I may draw the attention of the House, Sir, to the fact that in an interview given to the Associated Press by Mr. Venkatapatiraju, who was one of the Members of the Deputation, it is stated that the grievances dealt with in the correspondence are not all the grievances that the Indians in Fiji have complained of. One might infer from that that the Report refers to other points besides those mentioned in the memorandum submitted by the Crown Colonies Committee to the Colonial Office. For these reasons, I think, Sir, this is just the time for making further representations through the Government of India to the authorities concerned. Delay may prejudice the interests of the Fiji Indians.

Apart from this, Sir, I may mention one or two cases in which an adjournment of the House was allowed, I believe, in circumstances similar to those surrounding the motion I have given notice of. When

the Lee Commission was appointed, I believe, Sir, Mr. Seshagiri Aiyer moved the adjournment of the House and his motion was held to be in order by the President, although Mr. Aiyer wished merely to protest against the appointment of the Commission. I remember another occasion, Sir, on which a Member of this House was allowed to move the adjournment of the Assembly. That was when Sir William Vincent was Home Member. The Deputy Commissioner of Delhi refused to allow a public meeting to be held on a particular date, and four or five days afterwards a motion for adjournment was made in this Assembly, and the motion was held to be in order by the then President, Sir Frederick Whyte, your predecessor. For these reasons, Sir, I beg to submit that my motion is in order and should be treated as one dealing with a definite matter of urgent public importance.

Mr. R. K. Shanmukham Chetty (Salem and Coimbatore *cum* North Arcot: Non-Muhammadan Rural): Sir, on the point of order raised by the Honourable the Home Member, I would just like to say one word. The Honourable Member felt doubtful as to how this matter was of urgent importance, and he could not see the urgency in the motion which is now sought to be made. On this point I would like to say this. It was from the recent correspondence published by the Government of India that we came to know that, in the Fiji Legislative Council, only three seats have been given to the Indian residents which, in the opinion of this House, is grossly inadequate to the number and the interests of the Indian community in Fiji. It is by raising this motion and drawing the attention of the Government to the necessity of publishing this Report and thereby enabling us to find out what actually our deputation to Fiji thought about this matter that we would get an opportunity of pressing this matter further . . . .

Mr. President: That can be done by a Resolution. How is the matter so urgent as to justify resort to this extraordinary procedure?

Mr. R. K. Shanmukham Chetty: Sir, we all know that a Resolution has to go through the processes of the ballot and the freaks of the ballot are mysterious. The Colonial Office and the Fiji Government may give immediate effect to the arrangement which has now been made and decide to give only three seats to the Indian residents. If the House is given an opportunity at this stage to raise a discussion and represent to the Government the urgent necessity of pursuing the matter further with the Colonial Office, we would perhaps have a chance of rectifying the wrong . .

Mr. President: When was this Report made?

Mr. R. K. Shanmukham Chetty: The Report was submitted to the Government of India about three years back.

Mr. President: Was any attempt made by means of a Resolution to induce the Government to publish it?

Mr. R. K. Shanmukham Chetty: But, Sir, we did not know that this gross injustice was being perpetrated there. It was only after the publication of the correspondence by the Government of India a week or two ago that we came to know that only three seats have been given to the Indian residents in the Colony. We were all along waiting to see the outcome of the negotiations between the Government of India and the Colonial Office, and it was only after the publication of this correspondence that we came to know of this gross injustice.

Mr. President: When was the correspondence published?

Mr. R. K. Shanmukham Chetty: It was published two weeks back.

Mr. President: Was there not sufficient time for giving notice of motion for adjournment?

Mr. R. K. Shanmukham Chetty: But then we came to know only yesterday that the Government of India were not prepared to publish the Report.

Mr. K. C. Roy (Bengal: Nominated Non-Official): Sir, on a point of order, may I intimate to the House that the Fiji Report was the subject of discussion in 1924 between the Indian Colonies Committee and the Colonial Office. That matter was of public knowledge in India. Then, when the Colonies Committee returned to India in September of that year, the matter was also well known to many Members of this House as well as to the Government of India, and the question should have been raised then and there. Now, Sir, there is no immediate urgency about this matter. Moreover, the point which has been raised by Mr. Chetty is that representation might be made now in order to increase the number of Indian Members from 3 to 6 in the Fiji Legislative Council. We, as Members of the Colonies Committee, went into this matter very carefully, and we recognised, although we were very sorry to recognise, that the Indian community found it extremely difficult to produce even three Members.

Mr. N. M. Joshi (Nominated: Labour Interests): May I point out, Sir, that, so far, the Government of India have always held out hopes about the publication of the Report . . . .

Mr. President: Is that so?

Mr. N. M. Joshi: Yes, Sir. They had never said that they would not publish it (Laughter).

Mr. President: Does the Honourable Member still maintain that the Government of India had held out hopes?

Mr. N. M. Joshi: They never said that they would not publish it, and we took it for granted that, when Government spent a lot of money in sending a deputation and asking them to make a report, they would publish it. It was only yesterday that they finally decided not to publish it and I think, Sir, that the matter is very important and very urgent, and trust you will allow this motion.

Pandit Hirday Nath Kunzru: May I point out, Sir, that Sir Narasimha Sarma did hold out the hope in July, 1923, that the Report would be published at an early date?

Mr. President: In 1923?

Pandit Hirday Nath Kunzru: Yes. Since then, Government have been telling us that, as the matter was under correspondence between them and the Colonial Office, the correspondence could not be published. We have waited for the termination of that correspondence and now we are told that the Report cannot be published.

Mr. C. S. Ranga Iyer (Rohilkund and Kumaon Divisions: Non-Muhammadan Rural): Sir, the Honourable the Home Member said just now that

this subject was a subject for interpellation on the floor of this House and replies on the side of Government, but yesterday the answer that the Government gave took our breath away (Laughter) because Government have really gone back on what they had made us believe, namely, that they would publish this Report. This Report is of great importance and it became a matter of definite public importance in view of Government's persistence, I should say, in bureaucratic dilatoriness. Therefore, Sir, . .

Mr. President: The Chair has no doubt that it is a matter of definite public importance. The question is whether it is a matter of urgent public importance.

Mr. C. S. Ranga Iyer: The matter becomes urgent in view of Government's statement yesterday that they would persist in their usual dilatoriness.

The Honourable Mr. J. W. Bhore (Member for Education, Health and Lands): Sir, my Honourable friend Mr. Shanmukham Chetty has raised a point of some importance, but I must point out to him, that the Government of India are in entire accord with him in considering that three is not a sufficient representation for the Indian community. The published correspondence makes it perfectly clear that we have over and again tried to impress that point of view upon the Secretary of State for the Colonies, and we were eventually told that the final decision of the Colonial Office was that they could not agree to more than three. In these circumstances, Sir, I cannot see what useful purpose will be served by arguing this point (when we are entirely in accord with my Honourable friend, Mr. Shanmukham Chetty) or where the urgency comes in. If he will further read that correspondence, he will also find that we have said in our reply to the Secretary of State that while for the present, in view of the final decision of the Colonial Office, we do not now propose to press the matter, we leave it open to ourselves to raise the point on a future occasion.

Mr. President: The Chair is not satisfied that the matter is of such urgent character as to justify the use of the extraordinary procedure proposed in the notice. Several Members have taken part in the discussion on the point of order, and it appears to the Chair that, if they are all interested in the publication of the Report, it is easy for them to put down a Resolution and get it ballotted. The Chair, therefore, rules that the motion is not in order.

ELECTION OF PANEL FOR THE STANDING EMIGRATION COMMITTEE.

The Honourable Mr. J. W. Bhore (Member for Education, Health and Lands): Sir, I beg to move:

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

The motion was adopted.

Mr. President: I may inform the Assembly that, for the purpose of the election of members to the Standing Committee to advise on questions

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relating to Emigration, the Assembly office will be open to receive nominations up to 12 noon on Friday, the 4th February, and the election, if necessary, will take place in this Chamber in accordance with the principle of proportional representation by means of the single transferable vote on Wednesday, the 9th February.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

(EXECUTION OF DECREES AND ORDERS.)

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

"That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes, (Execution of decrees and orders) be referred to a Select Committee."

As I explained when introducing the Bill, this Bill contains a number of proposals formulated by the Civil Justice Committee as a result of their examination into the delays arising out of execution. The Civil Justice Committee have made very interesting observations on this question, not only in connection with the particular subject-matter of the Bill, but also on the general question of delays in execution. They made a very just remark that there was a tendency, perhaps, to over-estimate delays in execution and the actual figures of unrealised decrees were not entirely a true measure of the case. But they did agree that in India, speaking broadly, a litigant very often commences his troubles when he gets his decree, and, with that view, they made certain specific recommendations, which, after consultation with Local Governments and High Courts, we have embodied in the Bill before the House. I think I would not be quite correct in saying that, in all instances, all these proposals have been before High Courts, but the bulk of them, certainly the most important of them, have been, and the proposals we are now bringing before the House are, in some cases, slightly modified from those which were made by the Civil Justice Committee. I think it is difficult for me to say what the principle of this Bill is beyond saying that it is a general attempt to remedy defects in the law arising out of the present execution law. Execution law is obviously an agglomeration of minutiæ of procedure, and therefore is not susceptible of any broad or general treatment. I cannot therefore put any other broad line before the House and each of these proposals has really to be judged on its own merits.

