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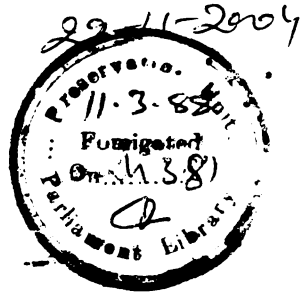
OF THE

THIRD COUNCIL OF STATE, 1932



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COUNCIL OF STATE.

Wednesday, 14th December, 1932.

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

QUESTIONS AND ANSWERS.

Financial Grant of the Imperial Council of Agricultural Research to the University of Dacca.

225. The Honourable Mr. JAGADISH CHANDRA BANERJEE: (1) Will Government be pleased to state the amount of the annual financial grant of the Imperial Council of Agricultural Research to the University of Dacca for research work at the Agricultural Farm at Manipur, Dacca ?

(2) Will Government be pleased to make a statement on the research work done by the scientific expert or experts of the Dacca University at the Manipur Agricultural Farm, Dacca, with the aid of the said financial grant of the Imperial Council of Agricultural Research ?

(3) Will Government be pleased to state whether the annual report of the research work done at the Manipur Agricultural Farm at Dacca with the financial aid of the Imperial Agricultural Research Institute, is translated into the vernacular of the province for the enlightenment of the public in general ? If not, why not ?

The Honourable Khan Bahadur Mian Sir FAZL-I-HUSAIN: (1) The Imperial Council of Agricultural Research has so far sanctioned the undermentioned grants to the Dacca University :

(*i*) Rs. 26,000 spread over a period of five years on account of staff.

(*ii*) Rs. 5,000 initial grant for apparatus.

(*iii*) Rs. 1,518 for apparatus in 1930-31.

(*iv*) Rs. 1,806 for apparatus in 1931-32.

(*v*) Rs. 2,000 for apparatus in 1932-33.

It is probable that a further sum of Rs. 4,000 may be required for apparatus before the scheme is completed in May, 1935.

(2) The research for which the grant has been made is on two problems, namely, (*i*) methods for the mechanical analysis of soils including a study of the organic matter in the soil, and (*ii*) the assimilation of nitrogen by the rice plant. The scheme was started in May, 1930. Interim progress reports on the work done during the years 1930-31 and 1931-32 have been received by the Imperial Council of Agricultural Research and examined by a sub-committee composed of expert members of the Advisory Board of the Council interested in soil problems. The Sub-Committee agreed with the Agricultural Chemist to the Government of Bengal who is co-operating with the Dacca University that satisfactory progress had been made.

(3) The annual reports which have been received so far are periodical progress reports and the results obtained cannot be regarded as final. When the scheme is completed and final results of the work are available, the question of translating them into the vernacular of the province will receive due consideration.

HUNGER-STRIKE IN THE DEOLI CAMP JAIL.

226. THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE: (1) Has the attention of Government been drawn to the news item published under the captions, "Deoli Detention Camp", "Is a Hunger-strike On?" in the *Hindustan Times* of the 29th November, 1932?

(2) Is it a fact that trouble occurred there on the 2nd November last as a result of a conflict between the Gurkha guards and the Bengali detenus?

(3) Were there any casualties among the detenus? If so, how many and what is their present condition?

(4) Is it a fact that the detenus have been on hunger-strike since the day of the incident? If so, what have Government done to end the reported hunger-strike of the detenus?

(5) Will Government be pleased to make a detailed statement on the incident?

(6) Is the Deoli Detention Camp visited from time to time by any non-official gentlemen under orders of Government? If so, do they submit any report to the authorities? If so, will Government be pleased to lay on the table the report or reports of the non-official visitors to the Deoli Detention Camp?

(7) Why has detenu Satindranath Sen been transferred to Ajmer Central Jail?

THE HONOURABLE MR. M. G. HALLETT: With your permission, Sir, I will answer the seven items of the question together. The facts are as follows:

During October, some of the detenus at the Deoli Camp disregarded the rules about roll-call. On the 26th October, two detenus were found absent from roll-call, and subsequently refused to obey the orders of the Superintendent summoning them to his office. The Superintendent awarded punishment to the senior detenu for absence from roll-call and deliberate and obstinate disobedience of his orders. The punishment awarded was reduction of diet allowance and personal allowance for 14 days and the cancellation of the privilege of writing and receiving letters for a period of two months. On the morning of the 29th October, the Superintendent received a general communication from a number of detenus threatening that they would cease to attend roll-call unless the punishment was withdrawn. On the 30th, only nine or ten detenus attended the roll-call, and similar disobedience of the orders occurred on the 31st October and the 1st November. Later on that day one detenu, who had not only refused to attend the roll-call but for a long time could not be found at all, was summoned to the Superintendent's office, but refused to obey. He was again summoned to attend on the morning of the 2nd, but again refused. The detenus' manager had been asked to persuade the detenu to proceed to the office, but he replied that he could give no help in the matter. Guards were therefore sent to bring the detenu to the office, whereupon some 50 detenus crowded round the entrance of the room blocking the way and adopting a threatening attitude towards the Superintendent. The guards were ordered to make a passage for the removal

of the detenu. They forced back the crowd and a scuffle ensued. The detenus abused the jail officers, seized the Deputy Superintendent round the waist and tore the uniform of the Superintendent and others. Two detenus received small cuts on the head, and a number received contusions. There is no truth in the suggestion that 30 detenus received injuries of a serious nature. On the 5th November, two of the detenus commenced a hunger-strike, and four others followed their example on various dates between the 10th and 15th November. On the 25th November, all six abandoned the hunger-strike, and their condition is understood now to be quite satisfactory. The hunger-strikers were looked after by the Medical Officer of the Camp, and the additional Civil Surgeon of Ajmer was also specially sent out to Deoli and remained there superintending their treatment.

The Chief Commissioner, Ajmer-Merwara, has appointed a Visiting Committee including a non-official visitor. Under the rules the Committee must visit Deoli Jail not less than once in every calendar month and their reports are submitted to the Chief Commissioner. I do not propose to lay those reports on the table.

Mr. Satindranath Sen has been transferred from the Deoli Jail, as he was the prime instigator of these organised attempts to defy authority.

CRIMINAL LAW AMENDMENT BILL—*contd.*

THE HONOURABLE THE PRESIDENT: The Bill to supplement the Criminal Law. Clause 2.

THE HONOURABLE MR. VINAYAK VITHAL KALIKAR (Central Provinces: General): Sir, I move:

"That in clause 2 for the word 'wilfully' the word 'maliciously' be substituted."

Sir, my amendment is a very innocent one and my intention in moving it is to shift the burden on the prosecution to prove that the accused was instigated by malice to induce the public not to join the Military, Naval, Air or Police service of His Majesty. It is admitted that under the ordinary law of evidence the prosecution has to prove the bad faith of the accused. In the two exceptions that have been appended to this clause the accused will have to prove good faith, and, therefore, the burden will be on the accused to prove good faith. It will be very difficult for the accused to prove good faith. So my intention in moving this amendment is simply to see that the accused is not put to any trouble and opportunity is given to enable him to show that he was not at all instigated by malice in dissuading the public from entering the Naval or Military forces. The word "malicious" has been defined as

"a wrongful act done intentionally without just cause or excuse".

Now, Sir, if the prosecution really has a good case against the accused it can prove that the accused really intended with malicious intention to dissuade the public from enlisting, and it will also be possible for the accused to prove his innocence. So, therefore, I appeal to the Honourable the Home Secretary to accept my innocent amendment.

THE HONOURABLE MR. J. BARTLEY (Government of India : Nominated Official) : Sir, I am afraid that the amendment moved by the Honourable Member is not quite so innocent as he attempts to make out. This clause as originally drafted ran :

" Whoever dissuades or attempts to dissuade ..... ".

In response to an objection which was ingenious and imaginative rather than well-founded, the word " wilfully " was inserted. The effect of " wilfully " is to put beyond doubt the fact that a wrongdoer who commits this offence involuntarily is not touched by the section. In fact, Sir, " wilfully " means nothing more than this, that the wrongdoer being a free agent and knowing what he is doing and intending to do what is done commits the act. Now the word " maliciously," if substituted for the word " wilfully," would have a very much more substantial effect on the meaning of the clause than that. The Honourable Member has said that a malicious act is a wrongful act done intentionally without just cause or excuse. That is a very bare and inadequate definition of the word " malicious." A man acts maliciously when he wilfully and without lawful excuse does that which he knows will injure another in person or property, and the word " malicious " and " maliciously ," although used in English law in the expression " malicious prosecution," " unlawfully causing death by malice aforethought " and so on, has been avoided as far as possible in the Indian Penal Code. In the Code as it stood for 40 years the word " maliciously " can be found only I think twice. Stephens in his Digest of the Criminal Law calls attention to the pitfalls which underlie this word " maliciously." He says :

" The word ' malice ' seldom has any meaning except a misleading one. It refers not to intention, but motive : and in almost all legal inquiries intention, as distinguished from motive, is the important matter ".

He adds :

" Another objection to it is that its popular meaning is not barely ill-will, but an ill-will which it is immoral to feel ".

Now, what the State sets out to do by this clause is to prohibit a certain class of offence as being against the interests of the State. It is necessary to stop them. In other words, this clause creates a wrong of absolute liability. The law says, this act shall not be done, whatever the intention of the doer. It cannot afford to make terms with the wrongdoer in matters of this kind. An important right of the State is at stake, and the State sets out to say that in the public interest this act must not be done. You do it at your peril. You may do it with the best motives, you may do it with an innocent intention, but you must not do it at all. If you are a free agent and know what you are doing, you are liable to punishment if you do the act at all. The Honourable mover says that he desires to shift to the prosecution the burden of proving that the wrongdoer was actuated by malice, that is, that he had an intention to do without lawful excuse an act which he knows will injure another in person or property. If you say here that the prosecution must prove malice, they must prove the state of mind of the wrongdoer. They must prove that he does an unlawful act to the detriment of another. To whose detriment ? To the detriment of the person dissuaded ? Well, it may not be to his detriment or it may be absolutely impossible to prove that it is. Then, to the detriment of the State ? The answer is, what detriment is there

to the State if one man is dissuaded from enlisting. The detriment is so slight that it could be argued on the principle *de minimis non curat lex* that it is beneath the notice of the law. But if a number of cases of this kind accumulated, the detriment caused by a number of attempts to commit this offence would be a very serious matter. The State might in the end be prejudiced in obtaining the services of citizens in its own defence. It is not the individual case that counts, it is the aggregate. Therefore, if you put upon the prosecution the onus of attempting to prove what can only be proved by overt acts, the state of mind, and if you put upon the prosecution the onus of showing that some detriment was caused, you render the protection afforded to the State by this enactment practically nugatory. Therefore this amendment, Sir, must be opposed.

The motion was negatived.

THE HONOURABLE MR. VINAYAK VITHAL KALIKAR: Sir, since my first amendment to this clause has not been accepted, I move another amendment. There is a clerical error in it and, with your permission, Sir, I want to add the word " or " before the words " attempts to dissuade the public or " in my amendment. My amendment therefore runs thus :

" That in clause 2 the words ' or attempts to dissuade the public or ' be omitted."

The clause would then read :

" Whoever wilfully dissuades any person from entering the Military, Naval, Air or Police service of His Majesty shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both."

Sir, in my opinion this clause is unnecessary and the difficulties that are anticipated by the Government for framing this clause are practically imaginary. Owing to unemployment among the educated, as well as the uneducated classes, you will get a number of persons to enter the Military, Naval, Air or Police service of His Majesty. I may state, Sir, that if anybody is dissuading the public from entering these services, I believe it is the Government which is dissuading them, because I can say with confidence about the educated classes that if you give them proper facilities, you will find a number of educated persons ready to enter the Military, Naval, Air or Police service.

Coming to the amendment, Sir, I submit that in this clause and Exceptions, there is no definition of " attempt to dissuade. " The phraseology is so vague that one cannot say what " attempt " is, what is the meaning of " attempt " and what results have followed from the " attempts " if there are any. Sir, I submit that there must be some overt act and that overt act must result in dissuading the public from enlistment. So if there is any overt act on the part of the wrongdoer and if it does not result in dissuasion, then in that case these words are unnecessary. By keeping these words in the clause, I submit that, in my opinion, you are giving practically a blank cheque to the prosecutors, because nobody knows what interpretation will be put on the words " attempts to dissuade " by the courts and if I were to give advice to a person on account of his personal circumstances, still I might come under the purview of the clause if these words are there. So I submit, Sir, that the words " attempts to dissuade " should not be there in the clause, and if these words are removed the object which the Government have of getting enlistment in these services will be achieved.

With these few words I move my amendment.

THE HONOURABLE MR. J. BARTLEY: Sir, the Honourable Member has corrected his amendment, but I do not know whether he yet completely appreciates the implications of the wording he has employed. The amendment is that the words " or attempts to dissuade the public or " be omitted. The clause will therefore read :

" Whoever wilfully dissuades any person from entering the Military, Naval, Air or Police service of His Majesty, etc."

There are therefore two results following from this amendment, first, that attempts to commit the offence are not punishable, and second, that the offence when committed with regard to the public as well as an attempt to commit the offence in regard to the public is no longer punishable. Now, the result of the omission of the word " public " is that general solicitations not addressed to individuals would no longer be punishable, that addressing a public meeting would no longer be punishable, that issuing a circular addressed to a community would no longer be punishable. In other words, the most dangerous and far-reaching forms of this deleterious activity are left untouched by the clause. As regards the effect of the omission of the word " attempts," so far as I understand the Honourable mover, he has no particular objection to the punishment of attempts *per se* but he objects in this case because he conceives that the courts may have difficulty in determining what actually constitutes an attempt. He says there might be no overt act. Well, if there is no overt act, there is no offence. I do not share his apprehension that the courts will have any difficulty in interpreting the word " attempts. " It is a well known stage in the commission of an offence. There are four stages : the intention or formation of the mental state, the preparation, the attempt and the commission. The law as a rule takes no regard of the first two stages, but it steps in at the third stage. In all modern systems of jurisprudence, attempts are penalised. In the Indian Penal Code section 511 makes a general provision for attempts where not otherwise provided for by the Code and if the Honourable Member will look at sections 153A, 161, 162, 165, 171C and 196 he will see that in the wording of these sections in the Code itself attempts are penalised—" Whoever promotes or attempts to promote feelings of enmity or hatred ", " Whoever accepts or obtains or agrees to accept or attempts to obtain ". Now, have the courts ever had any difficulty in interpreting what " attempt " means in these sections ? I think not. Therefore, Sir, my objections to this amendment are that it rules out the most dangerous and far-reaching form of this activity, and secondly, that the fears of the Honourable mover are completely unfounded in respect of the difficulty of interpreting what the word " attempts " means. I must therefore oppose the amendment.

The motion was negatived.

THE HONOURABLE MR. VINAYAK VITHAL KALIKAR : Sir, my third amendment is as follows :

" That in clause 2 after the words ' or with fine ' the words ' which extend to Rs. 200 ' be inserted."

This is a new offence created under this Bill, and in certain clauses of this Bill, I mean in clause 4 and clause 7, a maximum punishment of fine has been mentioned, but in this case no maximum punishment of fine has been mentioned. My submission is that as the Government has created this new offence there ought to be some limit for the fine which a magistrate will impose on a wrongdoer under this clause. I know, Sir, that an argument would be advanced that the

trial would be by a first-class magistrate and he would fine only Rs. 1,000 but in some parts of the country, especially in my province, the Honourable Sir Maneckji Dadabhoy knows it, under the Ordinances and in some cases under the sections of the Indian Penal Code, certain offences were dealt with severely and an over-enthusiastic magistrate went to the extent of imposing a fine of Rs. 10,000 under section 124A. So there must be some limit. Supposing this trial comes before a magistrate who is empowered under section 20 of the Criminal Procedure Code he may fine from Rs. 10,000 to Rs. 20,000. So as you have created a new offence and as I think you do not want to be vindictive on the wrongdoer, you must fix some limit and therefore I propose that a limit of Rs. 200 should be fixed.

