

11th September 1929

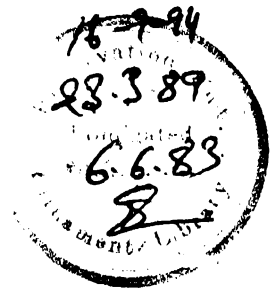
THE
LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

Volume IV

(2nd September to 17th September, 1929)

FIFTH SESSION
OF THE
THIRD LEGISLATIVE ASSEMBLY
1929



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1930

Legislative Assembly.

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THE HONOURABLE MR. V. J. PATEL.

Deputy President :

MAULVI MUHAMMAD YAKUB, M.L.A.

Panel of Chairmen :

PANDIT MADAN MOHAN MALAVIYA, M.L.A.

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SIR PURSHOTAMDAS THAKURDAS, KT., C.I.E., M.B.E., M.L.A.

MR. JAMNADAS M. MEHTA, M.L.A.

Secretary :

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

Assistant of the Secretary :

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Marshal :

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MR. DHIRENDRA KANTA LAHIRI CHAUDHURY, M.L.A.

NAWAB SIR SAHIBZADA ABDUL QAIYUM, K.C.I.E., M.L.A.

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LEGISLATIVE ASSEMBLY.

Wednesday, 11th September, 1929.

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

MEMBER SWORN :

Mr. Herbert William Emerson, C.I.E., C.B.E., M.L.A. (Home Secretary).

QUESTIONS AND ANSWERS.

RECRUITMENT FROM ENGLAND IN 1924 OF TWO SIGNAL INSPECTORS FOR THE EAST INDIAN RAILWAY.

346. *Lieut.-Colonel H. A. J. Gidney : (a) Is it a fact that in 1924 on the East Indian Railway two Signal Inspectors were recruited from England on a temporary agreement of three years ?

(b) Were they confirmed in their appointment and, if so, when ?

(c) Were any subordinates in the Signals Department promoted to the Superior Railway Service during the period 1924 and till these two covenanted men were confirmed ?

(i) If so, how many ?

(ii) If not, did the Agent of the East Indian Railway obtain the sanction of the Railway Board before thus increasing the cadre of the Department ?

(iii) If not, what action do the Railway Board intend to take ?

Mr. P. B. Rau : With your permission, Sir, I propose to reply to questions Nos. 346, 347, 348, 418 and 419 together. A full report of the circumstances was called for from the Agent of the East Indian Railway and reached the Board only yesterday. I hope to be able to give my Honourable friend a full reply within the next few days.

NUMBER AND QUALIFICATIONS OF ASSISTANT SIGNAL INSPECTORS ON THE EAST INDIAN RAILWAY.

†347. *Lieut.-Colonel H. A. J. Gidney : (a) How many Assistant Signal Inspectors are there on the East Indian Railway ?

(b) What are the special qualifications possessed by the two covenanted men and which are not possessed by Assistant Signal Inspectors recruited locally that called for their recruitment on covenanted service ?

(c) Were any of the Assistant Signal Inspectors ever allowed to officiate for any period as Signal Inspectors ?

†For answer to this question, see answer to question No. 346.

- (i) If so, who were they ?
 (ii) What were the reports of the officer in charge on their work ?

RECRUITMENT FROM ENGLAND OF TWO SIGNAL INSPECTORS FOR THE EAST INDIAN RAILWAY.

†348. *Lieut.-Colonel H. A. J. Gidney : (a) How many of the total cadre (grades 1 and 2) of Signal Inspectors excluding the two covenanted men referred to in the two preceding questions are :

- (i) covenanted men ;
 (ii) locally recruited ; and
 (iii) promoted from the grade of Assistant Signal Inspectors ?

(b) Is it a fact that the training which candidates have to undergo before their appointment as Assistant Signal Inspectors now and for the past decade is and has been more rigorous than that underwent by the men mentioned in part (a) (iii) ?

(c) Did the Agent, East Indian Railway, make any efforts at recruiting from among his worthy subordinates before confirming or continually employing the two covenanted Inspectors ?

PURCHASE OF PATENT TYPES OF ENGINES FOR INDIAN RAILWAYS.

349. *Pandit Nilakantha Das : (a) Are any patent types of engines purchased for use on Indian Railways ? If so, what are they ?

- (b) Which countries and firms supply them ?
 (c) What is the justification for the purchase of patent types in each case ?

The Honourable Sir George Rainy : (a) While a number of locomotives purchased by Indian Railways incorporate certain patented features, Government understand that it would not be correct to describe any as patent types. Such locomotives as the Mallet, Kitson Meyers, Garratt, Sentinel and Clayton types probably include more patented features than the ordinary types of locomotive in service.

(b) Of the types mentioned above the Kitson Meyers, Sentinel and Clayton types are, it is understood, manufactured exclusively in Great Britain. The Garratt type is manufactured in Great Britain and on the Continent of Europe, and Mallets all manufactured in Great Britain, on the Continent of Europe and in America.

(c) I am afraid it is impossible for me to give a detailed answer to this question. The types of locomotives above referred to have features which make them suitable for special operating conditions, e.g., an articulated locomotive makes it possible to provide larger tractive effort with a lower axle load, and is peculiarly suitable for sections of railway with heavy grades.

* Pandit Nilakantha Das : I wanted to know whether there were any advantages in the patent types of the articulated locomotives. Will the Honourable Member please enlighten me on this point ?

†For answer to this question, see answer to question No. 346.

The Honourable Sir George Rainy : Yes, Sir. When a locomotive is of a special kind, such as the articulated kind, it is common knowledge that it is probable that there would be more patent features than in an ordinary engine, just because it is a little out of the ordinary run.

TYPES OF ENGINES USED ON INDIAN RAILWAYS.

350. *Pandit Nilakantha Das : (a) Are there patent and non-patent types for one specification or one kind of service in the engines used on railways in India, e.g., Garret for articulated engines ? If so, in which case are such types used and with what justifications ?

(b) Which railways use articulated engines and in what numbers in each case ? What is the price of each type of articulated engine ? And which are the countries and firms from which each type is purchased and for what price in each case ?

(c) Have the tenders been called for for articulated engines all over the world ? If so, will Government be pleased to give a description in each case of tender and its acceptance ?

The Honourable Sir George Rainy : (a) If the Honourable Member is using the word "specification" in the technical sense in which it is used on railways, the answer is that, generally speaking, locomotives are purchased against one general specification, which specification is amplified as necessary in particular specifications to cover whatever variations from the general specification are necessary. The Honourable Member is no doubt aware that it is common practice to specify certain patented fittings on engines.

(b) and (c). There are articulated engines in use on the North-Western, Assam Bengal, Burma and Bengal Nagpur Railways. I am trying to collect whatever information is readily available and shall communicate with the Honourable Member later.

NATURE OF GOVERNMENT CONTROL OVER COMPANY-MANAGED RAILWAYS IN REGARD TO PURCHASES.

351. *Pandit Nilakantha Das : What is the control of the Railway Board or Government in the case of Company-managed railways (e.g., the Bengal Nagpur Railway) in regard to the purchase of articles without calling for tenders, or the favouring of patentees or others by purchasing their articles at a higher price ? Have any such cases been discovered in audit ? If so, will Government be pleased to give a description in each case, especially in cases of the universal sleepers and Garret engines ?

The Honourable Sir George Rainy : I am afraid it is impossible for me to give a general answer to the first part of the Honourable Member's question. The control exercised by Government over Company-managed railways is based on the contracts existing between the Government and individual Railway Administrations. Copies of these contracts are in the Library of the House. Any failure of the Railway Company to carry out the terms of the contracts, either in procedure or in incurring expenditure, would be taken up by the Government Examiner of Accounts and a record of important cases of that character will be found in the appropriation accounts of the Indian Railways. With regard to

the second and third parts of the question, I am informed that Audit Officers have not called attention to the cases which I think the Honourable Member has chiefly in mind, namely, the universal sleepers and the Garret engines, and so far as the Garret engines are concerned, I am not aware of any reason why they should do so.

Pandit Nilakantha Das : My question particularly was if there is any control over the purchase of articles of Company-managed railways. Is there any such control provided in the contracts? That is my specific question.

The Honourable Sir George Rainy : I cannot answer the Honourable Member's question fully if he means what are the exact powers of control. But I am quite prepared to say this that, if the Government of India found that a practice was growing up of not calling for tenders in cases where obviously tenders ought to be called for, or if it was found in the case of any article in general use that there was reason to believe that patented articles were being purchased where an unpatented article would serve the purpose equally well, and was cheaper, then without any doubt we should make inquiries on the subject and ascertain the facts, and I have no doubt that our powers of control, whatever exactly they may be, are quite sufficient to deal with such cases.

MANUFACTURE OF LOCOMOTIVES IN INDIA.

352. ***Pandit Nilakantha Das :** (1) What are the attempts being made to manufacture locomotives in India?

(2) How many locomotive manufacturers are there in England, Germany, America, Belgium, Japan and other countries?

(3) What number of locomotives are produced on the average in each such country?

(4) What is the smallest number of locomotives manufactured in a single factory in any country which keeps on going without a loss?

The Honourable Sir George Rainy : (1) As far as Government are aware, locomotives are manufactured in India only by the Bombay, Baroda and Central India Railway at Ajmer.

(2), (3) and (4). Government have no information.

Pandit Nilakantha Das : May I ask the Honourable Member whether the Government of India are prepared to ascertain if a locomotive firm can be run in India and had there been collected any information to that effect by the Railway Board?

The Honourable Sir George Rainy : I am afraid we have no information about that. I cannot answer these questions.

Pandit Nilakantha Das : Is the Honourable Member prepared to give any subsidy or bounty or guarantee for purchase if any private company wanted to manufacture locomotives?

The Honourable Sir George Rainy : I think, Sir, as regards the manufacture of locomotives the matter rests where it did after the report of the Tariff Board was submitted in 1924. The Tariff Board then recommended that it was not desirable to protect the manufacture of locomotives in India.

Pandit Nilakantha Das : May I know if this information was collected even when the Tariff Board inquired into the matter ?

The Honourable Sir George Rainy : I was a member of the Tariff Board at the time, Sir, and I do not recollect that we had before us anything like such complete information as the Honourable Member has asked for.

Mr. Jamnadas M. Mehta : What has happened to the manufacture of locomotives at Ajmer by the Bombay, Baroda and Central India Railway ? Is it continuing now ?

The Honourable Sir George Rainy : It is continuing at present.

Pandit Nilakantha Das : Is it only for the locomotives or for the locomotive parts ?

The Honourable Sir George Rainy : If the Honourable Member refers to the railway workshop at Ajmer, I think it was about 20 years ago or more that they began to manufacture locomotives, and they have continued to do so ever since. The Government have recently instituted an investigation to ascertain whether the manufacture of locomotives at Ajmer can be justified on economic grounds and that investigation is not yet complete.

Pandit Nilakantha Das : In view of that, will the Honourable Member make an effort to collect the information required in parts 2, 3 and 4 ?

The Honourable Sir George Rainy : I am very doubtful whether, without the kind of inquiry which the Tariff Board might make, we can get accurate and reliable information on this point. It is a very difficult question to investigate what is the minimum number of locomotives per annum which makes an economic unit. The Tariff Board have always found that it was a matter that required very close investigation. Now, practically the Government of India are not in a position to carry out that kind of investigation.

Mr. Jamnadas M. Mehta : Do Government suggest that, though locomotives have been manufactured at Ajmer for nearly 20 years, and although the Government have got a predominant interest in the Bombay, Baroda and Central India Railway, and though they are the exclusive proprietors of the Rajputana-Malwa Railway, they still do not know whether the locomotives are being manufactured at economic prices ?

The Honourable Sir George Rainy : The Honourable Member may take it for granted that, if we already knew it, we should not have ordered an investigation.

Mr. Jamnadas M. Mehta : Is there any reason why they did not know it ?

The Honourable Sir George Rainy : That question, I think, might be addressed to my predecessors.

PURCHASE OF RAILWAY MATERIALS IN INDIA.

353. ***Pandit Nilakantha Das :** (a) Will Government be pleased to give a list of imported railway materials which can be manufactured and

are being manufactured in India, e.g., cast-iron sleepers and parts of under-frames, with an explanation in each case as to why the entire demand was not purchased in the indigenous market ?

(b) Is there any agency to see that purchases for Indian railways are directed as far as possible to materials produced in India ? If so, what is that agency, and has there been any report of such efforts ?

(c) Why is not the Indian Stores Department used in our railway purchases in India ? What is the advantage of making purchases through Agents of railways ?

The Honourable Sir George Rainy : (a) I am afraid that the statement asked for by the Honourable Member could not be prepared without an expenditure of time and labour altogether disproportionate to its value.

(b) State-managed railways are required to send copies of all indents for the purchase of stores from abroad to the Indian Stores Department ; and these indents are scrutinized at monthly meetings by representatives of the Railway Board and the Indian Stores Department in order to see that they do not contain any item which can be purchased in India.

(c) This question has been discussed many times during Budget debates on the floor of this House and I think my Honourable friend will find the information he requires in speeches made by the Honourable Sir Charles Innes and by myself on this subject.

FUNCTIONS OF THE CONSULTING ENGINEER FOR RAILWAYS.

354. *Pandit Nilakantha Das : (a) What is the function of the Consulting Engineer for Railways ?

(b) What has made it necessary for the Consulting Engineers to have a branch in India in future ? Cannot the functions of the Consulting Engineers be taken over by the Inspection Department of the Indian Stores Department ?

(c) Have Government prepared any estimate of the expenditure incurred on account of the Consulting Engineers as compared with that which would be incurred if the Inspection were taken over by the Indian Stores Department ?

(d) What is the percentage charged by the Consulting Engineers ? What is the percentage charged by the Inspection Department of the Indian Stores Department ?

The Honourable Sir Bhupendra Nath Mitra : (a) Presumably the Honourable Member is referring to the Consulting Engineers to the Government of India, who are consulted by most railways (including all State-managed railways) on engineering subjects. The post of Consulting Engineer for Railways was abolished a long time ago, and the functions of that post were quite different.

(b) The necessity for the establishment of a Branch of the Consulting Engineers in India has been fully set out in the Government of India's Resolution No. S.-465, dated the 28th November, 1928, published in the Gazette of India, dated the 1st December, 1928, and I would refer the Honourable Member to that Resolution.

As regards the second part of the question, while the Inspection Branch of the Indian Stores Department acts as Consulting Engineers to some extent, its main function is inspection of stores purchased either by the Indian Stores Department, or by other bodies such as the Railways, who may require inspection to be done. It is not equipped to act as Consulting Engineers in a general way and not equipped for consultation work on railway projects.

(c) and (d). The Consulting Engineers do no inspection in India. The Indian Stores Department charges 1 per cent. on the contract value of the stores it inspects.

Pandit Nilakantha Das : Does the Honourable Member refer to the Consulting Engineers for Railways who have opened a branch in India and who were given instructions to see whether the articles of purchase were to the specifications recommended by the various specification committees ?

The Honourable Sir Bhupendra Nath Mitra : I have said that they are not the Consulting Engineers for Railways. They are Consulting Engineers to the Government of India. I have also said that they have established a branch of their firm in India. If the Honourable Member wants more information on this subject, I would refer him to the memorandum placed before the Standing Finance Committee, dated the 14th January, 1928, with reference to which that body accorded their approval to the establishment of the branch of the firm in India.

Pandit Nilakantha Das : May I know if there is any firm of Consulting Engineers for Railways in England ?

The Honourable Sir George Rainy : Not to my knowledge.

TYPES AND COST OF STEEL AND CAST-IRON SLEEPERS IN USE ON INDIAN RAILWAYS.

355. ***Pandit Nilakantha Das** : (a) Excluding the types sanctioned by the Permanent Way Specification Committee, how many other types of (i) steel and (ii) cast-iron sleepers are there in use on Indian railways for various sections of rails ?

(b) What are the advantages of these various types and what is the price of each as compared with the Railway Board types ?

(c) For how many years have the universal type steel and cast-iron sleepers been in use on Indian Railways, and what is the price and quantity purchased each year ? Are they used by any other railway than the Bengal Nagpur Railway ?

(d) How does the price of the universal sleepers both steel and cast-iron compare with the sleepers of the Railway Board type ?

The Honourable Sir George Rainy : (a) and (b). Steel and cast-iron sleepers have been in use on Indian Railways for about half a century, during which a vast number of types have been introduced. Many such types were discovered to be defective in some respects, and have since been removed from running lines, but they are still to be found in obscure sidings. The types vary from steel to various combinations of steel and cast-iron. The Honourable Member will understand

that the collection of the information asked for by him would involve great labour and time, as the drawings and records connected with the introduction of many of the types have been destroyed. The steel sleepers which survive to this day may generally be classified as the peapod type, sub-divided according to the nature of the fastenings used, such as keys, with or without auxiliary gibs, bolts and nuts with rail clips, etc. The surviving cast-iron sleepers may be divided into the pot type and the plate type, each having its adherents among the different Indian Railways, and each sub-divided into many different varieties. It is impossible to pronounce upon their relative advantages, as experts themselves differ upon the subject. The prices vary generally according to the weight, which itself is governed by the axle-loads which the sleeper is designed to carry. Speaking generally, the Railway Board types are somewhat cheaper, strength for strength.

(c) Government are not aware of any steel sleeper called the "Universal". The Universal type cast-iron sleeper was introduced in 1925. It has been mainly used by the Bengal Nagpur Railway, but is now under trial by some other railways. The number purchased by the Bengal Nagpur Railway in 1925-26 and in following years has been 800, 11,000, 82,000, 268,000 and 97,000. The price for the light type (which amounted to a quarter of the total number purchased) was Rs. 9 each and for the heavy type was Rs. 10|2|0.

(d) The Railway Board's standard sleepers cost at present Rs. 8|8|0 to Rs. 9 each.

Pandit Nilakantha Das : Does the Honourable Member say that there is no "universal type" of steel sleepers?

The Honourable Sir George Rainy : I said that the Government were not aware of any steel sleeper called the "universal sleeper". There is a "universal" cast-iron sleeper.

PURCHASE OF STEEL AND CAST-IRON SLEEPERS BY THE BENGAL NAGPUR RAILWAY.

356. ***Pandit Nilakantha Das :** (a) Have sections 43, 47 and 73 of the Contracts relating to the Bengal Nagpur Railway system been fully and properly observed in the case of the purchase of the universal type of sleepers, both steel and cast-iron?

(b) Will Government be pleased to lay on the table all documents and correspondence regarding the tenders, if any, for the purchase of the universal type of sleepers?

(c) Is there an audit report in the case of purchase of the universal type of sleepers? If so, will Government be pleased to lay the report or reports on the table?

The Honourable Sir George Rainy : (a) No breach of these sections regarding purchase of sleepers has, so far as I am aware, been brought to the notice of Government by the Auditor concerned.

(b) These papers are not before Government and the question of laying them on the table does not arise at present.

(c) I am not aware of any such report.

**PURCHASE BY THE BENGAL NAGPUR RAILWAY OF UNIVERSAL SLEEPERS
PATENTED BY FORMER EMPLOYEES OF THAT RAILWAY.**

357. *Pandit Nilakantha Das : (a) Is it a fact that the universal sleepers are contemplated in the patents Nos. 11281, 11282 and 11283 of 1926 granted to Messrs. R. D. T. Alexander, Henry William Joyce, and David Leslie ?

(b) Is it also a fact that the three patentees referred to in part (a) above are and were Civil Engineers in the employ of the Bengal Nagpur Railway—Mr. R. D. T. Alexander—the Chief Engineer and other two assistants of the Bengal Nagpur Railway ?

(c) Is it a fact that those Civil Engineers—the patentees—have arranged with Henry Williams, Ltd. and Burn & Co. for the manufacture and supply of those universal sleepers ?

(d) Has the firm, Henry Williams, Ltd., any connection with the patentee, Henry William Joyce ?

(e) Is it a fact that the universal type of steel sleepers is exclusively manufactured and supplied by Messrs. Henry Williams, Ltd. ?

The Honourable Sir George Rainy : Sir, with your permission, I propose to answer questions 357 to 360 together.

The Honourable Member was good enough to call my personal attention some time ago to some of the points raised by these questions. The information in my possession, however, is still incomplete, and a full report has been called for from the Agent. As soon as it is received, I will send the information asked for to my Honourable friend, and a copy will be laid on the table of this House.

Pandit Nilakantha Das : May I know in this connection whether the Honourable Member inquired particularly into question 357 (d), and if he has got any information at all ?

The Honourable Sir George Rainy : I have got some information, but I would rather not make an incomplete statement on this subject. I have no desire to withhold any information from the House and I have promised to lay on the table of this House a copy of the full statement that I hope to send to the Honourable Member.

Pandit Nilakantha Das : Sir, in this connection I may be permitted to draw the attention.....

Mr. President : The Honourable Member must ask a supplementary question.

Pandit Nilakantha Das : Has the Honourable Member noticed paragraph 65 at page 31 of the Report of the Accountant General, Railways, for 1927-28, under the heading, "Land leased at nominal rates" in which it is stated in sub-paragraph (4) :

"A certain firm has been given a lease at annas 8 per 1,000 square feet per mensem of 2,97,870 square feet of land, whereon it has erected workshops which are not used exclusively for work done on behalf of the Bengal Nagpur Railway. The recurring loss to the Railway in this case comes to about Rs. 52,000 per annum."

Also in the first paragraph it is stated :

"There is no evidence of a compensating gain in the shape of lower rates, since some of the contractors who have been given the use of railway lands at a nominal

rent were paid exactly the same rates as other contractors who had not been provided with railway land by the Bengal Nagpur Railway."

Mr. President : What is the Honourable Member's question ?

Pandit Nilkantha Das : My question is, has the Honourable Member noticed this ? And may I suggest that it is the same Henry Williams, Ltd. ?

The Honourable Sir George Rainy : I had not personally noticed this particular paragraph, but my Honourable friend Mr. Rau tells me that it has been noticed by the Railway Board, and I understand that instructions on that particular point have been issued.

CONDEMNED STEEL SLEEPERS OF THE BENGAL NAGPUR RAILWAY ALTERED AND RE-SUPPLIED TO THE RAILWAY AS UNIVERSAL SLEEPERS.

†358. ***Pandit Nilakantha Das :** (a) Is it a fact that the Bengal Nagpur Railway, as per a private contract, supplies so-called condemned steel sleepers to Henry Williams, Ltd., who in turn after making some slight alterations supply back those very sleepers to the Bengal Nagpur Railway as universal steel sleepers ? If so, what is the price per ton paid to Henry Williams, Ltd., for those additions and alterations in the so-called condemned sleepers ? What is the price per ton of the so-called condemned sleepers as well as the price per ton of the universal sleepers made therefrom ? What is the quantity of these steel sleepers supplied year after year by Henry Williams, Ltd. ? How many years had the so-called condemned sleepers been used before they were supplied to Henry Williams, Ltd., to be made into universal steel sleepers ?

(b) Was the price f. o. r. destination or f. o. r. manufacturing firm ? What is the price f. o. r. destination in each case compared with the price of Railway Board sleepers ?

QUANTITY AND PRICE OF UNIVERSAL CAST-IRON SLEEPERS SUPPLIED BY MESSRS. BURN & CO., AND BENGAL IRON, LTD.

†359. ***Pandit Nilakantha Das :** (a) Is it a fact that universal cast-iron sleepers are supplied exclusively by the combine of Messrs. Burn & Co. and Bengal Iron, Ltd. ? What is the quantity purchased year after year from them and for what price ? What is the price as compared with Railway Board sleepers ? Are tenders called for for universal type cast-iron sleepers ?

(b) Is the price f. o. r. destination or f. o. r. manufacturing firm ? What is the price calculated as f. o. r. destination in each case compared with the price of Railway Board sleepers there ?

PURCHASE FOR THE BENGAL NAGPUR RAILWAY OF STEEL AND CAST-IRON SLEEPERS BY MR. R. D. T. ALEXANDER.

†360. ***Pandit Nilakantha Das :** (a) Is it a fact that the Controller of Stores is entrusted generally with all sales of scrap and purchase of stores in the Bengal Nagpur Railway ?

(b) Is it also a fact that the supply of condemned steel sleepers to Henry Williams and the purchase of cast-iron and steel universal sleepers

†For answer to this question, see answer to question No. 357.

are entrusted not to the Controller of Stores but exclusively to the Chief Engineer, Bengal Nagpur Railway, Mr. R. D. T. Alexander, one of the partners of the patentees of these sleepers ?

**EXTENT OF BUSINESS ENTRUSTED TO MESSRS. HOARE MILLER & CO.,
BY THE BENGAL NAGPUR RAILWAY.**

361. *Pandit Nilakantha Das : (a) What business of the Bengal Nagpur Railway is entrusted to Hoare Miller & Co. ?

(b) Are tenders called for for the supplies entrusted to Hoare Miller & Co., if any ? Has Hoare Miller & Co. any connection with R. Miller, Esq., Chairman of the Home Board of the Bengal Nagpur Railway ?

(c) What is the extent of the business entrusted to Hoare Miller & Co. by the Bengal Nagpur Railway ?

(d) What is the reason for getting the Mayurbhanj State Railway entrusted to the Bengal Nagpur Railway, sub-managed by Hoare Miller & Co. ?

(e) Are Hoare Miller & Co. a commissioned agent so far as the Mayurbhanj State Railway is concerned ? If so what is the commission paid to them year after year ?

(f) Are Hoare Miller & Co. entrusted with the management of any other Railway in India ?

Mr. P. B. Rau : (a), (b) and (c). Government have no information, but have called for a report.

(d) and (e). The Railway is the property of the Mayurbhanj Railway Company, of which Messrs. Hoare Miller and Co. are the Managing Agents. The line is worked by Government through the agency of the Bengal Nagpur Railway Company. The Mayurbhanj Railway Company are allowed, subject to certain conditions, Rs. 6,000 per annum to meet office expenses, and the Managing Agents' remuneration for the administration of the Company. They are also allowed actual expenses in connection with Directors' fees, Directors' and Managing Agents' travelling expenses, legal expenses, audit of office account, printing, advertising, stamps, etc.

(f) No.

ENCOURAGEMENT OF PRODUCTION OF RAILS BY MESSRS. TATAS.

362. *Pandit Nilakantha Das : Is it a fact that rails are purchased at Rs. 135 per ton in England as against Rs. 110 paid to Tatas ? If so, have the Railway Board made any attempt to encourage Tatas for supplying more rails than they are now doing at a price more than Rs. 110 not exceeding Rs. 135 per ton ? Have the Tatas been asked if they can increase their output of rails if they are given Rs. 135 per ton for the quantities purchased outside India ?

Mr. P. B. Rau : The Railway Board have a contract for the supply of 50 to 100 lb. rail sections with the Tata Iron and Steel Company for 7 years at Rs. 110 per ton. Orders are not placed abroad for these rail sections unless Tatas are unable to manufacture them, and as Tatas' capacity is considerably in excess of the current demands, the necessity

for action on the lines indicated in the second portion of the Honourable Member's question does not arise.

TYPES AND COST OF INDIGENOUS AND IMPORTED POINTS AND CROSSINGS USED ON INDIAN RAILWAYS.

363. *Pandit Nilakantha Das : (a) How many types of points and crossings are used on the Indian Railways ?

(b) Are they also made of cast steel, and if so, what is the percentage ?

(c) Is there any specification of points and crossings, and if so, what are they ?

(d) What is the annual average requirements of points and crossings of each railway and what percentage of the points and crossings have been purchased from indigenous sources year after year in each railway for the last five years ? Which Indian firm or firms manufacture and supply these points and crossings ?

(e) What are the prices paid both in India and England for each type of points and crossings ?

Mr. P. R. Rau : (a) Government have no information, but the number must be very large. The Railway Board are at present standardizing nine sets each for 115 lb., 90 lb., 75 lb., 60 lb. and 50 lb. rails, altogether 45 sets approximately. It is proposed that these standards should be used in future on State-managed railways.

(b) Crossings used to be made of cast steel, but the practice has been given up.

(c) Yes. I can supply a copy to the Honourable Member, if he desires.

(d) No information is available on this point. But so far as I know all sets ordered to the new standard designs have been obtained from firms in India. Points and crossings are manufactured by most of the Indian firms undertaking railway track work (such as Henry Williams, Limited, Burn and Company, Rishardson and Cruddas, and others).

(e) As I have already stated, the standard points and crossings introduced by the Railway Board have not, so far as is known, been ordered from England. The Indian prices vary for each set, and in each tender according to the current price of the raw materials : it is considered that the collection and tabulation of the prices from the different railways would involve an amount of expenditure and labour incommensurate with the value of the information obtained.

METHOD OF CALCULATION OF PRICE OF IMPORTED SLEEPERS, TIE BARS, KEYS AND COTTERS.

364. *Pandit Nilakantha Das : (a) Regarding the purchase of steel and cast-iron sleepers, tie bars, keys and cotters, is it a fact that tenders are called for f. o. r. destination ?

(b) Is it a fact that orders are placed with Indian manufacturers f. o. r. destination and with European manufacturers f. o. b. their own ports and in their own money (*vide* Indian Trade Journal 28th March, 1929, page 713 and *ibid.*, 18th April, 1929, page 147) ?

(c) Is it a fact that discrepancies long after purchase have sometimes got to be adjusted in exchange as well as customs duty of certain articles purchased in European markets (e.g., tie bars, keys and cotters, which have been by mistake paying 10 per cent. *ad valorem*, may in future be calculated at Rs. 26 and 37 per ton with retrospective effect) ?

(d) Who will pay the money if in future more is to be paid on account of duty or exchange—Government or the supplier ?

(e) Do Government propose to demand tenders f. o. r. destination in Indian money from foreign manufacturers also ?

The Honourable Sir George Rainy : (a) and (b). Orders placed with European manufacturers are usually placed f. o. b. at a European port. Large orders placed with Indian firms are usually placed f. o. r. at the manufacturing centre, and only in exceptional cases is the order placed f. o. r. destination, as for example when the goods require to be inspected before being taken over, and inspection at the manufacturing centre cannot be arranged. The Honourable Member's question has drawn my attention to the possibility that in such cases a comparison of the prices of Indian and imported articles may be unfair, because the railway freight from an Indian port to destination would usually be calculated at railway material rates and the freight on the Indian articles at ordinary commercial rates. I have asked the Railway Board to examine the question and advise what action should be taken.

(c) If the rate of customs duty on a particular article is varied between the time when the order is placed and the time of importation, it is obvious that the actual price may be higher or lower than the calculated price. Variations in the course of exchange may also have a similar result. I cannot accept the suggestion that the 10 per cent. duty assessed on the tie bars, keys and cotters, is not the rate of duty actually imposed by the existing law.

(d) If by the contract of sale the price of the imported article is fixed in sterling f. o. b. a European port, the gain or loss arising from variations in the rate of customs duty or in the exchange accrues to or falls upon Government and not upon the supplier.

(e) With the introduction of the rupee tender system, contracts for the purchases of imported articles will be made in rupees. If the price is fixed c. i. f. an Indian port, variations in the exchange will not affect the price paid by Government, but changes in the customs duty will still do so. I think it unlikely that orders for imported articles will often be placed f. o. r. destination.

Pandit Nilakantha Das : Then am I to understand that Government are not going to arrange that they will quote prices,—as I understood it,—prices f. o. r. destination even in the case of imported articles ?

The Honourable Sir George Rainy : I think it is very unlikely. It has not specifically come before the Government of India to decide what the practice will be when the new system comes into force and I am giving my own personal opinion that it is unlikely that this system will be adopted.

DISCHARGE ON THE EXPIRY OF HIS LEAVE OF BABU BANKIM CHANDRA MUKHERJEE FROM THE EASTERN BENGAL RAILWAY.

365. *Mr. S. C. Mitra : (a) With reference to the reply to Mr. Joshi's question, No. 927, in the Legislative Assembly on the 25th September, 1928, will Government please state if it is a fact that Babu Bankim Chandra Mukherjee was forced to avail himself of all the leave due to him, and that after the expiry of the leave he was discharged ? If so, will Government be pleased to state the reasons for which the Agent, Eastern Bengal Railway, stated that he was discharged with a month's notice in terms of the service agreement ?

(b) Will Government be pleased to state if the terms of the service agreement apply to employees engaged before the introduction of the service agreement ? If not, will Government be pleased to state the reasons for which Babu Bankim Chandra Mukherjee should not be exempted from the operation of the service agreement ? Is it not the fact that he entered the Railway Department on the 16th August, 1905, i.e., long before the service agreement was introduced ?

(c) Is it a fact that Babu Bankim Chandra Mukherjee's request for communicating to him the charges and faults for which he was so dealt with was not granted by the railway authorities ? If so, why ?

Mr. P. E. Rau : (a) The appeal of Babu Bankim Chandra Mukherjee shows that he was given the option of taking the leave due to him and resigning thereafter, or of being discharged in accordance with the conditions of service.

(b) The service agreements embody conditions of service which existed prior to their introduction.

(c) I would refer the Honourable Member to the reply given by Mr. Parsons on the 25th September, 1928, to question No. 927 by Mr. N. M. Joshi.

REASON FOR THE EXCLUSION OF THE RAILWAY BOARD FROM THE SCOPE OF THE PUBLIC SERVICE COMMISSION AND NATURE OF TECHNICAL WORK DONE BY CLERKS IN THAT OFFICE.

366. *Mr. S. C. Mitra : (a) Is it a fact that the Railway Board is not within the scope of the Public Service Commission ? If so, why ?

(b) Is there any technical work for the clerks in the office of the Railway Board ?

(c) If the clerks are required to do technical work, will Government be pleased to state the nature of the work ?

Mr. P. E. Rau : (a) Yes, the reasons for this are stated in the reply I gave on the 5th instant to part (c) of the Honourable Member's starred question No. 218.

(b) and (c). Many clerks in the Railway Board's Office are required to deal with work for which previous experience and training in accounts and finance, or of the work of the several operating departments of a railway are essential.

NAMES AND PREVIOUS EXPERIENCE OF STAFF RECRUITED TO THE RAILWAY BOARD BETWEEN 1ST JANUARY AND 1ST AUGUST, 1929.

367. *Mr. S. C. Mitra : (a) Will Government be pleased to state the number of persons newly recruited in the Office of the Railway Board from the 1st January, 1929, to 1st August, 1929, with the names and previous office experience in each case ?

(b) Will Government be pleased to state the number of applications received by the Railway Board from the 1st January, 1929 to 1st August, 1929, with names and previous office experience in each case ? Is it a fact that the Railway Department recruited less experienced men during this period ? If so, why were not the applications from the better experienced men considered ?

(c) Is it a fact that Railway Department recruited their staff according to their whims ?

Mr. P. R. Rau : (a) No permanent appointments were made. A statement giving the information required in regard to temporary and officiating appointments is laid on the table.

(b) and (c). It is impossible to say at present what was the total number of applications received, as no note was kept of every such application. The main criterion of recruitment adopted by the Board was suitability and availability at the time the vacancy arose.

The question of preparing, with the help of the Public Service Commission, a list of suitable candidates from which temporary vacancies may be filled is at present under the consideration of the Railway Board.

List of acting appointments in Railway Board's office filled by recruitment between 1st January, 1929 and 1st August, 1929.

| Names. | Date of appointment. | Date of termination of appointment. | Previous experience. |
|------------------------|----------------------|-------------------------------------|---|
| 1. Anup Singh .. | 3-1-29 | .. | Currency Office, Lahore ; N. W. Railway ; Military Works Department ; and Accountant General, Railways. |
| 2. B. K. Gupta .. | 14-1-29 | 13-3-29 | Nil (appointment terminated). |
| 3. F. C. Edwards .. | 14-1-29 | 23-3-29 | Ditto. |
| 4. M. L. Chatterjee .. | 14-1-29 | 1-4-29 | Finance, Legislative, Army and Central Board of Revenue. (Transferred to Central Standard Office.) |
| | 3-5-29 | 24-7-29 | Nil (appointment terminated). |
| 5. Shah Mohammad .. | 15-1-29 | 1-4-29 | Do. |
| 6. B. N. Batra .. | 17-1-29 | 27-2-29 | Nil |
| 7. Ramji Das .. | 28-1-29 | .. | Nil |
| 8. Raja Ram .. | 18-3-29 | .. | Meteorological Department, Government of India. |
| 9. Ghulam Mohammad | 18-3-29 | 1-4-29 | Department of Industries and Labour (appointment terminated). |
| | 22-5-29 | 1-7-29 | |
| | 22-7-29 | 30-7-29 | |
| 10. M. N. Pande .. | 18-3-29 | 1-4-29 | Nil Ditto. |

| Names. | Date of appointment. | Date of termination of appointment. | Previous experience. |
|------------------------|----------------------|-------------------------------------|--|
| 11. V. B. Narain .. | 3-4-29 | .. | Home Department. |
| 12. P. C. Gupta .. | 15-4-29 | .. | N. W. Railway. |
| 13. Harbans Lal .. | 1-5-29 | .. | Lloyds Bank. |
| 14. Miss Brooks .. | 14-5-29 | 15-7-29 | Public Service Commission. (Transferred to P. S. Commission.) |
| 15. K. L. Banerjee .. | 22-5-29 | 1-7-29 | Nil (appointment terminated). |
| 16. Jan Mohammad .. | 3-5-29 | .. | Indian Stores Department, Indian State Forces, Meteorological Department, A. G. Railways and Quartermaster General's Branch. |
| 17. V. Krishnaswamy .. | 3-5-29 | .. | Salt Revenue Department, Madras, and Simon Commission. |
| 18. Din Dyal .. | 1-6-29 | .. | Audit Office, E. I. Railway and Railway Clearing Accounts Office. |
| 19. N. V. Pathe .. | 8-6-29 | .. | Assistant in Charge, Tata Sons, Ltd. Bhopal Electric Supply Co., Director of Industries, U. P. Government. |
| 20. Fateh Singh .. | 12-6-29 | .. | Simon Commission, Director of Civil Aviation. |
| 21. V. S. Shastri .. | 17-6-29 | .. | Examiner of Local Funds, Madras, Railway Clearing Accounts. |
| 22. Rajindra Singh .. | 22-6-29 | .. | N. W. Railway. |
| 23. R. S. Kapoor .. | 5-7-29 | .. | N. W. Railway from 10th September 1923. |

NAMES AND PREVIOUS EXPERIENCE OF CLERKS RECRUITED TO THE OFFICE OF THE CONTROLLER OF RAILWAY ACCOUNTS.

368. *Mr. S. C. Mitra : (a) Will Government be pleased to state the strength of the Office of the Controller of Railway Accounts and what percentage of clerks therein were recruited without examination ?

(b) If any clerks were recruited without examination, will Government be pleased to state their names and previous experience in each case ?

Mr. P. B. Rau : (a) and (b). The permanent clerical strength of the Office of the Controller of Railway Accounts is 30. This office has not been and will not be normally recruited for by examination but by transfer of experienced men from other railway accounts offices. Of the number employed at present, 24 were transferred with their work from the Accountant General, Railway's Office, four from other railway accounts offices, one from the Office of the Audit Officer, Indian Stores Department, and one from the Postal Department.

REVISION OF THE PAY OF RAILWAY SCHOOL TEACHERS.

369. *Kumar Ganganand Sinha : (a) Will Government be pleased to lay on the table a copy of the instructions issued to the Railway Administrations regarding the revision of pay of the railway school teachers ?

(b) To what Railway Administrations have the instructions been issued and when ?

(c) Will Government be pleased to state how far those instructions have been carried out by each of the Railway Administration which has been addressed on the question ?