I might perhaps very briefly refer to one or two of the proposals contained in the Bill. Clause 2 makes it clear that orders settling a sale proclamation under rule 66 of Order XXI of the Code are purely administrative actions and subject neither to appeal nor revision. That, I think, is accepted by everybody as a desirable change in the law and it is effected in clause 2 of the Bill by an addition to clause *(2)* of section 2 of the Code. Clauses 3 and 4 allow concurrent execution by several courts, subject to the restriction imposed by the decision of the Privy Council in the Maharaja of Bobbili's case, which is a case very familiar to my Honourable friends opposite. With regard to the executing court, we do not, however, give the entire powers conferred on the original court, and restrictions will be found by the House in clause 17 of the Bill. Clause 5 extends

to execution proceedings the ordinary rule that objections to jurisdiction must be taken at the earliest possible moment. Clause 6 is not based on a direct recommendation of the Civil Justice Committee, but I think it will be regarded by the House as a valuable safeguard in that it provides that a court by which a decree has been passed cannot send it for execution to any other court if the amount or value of the subject-matter of the suit in which the decree has been passed exceeds the pecuniary limits of the ordinary jurisdiction of such other court. Clauses 7 and 13 amplify and clarify the *Explanation* to section 47 and, further, make second appeals subject to special leave. The amendment of section 47 made by clause 7 provides or rather makes it clear that a stranger purchaser in execution is a representative of the parties within the meaning of that section. Clause 8 clarifies and simplifies the provisions regarding attachment contained in section 60 of the Code. It treats all salaries and most allowances on the same lines, and I think it may be regarded as an improvement on the existing provision in the law. Clause 10 embodies a specific proposal of the Committee. It bars the plaintiff, in certain circumstances, from maintaining a suit based on a *benami* transaction and amends section 66 so as to extend that section also to defendants who at the time of the suit are not in possession of the properties sold in auction. The Committee made some valuable observations on the general question of *benami* transactions, but they were not themselves unanimous in their view of that particular transaction and the only specific recommendation they made was the one which is embodied in the Bill under consideration. The subject, of course, as Honourable Members know, is one of very great difficulty. Clause 11 gives civil courts authority similar to that now given to the Collector, under the existing Code, for the satisfaction of a decree by a temporary alienation. Clause 12 puts forward a new proposal recommended by the Civil Justice Committee allowing the creditor who has taken out execution to receive a preference to the extent of 2½ per cent. from the distributable share beyond his own share.

I do not think that the remaining provisions of the Bill are of sufficient importance for me to draw the particular attention of the House to them. They are satisfactorily explained in the notes on the clauses of the Bill which are annexed to the Bill. I should like to tell the House that, although, as I have said in my opening remarks, it is true that the High Courts have been consulted on the bulk of the provisions in this Bill, it is equally true that they have not seen the actual form in which these proposals have been embodied in legal language, and there are also one or two proposals which they have not seen. I have moved for a reference to Select Committee, but I recognise that these are matters of complication which require the best advice that the Government of India are able to obtain, not only as to the actual principle of the amendments but also as to the form they should take. I notice that a motion for circulation has been put on the paper. If that motion is moved and if it commends itself to the House I myself will raise no objection. Sir, I move.

Mr. President: Motion moved:

"That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes be referred to a Select Committee."

Mr. H. G. Cocke (Bombay: European): In view of the concluding remarks of the Honourable the Home Member there is very little for me to say in moving the motion which stands on the paper in my name. It

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seems to me that this is essentially a measure which ought in its present form to be circulated for opinions. It is true, as the Honourable the Home Member said, that the High Courts have seen the main suggestions embodied in this Bill, but they have not seen them in the way in which they have been set out and certain of the clauses are new. It is also true that a Select Committee of this House can secure considerable legal scholarship and learning to consider a measure of this sort, but at the same time there is no immediate hurry, and I think it would be very much better if this Bill was first circulated for opinions. It will be noted that in sub-clause (2) of clause 1 of the Bill it is stated that it will come into force on the 1st day of January, 1928. Well, I take it that opinions can be called for and obtained before that date and probably that date can remain in the sub-clause. I do not know whether it is a practice in calling for opinions to fix a date by which they are to be sent in, but it occurred to me that it might be possible, if there were any urgency to bring this measure into force on the 1st January, 1928, to ask for opinions by the 31st July of this year. Sir, I move:

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

The Honourable Sir Alexander Muddiman: As I said before, I am quite prepared to accept that motion and we will call for opinions, but we must give the High Courts reasonable time. I may say that we have had protests from the High Courts in connection with a number of opinions that they were asked to give on several proposals of the Civil Justice Committee.

Mr. President: The original motion was:

"That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes, be referred to a Select Committee."

Since which the following amendment has been moved:

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

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

The motion was adopted.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

(AMENDMENT OF SECTION 115.)

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

"That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes, (Amendment of Section 115), be taken into consideration."

As I explained in moving for leave to introduce, this Bill amends, or rather seeks to amend, section 115 of the Code. Section 115 of the Code, as most of the Members of the House know, is the section which deals with the revision of civil proceedings. The matter of revisional jurisdiction was examined at considerable length by the Civil Justice Committee's report. They devoted pages 370 to 375 of their report to that matter. They deal with the various views which have been

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expressed on revisional jurisdiction and they refer to many rulings, with which I think it is unnecessary for me to trouble the House, but, if the Members wish to refer to them, they will find them in paragraph 11 on page 370 of that report. The committee noticed a tendency in our courts to enlarge their powers of revision. They took the view, moreover, that there was a difference of opinion on many matters, both between High Courts and also between individual judges, in the way they used the section, and they came to the general conclusion that it was a fruitful source of delay and that the law might well be laid down in more definite terms by the Legislature. They particularly pointed out the main difference of opinion between the courts on the question of how far revision is open on an interlocutory order. They say, and I believe rightly, though I speak subject to correction, that there is a difference of opinion between the High Courts of Calcutta and the courts at Allahabad and Lahore. The Calcutta court takes the view that, under the section, the court has discretion to interfere, even though the case in the court below has not been disposed of completely, whereas the view taken in the other High Courts to which I have referred is that the section does not warrant an interference during the pendency of the case. They themselves took the view that interference by way of revision on interlocutory orders is a fruitful source of delay, that it even harms the litigant who applies for the revision. They say, and speaking subject to correction I should imagine there was a good deal in what they say, that very often the litigant would have succeeded without any necessity for revisional proceedings. Obviously, it must be so. An interlocutory application of this kind stays proceedings and causes delay. The measure of the delay is largely the rapidity with which the High Courts dispose of the application. I fancy that at times it must be a somewhat long period, for the Civil Justice Committee observe:

> "If, for example, a rule once granted is not likely to be disposed of for eight months, then it is plainly better on the whole that interlocutory orders should not be subject to this form of attack."

I do not know what High Court they were thinking of, but it may be presumed that it took a very long period for the disposal of the interlocutory order.

Mr. M. A. Jinnah (Bombay City: Muhammadan Urban): Not in Bombay.

The Honourable Sir Alexander Muddiman: My Honourable friend is apparently aware of the court where 8 months is not a long period. I trust I shall have his support on that point. On an examination of the whole position, the committee came to the conclusion that the law needed amendment and they went further. Apparently, after consultation with the Chief Justice of Bombay and other Judges of standing, they rushed in, perhaps rashly, and themselves drafted the section. That section was naturally subjected to my Honourable colleague's scrutiny. It did not emerge quite in the same shape as it went in, but in essence it is the section proposed by the Civil Justice Committee, and it is that amendment of the law which I now ask the House to take into consideration.

Mr. M. R. Jayakar (Bombay City: Non-Muhammadan Urban): Sir, I rise to oppose the passage of this Bill. I will take the liberty of saying that this Bill is, in the opinion of a very large section of the legal profession, a retrograde Bill. I am aware, Sir, that this Bill carries out the