THE HONOURABLE MR. M. G. HALLETT (Home Secretary): Sir, I must oppose this amendment. It will be admitted, I think, by the Members of this Council that the offence of dissuasion from enlisting is a very serious one and a deterrent punishment must in some cases, not necessarily in all cases, be imposed. It has been argued that we have created a new offence, I admit we have created a new offence. There was a lacuna in the Penal Code. There was a hole in the law and Congress agents tried to get through that hole in the law. But because we have created a new offence, because we have realised that a serious offence may be committed, that is no reason why we should limit the power to impose punishment for that offence. The Honourable Member also referred to the fact that in certain cases he has heard of very severe fines being inflicted, that magistrates with special powers have imposed sentences of Rs. 5,000 to Rs. 10,000. But, Sir, even in cases tried by these courts there is still the right of appeal to the High Court or some other appellate court and my experience of appellate courts is that if a fine or a punishment is in their opinion in any way too high they reduce it. Further, I would remind the Honourable Member that there is a section in the Indian Penal Code which is no doubt borne in mind by the High Court when dealing with such a case that if no limit is stated in the law to the amount of a fine that fine shall not be excessive. To suggest that Rs. 200 is sufficient punishment for an offence of this kind in the worst circumstances—for after all this is a maximum and need not be imposed in every case—seems to me to be quite absurd. I have looked through the Code to see in what cases the limit of Rs. 200 is fixed. I have found one—that is a case of an offence under section 358—assault on grave and sudden provocation. It cannot for a moment be held that the offence of dissuasion from enlistment is at all comparable to the very petty offence of assault on grave and sudden provocation. We can trust our magistrates to impose suitable fines in suitable cases. Even if they do not we can trust our appellate courts to see that the fine is appropriate and for that reason we think it far better to fix no limit in the law. I oppose the amendment.

The motion was negatived.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab: Non-Muhammadan): Sir I move:

"That to clause 2 the following proviso be added, namely:

'Provided that no Court shall take cognisance of an offence punishable under this section unless upon complaint made by order or under authority from the Local Government or some officer empowered by the Government in this behalf'."

[Rai Bahadur Lala Ram Saran Das.]

Sir, this amendment is a simple one and my object in moving it is to avoid giving a blank cheque to the police. I do not want that any policeman might prosecute anybody he likes. What I propose, Sir, is that as similar clauses exist in this very Bill in clauses 4 and 7, I see no reason why such a special clause should not be added to this section. What I wish, Sir, is that the filing of a prosecution should be in the hands of a responsible officer. In case the case goes to the Local Government, the Local Government will see whether or not there is a *prima facie* case against a certain person. This will create confidence among the public and the public will find that innocent persons are not allowed to be wrongfully hauled up by the police. Therefore, Sir, I hope this House will accept this amendment.

THE HONOURABLE MR. M. G. HALLETT: Sir, the Honourable Member has moved this amendment, which I must oppose, because he anticipates that the police will use the power given them by this section unnecessarily and to harass innocent persons. I do not think there is any need for that apprehension. My own opinion of the police is considerably higher than that of very many gentlemen on the opposite side of the House and my experience of them which is considerable is that they do not file cases unnecessarily. Strict control is kept by the superior officer and there are very few occasions on which they abuse their powers. There are it is true certain sections of this Bill, there are certain sections in the Indian Penal Code in which the sanction of the Local Government is required. In the case of the Penal Code, that sanction is required in cases mainly of very serious offences against the State coming under Chapter 6 of that Code. In those cases difficult questions of law may arise but in cases where a person has gone to a village and has made a speech or has talked to people with a view to dissuading them from enlisting it is merely a very simple question of fact and surely the local officers, the local police and the local magistrates, are competent to decide questions of that kind and say whether a *prima facie* case has been made out, without the very cumbrous procedure of references to the Local Government. If a reference is made to the Local Government it must involve delay. That is our universal experience. But in these cases delay might be most disastrous. A Congress volunteer is going round the village trying to persuade people not to enlist in the Army. He tries to interfere with the recruiting party. It is essential in the interests of the Army that prompt action should be taken to stop any such pernicious activity. There is a further point that I would make. The Honourable Member referred to the necessity of the institution of such cases being subject to the control of a responsible officer, not merely in the hands of a sub-inspector of police. In many cases where recruiting parties are interfered with, it is probable that the first complaint will be made to the officer in charge of that recruiting party, that is to say, to a commissioned officer of His Majesty's Army. He would probably make a preliminary enquiry and then an enquiry will be made by the local police. That again is a protection, if a protection is needed, against any chance of harassment by a sub-inspector. But the main ground on which I oppose this amendment is that to introduce the Local Government into a case of this kind which merely involves decisions on questions of fact would involve a very cumbrous and very dilatory procedure and will take away greatly from the deterrent effect of prompt action. I oppose the amendment.

The motion was negatived.

THE HONOURABLE THE PRESIDENT: The question then is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 3.

THE HONOURABLE MR. VINAYAK VITHAL KALIKAR: Sir, this amendment is just the same as the one I moved on clause 2. The amendment is:

"That in clause 3 the words 'or attempts to induce' be omitted."

A new offence is being created and this clause is very wide. Taking into consideration the *Explanation* to this clause, even a village choukidar, or the servant of a local authority or railway administration will come within the scope of this clause. If you make the clause so wide, you must, at the same time, see that the wording of the clause is not vague and that it is not difficult for the prosecution or the accused to prove the guilt or innocence respectively. At the same time, the courts must not find it difficult to interpret the words "attempts to induce." It has been said in opposition to my first amendment on clause 2 that the word "attempt" may mean three different things. I quite agree that it means really three different things, intention, preparation and result. But here what is the meaning? The word "attempt" has not been defined in this Bill. The result will be that the prosecution will get a free hand to prosecute anybody though there is no practical result of his attempt to induce any public servant to fail in his duty. Cases may occur when advice may be given by the relatives or friends of a public servant that on account of certain circumstances he should not be in the service and that he should give it up. He will thus become a wrongdoer and will be punished under this clause. Even if there is an attempt, and if it proves abortive, there is no harm done to the administration. If really the attempt is successful and the public servant leaves Government service or fails in his duty, then there is some harm, but if the attempt is not successful, then the administration can be run as smoothly as before. In view of the large number of servants that have been included under the *Explanation*, petty cases, cases specially arising out of personal malice or out of a private grudge will crop up, and in such cases the principal witness will be the Government servant, and he, out of a private grudge, will try to take revenge on his opponent. Take, for instance, the case of a village choukidar who is mentioned in the *Explanation*. In my part of the country, the village choukidar, if I understand the term rightly, is called the kotwal. In my part of the country, practically in every village there are two parties. Suppose the kotwal belongs to one party and the accused to another. Suppose, again, the tenants who belong to the opposite party say that they cannot pay their rent on a certain day or that the kotwal should not ask them for rent. That will also be an attempt to induce him to fail in his duty as a public servant. In these circumstances, I want that these words should be omitted altogether. The court also should not find any difficulty in interpreting these words. At the same time, the courts should come to a certain conclusion not only on the evidence of the public servant, but there should also be some corroborative evidence to bring home the guilt to the accused. Therefore, Sir, I submit that these words should be omitted.

With these words I move the amendment.

THE HONOURABLE MR. J. BARTLEY : Sir, it appeared at first from the speech of the Honourable mover that he did not know what the meaning of the word " attempt " was. Subsequently it appeared that he was able to make a tolerably accurate guess by the example which he provided. There is really no obscurity or mystery about the meaning of the word " attempt " in law. " Attempt " is an act done in part execution of a criminal design, amounting to more than preparation but falling short of actual consummation. The only justification that I can see for accepting the amendment of the Honourable Member is if this House came to the conclusion that when a man sets out to commit an offence and succeeds, he should be punished, but when he sets out to commit an offence and does his best and fails, then he should be consoled by immunity for his incompetence or his lack of success. That seems to me about the only argument that can be put forward in favour of this amendment. Subversive activity is to be allowed to continue until it produces effect, until it succeeds. Only then would the Honourable Member agree to penalize it. This is a case in which it is absolutely essential that attempts to commit the offence should be punished with the same severity as actual commission of the offence, and that principle will be found recognized in the Indian Penal Code in the offences dealing with the relations of the public with public servants and servants of the State :

" Whoever assaults or threatens to assault, or obstructs or attempts to obstruct any public servant in the discharge of his duty in endeavouring to disperse an unlawful assembly ",

and so on. Everywhere you will find that the logical position has been adopted that it is necessary to punish and by punishment to prevent attempts just as much as it is necessary to punish and prevent the commission of certain offences. I therefore, Sir, oppose this amendment.

The motion was negatived.

THE HONOURABLE MR. VINAYAK VITHAL KALIKAR : Sir, my next amendment is :

" That in clause 3 for the words ' one year ' the words ' six months ' be substituted."

I do not think this amendment requires a speech from me. It is just like the amendment I moved under clause 2. Of course, this being a new offence a maximum period of punishment has to be fixed. But I do not know of any reason why the maximum period fixed in the case of two clauses, clause 4 and clause 7, should not have been fixed in this case. I think that a maximum punishment of six months will be quite sufficient and it is with that object that I move this amendment.

THE HONOURABLE MR. M. G. HALLETT : Sir, I am afraid I must oppose the Honourable Member, and my reasons for doing so are much the same as those which I gave when discussing his previous amendment. The offence is a serious one which may cause considerable trouble and inconvenience to the public generally, if somebody comes along and persuades public servants to fail in their duty. If he persuades the servants of a railway company or persuades the servants of a local authority, the inconvenience may be great. You may be deprived of your electric light or your water supply if they get hold of the servants of a municipality and persuade them to give up their work. You may be deprived of the convenience of telephonic communication if they get hold of the servants of the post office and persuade them to give up their

work. Government feel that they are bound to make it possible to impose a deterrent sentence when such offences are committed. The full sentence will not always be imposed, but there may be cases in which it is fully justified. I oppose the amendment.

The motion was negatived.

THE HONOURABLE MR. VINAYAK VITHAL KALIKAR: Sir, I move:

"That in clause 3 after the words 'or with fine' the words 'which may extend to Rs. 200' be inserted."

In this clause, Sir, the maximum period of punishment has been fixed for one year, but the maximum amount of fine has not been fixed. I fail to understand why it has not been fixed? If the period of punishment can be fixed, then under the same principle the maximum amount of fine also should be fixed. I have already said that as this is a new offence you should not be vindictive. It is just possible that the court may levy any amount of fine, and therefore I submit that some maximum should be fixed.

Sir, I move.

THE HONOURABLE MR. M. G. HALLETT: Sir, I am afraid I must again oppose the Honourable Member. I do not think I need repeat the arguments which I have already given in regard to the other amendment. We are following a very excellent precedent in this clause. There are many sections in the Penal Code where the sentence of imprisonment is subject to a maximum but where the fine is unlimited.

The motion was negatived.

THE HONOURABLE MR. VINAYAK VITHAL KALIKAR: Sir, my next amendment is:

"That in the *Explanation* to clause 3 the words 'a servant of a local authority or railway administration, a village choukidar and an employee of a public utility service as defined in section 2 of the Trade Disputes Act, 1929,' be omitted."

It is argued, Sir, on behalf of the Government that this Bill is intended to crush the civil disobedience movement. If it is intended to crush the movement launched by the Congress I may bring to the notice of the House that Congressmen are very keen to enter local bodies and they will not in the least attempt to disorganize the services of local bodies, because if those services are disorganized the public will feel the sting of it and as they are returned by the public they will think twice before disorganizing such services. The same applies to members of public utility services who will not fall a prey to the tactics of Congressmen. They have launched the civil disobedience movement but they do not want at all to inconvenience the public. It is not their programme to put the public to trouble by the stoppage of these services. If this *Explanation* is left here it will not do any good to the administration and it will create unnecessary discontent. Under the Trade Disputes Act labour organizations have a right to get their grievances redressed by striking. If this *Explanation* is left with the clause the right of the labour organizations to get their grievances redressed by way of a strike will come to an end. The same case occurs in local bodies. I am afraid I have to state it frankly, but I must state it that in all local bodies, rightly or wrongly, there are two factions and the office-bearers of local bodies are to some extent very strict when they have got the least suspicion that some of their servants belong to the other party. In fact those

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servants do not belong to the other party. In such cases, Sir, the servants of the local bodies also try this remedy of going on strike for getting their legitimate grievances redressed. In that case, the remedy that is open to the servants of local bodies will no longer be available. I have already referred in my speech to the inclusion in this clause of village choukidars. It will be a great hardship and will give a handle to the police to institute a large number of frivolous prosecutions. Taking into consideration these hardships, I submit that the inclusion of servants of local authorities, railway administrations and village choukidars and employees of public utility services in the clause is unnecessary. I therefore submit that my amendment should be accepted by the Government and these words removed.

THE HONOURABLE MR. M. G. HALLETT: Sir, again I must oppose this amendment. The exclusion of these words would render this section very ineffective; it would take away the protection this section is intended to give to the public. The Honourable Member is optimistic that Congress would not indulge in any of these activities, it would not interfere with the work of local authorities or with the work of some of the public utility services. I do not think that optimism is justified. We never can quite tell what mischievous activity the Congress will not adopt tomorrow. It may not be on their programme at present, it was, I admit, not in their original programme. But we have all heard of frequent cases where Congress volunteers caused considerable inconvenience to the travelling public by pulling communication cords of railway trains. We have heard of other cases where mischievous boys employed by the Congress have set fire to letters in letter boxes. We have heard also of cases in which telephone and telegraph wires have been cut. We have also had a case which occurred in the province from which I come in which certain people who from the evidence that was produced in court were shown to be connected with the Congress even went so far as to make two very serious attempts to derail the train. Those attempts were, I am glad to say, unsuccessful, unsuccessful rather in the sense that no loss of life occurred and I am glad to say that those two miscreants are now suffering transportation for life. Those are examples of the activities, the mischievous activities, due to Congress; and it is those activities or similar activities that a section of this kind is designed to prevent. Apart, however, from these servants of local authorities or railway administrations or public utility services, the Honourable Member thinks that by including the village choukidar we may give power to the police to bring false cases against those who refuse to cow tow to their authority. This section has been in force for some considerable time and has had none of those results. The number of cases reported under this section is not large, but the mere fact that this section has been a part of the law of the land for the last year or so has protected the humble choukidar from the very serious harassment to which he was exposed during the early part of 1930. I referred to that in my general speech on the Bill and I pointed out that in an area which I knew a great number of choukidars were forced by means of social boycott to fail in their duty, to neglect their work, the result was one disastrous to the general public, for a free field was thrown open to the thief and the dacoit and there was immediately a very large increase in ordinary crime. Sir, I consider that this definition, amplifying the definition of a public servant in the Penal Code is essential and without it this section would have very little effect.

The motion was negatived.

THE HONOURABLE MR. SATYENDRA CHANDRA GHOSH MAULIK (West Bengal : Non-Muhammadan) : Sir, the amendment which stands in my name runs thus :

" That in the *Explanation* to clause 3 the words ' a village choukidar ' be omitted."

Under this clause it is a punishable offence to tamper with public servants and in the Explanation to this clause we find the definition of public servant. This definition is so wide that it includes from the highest paid officers down to the ill-paid choukidars of the village. Any inducement or attempt to inducement to fail in their duty will be punishable with imprisonment for a term not exceeding one year, or with a fine of unlimited amount, or with both. Sir, even in the Ordinance itself " public servant " did not include such a wide class of people as the village choukidar or a railway servant. A village choukidar is generally illiterate. He is in most cases recruited from the lowest ranks of society. He is low paid and I do not know, and I am sure, if any ordinary villager knows what are the actual duties of his employment. His outlook cannot but be narrow. He is self-centred and too much engrossed with parochial affairs, and anyone who tries to belittle his importance in any way will at once incur his wrath and run the risk of being harassed under this section. The desire of power in excess caused angels to fall, leave alone an ordinary illiterate village choukidar. A weapon like this in his hands is sure to be an engine of oppression and a strong handle for satisfying his private grudge.

Sir, I move.

THE HONOURABLE MR. M. G. HALLETT : I have already given some reasons for opposing this amendment in dealing with No. 12 which has just been rejected by this Council. I do not myself hold as low an opinion of the choukidar as the Honourable Member who has just spoken. He is a most useful servant of the public and of Government. He does come from a very low strata of society—that is true. He does receive a very inadequate and wretched pay,—often only Rs. 4 a month. But without him the police could not really function in rural areas. If he is persuaded to withdraw from his work then the police work for the whole of that area must very nearly come to a complete end. I do not think there is any risk that he will abuse his power and harass people in his village. Public opinion will prevent him. But I think we are bound to protect him from the serious attacks to which he has been subjected during the last two or three years as a result of the civil disobedience movement.

The motion was negatived.