(d) Is it a fact that in Bihar the provincial basis of pay will serve to reduce the amount of the existing annual increment of the pay of railway school teachers ?

(e) If the answer to part (d) is in the affirmative, how do Government propose to deal with this and similar other cases ?

Mr. P. R. Rau : (a) and (b). A copy of the instructions has been placed in the Library of the House.

(c) The last letter on the subject issued only in August, and I am unable to give a reply to this question at present.

(d) and (e). Government have no information. If such instances arise they would be considered according to the merits of each case ; but the general principle adopted in such cases is to apply the revised scales to future appointments and to permit existing incumbents to elect to remain on the old basis of pay if they prefer to do so.

ISSUE OF INSTRUCTIONS TO THE AGENT, EASTERN BENGAL RAILWAY, REGARDING THE RECRUITMENT OF ANGLO-INDIANS.

370. *Kumar Ganganand Sinha : (a) Will Government be pleased to state whether they have issued any instruction to the Agent, Eastern Bengal Railway, with reference to his Memorandum regarding the recruitment of Anglo-Indians ?

(b) When was the instruction issued ?

(c) Will Government be pleased to lay a copy of it on the table ?

(d) Has the Agent of the Eastern Bengal Railway modified his instructions on the subject ?

(e) If so, will Government be pleased to lay on the table a copy of his orders ?

(f) Till what time are these instructions to be followed ?

(g) Was any Railway Administration other than the Eastern Bengal Railway addressed on the subject ? If so, which, and with what results ?

Mr. P. R. Rau : (a), (b), (c), (f) and (g). A copy of the letter issued to all State-managed railways on the 23rd May, 1929, is placed on the table.

(d) and (e). Government have no doubt that the Agent of the Eastern Bengal Railway is following their instructions in this matter, and they do not think it necessary to call for a copy of his orders.

COPY OF LETTER No. 2395-E., DATED THE 23RD MAY, 1929, FROM THE SECRETARY, RAILWAY BOARD, SIMLA, TO THE AGENTS, NORTH-WESTERN, EAST INDIAN, EASTERN BENGAL, GREAT INDIAN PENINSULA AND BURMA RAILWAYS.

I am directed to invite attention to the following communications from the Railway Board :

(i) Letter No. 447-E. of 19th April 1923.

(ii) Letter No. 2395-E. of 4th February 1926.

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(iii) Letter No. 7298-E., dated 20th October 1928.

The Government of India have reason to believe that their policy as regards the recruitment of subordinate establishments on the Indian Railways is not always clearly understood by Railway Administrations, with the result that Agents have sometimes issued circulars which, taken by themselves, are calculated to give an erroneous impression of that policy. They have therefore asked the Railway Board to issue fresh general instructions which will prevent unnecessary misunderstanding and embarrassment for the future.

2. The general principles to be followed are these :

- (1) No branch of the railway services should be reserved for any one class or community, but members of all classes or communities possessing the necessary qualifications should be eligible for appointment to any branch.
- (2) In order to secure adequate representation of minority communities, the rule is that, where recruitment is conducted by means of competitive examinations, one-third of the vacancies should be reserved for the redress of marked communal inequalities. Where recruitment is carried on otherwise than by competitive examination, steps should be taken to prevent an undue preponderance of any class or community.
- (3) Whatever method may be employed to redress communal inequalities or to prevent an undue preponderance of any one class or community, the efficiency of the services must be maintained, and no candidate should be admitted who does not possess the qualifications laid down as the minimum necessary for the work to be done.

3. The application of these principles to the Anglo-Indian community presents peculiar difficulties. Owing partly to reasons which are a matter of history and partly to the special aptitude displayed by members of the community for certain branches of railway work, a very high proportion of the appointments in these branches have for a number of years, been filled by Anglo-Indians. It appeared to the Government of India that this was a case which called for special treatment. The principles which in their opinion must be followed are these :

- (1) In those branches of the service in which a preponderant share of the appointments has fallen to Anglo-Indians in the past, opportunities must be given to members of other communities to show their fitness.
- (2) Whatever the qualifications considered necessary in order to justify the appointment of a candidate to a particular branch of the service may be, they must be the same for all.
- (3) No step should be taken which would produce a sudden and violent dislocation in the economic life of the Anglo-Indian community, and
- (4) In order to avert this danger, care must be taken, in the preparation of schemes for recruitment to the subordinate railway services, not to impose conditions which would in effect seriously restrict the opportunities of employment on the Indian Railways which Anglo-Indians at present enjoy.

4. It is important that undue stress should not be laid on any one aspect of the Government of India's policy in this matter. It is clear that to reserve in perpetuity a privileged position or a high proportion of appointments in any branch of the railway services for any one class or community would be contrary to all sound principle. It is inevitable that, as time goes on, a large number of members of other communities should be admitted to those branches of the service which have hitherto been manned mainly by Anglo-Indians, and the Government of India desire that steps should be taken to give members of other communities a chance of showing their fitness. But the change should be brought about gradually and slowly.

REDUCTION OF RAILWAY RATES ON FODDER.

371. *Kumar Ganganand Sinha : Has the question of reducing the railway rates on fodder been considered by the Indian Railway Conference Association ? If so, with what results ? How does the question stand at present ?

Mr. P. R. Rau : Yes. The Indian Railway Conference Association have reported that the majority of railways already carry fodder at

low special rates, and have asked railways to bear in mind the recommendations of the Royal Agricultural Commission regarding this commodity. Government are making further inquiries into the matter.

INTRODUCTION OF STAFF BENEFIT FUND AND RULES OF FINE FUND ON INDIAN RAILWAYS.

372. *Kumar Ganganand Sinha : (a) Will Government be pleased to state which of the Railway Administrations has accepted the suggestions of the Railway Board regarding the Staff Benefit Fund and in what manner each of them is carrying them out so far ?

(b) What is the amount of Fine Fund in each Railway Administration and what is the contribution from revenue in each case ?

(c) Will Government be pleased to lay on table a copy of the model rules on the subject ?

Mr. P. B. Rau : (a) The Staff Benefit Fund has not yet been started on any railway. Government are still in correspondence with Railway Administrations on the subject.

(b) A statement showing the amount at credit of the Fine Fund of each railway on the 31st March, 1929, is laid on the table. No contributions from revenue are made to the Fine Fund.

(c) These rules are only in a draft form at present. When they are in their final form, they will be laid on the table.

Statement showing the amount at credit of the Fine Fund of Class I Railways on 31st March, 1929.

| Railway System. | Amount at credit on 31st March, 1929. |
|--|--|
| | Rs. |
| Assam Bengal | 1,925 |
| Bengal and North Western | 29,673 |
| Bengal Nagpur | 45,030 |
| Bombay, Baroda and Central India | 79,115 |
| Burma | 49,125 |
| Eastern Bengal | 23,091 |
| East Indian | 6,48,782 |
| Jodhpur | 11,461 |
| Great Indian Peninsula | 3,39,826 |
| Madras and Southern Mahratta | 1,45,332 |
| Nizam's Guaranteed State | 34,852 |
| North Western | 2,08,468 |
| Rohilkund and Kumaon | 45,862 |
| South Indian | 1,59,628 |
| Total | 18,17,170 |

VALUE OF (a) INDIGENOUS AND (b) IMPORTED STORES PURCHASED BY RAILWAYS.

373. *Kumar Ganganand Sinha : Will Government be pleased to state (i) the value of railway stores purchased in India, classing them into (a) indigenous and (b) imported and (ii) those purchased abroad, specifying the country from which they were purchased ?

Mr. P. E. Rau : I would refer the Honourable Member to the Annual reports by the Railway Board on Indian Railways. Information for the year 1927-28 will be found in Volume II, Appendix A, pages 182—185 of the Report for that year. I am sorry particulars of the country of origin of imported stores are not available.

ORIGIN AND METHOD OF SETTLEMENT OF STRIKES OCCURRING SINCE APRIL, 1929.

374. *Kumar Ganganand Sinha : Will Government be pleased to state the number of strikes that took place since April 1929 up to date, and briefly mention how each of them originated and developed ? How many of them have been settled and how ? How many of them are yet unsettled, and in how many cases was use made of Trade Disputes Act ?

The Honourable Sir Bhupendra Nath Mitra : The attention of the Honourable Member is invited to the Press communiqué of the 21st August, 1929, publishing statistics of industrial disputes in British India for the quarter ending the 30th June, 1929, a copy of which will be found in the Library. Details in respect of subsequent strikes will appear in the next Quarterly Statistics, a copy of which will be sent to the Honourable Member when published. So far, the Trade Disputes Act has been made use of only in respect of the Textile Mills Strike in Bombay.

RECRUITMENT OF MECHANICAL AND ELECTRICAL ENGINEERS FROM STUDENTS OF THE ENGINEERING DEPARTMENT OF THE BENARES HINDU UNIVERSITY.

375. *Kumar Ganganand Sinha : (a) Will Government be pleased to state whether they have examined the course of training in the Engineering Department of the Benares Hindu University with a view to come to a decision regarding the recruitment of mechanical engineers and electrical engineers from among students qualified in that University ?

(b) If so, when, how, and with what results ?

(c) If the answer to part (a) is in the negative, will Government be pleased to state reasons for the same ?

Mr. P. E. Rau : (a) and (b). The syllabus of the Engineering College degree course of the Benares Hindu University was recently examined. The recruitment to the Mechanical Engineering and Transportation (Power) Departments of State-managed railways is being arranged by training Special Class Apprentices in accordance with the

prescribed regulations. The age limit for appointment as a Special Class Apprentice is 19 years, and graduates of Universities will not, therefore, ordinarily be eligible for appointments in these Departments after the training of the first batch of Special Class Apprentices has been completed. Meanwhile a certain number of appointments to these Branches will be filled in India by selection on the recommendation of the Public Services Commission if suitably qualified persons are available. Graduates of the Benares University, who have had some practical experience, will be eligible for such appointments.

Electrical Engineers required by the State-managed railways are recruited as and when there are vacancies, and graduates of the Benares University are eligible for appointment, provided they fulfil certain conditions regarding practical experience.

†376*.

LIST OF UNDER-TRIAL PRISONERS UNDERGOING A HUNGER STRIKE, WITH PARTICULARS OF THEIR PRESENT CONDITION AND GRIEVANCES.

377. *Kumar Ganganand Sinha : (1) Will Government be pleased to lay on table a statement showing :

- (a) the list of under-trial prisoners who have been or are undergoing hunger-strike ;
- (b) the period of strike in each case and the strikers' present condition ;
- (c) the grievances for which they have resorted to hunger-strike ;
- (d) the extent to which their grievances have been remedied ; and
- (e) the specific grievances which have not been remedied so far ?

(2) Will Government be pleased to state what further action they propose to take in this matter ?

The Honourable Sir James Orerar : (1) A statement has been laid on the table containing the desired information regarding under-trial prisoners who have recently been or are now on hunger-strike in the Punjab and Delhi Provinces. Government have not yet received similar information from other provinces, but will supply the Honourable Member with it, when received. Statement laid explains the action taken by the Punjab Government and the Government of India.

(2) In regard to the re-examination of the rules relating to under-trial and special class prisoners, the Government of India await the proposals of Local Governments whom they have asked to report with as little delay as is possible.

†This question was withdrawn by the questioner.

| 1 Name. | 2 Period. | 3 Present Condition. |
|----------------------------|---|--|
| 1. Jatindra Nath Dass .. | 55th day. Persists in refusing to take any nourishment. | He has lost 37 lbs. weight since admission in jail. He is extremely weak and exhausted on account of inanition. Refuses any medicine or nourishment. Condition grave. |
| 2. Vejo Kumar Sinha .. | 14 days. Took food on 2nd September. Resumed hunger-strike on September 6th. | Has lost 7 lbs. weight since admission in jail. The state of health from day to day depends largely on the opportunities of the jail officials to administer food. When the officials are able to administer food, the state of health is as satisfactory as can be expected in the circumstances. |
| 3. Jatindra Nath Sanyal .. | 51 days. Took food on 2nd September. Resumed hunger-strike on September 6th. | Has lost 14 lbs. weight since admission in jail. Otherwise as for No. 2. |
| 4. Kanwal Nath Tiwari .. | 51 days. Ceased to hunger-strike on September 2nd. | Has lost 24 lbs. weight since admission in jail. He is slightly weak. Otherwise condition satisfactory. |
| 5. Surindra Nath Pandey. | 51 days. Ceased to hunger-strike on September 2nd. | Has lost 16 lbs. weight since admission. State of health otherwise satisfactory. |
| 6. Mahabir Singh .. | 51 days. Ceased to hunger-strike on September 2nd. | Has lost 19 lbs. weight since admission. State of health otherwise satisfactory. |
| 7. Kishori Lal .. | 51 days. Ceased to hunger-strike on September 2nd. Resumed it on September 6th. | Has lost 12 lbs. weight since admission in jail. Otherwise as for No. 2. |
| 8. Gaya Parshad .. | 51 days. Ceased to hunger-strike on September 2nd. | Has lost 22 lbs. weight since admission in jail. Otherwise state of health satisfactory. |
| 9. Ajai Kumar Ghosh .. | 51 days. Ceased to hunger-strike on 2nd September. Resumed it on 6th September. | Has lost 14 lbs. weight since admission in jail. Slightly weak. Otherwise as for No. 2. |
| 10. Sheo Varma .. | 51 days. Ceased to hunger-strike on 2nd September. Resumed it on 6th September. | Has lost 29 lbs. weight since admission in jail. He is extremely weak as a result of inanition. |

ment.

| 4 Grievances for which they have resorted to hunger-strike. | 5 Extent to which the grievances have been remedied. | 6 The specific grievances which have not been remedied. |
|--|---|---|
| <p>The reason originally given by Nos. 1 to 13 for their hunger-strike was their desire to effect an improvement in the treatment of political prisoners, among whom they included prisoners convicted in the Punjab Ghadr Conspiracy Cases, 1915-1917, and the Kakori cases. Nos. 2-15 abandoned their hunger-strike on the 2nd September but Nos. 2, 3, 7, 9, 10, 14 and 15 resumed it two or three days later. The reasons given for their resumption are that Jatindra Das, one of the accused in the Lahore Conspiracy Case has not been unconditionally released, that is to say the case against him has not been withdrawn, and that Bhagat Singh and Dutt</p> | <p>Nos. 1-15. In so far as the treatment of the accused in the Lahore Conspiracy Case is concerned, the Honourable Member is referred to Punjab Government communiqués, dated the 6th and 9th of August, 1929, copies of which are attached. In so far as the re-examination of the rules relating to under-trial and special class prisoners is concerned, the Honourable Member is referred to the communiqué of the Government of India, dated August 10th, and to the Government of India letter No. D. 2789, dated the 17th of August, 1929, to Local Governments. The copies of these documents are attached.</p> | <p>In regard to the grievances originally set forth by the under-trials in the Lahore Conspiracy Case, Government have declined to accept the principle that persons committed of offences, in which the motive is political, shall be entitled, regardless of the offence for which they are convicted, to special privileges. In regard to the grounds on which the hunger-strikers in the Lahore Conspiracy Case state that they have resumed their strike, the Punjab Government have refused to release Jatindra Das unconditionally that is to withdraw the case against him, but have made it known that they will not oppose his release on bail. The Punjab Government have also refused to allow Bhagat Singh</p> |

| 1 Name. | 2 Period. | 3 Present Condition. |
|---------------------------|---|--|
| 11. Jai Dev Kapur .. | 51 days. Ceased to hunger-strike on 2nd September. | Has lost 26 lbs. weight since admission in jail. Slightly anaemic as he had attacks of malarial fever. Otherwise condition satisfactory. |
| 12. Sukh Dev | 24 days. Ceased to hunger-strike on 6th August. | State of health good. |
| 13. Agya Ram | 44 days. Ceased to hunger-strike on 2nd September. | Has lost 14 lbs. weight since admission. State of health satisfactory. |
| 14. Convict Bhagat Singh. | 81 days. Ceased to hunger-strike on September 2nd. Resumed it on 6th September. | Slightly weak having lost 15 lbs. weight since his admission in jail. Otherwise as for No. 2. |
| 15. Convict B. K. Dutt .. | 81 days. Ceased to hunger-strike on September 2nd. Resumed it on September 6th. | Weak having lost 17 lbs. weight since his admission into jail. Otherwise as for No. 2. |
| 16. Chatur Bhuj .. | 18th July to 23rd July, 1929. | Does not arise .. . |
| 17. Muni Raj | 18th July to 23rd July, 1929. | Does not arise |

| 4 Grievances for which they have resorted to hunger-strike. | 5 Extent to which the grievances have been remedied. | 6 The specific grievances which have not been remedied. |
|---|---|---|
| <p>are, as convicts convicted in another case, confined in a different Jail from that in which the other under-trial prisoners are confined. Nos. 16 to 17 are supposed to have gone on hunger-strike in sympathy with the accused in the Lahore Conspiracy Case.</p> | <p>Nos. 16 and 17</p> | <p>and Dutt, who are convicts in another case, to be confined in association with the other under-trials, since it is an important principle of jail administration that under-trials should be segregated from convicts.</p> |
| <p>..</p> | <p>Does not arise.</p> | |
| <p>..</p> | <p>Ditto.</p> | |

PUNJAB GOVERNMENT COMMUNIQUE, DATED SIMLA, THE 6TH AUGUST, 1929.

As there appears to be some misconception as regards the treatment of the prisoners on hunger strike in the Lahore Conspiracy Case the following facts are published for general information :

The accused in the Lahore Conspiracy Case fall into two classes : (a) persons previously convicted and serving sentence under Section 307, I. P. C. and under the Explosive Act at the time of the inquiry in the court of the Special Magistrate in Lahore, and (b) persons accused in the Lahore Conspiracy Case but not under sentence in any case.

Under-trial prisoners.

Under the jail rules the latter were treated as under-trial prisoners, i.e., they were allowed to receive food from friends outside the jail or, if that were not forthcoming, they received, under the rules, ordinary jail diet.

The former were convicts, and had not been classed as special prisoners by the convicting court at Delhi. In view of the sections of the law under which they had been convicted, they could not have been classed under the rules as special prisoners. They were entitled by the rules only to receive the same treatment as regards accommodation and diet as non-special class convicts, i.e., ordinary jail diet.

Special Concessions.

In view of the probable length, and the consequent strain, of the trial, however, the Punjab Government issued special orders to medical officers in charge of the jails concerned that it was important that the prisoners of both classes in this case should be kept in good health so as to be able to attend, without prejudice from ill-health, to the proceedings in the inquiry and to their defence ; and in consequence, if necessary, special diet on medical grounds might be given to them with this purpose in view.

" To secure better treatment."

Two convicts had gone on hunger strike in order, as they allege, to secure better treatment for political prisoners generally in India, among whom they included persons convicted of violent crimes such as the convicts in the Kakori case, and not classed as special class prisoners by courts. Their example was, later, followed at different times by most of the other under-trial prisoners.

Special Diet.

It is observed that, in the case of the convicts, the medical officer in charge of the jail had ordered special diet for them in accordance with the instructions issued by the Punjab Government. Special diet was also ordered in the same way for some of the under-trial prisoners, who were also at liberty to have food sent to them by the Defence Committee and friends outside the jail. Both classes of prisoners, however, refused to accept this special diet and are hunger striking. The under-trial prisoners also refused to accept food sent them by friends from outside the jail.

Forcible Feeding.

As regards artificial feeding, this is only resorted to under the rules at the discretion of the medical officer when, in his opinion, it is absolutely necessary in order to preserve the hunger striker's life from the result of his own action. Whether it should be given or not is entirely a question for the medical authority. When it is given it is administered by a qualified medical staff under qualified medical supervision.

As regards the rules for special class prisoners, they follow the All-India model and are as follows :

Excluded Classes.

(1) Certain class of prisoners are excluded from consideration for classification as special class prisoners. These include all who, whatever their station in life or motive, are convicted of any offences which directly involved violence or offence against property or persons, who have incited others to crime of this character or who were hired to commit offences in connection with political movement, or who have been guilty of attempting directly or by general incitement to seduce soldiers or police from their allegiance.

Prisoners of the special class are kept separate from ordinary prisoners, but, except as a jail punishment, their imprisonment shall, in no case, involve anything in the nature of separate confinement.

Diet.

They are given the diet prescribed for ordinary prisoners, but are allowed, at their own expense, additional food brought in from outside, subject to the approval of the medical officer.

They are permitted to wear their own clothing.

They are permitted to write and receive one letter once a month and receive a visit from friends and relations once a month.

They are not required to perform menial duties, nor to pay for having such duties done for them.

They are permitted the use of their own cups, plates, bedding and cooking utensils.

Suitable Work.

They may be furnished with a chair and a table.

Special class prisoners, who are sentenced to rigorous imprisonment or elect to labour, are allotted such tasks only as are suitable to their station in life.

They are permitted to sleep in the open air in the Summer, and given a light in their cells or wards until 10 P.M.

They are allowed books from the jail library.

A Comparison.

The corresponding rules in force in England for the offenders in the First Division have the following features :

They are kept apart from other prisoners, but remain for the whole of their sentence in a solitary cell, and not in association with any other prisoners of their class.

Having regard to the prisoners' ordinary habits, the visiting committee may direct that special provision of a room or cell may be made on the payment of a sum fixed by the Commissioners of Prisons.

Suitable bedding is provided.

Private furniture or utensils may be allowed at the cost of the prisoners.

The prisoner's cell may be cleaned for him on payment of a small sum fixed by the Commissioners.

Privileges.

First Division offenders are allowed their own food and clothing, their own books, if not objectionable, and if approved by the Governor.

They are allowed to work at their own trade, if they provide tools, or at prison labour by their own consent.

They may receive visits and communications once in 14 days.

Persons guilty of felony are not eligible for classification as First Division offenders. Both in England and in India the classification is made by the convicting court.

PUNJAB GOVERNMENT COMMUNIQUE, DATED LAHORE, THE 9TH AUGUST, 1929.

In continuation of the Punjab Government communiqué published on the 6th of August, 1929, the Punjab Government desire to publish the following supplementary details for general information.

The special diet, sanctioned by the Punjab Government for the prisoners in the Lahore Conspiracy case and offered to all of them, costs 0-12-7 per head per diem, and includes milk, ghee, sugar, fruit, vegetables, and bread, with fish and rice as alternatives for Bengalais, accustomed to the latter diet. The average cost of the diet of European convicts is (i) for those sentenced to labour 0-11-9, and (ii) for those not sentenced to labour 0-10-6 per head per diem.

[11TH SEPT. 1929.]

LETTER No. D-2789, DATED THE 17TH AUGUST, 1929, FROM MR. H. W. EMERSON, C.I.E., C.B.E., SECRETARY TO THE GOVERNMENT OF INDIA, TO ALL LOCAL GOVERNMENTS AND ADMINISTRATIONS.

I am directed to address you on the subject of the re-examination by Local Governments of the rules relating to under-trial prisoners, and to the classification of, and the privileges granted to, convicted prisoners, and in this connection I am to enclose a copy of a *communiqué* issued by the Government of India on the 10th August, 1929.

2. In regard to the general character of the examination, I am to say that the Government of India attach great importance to the ascertainment of non-official opinion, and especially of the views of non-official visitors of jails. While they are content to leave to the discretion of Local Governments the manner in which such opinion should be obtained, they desire that no cause should be given for complaint that sufficient opportunity was not afforded for the expression of the views of representative non-officials interested in the question. If, however, the Local Government have recently carried out an enquiry into these matters and have on record the evidence of non-officials, it will be necessary only to supplement the record in such manner and to such extent as will attain the above object. It is the wish of the Government of India that the examination be undertaken and completed with as little delay as is consistent with a thorough review of the various issues involved. They consider that it is very desirable that the rules of the various provinces should be as uniform as possible, and in order to facilitate a comparison of the existing rules the Government of India will shortly forward to Local Governments copies of the relevant rules framed by the Local Governments relating to under-trial and special class prisoners. It is not, however, the intention of the Government of India that the object of the review should be limited to the introduction of changes based on a comparison of the rules now in force in various provinces. They contemplate that decisions will be reached on particular issues which may involve amplification and amendment of the existing rules. Some of the issues which are likely to arise are indicated below, but the Government of India do not regard them as exhaustive, and have no doubt that other points will be raised during the course of the examination. In regard both to under-trial and convicted prisoners, the rules as amended must be consistent with the safe custody of prisoners and the maintenance of jail discipline, and in regard to convicted prisoners they must be consistent with the principles of penal detention.

3. In regard to under-trial prisoners, the Government of India consider that the rules adopted should, where possible, be at least as liberal for prisoners of similar social standing as those which may be ultimately adopted for special class convicts. The main questions which appear to require review relate to diet, conveyance and accommodation. In regard to the first item, it is for consideration, firstly, whether the diet, in accordance with proscribed scales, of under-trial prisoners, should not be in all cases a charge on Government, and, secondly whether one or more special scales should be proscribed for under-trial prisoners, whose standard of living is definitely superior to that of the ordinary convict. As regards the second item, the Government of India recognise that the conveyance of under-trial prisoners is a matter of police rather than jail administration, and that the issues involved extend beyond the question whether special consideration should be paid to under-trial prisoners of social standing. The question is admittedly a difficult one and it may not be practicable to lay down hard and fast rules, but the Government of India are inclined to think that the discretion given in this respect to police authorities might be more clearly defined. It appears in particular to be desirable, that, in cases of conveyance of under-trial prisoners of social position by rail, sanction should be given to a fairly liberal scale of diet money, and to accommodation of a class higher than the 3rd class.

In regard to the conveyance of an under-trial prisoner between the jail and the court, the Jails Committee appointed by the United Provinces Government have drawn attention in paragraph 382 of their report to the waste of time and the embarrassment or inconvenience caused to under-trial prisoners when they have to be escorted on foot. They have accordingly recommended that where lock-ups are at a considerable distance from the courts, prison vans should be provided if this provision does not already exist. The Government of India commend this suggestion for the consideration of local Governments. Since, however, financial considerations may delay the introduction of this reform, it is a matter for examination whether, subject to adequate arrangements being made for the safe-custody of the prisoners, the police authorities should not be instructed to provide special means of conveyance for under-trial prisoners of good social standing in cases where prison vans are not available.

The problem of better accommodation of under-trial prisoners raises questions of new expenditure, which in some provinces may be on a considerable scale. For this

reason it is probable that improvement in this direction can only be gradual. None the less the Government of India consider it desirable that the question of accommodation should be included within the scope of the re-examination, with the object of introducing, as financial resources permit, the reforms that may be found to be desirable. The observations of the Jails Committee of the United Provinces on this question are contained in paragraphs 384 and 385 of their report, and relate to the complete separation of under-trial prisoners by night and the more careful segregation by day, in order to prevent contamination by association with convicts or with other under-trial prisoners, whose previous record or alleged offences indicate depraved habits or tendencies. A further question for consideration is whether under-trial prisoners of good social standing should be provided with simple furniture, such as is allowed in some provinces to special class convicts, and, if so, whether it should be supplied at their own or at Government expense.

4. In so far as the suggestions made in the last two paragraphs relate to the privileged treatment of under-trial prisoners of good social standing, they raise the question of their classification for this purpose. Since the assumption must be made that under-trial prisoners are innocent until they are proved to be guilty, the nature of their alleged offences cannot be adopted as a criterion for the purpose now in question although it can, as suggested above, be adopted with propriety for the purpose of segregation of under-trial prisoners *inter se*. A suitable and perhaps the sole criterion for the grant of additional privileges to under-trial prisoners would appear to be the social status, education and character of the prisoners. No formal classification would seem to be necessary so long as the person is in police custody, and the requirements of the case would probably be met by the grant of discretionary powers to the police, combined with careful supervision by administrative officers that the powers are properly used. As soon, however, as an under-trial prisoner is committed to the custody of the jail authorities, a formal classification would be necessary, and it is a matter for consideration as to what authority should be responsible for the classification. It might be desirable to confer the necessary powers either on the District Magistrate or on the Superintendent of the Jail in consultation with the District Magistrate and the exercise of the powers might be subject, if this is considered desirable, to the confirmation of local Governments.

5. So far as the enquiry is concerned with convicted prisoners, it should be limited to the review of the rules relating to special class prisoners and should not include general questions of classification, *e.g.*, the separation of casual and habitual offenders. Within the scope of the examination as thus defined, the three main subjects for enquiry will be :

- (1) The criteria for classification.
- (2) The classifying authority.
- (3) The privileges to be granted to special class prisoners.

6. With regard to the criteria to be adopted, I am to invite attention to paragraph 2 of the *communiqué*, in which are stated the tests now employed. I am to lay particular stress on the fact that the Government of India regard as fundamental the principle of differentiation between offences for the purpose of classification and are unable to contemplate any deviation from this principle which would introduce the criterion of motive regardless of the offences committed. Subject to this essential condition, the general questions that are likely to arise in this connection would appear to be the following :

- (a) Whether it is necessary or desirable to make classification depend, as in the Bombay Rules, on the nature of the imprisonment to which the convict is sentenced, namely, whether it is simple or rigorous ; or whether the nature of the offence regardless of the punishment inflicted should be uniformly adopted as a criterion.
- (b) If the nature of the offence is uniformly adopted, whether the list of offences, the commission of which exclude persons from classification as special class prisoners, should be extended in some directions and restricted in others. For instance a question for consideration will be whether the list should include, as in the Bengal rules, the following offences :
 - (1) The possession of bombs or other explosive substances or being concerned in their manufacture where there is a presumption that they are intended to be used subsequently to endanger life or property.
 - (2) The illegal possession of arms where there is a similar presumption.

On the other hand, the further question will arise as to whether it is necessary to include in the list all offences against property, or whether it is practicable to curtail the list by the inclusion of certain specific offences only.

- (c) Whether in place of the general description of offences by categories it is practicable and desirable to substitute a specific list of offences, stating the section of the I. P. C. or other enactments, conviction under which will exclude from classification as a special class prisoner.

7. With regard to the authority responsible for classification, the existing rules show considerable diversity in regard to the original authority, but it is probable that a fairly uniform standard is secured by the fact that the original classification is either subject to the confirmation of the Local Government or is submitted in the form of a recommendation for the orders of the local Government. The questions for consideration in this connection would appear to be the following :

- (a) Whether the system of confirmation by the local Government should be uniformly adopted.
- (b) Whether the rules should specifically provide for an application to the Local Government by a convict in regard to whom no recommendation has been made or order passed classifying him as a special class prisoner.
- (c) Whether the rules should specifically provide for action by a Local Government, on its own motion in cases where no reference is made by the original classifying authority.
- (d) Whether there are defects in the administration of the existing rules which are capable of remedy.

8. In regard to the privileges to be granted to special class prisoners, the desirability of uniformity to which reference is made in paragraph 2 above will indicate the scope for revision in accordance with the principles which are at present accepted. The further question will arise as to whether it is desirable to extend those principles in certain directions, and in this respect the following points will require examination :

- (a) In regard to diet whether it is practicable and desirable to fix one or more scales, superior to the ordinary scale and to be provided at Government expense, for those classified, in accordance with the criteria adopted, as special class prisoners, the scale varying according to the further classification, if necessary, of the prisoner as determined by his previous mode of living. If the answer is in the affirmative the further question will arise as to whether the scale or scales should include all the reasonable requirements of a prisoner, or whether he should be allowed as at present to supplement it from outside the jail. Another matter for consideration will be whether the existing rules provide sufficiently for variation in the diet.
- (b) The question as to what extent other privileges, which special class prisoners may now enjoy at their own expense, should be provided at the expense of Government.
- (c) The question as to whether the rules in regard to accommodation and separation from other convicts require revision.

9. I am to request that on the completion of the re-examination of the rules, the views of the local Government may be communicated, with as little delay as possible, to the Government of India. The course that will be then adopted by the Government of India will depend to a large extent on the measure of uniformity represented by the proposals of the various local Governments and for this reason I am unable at the present stage to indicate the procedure which may be followed.

GOVERNMENT OF INDIA COMMUNIQUE, DATED 10TH AUGUST, 1929.

The Government of India make the following announcement for the information of the public.

The Punjab Government in a communiqué, dated 6th August, 1929, have stated certain facts relating to the treatment of prisoners in the Punjab. In view of the public interest which has recently been evoked in regard to the rules relating to under-trial and convicted prisoners, the Government of India consider

it desirable to supplement the information contained in that communiqué by reference to certain general aspects of the question.

2. Subject to legislation by the Indian Legislature, prisons and prisoners are a reserved provincial subject. The last revision of the rules was made by the various local Governments as a result of a Conference convened by the Government of India in 1922 attended by representatives of all the Provinces, at which a thorough examination was made of the subject. The rules are based on certain broad principles which, while allowing for differences of details between province and province, have secured a large measure of uniformity throughout British India. In the classification of convicts as special class prisoners the two criteria adopted are:—firstly, the character of his offence; and secondly, the social status, education and character of the prisoner. The rules framed by most of the local Governments provide that if the status, education and character of a convicted person merit the grant of privileges not accorded to the ordinary prisoner, he may be classified as a special class prisoner, provided that the offence for which he has been convicted does not fall within certain categories. The offences, the commission of which excludes a convict, whatever his station in life or motive may have been, from the privileges of a special class prisoner are broadly, those against property or involving violence, or the abetment of such offences, or the seducing of soldiers or police from their allegiance, or those committed in connection with political movements by persons who have been hired for the purpose. A convict whose offence does not fall within any of these categories is eligible for classification as a special class prisoner whatever the motive of his offence may have been, provided that his status, education and character merit such classification. On the other hand, no person convicted of any of the above offences can be so classified whatever may have been his motive. The principle of discrimination between offences for the purpose of inclusion within, or exclusion from, the benefits of the rules of convicted persons was adopted after very careful examination of the various considerations involved. The Government of India regard this principle as fundamental and they are unable to contemplate any deviation from it which would introduce into the rules of classification the criterion of motive, regardless of the offence committed.

3. A convict, who is classified as a special class prisoner, is entitled to certain privileges, the general nature of which, subject to differences of detail, has been stated in the communiqué of the Punjab Government.

4. As regards under-trial prisoners the rules show some local variations; but effect has been generally given to the following provisions:—Under-trial prisoners are separated from convicts, and a further separation is made between those under-trial prisoners who have previously been convicted of an offence and those who have not. Under-trial prisoners are not subjected to more restraint than is necessary for their safe custody, the maintenance of discipline, and the enforcement of jail rules. They are allowed to retain their own clothing, bedding, and eating and drinking vessels. They are permitted to purchase books or to obtain them from friends and they may supplement the prison diet by purchase or from private sources. They are granted all reasonable facilities for interviewing and communicating, either orally or in writing, with their relatives, friends and legal advisers. They are not required to labour; but they may, if they so wish, follow a trade and receive the earnings thereof.

5. The Government of India trust that the above statement will remove any misconception that may be present in the mind of the public in regard to the existing rules. At the same time they are conscious of the fact that public opinion is disquieted to whether these rules are sufficiently liberal in some directions, and they consider it proper that a re-examination of them should be made with the view of ascertaining and remedying any defects that may be found to exist. Such a re-examination in any case would have been necessary in the near future as a consequence of the report of the Jails Committee constituted in June, 1928, by the Government of the United Provinces to enquire into and report on the jail administration of those provinces. Their report, which is now under the consideration of the Local Government, raises various questions relating to under-trial prisoners, and to the classification and privileges of convicted prisoners, and since any changes in the rules which the Local Government might desire to make would be referred to the Government of India, the opportunity would then have been taken of consulting other local Governments in regard to the issues raised. In order that the consideration of the general question may

be expedited, the Government of India have decided to request local Governments to re-examine, with as little delay as possible, the rules relating to under-trial prisoners, and to the classification of, and the privileges granted to, convicted prisoners. Local Governments will be requested to consult non-official opinion in such manner as they may consider to be desirable and the Government of India hope that leaders of public opinion will assist Local Governments with their views.

APPOINTMENT OF A MUSSALMAN SECRETARY TO THE INTERMEDIATE BOARD OF EDUCATION TO BE PRESIDED OVER BY MR. KITCHLEW, AN OFFICER OF THE JAIPUR STATE.

378. *Maulvi Muhammad Yakub : (a) Is it a fact that an Intermediate Board of Education is being appointed at Ajmer ?

(b) Is it also a fact that Mr. Kitchlew, an officer of the Jaipur State, is to be appointed as the President of this Board ?

(c) If so, will the Government be pleased to state why an officer of an Indian State is appointed to administer the education of British subjects ?

(d) What arrangements have been made to protect the interests of the Mussalmans on this Board ?

(e) Do Government propose to consider the desirability of appointing a Mussalman as the Secretary of this Board ; if not, why not ?

Sir Denys Bray : (a) and (b). Yes. A Board of High School and Intermediate Education has been constituted with Mr. Kitchlew as the Chairman.

(c) Though Mr. Kitchlew happens to be at present in the service of an Indian State, he is a retired officer of the Indian Educational Service with about 30 years service in the United Provinces Educational Department. Moreover, though the Board is to have its headquarters in Ajmer, it is to control the education not merely in Ajmer-Merwara, but throughout Rajputana, Central India and Gwalior.

(d) Steps are being taken to secure the services of a suitable Muslim for the Board.

(e) It would clearly be improper to allow any consideration save educational qualifications to operate over the selection of the Secretary, at any rate in the first instance.

ADMINISTRATION OF THE EDUCATION DEPARTMENT AT AJMER.

379. *Maulvi Muhammad Yakub : (a) Is it a fact that the Mussalmans of Ajmer are not satisfied with the present administration of the Education Department at Ajmer ?

(b) Is it a fact that the Head Master of the Moinia Muslim High School at Ajmer is a Hindu gentleman ?

(c) Is it a fact that the Assistant Superintendent of Education at Ajmer is also a Hindu gentleman ? What are his educational qualifications and what university degrees does he possess ?

Sir Frank Noyce : (a) No expression of dissatisfaction has been brought to the notice of the Local Administration.

(b) No.

(c) The Assistant Superintendent of Education is a Hindu M.A., B.Sc. of the University of Allahabad.

TRANSFER OF THE RAILWAY CLEARING OFFICE FROM DELHI TO LUCKNOW.

380. *Maulvi Muhammad Yakub : (a) Is it a fact that those responsible for the public health of the city of Delhi are now definitely of opinion that, unless the extra pressure caused by the railway employees on the population of the city is removed, the health of the city is bound to be affected ?

(b) Is it also a fact that, in order to remove this pressure on population, the question of building railway quarters at Safdarganj, a place seven miles from the city is being seriously considered ?

(c) Has it been estimated whether this project will involve a very big capital outlay ?

(d) What is the reason for Government not proposing to shift the Railway Clearing Office from Delhi to Lucknow ? Can the office not be located in the Central office building of the old Oudh and Rohilkhand Railway now lying vacant ?

Mr. P. R. Rau : (a) and (b). The Delhi New Capital Committee have expressed the hope that the Railway Board will fix an early date for the completion of quarters for the clerks of the Railway Clearing Account Office so as to ensure relief of pressure in the Delhi City as soon as possible, and not to bring any more railway clerks to Delhi, until quarters have been provided for them. The question of building quarters has engaged the attention of Government for a considerable time, but the chief difficulty has been that of obtaining a suitable site for the colony. Safdarjang was one of the sites suggested, but it was not considered suitable for various reasons.

(c) The cost depends partly on the site selected, and the type and number of quarters finally decided upon. At a rough estimate I would put the cost at about 25 lakhs, assuming we build 1,000 quarters.