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provisions of the Civil Justice Committee and the draft set out in the Bill is also, word for word, the draft suggested by the Civil Justice Committee in their report. The Honourable the Home Member has sought to justify this Bill on the ground that it is intended to do away with the proverbial delays of the law of which poets have sung. But under that guise, Sir, this Bill is intended to have the effect, if it is passed into law, of cutting down the revisional powers of the High Courts, powers which are much prized in this country, notwithstanding many blemishes of judicial administration. Without being too technical, I will invite the attention of Honourable Members to two points. This Bill has two very retrograde provisions. First, clause 2 cuts down the very large discretion which the High Courts in India have enjoyed in the matter of interfering with the decisions of subordinate courts. These powers had been purposely left vague by the Government of India Act, and the Civil Procedure Code. There was a meaning in leaving them wide and undefined, because the idea was to invest the High Courts in British India with a residuum of very large powers of supervision which the Legislature wisely refused to limit or in any way restrict. This Bill divides those powers into two parts, one with reference to 'decrees' and the other with reference to 'orders'. I may tell my Honourable friends here that the High Courts' powers of superintendence are derived by them from the old Supreme Courts. The High Court has, under our law, three ways of interfering with the decisions of the subordinate judiciary, first by way of appeals, secondly, by way of revision and thirdly, by way of exercising the inherent power which the High Courts enjoy under section 15 of the Indian High Courts Act of 1861, which has now been supplanted by section 107 of the Government of India Act. What this Bill proposes to do under the guise of avoiding delay is to restrict this large power of the High Courts. It does so by the device of dividing decisions into two classes, namely, 'decrees' and 'orders'. I need not go into the technical difference between a decree and an order, except to state that the one is more final and the other is interlocutory. What this Bill does is that, in the case of decrees, it re-enacts the provisions of the old Act, about which I do not complain, Sir. But, with reference to "orders," which are referred to in sub-clause (*b*) of clause 2, it restricts the power of the High Court to interfere only to *one* of such cases, namely, where the subordinate court appears to have 'exercised or decided to exercise jurisdiction not vested in it by law.' That you will notice, Sir, is only one of three cases which are provided for in the case of decrees. In other words, stated briefly, the effect of this Bill will be, so far as this clause is concerned, to deprive the High Court of judicial interference in those cases which are contained in sub-clause (*ii*) and sub-clause (*iii*), namely, where the lower court has failed to exercise jurisdiction so vested, or acted illegally or with material irregularity. The effect of this will be that in the case of interlocutory orders, however unjust and erroneous they may be—and there are a very large number of them coming before the courts every year—the High Court will not have the power under this Bill of interfering with, correcting, amending, modifying or redressing, in any manner, however gross and manifest the injury may be. That, in my opinion, is a retrograde step. What moved the Civil Justice Committee to recommend this step, I cannot say. But so far as their reasons are given in their report, they appear to be based on one consideration only, the delay of the law. I hold the view, Sir, and

I am sure a large section of the profession also holds the view that delayed justice is better than speedy injustice. Then, Sir, proceeding further, there are one or two things which require to be very carefully examined. One of those things, which every lawyer prizes to the utmost, is embodied in sub-clause *(2)* of the *Explanation*:

> "Nothing in this Code, and nothing in the Letters Patent of any High Court, shall be deemed to confer upon any High Court any power to revise any decree or order which such Court is not empowered to revise under this section."

I have very grave doubts and I will make a present of them to the Honourable the Law Member sitting opposite, whether this Indian Legislature has this power at all of curtailing the inherent jurisdiction of the Court which was given to it by the High Courts Act, a Statute of the British Parliament and which is now embodied in section 107 of the Government of India Act, which is also a Statute of the British Parliament. That section, Sir, is very widely worded. It is a re-enactment of an earlier section, section 15 of the Indian High Courts Act, which was passed by the British Parliament in the year 1861 when High Courts were established for the first time in British India. That section, Sir, by wise British legislators—a species which has become rather rare in these days, was worded very wisely as follows:

> "Each of the High Courts has superintendence over all courts for the time being subject to its appellate jurisdiction."

My Honourable friends will notice the very wide words—and they were purposely left wide—of this section. The Legislature in those days thought that, having regard to the peculiar circumstances of British India, High Courts must be invested with very large powers of supervision. They used an expression which is plain and simple, namely, 'superintendence,' so that every kind of inquiry, revision, interference and inspection, might be included in the process. That section, Sir, is still good law and we are now attempting to limit the effect, and purview of this section by enacting this clause. Two questions arise. Are we competent? Supposing we are—into which question I will not go because I can see the array of legal talent on the opposite Benches which must have considered this question—but supposing we are competent, I say, is it advisable in these days that High Courts, the last resort of public justice, should be weakened, instead of being strengthened? I will ask my Honourable friends, are these the days when they should take away by a deliberate Statute the powers and privileges of High Courts? Are these the days when this House should permit any measure which has the effect of taking away, even by an iota, the rights and privileges of High Courts in India? I will not go into the question whether we are competent. I will leave that for the decision of judges when it arises. But I have very good authority for holding the view I do, *viz.*, the authority of the Privy Council contained in a well-known decision of the Madras High Court in the year 1920. The judgment in that case was given by a well-known lawyer of great eminence, Lord Philimore. I do appeal to my Honourable friends, those who value the privileges of the High Court, which are after all the reflection of popular liberties in this country, to consider whether it is advisable to curtail the rights of the High Courts on the simple ground of legal delay. The Honourable the Home Member has made no pretence about it, there is no other ground for this drastic change except that of delays of the law. I submit, Sir, this is no just ground for permitting this drastic change. This is my view which possibly my official friends can never realize.

[Mr. M. R. Jayakar.]

These are not the days, I say, when our High Courts should be weakened. On the contrary they ought to be strengthened as much as they can. Taking that view, I think it is my duty to oppose this Bill and ask that it should be thrown out.

Mr. S. Srinivasa Iyengar (Madras City: Non-Muhammadan Urban): Sir, I also oppose the further consideration of this Bill on three grounds. There is no necessity whatever that has been made out for this inartistic amendment of the existing section 115. Far from making it clearer, it makes it obscurer, and, if this Bill is passed, it will tend to cause greater delays than the promoters of this amendment are aware of or the delays that the Civil Justice Committee sought to suppress. In the first place, the House will notice that the section is divided into two parts, one relating to the revisional jurisdiction of the High Court in the case of decrees of subordinate courts, and the other the revisional jurisdiction of the High Court in the case of orders made by subordinate courts. Now, as regards the revisional jurisdiction of the High Court in the case of decrees, with few exceptions, generally speaking, the revisional jurisdiction can only exist in cases where the suit is of a small cause nature and the value does not exceed Rs. 500. In that case, as no second appeal lies, the High Court will have a power of revision against decrees. That is really not a very important class of cases, and I would merely say that the elaborate provision which is made for decrees is hardly necessary, because there is a first appeal in the first class of cases and there is a second appeal where the value is over Rs. 500. But where the value is less than Rs. 500 and it is of a small cause nature, you will have this right of revision, and that right of revision is confined to cases where the lower court did not exercise its jurisdiction, or exercised a jurisdiction which it did not have or committed a material irregularity. Thus, generally speaking, these matters would have been corrected by the first appellate court itself and there would be very little necessity for revision Therefore, the revisional jurisdiction of the High Court is really needed for the second class of cases, that is, cases in which it is not a question of decrees but a question of orders; because, in the case of orders, as the Civil Procedure Code does not provide for appeals except in a very few cases tabled in the Act, the power of superintendence of the High Court has been frequently exercised in order to redress injustice or to promote justice. Now, in that class of cases, the present law as it stands, as stated at section 115 of the Code, gives all the three branches of revisional jurisdiction to the High Court, that is to say, where the subordinate court has failed to exercise the jurisdiction which it has or exercised a jurisdiction which it has not or in exercising that jurisdiction has acted with material irregularity or illegality. Now, of these three branches, two branches are cut out by the present Bill so far as the revisional jurisdiction of orders is concerned. There is no right of revision even if there is a material irregularity. Supposing, for instance, in the hearing of an interlocutory application, the Court does not hear—such cases have been known and some of us have had experience of that—does not hear the opposite party and grossly misconducts itself in the procedure, nevertheless, the High Court will have no jurisdiction, because material irregularity of procedure is not made a ground for the exercise of revisional jurisdiction by the High Court. Then, again, supposing it had a jurisdiction, as in the case of adding of parties, where application has frequently to be

made, some cases also occur where, on absolutely frivolous grounds, such as the Court wanting to finish the case without really disposing of matters in controversy, it throws out the application; and then you go to the High Court and, in many cases, persons whose joinder has been negatived by the first court have, in the sound exercise of the revisional powers, been made parties to the suit. When the court has a jurisdiction but refuses to exercise that jurisdiction, in that case also the existing jurisdiction of the High Court in revision is cut out by the present Bill. It is only one class of cases, *viz.*, where it arrogates to itself a jurisdiction which it does not possess, that is preserved. Even there, I do not know what clause (*b*) means when it says:

"When the subordinate court appears to have exercised or to have decided to exercise a jurisdiction not vested in it by law."

I really do not know the subtle distinction between these two classes of words. How it tends to clarity I fail to see. How *Explanation* (*a*) is rendered necessary is a matter of drafting and I need not deal with it. Dealing with the substance of this Bill, I would urge upon Honourable Members of this House the gravity of such a proposal as this which takes away the existing jurisdiction of the High Court in just that class of cases where the jurisdiction is most needed. The revisional jurisdiction of the High Court has, in my experience which has not been very limited, certainly operated as a sort of pressure upon subordinate Courts. They know perfectly well that, if they behaved in a particular fashion, the party will rush to the High Court and get the ord r reversed. If this jurisdiction is removed, we know they will regard themselves as masters of the situation and deal with cases just as they like. It is just in this class of cases that justice has to be rendered, because these interlocutory orders are of the essence of a suit. And then, again, the result of this Bill, if passed into law, will be this. Instead of really cutting down expensive litigation and minimising the worries of the litigant, it will add to his trouble and expense. He will have to take all these grounds at the time when he prefers the appeal from the final decree of the court, and, if he succeeds, the whole of the cost would have been thrown away. If it were shown that the lower Court refuse to exercise a jurisdiction which it had in passing certain orders which had resulted in a failure of justice or if it had been shown that it acted with material irregularity in the exercise of jurisdiction, the whole proceedings would have to be nullified and the High Court would have to reverse the decree on those grounds and send back the case for a fresh trial. That would be the effect. Therefore, far from this pious opinion of the Civil Justice Committee materialising in practice, what will happen is that there will be greater delay in litigation and greater expense and useless trouble for the litigant. Therefore, I submit, the present law as it stands is good enough. You cannot find any formula of words upon which all the High Courts in India can be agreed, nor do I suppose, if anyone goes through the English Law Reports, that courts in England are any better. There is also plenty of conflicting decisions in all courts. Even the clearest human language is necessarily ambiguous and human brains are of different values. It is impossible, therefore, to attempt the impossible task of preventing all the High Courts from occasionally disagreeing with one another or different Benches of the same High Court differing from one another. That is a consummation which we wish for but can never be realised. On the other hand, our