THE HONOURABLE THE PRESIDENT : The question is :

" That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

THE HONOURABLE THE PRESIDENT : Clause 4.

THE HONOURABLE MR. VINAYAK VITHAL KALIKAR : Sir, my amendment is :

" That in sub-clause (*1*) of clause 4 the word ' lawful ' be inserted between the words ' his ' and ' duties '."

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Sir, the duties of a public servant are not defined in this clause. This is a new clause and such an all-pervading clause that from a money-lender to an ordinary washerman everybody can come under the purview of this clause. If a money-lender refuses to lend money to a sub-inspector because he has no security for returning the money or because he does not agree to the rate of interest, he can also come under this clause. If a washerman refuses to wash the clothes of a police inspector or a police jamadar or if a barber refuses to shave a police jamadar or police officer, he also can come under the purview of this clause. So, I want to submit, Sir, that the duties of the public servant should be mentioned and it should be made clear what are the duties and how a man who does not deal with him or who is alleged to harass him, fails to assist him in performing his duty. I therefore submit that if the word "lawful" is there that will clear the position. Recently a case occurred in my province, Sir, which I may bring to the notice of the House, where a veterinary officer wanted a cart to take him to some other village and his chaprasi went to a poor tenant and brought his cart without paying any money to the tenant. The tenant resisted and afterwards for that resistance he was challaned and fined by the lower court. In the appellate court, however, it was decided by the district magistrate that the taking of a cart by *begar* without paying anything for it was not a legal duty of the chaprasi and as such the resistance offered by the tenant was quite legitimate. He was within his rights in resisting and the poor man was acquitted. I have just heard from my Honourable friend, the Home Secretary, that there will be appeals and in case of fines the fines will be reduced. I quite understand, I quite realise the position, but then I submit why should poor people be made to pay unnecessary expenses for going to the appellate court and to pay large fees to barristers and pleaders like my Honourable friend, Sir Maneckji Dadabhoy, and others ?

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : Nominated Non-Official) : I do not get any money nowadays !

THE HONOURABLE MR. VINAYAK VITHAL KALIKAR : So my submission is that the phraseology should be as clear as possible and that there should be nothing left which will not be described in clear terms as to what are the lawful duties of the public servant. I therefore submit that this is a necessary amendment and should be accepted.

THE HONOURABLE MR. J. BARTLEY : Sir, I find myself in complete agreement with the Honourable Member who has just spoken in this respect that he says the clause should be as clear as possible and that there should be no ambiguity. I agree with that. The clause is as clear as possible and there is no ambiguity, but the insertion of the word which he wishes to interpose would, I think, introduce ambiguity. He says : "What are the duties of a public servant ?—make it clear what are the duties of a public servant". Duty, Sir, as the Honourable Member doubtless knows, means in law a legal obligation. There is very little difficulty in determining what are the duties of a public servant when the question arises in the courts. A duty is a legal obligation. Then what would a lawful duty be ? It would be a lawful legal obligation. Could there be an unlawful duty ? It would be a contradiction in terms. The word "lawful" is utterly unnecessary. Its introduction would suggest that there could be duties other than lawful duties and that is not the case. The courts will decide what are the duties of a public servant in any particular case where he was actually harassed in the discharge of his duties

and it would receive no assistance whatever—in fact it would if anything be hampered—were the word "lawful" interposed here in this section. I do not think, Sir, that I need say anything more except that the amendment is unnecessary and might be harmful.

The motion was negatived.

THE HONOURABLE MR. SATYENDRA CHANDRA GHOSH MAULIK : Sir, the amendment that stands in my name runs as follows :

"That in sub-clause (*1*) of clause 4 for the word 'otherwise' the words 'by services of a similar nature' be substituted."

The expression "otherwise" is vague and may include anything in common parlance. I have been a student of law and I know that according to the principle *ejusdem generis* the word will include services of a similar nature, but, Sir, this being a penal law, I would not like to keep the clause vague so that the prosecuting clever lawyer or for the matter of that the trying magistrate could stretch it in a way to cover a wide area which I am sure was not the general intention of the Legislature. Sir, it will remain in the hands of the magistracy and the judiciary for the interpretation of clauses. But, Sir, when it is possible to narrow down the limits of such interpretation and express the intention of the Legislature in no uncertain terms, I consider that the best interests of the country and the Government will be served if we express in no unambiguous terms the intention lying behind the clause. The days are not yet over when the saying "No conviction, no promotion is true."

With these words, Sir, I move the amendment.

THE HONOURABLE MR. J. BARTLEY : Sir, it is necessary in dealing with this matter to consider briefly the stages through which this clause proceeded before it took on its present form. The wording in the Bill as originally drafted was

"refuses to deal or do business with, or to supply golds to, etc."

Now, in the Select Committee, that wording was simplified and the words "deal with" were employed as, in the words of the Report of the Select Committee,

"a comprehensive general description of the activities particularised in the draft clause".

The result was to employ this expression "deal with" which is a popular expression, not a technical word or a word of art, and immediately a strange interpretation was forthcoming. I think that it was suggested that in addition to having the meaning of "associate with", the expression might be held to refer to a game of cards. An amendment was accordingly moved by Government. Government said in effect, "We will indicate clearly what we aim at by this expression. We aim at refusal to hold business transactions of the kind that men normally have with one another"; and this clarification was done by inserting after the words "deal with" the words "whether by supplying goods to, or otherwise". Those words are meant to indicate the nature of the transactions covered by "deal with". They cover various transactions which it is impossible to foresee in detail and to particularise in

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detail. Now, the amendment proposed would, instead of clarifying the meaning, introduce ambiguity. The amendment proposed is "whether by supplying goods to, or by services of a similar nature". The Honourable Mr. Ghosh Maulik has objected to the words "or otherwise", on the ground that they are vague; but the words "of a similar nature" are as much open to that objection. Take a specific instance of a refusal of services, or of a manifestation of unwillingness to serve that may take place. It is impossible to foresee all the forms which the ingenuity of people intent on harassing public servants may devise. Take a cooly or a railway porter refusing to carry luggage, or a hackney carriage refusing to convey a passenger, or a motor mechanic refusing to tighten up the brake of a motor car. Now, is that refusing to deal with "whether by supplying goods to, or by services of a similar nature"? The wrongdoer will say, "I have not refused to supply goods or refused services of a similar nature to the supply of goods; I have not refused to supply anything except the labour of my hands." His act will be covered by the wording of the clause as it stands. I do not say it would not be covered or might not be covered by the amendment, but there is a risk, and it is a risk that we cannot afford to take. The amendment will make the clause no longer wide enough to cover all manifestations of unwillingness to serve a Government servant. I must oppose the amendment, Sir.

The motion was negatived.

THE HONOURABLE MR. VINAYAK VITHAL KALIKAR: Sir, I move:

"That in sub-clause (*1*) of clause 4 the words 'or to render any customary service to such public servant or any member of his family' be omitted."

This clause is so wide that even the members of the family of a public servant are included in it. One does not know what the duties are, and what are not, of the general public towards the public servant. Even under the ordinary law one does not know what the customary services are. As an agriculturist I can bring to the notice of the House that there are certain services rendered in a village not only to a public servant but to any guest or any new comer who comes into that village. But are we to call those services customary services? Are we to call the services of a barber or washerman customary services? In my humble opinion, I do not think they should be called customary services. Take an instance of an officer going to a village for a shooting party. He wants to take about 200 men with him. Suppose some of them refuse to go with him for shooting in the forest. Will those persons come under the purview of this clause? Because in some cases those very people had accompanied certain other people to that forest for a shooting party, will it be called a customary service and will those people come under the purview of this clause? So, Sir, the phraseology is so vague and so wide that one cannot understand what are the customary services. Moreover, the customary services are to be rendered not only to the officer but to the members of his family. It may be possible that one may not know who are the members of the family of a particular officer. If some people accompany him, one can know that they are members of his family or party. But suppose that the members of his family come to a village in his absence and the villagers do not know that they are members of the officer's family and they refuse to give them a cart or the barbers of the place or washermen refuse them their services,

then under the present phraseology of the clause they will come under the purview of this clause and they will be hauled up. I therefore submit that in order to make the clause quite clear and unambiguous these words should be omitted.

Sir, I move my amendment.

THE HONOURABLE MR. J. BARTLEY : Sir, I am not quite certain of the grounds on which the Honourable mover thinks it necessary to omit these words. He argued that it is impossible to determine what are customary services. He added that he himself was aware that there were certain services which were rendered not only to public servants but to ordinary visitors to the village, and I assert, Sir, that it is a commonplace of village life that there are certain customary services, well known, well understood, in some cases even carefully recorded ; that there are certain classes of villagers whose special privilege, function or liability it is to perform these services ; that they can be performed adequately by no one else ; that if these persons will not perform the services, a state of affairs arises in which the person who is deprived of these services finds it practically impossible to continue living in the village. Now the essence of this section is precisely to prevent an unfair discrimination in treatment directed against a public servant merely because he is a public servant. The attempt to make his life uncomfortable is made solely with a view to diminish his efficiency as a public servant. And one of the methods which could be adopted and which actually was adopted was to bring pressure to bear upon him by the withholding of those services and that treatment which the custom of life accords to other members of the community who have not the misfortune to be public servants. If there were any doubt whether the service withheld was a customary service or not, there is no doubt whatever that the courts would give the benefit of that doubt to the accused person in accordance with the general principle on which the criminal law is administered in this and other civilized countries. I do not suppose that the administration of this section will be done in a manner other than intelligent and I think we may safely depend on the vigilance of the courts to prevent the occurrence of any of the dangers which the Honourable mover of this amendment fears.

The motion was negatived.

THE HONOURABLE THE PRESIDENT : The question is :

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

THE HONOURABLE THE PRESIDENT : Clause 5.

THE HONOURABLE MR. VINAYAK VITHAL KALIKAR : Sir, I move :

"That in sub-clause (*1*) of clause 5 after the word 'Whoever' the words 'with malicious intention' be inserted."

This also is a new offence created under this Bill and the gist of the clause is that anybody who reads or repeats or circulates any passage from a proscribed newspaper, book or document will be punished. But I do not find here anything which will help the accused to defend himself against a charge under this clause. My intention in inserting these words is to show that the wrongdoer published, circulated or repeated the passage with a

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particular intent. Suppose I were to read a passage out of a book with a view to condemning publications of that kind, and at the same time I do not know that the book has been proscribed by some Local Government, I think I come under the purview of this clause. So I submit that the prosecution must be made to prove that the wrongdoer committed the offence with malicious intention. One may find cases in which people do not know that certain books have been proscribed. But then even in that case if a person were to repeat or read from that book not knowing that the books have been proscribed, still he would be punished. I therefore submit that this is a new offence and as this to some extent affects the press also the wording should be as clear as possible. There should be no ambiguity and the court should find no difficulty in giving decisions in such cases. I therefore submit, Sir, that my amendment should be accepted by the Honourable the Home Secretary.

THE HONOURABLE MR. J. BARTLEY : Sir, I do not propose to weary the House by repeating the arguments which I used in connection with these words on an earlier clause. I will confine myself to answering the representations which have now been made, namely, that it appears to be a matter of some hardship that a man who reads a passage from a proscribed document for the purpose of indicating how reprehensible are the contents of that document and without knowing that the document has been proscribed should be punished. My answer to that, Sir, is, first, that he ought not to be in possession of a document which has been proscribed. Proscription is an executive act aimed at saving the public from material which is calculated to poison their minds or in some manner to be detrimental to them and so far as is possible Government achieve that end by securing and preventing the public from securing copies of the deleterious document. Secondly, if the document is one of a nature such as is likely to be declared forfeited, it is a seditious document and whatever may be the motives of a person who reads, publishes, circulates or repeats in public that document, he is doing a wrongful act. He is propagating sedition. As a matter of fact this section was aimed, as is perfectly well known, at a very definite exhibition of wrongful activity. It became—the fashion, I might say, to give public readings of documents which have been proscribed ; so that the circumstances under which the offence that will generally be pursued under this section are committed are such that an intention, and a malicious intention,—using that very dangerous word " malicious " in its narrow sense,—malicious intention is at once obvious from the circumstances under which the offence is committed. Further, in enacting this clause it is not intended that the onus of proving any intention should be imposed on the prosecution. It is an absolute prohibition of an act which the State desires to prevent. It imposes a penalty on the commission of the act quite independent of the intention with which the act is committed and it would weaken the clause if it were necessary to prove a definite state of mind in the person who committed the offence before a conviction can be obtained.

The motion was negatived.

THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD (United Provinces Northern : Non-Muhammadan) : Sir, I move :

" That in sub-clause (*1*) of clause 5 after the word ' force ' the following words be inserted, namely :

' knowing or having reason to believe that such copies have been so declared to be forfeited ',"

so that if my amendment is accepted, the clause would read thus :

" Whoever publishes, circulates or repeats in public any passage from a newspaper, book or other document copies whereof have been declared to be forfeited to His Majesty under any law for the time being in force, knowing or having reason to believe that such copies have been so declared to be forfeited, shall be punished with imprisonment, etc."

Sir, it seems to me that my amendment is quite simple and does not require many words in its support. When you are going to punish a person who publishes, circulates or repeats in public any passage from a newspaper, book or other document, copies of which have been declared to be forfeited to His Majesty, you should make sure whether the accused person did so knowing or at least having reason to believe that such copies had been declared to be forfeited, lest an innocent person should suffer in spite of his innocence. At a time when the Executive is going to be vested with such wide powers I think we should make pretty sure that the chances of innocent people suffering under the new law are minimised. If the phraseology of the clause is allowed to remain as it is, I fear that the mere publication, circulation or repetition in public of a forfeited document will constitute an offence irrespective of the fact whether or not the accused person knew or at least had reason to believe that such document had been declared to be forfeited. I think, Sir, this kind of thing must be provided against and the accused should be given an opportunity to show that he did not know or had no reason to believe that such document had been previously forfeited. I hope that the Government will accept this amendment.

THE HONOURABLE MR. J. BARTLEY : Sir, I regret that it is necessary to oppose the amendment. The forfeiture of a document of this nature is made known to all whom it may concern by publication in the Gazette. That is the ordinary method by which Government conveys to the public the facts, the rules and the laws which it desires to make known. There is practical y no other means by which, and no means by which greater, publicity can be given to the fact that a particular document has been declared forfeited. Now, the amendment would impose on the prosecution the onus of proving not merely that the document had been forfeited and that the fact of its forfeiture had been gazetted, but that the Gazette was actually brought under the eye of the accused. He of course would assert that the Gazette had not been brought under his eye and I would ask the House to consider how it could reasonably be expected that the prosecution could actually prove—unless some presumption of law were employed to make the task easier—how it could actually prove that the accused was aware of the existence of this notification or, if aware of its existence, that he had actually perused it. Accordingly it is impossible to accept a suggestion of this kind or to insert a provision of this kind in the clause.

The motion was negatived.

THE HONOURABLE MR. VINAYAK VITHAL KALIKAR : My next amendment is :

" That in sub-clause (*1*) of clause 5 after the words ' or with fine ' the words ' which may extend to Rs. 200 ' be inserted."

Sir, I have no new argument to urge in support of this amendment except to say that as the previous amendment of my Honourable friend Lala Jagdish Prasad has not been accepted the position is still there that the wrongdoer will not know whether the book or the publication has been proscribed and in such cases I submit that it may be his first offence and he might not have done

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it knowingly or with malicious intention and therefore the maximum amount of fine should be fixed and he should be fined for a less amount and that if the case is tried by a magistrate he will be fined to the extent of Rs. 1,000. So my submission is that you fix the amount of the maximum fine because under this clause cases may occur where a man may do things without having any intention of going against the provisions of this clause. I therefore move that this amendment be accepted.

THE HONOURABLE MR. M. G. HALLETT: Sir, I admire the Honourable Member's persistence but once again I must oppose the amendment. I do not intend to repeat the arguments that I have already put before the House in regard to the question of limitation of fines.

The motion was negatived.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 5 stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 6.

THE HONOURABLE MR. VINAYAK VITHAL KALIKAR: Sir, I beg to withdraw my amendment.*

THE HONOURABLE MR. SATYENDRA CHANDRA GHOSH MAULIK: My amendment is as follows:

"The after sub-clause (2) of clause 6 the following sub-clause be added, namely:

'(3) No court shall take cognisance of an offence punishable under this section except upon a report in writing of facts which constitute such offence made by a police officer not below the rank of an officer in charge of a police station'."