(d) Delhi has been selected in preference to Lucknow on grounds of efficiency and economy. I might add that there is no difficulty in Delhi as regards office accommodation ; nor is the building in Lucknow referred to by the Honourable Member now lying vacant.

APPOINTMENT OF MUSLIM OFFICERS IN THE RAILWAY BOARD.

381. *Maulvi Muhammad Yakub : (a) What is the total number of permanent officers in the Office of the Railway Board and how many of them are Mussalmans ?

(b) What steps do Government propose to take to appoint a sufficient number of Muslim officers in the Office of the Railway Board to protect the interests of the Muslim nationals ? If not, why not ?

The Honourable Sir George Rainy : (a) 17 permanent officers, one of whom is a Mussalman, and a second Mussalman have very recently been appointed.

(b) I am sure that the Honourable Member realises the difficulty of staffing any particular office on communal lines, if efficiency is not to be

sacrificed. Government are aware, however, of the importance which Muslims attach to the employment of members of their community on the staff of the Railway Board. It is always their desire to make sure that the claims of important minority communities are not overlooked when vacancies have to be filled.

Maulvi Muhammad Yakub : What steps have been taken to see that this desire is fulfilled ?

The Honourable Sir George Rainy : I think I have already answered that question : I said that a second Muslim had very recently been appointed.

GRIEVANCES OF MUSLIMS OF THE LOCAL FUND ACCOUNTS OFFICE, LAHORE.

382. ***Maulvi Muhammad Yakub :** (a) Has the attention of Government been drawn to a printed open letter addressed to Sir M. Frederic Gauntlett, Auditor General in India, by the "Aggrieved Muslims" of the Local Funds Accounts, Punjab, Lahore ?

(b) What action, if any, was taken to investigate into and redress the grievances contained in this letter ? If not, why not ?

The Honourable Sir George Schuster : The letter has been referred to the Accountant General, Punjab, whose reply is still awaited.

NUMBER OF MUSSALMAN OFFICERS AND CLERKS IN THE HEAD OFFICE OF THE AUDITOR GENERAL IN INDIA.

383. ***Maulvi Muhammad Yakub :** (a) What is the total number of (i) permanent officers, and (ii) permanent clerks, in the head office of the Auditor General in India, and how many of them are Mussalmans ?

(b) Was the Government of India's Circular of 1925 about the representation of minority communities in the Central Services, sent to the Office of the Auditor General in India ? If so, what effect was given to it in the said office, and how many Mussalmans were appointed since then ? If not, why not ?

The Honourable Sir George Schuster : (a) (i) Nine officers, of whom none is a Mussalman.

(ii) The permanent strength of the clerical (including supervising) staff is 105. The number of Muhammadan clerks at present employed is seven, including two who are officiating in deputation vacancies.

(b) A copy of the orders in question was sent to the Auditor General. They apply to a service as a whole and not to any particular office to which members thereof are posted. The postings of Government servants to individual offices are not governed by communal considerations. The fact that there is at a particular moment no Muslim officer in a particular office is therefore of no real significance. There are at present 13 Muslims out of a total of 167 officers in the Indian Audit and Accounts Service. Of these 5 have been appointed in the last three years against 18 of all other communities taken together in the same period.

HIGH DEATH RATE IN THE TOWNS OF BEAWAR AND AJMER.

384. ***Rai Sahib Harbilas Sarda** : Has the attention of Government been drawn to the Hindi book, "Beawar ki Bheeshan Mirthyu Sankya" (Alarming death rate in Beawar) by Vyas Tansukh Vaid, describing the insanitary conditions of Beawar and disclosing the fact that the death-rate in the towns of Beawar and Ajmer in Ajmer-Merwara is abnormally high ?

Sir Frank Noyce : Government have not seen this book.

HIGH DEATH RATE IN THE TOWNS OF BEAWAR AND AJMER.

385. ***Rai Sahib Harbilas Sarda** : (a) Is it a fact that while in Delhi, Agra, Muttra, Lucknow, Ahmedabad and Baroda births exceed deaths, in Ajmer and Beawar on the contrary, deaths exceed births ?

(b) Is it a fact while in Delhi there are 75.7 deaths as against 100 births, in Agra 70.8 deaths against 100 births, in Muttra 84.3 deaths for 100 births, in Lucknow 83.5 deaths against 100 births, in Baroda 92.8 deaths against 100 births ; there are 110.3 deaths against 100 births in Beawar and 152.3 deaths against 100 births in Ajmer ?

Sir Frank Noyce : With your permission, Sir, I shall answer questions 385 to 391 together. Information is being collected and will be supplied to the Honourable Member.

EXCESS OF DEATHS OVER BIRTHS IN BEAWAR.

†386 ***Rai Sahib Harbilas Sarda** : Is it a fact that in Beawar with a population of 22,362 souls, deaths exceeded births during the decade preceding 1921, A. D. by 3,865 or 17 per cent. of the total population ?

DECREASE OF BIRTH RATE AND INCREASE OF DEATH RATE IN BEAWAR.

†387. ***Rai Sahib Harbilas Sarda** : Is it also a fact that the birth-rate in Beawar has gone down from 38.82 in 1922-23 to 34.68 in 1926-27 while the death-rate has gone up from 34.88 in 1922-23 to 42.79 in 1926-27 ?

EXCESS OF DEATHS OVER BIRTHS IN AJMER.

†388. ***Rai Sahib Harbilas Sarda** : Is it a fact that in Ajmer during the last 14 years since 1915-16, deaths have every year exceeded births ?

HIGH DEATH RATE OF BABIES BORN IN AJMER.

†389. ***Rai Sahib Harbilas Sarda** : Is it a fact that in Ajmer, taking the average for five years, 1922-23 to 1926-27, out of every 1,000 babies born, 448.5 died in the first year.

HIGH CHILD AND INFANT MORTALITY IN BEAWAR.

†390. ***Rai Sahib Harbilas Sarda** : Is it also a fact that in Beawar with its dry climate, average mortality (below 10 years) for seven years,

†For answer to this question, see answer to question No. 385.
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1921 to 1928, was as heavy as 662.11 per thousand and infantile mortality during the first year of birth, 408.04 ?

BAD SANITARY CONDITION OF AJMER.

†391. ***Rai Sahib Harbilas Sarda** : (a) Is it a fact that in Ajmer, the Municipal Committee reported in 1922-23 that the " Sanitation of the City of Ajmer could hardly be worse than it is " ?

(b) Will Government be pleased to state what effective measures have been taken by the Municipal Committee, Ajmer, or the Government to remove this reproach, and whether there has been any appreciable improvement in the death-rate of Ajmer ?

INVESTIGATION OF THE CAUSES OF THE HIGH DEATH RATES IN AJMER AND BEAWAR.

392. ***Rai Sahib Harbilas Sarda** : Do Government propose to take any action to investigate thoroughly the question of deaths exceeding births year after year in the City of Ajmer and the Town of Beawar, and to recommend measures to be taken to put a stop to the present sad state of affairs disclosed by the book " Beawar ki Bheeshan Mirthyu Sankya " ?

Sir Frank Noyce : When Government are in possession of full statistics regarding births and deaths in the City of Ajmer and the Town of Beawar, they will consider, in consultation with the local authorities, what action, if any, is necessary.

ENFORCEMENT OF VILLAGE LABOUR WITHOUT REMUNERATION TO GUARD THE RAILWAY LINE NEAR AJMER DURING THE PASSAGE OF THE VICEROY'S SPECIAL.

393. ***Mr. Gaya Prasad Singh** : (a) Has the attention of Government been drawn to a report published in the " Young Rajasthan " of Beawar, dated the 8th August, 1929, in which it is stated that, when the special train of H. E. the Viceroy passed through Ajmer about the 5th August last, a number of villagers from the surrounding villages were forced to guard the railway line on the previous night for 12 hours on the system of *Begar*, without being paid anything, and that they were not even allowed to go and take their food ?

(b) Has the attention of Government been drawn to the " Arya Martand " of Ajmer, dated the 8th August, 1929 in which the same allegation has been made ?

(c) Is it a fact that at the instance of the Superintendent of Police, the Commissioner of Ajmer-Merwara issued orders to the tehsildars and revenue officials to warn headmen of villages to comply with the station officer's demands to guard the railway line during the passage of the Viceregal Special ?

(d) Under what law were the villagers forced to guard the railway line, without being paid any remuneration ? Is the system of *Begar* legal in British India, or in Ajmer-Merwara ? If not, do Government propose to institute an inquiry into the matter, and put a stop to this practice ?

†For answer to this question, see answer to question No. 385.

Sir Denys Bray : (a), (b) and (c). Yes.

(d) Owing to the inadequate number of village chowkidars in Ajmer-Merwara, it has been customary to ask the village headmen to assist the police on the rare and obviously very special occasions when Viceregal trains pass through the district, but the question is now under examination.

With regard to the system of *begar* generally, I would refer the Honourable Member to the replies given to the Honourable Mr. V. J. Patel on the 11th February, 1924, and to the Honourable Sir Ibrahim Jaffer in the Council of State on the 12th September, 1927.

Mr. Gaya Prasad Singh : I want to know, Sir, if the system of *begar* is legal in the province of Ajmer-Merwara ?

Sir Denys Bray : I would refer the Honourable Member to the answers that I have just quoted in my answer. It is legal in special and rare circumstances, as, for instance, in emergencies arising from floods and so forth.

Mr. Gaya Prasad Singh : Under what law can villagers be forced to work on occasions of the passage of Viceregal trains ?

Sir Denys Bray : On such occasions under the law of common sense. (Laughter.)

Mr. Gaya Prasad Singh : May I take it then that there is absolutely no law on the subject ?

Sir Denys Bray : The law of common sense in such emergencies is surely overriding ?

Pandit Hirday Nath Kunzru : May I ask the Honourable Member when floods have occurred in Ajmer-Merwara during the last fifty years ? (Laughter.)

Sir Denys Bray : Touché ! (Laughter.)

Mr. Gaya Prasad Singh : May I ask whether it is proposed to examine this question and abandon the system of forced labour ?

Sir Denys Bray : I have told the Honourable Member that the question is under examination.

Mr. Gaya Prasad Singh : For how long has it been under examination ?

Sir Denys Bray : The Honourable Member's question very properly prompted it.

Mr. Gaya Prasad Singh : I am glad to hear this.

DEFENCE IN A CIVIL SUIT BY THE PUBLIC PROSECUTOR OF AJMER-MERWARA OF A SUB-INSPECTOR OF POLICE ACCUSED OF ASSAULTING A VILLAGE HEADMAN.

394. ***Mr. Gaya Prasad Singh :** (a) Is it a fact that last year on the occasion of the passage of the Viceregal special train, a Sub-Inspector of Police assaulted the headman of a village, and was found guilty by a court, and he was fined for the offence ?

(b) Is it a fact that in a civil suit brought by the said headman against the Sub-Inspector of Police, the Public Prosecutor of Ajmer-Merwara has

been engaged to defend the Sub-Inspector ; and that he is considered to be on duty whenever he is required to attend court in connection with the case ?

Sir Denys Bray : (a) and (b). Yes. The reason why the Public Prosecutor has been instructed to conduct the case is that under section 42 of the Police Act, 1861, the Sub-Inspector having been criminally prosecuted is *prima facie* protected from being sued for damages on the same facts in a civil court. As the case is *sub judice*, it would obviously be improper to say more.

ESTIMATED AND ACTUAL COST OF THE KANGRA VALLEY RAILWAY PROJECT.

395. ***Diwan Chaman Lal :** (a) Will Government be pleased to state when the Kangra Valley Railway project was sanctioned, and the estimated cost of the project ?

(b) Will Government be pleased to state whether detailed traffic, engineering and geological surveys were carried out and scrutinised before the project was sanctioned ?

(c) Will Government be pleased to state whether the sanction of the project was in any way influenced by the demands of the Punjab Government ?

(d) Is it a fact that the Kangra Valley Railway project was not considered remunerative ?

(e) Will Government be pleased to state the number of times the original estimate was revised together with the periods of such revision and the amounts ?

(f) Will Government be pleased to state whether an undertaking was given to the Secretary of State at any stage that the estimate would not be exceeded ?

(g) Is it a fact that the actual expenditure did exceed all the estimates ?

(h) Is it a fact that under existing orders Agents of Railways are not permitted to incur expenditure on works beyond the amount of the sanctioned estimate and the allotment in the budget without the previous sanction of the Railway Board ?

(i) Is it a fact that expenditure on the Kangra Railway project exceeded the sanctioned estimate and the amount allotted in the budget without the previous sanction of the Railway Board ?

(j) What disciplinary action has been taken or is contemplated if the answer to part (i) be in the affirmative ?

The Honourable Sir George Rainy : (a) An estimate amounting to Rs. 134 lakhs was sanctioned in February, 1926.

(b) No.

(c) I would refer the Honourable Member to part (6) of the reply given to Mr. Abdul Haya's question No. 203 on the same subject on the 5th September last.

(d) It was considered that the Kangra Valley Railway would not prove remunerative without a guarantee from the Punjab Government.

(e) Revised estimates were received in March, 1928, amounting to Rs. 217½ lakhs, and in November, 1928, amounting to Rs. 301 lakhs.

(f) In reply to an inquiry from the Secretary of State, the Government informed him, on the 24th December, 1925, that the estimate of 134 lakhs was not likely to be exceeded.

(g), (h) and (i). Yes.

(j) The whole question is under my personal consideration at present.

COMMUNICATION TO THE OFFICIALS CONCERNED OF NOTES ON PAY ATTACHMENT ORDERS RECORDED IN THEIR CHARACTER ROLLS.

396. *Maulvi Muhammad Yakub : Is it a fact that a note of each ' Pay Attachment Order ' received from courts on account of debts, etc., is recorded by the Head of the Department in the Character Sheet of the official concerned ? If so, is a copy of such ' unfavourable ' note communicated to the official so affected ; if not, will Government be pleased to state reasons ?

The Honourable Sir James Orerar : The information asked for is being obtained and will be supplied to the Honourable Member in due course.

RULES PERMITTING THE GRANT OF SECOND CLASS RAILWAY FARE TO LADY CLERKS DRAWING LESS THAN RS. 200 PER MONTH.

397. *Maulvi Muhammad Yakub : (a) Is it a fact that lady clerks in receipt of a monthly emolument of less than Rs. 200 are entitled to 2nd class railway fare on their move or transfer ? If so, will Government be pleased to furnish the House with a copy of rules, etc., permitting such concession to lady clerks only ?

(b) Do Government propose to modify the rules so as to enable the male clerks also to draw the same concession ? If not, why not ?

The Honourable Sir James Orerar : (a) Yes. The orders will be found in the form of a note to Supplementary Rule 18 in the compilation of rules published by the Posts and Telegraphs Department, a copy of which will be found in the Library of the House.

(b) No, Sir. Government do not consider that it is necessary to extend to male clerks a concession which was given to lady clerks in consideration of their sex.

NECESSITY FOR THE TRAFFIC OFFICER OF THE WIRELESS BRANCH OF THE OFFICE OF THE DIRECTOR GENERAL OF POSTS AND TELEGRAPHS TO PROCEED TO DELHI DURING THE WINTER.

398. *Maulvi Muhammad Yakub : (a) Will Government be pleased to refer to paragraph (i) of starred question No. 226, answered on 8th September, 1928, and state why the services of the Traffic Officer, Wireless, are considered necessary at Delhi whenever the Director of Wireless is required to proceed on tour or even during the presence of the Director of Wireless there ?

(b) Who is in charge of the Wireless Branch at Simla during the absence of the Head of the Branch and the next senior officer ; if a most

junior officer, is he empowered and available to dispose of cases of other nature in addition to that of his own without consulting the senior officers referred to at part (a) above on the phone ?

(c) If answer to the second part of (b) above be in the negative, will Government be pleased to state who is responsible for the delay in the disposal of ordinary, early, urgent and immediate cases of purely traffic matters by sending them every day from Simla to Delhi to the Traffic Officer, Wireless, for disposal and return files back to Simla ?

(d) Are Government prepared to regularise this kind of irregularities, delays and unnecessary labour in the disposal of Government work and if not, state reasons ?

The Honourable Sir Bhupendra Nath Mitra : (a) The facts are not as stated by the Honourable Member. The Wireless Traffic Officer is not summoned to Delhi whenever the Director of Wireless goes on tour, but only as special circumstances may from time to time require.

(b) The Director of Wireless remains in charge of the Wireless Branch whether in Simla or not, and in accordance with the usual practice the next senior officer at Simla disposes of cases or refers them to higher authority at his discretion or under the orders of the Director of Wireless.

(c) Government are not aware that any unnecessary delay occurs.

(d) Government do not admit these allegations and are therefore not prepared to take any special action in the matter.

GRANT OF HELP TO INDIANS WHO HAVE RETURNED TO INDIA FROM SOUTH AFRICA.

399. ***Mr. Rafi Ahmad Kidwai :** (a) Are Government doing anything to help the repatriates from South Africa to settle in occupations for which they are best suited ?

(b) Are there any officers appointed by Government to look after the interest and welfare of the repatriates from South Africa after their landing in India ? If so, what are their duties ?

(c) Is it a fact that a large number of repatriates from South Africa, finding conditions in India not satisfactory to themselves, have emigrated to Malaya and Fiji ?

Sir Frank Noyce : (a) Yes. .

(b) Such officers have been appointed. Their duties are to look after repatriates and their personal property immediately upon their return from South Africa, to arrange for their despatch to their homes, and, if possible, to find them employment for which they may be suited.

(c) No. So far as is known, only 62 repatriates have emigrated to the Federated Malay States, and none to Fiji.

REPORTED HELP TO MEMBERS OF THE INDIAN CENTRAL COMMITTEE BY MR. J. COATMAN.

400. ***Mr. Rafi Ahmad Kidwai :** (a) Has the attention of Government been drawn to the report in the Press that the services of Mr. J. Coatman have been secured by two members of the Central Committee co-operating with the Statutory Commission to write a minute of dissent on their behalf ?

(b) Has Mr. J. Coatman accepted the work himself with the permission or approval of the Government of India or have the latter placed his services at the disposal of the two members ?

(c) Have Government given any instructions to Mr. J. Coatman about the policy to be adopted in this minute of dissent on important constitutional and communal questions, or will he be free to advocate his personal view or the point of view of the two members ?

(d) Will Mr. J. Coatman receive any remuneration for this work ? If so, will he be paid this remuneration by the Government of India or by the two members concerned ?

The Honourable Sir James Orerar : (a) Yes.

(b), (c) and (d). The report is entirely without foundation and these questions therefore do not arise.

NUMBER OF VARIOUS COMMUNITIES IN THE CLERICAL STAFF OF THE FOREIGN AND POLITICAL DEPARTMENT.

401. ***Manlvi Abdul Matin Chaudhury :** Will Government be pleased to lay on the table a statement showing separately the number of Hindus, Mohamedans, Sikhs, Europeans and Anglo-Indians, Indian Christians and other communities in the clerical staff of the Foreign and Political Department ?

The Honourable Sir James Orerar : With your permission, Sir, I propose to reply to questions Nos. 401-408 together. I would refer the Honourable Member to the printed statements showing the communal composition of the clerical staff in the various offices of the Government of India on the 31st December, 1928, of which copies have been placed in the Library. These contain all the information he wants except in regard to :

- (i) the offices mentioned in items (3) to (7) of question No. 406, and
- (ii) those mentioned in items (2) to (5) in question No. 407.

Information in regard to these is being collected and will be forwarded to the Honourable Member in due course by the Departments of the Government of India concerned.

NUMBER OF MEMBERS OF VARIOUS COMMUNITIES IN THE CLERICAL STAFF OF CERTAIN OFFICES.

†402. ***Manlvi Abdul Matin Chaudhury :** Will Government be pleased to lay on the table a statement showing separately the number of Hindus, Mohamedans, Sikhs, Europeans and Anglo-Indians, Indian Christians and other communities in the clerical staff of the following offices under the Government of India :

- (1) Home Department,
- (2) Office of the Private Secretary to the Viceroy, and
- (3) the Public Service Commission ?

†For answer to this question, see answer to question No. 401.

NUMBER OF MEMBERS OF VARIOUS COMMUNITIES IN THE CLERICAL STAFF OF CERTAIN OFFICES.

†403. *Maulvi Abdul Matin Chaudhury : Will Government be pleased to lay on the table a statement showing separately the number of Hindus, Mohamedans, Sikhs, Anglo-Indians and Europeans, Indian Christians, and other communities in the clerical staff of the following offices under the Government of India :

- (1) Commerce Department,
- (2) Railway Board, and
- (3) Commercial Intelligence Office †

NUMBER OF MEMBERS OF VARIOUS COMMUNITIES IN THE CLERICAL STAFF OF CERTAIN OFFICES.

†404. *Maulvi Abdul Matin Chaudhury : Will Government be pleased to lay on the table a statement showing separately the number of Hindus, Mohamedans, Europeans and Anglo-Indians, Sikhs, Indian Christians and other communities in the clerical staff of the following offices :

- (1) Education Department (Imperial Secretariat),
- (2) Medical Directorate,
- (3) Agricultural Adviser,
- (4) Director General, Archæology,
- (5) Surveyor General of India,
- (6) Director General, Botanical Survey of India,
- (7) Director, Zoological Survey of India, and
- (8) Keeper of Imperial Records †

NUMBER OF MEMBERS OF VARIOUS COMMUNITIES IN THE CLERICAL STAFF OF CERTAIN OFFICES.

†405. *Maulvi Abdul Matin Chaudhury : Will Government be pleased to lay on the table a statement showing separately the number of Hindus, Mohamedans, Europeans and Anglo-Indians, Sikhs, Indian Christians and other communities in the clerical staff of following offices under the Government of India :

- (1) Army Head Quarters,
- (2) Adjutant General's Branch,
- (3) Quarter Master General's Branch,
- (4) Master General Supply Branch,
- (5) Military Secretary's Branch, and
- (6) Royal Air Force †

NUMBER OF MEMBERS OF VARIOUS COMMUNITIES IN THE CLERICAL STAFF OF CERTAIN OFFICES.

†406. *Maulvi Abdul Matin Chaudhury : Will Government be pleased to lay on the table a statement showing separately the number of Hindus,

†For answer to this question, see answer to question No. 401.

Mohamedans, Sikhs, Europeans and Anglo-Indians, Indian Christians and other communities in the clerical staff of the following offices :

- (1) Department of Industries and Labour (Imperial Secretariat),
- (2) Director General of Posts and Telegraphs,
- (3) Post Master General, Bengal,
- (4) Post Master General, Bihar,
- (5) Post Master General, United Provinces,
- (6) Post Master General, Bombay,
- (7) Post Master General, Madras,
- (8) Director General of Observatories,
- (9) Central Stationery and Stamp Office, Calcutta,
- (10) Central Form Stores,
- (11) Central Printing Office, Delhi,
- (12) Government of India Press, Calcutta,
- (13) Government of India Press, Aligarh,
- (14) Government of India Press, Simla,
- (15) Government of India Press, Delhi,
- (16) Central Publication Branch, Calcutta, and
- (17) Indian Stores Department †

NUMBER OF MEMBERS OF VARIOUS COMMUNITIES IN THE CLERICAL STAFF OF CERTAIN OFFICES.

†407. *Maulvi Abdul Matin Chaudhury : Will Government be pleased to lay on the table a statement showing the number of Hindus, Mohamedans, Sikhs, Anglo-Indians and Europeans, Indian Christians, and other communities in the clerical staff of the following offices :

- (1) Finance Department,
- (2) Pay and Account Office (Miscellaneous Central Depts., Calcutta),
- (3) Pay and Account Office (Survey of India),
- (4) Pay and Account Office (Allahabad),
- (5) Pay and Account Office (Delhi Civil Administration),
- (6) Calcutta Mint,
- (7) Bombay Mint,
- (8) Currency Office, Bombay,
- (9) Currency Office, Madras,
- (10) Currency Office, Lahore,
- (11) Currency Office, Cawnpore,
- (12) Currency Office, Rangoon,
- (13) Currency Office, Karachi, and
- (14) Calcutta Paper Currency Office †

†For answer to this question, see answer to question No. 401.

NUMBER OF MEMBERS OF VARIOUS COMMUNITIES IN THE CLERICAL STAFF
OF CERTAIN OFFICES.

†408. *Maulvi Abdul Matin Chaudhury : Will Government be pleased to lay on the table a statement showing separately the number of Hindus, Mohamedans, Europeans and Anglo-Indians, Indian Christians, and other communities in the clerical staff of the following offices :

- (1) Auditor General,
- (2) Director, Army Audit,
- (3) Audit Officer, Indian Stores Department,
- (4) Accountant General, Railways,
- (5) Accountant General, Central Provinces,
- (6) Accountant General, Bihar and Orissa,
- (7) Accountant General, Madras,
- (8) Accountant General, Bengal,
- (9) Accountant General, Bombay,
- (10) Accountant General, Punjab,
- (11) Accountant General, Central Revenues,
- (12) Comptroller, Assam,
- (13) Accountant General, Posts and Telegraphs,
- (14) D. A. G., Posts and Telegraphs (Postal Branch),
- (15) D. A. G., Posts and Telegraphs (Telegraph Branch),
- (16) D. A. G., Posts and Telegraphs (Nagpur),
- (17) D. A. G., Posts and Telegraphs (Delhi),
- (18) D. A. G., Posts and Telegraphs (Madras),
- (19) Chief Auditor, North Western Railway,
- (20) Chief Auditor, East Indian Railway,
- (21) Chief Auditor, Great Indian Peninsula Railway,
- (22) Chief Auditor, Eastern Bengal Railway, and
- (23) Examiner of Government Press Accounts ?

IMPORT AND SALE AT A LOW PRICE OF AUSTRALIAN WHEAT IN INDIA.

409. *Sardar Kartar Singh : (a) Is it a fact that Australian wheat worth about Rs. 35 crores has been imported into India this year and that the said wheat is selling at Bombay at the rate of Rs. 3-7-0 per maund ?

(b) Is it a fact that practically no freight is charged for bringing the wheat from Australia to India ?

(c) Are Government aware that this large importation of Australian wheat has materially affected the price of Indian wheat throughout India and that the cultivators have been forced to sell their wheat at a very low price ?

(d) Is it a fact that Indian wheat this year is fetching less price than even gram ?

†For answer to this question, see answer to question No. 401.

(e) Have Government realised the consequences of this large importation of Australian wheat into India and are Government aware that consequent to the general fall in the price of wheat the zamindars have not, in most places, been able to pay the Government demands ?

(f) Is it a fact that, on account of the inability of the zamindars to pay, due to this extraordinary fall in the price of the wheat, the Government officers have felt greater difficulty in the realization of Government dues this year than in the previous years ?

Sir Frank Noyce : (a) From January to July, 1929, 630,000 tons of Australian wheat, valued at Rs. 891 lakhs, were imported into British India. Official quotations for Australian wheat at Bombay are not available. Special inquiries, however, show that it is selling at Calcutta at Rs. 5-2-0 per maund.

(b) The freight charge on wheat from Australia to India is 22 to 25 shillings per ton.

(c) The prices of Indian wheat per maund which were prevailing at Calcutta, Bombay, Karachi and Lyallpur at the end of last month were :

| | | | | Rs. | A. | P. |
|----------|----|----|----|-----|----|----|
| Calcutta | .. | .. | .. | 5 | 12 | 0 |
| Bombay | .. | .. | .. | 5 | 7 | 5 |
| Karachi | .. | .. | .. | 5 | 0 | 6 |
| Lyallpur | .. | .. | .. | 4 | 8 | 3 |

The price of wheat at Lyallpur in April of this year was Rs. 6-5-6 per maund and steadily declined as the new crop came on the market. The Indian wheat crop of 1927-28 was only 7½ million tons as against a five years' average of 9¼ million tons. The final estimate of the crop for 1928-29 was 8.4 million tons. The average requirements of India for internal consumption are approximately 8½ million tons, compared with which a net import of 629,000 tons during the period April 1st, 1928, to the end of August, 1929, is relatively very small. The fall in prices since the beginning of April of this year appears to be mainly due to the Indian crop of 1928-29 more nearly approaching the requirements for internal consumption.

(d) The price of Indian wheat is lower than gram at Bombay and Karachi but higher at Calcutta.

(e) & (f) Government have no information, but, as already pointed out, the fall in wheat prices which, according to the most recent information, are tending to recover, has been due far more to the new crop coming on the market than to unusually large imports of Australian wheat.

ADVANTAGE TO THE IMPORTER OF AUSTRALIAN WHEAT OF THE PRESENT HIGH RATE OF EXCHANGE.

410. ***Sardar Kartar Singh :** Is it a fact that an importer of wheat into India gets an advantage of 12½ per cent. on account of the present high rate of exchange ?

The Honourable Sir George Schuster : The answer to the question, as I understand it, is in the negative.

ADOPTION OF MEASURES BY THE GOVERNMENT OF INDIA TO ENABLE INDIAN WHEAT TO COMPETE WITH IMPORTED WHEAT.

411. *Sardar Kartar Singh : (a) Have Government opened experimental farms at several places in India to produce wheat ? Can Government afford to sell the wheat produced at these farms at the rate of Rs. 3-7-0 per maund ? If not, why not ?

(b) What facilities are afforded by the Australian Government to their farmers that they are able to sell wheat at the rate of Rs. 3-7-0 per maund in India ? Are the Government of India prepared to give the same facilities to Indian farmers so that they may be able to compete with the foreigners ?

(c) Are Government prepared to afford relief to Indian farmers by reducing the land revenue and water rates so that they may be able to hold their own against the Australian farmers ?

(d) If Government cannot see their way to reduce the land revenue and water rates, have they considered the advisability of imposing a heavy duty on foreign imported wheat with a view to afford relief to the agriculturists of India ?

(e) Have Government considered the advisability of stopping the import of Australian wheat into India ?

Sir Frank Noyce : (a) Government farms are merely for the production of seed of superior quality of wheat. They are not run on a commercial basis and the seed produced in them is sold to cultivators at the lowest rate which will secure that it is used for seed instead of for domestic consumption. The price at which it is sold is, therefore, no guide to the price at which the cultivator can afford to sell his wheat.

(b) Government have no information that Australian wheat has been sold at as low a price as Rs. 3-7-0 per maund. The latest quotation is Rs. 5 2-0 per maund at Calcutta.

(c) This is a matter for Local Governments.

(d) & (e) No. The imports of foreign wheat into India have, in recent years, only been of importance, in the years 1921-22, 1928-29 and the early part of 1929-30 and, in each case, this has been due to the wheat crop of the preceding year in India being a partial failure.

SCHOOLS FOR THE SONS AND WARDS OF THE GOVERNMENT OF INDIA STAFF IN SIMLA.

412. *Mr. S. C. Mitra : (a) Is it a fact that schools have been provided for the education of the sons and wards of the European staff of the different State Railways at different places ?

(b) Is it a fact that such schools are maintained from the Central revenues ? If so, will Government be pleased to state the reasons why no schools are maintained from the Central revenues for the sons and wards of the Government of India staff in Simla ?

(c) Will Government be pleased to furnish a statement of the European schools maintained out of Railway revenues showing the amount of grant given to each ?

Sir Frank Noyce : (a) and (c): I would refer the Honourable Member to the Report on the expenditure of the railways on the education of the children of employees in 1925-26, copies of which are in the Library.

(b) That Report also shows the extent to which railway schools are maintained from railway funds which are Central Revenues. Facilities already exist for the education of the children and wards of the Government of India staff in Simla. Grants are made from Central Revenues towards the maintenance of certain schools which have been established by private bodies for this purpose.

NUMBER AND QUALIFICATION OF TEACHERS AND FEES CHARGED IN THE LADY IRWIN GIRLS' SCHOOL, SIMLA.

413. ***Mr. S. C. Mitra :** (a) Will Government be pleased to state the number of teachers in the Lady Irwin Girls' School, Simla ?

(b) Will they be pleased to state the number of L. T.'s and B. T.'s out of the total number of teachers engaged in the School ?

(c) Is it a fact that very few of the total number of teachers in the School are trained teachers ? If so, why ?

(d) Is it a fact that the school fees for the students of the Lady Irwin Girls' School have been raised since the beginning of the year ?

(e) Are Government aware that the raising of the fees have hit hard the poorly paid staff of the Government of India ?

(f) If the answer to part (e) be in the affirmative, will Government be pleased to state what steps they propose to take to alleviate the hardships of the parents of the students of the said School ?

(g) If the answer to part (e) be in the negative, do Government propose to inquire into the matter from the Associations of the Secretariat and attached offices staff ?

Sir Frank Noyce : (a) There are at present nineteen teachers and one vacant post.

(b) Out of the nineteen teachers two are B. A., B. T.'s.

(c) Six are trained teachers. There are very few trained women teachers in India.

(d) Yes.

(e), (f) & (g). The matter will be re-examined.

GRANT OF FINANCIAL AID TO THE LADY IRWIN GIRLS' SCHOOL IN SIMLA.

414. ***Mr. S. C. Mitra :** (a) Are Government aware that the Lady Irwin Girls' School is deteriorating in staff owing to the Government grant being insufficient to meet the requirements of the School ?

(b) If the answer to part (a) be in the affirmative, do Government propose to make an annual recurring grant of Rs. 20,000 to the said School for improving the condition of the School ? If not, why not ?

(c) If the answer to part (a) above be in the negative, do Government propose to inquire into the matter ?

Sir Frank Noyce : (a) No.

(b) Does not arise.

(c) An application for an increased grant-in-aid to the school is under consideration.

DIFFICULTIES OF THE MOVING STAFF OF THE GOVERNMENT OF INDIA FOR WANT OF A MOVING SCHOOL FOR THEIR CHILDREN.

415. ***Mr. S. C. Mitra :** (a) Is it a fact that there is no moving school for the sons and wards of the moving staff of the Government of India ?

(b) Are Government aware of the difficulties and hardships of the moving staff of the Government of India for want of such a school for their children ?

(c) If the answers to parts (a) and (b) be in the affirmative, what steps have Government taken so far to redress the grievances of the staff in this direction ? If not, why not ?

(d) Are Government aware that there is great dislocation of education of the children of the Government of India moving staff for about six months in a year ?

(e) Is it a fact that in the schools of Simla children are compelled to finish their course for 12 months in about six months of the year ?

(f) If the answers to parts (d) and (e) are in the affirmative, what steps do Government propose to take to remedy those difficulties ?

Sir Frank Noyce : (a) Yes.

(b) and (c). The Government of India have already asked the Government of the Punjab to explore, in consultation with the Chief Commissioner of Delhi, the possibility of making special arrangements at the Government High School, Simla, for the children of the moving staff of the Government of India so as to enable these children to undergo, whilst at Simla, the same courses of study as are taught in the schools in New Delhi ?

(d) and (e). No.

(f). Does not arise.

RECRUITMENT OF STENOGRAPHERS THROUGH THE PUBLIC SERVICE COMMISSION.

416. ***Mr. S. C. Mitra :** (a) Is it a fact that the Public Service Commission have on their list a few passed stenographers who have not yet been provided with permanent appointments ?

(b) Is it also a fact that in some Departments of the Government of India and attached and subordinate offices a few unpassed stenographers have been entertained ? If so, why ?

(c) Is it a fact that in the Office of the Imperial Council of Agricultural Research there will be a few vacancies of stenographers in the near future ? If so, is it a fact that there has been a proposal to recruit unpassed men from outside to fill up those vacancies ? If so, why ?

(d) Are Government aware that recruitment of unpassed men is affecting adversely the interests of those who have passed the Public

Service Commission test but have not yet been permanently absorbed in any of the Departments ? If so, do Government propose to issue necessary instructions to the several Departments to recruit only passed men so long as they are available ?

. **The Honourable Sir James Crerar :** (a) Yes.

(b) The information is being collected and will be furnished to the Honourable Member in due course.

(c) There is, I understand, one post of stenographer vacant at present. Owing to the fact that the Vice-Chairman of the Council has not yet taken over formal charge, no definite decision has been reached in regard to the recruitment of the staff of the Council Secretariat through the Public Service Commission ; but there is good reason to suppose that the decision will be that the staff shall be so recruited.

(d) I understand that the claims of the passed stenographers on the list of the Public Service Commission are always considered before unpassed stenographers are newly recruited or allowed to officiate. When the information asked for in part (b) of the question has been collected, it will be considered whether any fresh instructions are necessary.

(There are six men on the Public Service Commission list awaiting permanent employment.

AMOUNT OF WORK DONE AT THE BRANCH POST OFFICE AT OUTSHAHI AND SUB-POST OFFICE AT SONARANG.

417. ***Mr. S. C. Mitra :** (a) Will Government be pleased to lay on the table a statement showing separately the amount of the different kinds of work, such as letters, registration, savings bank, insurance, money orders, etc., done by the branch post office at Outshahi in the district of Dacca and the sub-post office at Sonarang, in any particular month, say January, 1929 ?

(b) Is it a fact that the Outshahi post office has to serve about six different villages ? Is it a fact that it has got only one postman ? If so, is it a fact that he has to work from 7 A.M. to 7 P.M. daily ? Is it a fact that in the past there have been several representations from the postman as well as from the public of the locality to increase the number of postmen ? If so, with what result ?

(c) Is it a fact that the income of the Outshahi Post Office has been for several years past much more than that of a sub-post office ? If so, will Government please state if they propose to raise the status of the Outshahi Post Office to that of a sub-office ?

The Honourable Sir Bhupendra Nath Mitra : (a) to (c). The information required is being collected and will be furnished to the Honourable Member in due course ?

PROMOTION AS SIGNAL INSPECTORS OF ASSISTANT SIGNAL INSPECTORS TRAINED AT THE JAMALUPUR WORKSHOPS.

†418. ***Lieut.-Colonel H. A. J. Gidney :** (a) Is it a fact that the Signals is the only Department on the East Indian Railway in which

†For answer to this question, see answer to question No. 346.
LSCPB(LA)

Assistant Inspectors are not considered fit for promotion to Inspectorships ?

(b) If so, is the reason of their alleged unfitness due to want of ample training in the Jamalpur Workshops ? If so, do Government propose to change the training staff at these workshops and give suitable training to the Assistant Signal Inspectors, so as to avoid any further recruitment of covenanted men ?

(c) Is it a fact that Government is spending a large sum of money in training men in India for these appointments ? If so, how do Government justify this expenditure and yet pronounce these trained men unfit ?

PROMOTION OF 20 PER CENT. OF SUBORDINATES IN THE SIGNAL DEPARTMENT ON RAILWAYS.

†419. ***Lieut.-Colonel H. A. J. Gidney** : (a) Are the recommendations of the Central Railway Advisory Committee for the promotion of 20 per cent. subordinates in India to official grade being observed in the Signal Department ? If not, why not ?

(b) Do Government propose to give an assurance to this House that, if the two Inspectors are still retained on a temporary basis, they will be discharged, or, be employed in such a manner as not to block the promotion of the Assistant Signal Inspectors trained in the Railway Workshops, and that adequate opportunities will be afforded in future to the latter men to show their worth and capability to act as Signal Inspectors ?

REPORT ON THE INDUSTRIAL POSSIBILITIES OF THE NORTH WEST FRONTIER PROVINCE.

420. ***Mr. Abdul Haye** : (1) Is it a fact that an official of the Department of Industries, Punjab, was deputed by the Government of India last year to investigate and report upon the industrial possibilities of the North-West Frontier Province ?

(2) When was the report of the said officer submitted to the Government of India ?

(3) Have Government considered that report ? If so, with what result ?

(4) Do Government propose to establish a separate Department of Industries in the North West Frontier Province ? If not, why not ?