[Mr. S. Srinivasa Iyengar.]

existing section 115 has been the subject of anxious consideration on the part of various High Courts for a long period of time, for well over a generation, and the result of it is the law has been crystallised in different provinces in different ways. After all, what the litigant, what the parties and what their legal advisers and others want is greater certainty of law, simplicity of law, rather than the idea, according to the Civil Justice Committee or according to the Home Member or the Law Member, of what the law should be. The certainty of it has been practically ensured, the law has been crystallised, and the practice has been fairly well set and it is unnecessary to disturb that law at the present stage by this Bill so as to give rise to an endless series of decisions, because this legislation, as worded, is likely to give rise to far graver troubles than the wording of the present section 115. Then, again, the last clause is a really nugatory and wholly useless provision. Section 107, as pointed out in the Statement of Objects and Reasons, of the Government of India Act, gives each of the High Courts power of superintendence over all courts for the time being subject to its appellate jurisdiction. Therefore, every High Court will have, notwithstanding this law, all the other powers which it has, and there is no use either referring to the Letters Patent or anything else. Unless you cut out section 107 of the Government of India Act, you really will not be able to achieve the great object which the Civil Justice Committee had in view. It is quite clear that the Civil Justice Committee was so well instructed as to imagine that they could cut out section 107 of the Government of India Act; and the Law Member, as the Honourable the Home Member has told us, had to point out that that could not be done and this Bill had accordingly to be rectified. So much for the legal soundness and competence of the Civil Justice Committee. I should say that, just as in other matters Government have not proceeded to give effect to various recommendations of the Civil Justice Committee,—I notice that their recommendations are not being pursued in various other matters—we might as well give up this passion for despatch and agree with Mr. Jayakar who said that delayed justice is better than speedy injustice. I really consider that what would happen would be delayed injustice, not even speedy injustice, for there would not be any speed. Then, again, there is another point of view from which these Bills should be looked at. I should suggest that, in a law like this, Civil Procedure Code and Limitation Act, it would be very much more convenient to have all the amendments brought up in one Session and in one Bill, so that you may have a comprehensive Bill rather than piecemeal legislation. I would again say that, as this matter was not put before any Select Committee and was not examined, I certainly oppose this Bill.

Mr. Harchandrai Vishindas (Sind: Non-Muhammadan Rural): Sir, I also join in the opposition that has just now been set up against the provisions of this Bill not only on the ground put forward by the Honourable Mr. Jayakar, but also on another ground, that it is not merely a curtailment of the powers of the High Court, as he has described it, but it also curtails the liberties of the subject in getting redress for injustice. That aspect of the question I specially rely upon for the simple reason that High Courts are the places where justice and proper redress of grievances of litigants can be obtained. I need not repeat all that has been said by the two previous speakers. I support all that they have said and, in addition, I also say that the very reasons which are urged in support of this

amendment are more against the Bill than otherwise. For instance, the *Explanation* says:

"An erroneous exercise of discretion in a matter of procedure shall not be deemed to be an illegal act or a material irregularity."

So it is sought to exclude from the jurisdiction of the High Court its revisional powers over erroneous exercise of discretion. I think that such power should not be taken away from the High Court at all. There are many instances in which redress of this kind of wrong would be very necessary in the interests of the subject.

Then again, clause (*b*) of the *Explanations* is rather beyond me:

"(*b*) a finding or decision by a subordinate Court that it has jurisdiction shall be deemed to be an order within the meaning of clause (*b*)."

And clause (*b*) says:

"in the case of any such order, if the subordinate Court appears to have exercised or to have decided to exercise a jurisdiction not vested in it by law."

I don't know whether the former is any elucidation of the latter or a mere repetition. It is really intended that the powers of discretion to give justice to the people, which now exist under the present Code of Civil Procedure, and which are being exercised very wisely by the High Courts, are to be taken away. Such a measure, Sir, I oppose.

Mr. Nirmal Chunder Chunder (Calcutta: Non-Muhammadan Urban): Sir, I agree with Mr. Jayakar that this is a retrograde measure and ought to be thrown out, and I would appeal to the report of the Civil Justice Committee itself in support of my proposition. The Civil Justice Committee at page 372, para. 14, in the very last sentence, say that:

"The position would seem to be that when the High Court ultimately interferes under section 115, its action has a very good effect."

Then again, in para. 16 in the first sentence, they say:

"It is very difficult to determine with reference to each High Court whether on the whole their jurisdiction is an advantage or disadvantage. It seems fairly clear that unless the greatest care is taken to insure that a rule to show cause should never issue save when absolutely necessary, and unless rules can be disposed of in reasonably short time, diminished jurisdiction would in all probability do more harm than good."

The complaint of the Civil Justice Committee is that the particular procedure of the rule *nisi* is what creates delay. They diagnose the disease but I venture to say that they have proposed a wrong remedy. The remedy is to change the procedure of rules *nisi* by notices of motion to issue, so that the whole thing can be settled in a fortnight. Instead of that they want to curtail the powers of the High Court, although they had no materials before them, as they themselves admit, to show that the High Court has exercised these powers under section 115, or the powers which they arrogated to themselves under the Charter, and that they had exercised those powers in a manner which conduced to injustice.

I therefore suggest that no reason has been given by the Civil Justice Committee or here why the revisional powers of the High Courts should be curtailed in the way it is sought to be done.

I do not think, Sir, (as Mr. Srinivasa Iyengar has already pointed out), that sub-clause (*2*) of the proposed section 115 will at all affect section 107 of the Government of India Act, because the High Courts now derive

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their powers of superintendence not under the Letters Patent but under the Government of India Act; so that also is useless, and I hope that Mr. Prakasam's motion, that that should be deleted, will be accepted.

Mr. T. Prakasam (East Godavari and West Godavari *cum* Kistna: Non-Muhammadan Rural): Sir, I withdraw my amendment, with a view to oppose this Bill.

The Honourable Sir Alexander Muddiman: I am afraid I did not understand my Honourable friend. Do I understand him to withdraw his amendment? The amendment is not yet before the House.

Mr. T. Prakasam: I have withdrawn my amendment and take leave to oppose the Bill. . . . . .

Mr. President: The amendment is not before the House.

Mr. T. Prakasam: I have said that, inasmuch as the amendment is on the paper, I wish to say that I have abandoned it as I have risen to oppose the motion. I do not agree with the observation of my Honourable friend who stated that delay is better than injustice. Delay is very bad in the matter of justice and delay should be avoided. Delay can be avoided easily, if this House and if the Government take proper care, one in the matter of legislation, and the other in the appointment of Judges.

Well, Sir, the Civil Justice Committee's report is a very elaborate report based on a large mass of evidence gathered. They have tried hard to find out reasons for the delays in the administration of justice in this country. I spent the best part of my life in the legal profession until a few years ago, and I could tell you that the delays of the present day are largely due to the quality of the recruitment to the Bench, not only the subordinate but the highest courts in the land. Allow me to tell you, and also to tell my Honourable friends here, that the recruitment to the High Court under the Charter Act, consists partly of a class who have not been trained in law, who have never practised law. Civilian judges come here as Revenue Officers and are promoted to District Judges to administer both civil and criminal law. I have known a judge who, as soon as he was appointed a District Court Judge, said that he did not know that there was a provision in the Civil Procedure Code for temporary injunction. I have known judges in the High Court who did not know several provisions in the Civil Procedure Code. The Civil Justice Committee's report says that they had consulted the Chief Justice who was good enough to enlighten them. **This is the sentence, page 272:**

"One eminent Chief Justice has expressed the opinion that this revisional jurisdiction should no longer exist, its place being taken by mere right of prohibition."

My Honourable friends will allow me to tell them that I have known a Chief Justice who was sleeping a good part of the time on the High Court Bench.

I have known a Chief Justice who slept not only for several minutes, but who got up all of a sudden and asked an eminent lawyer who was arguing before him what he was arguing, and when the lawyer told him it was a commercial point. . . . .

Mr. President: Order, order, all this is very interesting, but it is hardly relevant.

Mr. T. Prakasam: Well, I must bow to your ruling, Sir, but here it is said the Chief Justice's opinion has been consulted. I only hope the Chief Justice who was consulted by this Civil Justice Committee was not the one who had been sleeping (Laughter). Again, Sir, the Civil Justice Committee says that it has consulted the Bar Association and the Bar Association also were opposed to the proposed change. It says, the Bar Association and others have represented that the right to interfere in revision should remain whenever there is an error of law. They have difficulty in understanding why there should be a right of revision. Such is the Civil Justice Committee which could not agree with the members of the Bar, the Civil Justice Committee which would not agree with the High Courts which, in the exercise of their jurisdiction under section 115 of the Civil Procedure Code as it exists and under the Letters Patent and the Charter Act, do interfere to do justice when they consider fit. The Civil Justice Committee says:

"apart from this question, section 115 has undoubtedly been productive of much bad law because of the tendency of High Courts to interfere with any order that they do not regard as correct."