Sir, I propose this amendment not with an idea to obstruct Government, nor with an idea of taking away the sting from this section, nor with the idea of really improving the section but I move this because I feel that before this clause is put into operation against anyone or before the police take advantage of this section, its very existence in the Statute-book without a safeguard of the nature that I am proposing would create a panic in the public mind which I am sure the Government would like to avoid. Sir, I frankly admit that in my mind there is no delusion of any kind that the man in charge of a police station is in any way different either in his outlook or by his training from the constable under him. So far as my experience goes, one is as good or as bad as the other. It is just to allay the panic in the public mind that I am suggesting this amendment and I do not think the Government will object to accept this amendment as it makes not the slightest difference to them whether the report is made by an ordinary constable or a sub-inspector or an inspector of police.

Sir, I move.

THE HONOURABLE MR. M. G. HALLETT: Sir, while recognising the motives which have made the Honourable Member propose this amendment

*"That in sub-clause (1) of clause 6 for the words 'one year' the words 'six months' be substituted."

I regret that I must oppose him for I regard this amendment as harmless possibly but entirely unnecessary. He has copied this amendment from sub-clause (*2*) of clause 7 and I would like to explain briefly why that clause has been inserted. Government were apprehensive, possibly unduly apprehensive, that the offence of molestation might be used by private individuals as another new way of harassing an enemy. Those of us who have experience of magistrates' courts will remember the cases which were not infrequently filed in these courts and how when there was a quarrel in a village one party accused the other of six or seven or eight offences under the Penal Code, we thought that there might be a risk that when there was a quarrel between two shopkeepers they would include with the offence of criminal trespass, assault, grievous hurt and other offences, the offence of molestation as well. We intended that there should be some safeguard against that and therefore we introduced this special clause which makes it necessary for them to go to the police in the first instance. If the police refuse to entertain their case, they have then no right to go to the court and file a case and ask the court to take cognisance of it. That is the object of this sub-clause—to prevent the section being used by private individuals to harass people. But in the case of section 6 there is no such need for any such clause. Section 6 is not likely to be ever used by a private individual. The case is started by the police officer himself and there is no chance of a private individual coming forward and saying that a rumour was likely to cause fear or alarm the public. Therefore, this amendment is not necessary and will effect no useful purpose.

THE HONOURABLE MR. ABU ABDULLAH SYED HUSSAIN IMAM (Bihar and Orissa : Muhammadan) : On a point of information, Sir ? May I know from the Honourable the Home Secretary whether the procedure he has just outlined will be always adhered to ?

THE HONOURABLE MR. M. G. HALLETT : Sir, I cannot guarantee what procedure the court will follow. That is a matter for the High Court to issue orders about but my own opinion is that generally they will follow that procedure and the cases would in all cases be police cases and not complaint cases.

The motion was negatived.

THE HONOURABLE THE PRESIDENT : The question is :

" That clause 6 stand part of the Bill. "

The motion was adopted.

Clause 6 was added to the Bill.

THE HONOURABLE THE PRESIDENT : Clause 7.

THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD : Sir, I beg to move :

" That in sub-clause (*1*) of clause 7 after the word ' Whoever ' the words ' wrongfully or without any legal authority ' be inserted ."

This clause, Sir, as at present worded, will apply to coercive intent which is manifestly beneficent in the interest of the person sought to be coerced. For instance, a parent seeking to obstruct his son with intent to cause him to abstain from going to a house of ill-fame or to a liquor shop would be within its purview, and this result would appear to be the more paradoxical if the

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new provision imposing vicarious punishment on the parent contained in clause 8 of the Bill is considered. I would therefore insert the words "wrongfully or without any legal authority" to safeguard against the danger of the nature mentioned above. My information is that a provision of a like nature is also found to exist in the English law on the subject. Especially when the Government are not prepared to allow even peaceful picketing, as I gather from the proceedings of the Lower House, I hope the Government will not object to accepting this small amendment of mine.

THE HONOURABLE MR. J. BARTLEY: Sir, I oppose this amendment. The words which it seeks to introduce are completely unnecessary. An act is wrongful if it is contrary to law and it is unlawful if it is contrary to law. There cannot be legal authority for doing anything which is prohibited by law. It is unnecessary to say that any one who does these acts does them unlawfully or without legal authority. The Honourable Member has said that these words are used in the English Statute. That is a very fallacious argument to apply to Indian Statutes. In the whole of the Indian Penal Code containing 511 sections, the word "wrongfully" will be found in connection with two matters only, wrongful restraint and confinement and wrongful loss or wrongful gain. For the purposes of the sections dealing with these offences, the word "wrongful" is defined. Thus:

"'Wrongful gain' is gain by unlawful means of property to which the person gaining it is not legally entitled".

Otherwise, the word is never used I think in the whole of the Indian Penal Code, and the reason why it does not occur is that it would be superfluous if it were inserted. Therefore, Sir, I must oppose this amendment. The words are unnecessary and useless.

THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD: On a point of information, Sir? May I know if it is a fact that a provision of the nature suggested in the amendment exists in the English law on the subject?

THE HONOURABLE MR. J. BARTLEY: Sir, in the Conspiracy and Protection of Property Act, 1875, the words "wrongfully and without legal authority" are used. Section 7 says:

"Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing wrongfully and without legal authority uses violence, etc.".

They are used there, Sir, but they are, I submit, superfluous there also.

The motion was negatived.

THE HONOURABLE MR. SATYENDRA CHANDRA GHOSH MAULIK: Sir, the amendment that I have proposed runs thus:

"That in sub-clause (*1*) (*b*) of clause 7 after the words 'similar act' the words 'after warning' be inserted."

Sir, the amendment which I have proposed in this connection is really to further the purpose of the Government, that is to say, to apprehend the real culprits. I have known that various political organisations employ volunteers or hirelings called volunteers, who are employed to do what has

come to be known as picketing. These poor fellows do not realise the real significance of their own actions. The people whom the Government would like to apprehend are in most cases behind the scenes and cannot be got at. If a warning is given then the volunteers concerned may realise the gravity of the situation and in most cases I hope will desist from persisting. If after warning they persist then it will be safe to conclude that they are doing it with a real criminal intention and no law-abiding citizen can possibly have any objection if such persons are apprehended and the law is set in motion against them.

Sir, I move.

THE HONOURABLE MR. M. G. HALLETT: Sir, I must oppose this amendment. Picketing is, I regret to say, a well-kown offence and I think everybody who is employed on it must know what the offence is and what the results are or may be. It is true that they are hirelings; it is true they are dupes; but they are paid for their services and I think every picketer knows pretty well that he will get paid eight or four annas a day and he does not very much mind if he goes to jail for a short period during which also he receives food and shelter. A warning will, as a matter of fact, in most cases be given. The sub-inspector will usually first tell the picketers to go away before he actually arrests them; and I have heard of numerous cases in which seven or eight picketers are put up before the court but only two or three of them are actually convicted and sent to jail; the rest are let off with a warning. But we do not want in any way to tie the hands of the police or the courts by making it a statutory obligation on them to say to each picketer, "Now, I warn you." To insist on a constable giving such a warning will serve no useful purpose. It is not quite clear whether the Honourable Member wishes the warning to be given by a policeman or by the shopkeeper. If he intends it to be given by the shopkeeper, my answer to that is that our trouble is that shopkeepers are very reluctant to protest and in cases where they do protest the result is re-doubled activity by Congress to harass them and put more picketers in front of their shops. Sir, I oppose the amendment.

The motion was negatived.

THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE: Sir, I move:

"That for the *Explanation* to sub-clause (*1*) of clause 7 the following be substituted namely:

'*Explanation.*—Peaceful persuasion, or inducement which does not, or is not calculated to involve any obstruction, violence, intimidation, annoyance, or alarm to any person does not come within the purview of this section'."

Sir, all that I would like to say in commending my amendment for the acceptance of the House and Government is that the *Explanation* is meagre and indefinite and saddled with such a condition as "without the commission of any of the Acts prohibited by this section", which is objectionable and so wide in its scope that it will be very difficult for those who would sincerely engage themselves in the work of encouraging indigenous industries or advocating temperance or doing some such social reform work in the country, because there is the hindrance of clause 7 of this Bill. But if the *Explanation* is substituted by the one I am putting in by way of an amendment to clause 7, I think the aim of the *Explanation* will have been better fulfilled than by the one we find in the clause. The *Explanation* defeats its own purpose by being

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evasive and meaningless, and therefore it should be substituted by the one I am pressing for, because it will then be quite understandable to the public as to actually what Government want by this clause 7 and its *Explanation*. Sir, if it is the pious wish or, say, the sincere intention of Government to promote the cause of " honest swadeshi " as Lord Minto used to call the encouragement of indigenous industries and buying of country-made cloths by the Indians, then what is the necessity of this condition which practically aims at stifling that honest swadeshi movement or hampering the progress of the work against the drink evil ? I therefore say that the *Explanation* is superfluous and useless and strongly urge on the acceptance of the one by which I want to substitute it. If Government are sympathetic towards encouraging indigenous industries and advocating temperance I do not think there can be any objection to their accepting my amendment which aims to make peaceful persuasion lawful. Peaceful persuasion is not picketing, Sir, and that done by a single individual to a friend who is going to a shop to buy foreign goods can not, it may be easily understood, involve any obstruction, violence, annoyance or intimidation, yet the shopkeeper may think that his would-be customer was dissuaded or withdrawn by " picketing " and may report the matter to the police who will then exercise the power given by this proposed Act. In that case, Sir, even a single individual who thought he had every right to ask his friend not to buy foreign goods would be punishable by law. This is something unique and unheard of. I would therefore ask the Honourable Members of this House to ponder over such matters seriously before they give their assent to the *Explanation* to sub-clause (*1*) of clause 7 of the Criminal Law Amendment Bill and I hope their verdict will be in favour of my amendment.

Sir, I move.

THE HONOURABLE MR. J. BARTLEY : Sir, I oppose this amendment. In effect the *Explanation* merely states a perfectly self-evident fact that where there are not present the elements of the offence as defined in this section, no offence is committed. That in effect is what the proposed *Explanation* says, its substitution would be useless and undesirable. The clause defines the elements of the offence as consisting of an

" intention to cause any person to abstain from doing or to do any act which such person has a right to do, etc."

in other words to coerce him—and in addition to that intent, the commission of an overt act, obstruction, violence, intimidation, loitering, persistently following or interference with property. The amendment says that where there is no obstruction, violence, intimidation, annoyance or alarm there is no offence. Of course there is no offence if those elements are absent. Annoyance or alarm must inevitably be caused by the acts which are specified in the clause. Alarm must be caused by violence, it must be caused by intimidation, it may be caused by obstruction or it may be caused by loitering or besetting. Annoyance is bound to be caused by loitering or besetting and by interference. Therefore, in effect the non-criminal activities which are to be saved by this *Explanation* are not in fact touched by the section. But the section does intend to prohibit, for whatever reason done, acts coming within the purview of the clause, that is comprising the intention and the activities which I have described. An *Explanation* already exists in the section calling attention to the absence of any design to hamper the encouragement of indigenous industries or the advocacy of temperance by the provisions of this Bill. In other words, the laudable purposes which

the Honourable Mr. Banerjee has at heart are safeguarded to some extent by the declaration that this section is not meant to touch them. But, of course, if the methods by which advocacy of swadeshi is pursued do come within the purview of the section then the persons employing those methods are bound to become subject to the penalties imposed by it. I oppose this amendment, Sir, on the ground that it contributes nothing to the elucidation of the clause and is utterly unnecessary.

The motion was negatived.

THE HONOURABLE MR. SATYENDRA CHANDRA GHOSH MAULIK: Sir, my amendment runs as follows:

"That in the *Explanation* to sub-clause (*1*) of clause 7 after the words 'advocacy of temperance' the words 'or social service' be inserted."

Sir, I am glad to note that Government in the Select Committee accepted the amendment proposed by what is known as the Opposition, and in the clause under reference added the words:

"Encouragement of indigenous industries or advocacy of temperance, without the commission of any of the acts prohibited by this section is not an offence under this section."

I think the words "social service" as I now propose for inclusion should have been added to the clause. My belief is that these words did not occur to anybody there and that is why they are not found in this clause. You, Sir, personally, have experience of social service in this country and the good that selfless workers do to the country at large. I do not think I need labour on this point, because I am sure my Honourable friend the Home Secretary will be able to accept my amendment.

Sir, I move.

THE HONOURABLE MR. M. G. HALLETT: Sir, I am certainly at one with the Honourable Member in his wish that social service may be developed in this country, but I regret that I cannot accept his amendment to this clause. This *Explanation* is, to a certain extent, rather out of place in an Act of this kind. It merely says that what is not an offence under this section is not an offence. We could have gone further and added other things that are not offences under this section. We might have mentioned that speeches in the Assembly or sermons in church advocating temperance are not offences. We did not try to make an exhaustive list; we merely wanted to give examples of the two principal activities which might be confounded with the offence of picketing and we did not attempt to elaborate it. Though I am entirely at one with the Honourable Member in supporting the idea that social service should be developed, I cannot hold that anything will be gained by including a special mention of it in this *Explanation*. By omitting it we are not in any way saying that we are opposed to any form of social service. Sir, I oppose the amendment.

The motion was negatived.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 7 stand part of the Bill."

The motion was adopted.

Clause 7 was added to the Bill.

The Council then adjourned for Lunch till Half Past Two of the Clock.

The Council re-assembled after Lunch at Half Past Two of the Clock, the Honourable the Chairman (the Honourable Nawab Malik Mohammad Hayat Khan Noon) in the Chair.

THE HONOURABLE THE CHAIRMAN: Clause 8.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Sir, if clause 8 is before the House, I beg to oppose that clause and I propose that that clause be not included in the Bill.

THE HONOURABLE THE CHAIRMAN: The Honourable Mr. Jagadish Chandra Banerjee.

THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE: Sir, I move:

"That in sub-clause (*1*) of clause 8 for the word 'sixteen' the word 'fourteen' be substituted."

Sir, the amendment proposed by me is a very modest one. It is very often found that boys of fourteen or over the age of fourteen no longer remain meek and mild as we want them to be but defy their parents or guardians and commit acts over which the parents or guardians have no control. It has further been found that in my part of Bengal, boys of fourteen years, impulsive as they are, joined the civil disobedience movement in the teeth of vehement opposition offered by their guardians and parents and courted imprisonment cheerfully. Boys of fourteen years or over that age are sometimes uncontrollable and, especially in these days, when there is such a political movement in the country which holds mighty sway over them. It would be really improper and unwise on the part of Government to impose fines upon the parents and guardians of boys over the age of fourteen or of fourteen who could not be kept under control. It would indeed be the sins of the sons visiting the fathers. Moreover, Sir, boys under fourteen, if they are found guilty of any offence under this proposed Act and convicted thereof, may be sent to the penitentiaries or to jails for juvenile offenders. Boys of under fourteen years of age may be kept under control and if they commit any offence their parents or guardians may be held responsible. Government will be doing a great injustice to the parents or guardians of boys over the age of fourteen or of fourteen by imposing fines on them for the sins of their sons and wards. I think I have been able to make my point clear in this respect. I therefore ask the House to adopt the amendment and substitute the words "under fourteen" in place of "under sixteen" in sub-clause (*1*) of clause 8.

Sir, I move.

THE HONOURABLE MR. J. BARTLEY: Sir, the reasons given in support of this amendment by the Honourable Mr. Banerjee appear to be that it is reasonable to expect a parent to control his child up to the age of 14 but that it is unreasonable to expect him to be able to control a child once he has passed the age of 14. Sir, I should be very sorry to believe that that was the case in India and fortunately I am not compelled to believe that it is the case in India, but if it were the case in India then it would appear that parents in India labour under a disability which parents in other countries do not labour

under. I say "fortunately I am not compelled to believe it" because the provisions of this section originate in the English Children's Act of 1908 passed by the Parliament in England and in force in England. These have been adopted in turn by practically all the provinces. I think a list of the local Acts in force was given in the Notes on Clauses to the Bill as introduced in the other House. The Central Provinces, Madras, Bengal, Bombay, have all passed Acts including this section and in every one of these Acts the limit of age for the child is 16. Now it is not unreasonable to expect a parent to be responsible for the good conduct of his child up to the age of 16 and it is infinitely preferable that that responsibility should be exercised as far as possible by the parent. For what is the alternative ?—that the child is brought under control by the State, that methods adopted for the check of criminals are applied to the boy, that he is brought in contact more than he should be brought with people who are definitely criminal in their habits. Therefore it is highly desirable that any means that can be employed to convince parents of the importance of keeping their children under proper control should be employed. This is a very mild means but it will undoubtedly operate to encourage parents to take a more serious view of their responsibilities towards their children than they have in the past in some instances exhibited and there seems to me to be no valid argument in favour of confining the provisions of this clause to the cases in which the child is under fourteen. A parent ought surely to continue to be responsible for his children for some time after they reach the age of fourteen when as a matter of fact they are still only on the threshold of adolescence. I must oppose this amendment, Sir.

