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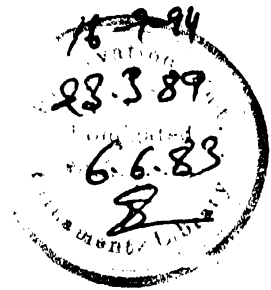
THE
LEGISLATIVE ASSEMBLY DEBATES

(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.

President :

THE HONOURABLE MR. V. J. PATEL.

Deputy President :

MAULVI MUHAMMAD YAKUB, M.L.A.

Panel of Chairmen :

PANDIT MADAN MOHAN MALAVIYA, M.L.A.

SIR DARCY LINDSAY, KT., C.B.E., M.L.A.

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 :

RAI SAHIB D. DUTT.

Marshal :

CAPTAIN SURAJ SINGH BAHADUR, I.O.M.

Committee on Public Petitions :

MAULVI MUHAMMAD YAKUB, M.L.A., *Chairman.*

MR. DWARKA PRASAD MISRA, M.L.A.

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

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.

Saturday, 14th September, 1929.

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

MOTION FOR ADJOURNMENT.

ACTION AND POLICY OF GOVERNMENT *re* THE ACCUSED UNDER TRIAL IN THE LAHORE CONSPIRACY CASE.

Mr. President : There are no questions today and I therefore call upon Pandit Motilal Nehru to ask the leave of the House for the adjournment motion of which he has given notice.

Pandit Motilal Nehru (Cities of the United Provinces : Non-Muhamadan Urban) : Mr. President, I beg to ask for leave of this Honourable House to make the motion of which I have given notice to you. It is to move the adjournment of the House to discuss a definite matter of urgent public importance, namely :

“ The situation arising out of the action and policy of the Government regarding the treatment of the accused under trial in the Lahore Conspiracy Case which has already resulted in the death of Jatindra Nath Das and is endangering the lives of other hunger-strikers in the said case.”

I beg to ask, Sir, that leave be granted.

The Honourable Sir James Crerar (Home Member) : The Government have no objection, Sir.

Mr. President : The matter proposed to be discussed is in order, and I intimate that leave is granted and that the motion will be taken up at 4 P.M., or, if the Honourable the Leader of the House has no objection, at any earlier hour at which the business of the day may terminate.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL— *contd.*

Mr. President : The House will now resume further consideration of the following motion moved by the Honourable Sir James Crerar on the 12th September, 1929 :

“ That the Bill further to amend the Code of Criminal Procedure, 1898, for a certain purpose (insertion of new section 540-B), be taken into consideration.”

Mr. M. A. Jinnah (Bombay City : Muhammadan Urban) : Sir, when the House last adjourned I was dealing with this Bill from the point of view of criminal jurisprudence, and I brought to the notice of the House what would be the position if this Bill was passed, so far as the trial and proceedings of this particular case or any other case under it was concerned. It is quite clear as I said, that the trial will be a travesty of justice. Let us consider the point further. The trial would proceed in

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the absence of the accused. I ask the Home Member, is there a Judge or jury who would feel that they were administering law or justice in that case? The moment this Bill is passed, the prosecution can go before the Court and say: "Here is a voluntary act of the accused person; he has or they have incapacitated himself or themselves and we ask you now to proceed *ex parte*". Remember, Sir, that in a particular case that procedure may be adopted from the very start. Even the plea of the accused may not be recorded, guilty or not guilty. Then the Judge will be asked to proceed to empanel a jury and the jury will be empanelled: you will have a Judge on the Bench and the jury by his side. What will they do? They hear the *ex parte* evidence, oral and documentary. I ask the Home Member, I ask this House, what would you consider of that Judge, what would you think of that Judge or jury, sitting there solemnly, seriously proceeding with a charge of murder, going through this farce as His Majesty's Court—what conclusion do you think any jury can come to under those circumstances? That prisoner stands already condemned. What is the good of this farce? I say that no Judge who has got an iota of a judicial mind or a sense of justice can ever be a party to a trial of that character and pass sentence of death without a shudder and a pang of conscience. This is the farce which you propose to enact under this procedure. I say this, that if ever there was a conscientious Judge and he was strong enough, if he had a judicial mind, and if he had any independence, let me tell you, that, in spite of this provision of yours, he would say, "True, the law has to be administered; I am obliged to make the order that the trial shall proceed *ex parte*; but I realise and I feel that it will be a travesty of justice and I cannot be a party to it, and I shall therefore adjourn this case until further orders". Have you considered that? I suppose you have not. It seems to me, Sir, that the great and fundamental doctrine of British jurisprudence, which is incorporated and codified in the Penal Code and the Criminal Procedure Code, has very wisely not made such an absurd provision in the criminal law of this country and I am not satisfied that there is a lacuna in our system of criminal law.

The Home Member said that it is a well-known doctrine and a fundamental doctrine of criminal jurisprudence that the man is taken to be innocent until he is proved to be guilty. May I remind him of another doctrine which goes to the very root of the criminal jurisprudence, or for the matter of that of even civil law, that no man is to be condemned until he is given a hearing. Sir, I think there cannot be the slightest doubt that we are now engaged in considering a cardinal principle, a principle of very vital and paramount character, to be introduced into the criminal jurisprudence of this country. It must be admitted that this is a most revolutionary, unheard of, unprecedented change that is proposed in our criminal jurisprudence. I know the Home Member will tell me, "Yes, the doctrine is that no man shall be condemned unless he is heard and until he is given a hearing; but here it is the voluntary act of the accused, and if he chooses not to go there and insist upon his being heard, it is his fault". Sir, this is not a new question; it has been considered in England and there is a long history about it and behind it and you will find that in old days there was the strictest formality observed as to the recording of the plea of the prisoner. And if the prisoner was mute of malice, that

is to say, if he refused deliberately to open his mouth when he was arraigned in a court of law and when the question was put to him as to whether he pleaded guilty or not,—he had to make his plea and there are cases where he refused to speak, and the old law was,—even England has advanced—in that case he was condemned and executed or must be committed to imprisonment.....