The Honourable Sir Bhupendra Nath Mitra : (1) An Industrial Surveyor whose services were borrowed from the Department of Industries, Punjab, was appointed by the Chief Commissioner, North West Frontier Province, for six months with effect from the 16th July, 1928, to undertake an industrial survey of the Province as a preliminary to the preparation of a programme for the expansion of technical and industrial education in that territory.

(2) The report has not yet reached the Government of India.

(3) Does not arise.

(4) No such proposal has been made by the Local Administration.

†For answer to this question, see answer to question No. 346.

ESTABLISHMENT OF A CIRCUIT COURT AT DELHI.

421. *Mr. Abdul Hays : (1) Was there any proposal before Government to establish a circuit court at Delhi to hear and dispose of appeals from the Delhi Province pending in the High Court of Judicature at Lahore ?

(2) Were the Honourable Judges of the Lahore Court consulted, and did they favour this proposal ?

(3) Will Government please state how the matter stands at present ?

The Honourable Sir James Orerar : The Honourable Member is referred to the answer given by the late Sir Alexander Muddiman to Sir Hari Singh Gour's question on the subject in the Legislative Assembly on the 25th January, 1926, which is published in Volume VII, No. 3 of Assembly Debates, page 148. The matter has not again been brought before the Government of India.

NUMBER OF LOCAL TRAFFIC SERVICE MEN TO BE PROMOTED TO THE SUPERIOR TRAFFIC SERVICE.

422. *Pandit Hirday Nath Kunzru : (a) Are Government aware that Mr. Parsons stated on the 19th February during the last Railway Budget debate that, in order to abolish the Local Traffic Service as early as possible, the Agents of the Railways concerned would be asked "to report in the order of their preference the names of the men whom they considered fit for promotion to the Superior Service" ?

(b) Have the reports of the Agents been received ? If so, will Government please state separately for each of the railways concerned what is the total number of Local Traffic Service men, how many of them are to be promoted to the Superior Service, and how many of the latter are direct recruits ?

Mr. P. R. Rau : (a) Yes.

(b) The reports of Agents have been received, and the number of Local Traffic Service men in the different railways is as follows :

| | | | |
|----------------|----|----|----|
| Eastern Bengal | .. | .. | 4 |
| East Indian | .. | .. | 9 |
| North Western | .. | .. | 11 |

As I explained in answer to a question by Mr. Neogy on the 4th, the whole question of the number of promotions to be made in 1929-30 and the selection of the men to be promoted is under the consideration of the Railway Board.

TOTAL NUMBER OF INDIANS RECRUITED TO THE SUPERIOR TRAFFIC SERVICE IN THE CURRENT YEAR AND NUMBER PROMOTED FROM THE LOCAL TRAFFIC SERVICE.

423. *Pandit Hirday Nath Kunzru : (a) What is the total number of posts in the Superior Traffic Service for which Indians have been recruited this year ?

(b) How many of them have been filled by promoted Local Traffic Service men ? How many of these men were directly recruited to the Local Service ?

Mr. P. R. Rau : None have been recruited this year.

Pandit Hirday Nath Kunzru : Is the Honourable Member aware that Mr. Parsons stated during the last Railway Budget that about 36 per cent. of the vacancies will be recruited from the Local Traffic Service men ?

Mr. P. R. Rau : As I said in reply to a question by Mr. Neogy on the 4th, at the time Mr. Parsons made that reply it was intended to promote four in 11 vacancies likely to arise in the course of the year, but since then the matter is being further considered.

Pandit Hirday Nath Kunzru : Do I understand that no direct recruitment has been made to the Superior Service ?

Mr. P. R. Rau : No.

APPOINTMENT TO THE SUPERIOR TRAFFIC SERVICE OF A SUBORDINATE IN THE TRANSPORTATION AND COMMERCIAL DEPARTMENTS OF THE EAST INDIAN RAILWAY.

424. ***Pandit Hirday Nath Kunzru :** (a) Is it a fact that a subordinate in the Transportation and Commercial Departments of the East Indian Railway has recently been appointed to the Superior Service with effect from the 1st October, 1928 ?

(b) Was he officiating in the Local Traffic Service ?

(c) Were there no permanent men in the Local Traffic Service who were considered fit for promotion ?

Mr. P. R. Rau : (a) and (b). Yes.

(c) Taking all the facts into consideration he was considered the most suitable man for promotion at the time.

Pandit Hirday Nath Kunzru : Considering the fact that the Agents of the various railways have already reported that there are a number of men in the Local Traffic Service fit for promotion, may I know why their claims have been passed over in favour of a man who was a subordinate in the Transportation and Commercial Departments of the East Indian Railway ?

Mr. P. R. Rau : The policy of the Government has been explained many times on the floor of this House. It is that when vacancies which ought to be filled by promotion arise, the claims of all subordinates, including the Local Traffic Service, will be taken into consideration, and those vacancies cannot be considered as reserved for Local Traffic Service officers only.

Pandit Hirday Nath Kunzru : Are the Local Traffic Service men, who had been promised recruitment to the extent of 20 per cent. into the superior posts in 1921, to have preference over the subordinate service men or not ?

Mr. P. R. Rau : I have already explained that the policy of the Government is that the claims of all subordinate service officers will be considered, and that one particular section of those officers will not be given any preference.

Pandit Hirday Nath Kunzru : Does it mean that the rights accorded to the Local Traffic Service men in 1921 have been wiped out ?

Mr. P. R. Rau : I have nothing further to add to the reply I have given or to the statements made by Mr. Parsons on the floor of this House.

Pandit Hirday Nath Kunzru : Is the Honourable Member aware of the rules under which recruitment to the Local Traffic Service took place in 1921, that is, the rules promulgated in 1921, regarding the establishment of the Local Traffic Service ?

Mr. P. R. Rau : I am not aware of those rules. I am afraid my memory is not as good as that of my Honourable friend.

Pandit Hirday Nath Kunzru : As the Honourable Member is dealing with the subject and it has now come before the House, are we not entitled to know whether the rules under which the Local Traffic Service men are recruited are to be observed or not ?

The Honourable Sir George Rainy : I will certainly undertake to look into the matter and especially to examine the point as to any rights that may have arisen owing to the orders passed in the year 1921.

PROCEDURE FOLLOWED FOR PROMOTION TO THE SUPERIOR TRAFFIC SERVICE.

425. ***Pandit Hirday Nath Kunzru** : (a) With reference to the statement made by Mr. Parsons on the 19th February during the last Railway Budget debate regarding the selection of Local Traffic Service men and members of the subordinate service for promotion to the Superior Traffic Service, will Government please state when they began consulting the Public Service Commission and what is the exact procedure followed by them in the matter ?

(b) Did the Public Service Commission interview the candidates concerned last year or had they to depend on the files sent to them by the Railway Board ?

Mr. P. R. Rau : (a) The Public Service Commission have been consulted since 1927. The Public Service Commission are supplied with :

1. A list of the men it is proposed to promote.
2. A statement of supersessions, if any, which would be involved in the proposed promotions.
3. The records and confidential reports of all the men concerned.

(b) I understand the Public Service Commission did not interview the candidates last year. They act in accordance with rule 6 of the Public Service Commission (Functions) Rules which are the statutory rules on the subject.

Pandit Hirday Nath Kunzru : Will the Honourable Member repeat the last part of his answer ? I did not hear him.

Mr. P. R. Rau : I understand the Public Service Commission did not interview the candidates last year. They act in accordance with rule 6 of the Public Service Commission (Functions) Rules which are the statutory rules on the subject,

Pandit Hirday Nath Kunzru : Does the Honourable Member refer to the rules for promotion from one post to another post ?

Mr. P. E. Rau : Will the Honourable Member kindly repeat the question ?

Pandit Hirday Nath Kunzru : Is the Honourable Member referring to the rules relating to the promotion of men from one post to another post ?

Mr. P. E. Rau : I am referring to rule 6 of the Public Service Commission (Functions) Rules.

Pandit Hirday Nath Kunzru : Is that the rule relating to the promotion of a man from a lower post to a higher post ?

Mr. P. E. Rau : It refers to recruitment made by promotion to any permanent post in all-India or Central Services.

Pandit Hirday Nath Kunzru : Are those rules required in the case of promotion of men to higher posts ?

Mr. P. E. Rau : I take it that this is a question of promotion to the Superior Traffic Service, which is a Central Service.

Pandit Hirday Nath Kunzru : Are the Public Service Commission required to give any opinion under the rules ?

Mr. P. E. Rau : The Railway Board always send up such cases to the Public Service Commission for opinion.

Pandit Hirday Nath Kunzru : As apart from the rules relating to the Public Service Commission ?

Mr. P. E. Rau : I am afraid I cannot give an answer to that question as regards the functions of the Public Service Commission. I do not recollect what are the particular functions of that body.

Pandit Hirday Nath Kunzru : Would the Railway Board be entitled to interview the candidates personally or not ?

Mr. P. E. Rau : The Railway Board ?

Pandit Hirday Nath Kunzru : I mean the Public Service Commission.

Mr. P. E. Rau : If the Commission so desires. The Railway Board would not object to the interview of the candidates.

Pandit Hirday Nath Kunzru : Have they been informed of that, or are they under the impression that their business is only to consider the file or files sent to them ?

Mr. P. E. Rau : I take it that is entirely for the Commission to decide.

Pandit Hirday Nath Kunzru : What were the rules which were communicated to them on the subject ? Under what rule is their opinion asked for in this matter ?

Mr. P. E. Rau : So far as I know, that is the practice of the Railway Board. I cannot say off hand what is the particular rule under which we have acted in this matter.

Lieut. Colonel H. A. J. Gidney : In view of the answer given by the Honourable Member, do I understand that the selection by the Public Service Commission depends entirely upon the recommendation of the head of the Department concerned ?

Mr. P. B. Rau : The Public Service Commission are judges of their own procedure.

Lient.-Colonel H. A. J. Gidney : That does not answer my question, Sir. Do I understand that the acceptance by the Public Service Commission of a candidate depends entirely on the recommendation of the head of the Department concerned ?

The Honourable Sir James Orerar : I think that is a matter of general principle and I may be permitted to reply. I have already, as a matter of fact, replied on this particular point to the Honourable and gallant Member. The reply is this. When a reference is made to the Public Service Commission under the rules which permit of an optional reference, as quoted by my Honourable friend, it is entirely for the Public Service Commission to make such recommendation, having regard to the facts in their possession, as they consider proper, and they are not bound by the recommendation of any authority whatsoever.

Lient.-Colonel H. A. J. Gidney : By what recommendation are they bound ?

The Honourable Sir James Orerar : My reply is, they are not bound by any recommendation whatever, but only by their own judgment and conscience in the matter.

Pandit Hirday Nath Kunzru : The Public Service Commission not having interviewed candidates, on what recommendations have their opinions been based so far ?

The Honourable Sir James Orerar : The Public Service Commission have constantly interviewed candidates. Whether they interviewed candidates in this particular instance I do not know. But as my Honourable friend has said, the Public Service Commission, within the terms of their functions rules, are judges of their own procedure and of the particular action they take in a particular case.

Mr. B. Das : Is the Honourable the Home Member aware that the Public Service Commission is always guided by departmental experts, who always cross-examine the candidates, and the Public Service Commission is very often influenced by them ?

Mr. President : Order, order.

INTRODUCTION OF A NEW LAW IN BELGIAN CONGO REQUIRING INDIANS TO GIVE FINGER PRINTS FOR THE PURPOSE OF IDENTIFICATION.

426. ***Pandit Hirday Nath Kunzru :** (a) Is it a fact that the Government of Belgian Congo have recently passed a law under which Indians will be required to give finger prints for purposes of identification ?

(b) If so, why has this new procedure been introduced and what are the documents for which finger prints are required ?

(c) Have the Government of India received any representation on the subject from the Indian Association, Dar-es-Salaam ?

(d) What action do Government propose to take in the matter ?

Sir Denys Bray : Government have no information on the subject beyond that contained in a representation, dated

12 NOON.

the 4th August last, from the Indian Association, Dar-es-Salaam, on receipt of which His Majesty's Government were at once addressed.

NUMBER OF OFFICERS IN A UNIVERSITY TRAINING CORPS BATTALION HOLDING KING'S COMMISSIONS AND NATURE OF COMMISSION HELD BY PLATOON OFFICERS.

427. ***Pandit Hirday Nath Kunzru :** (a) Has the attention of Government been drawn to the article " U. T. C. Again " in the *Servant of India* of the 8th August, 1929 ?

(b) What is the prescribed number of officers holding the King's Commission in a University Training Corps battalion ? Will platoon officers hold the King's or the Viceroy's Commission ?

Mr. G. R. F. Tottenham : (a) Yes, Sir.

(b) The authorised establishment of officers for a battalion of the University Training Corps is 26—all of whom, including the platoon commanders, are eligible for the grant of senior grade commissions. The procedure at present prescribed for the submission of recommendations for the grant of these commissions is a lengthy one and I am afraid has resulted in some delay. Government therefore propose to place the matter before the next meeting of the Central Advisory Committee, to see whether the system cannot be improved. I hope that the meeting will be held this month.

UNSTARRED QUESTION AND ANSWER.

INDIANISATION OF THE GEOLOGICAL SURVEY OF INDIA.

167. **Mr. K. O. Neogy :** (a) To what extent is the principle of Indianisation being applied to the Geological Survey of India ?

(b) Are the claims of Sub-Assistants for promotion to the grade of Assistant Superintendents regularly taken into consideration ? If so, how many have been so promoted since the reorganisation of the department in 1921, and how does the number compare with the total number of vacancies that have been filled since that date ?

(c) Are Sub-Assistants generally allowed to officiate in temporary vacancies in the grade of Assistant Superintendents ?

(d) What is the difference in the nature of work generally done by Assistant Superintendents and Sub-Assistants, so far as field duties are concerned ?

(e) What are the considerations that determine the number of Assistant Superintendents and Sub-Assistants, respectively, employed in the Geological Survey of India ?

The Honourable Sir Bhupendra Nath Mitra : (a) Recruitment to the Geological Survey of India is now ordinarily confined to Indians ; a European may only be recruited if no qualified Indian candidate is forthcoming.

(b) Assistant Superintendents belong to the Superior service and Sub-Assistants cannot claim promotion to that service as of right. They are however eligible for appointment to the grade of Assistant Superintendents in competition with candidates for direct appointment. The number of Sub-Assistants so appointed is one against 17 vacancies that have occurred since 1921.

(c) and (e). The attention of the Honourable Member is invited to the reply given by the Honourable Mr. (now Sir) A. C. McWatters to parts (c) and (a), respectively, of his unstarred question No. 553 on the 24th September, 1928.

(d) The more difficult and responsible field work is entrusted to the Assistant Superintendents.

THE TRANSFER OF PROPERTY (AMENDMENT) BILL.

Mr. President : The House will now resume further consideration of the Transfer of Property (Amendment) Bill, clause by clause. The question is :

“ That clause 4 stand part of the Bill.”

Mr. M. R. Jayakar (Bombay City: Non-Muhammadan Urban) : Sir, I move :

“ That after Explanation 1, Clause 4 of the Bill, the following proviso be inserted :

‘ Provided that :

- (1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908, and the rules made thereunder ;
- (2) the instrument has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and
- (3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.”

Stated briefly, the principle of the amendment is that registration is notice only when the registration has been duly made, and not when the registration is faulty for some reason as specified in sub-clauses (1), (2) and (3) of my amendment. As Honourable Members are aware, the rule is now for the first time made applicable to the whole of India that registration is notice. I have great doubts myself about the advisability of applying this rule in the present state of illiteracy in the country, as was pointed out by my Honourable friend Mr. Lalchand Navalrai. The rule has to be very cautiously adopted. Speaking of my own province, the rule of registration being notice has been prevalent in that province for a number of years, but its success requires that the processes of registration should be made as complete and perfect as possible. I am in complete agreement with the views propounded by Mr. Lalchand Navalrai in this behalf, and I note with satisfaction the assurance given to this Honourable House by the Government of India that they will take early steps to see that the rules in this behalf are revised, and the methods of registration are improved and perfected. My amendment intends to secure this. Honourable Members are aware that there may be a mistake in registration about names, etc. The registration may be made

[Mr. M. R. Jayakar.]

in the wrong book or under a wrong name. In such cases registration will not be notice. It will be notice only in those cases where the matter required to be registered is registered duly in the proper books and in the proper place. I am therefore suggesting this amendment in order that the hardships which may be caused by the application of the rule that registration is notice may be mitigated to some extent.

The Honourable Sir Brojendra Mitter (Law Member) : This amendment is intended to cover possible mistakes and inaccuracies in registration. It is a salutary amendment and I accept it.

The motion was adopted.

Mr. President : The question is :

“ That clause 4 as amended stand part of the Bill.”

Mr. M. S. Sesha Ayyangar (Madura and Ramnad *cum* Tinnevely : Non-Muhammadan Rural) : I suggest, Sir, that Explanation 1 to clause 4 may be put separately, in view of the opposition to it.

Mr. President : Explanation 1 has been amended now.

Mr. M. S. Sesha Ayyangar : The earlier portion of the Explanation stands.

Mr. President : Is it the desire of Honourable Members to ask for a division on that ?

Mr. M. S. Sesha Ayyangar : I submit to the Chair that Explanation 1 no doubt stands amended, but it remains there as it is. It was against that that the whole opposition was made yesterday. I do not know if it is not desirable to put that separately.

Mr. President : If there is a general desire on the part of the House to ask for a division, I am prepared to put it separately. Otherwise it will be only taking up the time of the House.

The question is :

“ That clause 4 as amended stand part of the Bill.”

The motion was adopted.

Clause 4, as amended, was added to the Bill.

Clause 5 was added to the Bill.

Mr. President : The question is :

“ That clause 6 stand part of the Bill.”

Mr. D. F. Mulla : (Bombay : Nominated Non-Official) : Sir, I move :

“ That in clause 6 of the Bill, for the word ‘ Explanation ’ where it occurs for the first time, the word ‘ paragraph ’ be substituted, and for the Explanation the following paragraph be substituted :

“ In this section ‘ living person ’ includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.”

The Select Committee has added an explanation to section 5 of the Act. Section 5 defines “ transfer of property”. It defines transfer of property as an act by which one living person transfers property to another

living person. The Select Committee added an Explanation which runs thus :

“ In this section, living person includes a company or association or body of individuals, whether incorporated or not.”

Now, Sir, this is too important an amendment to be included in an Explanation. Hence it is proposed to omit the word “ Explanation ” and to have it in a separate paragraph, paragraph 2. At the same time, with a view to save any special law relating to companies or associations, the proposed words have been added, beginning with the words “ nothing herein contained ” and ending with the words “ bodies of individuals ”.

The Honourable Sir Brojendra Mitter : Sir, I accept this amendment.

The motion was adopted.

Clause 6, as amended, was added to the Bill.

Clauses 7 to 13 were added to the Bill.

Mr. President : The question is :

“ That clause 14 stand part of the Bill.”

Does the Honourable Member (Mr. Mulla) wish to move his amendment ?

The Honourable Sir Brojendra Mitter : Sir, may I explain that that refers to the supplementary Bill, not to this Bill.

Clauses 14 to 16 were added to the Bill.

Mr. M. S. Seshu Ayyangar : Sir, I move that sub-clause (c) of clause 17 of the Bill be omitted. Sir, this amendment only restores the original provision of the Act which runs thus :

“ In the case of tangible immovable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.”

It is a question of policy. This has stood the test of time. It has been found to be convenient. I submit, Sir, that it is not worth while for a purchaser or seller of property worth Rs. 15 to go to the registration office to get it registered. I may say we had an indication yesterday from the Honourable the Law Member that he was prepared to accept this amendment. Sir, I move.

The Honourable Sir Brojendra Mitter : Sir, I accept this amendment.

The motion was adopted.

Clause 17, as amended, was added to the Bill

Mr. President : The question is :

“ That clause 18 stand part of the Bill.”

Mr. D. F. Mulla : Sir, I beg to move :

“ That in sub-clause (b) of clause 18 of the Bill, for the words ‘ or any person claiming under him with notice of the non-payment ’, the words ‘ any transferee without consideration or any transferee with notice of the non-payment ’ be substituted.”

This clause, Sir, relates to vendor's lien ; and it is proposed by this amendment to give an unpaid vendor the right to proceed against the property not only in the hands of a transferee with notice of non-payment, but also in the hands of a transferee without consideration.

The Honourable Sir Brojendra Mitter : Sir, I accept this amendment.
The motion was adopted.

Clause 18, as amended, was added to the Bill.

Clause 19 was added to the Bill.

Mr. President : The question is :

“ That clause 20 stand part of the Bill.”

Mr. D. F. Mulla : Sir, I beg to move :

“ That in sub-clause (c) of clause 20 of the Bill the word ‘ and ’ occurring at the end of paragraph (i) be omitted and the following paragraph be added :

‘ (iii) after the words ‘ or partly in lieu of interest ’, for the word ‘ and ’ the word ‘ or ’ shall be substituted ; and ’.

This, Sir, relates to a usufructuary mortgage. The word “ and ” which stood there was a slip for “ or ”. All that it is proposed to do is to substitute “ or ” for “ and ”.

The Honourable Sir Brojendra Mitter : Sir, I accept this amendment.

The motion was adopted.

Clause 20, as amended, was added to the Bill.

Mr. President : The question is :

“ That clause 21 stand part of the Bill.”

Mr. M. S. Sesha Ayyangar : Sir, I wish to move :

“ That in sub-clause (c) of clause 21 the words beginning with the words ‘ the second paragraph ’ and ending with the words ‘ the property and ’ be omitted.”

Mr. President : Order, order. The Honourable Member has not passed on that amendment to the Chair, and I cannot allow him to move it at this stage.

Mr. M. S. Sesha Ayyangar : I have got it in writing, Sir. I shall pass it on.

Mr. President : What is the position of the Government ?

The Honourable Sir Brojendra Mitter : Sir, the position is this. This clause (c) related to mortgages of property of the value of Rs. 100 or under, but it contains some other provisions also. Notice was given of an amendment to omit the whole of this clause. I agreed to accept the amendment in so far as it relate to the value of the property but so as not to affect the rest of that sub-clause. Now the fresh amendment which my Honourable friend is asking for leave to move is that the portion relating to the value only be allowed to be moved. That is the position. If the amendment as it stands on the paper be moved, it will make the whole section meaningless. That is the trouble, Sir.

Mr. President : The Honourable Member has no objection ?

The Honourable Sir Brojendra Mitter : I have no objection, Sir.

Mr. President : Unless previous intimation is given to the Chair, how is the Chair to know that an Honourable Member wishes to substitute one amendment for another ?

The Honourable Sir Brojendra Mitter : I am sorry, Sir.

Mr. M. S. Sesha Ayyangar : I am sorry, Sir. I crave your permission to move it in some other form, otherwise the amendment as it stands on the paper now is perfectly unintelligible.

Mr. President : Will the Clerk at the table get it ?

Mr. M. S. Sesha Ayyangar : I beg to move, Sir :

“ That in sub-clause (c) of clause 21 the words beginning with the words ‘ the second paragraph ’ and ending with the words ‘ the property and ’ be omitted.”

Sir, on principle, this stands on the same footing as clause 17. I move.

The Honourable Sir Brojendra Mitter : Sir, I accept the amendment.

The motion was adopted.

Clause 21, as amended was added to the Bill.

Clauses 22 to 26, were added to the Bill.

Mr. President : The question is that clause 27 stand part of the Bill.

Mr. D. V. Belvi (Bombay Southern Division : Non-Muhammadan Rural) : Sir, the amendment which I wish to move runs as follows :

“ That for clause 27 of the Bill the following be substituted :

‘ In section 63 of the said Act for the words ‘ at the same rate of interest ’ the words ‘ with interest at the rate of 6 per cent. per annum ’ shall be substituted ’.”

I am afraid that every Member of this Assembly has not got before him the text of the Transfer of Property Act. I find that in our Library here there are very few copies of the Act available, and it is a matter to be regretted that Government have not taken precautions to supply the Honourable Members with copies of the Act. I am told that copies were struck off (about 50 or so) of the sections which are intended to be amended together with the original sections standing in parallel columns, but unfortunately Members have not been supplied with those copies. It is necessary to look into the wording of section 63 of the Transfer of Property Act in order to understand what my amendment is. I had better read the text of the section for the information of the House. Section 63 of the present Transfer of Property Act runs thus :

“ Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.”

I need not read the rest of the section. My amendment relates to the last line of the paragraph which I have just now read. It is stated in the Transfer of Property Act, as it now stands, that the mortgagor has to make good to the mortgagee the cost of the accession at the same rate of interest. Now, the Honourable Member in charge of the Bill wishes to make it clear as to what the mortgagor should be called upon to

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pay. Clause 27 says that the mortgagor should be asked to pay the mortgagee the cost of the accession, together with such interest as is stipulated in the mortgage-deed itself, or, if no stipulation is to be found, then interest at the rate of 9 per cent. should be charged. My submission is that it should not be made a matter of difficulty to a mortgagor to redeem his mortgage. The path to redemption should be as smooth as possible. I know of mortgage-deeds in this country in which the rate of interest stipulated is generally very high. I have known of cases in which the rate of interest was as high as 24 per cent. I have known of numerous cases in my part of the country where the rate of interest was 15 per cent. I think that it will be very hard upon a mortgagor if he is called upon to pay interest on the amount of money that was spent by the mortgagee on the accession to the mortgaged property at the rate of 15 per cent., or even at the rate of 12 per cent. We know that mortgagors are generally needy people and they borrow money because they are in a necessitous condition and, therefore, I submit that they should be called upon to pay interest at the usual rate at which courts award interest. We know that according to the Civil Procedure Code, future interest is awarded generally at the rate of 6 per cent. We also know that in the case of negotiable instruments under certain circumstances interest only at the rate of 6 per cent. is allowed to the holder of the negotiable instrument. There is no reason why the rate should not be 6 per cent. in this case also. Perhaps it may be said in opposition to my amendment that, in asking this House to go behind the terms of the stipulation contained in a mortgage-deed, I am asking the House to go back upon the terms of the original contract. But, after all, we are here to look after the interests of the large mass of the people and we must see that redemption is made as easy as possible. My amendment is very simple and I hope the Honourable Member in charge of the Bill will be good enough to accept it.

The Honourable Sir Brojendra Mitter : Sir, I oppose this amendment. There are two objections and I shall state them *seriatim*. If this amendment is accepted, then whatever may be the rate of interest agreed upon by the parties and mentioned in the instrument is to be given the go-bye, and interest at the rate of 6 per cent. is to be allowed to the mortgagee. If Honourable Members will look at paragraph 3 of section 63, they will find that in the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor. So, the mortgagor is getting credit for all profits arising from the accession, which has been acquired at the expense of the mortgagee and is not capable of separate possession. Now, in such cases the question is what ought to be reasonable interest which the mortgagee ought to get. If Honourable Members will look at section 72 they will find that 9 per cent. is the rate which the Transfer of Property Act provides in similar cases when there is no agreed rate. Section 72 deals with salvage. If a mortgagee is bound to spend money on saving the property, then he gets interest on that money at the rate of 9 per cent. This is what the section says :

“ may, in the absence of a contract to the contrary, add such sum to the principal money at the rate of interest payable on the principal, and, where no such rate is fixed in the mortgage-deed, at the rate of nine per cent. per annum.”

Therefore the policy of the Transfer of Property Act is that when extra money is properly spent by the mortgagee he is to add that to the principal and that extra money carries the same rate of interest as the principal money. If there be no agreement on the subject, then 9 per cent. is the interest which is allowed. That has been the policy of the Transfer of Property Act since 1882. No one has objected to this rate of interest as being excessive and, as a matter of fact, 9 per cent. in this country is not an excessive interest on securities. So, my first objection is that it would be inconsistent with a similar provision with regard to salvage which is embodied in section 72.

My second objection is this. If the mortgagee is compelled to spend money for the benefit of the property which enures to the mortgagor and the profits of which go to the mortgagor, then it is not unreasonable that he should get interest at the same rate as the principal sum was carrying. Besides, in the absence of an agreement the mortgagor is not really paying 9 per cent. because all the time he is getting the profits from the accession. He will be paying less than 9 per cent. and that only in the absence of a contract. On these grounds, I oppose this amendment.

Mr. N. C. Chunder (Calcutta : Non-Muhammadian Urban) : Sir, it is true, no doubt, that under section 72, nine per cent. is stated to be the rate which is to be paid to the mortgagee in case the deed is silent as to the rate of interest. But, as a matter of fact, that rate is an anomalous thing because, under the Interest Act, if no rate is fixed in any document where interest has to be paid for the money entered therein, then the interest is to be calculated under the Interest Act, unless the Court otherwise allows a higher rate of interest, at six per cent., and it has been the universal practice of the courts in allowing interest, to fix it at six per cent. whenever interest is decreed in any case independently of a contract. Therefore, six per cent. is the rate of interest usually known in the market and is usually known in the courts as the court rate of interest. In this case, the expenses that have been incurred were unforeseen. The mortgagor had no means of knowing that he would be saddled with all these expenses ; the profits may be great or may be nil. Whatever it is, it is very hard lines on the mortgagor in this country, especially where under a deed he is made to pay very high rate of interest. I have seen mortgages carrying 36 per cent. I am told that in the mofussil 50 per cent. would not be unthinkable. So, in these circumstances I would appeal to the Honourable the Law Member to consider whether he should not fix the rate of interest at nine per cent. on those expenses over which the mortgagor had no control, neither had the mortgagee. Six per cent. would be the most equitable rate, but even if he cannot agree to six per cent., if he wants to keep the rate the same as in section 72, I should think that he might at least accept nine per cent. and not allow the contract rate which may be very much higher.

Mr. Lalchand Navalrai (Sind : Non-Muhammadian Rural) : Sir, I support the amendment to clause 27 of the Transfer of Property (Amendment) Bill. It appears to me that the words "same rate of interest" are ambiguous and indefinite. Section 63 nowhere says any amount of interest that the man has to pay, so that it may justify a refer-

[Mr. Lalchand Navalrai.]

ence at the end of the section, " that in case of accession, the interest would be at the same rate ". In other words, section 63 does not clearly show what interest has to be paid. Now, it is being interpreted that " same rate of interest " would mean the contracted rate of interest. This is not clear from the section at all. It may be an interpretation that might be put upon it. Therefore, it is very necessary that the rate of interest should be fixed. So far as the interest is concerned, I think it would be only reasonable that the court interest should be allowed. No doubt section 72 allows nine per cent., but that is no bar to making the interest payable at a lesser rate. But if the Honourable Member thinks that he cannot, under any circumstances, reduce it to six per cent., I would suggest that nine per cent. might be allowed. That is very reasonable.

Mr. M. A. Jinnah (Bombay City : Muhammadan Urban) : Sir, the last speaker said that the words of section 63 are not quite clear and the interpretation put upon it is that it must be the same rate of interest as the contracted rate of interest. That is very reasonable and the amendment makes it quite clear. Clause 27 of the Bill before us makes it quite clear and there is no doubt about it at all. What is made very clear is this, that where you have a rate of interest fixed by the contract, then the same rate of interest should be allowed. In the absence of any rate being fixed in the contract, nine per cent. is the rate allowed. Now, I ask the Honourable Members to realise the position of the mortgagee who will be running away with the rate of interest provided in the contract, in case of accession, or if no rate is provided will be running away with nine per cent. It does seem, at first sight, a high rate of interest. Therefore, I quite appreciate the desire of the Honourable Member to prevent the mortgagee from extorting a very high rate of interest. But on the other hand, I think the Honourable Members have not appreciated this position : that if you prevent the mortgagee from getting what is the current rate in this country, or getting the rate which is fixed by the contract—twelve or fifteen per cent., a very high rate of interest, I admit—if you prevent him from getting his contract rate, or nine per cent. in the absence of a contract, and tie him down to six per cent., do you realise that the mortgagee may create difficulties in acquiring the accession because it would not pay him to spend money and then at the end give all the profits to the mortgagor and get six per cent. interest. Do you think you will be rendering a service to the mortgagor ? I am very doubtful about it. Therefore, you must look at it from both sides and if you make any change, being under the impression that you are helping the mortgagor, you might find cases in which you would be doing him great injury because the mortgagee would not care to acquire any accession with difficulties. I will read out section 63 to the House. Section 63 says :

" Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled, as against the mortgagee, to such accession."

Therefore he becomes entitled to that accession and as the Honourable the Law Member pointed out, in the case last mentioned, profit, if any, arising from the accession shall be credited to the mortgagor. Now, if you therefore tie down the mortgagee's interest to six per cent. interest, I think you might do very great injustice to the mortgagor's interest.

Therefore, I would urge upon this House, that however much you may desire—and I quite appreciate the feeling—that you must cut down the rate of interest, it cuts both ways. Therefore I would prefer to give the mortgagee the contract rate, or nine per cent. which is the current rate. That was the original intention of section 63, but the words of that section are not very clear. The words are,

“ as an addition to the principal money, at the same rate of interest ”,

and that means that addition becomes principal and that the same rate of interest as the contract rate should be allowed on such an addition. I quite agree that my Honourable friend can argue like what he did in a court of law, but I think 999 judges out of 1,000 would decide against him.

Mr. D. F. Mulla : Sir, there is one misapprehension which I propose to remove. My Honourable friend Mr. Chunder said that, under the Interest Act, if there is no express stipulation for the rate of interest, the rate of interest fixed under the Act is 6 per cent. per annum. Sir, it is nothing of the kind. The Interest Act does not deal at all with the rate of interest. All that the Interest Act provides for is this, that if there is no stipulation as to the rate of interest in a particular document, in that case it is competent to the promisee to give intimation in writing to the promisor that from a particular date he will charge interest, and in that case it is open to the court to award interest to the promisee at such rate as the court thinks proper.

Then as regards 6 per cent., it is only interest on judgment that is awarded at 6 per cent., but as regards mortgages the rule laid down by the Privy Council and followed by all the High Courts in India is to allow interest at the contract rate to the mortgagee up to the date on which the amount is paid to him.

Mr. President : The question is :

“ That for clause 27 of the Bill the following be substituted :

‘ In section 63 of the said Act for the words ‘ at the same rate of interest ’ the words ‘ with interest at the rate of six per cent. per annum ’ be substituted ’.”

The motion was negatived.

Mr. President : The question is :

“ That clause 27 stand part of the Bill.”

The motion was adopted.

Mr. President : The question is :

“ That clause 28 stand part of the Bill.”

Mr. D. V. Belvi : Sir, the amendment which I wish to move runs thus :

“ That in sub-clause (2) of clause 28 of the Bill for the words ‘ with interest at the same rate as is payable on the principal, or, where no such rate is fixed in the mortgage-deed, at the rate of nine per cent. per annum ’ the words ‘ with interest at the rate of six per cent. per annum ’ be substituted.”

Sir, I do admit that the reasoning which was applicable to my amendment in the case of clause 27 applies to a great extent in this case also. But I submit that we can differentiate the case which is embodied in clause 28 from the case embodied in clause 27. It is proposed to add

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a new clause to section 63 of the Transfer of Property Act which relates to improvements to mortgaged property made by the mortgagee. The previous clause,—clause 27,—referred to the case of acquisition of accession to the mortgaged property. In this clause provision is sought to be made for the expenses of the mortgagee in making improvements to the property mortgaged. The clause runs thus :

“ Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage been improved, the mortgagor upon redemption shall, in the absence of a contract to the contrary, be entitled to the improvement ; and the mortgagor shall not, save only in cases provided for in sub-section (2), be liable to pay the cost thereof ”.

Then sub-clause (2) says :

“ Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or, where no such rate is fixed in the mortgage-deed, at the rate of nine per cent. per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor ”.

Now, it was argued by the Honourable the Law Member in his opposition to my amendment to clause 27, that the stipulated rate of interest must not be departed from. I submit that the stipulation contained in the mortgage-deed refers only to the rate of interest on the mortgage-money. I do not suppose that the mortgagor anticipates at the time he enters into the mortgage transaction that there will be any improvements made to his property by the mortgagee and he never contracts at that time to pay interest at the stipulated rate on the amount that may be so spent thereafter. The stipulation only refers to the rate of interest on the principal money. The stipulated rate is not necessarily the rate at which interest is to be paid on the amount that the mortgagee chooses to spend subsequently. This is a thing which must be borne in mind by the House.

Then, Sir, it is said that interest at 9 per cent. per annum is the policy of the Transfer of Property Act. I do not suppose that this policy of the Transfer of Property Act is to override common sense. It is not as if the Transfer of Property Act is something like the laws of the Medes and Persians and is not to be changed at all. We are sitting here as legislators to legislate for the benefit of the people. What is the use of saying that simply because section 72 of the Transfer of Property Act contains a provision allowing interest at the rate of 9 per cent. under certain conditions, therefore 9 per cent. should be taken as the invariable rate in all cases ? I fail to understand that there is any policy underlying the Transfer of Property Act. I am told that 9 per cent. is the usual rate of interest in this country. What interest does Government pay on deposits in the Savings Bank ? What interest does it pay on securities ? Does it pay even 6 per cent. ? What does it pay on postal certificates ? Why should it be forgotten that there are numerous cases in which interest is paid at a much lower rate even than

6 per cent. ? And 6 per cent. is not a small rate of interest to be charged to the mortgagor on whose property improvements are made, sometimes without his knowledge and sometimes with his knowledge, and sometimes even against his will. Mortgagors are generally illiterate people. Mortgagees are, as a rule in most cases, people who are able to read and write. Any recitals that are suitable and convenient to the mortgagee are inserted in the mortgage-deed, and if the mortgagor is to be called upon to pay interest at a high rate, even on a small sum of money that may be spent by the mortgagee for making certain improvements, it will really be a hard case for the mortgagor.

On these grounds I commend this amendment to the House. The House must see that their hands are not tied down to any definite policy underlying this Act, and each section should be examined on its merits.

The Honourable Sir Brojendra Mitter : Sir, I oppose this amendment. I am on still stronger grounds on this amendment than I was on the last. In this case the improvements are not fanciful or capricious or extravagant improvements made by the mortgagee, but they are in the nature of salvage. If the Honourable Members will look at the wording of paragraph 2 they will find :

“ Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration, or was necessary to prevent the security from becoming insufficient or was made in compliance with the lawful order of any public servant or any public authority ”.

In these cases only the mortgagor will have to pay interest on the outlay. These are really not improvements, but in the nature of salvage, as the mortgagee is saving the property. At this stage I must say that I am thankful to my Honourable and learned friend Mr. Jinnah for drawing the attention of the House to the consideration that it is in the interest of the mortgagor himself that the property should be preserved. Supposing a municipal authority makes a requisition that certain improvements should be carried out, and in default, what happens ? The municipality itself carries out those improvements and charges the cost against the owner of the property. Or, if the security becomes insufficient, the mortgagee may say that he will not wait for the due date but will immediately bring the property to sale. Is it to the interest of the mortgagor that the public authority should execute improvements at the cost of the mortgagor ? Is it to the interest of the mortgagor that the mortgagee, instead of waiting for the due date, should straight away go to court and bring the property to sale ? It is in such cases only that the mortgagee will be entitled to get the money which he has spent back from the mortgagor and will be entitled to interest,—not in a case of fanciful or capricious or extravagant improvement. It is entirely in the interest of the mortgagor that the mortgagee should spend that money ; and if he does spend that money, why should he be deprived of the contract rate of interest, or if there is no contract rate, why should he be deprived of 9 per cent. which, as my Honourable friend Mr. Jinnah pointed out, was the current rate of interest in this country ?