The motion was negatived.

THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE: Sir, the next amendment stands on the agenda paper in my name. Knowing full well the fate of the two previous amendments which I moved, I move this third amendment, which runs as follows :

"That for sub-clause (*2*) of clause 8 the following be substituted, namely :

'(*2*) No such order shall be made if the young person is not under the control of parent or guardian and maintained by such parent or guardian'."

Sir, the object of moving my amendment is that sometimes it is found that young persons run away from home, live apart from their parents and guardians and join some undesirable political movement without the knowledge of their parents and guardians and commit offences that may come within the purview of the proposed Act. In that case, Sir, fines imposed upon offenders to be realised from their parents or guardians would be not only a great hardship on them but unreasonable as the sons and the wards when they committed the offence were not actually maintained by the parents and guardians. Such may sometimes be the case with young persons who, disregarding instructions and commands, may join undesirable movements and may not live with their parents or guardians and may not be maintained by their parents or guardians at the time of the commission of the offence. Will it then be legal and logical to realise the fine from parents or guardians ? My view-point is to make sub-clause (*2*) of clause 8 explicit, clear and unambiguous by inserting the words of my amendment for the present sub-clause (*2*) of clause 8.

Sir, I move.

THE HONOURABLE MR. M. G. HALLETT: Sir, the object of the Honourable Member in moving this amendment is to make the section clearer. I do not think the amendment proposed will succeed in that object and I must oppose it. It will also give rise to certain difficulties. The clause was very carefully considered in the Select Committee, especially the actual drafting, and this clause makes it clear that the person who will be liable to the fine if a boy misbehaves himself is the parent or guardian in actual control of the child. That follows the principle laid down in the English Act, from which I quote the following extract:

"The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having actual possession and control of the child or young person."

(At this stage the Honourable the Chairman vacated the Chair, which was taken by the Honourable the President.)

A definition, which is similar to ours, has been given in the Irish Public Safety Act, 1927, which, as Honourable Members know, corresponds very closely to our Special Powers Ordinance. We have got the definition:

"In this section the word 'guardian' includes any person who, in the opinion of the Court, has for the time being the charge of or control of the offender."

The essence of the definition of the word "guardian" in this section is the word "control." But the Honourable Member introduces another point. He introduces the word "maintenance." Now that may give rise to considerable difficulty. Take a hypothetical case, the case of a boy who lives, we will say, in Muttra. He comes to Delhi for his education and he lives in Delhi with his uncle and his uncle has control over him, but his father sends to the uncle, his brother, say a sum of Rs. 50 a month to maintain the boy. The maintenance in this case rests with the father who lives in Muttra but the control of the boy, the possession of the boy, rests with the uncle as the *de facto* guardian in Delhi. It is the uncle that we want to get at under these circumstances because he has the control of the boy. If this amendment were accepted, we could not inflict a fine upon the uncle because the "maintenance" would rest on a different person though the control of the child would rest with him. That makes the amendment likely to give rise to very serious difficulties and to render the section ineffective. We have met the case which he has cited where the parent or guardian has a good excuse for not being able to control the child. We have endeavoured to meet that by the drafting of sub-clause (*2*) of this clause. The first point that this clause makes clear is that the parent or guardian shall have a chance of being heard and can put forward anything he likes in his defence before the court. It is emphasised in this clause that no order of fine shall be made if the parent or guardian satisfies the court that he has not conduced to the commission of the offence by neglecting to control the offender. If he shows that owing to circumstances over which he had no control, the boy had run away and got into bad company, then I presume he could get off. The final point on which the parent can give evidence before the court is that the offence was not committed in furtherance of a movement prejudicial to the public safety or peace. I submit, Sir, that this gives ample protection to a parent or guardian who really has taken all steps in his power to control his child. The section has not been very widely used. It has been used with discretion by magistrates. The total number of fines that have been imposed is nothing very much. I do not remember the exact figures, but we have the concurrent opinion of all Local

Governments that the mere fact that this section was in the Ordinance has had a deterrent effect, or rather an encouraging effect, on parents, and has led them to exercise more control over boys in schools and colleges, who otherwise might have been misled into taking part in these pernicious activities, which can only result in their being sent to jail. We have modified the section in that it is not possible for the Court to send the parent or guardian to jail but it can only realise the fine by the method provided by the Criminal Procedure Code. For these reasons, Sir, I oppose the amendment.

THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE: May I ask the Honourable Member why, when the boy is not with the parent or guardian and is away from him, that parent or guardian should be penalised for the offence of their son ?

THE HONOURABLE THE PRESIDENT: Order, order.

The motion was negatived.

THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD: Sir, I beg to to move :

"That in sub-clause (*2*) of clause 8 after the word 'offender' the following words be inserted, namely :

'or that the offender was not in his charge at the time of the commission of the offence'."

Sir, this amendment is somewhat different from the amendment just disposed of in that it does not seek to replace the entire sub-clause but only seeks the insertion of some words, and I hope that the Honourable the Home Secretary will treat it differently. In the first place, it is outrageous to seek to punish a parent for the actions of his ward, and no one should reconcile oneself to the principle of vicarious punishment being imposed on anybody, although my Honourable friend Sir Maneckji Dadabhoy said a good deal in support of the proposition the day before yesterday. But when you are going to make such a drastic provision, at least minimise its rigours. I am glad that it is proposed at least to give to the parent or guardian an opportunity to appear and be heard and to satisfy the court that he has not conduced to the commission of the offence by neglecting to control the offender or that the offence was not committed in furtherance of a movement prejudicial to the public safety or peace. But you have not provided against the contingency of a certain person being accused under the section who may not in reality be in charge of the young man at the time of the commission of the offence. I therefore seek to insert this important provision in the interest of a person who may not happen to be the real guardian of an accused young man at the time the offence was committed by the latter, as it is very important that a wrong person should not be punished for the actions of some one else. Hence the amendment.

THE HONOURABLE MR. M. G. HALLETT: Sir, I must oppose this amendment as being unnecessary. As I said in dealing with the last amendment, I think this section is perfectly clear in itself. It will be seen in the *Explanation* that the word "guardian" includes any person who in the opinion of the court has for the time being charge of or control over the offender. It follows from that, I think, that if the father was not in charge of the boy at the time of the commission of the offence he has not committed any offence and no court would inflict a fine upon him. Further it will be seen that under

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sub-clause (2) the parent or guardian can satisfy the court that he has not been negligent. Where there is no duty there can be no negligence, and it has to be proved that the parent had the duty of looking after the child and that he actually in fact exercised control over him. It is not a question of legal guardianship. It is a question of actual *de facto* guardianship. It is the person in actual control of the boy that we want to get at by this section, and I do not think there is the least chance of anybody suffering owing to faulty drafting of this section of the Bill.

The motion was negatived.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 8 stand part of the Bill."

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Sir, I beg to propose that this section be not included in the Bill; that it be deleted.

My reasons for this are that no parent likes his boy to join the civil disobedience movement or to do anything which is not proper and desirable. Most of us now send our boys to school or college where they live in boarding houses, and if they do anything wrong it is the educational policy of the Government of India which is to blame. The education imparted is Godless. No religious or moral instruction is given to the students at all. It may be that Government does not like to interfere with the boy's religion, but various religious institutions can be asked to nominate or put in teachers for their own religions. If that be done the students will be Godfearing, and will behave very much better. They will realize their duty to their parents, to their nation, to their God and to their Government. There is great defect in the system of education which is given to them. Before the educational portfolio was taken over by Sir Harcourt Butler, students used to behave very much better than they do now. We find now that most of the children are beyond the control of their parents, and when the Government with the penal measures behind them have so far failed to control them to the extent that is desired, it is too much to expect from their parents to do so. The parents have no penal powers. If they confine a boy in a hut or room or inflict bodily punishment there are sections in the penal law which will render the parent or guardian liable to prosecution and punishment. Therefore I think that the true guardian, as far as misbehaviour in schools and colleges is concerned, is the Government. Such a measure, Sir, is against the very spirit of criminal jurisprudence. To haul up the parent or guardian for the sins of his children or wards is wrong. Take the instance of a students, hostel, where a superintendent is in charge of 100 or 200 boys. In case any of those boys misbehave, I should like the Home Secretary to explain who will be hauled over the coals for the boy's offence? Will it be the superintendent, the headmaster, or the college principal, or the Director of Public Instruction or the Education Member?

With these words, Sir, I propose that this clause be deleted.

3 P.M.

THE HONOURABLE MR. M. G. HALLETT: Sir, the speech of the Honourable Member in advocating the rejection of this clause was possibly more an attack on the present system of education in this country than on the clause itself. I am not competent to speak at any length on the system of education, but my own experience of the schools, and particularly of the Government schools, of the province from which I come is that, although religious instruction is not given in the schools as we have to be entirely undenominational, yet moral instruction is given

and the boys are instructed in their duty to their country and are taught methods of discipline. That may not be the case in all schools, schools certainly differ, but this section, apart from emphasising parental control, also, as I understand it, emphasises the schoolmaster's control. If a schoolmaster has, to quote the words of the section, " for the time being the charge of or control over the offender, " he would be responsible for keeping that boy in order and for seeing that he did not go into the streets to take part in hartals or to take part in picketing. But the justification for the section is, as I have said, the results which we have obtained from it during the last year. There is nothing very extraordinary in the section. It is following the principles adopted in the ordinary law of this country and in the ordinary law of other countries. In other countries the law in fact is far more drastic. I referred in my previous speech to the Irish Public Safety Act. I refer to it again. There, instead of a parent or guardian being liable to a fine is liable on summary conviction to imprisonment for a term not exceeding six months. Our present section is very mild in comparison with that, for all we do is to inflict a small fine upon him which can only be realised by distraint and cannot be realised by sending the parent or guardian to prison. I trust therefore that the Council will support me in carrying this clause, which, as I say, has had a most useful effect during the last year when it has been in force.

The motion was negatived.

THE HONOURABLE THE PRESIDENT: The question is:

" That clause 8 stand part of the Bill. "

The motion was adopted.

Clause 8 was added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 9.

THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD: Sir, I beg to move:

" That sub-clause (*iv*) of clause 9 be omitted."

Sir, I fail to see why an offence punishable under section 7 alone should be made non-bailable. There was a consistent demand from the non-official side in the popular House and it has also been given expression to by one of my Honourable friends in this House that at least peaceful picketing should be excluded from the purview of clause 7. But the Government did not see their way to concede the demand. Now, when the clause has been made so stringent as to include peaceful picketing, I think the Government should at least concede this much, that an offence committed under section 7 is allowed to remain bailable and is not made non-bailable.

THE HONOURABLE MR. M. G. HALLETT: Sir, I must oppose this amendment. As the Honourable Member observed, when the Bill was originally introduced in the Assembly many of the offences, in fact, nearly all the offences were non-bailable. When the matter was discussed in the Select Committee and in the Lower House, Government conceded that point and allowed several offences to become bailable. They did not, however, see their way to allow bail in cases of picketing. The reason was simple. Supposing the police arrest a picketer outside a shop, they take him to the police station

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and the offence being bailable they have to release him on bail if he finds a surety. Experience has shown that the boy goes back and commits the same offence again. That is what we want to prevent. That results in contempt to the authority of the police and renders them unable to take steps to prevent the shopkeepers from being molested in this way. The boy himself or the man, as the case may be, does not, I think, suffer very much hardship, because after a short time he can obtain bail from a magistrate, because, as the law now stands, even in non-bailable cases a magistrate can, and very often does, grant bail. No hardship occurs, but it does prevent that defiance of the police which would result if the offender is let out immediately on bail and at once returns and commits the same offence.

The motion was negatived.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 9 stand part of the Bill."

The motion was adopted.

Clause 9 was added to the Bill.

Clauses 10, 11 and 12 were added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 13.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Sir, I beg to move the following amendment:

"That in clause 13 in the proposed new section 17-A of the Criminal Law Amendment Act, 1908, the following further proviso be added to sub-section (2), namely:

'Provided further that if such place is a place ordinarily used for worship by the public or any part of the public, then in such a case when taking over possession thereof, the District Magistrate or the Commissioner of Police, as the case may be, will see that the sanctity of the place as a place of worship is not interfered with, and that all necessary arrangements for the carrying out of the worship and the performance of the usual ceremonies connected with such worship are duly made. All persons *bona fide* attending such place to take part in such worship shall have a right to enter such place for that purpose'."

Sir, this amendment is an amendment which I consider is essential and ought to be included in this Bill. In case, Sir, the Government wish to abide by the assurances and by the pledges which have been given by it from time to time and in case the *Magna Charta* of the late blessed Queen Victoria and her successors is to be maintained, I think, Sir, it is the duty of the Government to see that whenever any place of worship is taken possession of, the sanctity of that place is observed. I am not advocating the cause of anybody who is found guilty or who is found suspicious and is kicked out of that religious place, but what I say is that in such case Government must replace him by somebody else, whomsoever it considers fit for the job to carry out the worship in accordance with the faith or in accordance with the religion to which that place of worship belongs. I think, Sir, the Honourable the Home Secretary will say that we shall include it in the rules and instructions. This is a very important matter and in case the Government are true to their pledges they must embody it in this enactment.

With these words, Sir, I move my amendment.

THE HONOURABLE MR. M. G. HALLETT: Sir, I congratulate the Honourable Member on having found an amendment which has not been discussed in the Lower House. It put me into some difficulty for the reason that I could not anticipate the arguments that might be put forward in support of it. I was apprehensive that he might produce some case in which a temple or a mosque or a church had been seized under the powers given by the Ordinance and that thereby inconvenience had been caused to the people who wished to carry on worship in that building. I am glad he has not done so; I am glad that no such case has occurred.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Then where is the necessity?

THE HONOURABLE MR. M. G. HALLETT: Do I understand him to say that there had been such a case?

THE HONOURABLE THE PRESIDENT: No, the Honourable Member said, "Then where is the necessity?"

THE HONOURABLE MR. M. G. HALLETT: If no such cases have occurred, I cannot understand what is the necessity for the Honourable Member's amendment. The section as it stands does not refer to places of worship; it refers merely to places which include a house or building or part thereof or a tent or vessel. It does not specify places of religious worship, such as temples, churches or mosques. I am glad that no case has occurred in which a temple or a church or a mosque had been used for this nefarious purpose. I trust that no such case will arise. It must be remembered what an unlawful association is. It is, to quote the words of the Act,

> "an association which encourages or aids people to commit acts of violence or intimidation or of which the members habitually commit such acts".

That is the first definition in the Act. The second is:

> "an association which in the opinion of Government has for its object interference with the administration of law or the maintenance of law and order or constitutes a danger to the public peace".

I should be extremely surprised if any religious buildings were used for this purpose. But assuming that some evilly-disposed persons got hold of a church, a temple or a mosque and used it for the purposes of an unlawful association without the knowledge or consent of the owner of the building or the person responsible for conducting this religious worship, what would be the position? What action would Government take? I have dealt with a good many cases of seizure of buildings under this section myself when in my province, and I would call to mind the instructions which were given when these Ordinances or when the first Ordinance dealing with the buildings of unlawful associations were passed. This was the Statement issued by His Excellency Lord Irwin in the Gazette of the 10th October, 1930:

> "I have further requested Local Governments to consider with sympathy the return to third parties of property occupied or attached under the Ordinance, provided that it is not required for the purposes of Government, and that the third party concerned gives assurances to the satisfaction of the Local Government in regard to its future use".

If a case came up in which a religious building had been seized because it was used by an unlawful association, then I think certainly any Local Government would make inquiries as to whether any third person, who might

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be of course the owner or priest of the temple, would take it back and give that assurance. Surely the person responsible for religious worship in a religious building would give that assurance. So that I think under the instructions as they stand there is no apprehension that the general public will suffer by being deprived of any opportunity of carrying on whatever religious services they have been accustomed to in a particular building. That I trust will satisfy the Honourable Member and for that reason I do not consider it necessary to insert this clause in the Bill. By inserting it in the Bill it seems to me that it might have the undesirable effect of suggesting to the members of these unlawful associations that they should go and take refuge in religious buildings. That, I trust, will never happen.