Mr. E. L. Price (Bombay : European) : Torture.

Mr. M. A. Jinnah : I am glad that you are up to date. I know that. I am only dealing with this one point that he used to be executed or committed to prison. Further, when it was thought that that was rather a serious thing that, because a man was mute of malice he should be condemned to death or imprisonment, then comes the point of my learned friend over there, who I understand is a member of the Bar, that they resorted to torture. Torture for what ? That he should make his plea, not that an *ex parte* trial should proceed—that is what you want to do here by this Bill, that *ex parte* trial should proceed. The old law was then altered, because the result of the torture was that some of them died and the form of torture was the most cruel form of torture, and I will read to you a passage from Stephen's "History of Criminal Law" :

"If he was accused of felony, he was condemned, after much exhortation, to the *peine forte et dure*, that is, to be stretched, naked on his back, and to have iron laid upon him as much as he could bear and more', and so to continue, fed upon bad bread and stagnant water on alternate days, till he either pleaded or died."

But they did not proceed *ex parte*. Then the old form of trial was trial by ordeal. That was done away with because the plea that a prisoner had to put forward was in a particular form. When he was asked he had to say that he wanted to be tried "By God and by my country". That was the trial by ordeal. That was done away with and in 1827 by a Statute and it was enacted that in such cases a plea of not guilty should be entered. Now, Sir, before that Statute was passed there is one case which I will bring to the notice of this House and which will illustrate how much importance was attached to the form and the procedure even in olden days. Of course, my Honourable friend Sir Darcy Lindsay will say that matters of this kind can be decided by the common sense of a single individual such as himself. Sir, I must remind him, for he is a man of peace, and especially when we get old we love peace, and common sense is sometimes regulated by that state of mind—I will remind him, and I think the House will agree with me, that law is nothing but the essence of common sense, that law is the concentrated essence of experience, of knowledge, of practice of centuries and generations, and even Sir James Stephen will point out to you that, when these rules, when these forms have been laid down as the essence of common sense and experience of generations they are not lightly to be departed from.

What do we find in this House now ? Have we not got forms and are we not slavishly following them ? Some of them would appear to the strangers in the gallery or any outsider to be most absurd and against common sense at first sight. If any one passes across between you and the speaker he will be guilty of a gross breach of the forms of this House and you would call him to order at once. Why is that ? Without meaning ? Without reason ? Without experience ? What common sense is there ? Why should the man not pass across ? It is therefore no use

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treating these matters lightly and saying that we have got to decide everything by the common sense of an individual. The instance that I was going to refer to is this. In one case :

“ Mr. Pike produces some evidence to show that in the early part of Edward I's reign, people who refused to put themselves on their trial were executed.....”

Better, people who refuse to put themselves to trial,—execute them, rather than go through the farce of an *ex parte* trial ; much better :

“ ...but this practice was opposed to the Statute which provided that ‘notorious felons’ and which openly be of evil name and will not put themselves in inquests of felonies that men shall charge them with before the justices at the king's suit, shall have strong and hard imprisonment, as they which refuse to stand to the common law of the land.”

Then he cites a case which I think will interest the House. He says this :

“ ‘ But this is not to be understood of such prisoners as be taken of light suspicion.’ According to Barrington this meant that the prisoner who refused to plead was to be starved till he died, but not tortured—(so they improved later on)—and he quotes in proof of it a pardon granted in the reign of Edward III to a woman who ‘*pro eo quod se tenuit mutam*’ was put in ‘*arota prisone*’ and there lived without eating or drinking for forty days, which was regarded as a miracle.”

Well, Sir, I know that there is a passage which is likely to be quoted in this House in Stephen's “Digest of Criminal Procedure”. It is a curious thing that the Government of India who have hardly given this House even seven days notice and call upon this House to endorse a vital, cardinal principle of a novel or unheard of character, do not possess in their Library even an edition of the Law of Criminal Procedure by Stephen of later date than 1883. And they seriously ask this House, “The Government case is that they find that a deadlock is created. The law is paralysed, and in fact, even the Government of India might tumble down altogether, and we therefore call upon the Legislature to come to our rescue—we admit it is unprecedented, we admit it is unheard of, we admit it is unknown to any system of jurisprudence ; but you as a responsible body—would you not endorse this Bill straightaway within these few days notice ?” You do not possess in your Library an edition of a textbook which is the standard book except of the year 1883 ! And it is a tall order to ask the House to pass the Bill now and here. I will read the passage now which is likely to be quoted, and I want the House not to be misled by it. But before I do so, I will request the Law Member to consider what I am going to submit. That is a branch of the law which comes under the category of contempt of court, and we know that the King's Bench in England and the Supreme Courts in India, who have inherited the jurisdiction under the Charter, have got unfettered powers to deal with cases of contempt. That is the one branch of the law which is neither codified nor restricted by any law. It is entirely left to the Supreme Court or the High Courts in India to deal with cases of contempt as they think proper. That is a branch which comes under that doctrine of law of contempt of court and even there while the Courts have asserted that they have the power to refuse to hear the party who is guilty of contempt of court, the footnote says that it has never been done in a criminal case. I will read to you what it says :

“ The prisoner has a right to be present at the trial so long as he conducts himself properly, but the Court may, in its discretion, permit his absence in cases

of misdemeanour, and may proceed with the trial in his absence in cases in which he has pleaded to an indictment or information in the High Court (Queen's Bench Division).

If a prisoner so misconducts himself as to make it impossible to try him with decency, the Court, it seems, may order him to be removed and proceed in his absence."

The footnote says this :

"I have never known or heard of this being done, but Lord Cranworth (then Rolfe, B.) threatened to have Bush removed from Court, at his trial for murder at Norwich in 1849, if he persisted in a singularly indecent and outrageous course of cross-examination, I have heard from eye-witnesses an account of a trial before Shee, J. (then acting as Commissioner) at Dorchester, where the prisoner (a convict at Portland, tried for the murder of a warder) behaved with such desperate violence that it was necessary to fasten him down with chains and straps. He was not, however, removed from the Court, and it is obvious that in capital cases, or indeed, in any trial involving severe punishment, almost any measures, short of removing the prisoner, should be resorted to."