Pandit Thakur Das Bhargava (Ambala Division : Non-Muhamadan) : Sir, the point at issue is not whether interest should be allowed ;

the point at issue is whether the rate of interest should be the same as was stipulated in the original contract or whether it should be 9 per cent. or 6 per cent. I submit there may be cases in which an improvement is made in consequence of, or in compliance with the lawful order of any public servant or public authority. In that case it appears that the one safeguard which was provided in section 63, that the accession is to be made with the assent of the mortgagor, is absent in the case of an improvement. The mortgagor does not accede or consent to the improvement being made ; the improvement is being made in spite of him ; and it may happen that if interest is calculated at the stipulated rate of interest, the interest charges will be much more than the actual value of the property. Suppose the stipulated rate of interest is 18 per cent. or 25 per cent. ; in that case the interest would amount to a much greater sum than perhaps the original amount of money which was secured by the mortgage, and it would be very difficult for the mortgagor in the circumstances to redeem his property. Suppose a well is sunk or other kinds of improvement are effected which save the property from deterioration. In such cases the amount secured by the mortgage may prove to be almost insignificant as compared to the amount which must come to the mortgagee by this section. I would submit that the argument used by Mr. Jinnah would only apply to cases in which it is to the interest of the mortgagor to have that improvement made ; but it may happen that, though it may be to the interest of the mortgagor originally to have them made, the ultimate amount which may grow up may be such that it may not be within the competence of the mortgagor to redeem the property at all. So that, the real point at issue is that if the rate of interest is 9 per cent., it will be acceptable to the House ; but if these words, " at the same rate " are allowed to continue in this section, then hardship will really accrue to the mortgagor. Therefore I submit that, as the mortgagor did not contemplate at the time of the mortgage that he would have to pay for improvements which would be made in spite of him, at a rate which was stipulated at the time of the mortgage, he should not be mulcted in the same rate of interest. On the contrary, if either 6 per cent. or 9 per cent. is secured to the mortgagee, it will be a safe investment for him, and it will repay him rather more than he would be repaid by advancing the amount in the ordinary way. Therefore it is only right that this rate should be either 6 or 9 per cent. ; and these words, " at the same rate of interest as is payable on the principal " should be deleted.

Mr. N. C. Ohunder : Sir, the issue has been very clearly stated by Pandit Thakurdas Bhargava. The real issue in the present instance is what should be the rate of interest ? One thing which has not been noticed in this particular case, in the case of section 63-A, which differentiates it from the case in section 63 is this : in section 63 it is a question of improvement, while in section 63-A it is a question of accession—accession which everybody can see. It is a physical thing, which everybody can see, while in section 63 the mortgagor may not know that any money has been spent on improvement, or that anything has been done by the mortgagee until he goes to redeem the mortgage. The question will not arise till the question of redemption is raised. That is one great difficulty. Supposing a municipal requisition is made—I will take an extreme instance—suppose a requisition is made that the

house has become dangerous and therefore it has either to be pulled down or reinstated, and the mortgagee reinstates it; he spends money. The mortgagor may know nothing about it, because the mortgagee is in possession. Notice will be served on the mortgagee, who is in possession, and who spends the money, and ultimately the mortgagor, when he comes to redeem the property, finds that he has got to foot a bill of say Rs. 10,000 or Rs. 15,000, carrying interest it may be at the rate of 18 or 15 or 24 per cent. Is it equitable that he should be allowed to do that and to charge the mortgagor a very high rate of interest, while on the other hand if the mortgagor had been informed that the municipality had required the owner of the house to pull it down or reinstate it, he might have borrowed the money, even on his personal credit at 12 per cent. This is a case which is entirely different from the case in section 63; and if in any case a rate of interest ought to be fixed, it should be in 63-A. Again, the circumstances which are mentioned in 63-A. are really the circumstances which are implied in section 69 of the Indian Contract Act. Now, if I have a policy, and if I pledge it with my learned friend over there, and if my learned friend has to pay the premia in order to keep the policy alive, he will not be entitled to charge me the rate of interest which he is charging on the loan; he will be given such rate of interest as the court gives; and so far as Calcutta is concerned, I can assure you that it has been invariably the practice of the Calcutta Courts to grant only 6 per cent. interest. This case is therefore distinguishable from that in section 63, and I hope that at least in this case the Honourable the Law Member will fix the rate of interest at 9 per cent., if he cannot accept 6 per cent. as proposed by Mr. Belvi.

Mr. D. F. Mulla: Sir, I beg respectfully to point out that there is no question of consent here at all, so far as section 63-A. is concerned. . . .

Mr. N. C. Chunder: Nor of notice to the mortgagor either.

Mr. D. F. Mulla: Well, the position is this. The mortgagor is the owner of the house; probably he lives in the house; the house is about to tumble down; does the mortgagor require notice?

Mr. D. V. Belvi: Suppose he does not live in the house?

Mr. D. F. Mulla: Suppose he does not live in the house. There are two persons who are interested in the property: there is the mortgagor who is interested in the property, and there is the mortgagee who is interested in the property. Which of the two is more interested? The answer is, the mortgagor. Therefore it is to the interest of the mortgagor to know whether his property is coming down or not; and if he does not care to know, why should we have any sympathy for him? If he does care to know, the position is that he may, if he likes, make the necessary repairs. . . .

Mr. N. C. Chunder: Supposing it is a question of relaying the drains.

Mr. D. F. Mulla: Probably that will be something which neither the mortgagor nor the mortgagee will know about; the municipality

[Mr. D. F. Mulla.]

will know about it and give notice to both the parties under the Municipal Act ; therefore that question does not arise.

Mr. N. C. Chunder : Under the Municipal Act the owner is the person who receives the rent.

Mr. D. F. Mulla : With very great respect to my learned friend, under the Municipal Act the owner is not necessarily one who receives the rent ; the occupier also is there ; so if the mortgagor is not to be found and if he is hiding, it is quite sufficient if the municipality gives notice to the occupier under the Municipal Act. Having done with these interruptions, I come to the point. The real point is this. As I said, there are two persons interested. There is the mortgagor and the mortgagee ; and I take it that, in the ordinary course, it is the mortgagor that will first come to know that the property is tumbling down. Then there are two courses open to him. He may, at his own cost and at his own expense, do the necessary repairs. If he has not got the money, the only course open to him is to go and borrow ; borrow on what ? On the security of another mortgage. At what rate of interest ? At such rate of interest as the new mortgagee may demand. Why then, so far as the improvements are concerned, should the position of the mortgagee in this respect be in any way different from the case in section 63 which provides for accession ? On the other hand, as I pointed out, under this section the case of the mortgagee is much stronger than the case of the mortgagor. Nobody compels the mortgagor to consent to the repairs being made. He is perfectly entitled to make the repairs. This section does not say that he is debarred from making repairs if he is inclined to make the repairs. But if he has no money, he will have to go and borrow the money at a very high rate of interest, 40 or 50 per cent., which was mentioned just now by one of my learned friends.

1 P.M.

Mr. President : The question is :

“ That in sub-clause (2) of clause 28 of the Bill for the words ‘ with interest at the same rate as is payable on the principal, or, where no such rate is fixed in the mortgage-deed, at the rate of nine per cent. per annum ’ the words ‘ with interest at the rate of six per cent. per annum ’ be substituted.”

The Assembly divided :

AYES—24.

Abdul Haye, Mr.
Ayyangar, Mr. M. S. Sessa.
Badi-uz-Zaman, Maulvi.
Belvi, Mr. D. V.
Bhargava, Pandit Thakur Das.
Chunder, Mr. N. C.
Das, Mr. B.
Iyengar, Mr. A. Rangaswami.
Kartar Singh, Sardar.
Kidwai, Mr. Rafi Ahmad.
Lahiri Chaudhury, Mr. D. K.
Lalchand Navalrai, Mr.

Mehta, Mr. Jamnadas M.
Mitra, Mr. S. C.
Moonje, Dr. B. S.
Mukhtar Singh, Mr.
Naidu, Mr. B. P.
Neogy, Mr. K. C.
Phookun, Srijut T. B.
Rao, Mr. G. Sarvotham.
Shafee Daoodi, Maulvi Mohammad.
Shervani, Mr. T. A. K.
Sinha, Kumar Ganganand.
Sinha, Mr. Siddheswar Prasad.

NOES—52.

Abdul Aziz, Khan Bahadur Mian.
 Abdul Matin Chaudhury, Maulvi.
 Abdul Qaiyum, Nawab Sir Sahibzada.
 Anwar-ul-Azim, Mr.
 Ayangar, Mr. V. K. Aravamudha.
 Bajpai, Mr. R. S.
 Bower, Mr. E. H. M.
 Bray, Sir Denys.
 Chalmers, Mr. T. A.
 Chatterjee, The Revd. J. C.
 Cosgrave, Mr. W. A.
 Covernton, Mr. S. H.
 Crerar, The Honourable Sir James.
 Emerson, Mr. H. W.
 Ferrers, Mr. V. M.
 French, Mr. J. C.
 Ghazanfar Ali Khan, Mr.
 Ghuznavi, Mr. A. H.
 Gidney, Lieut.-Colonel H. A. J.
 Hira Singh, Brar, Sardar Bahadur,
 Honorary Captain.
 Jawahar Singh, Sardar Bahadur
 Sardar.
 Jayakar, Mr. M. R.
 Jinnah, Mr. M. A.
 Jogiah, Mr. V. V.
 Keene, Mr. M.
 Mitra, The Honourable Sir Bhupendra
 Nath.

Mitter, The Honourable Sir Brojendra.
 Mody, Mr. H. P.
 Mukharji, Rai Bahadur A. K.
 Mukherjee, Rai Bahadur S. C.
 Mulla, Mr. D. F.
 Noyce, Sir Frank.
 Philip, Mr. J. Y.
 Porter, Lieut.-Colonel L. L.
 Price, Mr. E. L.
 Purshotamdas Thakurdas, Sir.
 Rafique, Mr. Muhammad.
 Rainy, The Honourable Sir George.
 Rau, Mr. P. R.
 Roy, Mr. K. C.
 Roy, Mr. S. N.
 Sarda, Rai Sahib Harbilas.
 Sarma, Mr. R. S.
 Schuster, The Honourable Sir George.
 Siddiqi, Mr. Abdul Qadir.
 Singh, Rai Bahadur S. N.
 Stevenson, Mr. H. L.
 Stewart-Smith, Mr. D. C.
 Sykes, Mr. E. F.
 Tin Tut, Mr.
 Tottenham, Mr. G. R. F.
 Winterbotham, Mr. G. L.

The motion was negatived.

Clause 28 was added to the Bill.

Clauses 29 and 30 were added to the Bill.

Mr. President : The question is :

“ That clause 31 stand part of the Bill.”

Mr. D. V. Belvi : Sir, the amendment which I wish to move runs thus :

“ That after sub-clause (2) (e) of clause 31 of the Bill the following be added :

‘ (f) In the case of a lease of immovable property other than buildings, the lease shall not be for a longer period of time than five years.’ ”

Sir, in clause 31 it is proposed to add to the present Transfer of Property Act a new section as section 65-A. The proposed new section runs thus :

“ (1) Subject to the provisions of sub-section (2), a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee.

2. (a) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.

(b) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance.

(c) No such lease shall contain a covenant for renewal.

(d) Every such lease shall take effect from a date not later than six months from the date on which it is made.

(e) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years, and

[Mr. D. V. Belvi.]

the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified."

I need not read the rest of the proposed new section. This is a new provision of law. To make myself intelligible, I will take an instance. Suppose A mortgages his property to B, and A, the mortgagor, wishes to lease the property. He may do so, provided the interests of the mortgagee are not in any way prejudicially affected. The proposed new section says that, in the case of house property, the lease may not be for more than three years, but in the case of agricultural land or other land, there is no period of time here laid down. Suppose that a mortgagor wishes to defraud his mortgagee by passing a permanent lease of the mortgaged property to another man, what will be the effect? The mortgagee will bring a suit to recover his money and he will get a decree. He will try to execute the decree in order to realise his money. The man who purchases the property, that is, the equity of redemption in the execution of the decree, will be only entitled to get the rent stipulated in the permanent lease. For aught I know, the mortgagor may receive from the permanent lessee an amount of money privately. This will be something like defrauding the mortgagee. The mortgagee may not be able to get the full amount of his money because what will be put to sale at the court auction will be the equity of redemption, and the man who takes the equity of redemption will have no right to get the actual physical possession of the property. He will step into the shoes of the original mortgagor, and as such he will be entitled only to get the rent which was stipulated in the permanent lease. Why should there be a special provision concerning house property, and why should there not be a period of time fixed in the case of landed property? There is no reason why a lease concerning a house should not be for more than three years, but in the case of landed property the law should not lay down any limit of time whatever. It seems to me that it is very likely that if the mortgagor is allowed to enter into a lease with anybody, we can imagine cases in which it will be possible for the mortgagee to be defrauded. It is open to the mortgagor to redeem the mortgage first and then to enter into any agreement of lease with any one he pleases. But so long as the mortgagee is not satisfied, so long as the mortgage is subsisting, the mortgagor should not be permitted to lease the property for an indefinite length of time. There may not necessarily be a permanent lease; there may be a lease for a very long period of time. The mortgagor may grant a lease for 50 years, and the man who purchases the equity of redemption in the court sale will have to wait until the long period of time stipulated in the lease runs out. This will surely be a very hard case on the mortgagee who wants to realise his money. The thing is so very obvious that I do not see why a limit of time was not laid down in this new section in the case of landed property, and why it should have been laid down in the case of house property. I fail to understand the distinction which is sought to be made in this new clause by the Honourable the Law Member. I hope I shall get a satisfactory explanation in opposition to my amendment. I am sure my amendment will be opposed because it seems to be the settled policy of the Government to carry this Bill as it stands. They think that, whatever has been done by them must be accepted by the House, and as they have a majority on

their side, they hope that every amendment will very easily be thrown out. Nevertheless, I shall have the satisfaction of hearing what they have to say in opposition to my amendment.

Maulvi Muhammad Yakub (Rohilkund and Kumaon Divisions : Muhammadan Rural) : They have already accepted two or three amendments.

The Honourable Sir Brojendra Mitter : I oppose this amendment. I entirely agree with my Honourable friend Mr. Belvi that the mortgagor should not be allowed to give long leases or permanent leases. That is the danger which is frightening him and he wants to know why no provision has been made in respect of immovable property other than buildings. Those who have had any practice in places like Calcutta or Bombay know that very often mines are mortgaged. Would you confine a mining lease to five years ? When a mine is mortgaged, if the mortgagor's hands are tied to grant a lease not exceeding five years, no lease will be taken at all. The mortgagor will suffer and the mortgagee's security will deteriorate. Take agricultural leases. I can speak of Bengal. No person will take a five years' agricultural lease in Bengal. Therefore, if the mortgagor has got a right to let out the mortgaged property.....

Mr. D. V. Belvi : Bengal is not the whole of India. In my own part of the country 5-year leases are numerous.

The Honourable Sir Brojendra Mitter : I know Bengal is not the whole of India. I am only telling you my experience of Bengal. It is to meet all manner of cases that we have to make a general provision. There is enough safeguard in sub-clause (2). Sub-clause (2) says :

“ Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.”

If you put a limit upon the power of leasing to 5 years, that would be denying to the mortgagor the right which by this clause is being given to him, because, as I say, in cases of mines, in cases of agricultural lands, he would not be able to exercise the right at all. As against the extravagant exercise of the right which is being given to him, sub-clause (2) has been enacted ; he cannot grant a lease which is outside the ordinary course of management. In the ordinary course of management, if it be found that not less than 30 years' lease would be taken by any body, he should be entitled to grant a lease for 30 years, as in the case of mining leases, or agricultural leases. If the usual practice in any particular part of the country be that no agriculturist will take a lease for less than 12 years or 15 years, the mortgagor should be entitled to grant such a lease. In order to protect both the mortgagor and the mortgagee, it has been provided that the mortgagor is to conform to local custom and usage and may grant a lease in the ordinary course of management. He should not be tied down any further. Therefore the safeguard is there and the liberty is there. We have considered the case in the interest of the mortgagor as well as of the mortgagee. It is in the interest of both that the mortgagor should have a free hand conformable to local custom and usage. Therefore I submit that to limit it to five years would be defeating the whole object of this section.

Mr. M. A. Jinnah : I do not want nor am I determined that this Bill should pass through this House as it stands if any sound grounds are made out in support of any amendment. May I add a few words to what the Honourable the Law Member has said. Under sub-clause (3) it is entirely in the hands of the mortgagor to regulate the granting of the leases. I will read that sub-clause. It reads :

“ The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage deed ; and the provisions of sub-section (2) may be varied or extended by the mortgage-deed and, as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section.”

Therefore it is open to the mortgagor when he is mortgaging his property to stipulate expressly in the mortgage-deed as to the authority of the mortgagee to grant leases. If he does not do that, still the interests of the mortgagor are protected to the extent the Honourable the Law Member has stated. What more do you want ?

Mr. President : The question is :

“ That after sub-clause (2) (e) of clause 31 of the Bill the following be added :

‘ (f) In the case of a lease of immovable property other than buildings, the lease shall not be for a longer period of time than five years ’.”

The motion was negatived.

Clause 31 was added to the Bill.

Clause 32 was added to the Bill.

Mr. President : The question is :

“ That clause 33 stand part of the Bill.”

Mr. D. V. Belvi : Sir, I move :

“ That in clause 33 of the Bill for all the words occurring after the words ‘ the same kind of decree under section 67 ’, the following be substituted :

‘ may sue to obtain such decree on any one or more of his mortgages, in the absence of a contract to the contrary, notwithstanding the fact that the principal money of all his mortgages has become due ’.”

Section 67-A is a new section which is proposed to be added to the Transfer of Property Act. It says :

“ A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of decree under section 67, and who sues to obtain such decree on any one of the mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage-money has become due ”.

I shall ask Honourable Members of this House to read another clause of the present Bill, namely, clause 25. There they will find this :

“ A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary, when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together.”

This clause 25 says that if a man passes in favour of another man more mortgages than one, it should be open to him to redeem any one or more of the mortgages according to his convenience. That is a very salutary principle of law. That is undoubtedly in the interests of the mortgagor. There should be no consolidation of mortgages. The amendment which I propose asks that a similar concession should be held out to the mortgagee. If a man takes more mortgages than one of the same property,

and from the same man, and if he finds that all his mortgages have become payable, then it should be open to him to bring a suit on one of the mortgages or on two ; and he should not be compelled to bring a suit for all the monies which are due to him on the several mortgages into which he has entered. Why should a mortgagee be compelled to bring a suit on all his mortgages ? Sometimes a mortgagee may find that it is not likely that he will realise the whole of the money that is due to him if he brings a suit on all the mortgage bonds. Suppose I take a mortgage of a property which I believe is worth only Rs. 30,000 in the market. My mortgage charges on the property may amount to Rs. 50,000. Why should I be compelled to bring a suit on all my mortgages, the amount of which aggregates to Rs. 50,000. It should be open to me to bring a suit and obtain a decree against the mortgagor on the mortgage transactions which I choose. Now, if the mortgagee is not to be permitted to bring a suit on some of the mortgages only, it means that he will have to pay court fees on the total amount of the monies that become payable to him under the several mortgages he holds. The court fees may amount to a very large sum of money, and after getting a decree, he may not be able to realise the whole of his money. I have read the notes to the several clauses which the Honourable the Law Member has been very kind to provide to Members of this House in the case of this Bill. I find that the only reason given is that, if the mortgagee is allowed to bring a suit on some of the mortgages only, the proper value for the property may not be fetched by the sales and the mortgagor will be put to a loss. It is not unreasonable that the mortgagee should ask that he should be given a decree on some of his mortgages only. There is no hardship on the mortgagor. There is no reason why, in the case of a mortgagor, he should be permitted to redeem some of the mortgages only and the mortgagee not allowed the same privilege. I have not been able to see what difference there is between these two cases. In the one case, provision is made for the convenience of the mortgagor ; in the other case no provision is made in the interests of the mortgagee. It seems to me that this is an invidious distinction which is sought to be made by this new provision. This is not to be found in the existing Transfer of Property Act, but this new provision is now sought to be incorporated into it. I submit that the amendment which I have moved may be accepted by the House.

The Honourable Sir Brojendra Mitter : Sir, I oppose this amendment. I think my Honourable friend is under a misapprehension as to the purpose of these two sections. Section 61 gives the mortgagor the right to redeem different mortgages separately. That is entirely in the interest of the mortgagor, as my Honourable friend has himself said. Section 67-A (new section, clause 33) is also in the interest of the mortgagor, and there is no difference of treatment between the mortgagor and the mortgagee in this instance. Probably my Honourable friend is aware that the Privy Council recently observed that the Transfer of Property Act as it stood led to a multiplicity of mortgage suits in this particular respect. What we are providing for is this. If the money has fallen due on all the mortgages, then the mortgagee will not be able to hold up some of the mortgages and sue on one or more, that is to say, bring as many suits as there are mortgages. What after all is the mortgagee's right ? The mortgagee lent money to the mortgagor on security. All he is interested in is to get his money back with interest. If all the mortgages have fallen due,

[Sir Brojendra Mitter.]

then what reason is there that he should hold up some of the mortgages, bring a suit on one of the mortgages and go on harassing the mortgagor with regard to the other mortgages. Why should he not be compelled to bring his suit on all the mortgages and thus avoid a multiplicity of suits and thereby save harassment? All he is interested in is to get his money back. He can do so by bringing one suit or different suits; but why should he be allowed to bring several suits when he can bring one suit? When he gets his money, he has no further interest in the property. That is from the point of view of the mortgagor. We propose to give relief to the mortgagor that he should not be needlessly harassed. At the same time no prejudice is caused to the mortgagee. All his mortgages have fallen due. He gets his money in one suit.

Then, Sir, look at it from another point of view. Supposing he brings his suit on one mortgage and the property is brought to sale. The property will be sold subject to the other mortgages. The result will be that the property will not fetch a proper price. If the property is sold free from all the mortgages, then it is reasonable to suppose that it would fetch a proper price; but if it is sold subject to mortgages which are due and which can be enforced at any moment, then that property is not likely to fetch anything like its proper value. Therefore, Sir, it is in the interest of both the mortgagor and the mortgagee, that where it is possible to bring one suit, the mortgagor should bring one suit. Thus it is both on the ground of relief to the mortgagor as well as on the ground of its being beneficial to both the mortgagor and the mortgagee that this provision has been made. Sir, I oppose the amendment.

Mr. President : The question is :

“ That in clause 33 of the Bill for all the words occurring after the words ‘ the same kind of decree under section 67 ’, the following be substituted :

‘ may sue to obtain such decree on any one or more of his mortgages, in the absence of a contract to the contrary, notwithstanding the fact that the principal money of all his mortgages has become due ’.”

The motion was negatived.

Clause 33 was added to the Bill.

Mr. President : The question is :

“ That clause 34 stand part of the Bill.”

Mr. D. V. Belyi : Sir, the amendment which I propose is intended to make the intention of the framers of the Act clearer. I will read only a part of clause 34 :

“ The mortgagee has a right to sue for the mortgage-money in the following cases and no others, namely :

(a) where the mortgagor binds himself to repay the same ; ”

I wish to move :

“ That in clause 34 (a) of the Bill after the word ‘ himself ’ the word ‘ personally ’ be inserted.”

The object of the framers of the Bill seems to be that, where a mortgagor binds himself to pay the mortgage money, that is, takes a personal responsibility of making good the mortgage-money, then his heirs, his

legal representatives or his assigns should not be bound to fulfil that condition personally. Now the framers of the Bill want to make it clear by the word "himself". But it seems to me that that is not sufficient. If we add the word "personally", the point will be clearer still. No other man will incur a personal liability for paying the mortgage money than the mortgagor himself. Who should be personally liable to pay the money to the mortgagee? Only the mortgagor and nobody else—not his heirs, not his legal representatives, not his transferees. It may perhaps be said that the word "himself" makes it clear, but I do not think it is as clear as it should be. "Himself" is certainly the object of the transitive verb "binds" and anyone not knowing the object of the framers may say that the thing is not quite clear. This is a mere verbal amendment and I do not think there is any difficulty in accepting it if the Honourable Member in charge of the Bill has a mind to accept it.

The Honourable Sir Brojendra Mitter: Sir, I oppose this amendment. I would have accepted it gladly if necessary. It is not necessary and the acceptance of it would lead to a drafting monstrosity. "Himself" means himself and nobody else; therefore, "personally" is not needed. The Select Committee considered this clause very carefully and they added a proviso which makes the position perfectly clear:

"Provided that, in the case referred to in clause (a), a transferee from the mortgagor or from his legal representative shall not be liable to be sued for the mortgage-money."

Now there these people are not liable to be sued. People who are left over are the legal representatives of the mortgagor. But it is well known that legal representatives are only liable to the extent of the property in their hands. That being so, where is the ambiguity? My Honourable friend's object was to make clear something which was ambiguous. What is ambiguous about the word "himself"? "Himself" excludes everybody else.

Mr. President: The question is:

"That in clause 34 (a) of the Bill after the word 'himself' the word 'personally' be inserted."

The motion was negatived.

Clause 34 was added to the Bill.

Clause 35 was added to the Bill.

Mr. President: The question is:

"That clause 36 stand part of the Bill."

Mr. D. V. Belvi: Sir, I move:

"That clause 36 of the Bill be omitted."

This is a very important clause. Honourable Members will kindly cast a glance at this clause, which is a very long one. I will give the substance of this clause. The object of this clause seems to be to empower a mortgagee to sell privately mortgaged property. I think that is the main object of this clause. Now, by referring to the notes on the clauses which have been given by the Honourable Member in charge of the Bill, I find that reference is made to an old Act of the year 1886. The present section 69 of the Transfer of Property Act should be looked into, which runs as follows:

"A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money,

[Mr. D. V. Belvi.]

the mortgaged property, or any part thereof without the intervention of the Court, is valid in the following cases and in no others, namely :

- (a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist, or a member of any other race, sect, tribe or class from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor General in Council, in the local official Gazette ;
- (b) where the mortgagee is the Secretary of State for India in Council ;
- (c) where the mortgaged property or any part thereof is situate within the towns of Calcutta, Madras, Bombay, Karachi or Rangoon.

But no such power shall be exercised unless and until—

- (1) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service ; or
- (2) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised ; but any person damaged by an unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances, if any, to which the sale is not made subject, or after payment into Court under section fifty-seven of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale ; and, secondly, in discharge of the mortgage-money and costs and other money, if any, due under the mortgage ; and the residue of the money so received shall be paid to the person entitled to the mortgaged property or authorised to give receipts for the proceeds of the sale thereof.

Nothing in the former part of this section applies to powers conferred before this Act comes into force.

The powers and provisions contained in sections six to nineteen (both inclusive) of the Trustees' and Mortgagees' Powers Act, 1866, shall be deemed to apply to English mortgages, wherever in British India the mortgaged property may be situate, when neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist, or a member of any other race, sect, tribe or class from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor General in Council, in the local official Gazette."

It is evident from this section that this power of sale is confined under the existing law to English mortgages and not to other kinds of mortgages. It seems to me that it is attempted by the Bill to extend this power to other mortgages. Here provision has been made in the existing Act that this power shall not be extended to mortgages to which the parties are either Buddhists, Hindus or Muhammadans. It seems to me that this safeguard is sought to be taken away by the enactment of this new provision. Sir, it seems to me that it will be very dangerous to the people of this country if a mortgagee is allowed to sell the mortgaged property privately without going to the court. My amendment is this, that in no case should a mortgagee have power to bring the mortgaged property to sale privately.

Mr. N. C. Chunder : But if clause 36 is omitted, how will that affect clause 35.

Mr. President : Does the Honourable Member wish to withdraw his amendment ?

Mr. D. V. Belvi : In these circumstances, I think, I should withdraw my amendment.

Mr. President : The question is :

“ That leave be given to the Honourable Member to withdraw his amendment.”

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

Clause 36 was added to the Bill.

Clauses 37 to 55 were added to the Bill.

Mr. President : The question is :

“ That clause 56 stand part of the Bill.”

Mr. D. F. Mulla : Sir, I beg to move :

“ That for clause 56 of the Bill the following clause be substituted :

‘ 56. In section 107 of the said Act, after the words ‘ by delivery of possession ’ where they first occur, the following paragraph shall be inserted, namely :

‘ Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee ’.”

Sir, this amendment is no more than a transposition of words.

The clause as it stood before the proposed amendment ran thus :

“ A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by registered instrument.”

And then come, Sir, the words which it is now proposed to transpose. Those words are :

“ and such instrument or, where there are more instruments than one, each instrument shall be executed by both the lessor and the lessee.”

Then there is a second paragraph which runs thus :

“ All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.”

It is after this paragraph that these words ought to have occurred. It is merely a question of transposition.

The Honourable Sir Brojendra Mitter : Sir, I accept the amendment.

Mr. President : The question is :

“ That for clause 56 of the Bill the following clause be substituted :

‘ 56. In section 107 of the said Act, after the words ‘ by delivery of possession ’ where they first occur, the following paragraph shall be inserted, namely :

‘ Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee ’.”

The motion was adopted.

Clause 56 as amended was added to the Bill.

Clauses 57 and 58 were added to the Bill.

Mr. President : Clause 59.

Mr. D. V. Belvi : Sir, I beg to move :

“ That in clause 59 (b) of the Bill for the words ‘ a reasonable time ’ the words ‘ within three months ’ be substituted ”.

[Mr. D. V. Belvi.]

Sir, we have been told by the Honourable Member in charge of the Bill more than once that his object is to leave nothing uncertain. Here is a provision which he wishes to enact but which is vague. "A reasonable time" may be interpreted by courts in different ways. One court may say, it is six months, another might say it is two months and so on. Instead of having this vague expression, it is much better to have a definite period of time, such as is suggested in my amendment, so that it may be known to litigants what they have to prove and what they have to expect.

The Honourable Sir Brojendra Mitter : Sir, I oppose this amendment. I am for "a reasonable time". Originally the proposal was for a fixed period; then it was pointed out in the Select Committee that a fixed period might be insufficient to remedy the breach. For instance, the covenant is for repairs or to add a storey to an existing house. On breach of that covenant, forfeiture is incurred. In such a case, in order to give relief against the forfeiture a *locus poenitentiae* should be given to the lessee. That is the underlying principle of the Bill. If you are going to give a *locus poenitentiae* to the lessee, he must have a reasonable time to carry out what he covenanted to do. Three months, or two months or six months may not be enough for that purpose. After considerable discussion on this matter, we came to the conclusion that the provision in the English law which gives "a reasonable time", should be embodied in this Bill.

Mr. President : The question is :

"That in clause 59 (b) of the Bill for the words 'a reasonable time' the words 'within three months' be substituted".

The motion was negatived.

Clause 59 was added to the Bill.

Mr. President : Clause 60.

Mr. D. F. Mulla : Sir, I beg to move :

"That in clause 60 of the Bill after the words 'such other party is liable to him or any person claiming through', the words 'or under' be inserted".

Sir, the words of the clause in the Bill are :

"If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through....."

Now the words that I propose to insert after this are,

"or under",

so that the clause would read,

"..... or any person claiming through or under him for loss caused....."

The Honourable Sir Brojendra Mitter : I accept the amendment.

Mr. President : The question is :

"That in clause 60 of the Bill after the words 'such other party is liable to him or any person claiming through' the words 'or under' be inserted."

The motion was adopted.

Mr. D. F. Mulla : Sir, I beg to move the next amendment which runs as follows :

"That in clause 60 of the Bill after the words 'if still in the possession of such other party' the words 'or his legal representative or a transferee from him without consideration' be added".

In the Bill as originally drafted there was this omission. The whole object of the present amendment is to supply that omission.

The Honourable Sir Brojendra Mitter : I accept the amendment.

Mr. President : The question is :

“ That in clause 60 of the Bill after the words ‘ if still in the possession of such other party ’ the words ‘ or his legal representative or a transferee from him without consideration ’ be added ”.

The motion was adopted.

Clause 60, as amended, was added to the Bill.

Clauses 61 to 64 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

Mr. President : Sir Brojendra Mitter.

The Honourable Sir Brojendra Mitter : Sir, if you will permit me, I shall make the next motion, that is, that the Bill be passed on Monday next.

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

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

THE TRANSFER OF PROPERTY (AMENDMENT) SUPPLEMENTARY BILL.

The Honourable Sir Brojendra Mitter (Law Member) : Sir, I beg to move :

“ That the Bill to supplement the Transfer of Property (Amendment) Act, 1929, as reported by the Select Committee, be taken into consideration.”

Sir, the Select Committee did not make any substantial alteration to the Bill which was referred to them, and I need not therefore say anything further.

The motion was adopted.

Clause 2 was added to the Bill.

Clauses 3 to 13 were added to the Bill.

Mr. President : The question is :

“ That clause 14 stand part of the Bill.”

Mr. D. F. Mulla (Bombay : Nominated Non-Official) : Sir, I beg to move :

“ That to clause 14 of the Bill the following new sub-clause be added :

‘ (4) In Schedule III to the same Act, after the figures and comma ‘ 116,’ the figures and comma ‘ 117,’ be inserted ’.”

Schedule III which is referred to in the amendment is Schedule III of the Indian Succession Act, 1925. There was an omission in that Schedule and the omission is proposed to be supplied by the amendment.

The Honourable Sir Brojendra Mitter : Sir, I accept the amendment.

Mr. President : The question is :

“ That to clause 14 of the Bill the following new sub-clause be added :

‘ (4) In Schedule III to the same Act, after the figures and comma ‘ 116,’ the figures and comma ‘ 117,’ be inserted.’ ”

The motion was adopted.

Clause 14, as amended, was added to the Bill.

Mr. President : The question is :

“ That clause 15 stand part of the Bill.”

Mr. D. F. Mulla : Sir, I beg to move :

“ That clause 15 of the Bill be re-numbered as sub-clause (1) of that clause and in the sub-clause so re-numbered, the words ‘ Save as provided in sub-section (2) ’ be inserted at the commencement and that to the same clause the following sub-clause be added, namely :

- (2) Notwithstanding anything contained in section 9 of this Act, in the Presidency of Bombay and such other territories as the Governor General in Council may, by notification in the Gazette of India, specify in this behalf, a suit by a mortgagee for foreclosure or sale on a mortgage by deposit of title-deeds may be instituted within two years from the date of the commencement of this Act, or within sixty years from the date when the money secured by the mortgage became due, whichever period expires first ; and no such suit instituted within the said period of sixty years and pending at the date of the commencement of this Act, either in a Court of first instance or of appeal, shall be dismissed on the ground that the twelve years’ rule of limitation is applicable.’ ”

This amendment relates to a mortgage by deposit of title deeds. As to mortgages of this kind there has been a conflict of opinion between the various High Courts of India. It has been held by the High Court of Bombay that a mortgage by deposit of title deeds stands on the same footing as an English mortgage. On the other hand it has been held by the High Courts of Calcutta and Madras that a mortgage by deposit of title deeds is no more than a charge. If it stands on the same footing as an English mortgage the period of limitation is 60 years, as provided by Article 147 of the Limitation Act. On the other hand, if it is merely a charge, the period of limitation is 12 years as provided by Article 132 of the Limitation Act. What is proposed to be done is to put a mortgage by deposit of title deeds on the same footing as a charge, following in this respect the view taken by the High Courts of Calcutta and Madras. So Article 132 is proposed to be amended by adding in it a clause to the effect that a suit on a mortgage by deposit of title deeds will be governed by this Article and the period of limitation will be 12 years only. But in Bombay it has been held that it stands on the same footing as an English mortgage with the result that it was decided about three months ago by the High Court of Bombay that a suit by such a mortgagee may be brought at any time within sixty years from the date when the mortgage money becomes due. With a view to give a chance to such a mortgagee in Bombay, it has become necessary to make the proposed amendment, and the effect of the proposed amendment is to give a period of two years from the date of the passing of the Bill to the holder of such a mortgage, and if the period of 60 years expires before the period of two years, then the suit will have to be brought within that period. In fact, what is proposed to be done now

is what was done several years ago when the new section 31 of the Indian Limitation Act was enacted.

The Honourable Sir Brojendra Mitter : Sir, I accept the amendment.

Mr. President : The question is :

“ That clause 15 of the Bill be re-numbered as sub-clause (1) of that clause and in the sub-clause so re-numbered, the words ‘ Save as provided in sub-section (2) ’ be inserted at the commencement and that to the same clause the following sub-clause be added, namely :

‘ (2) Notwithstanding anything contained in section 9 of this Act, in the Presidency of Bombay and such other territories as the Governor General in Council may, by notification in the Gazette of India, specify in this behalf, a suit by a mortgagee for foreclosure or sale on a mortgage by deposit of title-deeds may be instituted within two years from the date of the commencement of this Act, or within sixty years from the date when the money secured by the mortgage became due, whichever period expires first ; and no such suit instituted within the said period of sixty years and pending at the date of the commencement of this Act, either in a Court of first instance or of appeal, shall be dismissed on the ground that the twelve years’ rule of limitation is applicable ’.”

The motion was adopted.

Clause 15 as amended was added to the Bill.

The Schedule was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

The Honourable Sir Brojendra Mitter : Sir, I pray that the next motion which stands in my name may stand over.

THE INLAND STEAM VESSELS (AMENDMENT) BILL.

Mr. K. C. Neogy (Dacca Division : Non-Muhammadan Rural) : Sir, I beg to move that Mr. T. A. Chalmers, Mr. J. Y. Philip and Mr. S. C. Mitra be appointed to the Select Committee on the Bill further to amend the Inland Steam Vessels Act, 1927. This has been necessitated by the resignation of one and absence of two members of the Committee as originally constituted.

The motion was adopted.

THE HINDU CHILD MARRIAGE BILL.

Mr. President : The House will now resume further consideration of the following motion moved by Rai Sahib Harbilas Sarda on the 29th January, 1929 :

“ That the Bill to regulate marriages of children amongst the Hindus, as reported by the Select Committee, be taken into consideration ”.

Mr. H. P. Mody (Bombay Millowners’ Association : Indian Commerce) : Sir, I do not know whether it will be regarded as a piece of effrontery on the part of one who does not belong to any of the communities which will be affected by this Bill, if I speak on the motion before the House. But I am not going to concede that the question we have to decide is one

[Mr. H. P. Mody.]

which is either the property or the special concern of any one class or community. I think it must be regarded by everybody here as widely affecting the interests of Indians of every class and persuasion. It is therefore a matter of very considerable regret that it should have evoked such vehement opposition in a section of the people and that attempts should be made on the floor of this House to block the motion ; because with great deference to my Honourable friend, Pandit Madan Mohan Malaviya, I cannot but think that those who are pressing for the transfer of this Bill to the Delhi Session have no other idea, with honourable exceptions of course, than to wreck the measure.

Now, Sir, no one denies that religion is sacred, no one refuses a certain measure of sanctity even to religious practices. I do not know how far the Bill before the House affects either the religion or the religious practices of any one community or class, for the simple reason that I am not familiar with the precepts of any religion other than my own. But I think it may be advanced as an indisputable proposition that many so-called religious practices are nothing else but excrescences on religion, and have as much to do with true religion as the rules of a ladies' debating society have got to do with the constitution of a State. I, therefore, think that those who drag religion into this business must assure themselves and this House that they are standing on unassailable ground. What I want to ask them is : Is it doing any honour to the great law-givers of any community to suggest by implication—as my Honourable friends do—that when they laid down certain practices and customs they intended them to be so wooden and inelastic as to be incapable of harmonising with the conditions of present-day life, and that these great law-givers, if they had been alive today, would have continued to sanction customs and practices, which were good enough, perhaps two thousand years ago, but which are hopelessly archaic and out of keeping with the spirit of modern times ?