The motion was negatived.

THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD: Sir, I beg to move:

"That in clause 13 in sub-section (7) of the proposed new section 17-B of the Criminal Law Amendment Act, 1908, the words 'and the decision of the District Judge or Chief Judge of the Small Cause Court, as the case may be, shall be final' be omitted."

Sir, in view of the fate that all the amendments moved in the course of the day have met, it seems to me nothing more than wasting the time of the House if we moved any more amendments. But, Sir, we the non-official Members have to perform what we regard as our duty towards the public whom we represent here and it is in that spirit that I am obliged to move this and some other amendments regardless of the fate that I know is in store for them. Sir, my object in moving this amendment is to restore the right of appeal against the decision of the District Judge or Chief Judge of the Small Cause Court. The forfeiture of moveable property found in a notified place is a stringent provision and it is only fair that the Legislature should protect the elementary right of appeal of the subject in such cases. I therefore submit that the right of appeal against the order of forfeiture passed by the District Judge or Chief Judge of the Small Cause Court must be provided in such cases. I think the Government is not going to lose anything thereby while there will be some protection afforded to the accused person against the vagaries of the Executive in the shape of a right of appeal to the High Court or the Chief Court. I hope, Sir, that this amendment will commend itself to the Government.

THE HONOURABLE MR. J. BARTLEY: Sir, in the Bill as it was originally drafted the provisions of this section provided that if in the opinion of the Local Government any articles specified in the list which the District Magistrate or the officer taking possession of the notified building draws up on taking such possession, if in the opinion of the Local Government any such articles are or may be used for the purposes of the unlawful association, the Local Government may, by order in writing, declare such articles to be forfeited. In the consideration of the Bill in the other House it was considered that it was desirable, if possible, to arrange that instead of this summary procedure, there should be some machinery devised which would enable a judicial adjudication to be made on the question whether this property should or should not be forfeited. The machinery devised was to have an inquiry made by the District Judge or by the Chief Judge of a Small Cause Court on the lines of the judicial procedure followed in the adjudication of claims under the Civil Procedure Code. That was considered to be a fairly simple and obvious method of obtaining a judicial decision as to whether this

property should or should not be forfeited. It is not correct to say that there is no appeal, because what actually takes place under the Bill as amended is that if in the opinion of the District Magistrate or the Commissioner of Police the articles are or may be used for the purposes of an unlawful association, he proceeds to apply the procedure provided, that is to say, first of all the District Magistrate comes to the conclusion that these articles are liable to forfeiture because they are or may be used for the purposes of an unlawful association. The matter is then referred for adjudication to the District Judge or the Chief Judge of a Small Cause Court, and it is not until this adjudication has been made that any steps towards the forfeiture of the property can be taken. The opinion of the District Magistrate or Commissioner of Police is, then, subject as it were to an appeal, and this is in fact a very material safeguard against hasty decision. You will have a careful and detailed examination by a judicial officer. It is therefore idle to talk about the vagaries of the Executive. The executive order will operate only when the grounds upon which it has been made have been confirmed by the conclusions of an experienced judicial court. The elimination of the words which this amendment proposes to remove will in effect throw the decisions of the District Judge and the Judge of the Small Cause Court open to appeal. That would delay very considerably, and possibly intolerably, the time by which an order of forfeiture can be made. One of the essentials in executive proceedings of this kind is a reasonable degree of expedition. To allow of appeals would be to deprive the clause of a great deal of its value and force.

The motion was negatived.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Sir, I do not like to move this amendment* as it is a consequential amendment to the amendment which I have just moved. As that amendment has been negatived, I think there is no use in moving this amendment.

THE HONOURABLE THE PRESIDENT: I assume that that is the view of the Honourable Rai Bahadur Lala Jagdish Prasad in whose name the next amendment† also stands.

THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD: I do not propose to move it, Sir.

THE HONOURABLE THE PRESIDENT: No. 35‡ is similar to the one which has just now been disposed of.

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*" That in clause 13 in the proposed new section 17-B of the Criminal Law Amendment Act, 1908, after sub-section (*8*) the following sub-section be added, namely:

'(*9*) This section shall not apply to moveable property found in a place ordinarily used for worship as provided for in second proviso to clause 17-A (*2*), which is used for carrying out the worship or for the performance of the ceremonies connected with such worship'."

†" That in clause 13 in the proposed new section 17-B of the Criminal Law Amendment Act, 1908, after sub-section (*8*) the following sub-section be added, namely:

'(*9*) This section shall not apply to moveable property found in a place ordinarily used for worship as provided for in the second proviso to clause 17-A (*2*) which is used for carrying out the worship or for the performance of the ceremonies connected with such worship'."

‡" That in clause 13 in sub-section (*4*) of the proposed new section 17-E of the Criminal Law Amendment Act, 1908, the words 'and the decision of the District Judge or Chief Judge of the Small Cause Court, as the case may be, shall be final' be omitted."

THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD : I do not propose to move it in view of the fate shared by my previous amendment.

THE HONOURABLE THE PRESIDENT : The question then is :

" That clause 13 stand part of the Bill."

The motion was adopted.

Clause 13 was added to the Bill.

THE HONOURABLE THE PRESIDENT : Clause 14.

THE HONOURABLE MR. SATYENDRA CHANDRA GHOSH MAULIK : Sir, I want to put forward that this clause should not be put on the Statute-book. The reason why I am proposing this is as follows. If this Bill is to suppress the civil disobedience movement or the terrorist movement or the communist movement, then the phraseology of this clause should be strictly confined to those matters only which refer to the civil disobedience movement and movements of the nature referred to above. The clauses as drafted are very wide and the words in the long title and preamble of the Indian Press (Emergency Powers) Act of 1931 were, in my opinion, quite sufficient for the purpose. In that view of the matter, instead of making the alterations suggested in this clause, I would suggest keeping the long title and preamble of the Indian Press (Emergency) Powers Act, 1931, untouched.

Sir, I oppose the keeping of this clause 14.

THE HONOURABLE MR. M. G. HALLETT : Sir, I do not think it is necessary for me to speak at length on this. It is only a question of the title of the Indian Press (Emergency Powers) Act. I understand the Honourable Member to suggest that we should have kept the original title, which was

" An Act to provide against the publication of matter inciting to or encouraging murder or violence."

If we amend that Act, as we hope we shall, in the manner provided in clause 16 of this Bill, then that title would be most misleading, for clause 16 makes the publication of matter other than matter inciting to or encouraging murder or violence punishable. The title which is now proposed to be given clearly defines what the functions of the Act in the future will be, and it follows the expression in the old Press Act of 1910.

THE HONOURABLE THE PRESIDENT : The question is :

" That clause 14 stand part of the Bill."

The motion was adopted.

Clause 14 was added to the Bill.

THE HONOURABLE THE PRESIDENT : The question is :

" That clause 15 stand part of the Bill."

The motion was adopted.

Clause 15 was added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 16.

THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD: Sir, I beg to move:

"That to *Explanation* 4 of clause 16 the following proviso be added, namely:

'Provided that no action shall be taken under this section against a printing press until at least one warning in writing has been given to the keeper of such press and has been disregarded by him'."

Sir, I hope it will be readily admitted that the existence of the Press is extremely necessary in a democratic country, and the services rendered by the Press in creating public opinion in India cannot be denied. There may be some vernacular newspapers to which some of our present-day troubles could perhaps be ascribed, but the existing Press Law is in my humble opinion enough to curb such activities and there is to my mind absolutely no justification for making the provisions of the existing law more stringent. I am therefore not in favour of enacting clause 16 at all. But when you are making stricter provisions and are providing for the forfeiture of the security and of the press in so many more cases, it is but fair that you must give to the keeper of the press at least one warning and when it is disregarded then alone should action be taken under the section. After all, Sir, a newspaper is, so to say, the poor man's universe, and if Government cherish the encouragement of education they must encourage the newspaper. Without at least one previous warning being given in such cases, I fear that this clause would work as an engine of oppression on the Press. Hence my amendment.

(At this stage the Honourable the President vacated the Chair, which was taken by the Honourable Sir Maneckji Dadabhoy.)

THE HONOURABLE MR. M. G. HALLETT: Sir, I must oppose this amendment also. If I may give my personal experiences—and I saw a certain amount of the working of the Press Ordinance in my province during the last few years—I may say that it is the usual practice with a Local Government to give a warning to the keeper of the press or the editor of the newspaper, as the case may be, the first time they publish an offending article. But there may be cases in which Government cannot go so far as to give a warning. The article may be so grossly objectionable that a warning would not be sufficient in such cases. It may be known to Government or they may apprehend that a warning will have no effect. But in every case in which they think that a warning will have a good effect I feel quite sure that Local Governments do issue that warning. I may remind this Council that when the Press Ordinance was first promulgated in June, 1930, a deputation of journalists and people specially interested in the press shortly afterwards went to see His Excellency Lord Irwin, and as a result of that instructions were issued to Local Governments in regard to the way in which they should administer the Ordinance. The Honourable the Home Member in the Lower House has given Members there an assurance that when this Bill is passed those instructions will be again brought to the notice of Local Governments. Those instructions ask Local Governments to exercise the power conferred by the Ordinance with due care and discretion and to take steps to see that unoffending papers are in no way harassed by the provisions of the Press Act.

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Those instructions have been complied with and I do not think that the press which indulges merely in fair criticism—fair but trenchant criticism perhaps—of Government has experienced any difficulties in the past or will experience any difficulties in the future. For these reasons I think it is impossible to accept this amendment, because it would unduly tie the hands of Government in dealing with that class of paper which is not open to reason and which will not heed any warning which might be given to it.

THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD : Sir, I am glad that the Government has met this amendment to a certain extent, and in view of the assurance given by my Honourable friend Mr. Hallett, I beg leave of the House to withdraw the amendment.

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

THE HONOURABLE THE CHAIRMAN : The question is :

"That clause 16 stand part of the Bill."

THE HONOURABLE MR. SATYENDRA CHANDRA GHOSH MAULIK : Sir, I oppose the inclusion of this clause in the Bill. I beg to point out that the opening sentence of the clause and the provisions in this clause are so comprehensive as to have the effect of gagging the Indian press altogether. The gagging of the press will be the most disastrous thing in the country, because the public will be deprived of the opportunity of knowing the actual state of things prevailing, and oftener than not inferences of an adverse nature towards the Government will be drawn by the public which I think will create a much worse situation than that which exists to-day. I therefore say that there is really no necessity for this clause, and even if there is some necessity, the clause under reference as drafted is highly repressive and this House should not be a party to giving such drastic powers to the authorities. Under the Indian Press (Emergency Powers) Act, 1931, there are sufficient safeguards to enable the Government to put a check on any recalcitrant newspaper whenever required. The provisions for demanding a security and then forfeiting it if necessary cannot but have a deterrent effect upon the offending newspaper. There have been cases where security to the extent of Rs. 20,000 was demanded, paid and forfeited. Is it suggested that even fines of Rs. 20,000—because that forfeiture is nothing less or nothing more than a fine—have no effect on the offending newspapers ? There are no rich patrons of newspapers in this country, no big combines, no Northcliffs and no Rothermeres. Every individual newspaper has to paddle its own canoe. Therefore, a fine of that nature has, I make bold to say, sufficient check on irresponsible journalism such as Government want to curb. I am a believer in the Englishman's love for the freedom of the press. I believe that a Government manned by Englishmen have not yet forgotten their tradition which they must have imbibed from their mother country and they cannot be vindictive or act in a way to trample under foot that freedom of the press which has been one of the cherished rights and traditions of the British nation.

Sir, I oppose.

THE HONOURABLE THE CHAIRMAN : The question is :

"That clause 16 stand part of the Bill."

The Council divided :

AYES—29.

Akbar Khan, The Honourable Major Nawab Sir Mahomed.
Bartley, The Honourable Mr. J.
Benthall, The Honourable Mr. E. C.
Charanjit Singh, The Honourable Raja.
Chetti, The Honourable Diwan Bahadur G. Narayanaswami.
Choksy, The Honourable Dr. Sir N.
Clow, The Honourable Mr. A. G.
Commander-in-Chief, His Excellency the.
Cotterell, The Honourable Mr. C. B.
Devadoss, The Honourable Sir David.
Drake, The Honourable Mr. J. C. B.
Fazl-i-Husain, The Honourable Khan Bahadur Mian Sir.
Ghosal, The Honourable Mr. Jyotsnanath.
Habibullah, The Honourable Nawab Khwaja.
Hafeez, The Honourable Khan Bahadur Syed Abdul.
Hallett, The Honourable Mr. M. G.
Israr Hasan Khan, The Honourable Khan Bahadur Sir Muhammad.
Johnson, The Honourable Mr. J. N. G.
Mehr Shah, The Honourable Nawab Sahibzada Sir Sayad Mohamad.
Muhammad Hussain, The Honourable Mian Ali Baksh.
Murphy, The Honourable Mr. P. W.
Noon, The Honourable Nawab Malik Mohammad Hayat Khan.
Padshah Sahib Bahadur, The Honourable Saiyed Mohamed.
Parsons, The Honourable Sir Alan.
Ram Chandra, The Honourable Mr.
Shillidy, The Honourable Mr. J. A.
Sinha, The Honourable Rai Bahadur Madan Mohan.
Suhrawardy, The Honourable Mr. Mahmood.
Vachha, The Honourable Khan Bahadur J. B.

NOES—10.

Banerjee, The Honourable Mr. Jagadish Chandra.
Dutt, The Honourable Rai Bahadur Promode Chandra.
Ghosh Maulik, The Honourable Mr. Satyendra Chandra.
Hussain Imam, The Honourable Mr. Abu Abdullah Syed.
Jagdish Prasad, The Honourable Rai Bahadur Lala.
Kalikar, The Honourable Mr. Vinayak Vithal.
Kidwai, The Honourable Shaikh Mushir Hosain.
Natesan, The Honourable Mr. G. A.
Ram Saran Das, The Honourable Rai Bahadur Lala.
Sinha, The Honourable Kumar Nripendra Narayan.

The motion was adopted.

Clause 16 was added to the Bill.

Clauses 17, 18, 19 and 20 were added to the Bill.

THE HONOURABLE THE CHAIRMAN : New clause 21.

THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD : Sir, I move :

" That after clause 20 the following new clause be added, namely :

' 21. At the expiration of this Act all monies, securities, articles or property forfeited under the Act shall on application by any claimant be refunded or returned by the Local Government to the person or persons duly entitled to the possession of such monies, securities, articles or property '."

Sir, this is an emergency piece of legislation and it will be very hard on the people concerned if the monies, securities, articles or property forfeited under its provisions were to be permanently forfeited. The underlying idea being that certain persons or associations whose activities according to Government constitute a menace to the public peace should be kept under check for the time being from following their pursuits by the seizure of the

[Rai Bahadur Lala Jagdish Prasad.]

means of their doing so, it is, in my opinion, only fair that when that emergency period has passed these forfeited articles should be restored to the claimants entitled to their possession. I think, Sir, it is a reasonable proposition and should commend itself to the House.

THE HONOURABLE MR. J. BARTLEY: Sir, this proposal is misconceived in more ways than one. There is a formal misconception about it. No property strictly speaking is forfeited under this Act. It is under the Criminal Law Amendment Act of 1908 as amended by this Act that the forfeiture would take place and the amendment as drafted would not be apposite in the Bill if it were accepted in the form in which it comes before the House now. However, that is a matter of form merely. Coming to the actual substance of the amendment, what it seeks to do is to insert in the Criminal Law Amendment Act of 1908, in addition to the sections which are by this Bill inserted in that Act, a section which would provide that property forfeited under the Criminal Law Amendment Act should be restored at the end of the period for which this Act is in force, that is, a period of three years; in other words, that the orders of forfeiture should not be final but that at some remote subsequent date three years hence, they should be open to claims by the persons who then alleged they were entitled to the property. Obviously if this object were to be attained, the best method of doing so would have been to provide that where forfeiture is prescribed in section 17-B and so on temporary sequestration should have been provided. That was not done. Nor has 17-F been attacked which says that every declaration of forfeiture made under this Act shall be conclusive proof that the property specified therein has been taken possession of by Government or has been forfeited. The property has been forfeited. It remains for three years unclaimed and then at the end of three years it is sought that the whole business of determining who is entitled to the property should be thrown open again. I think it would be utterly impracticable and on its merits and on the formal objection, which is a serious one, it must be opposed.