The *raison d'être* of this principle is very different and requires no more words to understand it. Now, Sir, I shall not weary the House with any further legal quotations. I am driven to think, the object of Government in bringing in this Bill is political, but if their real object is to supply a lacuna, not for the purpose of this particular case, but in the general interest of the country and the administration of justice, if that is their object, let them remove this case from their mind, for Heaven's sake. Come to us dispassionately and without prejudice. Let them tell us that they find a lacuna and that it is necessary to make some provision. If that is their object, then their honest and straightforward course is to come before the House and place all the facts before us. Now, I do not admit for a moment that there is a lacuna and I do not admit that such a principle should be introduced in the criminal jurisprudence of our country especially and admittedly when it does not exist anywhere else. I am prepared to assume that you honestly and sincerely believe that it is necessary in the interests of the people and the administration of justice that some such measure of the kind should be introduced. Then your honest course is to go slowly. Pause and consider. Let those outside this House who are competent to speak express their opinion. What are you going to lose? What is the harm that will be done? Remove from your mind this Lahore conspiracy case. But if you say that this course will cause you inconvenience and that you want this instrument now and at once, then I say that I am not satisfied with your plea and I can't support it, nor am I satisfied with the version that you have placed before the House about your difficulties. I am not going to give you this power standing on the floor of this House today now and here. Sir, can you imagine a more horrible form of torture than hunger-strike? If rightly or wrongly these men are inflicting this punishment upon themselves and thereby you are inconvenienced, is that any reason why you should ask us to abandon one of the cardinal principles of criminal jurisprudence? If these young men pursue this course, and I am sorry to hear that one of them has died, what will happen? Is this a matter which can continue indefinitely? Certainly not. As I say, I am not satisfied with the version that you have placed before this House. I understand that some of the prisoners are not on strike. If you are solicitous and anxious that their trial should proceed and should not be delayed, then split up the trial. Proceed against them and bring home the guilt to them if you can. I am told that it means expense. I am told that 400 witnesses are going to be

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produced and 200 more may be added. Now I appeal to the common sense of the House and not only of Sir Darcy Lindsay. Can you imagine that 600 witnesses are necessary to prove the case against each one of the accused? And, Sir, I ask, is it not an amazing fact that, in order to prove this case, 600 persons should have been cited as witnesses? Well, Sir, it may seem a joke and it may seem that I am making fun of the statement made to this effect, but the first impression that one gets is that, when a case cannot be proved without the testimony of 600 witnesses, that case is a very bad case. (Hear, hear.) Therefore I say that it is open to Government to split up the case. You think of expense? But are we here to abandon this cardinal principle because it is going to cost some money to Government? Is that the reason? Is that a plea which can be accepted by any responsible Legislature? Well, Sir, I was told that some of them hunger-strike for a short time and then they get better for a little while and again they start, and so it goes on. Sir, I cannot understand the anxiety of the Government to proceed with this trial when these men are inflicting the greatest possible punishment upon themselves by prolonged fasting? Is it your fault? Does it mean that you are not treating them properly and therefore you are compelling them to resort to these extreme methods? Well, then, I appeal to you with all the emphasis I can command, do not be vindictive. Show that you are fair, generous, that you are willing to treat these men decently. At any rate before they are released or sentenced, give them proper treatment. What treatment do they want? What is it that bothers them? Do they want spring mattresses? Do they want dressing tables? Do they want a set of toilet requisites? No, Sir, they ask for nothing but bare necessities and a little better treatment. I ask you in all decency, why you cannot concede this small thing? Well, Sir, if this Bill is passed, perhaps I might ask the Honourable Member when he goes to Court how would he base his application? Will he base his application on the point that the period of a hunger-strike which has already taken place for a short period is not to be counted? Or is it to be counted? Supposing I tried to put myself in the position of a Judge when the application is made that the presence of the accused in this case should be dispensed with, because by their own voluntary act they have rendered themselves incapable. Now from what period shall I take the disability? From the period after this Statute is passed? Shall I disregard the disability which has already taken place before the passing of the Act? Supposing something else happens to these men on hunger-strike and they do not get well for two or three months. Will the trial not be delayed? Do you think, you can avoid considerable delay even if the Bill is passed, but further can you give a guarantee, that all the prisoners will be well enough in the course of these two or three months from now to stand their trial, even if they abandon hunger-strike? When you say that this Bill will not have retrospective effect, how is it going to work? Then will you give them notice that in view of the fact that this measure is passed, if you do not cease your hunger-strike from today and if you are not better within two or three months as you ought to be, then we shall apply to the Court that your presence will be dispensed with and we shall proceed *ex parte*? Does it not come to this, that you want to carry this Bill, you want to have this Bill placed on the Statute-book and then you want to give notice to the prisoners that, unless they cease their hunger-strike within a certain period, you are going to proceed *ex parte*? Under that

threat you think these prisoners will cease their hunger-strike ? Can you give the House that assurance and if they do not cease their hunger-striking, what will you do ? You will proceed *ex parte* ? Just imagine the absurdity of the whole position.