Is it wrong that the High Courts should interfere when they think the orders of the lower courts are not correct; that they should interfere to set them right? This is the Civil Justice Committee's report on which the Home Member relies each time he introduces a Bill. On its every paragraph, I am afraid, he is going to introduce a Bill to amend the Civil Procedure Code. So the Civil Justice Committee's Report is one which I would request every one of my Honourable friends here not to regard as any authority. I know at least one gentleman of this Committee who has never handled section 115 in the matter of an application or arguing a case at the High Court himself. It is really astonishing that the Civil Justice Committee should be quoted each time as a standard authority, that must be accepted by all of you. I also see, Sir, now, a growing tendency not to pay sufficient regard to the matter of legislation in such measures. Every amendment that you carry here, every alteration that you make here will form part of the permanent statute which will be administered by the law courts and very large interests will be affected and very seriously affected, and so I appeal to every one of you to consider this amendment in regard to removing section 115 as it stands to-day, and having in its place a reactionary provision which curtails the power of the High Court. The High Court's jurisdiction is not merely one of applying the letter of the law. Any court of justice is expected not only to look to the letter of the law but to look to the spirit of the law whenever the letter of the law is mischievous and will not allow them to do justice. That is the equity jurisdiction of the courts in England. You know how, when the Common Law Courts could not give justice, equitable jurisdiction came into existence in England. Section 115 is one of the few sections, perhaps the only section, which vests equitable jurisdiction in the highest courts of the land so that they might set right any injustice done in the lower courts. For heaven's sake, I appeal to you not to throw away the existing section and accept the amending Bill of the Home Member. It will be an immense injustice. The Civil Justice Committee had dealt at considerable length in one chapter with the frivolousness of litigation in small cause suits. Small cause suits generally relate to poorer people, and, if they are not allowed the remedy to take them in revision to the High Court, it will be doing a great injustice to that class of people. The Civil Justice Committee says

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"that this is a class of litigation which should not even be looked at." We have known judges who asked, when the matter came under revision, "What is the value of this revision petition?" When it was said "Rs. 50", they said "Oh, dismiss it!" Why? Because it is only Rs. 50. I therefore submit, Sir, that this Bill for amendment should be rejected *in toto*.

As regards the last clause under which the proposal is made that the power of superintendence of the High Court, given to it under the Government of India Act, should be restricted, I am one of those who long to see this House have the power to enact laws for itself and not to care for the laws which are enacted by the House of Commons. I should be very glad if we had that power to enact laws here ourselves and to have our own constitution; but as we stand to-day we are again and again told that it is the House of Commons that is ruling us and that it is Parliament to which we must submit ourselves. The proposal made in the last clause is that the powers of superintendence which the High Courts derive from an Act of Parliament itself should be curtailed by this House. I hope you will have the power and I wish you will have the power, and when we have that power we will not really care for Parliamentary Acts.

The Honourable Mr. S. R. Das (Law Member): Sir, I am not surprised at the opposition to this measure by Honourable Members who are lawyers by profession. As a lawyer myself, I may confess that my first instinct was to go against the advice of the Civil Justice Committee with regard to this point. But I think, if my friends will look into this Bill carefully, they will see there is no ground for the apprehensions which they have put forward. After all, so far as revision of decrees is concerned, no alteration has been made in the existing law. The section says "It may call for the record of any suit or proceeding in which a decree or order from which no appeal lies has been made". So that, so far as the powers of revision in regard to decrees are concerned, there is no alteration made in the law from that which now prevails. The only alteration is with regard to revision of orders. Now, with regard to that, the reason why the Government has accepted the advice of the Civil Justice Committee is shortly this. So far as orders are concerned, so far as interlocutory orders are concerned, no real injustice can be done, except in the way of delay owing to certain proceedings being taken which may have to be set aside later on, because, when the matter comes up on appeal, that order can always be revised by the High Court and set right. (*An Honourable Member*: "It is often too late"). Sometimes it may be too late, but in very rare cases is it too late because when it comes up on appeal the High Court can set it aside. Sometimes it does mean further cost because the case may have to be remitted for further trial, though that does not often occur. On the other hand, there have been numerous instances—at any rate in my experience—where a case has been held up for months, not once only but on several occasions, by an application under section 115 with reference to an order. I can recollect now several cases in which rules have been issued from an order of a subordinate court dealing with amendments of plaints. A rule has been issued; records have been called for and it has been some time before the High Court has been in a position to deal with the rule, generally ending by refusing that rule; and that has occurred more than once. In the case of very rich litigants, you find applications made over and over again with regard to these interlocutory orders in the same case, thus delaying the proceedings by sometimes one or two years. It is to prevent

that that this view of the Civil Justice Committee has been accepted. On the other hand, as I have pointed out, it really works no injustice because if a wrong order has been made, if, for instance, an amendment has been allowed or refused which ought to have been refused or allowed, that can be set right when the matter goes up on appeal. But Honourable Members will notice that, in one case, the High Court is given power to interfere in the case of an order, and that is where a subordinate court has exercised or decided to exercise a jurisdiction not vested in it. That contemplates a case where a subordinate court has no jurisdiction to entertain a suit but holds that it has jurisdiction and proceeds with the case. It is obvious, in such a case, that the High Court ought to be allowed to interfere because if the subordinate court has no jurisdiction it would mean a considerable amount of time and money wasted in the case being heard and decided by the subordinate court and then on appeal the High Court deciding that the subordinate court had no jurisdiction to try the case. Therefore, in that case, power has been left with the High Court to interfere. Otherwise, in accordance with the opinion or view of the Civil Justice Committee, the Government thought that the jurisdiction of the High Court should be restricted in the case of revision of orders . . . .

Mr. M. R. Jayakar: On a point of information, Sir, may I know what the difference is between " exercised " and " decided to exercise "?

The Honourable Mr. S. R. Das: I have not followed the question.

Mr. M. R. Jayakar: I want to know from the Honourable the Law Member what is the difference between the two expressions " if the subordinate court appears to have exercised " or " to have decided to exercise ".

The Honourable Mr. S. R. Das: There may be occasions when the subordinate court has decided to exercise jurisdiction—when it has held that it has jurisdiction—and you can go up on that; or supposing, after that, that they have proceeded with the case in the exercise of that jurisdiction, then an application may be made under section 115.

There is only one other point that I should like to make and that is this. Sub-section (2) does not attempt to curtail the jurisdiction of the High Court so far as section 107 is concerned. That is clearly pointed out in the Statement of Objects and Reasons; because obviously this legislature cannot affect the provisions of a Parliamentary Act. But, so far as it can, that is to say, so far as the Code of Civil Procedure is concerned and the Letters Patent are concerned, this Legislature is competent to affect the provisions of those enactments, and all that this section says is that:

> " nothing in this Code, and nothing in the Letters Patent of any High Court, shall be deemed to confer upon any High Court any power to revise any decree or order which such High Court is not empowered to revise under this section."

So far as the power of superintendence is concerned, that is not affected by the Bill. That exists in the same way as it does now and, therefore, I submit to this House that, if the measure is carefully considered, it is not one which is likely to cause injustice to litigants. After all, it is very nice to hear—most of us would subscribe to that statement—that delayed justice is better than injustice, but very often delayed justice amounts to injustice.

Mr. M. A. Jinnah: Sir, I was particularly anxious to hear the Honourable the Law Member, and I have heard his defence of this Bill. I regret to say, Sir, that he has made a very poor defence. There is not

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the slightest doubt that this Bill is a very drastic departure from the old law, section 115 of the Civil Procedure Code. Under section 115 of the Civil Procedure Code, we had to deal,—I want the House really to pay a little more attention to this question because it is a very important question,—we had to deal with three matters. First a decree, second interlocutory orders—an order made in the course of the proceedings of a case and which was an appealable order, and an order made which was not an appealable order. Now, Sir, with regard to the question of a decree, which is the final adjudication by a Court of first instance, no doubt the law is not sought to be changed. It remains exactly as it was, and so we need not trouble about that. But, with regard to the interlocutory orders which are passed, we have got two classes, as I said, of which one is appealable and the other is non-appealable. Now, Sir, with regard to the appealable order, the High Courts have differed. One set of High Courts have held that, as there is a remedy by way of appeal, you should not be entitled to invoke the revisional jurisdiction of the appellant court. Other courts have held that, although you may have a remedy in the form of an appeal, yet if you are going to follow the procedure laid down for an appeal against an appealable order, as we all know, it will take a considerable time before you can get a hearing. Therefore, on that ground, the High Court of Bombay held that, even if an order is an appealable order, yet, if the urgency of the case requires that we should extend our revisional power, we shall do so; because, Sir, sometimes an interlocutory order is made and any delay in the final disposal of that order may involve very serious consequences to both parties. I will give the House one instance. Here an order was made with regard to the amendment of the plaint. The lower court refused the plaintiff's application for an amendment of the plaint. The High Court of Madras set aside the order in revision and directed the plaint to be amended. Well, now, supposing the plaint was not allowed to be amended, as the lower court refused the amendment, what would have been the consequence? That both parties would be obliged to proceed on the original plaint. All the evidence is heard, all the issues are raised and decided, and eventually a decree is passed. Then the plaintiff whose application was refused for the amendment of the plaint is entitled to make his grievance in the Court of Appeal after the final decree. And supposing the Court of Appeal held that the plaint ought to have been allowed to be amended, what happens? You start *de novo*. All the cost, all the trouble and all the time is wasted. Take another case, where the question was, whether an election petition was maintainable at all, and the lower court held that it was. The Madras High Court set aside the order in revision and dismissed the petition. Now the lower court held that the petition was maintainable. All right, both parties proceed; issues are raised, evidence is taken, considerable time and money is spent, and then you go to the High Court eventually, and they say that the petition is not maintainable. Sir, the only ground which has been urged in support of this very drastic change is "law's delay". Sir, may I point out to the Honourable the Home Member, who unfortunately has not been at the Bar, although if he had been I think he would have been one of its ornaments, that he would not have put forward this Bill if he had had practical experience.