The motion was negatived.

THE HONOURABLE RAI BAHDUR LALA JAGDISH PRASAD: Sir, in view of the decision given by the House on my amendment of a similar nature, I do not propose to move the rest of my amendments*.

THE HONOURABLE THE CHAIRMAN: Clause 1.

THE HONOURABLE MR. SATYENDRA CHANDRA GHOSH MAULIK: Sir, the amendment which stands in my name runs as follows:

"That for sub-clause (*3*) of clause 1 the following be substituted, namely:

'(*3*) It shall remain in force for one year only, but the Governor General in Council may, by notification in the Gazette of India, direct that it shall remain in force for a further period not exceeding one year'."

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* "22. All convictions made and sentences passed under this Act shall be subject to appeal to the Court to which appeals ordinarily lie and shall be open to revision by the High Court."

"23. All orders passed under this Act shall be subject to appeal to the Court to which appeals ordinarily lie and shall be open to revision by the High Court."

My main points are as follows. I have carefully scanned the arguments put forward by the Honourable the Home Member in the other House but could not find any convincing reason why the life of the Act should be three years. It is an emergency measure and no emergency should ordinarily last for more than a year and if it does last the Government of the future, if they want it, will easily be able to re-enact this law or any other law that they want to have. Why then fetter their hands ? The constitutional reforms will be working after about a year and I therefore want that the life of this Act should end by that time. Government have been promising us a very liberal constitution at the conclusion of the Round Table Conference that is sitting now in London and if we take the Government at their word, then that liberal set of reforms ought to satisfy the reasonable sections of the Indian public and it would not be too much to assume that the unrest that has been created on account of political disaffection will subside and normal times will return. This civil disobedience movement is planned and destined for achieving a certain object. When that object is achieved such movement will not exist. When the new constitution comes into operation, there will be no necessity for this legislation, since I presume the object of such movement is to get responsible Government for India. When that responsibility comes there will be absolutely no necessity for furthering this movement. If the present behaviour of the extremists continues, then it is quite reasonable to presume that this Bill will also continue, or, in other words, that the period of this Bill must depend upon the reasonableness of the extremists. If that be the argument of the Government, to limit the period of the Bill to three years, do the Government think that the attitude of the extremists will change during that period ? Government, however, themselves perceive that some limitation must be fixed for the duration of the Bill. My contention is that the attitude of these people holding different views will undergo a great change by the reforms which I hope will come into operation very soon. So that we can safely limit the operation of the Act to a year, and if it be necessary to extend it for a further period of a year, the Government can do so by a notification in the official Gazette. And, Sir, if there be any truth in what the Home Secretary says, that the movement is well under control by now, then by a year it will be completely crushed and I submit therefore that Government will have no difficulty in accepting my amendment.

Sir, I move.

THE HONOURABLE MR. M. G. HALLETT: Sir, I must oppose this amendment also. It will be recollected that the Bill as originally introduced in the Legislative Assembly was a permanent measure. It was in deference to the opinions expressed in the Lower House and in Select Committee that Government agreed to reduce the period of duration to three years. Further than that they cannot go. As I tried to explain in my opening speech on this Bill, we are passing through a period of transition and during any such period of transition, both before and immediately after the change has been made—the change may come into effect in some 18 months or so—there is a serious risk of movements of this kind starting again in this country. I explained in my previous speech how civil disobedience was not a novel feature in the political life of this country and I am not optimistic enough to hope that in a year we shall see the end of it. We have it under control, I admit, but we have it under control mainly because we have these special powers given by the Acts recently passed by Provincial Legislatures to control it. If that power was taken away, if the power of control was lessened, we should lose the initiative and civil disobedience might again raise its head. It would

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be far more effective if we showed from the outset to the supporters of that movement that these powers were going to be retained for a definite period of three years. Then they would know that there was no chance of our loosening our grip and would, in my opinion, abstain from this barren path of civil disobedience. For these reasons I oppose this change in the period of duration of the Bill. The point has been very fully considered in the Lower House.

The motion was negatived.

THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD: Sir, I do not propose to move my amendment*.

4 P.M.

THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE: Sir, I think this is the last amendment in my name. I move:

"That in sub-clause (*3*) of clause 1 for the words 'three years' the words 'six months' be substituted."

In moving this amendment I should like to bring home to Government that the duration of three years is not only a long term but is unnecessary since the new constitution is within sight. Moreover, it will cause bitter irritation in the minds of the younger generation of the country, and I am afraid the calm atmosphere for which we are all sincerely trying will not come if this period of three years is allowed to remain in this clause of the Bill. Sir, the Provincial Governments have given legislative shape to the Ordinances but have fixed their lifetime for one year only. In these circumstances, Sir, it will be a grave injustice to the people,—nay, it does not become the Government of India now to keep this proposed Act in force for three years. Sir, when the new reforms are ushered into the country in the near future there will be a new chapter in the history of India under the ægis of the Britishers and there will also be the beginning of the era of forgive and forget. Sir, does it then behove Government to keep this law on the Statute-book which would pollute the pages of history of the new era? Sir, in all fairness to Government and in the fitness of things I should say that the best thing for Government would be to adopt a conciliatory policy now, which would be the harbinger of peace in the country. And this can easily be done by Government if this proposed Act be kept in operation for six months only instead of three years. Sir, I hope Government will give us serious hearing when we say this and accept the amendment proposed by me and I further hope the House too will not be slow in realising the import and implication of my amendment.

Sir, I move.

THE HONOURABLE MR. M. G. HALLETT: Sir, if my arguments were at all relevant to the previous amendment, they are equally relevant to this. They should apply perhaps with even greater force to this amendment. I need not repeat them. There is only one point that I would like to make. It is suggested that this Bill should be in force only for six months. I would remind the House that five Local Governments have passed Bills which will

* "That for sub-clause (*3*) of clause 1 the following be substituted, namely:

'(*3*) It shall remain in force for two years only, but the Governor General in Council may, by notification in the Gazette of India, direct that it shall remain in force for a further period not exceeding one year'."

be in force for three years. Their Bills supplement this Bill. They understood from us that our Bill would be in force for the same period as that for which their Bills will be in force. It is unfair to leave them with the central Bill lasting only for six months and thereby not giving them adequate powers for the remainder of the period. I oppose this amendment.

The motion was negatived.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Sir, in view of the fate that a similar amendment has met with in this House, I do not think that I will move this amendment*.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE THE CHAIRMAN: I understand that a Bill has been remitted to this Council from the other House. I shall ask the Secretary to mention it.

BILL PASSED BY THE LEGISLATIVE ASSEMBLY LAID ON THE TABLE.

SECRETARY OF THE COUNCIL: Sir, in pursuance of rule 25 of the Indian Legislative Rules I lay on the table a copy of the Bill to supplement the Bengal Suppression of Terrorist Outrages Act, 1932, which was passed by the Legislative Assembly at its meeting held today.

CRIMINAL LAW AMENDMENT BILL—*contd.*

THE HONOURABLE MR. M. G. HALLETT: Sir, I beg to move:

"That the Bill to supplement the Criminal Law, as passed by the Legislative Assembly, be passed."

THE HONOURABLE MR. VINAYAK VITHAL KALIKAR: Sir, I think I should not silently vote on this motion without expressing my views on the Bill. I have listened carefully to the discussions on this Bill from last Monday but I am not yet convinced of the necessity of this Bill under the present circumstances. On the first reading of the Bill, the Honourable the Home Secretary made it clear to us that the movement of civil disobedience had been brought under control. The Secretary of State has stated in clear language that the movement has been crushed, and His Excellency the Viceroy in his address to the Lower House in Simla stated that the no-rent campaign in the United Provinces had died away and the red shirt movement in the North-West Frontier Province was rapidly being brought under control and that the greater part of the mass of the population was unconcerned with the civil disobedience movement. If the movement is crushed according to the Secretary of State or if the movement has been brought under control according

* "That in sub-clause (*3*) of clause 1 for the words 'three years' the words 'one year' be substituted."

[Mr. Vinayak Vithal Kalikar.]

to my Honourable friend the Home Secretary or if the mass of the population are not concerned with the civil disobedience movement according to His Excellency the Viceroy, then I do not see any reason why this repressive legislation is being put on the Statute-book. It is stated that this is a period of transition and this sort of legislation is necessary for the future Government so that there may be no recrudescence of the civil disobedience movement. I submit, Sir, that it does not lie with the Executive of the present Government to fetter the hands of the future Government. If the civil disobedience movement recurs again, the future responsible Government that we expect to have will take care of itself.

It is said, Sir, that the Congress by adopting this direct action has created a lot of trouble and is creating great disturbances in the country. I will review briefly the main features of the civil disobedience movement. The leaders and followers of this movement, Sir, court jail. They do not offer any defence and submit to all sorts of indignities without resistance. It is well known, Sir, that for the last half century the Congress adopted a different method altogether, that of petitioning and protesting. But when the younger generation found that those methods were rejected they decided to adopt some other methods and to rely on their own organization. They may be wrong in adopting this direct action, and I personally do not agree with them, but that is no reason why the Government should enact such a Bill wherein personal liberty and the rights of private property are encroached on and by which the powers of the Judiciary have been curtailed and wide powers have been given to the Executive. If you want to put a repressive measure like this on the Statute-book, I submit that you must have public opinion behind you. Unless you have public opinion behind you, you cannot expect the smooth working of this Act. But, Sir, what is the verdict of public opinion ? Since the inception of the Ordinances, for the last year and more, except in a very few interested quarters, public opinion has all along been against these measures. Not only the nationalists and extremists, but even the moderate section of the politically-minded people has condemned it in no uncertain terms. Rule by Ordinance in a civilized country when there is no war, when there is no rebellion, is a new thing.

An Honourable Member : Only murders and riots and dacoities and compulsions !

THE HONOURABLE MR. VINAYAK VITHAL KALIKAR : I will come to that point. Rule by Ordinance is condemned in every civilized country. We are living in civilized times, and, Sir, we have been taught the benefits of democracy by Britishers. We cannot agree, Sir, to the legislation like the one under consideration. Another difficulty that is before my mind is this. By enacting this legislation you have practically gagged the press. It is not in your interest, and it is not in our interest also that the press should be gagged. It is in the interests of the Government to know what are the feelings of the public on certain questions. It is in our interest also that we should give vent to our feelings, and I submit that in a constitutional way, that is the only method of giving vent to our feelings and of trying to get our legitimate grievances redressed. What do we find in the provisions of this Bill ? We find the press has been gagged. There is an encroachment on the rights of private property and personal liberty. You have curtailed the powers of the High Courts which you have established under the provisions of this Bill. You want to arm the Executive with wide powers and you do not want

to allow appeals even from district judges and the Small Cause Court to the High Court. I sound a note of warning, Sir, against the gagging of the expression of political thought. I submit that if by the enactment of this Bill you succeed in that purpose, the currents of political thought will be driven underground and what sort of turn it will take I do not know. It will recoil on you and it will recoil on us, and we do not want that. For this reason I make a last request. We have tried our utmost to lessen the rigour of this Bill by moving amendments, though we knew that we would not be successful. But my submission is that at least you should warn your officers who will be in charge of the operations of this Act not to be over enthusiastic. Perhaps if the Act is not applied at all, some discontent may be removed. It was argued by my Honourable friend Mr. Benthall yesterday and by some other Honourable Members of this House that the Rowlatt Act was passed but no action was taken under that Act. I submit that if no action was taken under that Act as it was not necessary to do so, why do you want to adorn the Statute-book by placing such a repressive legislation upon it ? However, I know that my voice is a forlorn one. We, on this side, cannot do anything in this matter. I repeat again my appeal that your officers should be warned and warned strictly that this Bill should not be brought into force unless they think that an emergency has arisen, and also before they decide that it is an emergency, they should very carefully study the situation.

With these words, Sir, I oppose the Bill.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Sir, I do not want to detain the Council long at this stage. I simply want to mention, Sir, that on the consideration stage of this Bill nine elected Members voted against it and the elected Members who voted for it were seven and in case we do not count one Honourable Member who came in and voted after the bell stopped ringing, I think it shows that the elected representatives of the people who voted for it were six. Sir, that as far as the press amendment is concerned, nine elected Members voted against it as against six elected Members who voted for it.

THE HONOURABLE NAWAB MALIK MOHAMMAD HAYAT KHAN NOON (Punjab : Nominated Non-Official) : Out of thirty?

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: I am talking of the elected Members who are present here today.

Sir, another point which I want to put before this House is that there is an impression among the public that owing to economically bad times more and atrocious taxation is likely to be imposed in the next budget and so far as the proceedings of the Round Table Conference are concerned in view of the utterances which Sir Samuel Hoare, the Secretary of State for India, is making and the multiplicity of safeguards which he is imposing, we are afraid, Sir, that the new constitution will not at all be satisfactory. The result of that will be an increase of agitation and Government want to arm themselves against that contingency. I wish to repeat, Sir, that as this Bill is now to be passed, Government must issue instructions to the officers concerned who will have to deal with it to deal with it very carefully and very cautiously.

THE HONOURABLE DIWAN BAHADUR G. NARAYANASWAMI CHETTI (Madras : Non-Muhammadan) : Sir, I rise to support the measure which is now before the House. It has been said that there is not much public demand for an enactment of this sort. I would only say to those who think

[Diwan Bahadur G. Narayanaswami Chetti.]

so that there was a demand from Bombay to tighten the law in view of the lawlessness and disorder that prevailed in Bombay last year and the year previous. It has also been said that on the eve of the new reforms an enactment of this sort is not necessary. I would only reply to that by asking whether until you get the constitution, you would like to have lawlessness and disorder everywhere ? Whatever constitution we are going to have, I think law and order ought to be respected in any form of government that we may have. For these reasons, I think the Legislative Assembly has shouldered the responsibility in passing this Bill. They have gone through it very carefully day after day and the Select Committee have on the whole satisfactorily come out and the Bill has been passed by a very large majority in the other House.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : This House is a revising Chamber.

THE HONOURABLE DIWAN BAHADUR G. NARAYANASWAMI CHETTI : Still I say that we do not go so carefully as the Assembly. I shall give one instance of what an elected Member said in the other House, I mean Mr. Mody. He said :

> " I come from a city where picketing has been carried to lengths which have made organised economic life absolutely impossible. It would be difficult to conceive of the excesses which have been committed in the name of peaceful picketing were it not for the fact that we live in times which are abnormal. I therefore cannot possibly support the demand that there should be no provisions in the law of the land with regard to picketing ".

Peaceful picketing ends in rebellions. I know, as a matter of fact, that some people who go in for peaceful picketing do go with the best of intentions ; but the street crowds, people who have really nothing to do, join the crowd and create disorder. That also affects peaceful citizens who pass the streets. Therefore picketing has done the greatest harm to Bombay. They were the worst sufferers compared to other provinces.

Sir, the provisions of this Bill will not deter the preaching of temperance, or of issuing leaflets or urging " Buy swadeshi goods ". Section 7 makes this clear. There will be no obstacle, when this Bill is passed, to social lectures and temperance preachings. I do not think social workers go about preaching in the streets, but social workers do have meetings in public places and in buildings, but not in public streets. There is nothing to be afraid of that these provisions could be used against *bona fide* meetings or *bona fide* preachings. We feel that the Government have introduced this measure only as a temporary measure and I hope that this Act in practice will not come into operation, because things are getting on satisfactorily and that there will be no necessity for applying the provisions of this Act, even though it is on the Statute-book. I am sure that everyone who likes peace and order would support the enactment. After all some of these provisions will only be applied when there is a necessity and I only hope that no necessity will arise, and that things will go on smoothly till we get our future constitution. After all law and order have to be respected and no one would question Government taking necessary powers to put down rowdyism which goes on in the name of peaceful picketing. What is the offence under the Act is to coerce people, to intimidate them, to annoy them and to pester them into agreeing with something with

which they do not agree. The Bill is intended to suppress lawlessness and I hope that people who think that this enactment is unnecessary will feel that they are making a mistake. After all, as I have already said, whatever constitution we may have one must love peace and order. For these reasons, I beg to support the motion.

*THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR (Madras : Muhammadan) : Sir, by the passing of this Act the country's Legislature has given another proof of how they are alive to the necessity of maintaining law and order in the country. Sir, besides the Central Legislature which has just given its final sanction to this Bill, various Provincial Legislative Councils have passed similar measures in the interests of public peace and tranquillity. None of these Legislatures failed to do their duty and to shoulder their responsibility which devolved upon them. I hope, Sir, that this conduct on the part of the representatives of the people, which is proof positive of the spirit of co-operation and responsibility which characterise the bulk of the people in the country notwithstanding other movements which have only a very poor following, will be duly appreciated by the British Government and no more misgivings entertained as to the fitness of Indians to shoulder the responsibility of self-government. Sir, various apprehensions have been expressed regarding the way in which this Act may be worked. Fears have been expressed that the provisions of this Bill may be worked with undue hardship. In the light of our past experience, in view of what has happened under the Ordinance law, I feel sure that this law will also be worked very reasonably and sympathetically. Still, I would request Government to take note of what has been said here and to take every possible care that no frivolous or vexatious cases come up before the courts under the provisions of this law.

One word more and I have done. In passing this legislation the representatives of the people have not only discharged their duty by their constituencies and have proved themselves fully alive to the responsibility which they owe to the masses in the country whose primary concern is the safety of person and property, not only have the Legislatures discharged this duty, but they have also by passing this Act laid a sure and strong foundation for the building up of self-government in the country. For it is obvious, Sir, that for the successful working of the new constitution it is necessary that it should be free from embarrassments. Therefore, Sir, by passing this Act this Legislature has not only discharged its duty by its constituencies but has also discharged its duty to posterity.

THE HONOURABLE KHAN BAHADUR DR. SIR NASARVANJI CHOKSY (Bombay : Nominated Non-Official) : Sir, coming as I do from Bombay, I should like to give the Honourable Members some idea of the state to which the premier city of India has been reduced by civil disobedience. It has become degraded to a fourth place. I cannot adequately depict its horrors, havoc, agony and misery. Trade, commerce and public opinion have all been paralysed. People have been cowed down, their energies suppressed, and they do not know where to turn. They realise that if they were to show any resistance, they would have to undergo greater disabilities and greater oppression. That has been the state of Bombay, so far as the people are concerned. There the fiat of the civil disobedience movement runs thus : " Thou shalt not do this : Thou shalt not do that ; Woe to him who would disobey, because he would be oppressed and harassed in every possible way !"

*Speech not corrected by the Honourable Member.

[Khan Bahadur Dr. Sir Nasarvanji Choksy.]

Sir, look at the deplorable state of the mill industry of Bombay. Look at the Stock Exchange. Look at the cotton trade. You will find that even today after the recent Cotton Association Act was passed, the European and some Indian houses are being hampered and unable to find free scope for their legitimate trade. Not that alone. Look also at the family ties. They have been disrupted ; father has been set against son, husband against wife, brother against sister ; so much so, that some have had to desert their families, whilst others had to go over to the civil disobedience movement rather than separate. That is not all. The effects of picketing have been simply disastrous. It is not picketing in the sense in which it is understood in Europe where people have a *personal* grievance and seek redress for their grievance, real or imaginary, by resorting to picketing. But in India and in Bombay picketing has been done by hirelings,—hirelings who have no *personal* grievance, who receive a few annas a day and perhaps a plateful of rice, and go about harassing the people in every possible way. Sir, the way in which these pickets work is simply intolerable to self-respecting people who have to do their shopping. In the early days they were recruited from the byways of Bombay. When that recruitment area was exhausted, up-country persons were brought down—men with wild eyes and long hair—who roam about the city and prevent people from entering shops. They waylay people entering the shops by a barrier with linked arms, snatch packages from their hands, tear them open and thus harass delicate and gentle women who have never been subjected to such treatment. Some may resist, but the majority submit to it lest they should be harassed further. They have not left a single trade untouched. Even shops dealing in goods which are not produced in India have been picketed. The requirements of the profession to which I have the honour to belong, namely, drugs, have been interfered with. They have been picketing drug shops and men who have made money for years and years by dealing in British drugs are now boycotting British products and pushing foreign ones which are of very poor quality. There occurred a very curious instance when one of the merchants was asked that if there was a serious case of illness in his family and the only drug that could save the life of the patient was a drug of British origin, whether he would allow it to be used. His reply was that he would rather let the patient die than use a drug of British manufacture ! That is the mentality to which even sane and sensible people have been reduced. People go about in fear and trepidation and do not know where to turn for redress. Social ostracism and even fines are imposed upon those who resist.

Then, Sir, look at their literature. It is full of lies, half-truths and concocted stories. Some of the productions are so filthy, so obscene and immoral that they are scarcely fit to be read by adults and yet they are read by young children in schools. You can easily imagine what would be the morality of those children when they grow up. And that, Sir, is called civil disobedience.

The defenders of the movement have not uttered a word of sympathy to those murdered and maimed. We have heard not a word today about the arson, about the loot, the murders and numerous hideous crimes that have been committed upon defenceless people. I do recollect, Sir, that in the early epidemics of plague, the streets of Bombay were deserted. Similarly, during the recent riots a number of streets were deserted, houses were closed, tramcars were not running and people were hiding away in their homes or left for their country homes. That, Sir, is what civil disobedience has done for Bombay. I should like to hear any one standing up here and defending

this state of affairs. They have shown no pity, nor a word of regret at the holocast and the sacrifice of innocent lives to the lust and terrorism of the supporters of the movement.

Sir, this Bill has been conceived on very broad lines and I believe that very great good will result from it. It will hearten the people, it will put fresh spirit into them, ensure them their personal liberty and allow them to engage in their legitimate pursuits. It is not a repressive measure. It does not lie in the mouth of those who have been terrorising and repressing the people to call it repressive. It is a measure for the protection of the people, for the protection of their personal liberty which has been so trenched upon by the civil disobedience movement. None whose hands are clean need fear its provisions. I cordially support the Bill which has just been discussed. (Applause.)

THE HONOURABLE SHAIKH MUSHIR HOSAIN KIDWAI (United Provinces East: Muhammadan): The present law being more than sufficient I consider every letter and every word of this Bill to be superfluous and therefore I stand to oppose it, although I know it is mere waste of breath to speak in this House where we are treated as old men in their dotage who cannot manage their own affairs or house and whose opinion is not worth having on any important occasion like that of the Ottawa Conference or the final discussions of the Round Table Conference. We are here only to help the Government in passing reactionary and repressive laws. I am rather surprised that anybody can have faith in repressive laws after having seen the fate of Tzars and Tzarism. I for one have no faith in Tzarist laws. Nor have I any faith in the policy which is called the dual policy, that is, having repressive laws on the one side and promising constitutional improvements on the other. This also was tried in Russia in its last stage when they had the Duma. It also failed. And what do we see here in this respect. We see lathi charges; repressive laws in action. But on the other side, what are the prospects of constitutional reform? The prospect, in my opinion are that we shall have autocracy with a vengeance—the word of every Governor will be law, superseding legislative enactments. Therefore, I do not find any consolation in having these repressive laws on the pretence that we will have self-government in the future.

THE HONOURABLE KHAN BAHADUR MIAN SIR FAZL-I-HUSAIN (Education, Health and Lands Member): Sir, we have got through a full day's work today. Our Opposition has brought a good deal of life into the discussions of this House, and it seems to me an irony of fate that today of all days my Honourable friend who spoke last should have said something reflecting on the dignity, the utility and the importance of this House, the very first day when the Opposition have been so strong and have voted so solidly.

I think it is not necessary for me, Sir, to take much time either in summing up the debate or in making promises to the Honourable Members opposite with reference to the points they made as to how this law is to be worked. No promises are called for because the law must be worked in a *lawful manner*. (Applause.) Permit me, Sir, to add that any law that this House passes will we worked in no manner other than a lawful manner, to achieve the object that this House desires that the law should achieve, and in no other manner whatsoever.

The Honourable Members opposite have said a great deal on questions of principle—liberty of the individual, primary rights of the citizen, the rule

[Khan Bahadur Mian Sir Fazl-i-Husain.]

of law. I accept all those principles and I assure them, Sir, that it is to vindicate these very principles that it has been found necessary to bring forward this legislation. Honourable Members have been talking at random about the Ordinances. I assure them that there is not a single Member of Government who does not detest and hate Ordinances more than they do (Hear, hear), and today when legislation is being introduced to do away with the Ordinances, why talk about the Ordinance law, therefore the talk about the rule by Ordinances seems to me to be altogether irrelevant and unnecessary. It is the highest compliment that any Executive can pay to the Legislature of the country to place before it legislation embodying the necessary provisions of the Ordinances to which they have had recourse, so that the Legislature may express its opinion on it. I should have thought that every Member of this House would welcome a Bill to enable him to say, "So far I am prepared to agree with you; and to this extent I am not prepared to agree with you." In spite of the various amendments moved by the Honourable Members opposite, I should like to congratulate them on the very large measure of support they have given to the Bill as a whole. Whether the Bill should last for a year or three years is not a matter of such vital importance to some others. The matter of vital importance is that the country needs this measure, and the Honourable Members have realised it and I am very glad of it, for, unless responsible Members in this House and in the other House boldly and fearlessly come forward to give the lead which it is their duty as well as their privilege to give to the country, they will be abdicating in favour of those people who have not cared to utilise their opportunity of representing their country in the legislatures of the country.

I have very great sympathy with those Members who entertain certain doubts and find some difficulties as to what the future holds for them in the matter of reforms. Some of them feel that the prospect is by no means bright. The Honourable the Leader of the Opposition talked of the numerous safeguards which are being discussed at the Round Table Conference. The Honourable Mr. Kidwai also talked of the autocracy of the would-be Governor of an Indian province and the Governor General. It is useless at this stage, Sir, to forecast these things. But may I put a question to both these Honourable Members? Are the safeguards which we find in the papers discussed as those mentioned at the Round Table Conference any more in number or any more stringent in their nature than those which have already been evolved in the matter of different provinces by those Indian leaders who have been deliberating for weeks at Allahabad? I assure him, Sir, that the number of the Round Table Conference safeguards is less and their nature is certainly milder than of those which have been evolved at the Unity Conference held in Allahabad. As to my Honourable friend Mr. Kidwai, let me assure him that however great the autocratic powers, it is being discussed, the Governors should be invested with, they are not greater than the powers which certain minorities in Sind and in the Punjab claim that they must have if the reforms are ever to come into being at all. It is no use, Sir, for this House to attribute to others what is really the result of their own *karma*.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Do you really believe in *karma*?

THE HONOURABLE KHAN BAHADUR MIAN SIR FAZL-I-HUSAIN: Whether I believe in it or not, Sir, the inexorable law of *karma* takes no

account of that. It works in its own way and in spite of anybody believing in it. I think it will be wise for all of us, in the matter of this legislation and its working in the interests of the peace of the country during the next year or so, to make sure that our ideas on all these subjects are clear and definite, not only in our own interest but also in the interest of the masses. It is of the utmost importance that every one of us should realise that and stand up to what he feels is right. The Honourable the Leader of the Opposition knows this perfectly well. Whatever fling we may have at the provisions against peaceful picketing is it not a fact that it has ruined many peaceful tradesmen in Amritsar and sent them into bankruptcy, simply because the peaceful picketers chose to interfere with the exercise, the peaceful exercise, by these tradesmen and others of their own vocations ?

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : This Party never supported picketing. We are all against picketing and civil disobedience.

THE HONOURABLE KHAN BAHADUR MIAN SIR FAZL-I-HUSAIN : I am very glad to hear that. That only illustrates what I have just said, the great support we have derived from those who are sitting opposite. If time permitted, I could have made a really good speech. My Honourable friends opposite would have readily supported the measure if they really felt there was any danger of its being rejected. So we are really all agreed on the main points of this Bill. Such opposition as has been put up was intended to improve the Bill and make it more effective. It is the duty of every Opposition to put up some opposition, otherwise how could it be an Opposition. But we all know that there is, if I may say so, unanimity on the main points of this law. I am very glad, Sir, that that unanimity which exists in this House is not the privilege of the elders, the old people or the large capitalists or landowners, but is reflected in the Legislatures of the whole country. We all know that this movement, the civil disobedience movement, which otherwise means defiance of law, has been very strong in Bombay. It is the law of nature, Sir, that wherever there is a disease the reaction to it also is very acute. Perhaps some of the Honourable Members may not have carefully noted the division in the Legislative Council of Bombay on the local variant of this Bill. It was really startling. It was 48 for and 19 against, and I am sure that the 48 were not all officials ; I am sure that there were not even 24 officials. They were more in the neighbourhood of 12 than 24. I hope, Sir, that the Honourable Members of this House will go out feeling that they have done the right thing today and will take from this House a message to their constituents, a message of peace and goodwill to all ; a message of peace to those who, for the time being, either on account of their own sentiment or on account of being misled by others, had thought that defiance of law is a good thing. The message of this House is that defiance of law can never be good. The second message would be that there is no law worth passing which is not worth being acted upon in the spirit in which it has been passed. It has been said that the law should be applied carefully. Is there an officer of Government who will not endorse that view ? Certainly, it ought to be applied most carefully. Government would discourage and detest any other course of action. Government considers that an officer who does not act in accordance with the law does the utmost possible harm not only to himself but also to the government of the country. I trust, Sir, that the good work we have done will produce excellent results and that this law will be honoured to such an extent that it will not be necessary to apply it, in even a single case.

THE HONOURABLE THE CHAIRMAN: The question is:

"That the Bill to supplement the Criminal Law, as passed by the Legislative Assembly, be passed."

The motion was adopted.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Sir, I should like to know what Bill has today been laid on the table by the Secretary?

SECRETARY OF THE COUNCIL: The Bill to supplement the Bengal Terrorist Outrages Act.

THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD: In this connection may I invite a ruling from the Chair? In the first place, Sir, copies of this Bill have not been made available for the use of Honourable Members. I ask for your ruling as to whether it is a correct procedure that a Bill should be laid on the table of the House without its copies being made available for Honourable Members? I understand that copies of the Bill will be made available for us tomorrow. In the second place, Sir, I may read out the relevant rule contained in the Manual of Business and Procedure, which runs thus:

"Every Bill which has been passed by the originating Chamber shall be sent to the other Chamber and copies of the Bill shall be laid on the table at the next following meeting of that Chamber".

I understand, Sir, that this Bill has been passed by the other House only today. If that is so, then I submit that its laying on the table of our House at today's meeting is not in conformity with this rule. I therefore beg to invite a ruling from the Chair as to how far the procedure adopted in this connection today is a correct procedure?

THE HONOURABLE KHAN BAHADUR MIAN SIR FAZL-I-HUSAIN: May I, Sir, be clear as to what the Honourable Member wants? Does he want that the Bill be treated as if it is not laid on the table and that he would prefer that it be laid on the table tomorrow or some other day? We, at any rate, are tied down to Delhi and if the Honourable Member would like to stay here longer we would be glad to lay the Bill on the table tomorrow; and we need not take it up this week.

THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD: Sir, the question is not this, that I want to prolong the sittings of the House. I only asked for your ruling as to whether the procedure adopted was a correct procedure, in view of the observations I have made.

THE HONOURABLE THE CHAIRMAN: The procedure which has been adopted is an absolutely correct one and is in conformity with the practice of this House. The Bill has only been laid on the table today, but at the next meeting, as stated in the rule, copies will be provided to Honourable Members. It is a perfectly correct procedure.

The Honourable the Leader of the House will let us know the course of business during the next few days.

STATEMENT OF BUSINESS.

THE HONOURABLE KHAN BAHADUR MIAN SIR FAZL-I-HUSAIN (Leader of the House) : Sir, so far as I have been able to ascertain the wish of the Honourable Members of this House is that the Bill that has been laid on the table will be studied by them tomorrow and that they would like to take it up day after tomorrow, if you, Sir, agree that it be done. It is possible that another Bill will be available to be laid on the table of the House tomorrow evening. Therefore, Sir, I suggest that the House stand adjourned till 4 o'clock in the afternoon tomorrow, so that the business of the House may be expedited. I may, Sir, with your permission assure the House that Government are most anxious to meet the wishes of the House in the matter of arranging business for their convenience, not for the Government convenience. If they would like to do things in a leisurely fashion we have no objection whatever. If, on the other hand, they would like the business to be expedited we are ready to help them.

THE HONOURABLE THE CHAIRMAN : I would like to know the wishes of the Honourable Members in this connection.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : We are ready to meet with the wishes of the Honourable the Leader of the House in this matter.

The Council then adjourned till Four of the Clock on Thursday, the 15th December, 1932.