Sir, now I have finished from the point of view of the jurisprudence. I do not wish to go into details so far as their treatment is concerned. I have in the course of my speech already indicated their grievances and how they can be met. But there is a political aspect of this Bill and the policy underlying this measure. I think the Honourable the Home Member must admit that this is not a measure which is only brought here for the purpose of putting the law in order. Sir, it reminds me of a story, an old Persian story. A man got stomach-ache because he had eaten some very rotten bread. So he went to the doctor and told him that he had stomach-ache. The doctor said, yes, and he promptly started treating his eyes. Then he said, "What have my eyes got to do with my complaint ?" Then the doctor said, "Well, if you had eyes, you would never have got stomach-ache because you would not have eaten rotten bread". Similarly I would say to the Honourable the Home Member, "Have you got eyes ? Well, if you had, you would never have got this stomach-ache". Now will you open your eyes ? (Laughter.) Will you have a little more imagination ? Have you got any statesmanship left ? Have you got any political wisdom ? This is not the way you are going to solve the root cause of the trouble. You may temporarily, provisionally get over this particular trial. But now let us see what is the real cause of the trouble. I ask this House to consider this. Is there today in any part of the globe a civilized government that is engaged day in and day out, week in and week out, month in and month out, in prosecuting their people ? You have read the daily papers for the last six or eight months. You will find prosecutions in Bengal, prosecutions in Madras, prosecutions in the Punjab, prosecutions all over the country. In fact I am afraid you will soon have to open a new Department and to have an additional Member to manage these prosecutions if you go on at this rate and in this way. Do you think that any man wants to go to jail ? Is it an easy thing ? Do you think any man wants to exceed the bounds of law for the purpose of making a speech which your law characterises as a seditious speech, knowing full well the consequences, that he may have to go to jail for six months or a year ? Do you think that this springs out of a mere joke or fun or amusement ? Do you not realise yourself, if you open your eyes, that there is resentment, universal resentment against your policy, against your programme ?

Then, Sir, what has happened so far as this House is concerned ? What have you done since 1924 with regard to the protests that we have made session after session ? Have you accepted the proposal or suggestion of any reasonable section of this House ? I do not wish to go into the details, Sir, but what has been the attitude of the Government towards this House and the country outside over the constitutional reforms since 1924, leave alone the past prior history ? The reply is : "We have appointed the Simon Commission and we must await for its Report". Well, the Simon Commission was not accepted by this House—but that does not matter. This is the answer in regard to the constitutional reforms. What has been your answer with regard to the Indianisation of the Army ? You appointed a Committee to go into that very important question ; I attach more importance to it than to any other question. What have you

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done with the unanimous Report of the Skeen Committee which was endorsed by this House, without a division, the responsible House as you call it today and to which you appeal today in the name of "responsibility" ? This House endorsed that Report without a division. What have you done with it ? The attitude of Government had been an amazing one. The Army Secretary stood there on the floor of this House last session and said : " We cannot get even 20 suitable candidates ". Sir, the apparent untruth of that statement is enough to condemn the Government. You cannot get 20 young men out of 300 odd millions of people who are suitable candidates for the King's Commission. Then, there are many other matters. What has been your attitude always ? Don't you think that, instead of trying to proceed with an iron hand and pursuing a policy of repression against your own subjects, it would be better if you realised the root causes of the resentment and of the struggle that people are carrying on ? Don't you think that it is high time that you made your position more clear ? I understand that there is something in the atmosphere—I hope it is true—that some satisfactory announcement is going to be made in Parliament very soon, when it meets next which I trust will satisfy this House and the people. Do you want to prepare an atmosphere for it, or you do not ? Do you want reconciliation between the Government and the people or you do not ? Don't you think that these difficulties and troubles of yours are of a temporary character ? They are an obstruction in the trial of this particular case which can be managed by other methods, but that is a very small matter when you compare it with the bigger issues which are awaiting the decision of the Government, this House and the country.

Sir, the Honourable Member asked, what are the Government to do ? I think I understood the Honourable Member aright when he said that the Government have no other course. What are the Government to do ? They are, therefore, compelled to bring this Bill. Now, let me tell you that your course is to open your eyes, have more imagination, do not be guilty of bankruptcy of statesmanship, do not merely sit there as if the wheels of the Secretariat must not be clogged at any cost, but try and understand the root cause and deal with the situation as politicians, as statesmen and not as bureaucrats, who can see no other way but to come forward before this House and ask for more statutory powers the moment any difficulty arises. You have got several courses open to you. The first and the foremost course open to you is this. Give these men decent treatment, and I think you will get over your difficulty. At least I hope so. If you do not, you will, at any rate, be exonerated in the eyes of the public and at the Bar of public opinion. Behave as a human and decent Government, and that is enough for you. I am not going to urge upon the Government to withdraw prosecution cases against men if they have evidence enough to bring home to them their guilt. So try that better treatment first. Secondly, if you do not succeed, split up the trials. Try those with whose trial you can proceed, and leave the rest. After you have made it clear to them that you stand for a decent treatment being given to them and they still wish to torture themselves and follow that course, then you cannot help it ; and I venture to say that it will not last very long or indefinitely. And the last words I wish to address the Government are, try and concentrate your mind on the root cause and the

more you concentrate on the root cause the less difficulties and inconveniences there will be for you to face, and thank Heaven that the money of the taxpayer will not be wasted in prosecuting men nay citizens who are fighting and struggling for the freedom of their country.