I have even less patience with another argument which was advanced in the course of this debate, and that was that we should hold our hands until such time as the mass of the people were educated to a sense of what was good for them. I have heard nothing more amazing than that. Every bureaucrat, whether sun-dried or not, since creation began, has employed this very same argument for the purpose of withholding power and privilege from the people, and if this philosophy or argument were to hold good, then, I submit, Sir, that we would still be in the stage of sending up petitions to a benign government for the redress of our grievances. In the social field, things would be even worse. India would still be in the middle ages ; and practices like those of *suttee* and infanticide would still be prevailing amongst us. Therefore, I want to ask, with great respect, those of my friends here who have advocated or supported the blocking of this measure, how they can reconcile this particular argument with their political principles.

My Honourable friend, Mr. Neogy, flourished in our face the other day a mass of letters and telegrams from various known and unknown constituents of his. Sir, permit me to tell my friend that I was not unduly impressed by the performance ; and I doubt very much whether he himself was. My Honourable friend, Mr. Price, said the other day that Mr. Neogy was a man of great sincerity and earnestness ; and I think every Member of the House must agree with that ; but I cannot get rid

of the suspicion that, when Mr. Neogy was on his legs and advocating so vehemently the cause of orthodoxy, he was talking with his tongue in his cheek. (*An Honourable Member* "Why"?) I do not think that conservatism or orthodoxy can be allowed to sweep back either the tide of political progress or social reform. I want to ask my friend Mr. Neogy and others of his way of thinking, what have the orthodox got to show for their orthodoxy? What was their attitude in 1891 when the age of consent was first raised? Did they not offer vehement opposition? Are they prepared to stand up in their places today and defend that attitude? I was very glad to note the other day my friend, Mr. Kelkar, courageously avowing that he was one of those who opposed that measure, but that he was no longer prepared to defend that position. Therefore, I want to say to the orthodox people and those who are voicing their opinions in this House:

"You may indulge in your orthodoxy as much as you like; but when it comes to a question of your orthodoxy being placed above national interests, I say 'Hands off'."

Here is a practice which has been condemned on all hands and which has been admitted as sapping the growth and vitality of the Indian people; and for anybody to get up here and say that, because a certain section of the people is opposed to it, therefore this legislature must keep away from it, seems to me perfectly amazing.

One or two of my friends contended that this legislature has no business to deal with matters of social reform in the teeth of opposition from a certain section of the people. What are we here for? Are we here merely to hurl abuses at our friends on the Treasury Benches? I do not deny that it is first-class sport and perfectly legitimate! But I think we are here for something else too. We are here to serve national interests, and I say most emphatically that national interests demand that this Bill should be passed into law immediately.

Mr. D. C. Stewart-Smith (Bengal: European): Sir, it is with some diffidence that I venture to address you on a subject of such far-reaching importance as this, and moreover on a matter which does not appear at first sight to be of any particular interest to the constituents whom I have the honour to represent. My excuse for intervening in this debate is that the Bill has created a far more definite interest among English people in Calcutta than is probably realised, and of that interest I have received convincing proofs. I do not wish it to be thought for one moment that such interest is confined merely to philanthropic and missionary circles where approval of such measures as this may be taken for granted. This Bill has evoked a very definite interest among the ordinary rank and file of English people in my constituency, who view with cordial approval this bold step which has been taken on behalf of Indian children by the Honourable Member for Ajmer-Merwara and his friends. It has been said in some quarters that we non-official Europeans should not take any part in a discussion of this nature, that it is a matter solely for Indian sentiment, and the less we have to do with their social customs the better. Now, at first sight this may appear to be a very plausible argument. But I venture to suggest that it will bear closer scrutiny. We are summoned here not only to voice our opinions on matters which touch our own interests. As I understand it, we are called here to give our assistance to such measures as we think will be beneficial to the people of this country. An attitude of aloofness at this moment might be interpreted as an attitude of indifference,

[Mr. D. C. Stewart-Smith.]

an attitude which I may assure you that none of us here share. When we are confronted with a measure such as this, which has been carefully thought out and widely advertised, which has been put forward by responsible Indians inspired solely with the idea of curing a social evil, we should be failing in our duty to our constituents if we did not render to such reformers all the assistance which lies in our power.

Sir, it has been argued that this is a religious matter and therefore cannot properly be discussed here. I am quite incompetent to discuss the religious aspect of this matter, but I find it difficult to believe that there can be found anywhere the divine sanction to an interference with a girl below the age of fourteen. Put shortly, this Bill asks us to protect girls throughout India up to the age of 14. Is there any one who can deny, even in the name of religion, that such a reform as this would have a wide-spread effect on the health of the women of India and upon the sturdiness of the generations to come? It is not a religious matter that we are discussing; it is a national one, and one which contains a measure of far-sighted patriotism which every lover of this land will warmly welcome.

Sir, I am well aware that this Bill, if passed, may to some extent remain a dead-letter owing to the difficulty of detecting breaches of the law. Now, those who fear this result and use it as an argument against the Bill are too faint-hearted and are too easily discouraged. Many laws are difficult to enforce. As I understand it, what the Rai Sahib and his friends require is a law behind them, which they can use if need be; what they want is a weapon which they can use with effect and even severity against those who would contract child marriages with their evil consequences of early pregnancy or lifelong widowhood. At present such reformers are quite powerless. Let us, therefore, give them a weapon even though they may find that weapon difficult to use, because as popular education spreads in this country the need for this weapon will become more recognised.

And, finally, Sir, it has been argued that we cannot cure social evils by legislation. I for my part would say that it is only by legislation that you can cure such evils, and I will give two conclusive examples, one in England and one in India. The removal of child labour from the mines and factories in England was due to legislation initiated by Lord Shaftsbury in the teeth of opposition of factory owners and wage earners alike. In India the custom of *suttee* was put an end to by legislation about a century ago. No, Sir, public education, admirable though it is, was not considered the remedy for child labour in factories or for the burning of widows. It is only by placing a law upon the Statute-book, a law fortified with adequate penalties, that you can bring home to a nation the evils from which it suffers.

Sir, I have detained the House long enough. I want the Mover of this Bill and his friends to know that many English people in my corner of this land, and I believe throughout India, wish him well in his great reform and desire to accord him not only their applause but also all the assistance that lies in their power.

Mr. D. K. Lahiri Chaudhury (Bengal : Landholders) : Sir, I do not think it would be proper for me, representing as I do an important community like the Hindu community, to which I belong, to give a silent vote on this important matter. Sir, I have heard many speeches in favour

of this Bill, but I cannot understand whether the motion as it stands today is for the consideration of the Bill or for the postponement of the measure. Sir, I stand for postponement, because I feel strongly that this is a measure which should not be rushed through so hastily. Bearing in mind the fact that I am a student of politics still, I feel that this sort of legislation, which interferes with our social affairs, should not be rushed through, but I should like to tell those friends of mine who have just spoken on child mortality and the evil consequences of child marriages, that there are different schools of thought on the subject. Now, Sir, I can cite some evidence to prove the falsity of the idea that infantile mortality is due to child marriage. A reference to the Census Report of 1911, of Bengal, Bihar and Orissa will show that in districts, where the percentage of child marriage is the highest, infantile mortality is least although the general mortality is very high. Take for instance the two districts where the percentage of child marriages is highest, namely Darbhanga and Bhagalpur. The number of married girls between the ages of 5 and 10 is for the district of Darbhanga as high as 565 per 1,000 and for the district of Bhagalpur 435 per 1,000. In both these districts infantile mortality is as low as about 13 per cent., although the rate of general mortality is about 35 per cent. In the districts of Balasore, Jalpaiguri and Darjeeling where the number of married girls between the ages of 5 and 10 is only 56 per 1,000, 52 per 1,000 and 17 per 1,000, respectively, and although the rate of general mortality is not higher than about 35 per cent., the rate of infant mortality is in the case of Darjeeling as high as 22 per cent. ; and in Balasore and Jalpaiguri the rate goes up as high as 27 per cent. In Burma, where there is no child marriage, the rate of infant mortality is higher than that in Bihar and Orissa where child marriage prevails to a much greater extent than in any other part of India. I quote this from the Census Report for 1921. In lower Burma the rate of infantile mortality is about 24 per cent. In Chile it is about 32 per cent., in Hungary 30 per cent., in Russia 25 per cent. The general average for India is 20 per cent.

Now, Sir, with your permission I should like to quote the opinion of one whom every well wisher of the country holds with great esteem and regard, I mean Dr. Besant. This is what Dr. Besant says :

“ Early marriage is best, both physically and morally ; it guards purity, softens the affections, trains the heart and preserves physical health ; it teaches thought for others, gentleness and self-control ; it makes man gentle and woman brave from the contact of their differing natures. The children that spring from such marriage,—while not following each other too rapidly,—are more vigorous and healthy than those born of middle-aged parents, and in the ordinary course of nature the parents of such children live long enough to see them make their start in life, to aid, strengthen and counsel them at the beginning of their career.”

Now, Sir, I should like to give the medical opinion on this important matter given by Mr. Lyon on puberty and motherhood. This is from Gallabins' Midwifery, page 45 :

“ The first menstruation is the usual sign that a girl has become capable of conception and child bearing.”

Now, Sir, there are also other authorities who hold that child marriage does not constitute a grave crime. With the permission of the House, I can quote some statements to prove that many Europeans themselves think that child marriage for India is good. Mr. Ellen Key, in Chapter VIII, page 311, says :

“ It is evident to every thoughtful person that a real sexual morality is almost impossible without early marriage ; for simply to refer the young to abstinence as the

[Mr. D. K. Lahiri Chaudhury.]

true solution of the problem is, as we have already maintained, a crime against the young and against the race, a crime which makes the primitive force of nature, the fire of life, into a destructive element".

(An Honourable Member : " Is he advocating child marriage ? "). Certainly. (At this stage there were several interruptions). I am a student and I have no objection to girls being married at any time of their life, but I object to this sort of legislation. It should have been the duty of the Government to remain neutral on this subject and to allow the representatives of the people here to decide the matter. But that thing is far off and the Government has already made a statement that they will support the Bill. I do not know what will be the effect of this legislation.

I should also state that my Honourable friend Mr. Jayakar, in his eloquent speech, made a statement that he is a student of Vedanta wherein it is said that when lions roar the jackals run away. But that doctrine does not apply here, because in Vedanta there is no marriage and things of that sort.

Mr. M. B. Jayakar (Bombay City : Non-Muhammadan Urban) : I was only translating an ancient sanskrit text.

Mr. D. K. Lahiri Chaudhury : I know a similar text from the Gita which says :

" Jabanartha udopane sarbata sanplutodake

Taban Sarbeshu Vedhesu Brahmanashya Bijanata ".

which means :—as when there is flood all round there is no necessity of well ; so whole customs laid in whole Vedah are futile to that Brahman who has the real perception of conception. If the Honourable Member had studied Vedanta he would not have made that eloquent speech. The Smrithis are concerned with child marriage and not the Vedanta. He has nothing to do with a student of Vedanta here ; but it is only the Smrithis which discuss marriages and that Smrithis should not be neglected.

I want to say this that this Bill may be kept pending for three months so that we can try and come to a settlement with those who oppose it. Formerly I was really against the principle of the Bill, but now I agree with it, but at the same time I should like to see a settlement about those matters which raise controversial issues. My Honourable friend Mr. Jayakar said, " You could wait for three years more ". He said if he could get a chance, he had no objection to waiting for three years. If so, why not wait for three months ?

Mr. M. A. Jinnah (Bombay City : Muhammadan Urban) : What will happen after three months ?

Mr. D. K. Lahiri Chaudhury : In those three months I will consult with those who object to the provisions of the Bill and try to convince them of the effect of this legislation. This custom of marriage has been prevailing for thousands and thousands of years in this country.

Rai Sahib Harbilas Sarda (Ajmer-Merwara : General) : For two years the Bill has been before the public.

Mr. D. K. Lahiri Chaudhury : You can wait for 200 years. I can wait for ten years, but that is not possible and I am asking only for three months' time.

Mr. G. D. Birla (Benares and Gorakhpur Divisions : Non-Muham-
madan Rural) : Will you support us then ?

Mr. D. K. Lahiri Chaudhury : I can wait for three months. I may support it after three months, provided my constituency agrees.

Nawab Sir Sahibzada Abdul Qaiyum (North-West Frontier Pro-
vince : Nominated Non-Official) : If you can convince your constituency !

Mr. D. K. Lahiri Chaudhury : I will try to convince my constitu-
ency whether we can have this sort of legislation or not. If this Bill is
carried over to the Delhi Session, most of the Members and also the Mussal-
mans will come to terms and we can settle the matter ourselves as to what
can be done with the Bill. So, I support the motion for postponement and
oppose consideration.

Mr. A. H. Ghuznavi : (Dacca Division : Muhammadan Rural) : I
would be failing in my duty if I did not oppose this Bill, and I will give
you my reasons. It is two years now exactly to this day that my Honour-
able friend Rai Sahib Harbilas Sarda introduced his pet Bill, which he
then called the Hindu Child Marriage Bill, and what he then said was
that it must apply to the Hindus only. And the reason that he gave,
to quote his own words, was that he wanted "to put a stop to child
widowhood". With your permission, Sir, I will only read a few lines
from his opening speech in moving that Bill. He said :

"The primary object of this Bill is to put a stop to child widowhood. No country
in the world except this unhappy land presents the sorry spectacle of having in its
population child widows who according to the customs of the country cannot remarry.
Enforced widowhood is a feature peculiar to the Hindu society."

There is no Mussalman widow..

Mr. T. A. K. Shervani (Cities of the United Provinces : Muham-
madan Urban) : Question.

Mr. A. H. Ghuznavi : I say Mussalman widows can be remarried.
(*An Honourable Member* : "That is another matter"). There is no
enforced widowhood. The law enjoins that the widow should be married
at once.

An Honourable Member : Not enjoins. It permits.

Maulvi Muhammad Yakub (Rohilkund and Kumaon Divisions :
Muhammadian Rural) : Not at once

Mr. A. H. Ghuznavi : Now, my point was that the Mussalman com-
munity should not be included in this Bill at all. (*An Honourable Mem-
ber* : "Why ?"). It was originally intended for the Hindu widows.
Why do you drag the Mussalmans in in this Bill ? (*An Honourable Mem-
ber* : "Poor Mussalmans !").

Mr. T. A. K. Shervani : Because you are as cruel to girls as the
Hindus.

Mr. A. H. Ghuznavi : Probably in your province.

(There were several interruptions).

Mr. President : Order, order.

Mr. A. H. Ghuznavi : Sir, it will be thus seen that the intention of
the Mover was nothing beyond stopping the child widowhood which
exists in the Hindu Society.

Rev. J. C. Chatterjee (Nominated : Indian Christians) : Question.

Mr. A. H. Ghuznavi : At that time the Government were not sure whether this measure would be acceptable to the Hindus, inasmuch as such legal restrictions on the marriageable age would encroach upon their personal law. Sir, the Honourable the Home Member moved that the Bill be circulated for eliciting public opinion. He said :

“ Legislation, however, well-intentioned, if it is hasty, is not likely in the end to promote the purpose for which it was intended. Legislation which is passed without due consideration may have consequences very remote from those which were intended ”.

But my friend would not agree to the circulation of this Bill, and in his zeal for the passage of the Bill did not want to send it for circulation. I warned the House at that time that to refer the Bill directly to the Select Committee would be lamentable inasmuch as it affected the Hindu community as a whole and it would not be fair not to elicit public opinion on a momentous measure of this kind. I was emphatically of opinion that in a measure of this kind public opinion should not be ignored, but no heed was paid to those who demanded circulation ; and the Mover succeeded in getting the Bill referred to the Select Committee. Then, Sir, the Government by its executive order circulated the Bill for eliciting public opinion, and the opinions Government received left no room for doubt that the Bill, as it then stood, was not wanted by the public.

Mr. Jamnadas M. Mehta (Bombay City : Non-Muhammadan Urban) : Question.

Mr. A. H. Ghuznavi : Just wait a minute. I am coming to that. I have got the materials before me. The Select Committee threw out the original Bill and evolved another Bill which was circulated for collecting public opinion, and the second Select Committee made their report on the 13th September, 1928. Now, Sir, out of the 18 members of the second Select Committee only three were Muslims, and let us examine what they said in their minute of dissent. My Honourable friend Maulvi Muhammad Yakub said :

“ I sign the Report subject to the observation that an over-whelming majority of the Mussulmans, including eminent and distinguished ulemas, is strongly against the application of this Bill to the Muslim community on the ground that it interferences with religion.”

My Honourable friend Muhammad Rafique said :

“ The principle of the Bill affects the personal law of the Mussalman, and therefore it should not be applicable to the Mussalman at all. I am therefore of opinion that the Mussalman should be exempted from the operation of the Bill.”

As regards Mr. Yusuf Imam, he is only a Mussulman by name. (*Cries of “ Withdraw ”* from all parts of the House.)

Mr. President : I think the Honourable Member must withdraw that observation.

Mr. A. H. Ghuznavi : I withdraw that, Sir. As I have already said, the original Bill was thrown out by the Select Committee and a new Bill was evolved which, to my utter amazement, brought all the nationalities within its clutches and penalised marriages of girls under a certain age. Their Report came as a tremendous shock to the Mussulmans, for the

simple reason that it not only affected their personal law, but that the question of widowhood did not arise in their case, as Islam enjoins widow marriage. To bring the Mussulmans within the purview of the Bill was absolutely unwarrantable. This Bill was ultimately taken into consideration in the Delhi Session early this year, but on the 25th June, 1928, Government appointed a committee to report on the Age of Consent, and the Government were, therefore, not willing to proceed with this Bill till the Report of the Age of Consent Committee was available. That Report was out on the 26th August last. Barely a week had elapsed and the Bill was taken into consideration in this House. Unfortunately illness prevented me from being present in this House on the 4th and 5th September and deprived me of the opportunity of listening to the interesting debate which took place in this House in connection with this Bill. Sir, as I said, I oppose this pernicious Bill. I oppose it because I do not believe that social reform can be effected by legislation. I oppose it because it infringes the Muslim personal law and encroaches upon the Muslim religion; I oppose it because it is the mandate of my constituency; I oppose it because the opinion of the dumb millions is wholly against it; I oppose it because the Muslims as a whole do not want it. And.....

Mr. T. A. K. Shervani : Question.

Mr. A. H. Ghuznavi : I am a Muslim first and an Indian afterwards. (*Cries of "Shame"*.) I oppose it because the original Bill did not touch the Muslims and Muslims should not have been included; I oppose it because it would be a menace to the peace of the society; I oppose it because it will inevitably result in endless prosecutions, police *zulum* and untold hardships on the people; I oppose it finally because the orthodox, the non-orthodox, the reformers and the non-reformers, in fact none want it.

Now, Sir, no less than 29 Members of this House represented to the Home Member on the 13th September, 1928, that they were opposed to this Bill. With your permission, Sir, I will read that document :

“ To

The Honourable The Home Member,
Government of India,

Simla.

SIR,

We the undersigned members of the Legislative Assembly are strongly opposed to Rai Sahib Harbilas Sarda's Hindu Child Marriage Bill as it strikes at the root of the most cherished and sacred institutions of Hindus and Muslims and penalises what is lawful under the personal laws of Hindus and Muslims.

We therefore request you to help us in opposing this measure which affects our law and religion and against which orthodox public opinion has expressed itself or, at least, to maintain the oft-proclaimed neutrality in matters of religion by abstaining from voting on the Bill.

We have the honour to be,

SIR,

Your most obedient Servants,"

Well, Sir, the signatories were Srijut Dharendra Kanta Lahiri Chaudhury, Mr. Ismail Khan, Mr. Abdul Qadir Siddiqi, Maulvi Abdul Matin Chaudhury, Mr. Fazal Ibrahim Rahimtulla, Nawabzada Ashrafuddin Ahmed,

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Nawab Sir Sahibzada Abdul Qaiyum, Mr. Duraiswamy Aiyangar, Haji Abdoolah Haroon, Haji Choudhury Mohammad Ismail Khan, Mr. W. M. P. Ghulam Kadir Khan Dakhan, Mr. Illahibakhsh Bhuto, Mr. Aney, Lieutenant Muhammad Nawaz Khan, Dr. Suhrawardy, Mr. Anwar-ul-Azim, Rai Bahadur Tarit Bhushan Roy, Nawab Sir Zulfiqar Ali Khan, Mr. M. K. Acharya, Mr. Muhammad Rafique, Maulvi Sayyid Murtuza Saheb Bahadur, Mr. Abdul Latif Sahib Farookhi, Khan Bahadur Syed Rajan Baksh Shah, Maulvi Badi-uz-Zaman, Maulvi Muhammad Shafee Daoodi, Mr. Sesha Ayyangar, Mr. Belvi, Mr. A. H. Ghuznavi and Mian Mohammad Shah Nawaz (Laughter.) What has since happened to my Honourable friend Mian Mohammad Shah Nawaz ?

Mian Mohammad Shah Nawaz (West Central Punjab : Muhamadan) : Anyhow it was not the same Bill.

Mr. President : Order, order. The Honourable Member may now conclude his speech.

Mr. A. H. Ghuznavi : I was asking my friend what has happened since that. He has now made a somersault on the floor of this House. Sir, I was not here to listen to his cock and bull story about the conditions prevailing in Bengal. It must have been amusing to listen to him, to listen to a man who knew as much about Bengal as the man in the moon. ("Hear, hear".) I should like to throw out a challenge to my friend.....

Mian Mohammad Shah Nawaz : Become a member of the Committee.

Mr. A. H. Ghuznavi : You resign your seat and seek re-election in the Punjab on this Marriage Bill.

Mian Mohammad Shah Nawaz : I will, if all the Muslim Members of the Assembly who support or oppose the Bill will resign and seek re-election.

Mr. President : Order, order. I hope the Honourable Member will now conclude his observations.

Mr. A. H. Ghuznavi : Well, Sir, as regards the Age of Consent Committee, I will, with your permission, read what the *Madras Mail*, in a sub-leader, has said about it. It is an Anglo-Indian paper, not an orthodox Hindu paper but a pure and simple Anglo-Indian paper :

"An orthodox correspondent asks whether it is necessary for the Age of Consent Committee to continue its inquiries in view of the speeches made by its President and other prominent members favouring drastic changes in the existing law. These speeches, in the view of our correspondent indicate that the majority of the Committee has already made up its mind about its ultimate recommendations and is seeking, not so much to find the facts, as to build up a case in support of its views,"

and so on and so forth. I have not much time to go on and quote the whole.

Mr. E. L. Price (Bombay : European) : It is from a correspondent.

Mr. A. H. Ghuznavi : I will now only quote, Sir, from the Report of the Age of Consent Committee what Maulvi Muhammad Yakub has said. I shall quote only one or two passages ; I will not be long :

"Interference with tenets of religion or furthering limitations where not one is placed by religion cannot be allowed to pass under the cover of the progressive nature

of Islam. For those who consider religion a mockery it is very difficult to understand a religious man's attitude towards religious beliefs and sentiments. The life of a Mussalman from cradle to grave is a series of religious performances and therefore any foreign element which interrupts or puts limitations on these performances cannot be tolerated from the Muslim point of view."

Sir, here is a *Fatwa* signed by 74 ulemas throughout India. This *Fatwa* is signed by 74 ulemas. They have condemned this measure. They say it infringes the Muhammadan personal law, and they appeal to the Mussalman Members of this House to enter an emphatic protest against the Bill. I was very glad, Sir, to read in the papers that my friend, Mr. K. C. Neogy, had entered an emphatic protest on behalf of the Hindus of Bengal. My friend, Mr. Kelkar, will bear him out, for he knows how, at a meeting presided over by him only the other day at Dacca, an overwhelming majority opposed this measure. Mr. Neogy and I, Sir, come from the same Division in Bengal. He represents the non-Mussalman constituency and I the Mussalman constituency. The mandates of our constituency are vehemently to oppose this measure, and we are in duty bound to carry them out, and we shall do so to the best of our ability. My Honourable and esteemed friend, Mr. K. C. Roy, gave his whole-hearted support to the Bill and is reported to have said that he welcomed the Bill, that he thought Mr. Neogy had evidently been misled by the orthodox tyranny of Bengal, but that the Bengal Government faithfully and correctly represented the entire Province, and so on. Well, Sir, I accept that and I shall show that the Bengal Government has opposed this Bill.

Mr. President : Order, order. The Honourable Member should have taken the hint I gave him.

Mr. A. H. Ghuznavi : I ask for only two minutes more, Sir. The Bengal Government says :

"In reply, I am to say, that some selected Bar Libraries and recognised Associations and certain selected officers were consulted and copies of the replies received are enclosed for the information of the Government of India. It will be seen that most of the Associations are opposed to the proposed legislation as affecting religious rights and usages."

An Honourable Member : What is it ?

Mr. A. H. Ghuznavi : The Bengal Government's Report.

An Honourable Member : Your brother is in that Government ?

Mr. A. H. Ghuznavi : My brother was not then in the Bengal Government.

"But apart from the considerations as to the object or the practical effect of the proposed legislation, the way in which that object is sought to be gained is open to grave criticism. The Governor in Council considers that there are very strong objections to the proposal to invalidate any marriage which has taken place".

The Government of Bengal further say :

"In reply, I am to say that three District Judges, 18 recognised Associations, 7 Bar Associations and the incorporated Law Society of Calcutta were consulted in the

[Mr. A. H. Ghuznavi.]

matter and copies of the replies received from the Indian Christian Association, the Buddhist Association of Chittagong, the Hillmen's Association of Darjeeling, the Marwari Association, the Jain Swetambari Terapanthi Sabha, the European Association, Calcutta, and the Bar Association of the 24-Parganas, Tipperah, Dacca, Midnapore, are forwarded for the information of the Government of India. From the replies received, it appears that the preponderating majority of opinion is against any legislation on the subject, and only a minority of ardent social reformers are in favour of it. The Governor in Council is of opinion that the Bill may be dropped."

Now, I come to the European Group. Last September Sir James Simpson and Colonel Crawford gave me to understand that the European Group was going to support me to throw out this Bill.

Lieut.-Colonel H. A. J. Gidney (Nominated : Anglo-Indians) : You were lobbying yourself.

Mr. A. H. Ghuznavi : That is not lobbying.

Mr. President : Order, order : The Honourable Member must take the hint.

Mr. A. H. Ghuznavi : I will finish in one minute, Sir. I appeal to the Treasury Benches. I appeal to Sir James Crerar personally. Sir, this is a matter which affects the Mussalmans and the Hindus. Therefore, do not be in a hurry ; do not side with one party or the other ; abstain from voting on this Bill. Let us divide in this House without official Members. Do not give a mandate to the nominated Members. Let them vote as they like.

Mr. K. C. Roy (Bengal : Nominated Non-Official) : You do not want any guidance.

Mr. A. H. Ghuznavi : No, I do not want any guidance.

The Revd. J. C. Chatterjee : Then why did you quote the opinion of the Government of Bengal ?

Mr. President : Order, order. Mr. Shah Nawaz.

Mian Mohammad Shah Nawaz : On a point of personal explanation, Sir. It is true that nearly a year ago I was persuaded by my friend the Honourable Mr. Ghuznavi to sign the 'precious' document which he still holds in his possession on the assumption that the evils of early marriage and early consummation and early maternity did not exist amongst the Mussalmans of Bengal. The Age of Consent Committee, of which I was the member, has, however, unanimously found that the evil of early marriage and early consummation very largely prevails amongst the Mussalmans of Bengal, who form 42 per cent. of the total Muslim population in India. The Committee has further found that the evil also prevails amongst Muslims of other provinces though in a lesser degree. The Committee has further recommended that the only effective remedy to remove the evil is to penalize marriages of girls below fourteen years of age. In the face of these undeniable facts and findings

I would have been guilty of dishonesty if I had paid attention to the document signed by some Muslim Members of the Assembly on the basis of assumptions which are found entirely untrue. There is nothing in Islamic laws which would stand in the way of the present legislation. Whether in the next election I am elected to the Assembly or not, I care not. I feel I have done my duty without fear and doubt.

Mr. T. A. K. Shervani : Sir, I did not intend to take part in this debate at this stage and wanted to express my view on the amendments which stand in the name of some of my friends, to the effect that Musalmans should be excluded from the operation of the contemplated Act. But I do so now, because, by the speeches of certain Musalman Members, an impression has been created that Musalmans in a body or a big majority of them are against this Bill. Sir, I am convinced that this is not the fact. (Hear, hear.) And my conviction is not based on arrogance, the arrogance of those persons who come forward and say that they are the only representatives of Musalmans and denounce those who happen to oppose them. This conviction of mine is based on ascertained facts. The whole country was given an opportunity, and this Bill has been before the country for the last two years. Several opportunities were allowed and, after all, a Committee was appointed which made a tour round the whole country. The tour was notified in all the papers, English as well as vernacular, and persons came and expressed their views before the Committee. The majority of the Musalman witnesses who appeared before the Committee were in favour of the Bill, and that is the only ascertained opinion before this House. The only plea which has been put forward by Honourable Members on the other side is that many Muhammadans did not come forward to express their opinion.

Mr. M. K. Acharya (South Arcot *cum* Chingleput : Non-Muhammadan Rural) : That is what the Committee says.

Mr. T. A. K. Shervani : I will come to the Committee later on. The only conclusion which can reasonably be drawn from this attitude of Musalmans is that they are indifferent to the Bill.

Mr. M. K. Acharya : They have no confidence in the Committee.

Mr. T. A. K. Shervani : Honourable Members are at perfect liberty to hold one view or the other. But I feel really exercised when I hear from the mouth of learned friends that this measure is against our religion. I believe and say here on the floor of this House that this Bill is in exact accord with the true principles of the Islamic law of *Mash-riq*. (Applause.) Some friends have come forward and asserted that this Bill is against our religion, but if they had taken the trouble of reading even the note of dissent of Maulvi Muhammad Yakub, they would have come to the same conclusion to which I have come, and I came to that conclusion long before it. I will not enter into the details of the Muhammadan law because this is not the suitable occasion for it and I will wait for the Honourable Members who propose the exclusion of Musalmans from the operation of the Bill when they move their amendments. But at this stage I may say that, so far as the holy book of the Musalmans is concerned, it never contemplated child marriage. The holy book says :

“ *Fankahoo Ma Tah hakum Minannesui.* ”

“ Marry from among women, those whom you like best. ”

[Mr. T. A. K. Shervani.]

That is the only verse which directly bears upon the question and there are two most significant words, upon which I lay particular emphasis and to which I wish to draw the attention of the House. I invite the attention of the House to the word "*fankahoo*". It is not said "*unkahoo Ahanukum wa Bautukum*", etc. It says "*fankaho*", that is to say, it leaves the marriage of a person entirely to the person who wants to marry. In other words it contemplates marriage of a person by the person himself. Now you say, "No", and say that a person can marry any other person which apparently is not contemplated in the verse quoted above. The second word which is the most important word in this verse is the word "*nissa*" and I challenge my Honourable friends over there to find any Arabic quotation in which the word "*nissa*" is used for Sileyah (a child). The word *nissa* is always used in Arabic for a full grown up woman. This is what the Holy Koran says, still my Honourable friends come forward and say it is against Islam. I do not stop here; this debate will continue, and I ask my Honourable friends who oppose this Bill to find any *hadis* which recommends child marriage.

Hadises are of two kinds, *Hadis bilqual* and *Hadis bilfeal*, and it is the recognised principle of Islam that the acts of Prophets are not always binding on his followers. So, I ask my Honourable friends here to find out a single *hadis bilqual* which recommends child marriage. I now turn to *fiqa*. In *fiqa* there is no doubt that Muslim (*faqih*s) have allowed the marriage of a minor. But how did it come about? For this we will have to go to the history. We find throughout the Islamic law that there were certain customs prevalent amongst pre-Islamic Arabs. And from amongst those customs, the customs which were against equity and justice and which were repugnant to the principles of Islam were prohibited. Those customs which were not such were not interfered with. We find among the pre-Islamic Arabs the custom of marrying children, whether they were minors or majors only with the permission of their parents or guardians; the rule of *familea patestos* was fully in vogue. That was the pre-Islamic custom in Arabia. When Islam came, it abolished the marriage of a major by a father or grandfather or any other relation. But, so far as marriages of minors were concerned, Islam did not interfere. So, as a matter of fact, this marriage of minors is not based on Islamic principle. It is a remnant of the pre-Islamic Arab custom. My Honourable friends come forward and say that it offends against Islamic religion. I wish to submit that Moulvi Mohammad Yakub has really taken great pains and has given us, if we care to read his notes, the entire relevant texts on the question. I congratulate him for his labours and for the great pains which he has taken. But I do not agree with the conclusions he has arrived at. My reasons are obvious. My Honourable friend Maulvi Muhammad Yakub, in his note of dissent, simply says that it is the consensus of opinion among the Muhammadans. Practically all the Muhammadan witnesses who appeared before him did agree that *fiqa* could be changed. But some say that *fiqa* could be changed only by a Muhammadan King. I do not endorse that view, because, if I endorse that view, I will be in awful difficulties. I cannot afford to go out of the protection of the Legislature of this country, so long as I am residing in this country. There are only two alternatives open for meeting:

either to leave the Islamic law entirely to the mercy of a judge or a bench of judges, or bring it within the purview of this Legislature. The advantage in this Legislature is that we are so many representatives of Mussalmans here, and we can very well discuss the matter among ourselves as well as with members of other communities, and also with the members of the Government. But if you take Islamic law out of the purview of this Legislature, the only result will be that as we live in this country, our cases must go to the courts, and instead of the Legislature enacting certain measures for the Mussalmans, the Islamic law will be absolutely in the hands of one or two judges, as has been the case hitherto. For example, there was not a single branch of Muslim law so well developed as the law of *Waqf* at the time when the British took up the administration of justice into their hands. But in fifty years time the whole law of *waqf* has been changed beyond reorganisation by the Indian courts, and Mussalmans were compelled to come to the Legislature for rescue. Take the law of pre-emption. That law was recognised by the Government of this country. But with what result? There were more conflicts in the rulings on pre-emption than on any branch of law, and the result was that the entire law of pre-emption had been mutilated by the time the Legislature came to its rescue. That is about my own province.

Nawab Sir Sahibzada Abdul Qaiyum : Will it remain in the hands of a few judges or in the hands of a few irresponsible Mullahs?

Mr. T. A. K. Shervani : While I say all this, I do not concede to the Legislature the power or authority to interfere in my religion without my consent. But at the same time I will never advise Muhammadans to take their personal law entirely out of the hands of the Legislature of the country. Certain personal remarks were made by an Honourable Member on Dr. Hyder while he was speaking. I do not hold any brief for my Honourable friend Dr. Hyder, but, I may remind my Honourable friend Maulvi Muhammad Shafee Daoodi for his benefit that Dr. Hyder represents a constituency which had been the centre of Muslim thought and opinion for the last fifty years. I further remind my Honourable friend Maulvi Sahib that Dr. Hyder represents a more enlightened constituency than my Honourable friend Muhammad Shafee does. (Laughter.)

An Honourable Member : In politics?

Mr. T. A. K. Shervani : In politics, in religion, in wealth, in culture. I further remind my Honourable friend that Dr. Hyder represents a constituency which consists of many more Muhammadans than the constituency from which my Honourable friend Maulvi Sahib hails. It is very easy in this House to come forward and say, "I am the person who represents Mussalmans and nobody else", but such assertions must be the outcome of arrogance and not taste.

Now, at this late stage, I do not want to take much of the time of this Honourable House. I waited and waited in vain to get some light thrown on the question by a person like my Honourable friend Maulvi Muhammad Shafee Daoodi, who is called a Maulvi, and who has at least for 16 or 17 years given out to his clients and courts, in which he practised, that he knows Muhammadan law, how this innocent measure is against the tenets of Islam.

[Mr. T. A. K. Shervani.]

It is really curious that, when the question of fees comes up my lawyer friends come forward and say that they know Muhammadan law, they are the experts; but when there comes the question of Sarda's Bill, they say they do not know Muhammadan law and cannot express any opinion unless they consult the ulemas. The question before the House is a pure question of Muhammadan law, and I am entitled to give a better opinion on this question than those whose primary business in life is not law. It is my every day business, while an Alim might come across a case or two in the course of a year or two. My friend Mr. Ghuznavi comes armed with 74 opinions, but should we accept the opinions as the last word until we are assured that Islam enjoins child marriage. I again assert that, so far as Islam is concerned, it has never recommended child marriage. We do respect certain individual Alims for their learning and erudition, but we should not accept a verdict without authority from the books of Shorah. So far as individual opinions of Alims are concerned, I have tried to ascertain and I assure the Honourable Members of this House that, up till now, the only objection to this Bill is that this country is not *Dar-ul-Islam* but *Dar-ul-Herab*, and this Legislature can effect a change in Islamic law. I challenge any one who asserts that proposition to prove that according to the tenets of Islam India is not *Dar-ul-Islam* but *Dar-ul-Herab*. I maintain and I say here on the floor of this House that India is *Dar-ul-Islam* and not *Dar-ul-Herab*.

Nawab Sir Sahibzada Abdul Qaiyum : Including Kadian ?

Mr. T. A. K. Shervani : There are unguided persons in Islamic countries also, it does not become *Dar-ul-Herab* thereby.

I further maintain that the change of law is not confined to a Muslim king; there was a time when there was no king at all, and still rules of *Fiqah* were changed. They have been changed from the earliest times, and I can give many examples of the rules of *Fiqah* having been changed. They were changed even in the time of the Khalifs. To quote one example, the punishment for fornication in Islam was stoning to death and Hazrat Ali, the fourth Kaliph abolished it. The rules of law have always been changed and they are being changed here in India every day. It is for us to choose once for all whether the change should depend on the whims and fancies of a judge or two or on the Legislature with our free consent. Every sane man will choose the latter course. With these words, Sir, I support the original motion. In a private meeting of Mussalmans I said that I was indifferent whether the Bill was postponed or not, but when we have reached to this stage of the debate, I oppose the amendment also proposed by my friend Mr. Acharya.

Mr. M. Keane (United Provinces : Nominated Official) : Sir, I thank you for giving me this opportunity of saying a few words. I trust I will not offend against the clock. The fact is that my Honourable friend Rai Sahib Harbilas Sarda asked me to speak on this measure and as it coincided with my own wishes also, I am on my feet. The Rai Sahib of course knows exactly how my vote is likely to go. But I want to say this, that we in these benches,—at any rate in the back benches,—have from time to time wished to be in a position to express our opinions regarding this measure. At one time

or another, and for various reasons, we were not in that position. In fact the Rai Sahib and others did to some extent,—benevolently, I admit,—but they did taunt us with a doubt whether we were opposed to the measure or in favour of it, or were only indifferent. After the speech which the Honourable the Home Member made the other day,—a speech which I may say the whole House felt was nobly done,—after that speech, there can be no doubt as to our opinion and the position that we take up. We are not opposed to the Bill; we are not indifferent to it. We strongly, unhesitatingly, unconditionally believe that the Bill has very great advantages; that there is urgent necessity for it, and above all, I may say we believe in the righteousness of the Bill. When Mr. Acharya moved his dilatory motion the other day I thought that once more we were to be in for the usual futile discussion; but since then the House has unmistakably shown that they have no intention to be put off by any dilatory motions. They have shown that they are determined now to face the issue before them; and the issue is very clear. It is not a light issue; it is a great issue; it is the very gravest issue that can face a people,—the welfare of its own rising generations, the welfare of the young mothers that are the custodians of their race, the young mothers whose privilege and function it is to hand on the torch to the future. That is the issue before this House, and the House is obviously now determined to deal with the issue once for all. Mr. Acharya undoubtedly spoke with the very greatest eloquence, and I should be one of the very last to under-estimate in any way the sincerity, the fervour and the belief that underlies his speech, and the same, of course, I can say of my Honourable friend Pandit Malaviya over there. We should be very ungrateful, I feel, if we did not recognise, and give public expression to that recognition too, the very great help that Pandit Malaviya gives to all reform movements although he stands firmly for orthodoxy. The open mind that he displays towards advance and reform is an encouragement and help to all of us who believe thoroughly in this particular reform.