1 P.M.

The Honourable Sir Alexander Muddiman: I doubt it.

Mr. M. A. Jinnah: I mean he never practised at the Bar otherwise he would not have taken very long to understand this point. The real point, Sir, is, as one of the Honourable Members said, that if you have efficient Judges, if you have competent Judges, no difficulty arises in the administration or the interpretation of this section. I know that the two High Courts of Allahabad and Lahore have taken a different view. They consider—and I must say that it is a most extraordinary view, if I may say so with great respect—they consider that the word " case " in the section does not mean part of the case, and therefore, you can never invoke the jurisdiction of the High Court with regard to any interlocutory orders at all. But of course they stand singular in that attitude and all the other High Courts have held the other way. I can also understand that very well, because the class of cases that happen to come before the Allahabad High Court and the Lahore High Court are mostly of very different character. They are cases where it is very seldom necessary that the revisional jurisdiction should be exercised. But Presidency-towns like Calcutta, Bombay and Madras stand on a very different footing because the class of cases are different. Therefore, what you really want is to secure competent judges. I can tell you from my experience of the Bombay High Court that I do not remember a single case where a rule for revision was granted and was not disposed of for 8 months. First of all I venture to say that no competent judge, if he understands his business, will grant you a rule. I may point out to the Honourable Member that one has to make out a case—a very strong case indeed—before a rule is granted. You have to make out that the subordinate Court has " exercised a jurisdiction not vested in it by law ". Surely the High Court Judge can at once see, from the records placed before him, when application for a rule is made, whether it is so or not on the face of it. Then you have to make out that the subordinate Court has " failed to exercise a jurisdiction so vested ". Surely that is not a question of evidence. It is a question of law. Next, you have to make out that it " acted in the exercise of its jurisdiction illegally ". That is not a question of evidence. The only matter where you have to deal with evidence is in the case of "material irregularity". That may be a question where you may have to refer to evidence to see if the lower court has acted with material irregularity. Otherwise, all the other provisions are questions of law and I venture to say that no High Court Judge who understands his business or who is competent to preside over the High Court would grant a rule in a hurry and these powers are exercised most sparingly and cautiously. I can assure my Honourable friend that sometimes applications were made before our late Chief Justice, Sir Norman Macleod and let me tell you they were disposed of in ten minutes.

The Honourable Sir Alexander Muddiman: At the time of hearing. But when were those applications put in? How long was the case in the lower courts pending?

Mr. M. A. Jinnah: My Honourable friend has not understood the matter.

The Honourable Sir Alexander Muddiman: He has.

Mr. M. A. Jinnah: No, he has not. I will repeat it for the benefit of my Honourable friend and leave the House to see whether he has understood it. My point is this, that you, first of all, apply for a rule to show

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cause why this order should not be set aside. First of all, you have to satisfy the Court that it comes within the terms of this section before it is granted. In the first instance no rule will be granted, in other words, let me make it clear to the Honourable the Home Member that your application will be summarily dismissed. Do I make myself clear? It is only after the rule is granted that the other side gets a notice to show cause why this order should not be set aside. Then comes the hearing of the rule and it is with regard to the pendency of the hearing of the rule that the Civil Justice Committee is talking of delay. Now, as regards that delay, I cannot understand which High Court it was that granted the rule which was kept pending for 8 months. A rule in the terms of section 115 is a matter of urgent importance—the interlocutory order is so palpably wrong and therefore the rule is granted, and that rule should be allowed to remain pending for eight months. Well, the Judge who did that and the High Court that did that has no business to exist and you had better put better judges on the High Court then. (*An Honourable Member*: "Hear, hear.") Sir, I know this perfectly well. Speaking from my experience of many years at the Bar in Bombay, it is the most difficult thing to get a rule granted to you and the public know it perfectly well and the profession know it perfectly well. And let me tell you that, unless it is a very, very strong case Counsel will never advise his client to apply for a rule because he knows that he will never get it. I have dealt with one ground of delay. But what does the Civil Justice Committee say? It says this:

"It is very difficult to determine with reference to each High Court whether on the whole this jurisdiction is an advantage or a disadvantage . . . "

It cannot determine.

"The statistics which are compiled for the purpose of administration reports are completely useless for the purpose of founding an opinion on this subject."

And yet we are told seriously that, because they may have come across one or two or three instances,—we do not know how many instances, we cannot make out from the report—and there was undue delay in those cases, therefore the High Courts throughout the whole of India should submit to this drastic change. Sir, a much stronger case should be made out before a drastic change of this character can be accepted, which purports to take away a most statutory provision which gives the High Courts the power to correct errors in a speedy manner. If this Bill is passed the result will be that interlocutory orders can be challenged only on the ground that the lower court has exercised jurisdiction not vested in it by law; but it shall no longer be open to any one to challenge that order on the other two grounds, namely, that the lower court has failed to exercise the jurisdiction so vested. Why not? What is the reason? Why do you cancel the one and not the other? And again it will no longer be open under the Bill to invoke the jurisdiction in cases where the lower court has acted in the exercise of its jurisdiction illegally or with material irregularity. If I have the right to go to the High Court in revision and complain that the lower court has exercised jurisdiction not vested in it by law, why do you want to deprive me of satisfying the High Court on the other two grounds? If a man wants to complain that the lower court has failed to exercise jurisdiction vested in it, what is his remedy? He cannot go in revision. Why do you also debar him if he can make out

a case that the lower court has acted in the exercise of its jurisdiction illegally? Why should he be debarred? Why should he wait until the decree is passed? With regard to the last point of the Honourable Member, sub-clause (2) of clause 2 says:

"Nothing in this Code, and nothing in the Letters Patent of any High Court shall be deemed to confer upon any High Court any power to revise any decree or order which such court is not empowered to revise under this section."

Here again I would respectfully point out to the Honourable the Law Member that one view is this—that section 107 of the Government of India Act is only of an administrative nature. The Civil Justice Committee say that both the Lahore and the Calcutta High Courts appear to have extended their jurisdiction under section 15 of the Charter Act—this is the same as section 107—and to have exercised under that section powers other than those of a merely administrative nature. In other words, one view is that section 107 gives powers merely of superintendence in matters of an administrative nature. In other words it has not got judicial power. Those are the two conflicting views. The High Courts have held that section 107 is not merely a power of an administrative nature but the word 'superintendence' gives them power to judicially interfere with the lower courts and the words are so interpreted. So some High Courts have held, rightly or wrongly, under this section that they have the power to revise the orders of the lower court independently of section 115 of the Civil Procedure Code. If that is correct, now, so far as these High Courts are concerned, what will be their position? Their position under this will be that they will have to abandon that view. They cannot decide anything else except according to this Bill. But if they have the power, says the Honourable the Law Member, this Bill does not seek to take away those powers. Why? Well, if they have the power what is the use of this Bill of yours? What is it worth? Is this Bill merely the interpreting Bill? The High Court Judge will say, "what does it matter about the Civil Procedure Code, I have the power under section 107 of the Government of India Act, which is a parliamentary statute, of superintendence; I will exercise my revisional powers". What is there to prevent it? Now let us consider. As the old law stands, is there anything which a competent High Court cannot regulate and deal with if it is only a question of delay? That is what it really comes to. Because these powers are there, why are we to assume that these powers will be wrongly exercised and that the High Court will lend itself to granting rules for the mere asking? Why should we assume that? All that the Civil Justice Committee seems to be obsessed with is the idea that they are going to do away with the law's delays in this world. You find nothing else but that idea, which appears to have been a nightmare with them. But we find no data for it. And yet that seems to be the underlying principle of this recommendation. The Honourable the Home Member has been lured into it and he has undertaken this legislation. Surely the Honourable the Law Member knows perfectly well that this section 115 is very cautiously and very rarely applied. As far as the Bombay High Court is concerned I know it is, and the judges are fully alive to the position, and it is very difficult, I can assure you, to get a rule from the High Court of Bombay. I believe also we have competent Judges in Calcutta and in Madras and Allahabad. As regards the rest, we have only recently been getting their decision officially and therefore I am not in a position to pronounce any judgment upon them (Laughter). I therefore do hope that this House will not pass this Bill and I hope the

[Mr. M. A. Jinnah.]

Honourable the Home Member will not press it. If he is really in earnest about this Bill, let him get some more materials and place them before us on the ground of delay. Show me, convince me with figures showing that, say in Calcutta, Bombay, Madras and Allahabad, so many rules were granted in the course of the last so many years, that those rules were allowed to hang on for 8 months or a year. Show us figures and convince us of that, and then I am prepared to consider the matter.