The Honourable Sir Brojendra Mitter (Law Member) : Sir, I express my gratitude to my Honourable and learned friend Mr. Jinnah for bringing this debate from the foggy atmosphere of politics into the pure atmosphere of law, because, after all, the Bill before the House deals with a technical branch of the criminal law. I am glad that my learned friend has raised important legal issues based upon fundamental principles of criminal jurisprudence. I will join issue with him in some of the matters and opinions which he has expressed. I shall confine myself, Sir, purely to the legal aspect of this Bill, leaving the political aspect to be dealt with by other speakers. There has been a great deal of misapprehension, as I gathered from the debate which took place on the last occasion, with regard to the aim and scope of the Bill. There has been a great deal of misapprehension also with regard to the fundamental principles of criminal jurisprudence upon which its provisions are based. I shall endeavour, Sir, as briefly as I can, to remove those misapprehensions and I beg of this House to consider the legal aspect, as distinguished from the political aspect of the Bill dispassionately and bring to bear upon it their calm judgment. Sir, this is a Bill which seeks to amend a particular provision of the Criminal Procedure Code, relating not merely to trials but to inquiries also. Recent events have disclosed certain defects in the existing procedure. My learned friend Mr. Jinnah disputes that proposition. I shall show that the defect does exist. The aim of the Bill is to remedy that defect, and the scope of the Bill is limited to the particular defect which recent events have disclosed. Neither the aim, nor the scope goes any further. The House will pardon me if I draw its attention to certain broader principles of jurisprudence before I come to this particular Bill. I shall do that very briefly. In law, as all lawyer Members of this House are aware, there are two broad divisions, substantive law and adjective law. Substantive law defines rights and duties, adjective law prescribes the machinery for enforcing those rights and duties. This is of course elementary. My learned friend Mr. Rangaswami Iyengar is laughing, but every one here is not an acute lawyer like him. I will not take more time than is absolutely necessary to elucidate what I am going to say later. The broad division of law is into substantive and adjective law. Substantive law defines rights and duties, and adjective law or procedure provides the machinery. Substantive law is not being dealt with by this Bill at all. In criminal law, substantive law is that which defines offences and prescribes punishments. This Bill has got nothing whatsoever to do with substantive law. Its scope is limited to the machinery. My submission is that there is a defect in the machinery and this Bill has been designed to supply that defect.

Mr. Lalchand Navalrai (Sind : Non-Muhammadan Rural) : Perhaps you want to break that machinery.

The Honourable Sir Brojendra Mitter : I could not hear what the Honourable Member says. Now, Sir, the House will realise that procedure exists merely for the sake of substantive law. It has no independent existence. If under substantive law a certain act or course of conduct amounts to an offence, then it is the duty of the State to bring the offender

[Sir Brojendra Mitter.]

to look through the machinery or the procedure which the Criminal Procedure Code provides. I am talking generally. There are particular procedures in particular cases ; I am not dealing with them. Now, in the matter of this general procedure, a fundamental principle has been referred to by several speakers and by my Honourable friend Mr. Jinnah in particular. And that fundamental principle, in the words of Mr. Jinnah, is that, " No man is to be condemned until he is given a hearing ". That is how he enunciated the principle. Sir, I do not accept the principle in those terms. In my submission, the true principle is this, that no man is to be condemned until he has been given every opportunity of being heard. That is the principle. A man must be given an opportunity, not that he must be heard. Many prisoners are not heard. Any one familiar with criminal trials knows that in every session, there are dozens of accused who go undefended and are convicted unheard.

Mr. M. A. Jinnah : That is not the point. We are dealing with dispensing with the presence of the accused.

Mr. Gaya Prasad Singh (Muzaffarpur *cum* Champaran : Non-Muhammadian) : The accused is there.

The Honourable Sir Brojendra Mitter : I am not talking of the presence of the accused, I am talking of being heard or unheard.

Mr. A. Rangaswami Iyengar (Tanjore *cum* Trichinopoly : Non-Muhammadian Rural) : They are being heard.

The Honourable Sir Brojendra Mitter : I shall explain what I mean. The true principle is this, that you must give the accused every opportunity of being heard and of defending himself. If he avails himself of the opportunities, well and good. If he does not avail himself of the opportunities, he has no right to complain.

Mr. B. Das (Orissa Division : Non-Muhammadian) : Have Star Chamber methods then !

The Honourable Sir Brojendra Mitter : I have been in charge of Calcutta sessions trials for many years. I know from my own experience that at every session, more than half the prisoners never defended themselves, never took the slightest interest in the proceedings and the cases were heard *ex parte*.

Mr. A. Rangaswami Iyengar : *Ex parte* !

The Honourable Sir Brojendra Mitter : *Ex parte* means that the prosecution evidence goes untested by cross-examination. That is *ex parte*.

Mr. A. Rangaswami Iyengar : It does not mean that. *Ex parte* means that the party is absent.

Mr. T. A. K. Shervani (Cities of the United Provinces : Muhammadian Urban) : What the Honourable the Law Member says is not the legal meaning.

The Honourable Sir Brojendra Mitter : What I am saying is this, that there are every day cases in the courts where the accused is not heard.

Mr. Gaya Prasad Singh : But the accused is present.

The Honourable Sir Brojendra Mitter : He is given an opportunity to be heard, he is given an opportunity to defend himself, but he does not avail himself of that opportunity.

Mr. M. A. Jinnah : That is not *ex parte*.

The Honourable Sir Brojendra Mitter : It may not be according to you. (Laughter and Applause.) Let us not quarrel over words. I am dealing with the principle, the principle which my Honourable friend Mr. Jinnah laid down, that is that "No man is to be condemned until he is given a hearing".

Mr. M. A. Jinnah : I made that statement, and then I gave the answer, that in this particular case, it would be urged that the accused had incapacitated themselves by their own voluntary act.

The Honourable Sir Brojendra Mitter : Sir, what I submit is this. The true principle is that every accused must be given every opportunity of being heard. He must be given every opportunity of defending himself. That is to say when the prosecution witnesses are examined, the accused should be given every opportunity to have the evidence tested by cross-examination, either by himself or by counsel of his own choice. If he does not avail himself of that opportunity, is the prosecution to be abandoned? The whole question is this. Does this Bill outrage or violate the fundamental principle that the accused should not be denied the opportunity of being heard?

Mr. President : What about the man who absconds?

The Honourable Sir Brojendra Mitter : Wait, I am coming to the absconder presently. The question of absconders was raised by one of the speakers, and I shall have my say in the matter. Sir, under sub-clause (4) of clause 2 of the Bill, it is provided that :

"No order under sub-section (1) dispensing with the attendance of an accused shall affect his right to attend or to be represented by a pleader at any subsequent stage of the proceedings."

Therefore this Bill provides that the accused, notwithstanding the order dispensing with his attendance, can always, if he so chooses, come before the Court and defend himself and take part in the proceedings.

There is nothing to prevent him from doing that. It is not like a civil case where, when once an order is made that a case should go undefended, the defendant can never come and defend.