I admit that Mr. Acharya, with his eloquent ways, is liable to carry along opinion on his side. At the same time it is to be remembered that we cannot today deal quite with this question as if there were nothing else but ancient texts, and I think myself that Mr. Neogy, his neighbour, felt that. Mr. Neogy comes to us, persuasive, intensely modern, a man of the world speaking to men of the world, not relying at all on the ancient shibboleths, Shastras and Smritis and all the other unpronounceable words that we have heard so much about. He relies entirely on the very post-Vedic Excellencies in Council, and he quotes the Governor of Bengal, the Governor of Madras, the Governor of the Punjab, and the Governor of Bihar and Orissa. I confess, Sir, as he mentioned them, that I was myself very much impressed, and I went at once to see the opinions of these authorities on whom he relies; and when I got the papers, I must say that I was somewhat surprised on seeing the first page of the first opinion of paper No. 1. Now, Sir, I have sat here many a day and how often have I not been told from those benches that the elected representatives of the people are the repositories of all the wisdom of the people, that they alone have any right to speak for the people, that they are the interpreters of the convictions of the people (*An Honourable Member*: "Sole interpreters"), and Mr. Neogy is one of the prime exponents of that particular view; and yet Mr. Neogy overlooked, forgot, possibly ignored, the very first opinion that appeared in the papers that my friends were good enough to lend me. I have the opinion here, and I do not think any one has

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so far quoted it. I need not delve particularly deep in order to find the opinion of those people on whom our friends opposite lay such wonderful stress—and Mr. Neogy in particular. It reads thus :

“ The Secretary to the Government of Madras—(Madras of course being the protagonist of this particular anti-movement)—“ to the Secretary to the Government of India, dated the 18th April 1928, on the Child Marriage Bill : Sir, I am directed to state that the following Resolution was carried at the meeting of the Madras Legislative Council held on March 28 ”—(not His Excellency in Council, but the Madras Legislative Council)—:

“ This Council recommends to the Government that they may be pleased to communicate to the Government of India that in the opinion of this Council legislation raising the marriageable age of boys and girls to at least 21 and 16 years, respectively, is necessary ’.” (Hear, hear.)

And, Sir, this pernickety Secretary goes on to add :

“ I am to add that the motion was carried without amendment or division, the Government Members remaining neutral when the Resolution was put to the House.”

And there, Sir, is the first opinion. Mr. Neogy lightly skipped it and went on to the Governor of the Punjab.

Mr. K. C. Neogy (Dacca Division : Non-Muhammadan Rural) : May I point out to the Honourable Member that what I was quoting was the opinion of the Government of Madras, and he will find in that very opinion that they refer to their previous opinion to which they say they stick ?

Mr. M. Keane : Mr. Neogy, having forgotten his old friends, the representatives of the people, now wishes to rely on the Government. (Laughter.) His next Government is the Government of the Punjab, on whose opinion he laid very great stress. I think he did that possibly because, at that time, Sir Malcolm Hailey, whose reputation as an administrator none can ignore, was Governor of the Punjab. During my life—and I am getting old—there are two things that I have always kept before me : two simple points. When I hear a quotation made, unless it is quoted indeed very fully, I go and find the original authority ; that is one thing. The other is the very ordinary one “ Always hear the other side ”. Well, I got out the opinion of the Governor of the Punjab—and not only his opinion but also that of his Government, of his Ministers and Members as well. The opinion is thus very briefly put. After giving a number of the opinions collected, paragraph 2 says :

“ I am to say, that though there are great practical difficulties about the Bill—(he admits that frankly, as we all do)—yet, in the view of the Governor in Council it is a great improvement on the previous measure, and it has his approval both in the matter of the general principle and of the limits of age suggested. The Ministers of His Excellency ”—(elected by the people)—“ The Ministers of His Excellency’s Government are also in general agreement on the principles of the Bill.”

Mr. K. C. Neogy : Proceed further.

Mr. M. Keane : I shall pause here for a moment to point out that the Government of the Punjab recognised the practical difficulties.....

Mr. K. C. Neogy : That is exactly the point I was referring to on that occasion.

Mr. M. Keane : We shall have to deal with the administration of this measure, but I am prepared to say that, though it will not be an easy Bill for us to administer, and though there will be difficulties, I will engage that we will administer it. I know that we shall have to walk warily.

I know that we shall have to walk delicately ; but I will engage that, where it is necessary to go slow, we will not be hasty, and where it is necessary to go fast and where faltering would be a sin, we will press it home. (Hear, hear.) There will be difficulty, of course, but we will do our best.

I will not further deal with that particular point—the opinions of the Governments. Mr. Neogy has not attempted to suggest that the United Provinces, Bombay and Central Provinces Governments were against the Bill (*Mr. K. C. Neogy* : “ I did not refer to these Provinces at all ”); and he was inclined to leave a wrong impression—not intentionally—that the Punjab Government was against the Bill.

I do not wish to say too much on the attitude of some Mussalman Members. It has come to me as a surprise and a very great disappointment.....

Mr. B. Das (Orissa Division : Non-Muhammadan) : Because they do not support the Government ?

Mr. M. Keane : The opinions given now by some Mussalman Members are not, I admit, at all what I had understood were the opinions that they held, and what I believe were originally their opinions. My friend, Mr. Ghuznavi, a short while ago quoted with very great relish and very great approval the opinion of my friend, Maulvi Muhammad Yakub ; and he taunted my friend behind with having changed his views. Mr. Shah Nawaz gave an absolutely convincing answer to that. He said :

“ I waited for the evidence ; I was convinced by the evidence ; the evils were proved to me and I was not ashamed to be honest and change my opinion.”

Mr. Ghuznavi called that a somersault. Was there no somersault then in the opinion of our friend, the Maulvi, whom Mr. Ghuznavi quoted so fully, so carefully, and so approvingly ? Maulvi Muhammad Yakub not only agreed in Select Committee to Mussalmans being included in the Bill, but he also agreed to the age being raised from 12 to 14. And, Sir, not only that, but his agreement was so full that amid a forest of minutes of dissent, he was one of the few who had no minute of dissent. Afterwards he comes and says, “ The Ulemas say otherwise. I therefore changed my opinion ”. No evidence : only the word “ Ulema ”.....

Maulvi Muhammad Yakub : I have never said that I changed my opinion.

Mr. M. Keane : I am quoting from the Report of the Second Committee, and from that I understand that Maulvi Muhammad Yakub is opposed to the Bill. It may be, Sir, that he agrees with the Bill, but yet opposes it ; I cannot say. (Laughter.)

Maulvi Muhammad Yakub : Let the Honourable Member read my note carefully and then he will find out my opinion.

An Honourable Member : What is your opinion ?

Mr. M. Keane : I will leave that point, it is no place, I admit, for me or for my friends on this side to enter into a controversial discussion of Muslim law. All I would say in a general way is that I have always been led to suppose, and I believe it is true, that the first modern Law Giver to give woman her proper place legally and otherwise was their own Holy Prophet. I can hardly believe, whatever be the details of theology, that a measure like this would not have his approval, and when I see that a country like Egypt, which has always been considered, by us at

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any rate, as a very orthodox Muslim country, has a similar marriage law, and that Turkey also, a great Muslim country, has a marriage law fixing the age higher than 14, I cannot believe that there is any Muslim dogma against the fixing of a minimum marriage age. Dogma is something that must be universally applicable to a faith. I myself belong to a branch of the Christian Church where dogma rules very largely, but no Catholic could be ignorant of the dogmas of his faith, yet my friend Mr. Yakub, I am surprised to find, supported in Committee something which only now apparently he discovers was or is contrary to the dogmas of his faith. That is a thing which surprises me. My friend over there, Mr. Shervani, seemed to me to give a very full answer from the Muslim point of view ; it is not for us to judge the matter. I will only add this, that I was surprised when I heard my friend, Mr. Ghuznavi, in his powerful speech, say—at least he left me with that impression,—that so long as this Bill was confined to the Hindus he was prepared to support it. That is to say, he was prepared to support the Bill, knowing that it would be to the moral and physiological advantage, I take it, of the Hindu community, and it was only when the Bill was applied to Mussalmans, that he was prepared to oppose it, even though the same moral and physiological advantages were applicable to them. Surely, it is also worth applying to no less than 70 millions of Muslim people. (*An Honourable Member* : “ What about widowhood among Mussalmans ” ?) I am not speaking of widowhood, I am speaking about all the results of early marriage. I will leave that particular point of Muslim faith. I consider that my friends Mr. Shervani, Dr. Hyder and others have fully dealt with the question.

There is only one other point that I would care to make, and it is this. There is a tendency, it seems to me, amongst some Members,—Mr. Belvi voiced it the other day,—he voiced the feeling—that it was not for Indians over there or here to listen to the talk of people like Miss Katherine Mayo and other outside people. We here in India should say what is good for ourselves ; we should not bother about the opinions of Miss Mayo and others.—that is what I understood him to say. Now, Sir, I think myself that that attitude of mind in the modern day is entirely a wrong attitude. If India is to take her place in the stream of the world's life, it has got to come into line with the world. Time and distance have been annihilated. People cannot now, as they did in olden days, hide behind their mountains or live within their seas. There is no isolation now. The age of isolation is gone. The whole world is a whispering gallery, and if you do anything that offends against the moral sense of the world it must fall.

Mr. M. A. Jinnah : Sir, the first and foremost question that I put to myself as a Member of this Legislature is whether child marriage is an evil in this country or not ; is it a crying evil or not ? Is it human that thousands and millions of girls should be married at a very tender age which must sap their womanhood ? Sir, I do not think, whatever may be the controversy on this point, on the plea of humanity, that there is a single Member in this House who can contemplate with equanimity and would not deplore and condemn the grave evil and the inhuman practices which are daily taking place in this country. Is it or is it not a fact ? Sir, I entirely agree with my friend Mr. Shah Nawaz. I was myself unaware of the extent and the degree of evil that existed among the Mussalmans.

(At this stage Mr. President vacated the Chair, which was taken by Mr. Deputy President.)

When the debate was going on on previous occasions, my friend Pandit Malaviya corrected me because I happened to say that so far as the Mussalmans were concerned, the evil did not exist to such an extent. And when he corrected me I was taken aback, but I had not the facts and figures, which we have since obtained. Therefore, although in my Presidency the evil does not exist to the extent that we now know it did exist, yet there are other parts of India where this evil does exist. Now, Sir, if that is a fact, and I take it that it is an established fact, then the next question that we have to consider is this. Are we going to tackle this horrible evil? I ask my friend Mr. Ghuznavi to answer this. Are we precluded from dealing with this evil? Sir, I do not pretend to be an Ulema, and I am not one. Nor do I pretend to be an authority on theology. But I do know one thing, that during the last 30 years of my fairly active practice in Bombay, I always understood that marriage law had nothing to do with religion as such; that marriage was a contract according to Muhammadan law, pure and simple. Now, if I am right that marriage is a contract, pure and simple, will Honourable Members point out to me a text of which I am not aware? I repeat that marriage is a contract according to Muhammadan law. Can that be challenged? If anybody contradicts me on that, he has yet to learn the Muhammadan law. But the question is this, whether there is any text which makes it obligatory on Mussalmans that they should get their daughters married before the age of 14. (*Some Honourable Members*: "No, no".) There is no text. On the contrary, as far as I have been able to understand,—and here Maulvi Muhammad Yakub supports the proposition which I am going to place before the House in his very excellent note—on the contrary, the Muhammadan law defines the age of puberty as 14. (*Some Honourable Members*: "Fifteen".) I am not taking the text, I am taking now the Muhammadan law as it is written by the Anglo-Indian text-writers. (*An Honourable Member*: "Fifteen".) I beg to differ. The age of puberty is 14. However, if it is 15 it supports me more. Very well, I will accept that if you like because it supports me more. Now what does Maulvi Muhammad Yakub say?

"Islam thus generally seems to favour marriages after the age of discretion, but it sometimes happens that special circumstances and the well-being of a girl herself make it imperative that her marriage should be performed at an early age. Islam, therefore, did not fix any age for marriage and marriages of minor boys and girls were kept permissible".

Therefore, I am not convinced that this Bill in any way militates against the rule of civil laws applicable to marriages amongst Mussalmans, I agree with my Honourable friend over there—I congratulate him upon his maiden speech. I cannot believe that there can be a divine sanction for such evil practices as are prevailing, and that we should not, for a single minute, give our sanction to the continuance of these evil practices any longer. How can there be such a divine sanction to this cruel, horrible, disgraceful, inhuman practice that is prevailing in India?

Sir, I am convinced in my mind that there is nothing in the Koran, there is nothing in Islam which prevents us from destroying this evil. If we can do it today do not wait till tomorrow. I fully recognise the orthodox opinion. I fully appreciate the orthodox sentiments, the orthodox feelings both of the Mussalmans and of the Hindus. Sir, whether certain practices have any sanction divine or religious or not, usages and customs grow up, and when any social reform is suggested which goes to destroy the usages and the practices to which the people are used and upon which they

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have looked as semi-religious usages and practices, it is always known all over the world that those people who have got deep sentiments, deep convictions, strong opinions, always resent, and they believe that it is destroying the very root of their social life or religion. Always the social reformer is face to face with this orthodox opinion having behind it this conviction, this sentiment, this feeling which is perfectly understandable and to some extent legitimate. But are we to be dragged down by this section for whom we have respect, whose feeling we appreciate, whose sentiments we regard,—are we to be dragged down and are we to be prevented in the march of progress, in the name of humanity, I ask you? And Sir, as far as my own constituency is concerned, that is, Bombay, I have no mandate from them. This measure has been before this House for a long time, this measure certainly has been discussed in the Press and on the platform; but my constituency has not given me any mandate whatsoever of any kind, and therefore, perhaps I am very happy and perhaps I am in a better position than my Honourable friends who probably are afraid that they may have to face their constituencies in the future, and that they may have some trouble, or some of them may have got some mandates. But, Sir, I make bold to say that if my constituency is so backward as to disapprove of a measure like this then I say, the clearest duty on my part would be to say to my constituency, "You had better ask somebody else to represent you". Because, after all, you must remember that public opinion is not so fully developed in this country, and if we are going to allow ourselves to be influenced by the public opinion that can be created in the name of religion when we know that religion has nothing whatever to do with the matter,—I think we must have the courage to say, "No, we are not going to be frightened by that".

Sir, I do not wish to go further into the details of this Bill because I hope that this House will reject this motion which is really a dilatory motion. I tried to understand what good will come out of this if the House now agrees either to the postponement of this measure or delays in passing this measure. I have not yet been able to understand what is the object of it. I asked my Honourable friend Dharendra Kanta Lahiri Chaudhury,—for whom I have great respect, and although he opposes this Bill I admire his speech because he took up a very courageous, strong and admirable stand—I asked him why he wanted time and his reply was the first opportunity that I had of getting some definite reason for the postponement—and he said that he wanted to go back to his constituency and consult them and therefore he wanted three months. Surely, I appeal to my Honourable friend over there, has not his constituency had enough time, has not this question been agitated in this House for the last two years, and what will you gain by postponement unless you want to strengthen your opposition, unless you want to frighten the Government more?

Mr. M. K. Acharya : Is that a crime?

Mr. M. A. Jinnah : No, perfectly legitimate. I do not want the Government to slip away again. It is after a great deal of trouble that I have the pleasure of seeing the Government in this frame of mind, which was echoed by my Honourable friend Mr. Keane there. The Government is not always ready to take risks in matters of this kind. I hope the policy has changed. I welcome it, and I say that, by taking up this attitude towards this measure, the Government, although foreign, has proved that it is national in its spirit so far as this matter is concerned. In the past the

Government policy was, " We have enough trouble. We have got the agitators who are making our lives miserable already. Why should we undertake a measure which will make our loyal subjects who always support us, who look upon us as *ma-baps*—the orthodox who are quite content and satisfied—why should we undertake this extra trouble, this extra burden upon our heads to improve your people ? " That was their attitude, but I am glad that that policy has been exploded, and I hope for ever, and I hope that

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Government will in future side with us in the matter at any rate concerning social reforms we are working so that we may help India to take her place among the great nations of the world. We are looking forward to a great India and a great nation. This is after all a small move. It is not going to be the end of all our troubles or evils that exist, nor is it going to be our salvation. It is only the beginning. If you take your courage in your hands and if Government do their duty to help us in the onward march of progress to secure the welfare of the people of India, I say, then, India will not have to ask for self-government. It will come to us.

Mr. Muhammad Yamin Khan (United Provinces : Nominated Non-Official) : I had no intention of taking part in this debate and I was keeping myself silent all the time when this debate was going on. Now, Sir, certain circumstances have forced me to say a few words, so that my action, while voting, may not be misjudged. I am one of those who supported Dr. Gour's Civil Marriage Bill from the very beginning. I was always for any progressive law which came before this House. I do not like on this question to be guided by my personal inclination. As far as my personal views are concerned, I am totally in favour of fixing the age for the girls who are to be married and I think 14 years is a reasonable age. Whatever my views may be on the question of the restriction of the age of marriage for boys, I do not say a word about that at this stage, because I shall have a chance of explaining it at a later stage. I am sorry that Mr. Jinnah has gone out now. I got up to speak only after hearing Mr. Shervani and Mr. Jinnah. We the Mussalman Members received telegrams and letters from the Jamiat-ul-Ulma and from different Ulema associations. They are of opinion that this Bill is against the principles of Islam. When we got these telegrams we collected in your room, Sir, in the room of the Deputy President and we invited every Mussalman to attend. No one was left out. Some Members held the view that this Bill was not against the tenets of Islam. Others held the view that this Bill infringed on the religious rights of Islam, and it was decided that the Mussalman Members could not express their view unless they heard fully the ulemas who were of opinion that the Bill was against the tenets of Islam. When these opinions were expressed we came to the unanimous conclusion that the consideration of this Bill should be postponed in order to see whether we would be convinced by the ulemas or whether we would convince them, and we should voice the opinion arrived at after discussion with the ulemas, in the Legislative Assembly when the Bill comes up for consideration. Now, Sir, the first Mussalman Member who spoke on this Bill, Mr. Abdul Haye, made it clear that the Mussalmans had unanimously decided to get the Bill postponed, and I am sorry that, after Mr. Abdul Haye had spoken, two Members, who were a party to that agreement, backed out. One of them is Mian Shah Nawaz. On the 5th of this month, he got up and said that the consideration of this Bill should be taken up at once. Mr. Shervani and Dr. Hyder did the same.

(At this stage Mr. President resumed the Chair.)

[Mr. Muhammad Yamin Khan.]

I do not want to discuss the question whether this Bill is against the principles of Islam or not. I am simply giving expression to the opinion that I shall be voting simply in accordance with the decision we have arrived at.

I do not mind, Sir, whether certain Members back out, but as a conscientious Member and a conscientious Mussalman, I must stick to the word which I have given ; and even if all of them back out, I shall stick to my place and shall vote for the postponement of this Bill. I wanted to make my position clear so that it may not be misunderstood when I vote for further postponement.

Sir Purshotamdas Thakurdas (Indian Merchants' Chamber : Indian Commerce) : Sir, I rise to support the motion before the House and to oppose the amendment of the Honourable Member from Madras, Mr. Acharya. Sir, as one who condemned the Government's attitude during the last Delhi Session, when the Honourable the Home Member advocated the postponement of further consideration of the Bill, I hasten today to congratulate the Home Member on the attitude which he has taken up on behalf of Government. I also hasten to offer a word of congratulation to the Honourable Member from Calcutta, who promises well to be an acquisition to the European Benches. Mr. Stewart-Smith's speech, Sir, has impressed me more than many of the speeches that we have heard on this debate in the past, and I do hope—(Mr. M. K. Acharya was going to interrupt)—everything at the right time, don't interrupt me please—and I do hope that the sentiments which he put forward today will always be the guiding sentiments of my friends on the European Benches in all matters which concern the welfare of India. (Applause.) I must now, Sir, refer to a little disclosure which my Honourable friend from Calcutta, Mr. Ghuznavi, seemed to have made, perhaps innocently. Mr. Ghuznavi said, to my great surprise, that my friend, Sir James Simpson, had indicated to him last Delhi Session that Members of the European group would join him in getting this Bill postponed. I hope, Sir, that that information given by Mr. Ghuznavi to this House is incorrect. I am sure that, in the interest of my friends on the European Benches, if there was any understanding of that nature, none will dislike it more than my friend, Sir Darcy Lindsay, the Leader of the European Group. (*Sir Darcy Lindsay* : "Hear, hear".)

When this Bill was ushered in, Sir, about two years back, I happened to have had the misfortune, as it then appeared, to advocate that the Bill be circulated for opinion. I was then reminded by that great Nationalist whose absence we all deplore, the late lamented Lala Lajpat Rai, that any delay in carrying forward this very necessary measure was—and he deliberately used the word—"a crime". If, Sir, according to the late lamented Lala Lajpat Rai my motion that the Bill as it was originally introduced be circulated for opinion was a crime, I submit that it is a greater crime today for my friends on these Benches to advocate that there should be avoidable delay in the further progress of this Bill.

Sir, I represent here in this House a constituency which is mainly interested in commerce and industry. My constituency has given me no mandate in connection with this Bill and whatever I say hereafter I propose to say in my personal capacity as a Hindu and as one who is interested in the further progress alike of Hindus and of all nationals living in India.

I am very much inclined, Sir, seriously to notice—I say it with all

deference—the very eloquent appeal which my Honourable friend, Mr. Ghuznavi, made to this House, and to follow up the few perorations with which his speech was punctuated. In fact I would make that the main theme of my remarks hereafter but for one word of my friend, Mr. Ghuznavi, which makes me feel that I should not notice him in my speech at all. Mr. Ghuznavi said—and it pained me at any rate to hear it—that he was a Mussalman first and an Indian afterwards. If that is confirmed, I propose to leave the Honourable Member to his opinions, and not to notice his views before this House any further. This House should have nothing to do with persons who say that they have a narrower outlook than what should be the outlook of an Indian as inhabiting this great land. We can at times understand a European, Sir, saying that, but I cannot understand a person born here, bred here, a person who must die here, saying that he is something higher than an Indian. I do hope, Sir, that my Honourable friend, Mr. Ghuznavi, will think it right to revise his outlook hereafter.

I wish now, Sir, to say a word regarding the attitude that my Honourable friend, Mr. Shah Nawaz, has taken on this question. I have greatly admired the spirit, Sir, with which he has, as has been alleged, turned round. A strong man, Sir, will turn round and admit his mistake when facts and figures are put before him, and all honour to Mr. Shah Nawaz for having said (Applause) on the floor of this House that what he learnt on the Age of Consent Committee has made him change his previous opinion. We do not want persons in this House, Sir, who take up the attitude: "I said this at first (probably in ignorance); I stick to it because I refuse to be convinced". I do hope that the House will agree with me that the Honourable Member from the Punjab, Mr. Shah Nawaz, deserves extreme consideration for his close study of the subject and for the courage of conviction with which he is facing today his own fellow Members on the Central Muslim Benches.

Now, Sir, I propose to say a few words to my friend from Madras, Mr. Acharya (Hear, hear.) He, Sir, appears to me to have put forward the opinion of the orthodox Hindus in this House very ably, and with all the emphasis that he can. I admire him for his very able advocacy of the orthodox Hindu opinion. Before I proceed further, I wish however to express my regret that my friend should have been carried away in his enthusiasm for advocacy of orthodox opinion. He has deliberately chosen to criticise both the personnel and the very able Report of the Age of Consent Committee.

Mr. M. K. Acharya: I am sure I do not regret it.

Sir Purshotamdas Thakurdas: You may consider it a great *punya* (merit) and not regret it. Act according to your lights. I won't quarrel with you. But I, Sir, admire greatly the self-sacrifice and the devotion which the various Members of that Committee gave to that very difficult task (Applause.) Sir Moropant Joshi has worked hard and in earnestness to put before his countrymen a document which will carry weight and conviction (Hear, hear.), and I wish particularly to refer to those two good ladies who rendered such splendid work on that Committee. I particularly wish to name Mrs. Brijlal Nehru for whose anxiety to get at the orthodox opinion I can vouch and give an assurance to this House. Mrs. Brijlal Nehru accompanied me to one of the strongholds of orthodox opinion in Bombay especially to get at the opinions and sentiments of those who held views as strong as Mr. Acharya's. Let us have differences of opinion regarding this question, but, Sir, let us not be carried away

[Sir Purshotamdas Thakurdas.]

so much as to overlook the services of these ladies ; and this is the first time that an Indian lady has taken upon herself to travel over the length and breadth of India to find out what is the plight of her sex in this matter. I wish to pay my tribute to all that she has done in this connection and I do hope that Government will always find for future Committees ladies of the capacity, sincerity and the will to work of Mrs. Brijlal Nehru. I am afraid I am not able to speak equally eloquently about the other lady on the Committee. It is due to my misfortune not to have known her, but I also couple her name with what I have said about Mrs. Brijlal Nehru.

Now, Sir, my friend Mr. Acharya and those for whom he spoke here take their stand on this. They do not say that it is good for young girls to be married under the age of 14. They do not say that it is to their benefit physically that they should be married early. All that I have heard them plead is that their religion and Shastras enjoin early marriage. I am a Hindu although I may not be as religious a Hindu as others are. But I do know this, that I have great faith in my Shastras because they enjoin nothing which I cannot reconcile with my common sense. I am not learned in the Shrutis or the Smritis. I believe in and I have read a little of the Gita. I have the greatest veneration for it. But if Mr. Acharya tells me that the Hindu Shastras enjoin child marriage, though common sense tells one that it is bad for our daughters and grand-daughters, that it is playing havoc with their constitutions and is ruining the future hope of India, then I say that there is either something wrong with the scriptures that you are quoting to me, or you are misinterpreting the Shastras. Sir, Napoleon Bonaparte said : " The hand that rocks the cradle rules the land ". Do you want your womanhood to get weaker and weaker from year to year and from generation to generation ? What is the good of asking me to abide by your Shastras when from year to year and generation to generation we find our womanhood going down and down steadily ? It needed no Miss Mayo to tell us that child marriage is bad for India. We knew it. All that I and many like me were waiting for was the day when the Government would take courage in both their hands and say, even though a hundred years after Lord William Bentinck said to himself about the stoppage of the *Sati*, that this practice is wrong and we will help you to stop it. It is now for this Assembly, consisting of the representatives of the people to say to the Government : " Bravo ! come and help us to carry this legislation through ". Sir, if we were dealing with anything less sacred, less important, and less cherished than the future womanhood of India, I would have the patience even to reason with my friend and try to understand the Shastras. But knowing as I do from my personal knowledge how much we suffer owing to girls of 5, 6, 8, 10 and 12 years being married, who are not girls of families which are illiterate, but whose parents are cultured and are educated, under this one misguided, if I may say so, religious belief, I say, Hindu as I am, that I refuse to believe that the Shastras could be saying what you say they do. My common sense tells me that I must stand out for this measure. My only regret is that it was not introduced two years earlier than today.

Sir, this Honourable Member hails from Madras. Only four weeks ago I was travelling from Madras to Bombay and there is a station on the railway line called Tungbhadra which my friend cannot forget. At that station, when my train stopped, a Hindu lady came up and gave me this

pamphlet containing a picture with the words, "Marriage or marriage". There is a small poem attached to it which summarising it says: "A Hindu father is giving his daughter, 12 years old, to a Sub-Judge 54 years old, and the Hindu father thinks that he is reserving some space for himself in heaven". (Cries of "Shame".) The poem ends by saying that it is only *Santa* the young girl of 12 who saw the vision in which she was clasping the hand of a skeleton. I present this to Mr. Acharya. This was not given to me by a non-Hindu. This was not given to me by a Christian Missionary. Sir, this was given to me by a Hindu lady, Shrimati Sumati Bai, B.A., L.T. Are we going to tolerate a day longer than we can help instances like these? No religion can say that you should satisfy gods, for the purpose of reserving a place in heaven, by such practices. I can understand a religion saying that man should fast at certain intervals. We eat too much and it does us good to fast. I can understand a religion saying that you should observe the Ramzan, but I cannot conceive of a religion saying that you should marry your girls at the age of 11 or 12 especially so when there is enforced widowhood in a community.

Sir, we are told that the Hindu marriage is not a contract but it is a sacrament. I believe in it and I respect it. The day the Hindu looks upon marriage as a contract I will regret. But let us respect that sacrament, in every aspect and let those who give *Kanya Dan*, those who make *Dan* of their daughters whom they have brought up with loving care for 10 or 11 years, take every possible precaution that the risk of widowhood is avoided as far as possible. I will illustrate this by a few words. I was told by an esteemed friend who came on the orthodox deputation that there was a misunderstanding about the position of the Brahmin community of Madras. The Madras Brahmin says that, although he gets his daughter married at the age of 10 or 12, you are mistaken if you think that the marriage is consummated at that age. I ventured to ask that respected friend that if marriage did not mean consummation, how do we interfere with your custom if we say that you should not get your girls married until they are 14 years of age which you yourself, orthodox leaders, admit is about the correct minimum age when consummation should take place.

Mr. M. K. Acharya : We are agreeable to that.

Sir Purshotamdas Thakurdas : Then support this Bill. I ask, Sir, why in these days of cholera, plague and a hundred and one other diseases, when a man's life, an Indian's life especially, is at a pretty low ebb, I ask why expose the dearest of your dearest in this world to the risk of widowhood for a day longer than you can help. Why not get the girls married at 14 which is about the time when you want them to enter the *grahasthashram*. We are told that the Shastras say that marriage must be pre-puberty. I say you must re-read the Shastras or if you cannot do that, you must find a way out of this. My point is that the Shastras cannot possibly say, expose your children to any risk more than you can help. To those amongst whom widow marriage is prohibited, I say that they should be grateful to this House if it enacts against the idea of marriage till after the age of 14.

One word more, Sir, and I have finished. It is exactly about a hundred years since the great Lord William Bentinck forced—there was no question then of taking the views of the people of India then—forced upon Indians the abolition of *Sati*. I am sure that if the opinion

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of Indians were then sought by that great Englishman, gentlemen like my Honourable friend Mr. Acharya in those days must have come forward and said that religion was in danger and that Government should not interfere with religion. (*Honourable Members* : "They did so.") All the greater honour to Lord William Bentinck then. None today in this House ventures to say that Lord William Bentinck interfered with Hindu religion by abolishing *Sati* in 1829. Similarly if only we non-officials think less of our constituencies and do what our conscience dictates is right and what we think we owe to the womanhood of this land, then within a few months—and it will not take years—the House will be remembered with gratitude by India for the day when they took their courage in both their hands and fixed this very modest age as the minimum age at which girls may be married and not below that age.

Finally, I should like to ask my Honourable friend one question. Can he quote to me any other civilised country in the world, any other civilised, self-respecting set of people who think of marrying their daughters when they come out of their nursery and should be at school? Is it not too late in the day today when we men read Shakespeare, Bacon and what not, to think that you are committing a great act of *punya* (merit) by giving your daughters in marriage at 11 and 12? I say, Sir, that every side of the House and every set of people, Hindus, Muhammadans, Parsis, Jews and Christians, all will welcome this measure and ought to be anxious to see this put on the Statute-book.

Lieut.-Colonel H. A. J. Gidney : I rise whole-heartedly to support the Bill moved by my Honourable friend Rai Sahib Harbilas Sarda. As a medical man, with 35 years experience behind me, I consider that I have a better title to speak on this much needed reform than a school master like Mr. Acharya, however learned he may be in the Vedas and the Shastras.

Mr. M. K. Acharya : I never quoted them here.

Lieut.-Colonel H. A. J. Gidney : Sir, had women been present on the floor of this House to plead their own cause, I tremble to think what would have been the fate of Mr. Acharya (Laughter), or what reception Maulvi Mohammad Shafee Daoodi would have received at their hands for his ungallant reflections on their fashions. But, Sir, in the absence of those who are the real sufferers and are the party most vitally affected by the projected reform, the task of remedying the great evil of child marriage lies primarily with such of us Members as have felt and known the dangers and difficulties of the prevailing system; and I venture to say that I yield to none in my solicitude for the welfare, the development and social reform of India and in my knowledge of the question before the House.

Before I proceed to deal with the medical aspect of this question, I have one matter to which I must make reference. It refers to my Honourable friend Mr. Neogy. Mr. Neogy with an altogether admirable ingenuity has succeeded in stifling the voice of his conscience under the weight of a monumental edifice of a thousand pre-paid post cards. Ready to snatch at any straw in his desperate opposition to this Bill, he referred to a resolution that was passed at the all-India Medical Congress last December. He quoted the Editor of the *Medical Review of Reviews*.

The Editor of this paper is an orthodox Hindu and he has circulated a letter on which my Honourable friend Mr. Acharya has apparently pinned his faith. This Editor stated that that resolution was passed at the fag end of the day and in a thin House. I was present at that discussion, and as Executive Member of the all-India Medical Congress. I desire on the floor of this House to repudiate that statement. (Hear, hear.) Let me inform Mr. Neogy and this House that this resolution was discussed most fully by all the medical men and women who attended the Congress. True, there was an invitation to the delegates to attend Sir Jagadish Bose at his experiments, but that did not in any way interfere with the deliberation of the Congress which took place after that function, and was very fully attended. Mr. Neogy's ignorance of facts is proof, if proof were needed, of the apathy which exists in his province towards this much needed reform. The resolution was passed by a large gathering of medical men and women, and after a very prolonged discussion of the subject, and the criticism in the *Medical Review of Reviews* is a wholly distorted one. Not only that. Might I tell Mr. Neogy that Dr. Deshmukh, one of the most eminent medical men in Bombay, and who was the President of the all-India Medical Congress, has recently issued a notice to the Press supporting the Sarda Bill. Furthermore, does my Honourable friend Mr. Neogy realise that the entire medical profession, with few exceptions, men and women, official and non-official, numbering many thousands, who are daily witnesses to the miseries attendant on child birth, unanimously support this Bill ?

Now, Sir, I wish to direct my attention to the Mover of this dilatory motion—Mr. Acharya. Mr. Acharya is an orthodox Hindu whose views are entitled to the greatest respect. He stated that this reform was necessary. But he went further and said that he was not satisfied with the facts and figures and that he wanted further facts, that he desired to postpone this measure so, as to appeal to the country and to get further facts and figures. For him the evidence given before this House by my Honourable friend Dr. Hyder was not sufficient.

Mr. M. K. Acharya : Sham.

Lieut.-Colonel H. A. J. Gidney : For him the weighty evidence placed before the House by the Age of Consent Committee is inadequate—unconvincing. What does he as a school master know about the evidence ? Has he read the Report ? For me as a medical man, these statistics are the most convincing proofs of the necessity of this social reform. But it appears that my Honourable friend Mr. Archarya has read very carefully the circular issued by Dr. Sen Gupta on which he is pinning his faith and so he wants further facts and figures. I have gone carefully through Dr. Sen Gupta's report, and as a medical man, I can only describe the inferences and issues he has drawn on the back cover page as entirely unjustified and contrary to the evidence that was given before the Age of Consent Committee, and as a medical man I repudiate the *bonâ fides* of that circular. That circular has been issued to satisfy orthodoxy not a much needed social reform and peril.

Sir, Mr. Acharya wants further figures. If he is a true seeker of the truth and if his mind is open to conviction, I would invite him to pay a visit to the women's hospitals at Delhi,—one city will be quite enough for my purpose. He will there see rows of beds occupied by his own country women. He will see children between the ages of 11 and 13 who

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have either undergone Caesarian operation for child birth or are awaiting such operation,—young girls, stunted and ill-developed, who, instead of playing with toys and dolls, have been burdened with indecent haste, with the pains and dangers of motherhood. Does Mr. Acharya realise what a Caesarian operation means to a girl mother? Does he know that if any patient faces death, she does? And what about the issue of a child mother of 11 or 13? Sir, I go further and say that the total number of Caesarian operations done in Delhi is, I believe, more than the total number of such operations done in the whole of the hospitals in the United Kingdom put together. If that is not enough evidence for the opponents of this social reform, then I should allow Mr. Acharya and his friends to stew in the juice of their own stubborn prejudice. Mr. Acharya puts me in mind of a politician with 20th century ideas, demanding highly formed 20th century political institutions, but as far as social reform is concerned he lives in the 12th century. Has this House realised that, if Mr. Acharya's motion is carried, it will only be sending a message to Miss Mayo that she was right in all she said in her book? And there is no doubt she is supported by the Report of the Age of Consent Committee. As further evidence to convince the opponents of the Bill let me quote what Mrs. Brij Lal Nehru, a member of the Committee, says:

“ My heart aches at the thought of the sufferings of the girl wife. Our whole Report is a plea on behalf of these victims of blind custom and usage ”.

That is the view of one of the most intelligent Indian women today. If that does not appeal to the House, nothing will.

Then, Sir, one has only to refer to the statistics in the Age of Consent Committee's Report to find pages upon pages of monumental evidence, showing the opponents of this Bill the dangers and the death rate of both mother and child attendant upon child marriage, unparalleled in any other civilised country. And yet we have witnessed the sorry spectacle of two sons from Bengal, Mr. Amar Nath Dutt and Mr. Neogy, coming to this House to oppose this Bill. Fortunately for this House, we have only one Mr. Amar Nath Dutt and wisdom will not die with him. As for Mr. Neogy, I am surprised that, student of history that he is, he should have come here in the face of the Age of Consent Committee's Report to oppose this Bill. Has Mr. Neogy read the Age of Consent Committee's Report? If he had he would have noticed that Bengal, his Province, is the worst offender in child marriages. That its birth-rate is the lowest in India and that over 52 per cent. of its infantile mortality happens within one month of birth. A most damaging damnable evidence against Bengal.

It is all very well, Sir, for the opponents of this Bill to fall back on their religious precepts, but there is a world of difference between theory and practice, and whereas religious precepts are a question of faith—these figures are based on actual happenings, cold facts, of your women and your children dying by slavishly following what their religion demands—“ child marriages ”.—facts that even the most extreme opponents of this Bill cannot lightly brush aside.

In support of his dilatory motion Mr. Acharya quoted two speeches of the Honourable the Home Member, and he said that in his 1927 speech the Home Member asked for postponement to elicit further evidence, etc., that was on the Child Marriage Bill. The other speech referred to the

postponement of another reform measure,—the Divorce Bill. But he forgot to mention that whereas one Bill referred to the making of marriages the other dealt with the breaking of marriages, two totally different considerations and quite different and inapplicable to Mr. Acharya's dilatory motion.