Pandit Motilal Nehru (Cities of the United Provinces: Non-Muhammadan Urban): Sir, the matter has been thoroughly threshed out in the speeches already delivered and I see the Honourable the Home Member is in a hurry to reply. I will, therefore, not be long. One or two points I specially wish to mention. The Honourable the Law Member has in fact conceded the whole argument advanced on this side of the House. He said that there may sometimes be cases where, if no revision is allowed, the object of the amendment may be defeated: instead of expediting the business of the court long delays might occur and the trial might have to be begun afresh. But he says more often the trial is delayed by the application for revision having been admitted. That assumes that the application for revision has been wrongly admitted. I think—and in this I agree with my friend Mr. Jinnah—that the admission or rejection of an application for revision may well be left to the High Court which has to deal with it. It is for the court to decide whether a *prima facie* case has been made out which calls for the exercise of the special revisional jurisdiction vested in it by law. I also bear out my friend Mr. Jinnah about the actual practice. So far as the practice goes in the Allahabad High Court, Judges are more inclined to refuse a rule than to grant it unless of course they see no other course is open. Besides the cases that have been mentioned, there are certain other classes of cases in which no appeal is given by the law. I am talking of cases which arise not under the Code of Civil Procedure but under various other Acts, for instance, the Succession Act, the Guardian and Wards Act, Religious Endowments Act. All the orders passed under these Acts are not appealable. But many important orders, having far-reaching effect, can be passed and are passed daily under those and other Acts and if they are not to be dealt with under the revisional jurisdiction of the High Court, there is absolutely no remedy for the aggrieved party. There was a case where a Court refused to confirm a sale under section 312 of the Code believing that it had no power to do so, after the purchaser objected to the sale on the ground of misrepresentation. It was held by their Lordships of the Privy Council that the case was one in which the Court had failed to exercise jurisdiction vested in it by law and the decision was therefore subject to revision under the present section. Now, if this amendment is carried, the case would not be covered by the section as it is now proposed to be altered by the amendment, because a refusal to exercise jurisdiction in regard to orders is expressly excluded. Now, Sir, that is a very important matter and the illustration tends to show the necessity of the application of the rule to all interlocutory orders where of course they satisfy one of the three conditions, *viz.*, where a jurisdiction not vested in the court has been exercised or where the court has failed to exercise jurisdiction so vested or where illegality or material irregularity has been committed. There is absolutely no reason why one class of cases should be judged by one standard, and another and far more important class should be treated differently. The House will

bear in mind that there are very few decrees that are not open to appeal and those few decrees that are not open to appeal are comparatively of less importance than the many very important orders that are asked for day after day in courts, involving very large amounts of money and sometimes very important rights. If there is any reason to enlarge the jurisdiction in any class of cases, I submit it is in the class of cases which comes under orders final or interlocutory. As I have submitted, there are many final orders, under the various Acts which I have referred to, which are not appealable and there is no remedy at all. If we take away that remedy now, there will be no provision at all in the law to carry them to the High Court. The whole argument, Sir, is based upon the law's delays. Now I can assure the House that so far as the Allahabad High Court is concerned, there need absolutely be no fear of that, because only last week no less than 45 first appeals were dismissed by one bench in one day. As for cases of revision, they sometimes take two minutes each. What I submit is that the jurisdiction itself is more or less discretionary and you cannot lay a case before any High Court in which the High Court will feel itself by the terms of the law compelled to take action. It has to go further and see whether any injustice would be done by not taking action. In the case of interlocutory orders, I know that applications have been refused time after time on the ground that the matter will be considered when the case comes up on appeal from the final decree. There is no reason, therefore, why this innovation should be introduced into the law, and I agree with Mr. Srinivasa Iyengar that instead of clarifying the law it simply mystifies it.

The Assembly then adjourned for Lunch till Twenty-Five Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Twenty-Five Minutes to Three of the Clock, Mr. President in the Chair.

Mr. President: The House will now resume further discussion of the motion by the Honourable Sir Alexander Muddiman:

"That the Bill to amend the Code of Civil Procedure, 1908, for certain purposes, (amendment of section 115), be taken into consideration."

The Honourable Sir Alexander Muddiman: Sir, I must confess that I should have hardly thought a Bill of this character would have excited so prolonged a debate, but I had forgotten that this House is very largely composed of exceedingly able lawyers. I am sure the House is greatly indebted to them for the opinions we have had to-day on the many interesting points which have come up for consideration. Sir, I propose, with the permission of the House, to deal first with one of the points which was taken last. That is, if I understood the arguments of my Honourable friends opposite, or some of them, they say the Bill is wholly innocuous in that it does not affect the power of the High Court under section 107, and therefore, whatever happens, the power of revision remains. If that is so, Sir, it seems a little curious that my Honourable friends who have spoken on the Bill should have devoted quite so much attention to demolishing the merits of the Bill . . . .

Mr. M. A. Jinnah: Sir, ...

The Honourable Sir Alexander Muddiman: I do not give way, Sir. If my Honourable friend wishes to make a personal explanation, I will give way.

Mr. M. A. Jinnah: The Honourable Member is misrepresenting me. So far as I am concerned, all I said was this, that certain High Courts have held that under section 107 of the Government of India Act they have not only administrative jurisdiction but judicial powers to revise. That has been held by a High Court. Either that is good law or bad law. If it is good law, then it is no use your bringing in this Bill.

The Honourable Sir Alexander Muddiman: I am interested in my Honourable friend's remarks, but Mr. Jinnah was not the only speaker on that side. The argument I am refuting was used by other speakers. Mr. Jinnah, as I understand him, on this point has correctly stated the law, but the argument was used in other quarters that, as the Bill purported to deal inefficiently with 107, the Bill was unnecessary and would have no effect on the law, and, that being the case, I was rather surprised that it was so violently opposed.

I will now deal with Mr. Jinnah. The power conferred by the Code and the power conferred by section 107 are not, if I may submit in all humility to this House, entirely co-extensive. The courts are, it is well known, far more cautious in invoking their power of superintendence than in invoking their power of revision. I appeal to any lawyer in this House to say if I am not correct. When the courts act under 107 they move rather delicately, about as delicately as they do when they take proceedings in contempt. That is a point which I think the House should bear in mind. Now, Sir, so much eloquence has been spent on this Bill that I am more convinced of its merits than I was when I introduced it. (Laughter.) I cannot help feeling that, if my legal friends feel it is going to cut into their practice to this extent, then there must be more in the Bill than I thought. Now my Honourable friend, Mr. Jayakar, imparted, if I may say so, or endeavoured to impart a slight tinge of political life into this Bill. I admire him for doing it, for a drier Bill I have never had to deal with. (Laughter.) Willing as I am on all occasions to assume the Machiavellian intention of the Executive to interfere in all matters, I cannot really see in the reduction of the power of the High Court to interfere by way of revision in civil proceedings, any manifestation of that doubtless dangerous process. He said, Sir, that he took his stand on the line that nothing should be done to impair that palladium of British justice, the High Court. I agree, Sir, he did not use the word "palladium" but he evidently intended to and I do. Nothing will give me greater pain than that this very small Bill is going to do anything of the kind, for in that enlightened province from which one of the leaders of this House comes they do suffer from this disability that, in so far as this Bill is concerned, the Courts there do not interfere with interlocutory orders for that is the existing law in that province. Mr. Jayakar, living as he does in the enlightened province of Bombay, has the confidence to hold an opinion of the law to be reactionary which does not apply to a province which I regard as equally enlightened. So I think I have disposed of the argument as to a Machiavellian scheme on the part of Government in bringing forward this very simple Bill which is entirely of legal importance.

Now I am somewhat surprised—I really am—that the question of the reconciliation of differences between the High Courts should be treated so lightly. I must confess it is new to me that it is desirable that the High Courts of different Provinces should crystallise different forms of law. In fact, I have often been urged to terminate differences between competing High Courts and one of the arguments that has been much pressed by

those who have urged the establishment of a Supreme Court of Appeal in India is that that kind of difference will, under their proposals, be terminated without necessity for legislation. I am not addressing my remarks to my Honourable friend, Mr. Jinnah, who did not use that argument. Now, Sir, it is said that competent judges dispose of these matters very readily and I am quite prepared to admit that. But if I am quite prepared to admit the argument I have heard from one side of the House, I have heard from the other side of the House that we have no competent judges. There seems then to be some difference of opinion. Might I point out to many of our leading lawyers who sit in the Assembly—that it is exceedingly difficult to get them to assist us in the judicial department?

There is one little point I would like to bring to the notice of the House. I have a few statistics here. I did not lay them before the House but I think now, in view of the arguments adduced, I must mention them in my reply. The argument was that there are very few of these cases and that they do not amount to very much; they are heard very promptly and there is really very little obstruction of justice. Unfortunately, I am not in possession of complete figures, but I have the figures for two important High Courts. It is perfectly true—here I must agree with my Honourable friend, Mr. Jinnah—that the Bombay High Court is—shall I say—very reticent in using their powers of revision. There are other High Courts however who are not so reticent; and the figures are not very reassuring. In Madras there were 1,221 of these applications, while in the Bombay Presidency there were 108 in the course of a year. The figures are for 1923 and 1924 respectively. Taking the 1923 figures for Madras, the number admitted was 1,008; the number dismissed was 213; and, when they came on for final hearing, 189 were allowed and 569 were rejected.