Mr. M. S. Aney (Berar Representative) : Is that a correct statement of law?

The Honourable Sir Brojendra Mitter : Yes. This Bill has made provision for the accused coming before the Court at any stage he chooses; not that he is shut out from defending himself; not that he is denied the opportunity of availing himself of any procedure in the court, any rule of evidence that he may choose to adopt in his own defence. He is not denied anything. All that this Bill does is this, that if an accused deliberately refuses to avail himself of the opportunities which the Criminal Procedure Code gives him, then he has to thank himself if the trial goes on in his absence. That is all that this Bill says.

[Sir Brojendra Mitter.]

Sir, I will now deal with the case of the absconder. Under the Criminal Procedure Code, an absconder cannot be tried, under the Criminal Procedure Code an absconder cannot be convicted, under the Criminal Procedure Code, no judgment can be passed upon an absconder. All that the Criminal Procedure Code provides in the case of an absconder is this, that certain rules of evidence have been framed under which evidence may be taken in his absence; and that is, to use legal language, for perpetuation of testimony. It is for that purpose and that purpose only that, in the case of an absconder, you may record evidence in his absence. Beyond that you cannot take any other step against an absconder.

Mr. President : Why not? He is given an opportunity to defend himself but he does not avail himself of it.

The Honourable Sir Brojendra Mitter : Because there is another cardinal principle of criminal law, and it is this, that there cannot be a trial of an absent person. (*Cries of "Hear, hear" and Laughter.*) There absence means this: the man has not been under arrest, the man has not been in custody. A man who is not in custody cannot be tried. That is one of the fundamental principles of criminal jurisprudence, and it is by virtue of that principle that you cannot try an absconder. There are several principles underlying criminal law, and the principle which applies to an absconder is this, that a man who has not been arrested cannot be brought to trial, and it is by virtue of that principle that an absconder cannot be convicted or cannot be sentenced. Courts never act in vain. It is quite different from the position when a man is under arrest on the allegation that he has committed an offence; he is then before the Court; he is in the custody of the Court, although he may not be physically present.

Mr. Amar Nath Dutt (Burdwan Division: Non-Muhammadan Rural) : Where do you get all this?

Mr. President : Order, order.

The Honourable Sir Brojendra Mitter : The case of a person who has been arrested and brought before the Court is entirely different. Once he has been brought before the Court, then the principle enunciated by my learned friend Mr. Jinnah, subject to the modification which I have suggested, applies.

Mr. M. R. Jayakar (Bombay City: Non-Muhammadan Urban) : What if the prisoner absconds from jail custody after he is brought to Court once and kept in jail pending completion of trial.

Mr. Gaya Prasad Singh : He must be on bail?

The Honourable Sir Brojendra Mitter : Even when a person is on bail he is under the control of the Court. A man must be either in physical custody or under control. Once a man is in the custody or under the control of the Court, it is then and then only that the Court can try him and the Court can convict him or acquit him or deal with him, but not a man who is not under the custody or control of the Court. In the case of a man who escapes from jail custody, as my Honourable and learned friend Mr. Jayakar puts to me, he ceases to be under the control of the Court and therefore the Court cannot deal with him.

Mr. Abdul Haya (East Punjab: Muhammadan) : Then you put a premium on dishonesty and cowardice!

The Honourable Sir Brojendra Mitter : I do nothing of the sort.

Sir, section 512 of the Criminal Procedure Code was referred to in connection with the case of an absconder. Now, section 512 comes in Chapter 41 which deals with special rules of evidence and does not deal with trial at all. Section 512 says this :

“ If it is proved that an accused person has absconded and there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of ”

—not the Court “ trying ” but the Court “ competent to try ” him. That makes it quite clear—

“ may in his absence examine the witnesses, if any, produced on behalf of the prosecution and record their depositions.”

That is to say, the competent Court and not the trial Court. That is the distinction between the absconder and the man who is under arrest.

Mr. Gaya Prasad Singh : Please read further on.

The Honourable Sir Brojendra Mitter : It is not necessary for the purpose of my argument, but if there is anything against my contention, as is insinuated in the interruption, I shall read it and deal with it :

“ Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged ”

—that supports my contention. That shows that he cannot be brought to trial until he is under arrest—

“ if the deponent is dead or incapable of giving evidence, or his attendance cannot be procured without an amount of delay, expense and inconvenience which, under the circumstances of the case, would be unreasonable.”

That shows the circumstances in which the evidence may be used against him, although that evidence may not have been tested by cross-examination. That is a special provision, a rule of evidence in the case of absconders. As I said, that section is based upon the principle of perpetuation of testimony, because otherwise that testimony may be lost.

Mr. M. A. Jinnah : Preservation of testimony.

The Honourable Sir Brojendra Mitter : Very well, preservation of testimony. Sir, in the language of the law it is called perpetuation of testimony and I was using the legal phrase, but I shall willingly adopt the popular phrase, as suggested by my Honourable friend Mr. Jinnah, preservation of testimony.

Now, Sir, having said so much, I proved, with your leave, to show that there is a lacuna in the procedure. Sub-clause (1) of section 540-A deals with the presence of the accused either in person or vicariously by pleader. This is sub-clause (1) of section 540-A. :

“ At any stage of the inquiry or trial under this Code, where two or more accused are before the Court, if the Judge or Magistrate is satisfied, for reasons to be recorded, that any one or more of such accused is or are incapable of remaining before the Court, he may, if such accused is represented by pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.”

I know, Sir,.....

Mr. Amar Nath Dutt : I know that you know.

The Honourable Sir Brojendra Mitter : Then what is the use of interrupting me ? You will only prolong the agony.

Mr. Amar Nath Dutt : But I want you to say it.

The Honourable Sir Brojendra Mitter : I know all that, and as I have stated it will only be prolonging the agony if Members constantly interrupt me. I am not going to sit down by reason of these pointless interruptions.

Mr. Amar Nath Dutt : No, no; I know that.