Might I in passing suggest to those who oppose this measure that India, with its centuries-old civilisation and culture, its religion and philosophy, worthy of our highest respect, has unfortunately hitherto shown a lamentable lack of material powers which have characterised the Western peoples ; and if India is to take a place of honour amongst the other nations, she must pass this Bill, for the time has come for her to rejuvenate herself in the stream of living experience and to make a bid for a place of honour among the nations of the world. This Bill is but one of the many symptoms which we see around us of a growing national consciousness. And I think it is not a mere accident that two of the greatest living men in the country, Mahatma Gandhi and Pandit Motilal Nehru, have given their whole-hearted support to this measure. Nor is it a small victory for the new spirit that is abroad in the land that the Government should have departed from their usual attitude of neutrality in such delicate matters and declared themselves openly in favour of the Bill, as the Home Member did the other day in one of the most eloquent speeches we have heard in this House. I congratulate the Home Member on his excellent speech which came from deep conviction.

It was therefore, Sir, with great regret that I listened to the latter part of the speech of Pandit Madan Mohan Malaviya. While he went out of his way to accord support to the principle of the Bill, he supported its postponement. The curious part of his speech was the mental agility he displayed, and which smaller people find it very difficult to follow, when he connected the plea of postponement with a wholesale condemnation of British rule in this country. We who have frequently had the pleasure of hearing the Honourable Pandit in many of his "rolling periods" have never ceased to wonder at the dexterity with which he is always able to drag in the plea of foreign domination (like King Charles' head) whenever the backwardness of India is in question. But never have we received a more instructive object lesson in the futility of that plea than in this connection. I yield to none in admiration of the great work the Pandit has done for his country but I beg of him to remember that he, as an enlightened man living in the 20th century and demanding the most advanced political institutions, would be guilty of inconsistency and a betrayal of the trust which the people repose in him if he accomplished the postponement of this measure even for three months. The Pandit's attitude puts me in mind of a politician suffering from a socio-political squint who has one eye fixed on the political aspect of the question and the other on the orthodox aspect, and between the two I fear he has lost his focus of central vision and so in his desire to satisfy orthodoxy is prepared to delay the passing of this Bill. For what are the facts ? It is not the illiterate masses who are today resisting the passage of this Bill but the educated Members of this House representing various parts of the country, who forgetful of their high mission as custodians of the people are sacrificing their enlightened principles at the altar of obscurantism.

Reference has been made by Sir Purshotamdas Thakurdas to the outcry that followed legislation when *Suttee* was abolished a century ago. This raised a great outcry, but of the two evils *Suttee* or child marriage,

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the latter is the greater. Because in *Suttee*, the ignorant brave wife, in being burnt on the funeral pyre of her dead husband, meets with a sudden death whereas with child marriage, the child mother endures a life-long lingering misery of injured parts, ruined health and a slow painful death, outside the fact that child marriage is sapping the life of the nation.

Sir, we have heard enough of foreign domination from the opposite Benches ; but if there is one thing that cannot be placed at the door of foreign domination, it is the practice and the ill effects of child marriage, and it is absurd for any politician to attempt to lay this at the door of Government. To quote the words of Mr. Snowden, " It is ridiculous and grotesque ". I appeal to the opponents of this Bill to realise their sense of duty both to their women and country ; and as I do so my eyes naturally fall on Dr. Moonje whom I look upon as one of the few constructive politicians of this House. (Hear, hear). The work he is doing is one of great practical value and importance to India. It is not aerial politics of which we see so much in this House, but sound solid work that he is doing for the nation. Now, Dr. Moonje's aim and object—and he is straining every nerve to attain it—is to improve the physique of the youth of this country so that they will develop into healthy strong men capable of defending their own country and forming their own army. Dr. Moonje, I am sure, will not disagree with me when I refer to the large number of Indian youths who are rejected for the Army and for Sandhurst due to physical defects ; and I believe I am right in saying that Dr. Moonje's one idea is to remedy this state of physical deterioration by introducing a system of physical training which he demands must be taught in all Indian schools and colleges.

Mr. B. Das : What about physical starvation ?

Lieut.-Colonel H. A. J. Gidney : That exists only in Bihar and Orissa from where my friend comes. Now, if India desires an army of well developed men and desires to defend herself effectively, her sons *must* be the issues of mothers who are well developed. How can you expect a child mother to produce a vigorous child such as the Indian Army will demand for her defence and to maintain her position among the rest of the nations of the world ? If India is desirous of taking her place amongst the other nations of the world, and if this House is convinced that the practice of child marriage is at the root of this physical deterioration of our rising generations there should be no hesitation in condemning it and passing this Bill. The mischief must be dealt with at its source and the first step must be to put an end to this " grave and corroding evil ", in the words of Sir James Creer.

Before I sit down, Sir, I think I can best conclude by using the words that appeared on one of the placards displayed by Indian ladies we saw in front of the Assembly Chamber on the first day we discussed this measure. It is in those words I would ask the House, especially those who oppose this Bill, to remember that this Bill is moved, " in the interests of humanity and India's womanhood " and that it is " custom and not religion which is to blame for pre-puberty marriage " and its evil effects.

One word more and I have finished. Here is a measure of social reform for which enlightened India is crying out, but which orthodox

India is trying to stop. Is India to lag behind the rest of the civilised world on the road of progress? Can India reasonably demand Dominion status and yet cling to what orthodoxy demands in relation to child marriages? In this House going to accept this dilatory motion? If it does it will stand condemned in the eyes of the rest of the world. But if this Bill is passed—and I hope it will be—then the name of Rai Sahib Harbilas Sarada will go down to posterity as one of India's greatest social reformers (Hear, hear), and the future generations of Indians, both men and women, will see and appreciate the fruits of the tree which Rai Sahib Harbilas Sarada has planted in the garden of India's social reform, and his name will be praised and blest by one and all. (Applause.)

Pandit Motilal Nehru (Cities of the United Provinces : Non-Muhammadan Urban) : Sir, at this fag end of the day I rise just to say a few words, as I do not wish to record a silent vote on an important question like this. My views are very well known and I do not think I am at all called upon to explain them to this House. But I wish to make a confession; and that is this : that along with other Honourable Members of this House I have received numerous opinions and numerous representations, both for and against the Bill, and I confess that they both received the same treatment from me. Both have found a place of safety where they remain unread; and why? It seems to me, and it has seemed to me all these two years that this controversy has been raging, that it is the silliest possible question which any two men or two women can sit down to discuss seriously. When I see what I can by the use of my eyes, do I need to be told what the doctors think of it, what the Shastras say about it, or what the Smritis or Srutis lay down in regard to it? I have seen the havoc that this custom plays every day of my life for the last 68 years. Do I need any further proof of the mischief that is being wrought by this wicked diabolical custom? I confess, Sir, again that I have no patience to hear any arguments either for or against the Bill. I say that those who argue in favour of the Bill are wasting their time which they could occupy with something better, as a thing like this needs no argument. As for those who argue against the Bill, I credit them with having conscientious scruples as they call them and a genuine belief that there are religious injunctions in favour of the custom. To them, so far as I am concerned, my answer is this. I am not what is known as an orthodox Hindu, but I claim to be as good a Hindu as any other Hindu. I do not believe that there can be any injunction in the Shastras to countenance a fiendish custom like this, and I further say that, if there is such a sanction, the Shastras have no use for me, and I have no use for them. In that frame of mind, Honourable Members will now realise that it was unnecessary for me to pay any attention whatever either to the representations in favour or against this Bill. It may be said that I am prejudiced. Well, yes. If a life-time of observations means prejudice, I certainly am prejudiced. I have heard earnest appeals thrilling speeches in this House today—unfortunately I was not present during the previous debate on this measure—but while listening to these speeches today the wonder has grown upon me as to where was the necessity for these able men to make all these very learned speeches and all these very earnest appeals. It seems to me as if all the learned men in the world had put their heads together to prove that two and two make four. The practice is so obviously inhuman that anybody who calls himself a man would naturally be staggered at what he sees with his own eyes.

[Pandit Motilal Nehru.]

Now, Sir, I belong to a very small community of Kashmiri Brahmins.

They are very small in number ; they are about
 6 P.M. 5,000 all over India, barring Kashmir. During the last twenty years in that community, without the aid of any legislation, there has been a regular fight against this custom, until we have now reached the stage where marriages of girls are more frequent at the age of 20 than at the age of 15. I have always been of opinion that a reform of this character must be left to public opinion. Knowing what we in our small community have accomplished without legislation, on one occasion, I refused to move a similar social measure on that ground. I agree in the principle that social reform comes with better effect and quicker and with less opposition if it comes from within than if it is imposed from without. But when a measure like this is brought before this House, what is one to do. I mean no disrespect to my friend Mr. Sarda when I say that my first feeling was one of amusement at his Bill. I thought it was an attempt to gain cheap notoriety, and said to myself, " Here is a social reformer who wants legislation on a most obvious thing ; he comes to the Assembly to have a law against a custom which every school boy condemns." But when I see the reception which this measure has received from what is known as the orthodox community, I feel that my friend Mr. Sarda was quite right in bringing this measure before this House. But whether he was right or wrong, once the measure is before us, what is our plain duty ? That is the one question which Honourable Members have got to answer. What is our plain duty to ourselves, to our children and to our country ? I do not think, Sir, that that question admits of any answer except this, that this Bill must be passed with as little delay as possible. I need not remind the House that today the eyes of the whole world are upon this House. We are going through a test, which, if we successfully pass, will justify our claim to rank amongst the civilised nations of the world.

Maulvi Muhammad Yakub : But you have got 14 as the minimum.

Pandit Motilal Nehru : And if we reject this minimum, I would ask my friend, the Deputy President, what would the world say ? These people have not got the courage to fix the marriageable age of girls even at 14. I ask that if this measure is not passed by this House, what will the world think of us ? If I were left to myself, I would fix the minimum age at 18 for girls and 24 for boys, but now that we have 14, I take it as the first step, and I say that if we do not accept that, we shall go into deeper depths of degradation than we can possibly imagine in the eyes of the other nations of the world.

Several Honourable Members : The question may now be put.

Mr. President : The question is that the question be now put.

The motion was adopted.

Mr. President : The original motion was :

" That the Bill to regulate the marriages of children amongst Hindus, as reported by the Select Committee, be taken into consideration."

Since which the following amendment has been moved :

" That the consideration of the Bill be postponed in view of the late publication of the Report of the Age of Consent Committee, and in view of the desirability of assessing, with the help of adequate evidence, the real value of that portion of the Report which deals with the marriage laws and customs obtaining among Indian communities."

The question is that that amendment be made.

The motion was negatived.

Mr. President : The question is :

“ That the Bill, as reported by the Select Committee, be taken into consideration.”

The motion was adopted.

Mr. President : The question is that clause 2 stand part of the Bill.

Mr. M. K. Acharya : Sir, May I move the amendments that stand in my name ?

Mr. President : Which amendments ?

Mr. M. K. Acharya : My amendments on clause 2.

Mr. President : I think Mr. Sesha Ayyangar has got an amendment to clause 2.

Mr. M. K. Acharya : I have got amendment also, Sir. If it is the desire of the House that we should go into a detailed discussion of the clauses today—I should thank you for giving me this opportunity—may I proceed, Sir ?

Mr. President : The Honourable Member is entitled to move his amendment.

Mr. M. K. Acharya : Sir, I was just about to say that, in sending up the two amendments printed as No. 15 and No. 24 standing in my name, my intention was....

Mr. President : Which amendment does the Honourable Member move ?

Mr. M. K. Acharya : I am moving the first, namely No. 15 and referring to the other, namely No. 24, because the two go together. And my idea was that, although I should move them separately for the purposes of debate and for the purposes of being voted upon, yet I should explain them together, in order if possible to offer in my own humble way some constructive suggestions to make the proposed legislation more efficient. I am anxious, Sir, at this stage to say nothing which will generate heat or which will give vent to any controversial remarks. In fact, I am as serious as anybody else in this House or elsewhere that we should do everything in our power to remove evils which are well-defined and well ascertained by methods that are safe and sound ; and therefore, Sir, I feel that I should express my great regret that some remarks which I made at an earlier stage of this debate, some of them at least, have been misunderstood and an intention was ascribed to me, repeatedly ascribed to me, I was told that I wanted to wreck the Bill. Such is not my intention. (An Honourable Member rose to make an interruption.) I am sorry I gave my hysterical friend over there cause.....

Mr. President : Will the Honourable Member come to the amendment ?

Mr. M. K. Acharya : The amendment, Sir, is this. I propose :

“ That for sub-clause (a) of clause 2 of the Bill the following be substituted :

“ ‘ child ’ means a person who, if a male, is under twenty years of age, and if a female, is under fifteen years of age .”

[Mr. M. K. Acharya.]

I formally move it, Sir. I may explain, and I think it is my duty to explain, how I have come to this conclusion. I desire to crave the indulgence of the House to put my case clearly, because on this and on the other amendment to the next sub-clause depends my whole case, so if I can take the House with me and if I can succeed in getting these two amendments accepted, I venture to believe that all of us will feel glad that we have carried a piece of legislation through, for which we may well be entitled to the thanks of posterity. As I said, I would beg of my friends not to side-trick me by interrupting me in the course of my trying to make myself clear. I am at a great disadvantage. I am not a gifted eloquent speaker; I am not a *persona grata* in the House; and so, in the discharge of my duty, I must crave the indulgence of the House.

You may ask me how I have come to twenty and fifteen years. Well, Sir, I think that, in a matter like this, we should try to be guided by what we consider to be fairly reliable authorities. I am sure I can say with confidence that I have not in this House either dared or cared to quote what all the Smrithis say, or "Simitries" as my Honourable friend over there called them. In fact, I have held that this is not the place where we can discuss them; and in the case of Mussalmans also I do not think this is the place where the Islamic law should be discussed. Therefore, for myself, if I have tried to make any suggestions as I am now trying to make—I am trying to take my stand not on the Srutis or the Smrithis, not on the Dharmasastras or other olden books, but I am trying to take my stand upon something which would appeal better to this House, upon scientific investigations, not simply upon the report of this House or of that meeting, not upon the resolutions of conferences, nor upon telegraphic messages sent to us, not even upon the hasty resolutions of this Provincial Legislature or that Legislature. Sir, this is a matter most vitally affecting the future generations of this country, so I am taking medical opinion on the subject; and I can assure my Honourable friend, Colonel Gidney, that I have been trying to get as many statistics as possible from medical people. I have been trying, ever since I supported the Rai Sahib's Bill two years ago, to read more and more, to study carefully the opinions of psychologists, of those who have written on sex psychology, on sex biology, on the relationships between the sexes, not from the standpoint of the Koran, not from the standpoint of the Hindu Shastras, but of the investigations, scientific investigations that have been carried out.....

Mr. President: The Honourable Member was given the fullest latitude when he moved his amendment on the main motion. He must now speak to the present amendment only.

Mr. M. K. Acharya: How can I explain myself unless I.....

Mr. President: The Honourable Member is not relevant. He is not speaking to his amendment.

Mr. M. K. Acharya: I am trying to show how fifteen and twenty years are respectively.....

Mr. President: The Honourable Member must be strictly relevant to the amendment which he has moved.

Mr. M. K. Acharya : I am endeavouring, to the best of my humble ability, to show how, so far as I am able to make out, fifteen for the girl and twenty for the boy will be....

Mr. President : The Honourable Member has not said a word in favour of his amendment. The Honourable Member must strictly confine himself to the amendment which he has moved.

Mr. M. K. Acharya : I am just trying to place before you and the House why I am for putting at 15 and why I am for putting at 20 the ages for marriage consummation and unless you have a little patience,— I am putting my arguments....

Mr. President : I have enough patience. The Honourable Member knows that I allowed him one hour and a half and more when he moved his main amendment, and I am not going to allow Honourable Members to speak at length on these amendments. They must confine themselves strictly to the amendments.

Mr. M. K. Acharya : Sir, these are my points. I am sorry that you should be hard on me, but I submit to your ruling. I will try my best. I say that psychology, physiology, biology, eugenics, all these kindred sciences, all the scientific conclusions of those who have investigated on these lines, are leading me to the conclusion that the proper age of marriage for a girl, the proper minimum age for consummation is 15, and the proper minimum age is 20 for the boy. I do not want to make statements of my own ; and I am anxious to place before you the authorities on which I rely, namely, the psychological, physiological, biological and other scientific authorities. As I said, I have been reading a number of the latest scientific books ; and I thought that in such an important matter like this, it is my duty to place before the House the opinions and authorities....

Mr. President : The only point that is relevant is why the age should not be fourteen but that it should be fifteen. Anything that the Honourable Member says in favour of that will be relevant.

Mr. M. K. Acharya : That is exactly what I am trying to submit to you, namely, that not only in my own opinion....

Mr. President : If the Honourable Member thinks that I will allow the public time to be wasted, he is very much mistaken. I had allowed the Honourable Member one hour and a half in moving his original amendment, and I must restrict him to his amendment now. *Honourable Members :* "Hear, hear.")

Mr. M. K. Acharya : If you want me to sit down I am ready to do it....

Mr. President : If the Honourable Member has nothing to say, he may resume his seat.

Mr. M. K. Acharya : No ; I do not want to inflict myself on the House ; and yet as a humble Member of this House I am entitled to protection. If you want me to sit down, I am ready to sit down ; I am at your mercy. I am trying to adjust, at a moment's notice, all my thoughts, all the materials that I have gathered, and that I want to place before you the scientific authorities in support of my contention. Probably, if this is taken again next day, I may rearrange my materials and put them

[Mr. M. K. Acharya.]

before you in the space of ten or fifteen minutes. (*A Voice* : " And all your authorities ? ")

I am sorry I made the mistake of reading very many books by scientific authorities. If you want to restrict me in this way, I am at your mercy. In justice to my cause I want to convince my colleagues, as it is my duty to try to convince them....

Mr. President : Will the Honourable Member speak to the amendment ?

Mr. M. K. Acharya : Firstly, the question as to when a girl becomes fit to be married or when a boy becomes fit to be a husband is in my humble opinion a matter for scientific investigation. Now a number of scientific investigators have made this clear, that there are two natural ages before we come to what we call the legal age of marriage. There is the psychological age of desire and also the biological age of fitness. When we want to deal with this question of the age of marriage, we have to take into account the fact that marriage is an aspect of life which is partly psychological, partly physiological, partly biological and partly ethical.

Mr. President : Order, order. Will the Honourable Member say why he thinks the age should be 15 and not 14 ? I have not heard him say one word on this subject.

Mr. M. K. Acharya : I am coming to that, Sir. When we consider the psychological age and the biological age, we come to this conclusion, namely that 15 is the better age so far as marriage in the sense of consummation is concerned.

Mr. President : I now inform the Assembly that Mr. Acharya is persisting in irrelevance.

Mr. M. K. Acharya : I do not hear you, Sir.

Mr. President : I have drawn the attention of the Assembly to the fact that the Honourable Member is irrelevant and persists in irrelevancy.

Mr. M. K. Acharya : I am sorry to hear that remark. If the Chair does not want to hear me I shall sit down.

Mr. President : Will the Honourable Member withdraw his remarks ?

Mr. M. K. Acharya : Yes, I withdraw them. I am entirely in your hands. I shall proceed or sit down just as you command me.

The Honourable Sir James Orerar (Home Member) : I am not quite sure if the Honourable Member has clearly understood the purport of your observation, when you called the attention of the House to his persistence in irrelevance. Perhaps the Honourable Member will understand the matter more fully if he realises that the Honourable the President has got the power, under rule 16, to call upon a Member to resume his seat if he fails to act up to the observations of the Chair. I think the House and the Chair have been very patient to the Honourable Member, and I trust that, after the admonition which you have just given him, he will act upon it.

Mr. M. K. Acharya : I am sorry if I said anything which was inconsistent with the decorum of the House. I am the last man to say anything of that kind. I greatly deplore it. I was trying to make out that this

point of minimum age of marriage is to be determined by what happens to be fairly well recognised and accepted rules of the science of physiology. Now, when a girl and a boy are brought together into the marital union, it means that it will affect their whole course of life, not only physically, but physiologically and biologically. Therefore we have to realise what the proper period for the girls and the boys will be when they will be physically and mentally well developed in order to produce results in life, which will be to the best advantage of them both individually and also of the community at large. That is a question which a Legislature will have to determine if it is to fix upon any minimum age. It is not a question of how many say the age should be 11 or 12 or 13 or 14. I was trying to find out what explanation the Select Committee gave for fixing the age at 14, but I am sorry I did not get much information on that point. Therefore the House is not in a position to know how the Select Committee arrived at the conclusion that 14 is the proper age.

Mr. President : Will the Honourable Member explain why the age should be 15 ? He has not said one word on that so far.

Mr. M. K. Acharya : I wish to point out that the Select Committee has not given any reason why they consider 14 as a very good age.

Mr. President : Therefore it should be 15 ?

Mr. M. K. Acharya : Because I think 15 is a better age. In the absence of any definite reasons on behalf of 14, I prefer 15. I consider the weight of medical evidence and physiological evidence and biological evidence is in favour of 15. I would prefer 15 to 14. That is exactly my argument. My humble research leads me to that conclusion, because it is admitted on all hands that in India a girl attains her puberty some time between 12 and 13 or between 13 and 14. The Age of Consent Committee, in an Appendix to their Report, deal with this question of the age of puberty in India. They admit that there is a consensus of opinion that puberty in India is between 13 and 14. Then naturally you will want some time to elapse before the girl becomes quite fit to take up the responsible duties of a wife. If 14 is the age of puberty or the age of the first appearance of menstruation, then naturally one year at least will have to elapse before the girl is declared to be fit, before her parents could send her over to her husband in order that she may be the wife of the husband and the chief member of his household. There is also a lot of evidence to show that immediately after puberty a girl is not fit to have consummation celebrated, and it is best that consummation is postponed for some time. That also is what obtains in a large part of the Madras Presidency with which I am conversant. A girl generally after puberty is kept in her father's home for at least one year. She is sometimes kept for two years, but never for less than six months. If the girl attains puberty by 13 or 14, then she will require another year before she can enter upon her duties in her new home and in course of time become the mother of children. Therefore, Sir, a certain period, 14, is too low. The parents are anxious to give a girl away to one whom they consider to be a very desirable match, and naturally they will be tempted to get the girl married as soon as she is 14 so as not to transgress the law. On the other hand if fifteen, which I consider the right age, is adopted as the minimum age for consummation, then parents will have a longer time, and I for one should have thought that there was

[Mr. M. K. Acharya.]

not going to be any great opposition from those conversant with scientific, physiological and biological reasons (Laughter).....

Mr. President : Order, order. I have ruled more than once that speeches on these amendments must not be long. I had given sufficient indulgence to the Honourable Member when he moved his main amendment, and I would now ask him to conclude his observations.

Mr. M. K. Acharya : Sir, I move the amendment that stands in my name, with this humble protest that I have not been given a fair chance.....

Mr. President : Order, order. Will the Honourable Member withdraw those remarks ?

Mr. M. K. Acharya : If you want it, I will withdraw.

Mr. President : The Honourable Member must be respectful to the Chair. What does he mean by saying, "If you want it, I will withdraw" ?

Mr. M. K. Acharya : If I am not allowed.....

(Cries of "Order, order.")

Mr. President : Order, order. Will the Honourable Member unconditionally withdraw the words he has used, without any comment ? Is the Honourable Member prepared to withdraw them ?

Mr. M. K. Acharya : Yes, Sir, I withdraw those words. (Applause.)

Rai Sahib Harbilas Sarda : Sir, I rise to oppose the amendment moved by the Honourable Mr. Acharya. It is difficult to take him seriously, Sir, when he moves this amendment. (Applause.) All the time he has been insisting, on pre-puberty marriages, and fifteen years is certainly a post-puberty age, not a pre-puberty age. Moreover, when in amendment No. 28 he proposes that "the solemnisation of marriage, as distinct from consummation, of any girl below fourteen years of age, shall not be deemed to be child marriage as defined above", I do not think this amendment is consistent with that and I cannot take him seriously. Sir, I oppose the amendment.

Mr. Mukhtar Singh (Meerut Division : Non-Muhammadan Rural) : Am I in order, Sir, to move amendment No. 18 standing in my name ?

Mr. President : No. This amendment must be disposed of.

The Honourable Sir James Orerar : Sir, I entirely associate myself with the remarks which have fallen from the Honourable Member in charge of the Bill. I do not think that this amendment should be accepted as I consider that for us to follow the provisions in the Bill would be the wisest course.

Mr. President : The question is :

"That for sub-clause (a) of clause 2 of the Bill the following be substituted :—
"child" means a person who, if a male, is under twenty years of age, and if a female, is under fifteen years of age."

The motion was negatived.

Mr. Muhammad Yamin Khan : Sir, I move the amendments which stand in my name on Nos. 16 and 17 jointly.

Mr. President : One by one, please.

Mr. Muhammad Yamin Khan : Sir, it will have no meaning, I think, if I do not include them jointly. If the first is not carried, then I will not move the second.....

Mr. President : I would advise the Honourable Member to move his first amendment. If that is carried, he might move his second amendment ; otherwise he might drop it.

Mr. Muhammad Yamin Khan : Sir, I move :

“ That in clause 2 (a) of the Bill the words ‘ a person who, if a male, is under eighteen years of age, and if ’ be omitted.”

The object, Sir, of my moving this amendment is that a child would mean a female under fourteen years of age. This will be the effect of my amendment if it is carried. My object, Sir, is solely to be guided by the principles of criminal law. I have listened to many speeches and I have not heard a single Member here in this House advocating the necessity for fixing any particular age for the marriage of boys. All the speakers have referred in their speeches to their great desire to protect girls below the age of fourteen. All Members here are united on that point, but no case has been made out by any Member for the necessity for protection in so far as boys are concerned ; and neither has it been pointed out that there is any evil at present existing in this country which requires a penal law to be enacted in order to protect boys from getting married below the age of eighteen. Is there any justification, Sir, for punishing the parent of a boy if he marries him when he is below the age of eighteen ? It may be a very desirable thing and a good case may be made out that no boy should get married before he attains the age of eighteen, but no justification can be shown that the boy's parents should be punished if the boy is married when he is below the age of eighteen. In fact, amongst educated classes, a boy never gets married until he leaves the school or until after he finishes his studies. But this question whether one thing is desirable or not is totally different from the question whether it should be made penal if in an exceptional case a boy gets married below the age of eighteen. In England, Sir, the age limit for the boy is fourteen years. (*An Honourable Member :* “ That has been revised ”.) (*Another Honourable Member :* “ It is sixteen years ”.) Now, Sir, here the point is that at present it may be desirable to punish the parents of girls on two principles. The first principle is, as has been pointed out by all speakers in this House, that it causes cruelty and hardship to the girl if she is allowed to live with her husband before she is fourteen as a wife, and it is said to be very undesirable that she should become a mother before attaining the age of fourteen because that would tell on her constitution, and because any children born would be weak. It is said that protection is required in the case of the girl who has got no will-power, and therefore it is sought to penalise the action of the parents because they should not exercise their power and influence on a child of less than fourteen years to make her go and live with a young man as his wife, and in this way inflict injury on her person. Therefore, it is deemed to be desirable to punish this act of the parents or the guardians who give away their daughters, who cannot speak in their own case whether they like to live as wives of a particular individual or not. In India the custom is that the girl has got no voice in the matter of her marriage and when she is below 14 years she does not understand whether she is going to live as a wife and

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what will be the consequences. After recognising this principle which causes a hardship on the constitution of the girl, it must be admitted that a protection is necessary and that protection must be given by making the action penal.

Another point which can be argued on behalf of making this a penal law is this that, when the age of consent outside marital relations is 14 years, under the Indian Penal Code, the husband should not be allowed to have sexual intercourse with his wife who is below the age of 14. This protection was sought to be given by other kind of interference or in some other way, as was originally suggested by the Honourable Mover of this Bill, but it was deemed to be undesirable. But the same effect is being created by punishing the parents in other ways, and the age is indirectly raised to the same age as it would be for extra-marital relations.

Now, Sir, in the case of a girl, there are certain ways which the medical jurisprudence provides for finding out whether the girl has been raped or not. If the sexual intercourse has been had with a girl of less than 14 years of age, it can easily be found out. If, however, the rape has been committed by the husband, he cannot be punished but only the parents of the girl are liable to be punished. These were the two principles which led to this conclusion that this action should be penalised. But in the case of the boy I find that you have got no law whatsoever which can prohibit him, if he is less than 18 years of age, from having sexual intercourse with any woman above 14 years of age. When you cannot stop him from doing that unlawfully, why should you have a penalising section put in this Bill to punish the parents for allowing him to do the same thing lawfully which you cannot stop him from doing unlawfully? In the case of a girl, you stop her if she is less than 14 years of age from having sexual intercourse with any man, and the man is to be punished for rape. But in the case of a boy of less than 18 years of age, if he goes to a certain public woman, you cannot stop him. This action will be much more injurious than allowing him to do the same thing lawfully which he is not stopped from doing unlawfully. It may be a desirable thing that no boy should get married before he attains the age of 18; it may be a very laudable object. There are many other laudable things, as for instance, stopping drinking in excess. That is supposed to be a bad thing; but we cannot stop it. If people choose to drink we cannot stop them. It may be morally as bad as visiting women unlawfully. But you are not punishing this. The same may be said about prostitution, which is supposed to be very bad because it has got very bad moral effects, but you are not stopping it by legislation. You are not penalising it. My objection to penalising the marriage of a boy below 18 years of age is only on this ground that he can do the same thing unlawfully and you cannot stop him from doing unlawfully the same action if he so desires. It may be very desirable that he should be advised, for his own sake, not to do that, but you punish the guardians if they stop him from doing something which they consider to be wrong. No jurist in his senses can make an action an offence which he cannot stop in other ways because the man is forced by nature to do it. The same objection has risen from my friend Maulvi Mohammad Shafee Daoodi, and the same line has been adopted by certain Ulemas about this Bill, namely, that this Bill takes away the

liberty of action of a boy who is capable of understanding certain things. You take away his liberty and you encourage him to do a sinful act. Nothing can be against the religion which does not encourage a man to do a sinful act, and it is considered to be a sinful act if a man has a sexual intercourse with a woman who is not his wife. Now, if a boy cannot control himself, then you encourage him to do unlawful things, which means that you encourage a sin, and anything which encourages a sin is really irreligious. That has been the objection raised by the Mussalmans and the Muslim Ulemas, that encouragement of an action which might lead to the committing of a sin should not be passed by this Legislature. I should like to quote on behalf of this plea, the words of Ameer Ali and of the Ulemas and the Imams from the Abbaside time right up to now. They are all unanimous on this point that the age of puberty is reached after the completion of the age of 15 years both in the case of a boy and a girl. When a boy attains the age of puberty after the completion of the fifteenth year, no father or the Sovereign can stop him from contracting a valid marriage, because his natural desire cannot be stopped and no legislation can come in his way if he feels it a necessity to have recourse to sexual intercourse, and by stopping him lawfully in that action, it encourages him indirectly to do it unlawfully. Ameer Ali has described it in the following terms :

“ Among the Hanafis and the Shias, the children are emancipated from the right of *Jabar* on attaining puberty. An abuse of the paternal authority among the followers of these two sects is impossible where the children are adult and discreet. Should a father persist in refusing his consent to the marriage of his adult daughter, she can validly enter herself into a contract of marriage even against his will and without his consent. Nor can the father indefinitely abuse his authority by systematically refusing his consent to the marriage of his child. Such cases are necessarily rare, Islamic law being opposed to monasticism or celibacy.”

Now, Sir, this commentary refers not only to the case of boys, but even to the case of girls. A girl can contract a marriage against the will of her father, if her father refuses to allow her to get married after she attains puberty, because in Islam there is freedom of action given once a man has attained the age of discretion, that is, has attained puberty. As soon as he has got an inclination for an action and the consequences of which he can understand, then putting any stop to that or penalising him from doing that act, will be against the principles of the laws of all civilised nations. It is not at all civilisation. My Honourable friend Mr. Jinnah might say that it would be very desirable that the girl should be protected before she attains the age of 14. But may I ask him, is it civilisation to put a restraint on the freedom of action of a boy at the age when he has attained puberty? You are talking about freedom in all things, and at the same time you want to impose restriction on the freedom of action of a boy who, in the natural course, wants to enjoy his own rights. Will that be consistent with the progressive ideas of a nation? It will not be consistent with any law of any progressive nation in the world. Islamic law, when it progressed to its zenith, gave entire freedom of action. Islam did not want to put a stop to any natural desire of a boy. It did not want to stop the promptings or inclinations which nature has provided a boy with. That is my second objection to this. Although I know that there will be very few cases, very rare cases, when a boy below 18 will get married, yet even in those cases to penalise the boy will be inconceivable to any jurist. I will give you one example by which you can

[Mr. Muhammad Yamin Khan.]

judge whether it will cause hardship upon these boys or not. Supposing there is a Muslim boy or a Hindu boy who has attained 17 years of age, and who is very wealthy and who has attained puberty. Supposing he is so minded as to get himself married to a girl of 16 years of age. Supposing this boy, who desires to get himself married has no father but only his mother as his guardian, who is a *pardanishin* woman. Can she refuse to give permission to the boy to get himself married? If the boy persists in getting himself married, the mother at the worst may not say anything either for or against the marriage and may keep quiet. Supposing a *kazi* or a Brahmin priest officiates at the ceremony of marriage. Can you punish the *kazi* or the priest for having officiated at the marriage ceremony, simply because the boy persisted in getting himself married? You are not punishing the boy by this Bill, you are only punishing the parents of the boy or the people who joined in performing that ceremony.

Now, Sir, I will give you another example. Take the instance of that same boy of 17 years of age. He starts squandering his money and he gets into bad society and he starts visiting public women where there is the danger of his, not only squandering money, but also contracting some disease so that his health will be undermined. The mother, finding out that the boy is ruining himself and that he requires some protection and that he cannot be stopped in his actions of committing these unlawful things except by getting him married, so that he can be weaned away from bad society by the influence of his wife, wants to get the boy married to save him both monetarily and constitutionally. If this mother, finding out that this is the only solution left, advises that this boy should be married to stop him from ruination, then do you think of punishing the mother simply because she is trying to save her son, his constitution and property? You cannot punish a *parda* lady because she has no opportunity of coming out among the public and controlling her son. You should not inflict a punishment in these rare cases which might come before the courts.

Now, I will cite another instance.

Mr. President : I cannot allow the Honourable Member to proceed in that way. I cannot allow him to go on citing instances. The Honourable Member knows that I have already ruled that the speeches on amendments should be brief. The Honourable Member has really taken half an hour. The Honourable Member must conclude his speech now.

Mr. Muhammad Yamin Khan : I will try to finish soon. This is not an amendment which I have moved at random ; this is an important amendment.

Mr. President : That is why I allowed the Honourable Member great latitude till now.

Mr. Muhammad Yamin Khan : There is a conflict of opinion on this point. I have to deal at length and bring round a lot of people to appreciate my view-point. If this amendment is accepted, it will remove a great portion of the objections against this Bill. That is why it is necessary for me to make those Honourable Members understand who have not given their full thought to this question. I, as is my

nature, have not gone about to canvass votes for my amendment. I have not tried to get at Honourable Members in private, and so this is my only opportunity to convince them about the reasonableness of my amendment. As I was submitting, Sir, in these rare cases, there will be real hardship caused to the poor mothers. It is desirable not to make this an offence and penalise it. If there is any other method by which we can stop the marriage of a boy below 18 years of age, it would be acceptable to me. But I cannot for a moment think of making it penal and punishing the parents of the boy for doing a thing which he cannot be stopped from doing by the Legislature or by the Government by enacting this Bill. I am therefore opposed to the inclusion of boys in this Bill.

When my Honourable friend Mr. Jinnah was speaking I had an exchange of words with him. He said that the age of puberty for a girl was 14 years. I was asserting that the consensus of opinion of all Muhammadan doctors of law has been unanimous that it was on the completion of the age of 15. It is after that, that a girl might become independent according to Islamic law. As soon as they attain the age of puberty, that is after the completion of the 15th year, nobody is responsible for their actions except themselves, and nobody, no State, no father or mother could interfere in their actions. On account of

7 P.M. these two great objections, and as I find that the time of the House is very limited, I will not dilate more on this. I hope I have made it clear that there are many other instances which I could quote, and by which I could illustrate my objections to the boys being included in this case. But as I have no time, I will not give those illustrations and will confine myself to what I have said.

Rai Sahib Harbilas Sarda : Sir, I oppose this amendment. The object of the mover of this amendment is to define a child as a female under 14 years of age. Sir, this is a Child Marriage Bill, and both males and females under a certain age are children. The Bill provides for the marriage of both male and female children, and consequently it is necessary that the Bill should define a male child as well as a female child whose marriages below a certain age would be penal.

The Honourable Mover said that he had heard many speeches and they were on the question of protection of females but that he had not heard anybody say anything about fixing the age of the boy who is to be married, and that no reasons had been given why 18 should be fixed or that any age at all should be fixed so far as marriages of boys are concerned. Sir, if he had read the Statement of Objects and Reasons which I attached to my Bill he would have found that I had stated therein that :

“ The second object of the Bill by laying down the minimum marriageable age of boys and girls is to prevent, so far as may be, their physical and moral deterioration by removing the principal obstacle to their physical and mental development ”.

There is thus a reason why it is necessary to fix the minimum age for the marriage of a boy also, and that reason is :

“ so far as possible, to prevent his physical and moral deterioration by removing the principal obstacle to his physical and mental development ”.

The Mover said, Sir, that amongst the Mussalmans, the boy is at liberty to marry after reaching 15 years of age. I have only to say

[Rai Sahib Harbilas Sarda.]

that fixing a minimum marriageable age does not contravene any provision of Muslim law. Muslim law does not enjoin anywhere that a boy, as soon as he reaches the age of 15, should be married.

Sir, I oppose the amendment.

Maulvi Mohammad Shafee Daoodi (Tirhut Division : Muhammadan) : Sir, may I request you to adjourn the House to allow Muhammadan Members to say their prayers ?

Mr. Amar Nath Dutt (Burdwan Division : Non-Muhammadan Rural) : And there is a rule that the Assembly will sit from 11 to 5.

Mr. President : Sir James Crerar.

The Honourable Sir James Crerar : Sir, I have something to say on this amendment, and I regret very much to find myself in, I hope temporary, disagreement, with my learned friend Mr. Yamin Khan. It is true that, though he himself recognises that the case of the female child under the system of child marriage is the most serious and demands remedy, I do not think, as the Honourable Member in charge of the Bill observed, that the Honourable Member was correct in saying that no one had ever made any demand for the similar fixation of age in the case of a boy. Indeed those who have read some of the voluminous literature on the subject, cannot fail to observe that very much emphasis has been laid on the fact,—and I have no doubt coming from those who are familiar with the facts, with a great deal of cogency,—that the marriage of boys when they ought to be devoting all their energies to education or learning a trade for their life work, constitutes a severe handicap. And though the grounds of physical deterioration may not be quite so acute or so direct as in the case of the girl, they are in the total result a very great injury to the national life. I do not dispute the instances which my Honourable friend quoted of hardship, though I think perhaps what he referred to as grave hardship might perhaps be more properly called some temporary and individual inconvenience. Taking the question, however, in the sum of its national significance, I have little hesitation myself in holding that those who press for limitation of the age on the boy partner to a marriage are acting on sound lines.

Mr. President : The question is :

“ That in clause 2 (a) of the Bill the words ‘ a person who, if a male, is under eighteen years of age, and if ’ be omitted.”

On Mr. President declaring that the “ Noes ” had it, a division was called for by Mr. Amar Nath Dutt.

Mr. President : I think the division is frivolously called for and I must disallow it.

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 12th September, 1929.