Mr. M. A. Jinnah: Does it apply to interlocutory orders?

The Honourable Sir Alexander Muddiman: Certainly.

Mr. M. A. Jinnah: All?

The Honourable Sir Alexander Muddiman: Yes, certainly. In Bombay there were 108. My Honourable friend was kind enough to point out to me and he rightly corrected me—though I was misled by what the Honourable Member said into what is always a very dangerous thing—a rash interruption into intervening on a bad point—he was in fact correct in stating that the delay occurs not on the motion of revision but after a rule has issued. However, I have some interesting figures which show the actual time that was taken by these applications when they did come in the Bombay Court for final disposal. The minimum time of an application of this kind for revision which was finally heard out was 10 months and 7 days, and the maximum was one year and five months; the average was one year and one month.

Mr. A. Rangaswami Iyengar: That is Bombay?

The Honourable Sir Alexander Muddiman: That is Bombay. I am sorry I have not got the figures for Madras. So I think there is something to be said for the point of view that, when unfortunately these interruptions or stays of proceedings do take place, they do lead to very serious delays.

Now, Sir, it was said "Why do you cut into the jurisdiction of these High Court Judges who exercise their powers of revision very carefully? You must be very careful how you do it." I agree. But why is it then

[Sir Alexander Muddiman.]

that the majority of our judges are in favour of our cutting into their powers? That seems to be a point not without interest. The bulk of judicial opinion consulted is in favour of the reduction of the power.

The next point I have to make is this: it was said that one of the most efficient judges in the disposal of these applications—and I bear testimony to that fact—was Sir Norman Macleod, the late Chief Justice of the Bombay High Court. It was this very Sir Norman Macleod who assisted the Civil Justice Committee in drawing up this recommendation.

Mr. M. A. Jinnah: Is there any evidence?

The Honourable Sir Alexander Muddiman: Merely the statement of the Civil Justice Committee.

Mr. M. A. Jinnah: What is that paragraph?

The Honourable Sir Alexander Muddiman: Did the Honourable Member wish to verify the reference? I assure him I am not deceiving him. I quote the actual passage:

"We would accordingly remodel the section by basing it upon the well-defined distinction between "decrees" and "orders" as was suggested to us by the Chief Justice of Bombay."

Now, Sir, there was another point that really rather pained me. Reflection was made on the ability—I think I may almost say—honesty of the members of the Civil Justice Committee. Now, is that right? Is that reasonable? Are you going to discredit them because you do not like this particular proposal—are you going to say that the men who held the posts that these men held are to be treated in this way? (*An Honourable Member*: "Their honesty is not challenged.") Their competence. (*An Honourable Member*: "Yes.") Well, Sir, I will leave the point about honesty. I will take up the point of competence. Sir, the President of this Committee was Sir George Ranken, a judge known, I think in all parts of India, as a very distinguished lawyer. At present he is the Chief Justice of the High Court of Judicature at Fort William in Bengal, a court which at any rate has received some favourable comments in the course of its long and somewhat chequered career. He, Sir, was the President; and I think whatever may be said on the merits or demerits—and I do admit that this is a matter that I should like to see argued out by lawyers on arguments that appealed to them: it is a question on which two opinions are quite possible. I quite admit that. But it is not the sort of question where you should begin to throw stones at people who devoted their time—they may be right or they may be wrong; but they are persons of competence; they are expert persons—to throw stones at them because they put forward proposals you do not agree with, is not quite right. Indeed I prefer to follow Sir George Ranken rather than some of my friends opposite.

My Honourable friend and colleague explained certain difficulties in connection with the Bill and I have no doubt that he has satisfied many members in connection with the doubts that they felt. He pointed out that the Bill is a narrow Bill, that it only affects orders, not decrees, although it has been said and argued with force—and I agree that some of the arguments that were put have to be considered—that we have gone too far. Still, I do contend that this Bill is one which this House ought to take into consideration. It is a Bill in the interests of the poor. As my Honourable friend has said these revision applications are more available to the rich than to the poor; and the figures before me prove that this is a Bill which this House should not throw out at this consideration

stage; it should allow it to go forward with any necessary amendments; but by throwing it out at this stage this House will take the line that it is in favour of delayed justice which is denied justice. (Applause.)

Mr. President: Order, order. The question I have to put is:

"That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes (Amendment of Section 115) be taken into consideration."

The Assembly divided:

AYES—42.

Abdul Aziz, Khan Bahadur Mian.
Akram Hussain Bahadur, Prince A. M. M.
Allison, Mr. F. W.
Anwar-ul-Azim, Mr.
Ashrafuddin Ahmad, Khan Bahadur Nawabzada Sayid.
Ayyangar, Mr. V. K. A. Aravamudha.
Bhore, The Honourable Mr. J. W.
Clow, Mr. A. G.
Coatman, Mr. J.
Cocke, Mr. H. G.
Crawford, Colonel J. D.
Donovan, Mr. J. T.
Dunnett, Mr. J. M.
Evans, Mr. F. B.
Gavin-Jones, Mr. T.
Ghulam Kadir Khan Dakhan, Mr. W. M. P.
Gidney, Lieut.-Colonel H. A. J.
Graham, Mr. L.
Greenfield, Mr. H. C.
Haigh, Mr. P. B.
Hezlett, Mr. J.
Howell, Mr. E. B.
Innes, The Honourable Sir Charles.
Jowahir Singh, Sardar Bahadur Sardar.
Kabul Singh Bahadur, Risaldar-Major and Honorary Captain.
Keane, Mr. M.
Lamb, Mr. W. S.
Littlehailes, Mr. R.
Macphail, The Rev. Dr. E. M.
Mitra, The Honourable Sir Bhupendra Nath.
Moore, Mr. W. A.
Muddiman, The Honourable Sir Alexander.
Nasir-ud-din Ahmad, Khan Bahadur.
Parsons, Mr. A. A. L.
Roy, Mr. K. C.
Roy, Sir Ganen.
Ruthnaswamy, Mr. M.
Sassoon, Sir Victor.
Singh, Rai Bahadur S. N.
Sykes, Mr. E. F.
Tonkinson, Mr. H.
Young, Mr. G. M.

NOES—58.

Abdul Haye, Mr.
Abdul Latif Saheb Farookhi, Mr.
Acharya, Mr. M. K.
Aiyangar, Mr. C. Duraiswamy.
Aney, Mr. M. S.
Ayyangar, Mr. K. V. Rangaswami.
Ayyangar, Mr. M. S. Sesha.
Badi-uz-Zaman, Maulvi.
Belvi, Mr. D. V.
Birla, Mr. Ghanshyam Das.
Chaman Lall, Mr.
Chetty, Mr. R. K. Shanmukham.
Chunder, Mr. Nirmal Chunder.
Das, Mr. B.
Das, Pandit Nilakantha.
Dutt, Mr. Amar Nath.
Dutta, Mr. Srish Chandra.
Ghazanfar Ali Khan, Raja.
Gulab Singh, Sardar.
Haji, Mr. Sarabhai N.
Ismail Khan, Mr.
Iyengar, Mr. A. Rangaswami.
Iyengar, Mr. S. Srinivasa.
Jayakar, Mr. M. R.
Jinnah, Mr. M. A.
Jogiah, Mr. Varahagiri Venkata.
Kidwai, Mr. Rafi Ahmad.
Kunzru, Pandit Hirday Nath.
Lahiri Chaudhury, Mr. Dhirendra Kanta.
Lajpat Rai, Lala.
Mehta, Mr. Jamnadas M.
Misra, Mr. Dwarka Prasad.
Moonje, Dr. B. S.
Mukhtar Singh, Mr.
Murtuza Saheb Bahadur, Maulvi Sayyid.
Naidu, Mr. B. P.
Nehru, Pandit Motilal.
Phookun, Srijut Tarun Ram.
Prakasam, Mr. T.
Rahimtulla, Mr. Fazal Ibrahim.
Rang Behari Lal, Lala.
Ranga Iyer, Mr. C. S.
Rao, Mr. G. Sarvotham.
Roy, Mr. Bhabendra Chandra.
Roy, Rai Bahadur Tarit Bhusan.
Sarda, Rai Sahib M. Harbilas.
Shafee, Maulvi Muhammad.
Shervani, Mr. T. A. K.
Singh, Mr. Gaya Prasad.
Singh, Mr. Narayan Prasad.
Singh, Mr. Ram Narayan.
Sinha, Kumar Ganganand.
Sinha, Mr. Ambika Prasad.
Sinha, Mr. Siddheswar.
Thakur Das Bhargava, Pandit.
Vishindas, Mr. Harchandrai.
Yakub, Maulvi Muhammad.
Yusuf Imam, Mr.

The motion was negatived.

THE INDIAN REGISTRATION (AMENDMENT) BILL.

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

"That the Bill further to amend the Indian Registration Act, 1908, for a certain purpose, be taken into consideration."

Sir, I do not propose to detain the House with any arguments on this Bill. They were stated fully by me when I moved for leave to introduce the Bill. I move that the Bill be taken into consideration.

3 P.M.

The motion was adopted.

Clauses 2 and 1 were added to the Bill.

The Title and the Preamble were added to the Bill.

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

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 3rd February, 1927.