The Honourable Sir Brojendra Mitter : Now, sub-clause (1) deals with a person who is either present himself or vicariously. Sub-clause (2) deals with a person who has no pleader :

“ If the accused in any case is not represented by pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for reasons to be recorded by him; either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.”

That deals with the case where an accused is absent and is not represented by pleader. This section deals with a case of unavoidable absence ; it does not deal with a case of avoidable absence, and that is where the lacuna comes in. Mark the difference between “ is incapable ” and “ has voluntarily rendered himself incapable ”. A person who, by his voluntary act, is absent, is absent for an avoidable cause ; but 540-A deals with the case of a person who is absent for an unavoidable cause ; he may not be represented by pleader owing to poverty or any other cause. That is my reading of the law. You may accept or may not accept it. I know that political prejudice may prevent Honourable Members opposite from accepting it. If they will keep their prejudices aside, their legal sense will be entirely with me. I know that. What I am submitting is this ; that the lacuna consists in a provision for avoidable absence ; 540-A has provided for unavoidable absence, but avoidable absence has not been provided for. This lacuna is sought to be filled by the present Bill.

It is said that trial of an accused in his absence is unprecedented. I admit it ; I admit that it is unprecedented and unusual ; but my submission to you, if you will consider my submission in your calmer moments, is this : that that is not an inflexible rule of law, but if I may so express it, a rule of prudence ; and that is why Sir James Stephen, in his book on Criminal Procedure, says as follows. May I have the book, please ?

An Honourable Member : It has been returned.

The Honourable Sir Brojendra Mitter : It is my book ; it has not been returned to me ; very well, I have got an extract in my notes.....

Mr. M. A. Jinnah : May I inform the Honourable Member that for the moment the book has been taken away by the reporter.

The Honourable Sir Brojendra Mitter : I have got an extract here.....

Mr. President : Order, order ; one of the two Honourable Members must resume his seat.

The Honourable Sir Brojendra Mitter : Sir, I plead want of practice. In article 302 of his well-known book on Criminal Procedure, Sir James Stephen lays down this proposition ; that the prisoner has the right to be present so long as he conducts himself properly, but the Court may, in its discretion, permit his absence in cases of misdemeanour, and may proceed with the trial in his absence in cases in which he has pleaded to an indictment on any occasion in the High Court. My learned friend, Mr. Jinnah, said that this refers to a contempt of Court. That does not affect my argument that, whether it is contempt of Court, or falls under some other division of the criminal law, nevertheless it is a criminal offence ; and in a criminal offence, it may be permissible, in certain circumstances, to go on with the trial in the absence of the accused. That is all I say. I do not put it any higher than that.

Mr. M. A. Jinnah (Sir Brojendra Mitter still standing) : Are you providing for that now ?

Mr. President : Is the Honourable Member prepared to give way ? If the Honourable Member is prepared to be interrupted, he must resume his seat.

The Honourable Sir Brojendra Mitter : I am very sorry that I have been guilty on more than one occasion of this irregularity, but as I pleaded, it is entirely due to want of practice ; probably the next Session will find me behaving much better. (Laughter.)

Mr. President : Ignorance of the law is no excuse. (Laughter.)

The Honourable Sir Brojendra Mitter : I bow to that, Sir ; but ignorance of procedure may be condoned. Sir James Stephen goes on to say :

“ If a prisoner so misconducts himself as to make it impossible to try him with decency, the Court, it seems, may order him to be removed and proceed in his absence.”

All that I am submitting is this : the normal procedure is that you must proceed in his presence, but there may be circumstances—I am not dealing with the circumstances now—there may be circumstances now—there may be circumstances—which is within the bounds of possibility—when the Court may proceed with the case in his absence.

Mr. D. V. Belvi (Bombay Southern Division: Non-Muhammadan Rural) : After his plea is recorded.

The Honourable Sir Brojendra Mitter : I do not put my case any higher than that, and therefore my submission is this : that the necessity for the presence of an accused at a trial is not an inflexible rule of law. It has been found generally to be a good rule of prudence, which ought, in normal circumstances, to be complied with ; but in abnormal circumstances it is permissible, according to the principles of English criminal jurisprudence, to proceed with the trial in the absence of an accused.

Mr. M. A. Jinnah : Only in the case of contempt.

The Honourable Sir Brojendra Mitter : If you extend it to the offence known as contempt, is there anything in principle why it should not be extended to other offences ?

Mr. M. A. Jinnah : It has not been done so far, as it is founded on a different principle.

The Honourable Sir Brojendra Mitter : I know it has not been done, for the simple reason that the circumstances with which we have to deal never arose in any other country.

Mr. M. A. Jinnah : They did ; my point is they did arise before ; I quoted those cases from Stephen's History of Criminal Law and Procedure.

The Honourable Sir Brojendra Mitter : You are talking of the Middle Ages. (Laughter.) I have pointed out, that there is a lacuna in the criminal procedure as it exists, the lacuna being that it does not provide for the case of avoidable absence, when a person refuses to be present. In this connection, I may draw the attention of the House to a section in the Criminal Procedure Code which deals with pleas. I refer to section 272. If the accused refuses to, or does not plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed and try the case. I am referring to it only for the purpose of drawing the attention of the House to the case of refusal of the accused to plead.

That has been provided for. If the accused refuses to plead, then he is to be deemed to have pleaded not guilty and the trial will proceed. Here, we are providing, if he refuses to be present.....

Mr. M. A. Jinnah : He ought to be acquitted according to that rule.

The Honourable Sir Brojendra Mitter : I do not see that. What we are providing for is this. The Criminal Procedure Code has already provided for the case where the accused refuses to plead, and here we are providing for the case where the prisoner refuses to go to Court, to be present in Court, or refuses to be represented by pleader. That is the case we are providing for. Now, Sir, it may be said that it is not fair that the accused should go unrepresented. That is a point on which I want to make one observation. That is a matter for the Select Committee. If it be the sense of the House that provision should be made for the representation of the accused in every case when he is absent, I am prepared to meet my Honourable friends and accept the suggestion and make proper provision for representation. Sir, you can take a horse to the water, but you cannot make him drink. You can offer to pay for a pleader of his own choice, but if he refuses to engage any pleader, what are we to do ? Is the trial to be defeated by reason of such recalcitrant attitude ? Is the administration of the law to come to a standstill because a determined person refuses either to be present or to engage a pleader when the Crown may be prepared to pay for that pleader ? I say, in such a case, the law requires amendment. There is that lacuna which impedes the course of justice. There is that lacuna which is likely to bring about a deadlock in the trial. Administration of justice is one of the most important parts of the foundation upon which every ordered society is established. When there is such a lacuna, it is the duty of the Government when such lacuna is discovered as has been disclosed by recent events—it is the duty of the Government to come to the Legislature and confidently ask the Legislature to assist them in

filling that lacuna. Banish all political prejudice from this Bill, consider it calmly and dispassionately as a measure seeking to fill a gap in the law, and then I am sure, if you exercise your judgment on those considerations, freed from political passions or political prejudices,—I am sure you will unanimously pass this measure. (Applause.)

Pandit Motilal Nehru (Cities of the United Provinces : Non-Muhammadan Urban) : Sir, previous speakers on this side of the House have characterised this Bill as an unparalleled and unprecedented measure. To my mind it is nothing short of an outrage on any Legislature to be asked to consider a Bill of this kind. I have just had the benefit of listening to a solemn lecture which I have long ceased to be accustomed to during the last forty-five years ever since I left the class room. That came from the Honourable the Law Member.

The Honourable Sir Brojendra Mitter : Sir, it was my misfortune, not my fault.

Pandit Motilal Nehru : But I do not know which is to be more regretted, the misfortune of the Law Member or his fault, because in the present case both the elements are present. It is his misfortune to select a place and an occasion to say things which are not at all suitable to that place or occasion, and it is his fault that he does not know what the law is. Well, I will take up the challenge of the Honourable the Law Member and show that there is absolutely no foundation for the distinction which he makes between avoidable and unavoidable absence nor for the interpolation of words into a Statute which the framers did not use on any principle of the criminal jurisprudence of India or England or any other part of the world.

Sir, I shall deal with the Honourable the Law Member as I come to the points which he has raised. Let me first deal with the avowed object of the Bill. For that purpose I shall ask the House just to refer to the Statement of Objects and Reasons which is a very short and sweet document. It is said :

“ The Code of Criminal Procedure, 1898, contains no provision by which an inquiry or a trial can continue in the absence of an accused if he is not represented by counsel.”

I ask the Honourable and learned Law Member, is there any system of jurisprudence in the world, which does contain a provision by which an inquiry or a trial can be continued in the absence of the accused person ? I submit that there is no precedent for it in any known system of criminal jurisprudence. And this is what is said to be a lacuna ! These principles are centuries old. People have been tried for hundreds of years but it was given after all these centuries to the present Government and to the present Law Member to discover that there was this lacuna in the Criminal Procedure Code of this country. Then, what is the evil that is sought to be removed ? The Statement of Objects and Reasons proceeds :

“ It is, therefore, possible for an accused person to bring the administration of justice to a standstill by a voluntary act by which he renders himself incapable of attending Court.”

The same has been the experience elsewhere and as I shall presently show it certainly was the experience, if not in England, at least in the neighbouring island of Ireland, and yet it never occurred to anybody

[Pandit Motilal Nehru.]

either in England or elsewhere to suggest the removal of this lacuna in the law of the country. The chief object of the Bill is this :

“ The provisions of this Bill are intended to prevent the delay and defeat of justice.”

Well, if it were said that the object is to delay and defeat justice, it would be more appropriate. And what is the remedy ?

“ Empowering Judges and Magistrates to proceed in the absence of an accused, even if he is not represented by counsel.”

That is to say, by doing a thing which is not warranted by any system of law or jurisprudence. Those are the reasons and those are the objects. I submit that not one of them is such as should have been placed before any legislature.

Much has been said about the cardinal principles and the fundamental rules of criminal jurisprudence and criminal law. I now take up the argument of my Honourable friend, the Law Member that there is an omission which he supplies by reading the word “ unavoidable ” in section 540-A, and after making that interpolation, he says, here is the law which provides only for “ unavoidable ” absence. In the first place, I ask this House to make no such assumption of the existence of a lacuna as the Law Member wants us to make, and secondly I ask the House to read the section as it stands.

It is opposed to every canon of construction either of civil or criminal law to read into the law words which are not there. You cannot restrict the ordinary meaning of the words and take them to mean something not warranted by their grammatical construction or dictionary meaning.

Now, let us examine these fundamental and cardinal principles. The first is admitted by the Law Member. It is that you cannot begin a trial in the absence of an accused. He must either be present himself or must be brought before the Court before the trial can commence. I need not cite any authority for that proposition because I take it that it is admitted by the Honourable the Law Member, but there is a whole series of sections in the Code of Criminal Procedure dealing with this point. There are four forms of procedure. The first relates to inquiries into cases triable by Sessions Judges and High Courts. The second to summons cases, the third to warrant cases, and the fourth to trial before the Sessions Court or the High Court. Separate Chapters of the Criminal Procedure Code deal with these various kinds of trial or inquiry, and the opening section of each Chapter lays down that the Court shall begin the proceedings when the accused appears or is brought before the Court. That is principle No. 1. The second principle, which has been conceded by my friend, is that the accused must be given an opportunity to be heard. We are not concerned with that in this case. But there is a third principle. What is to happen if the accused ceases to attend the Court while the proceedings are going on ? The Legislature has not ignored that contingency. That very contingency is provided for in section 540-A, clauses (1) and (2). Now, if clause (2) of that section is read without the commentary of my learned friend and without the interpolation of words which he finds it convenient to read into that section, then it covers exactly the present case. Here is a case where there has been an incapability to remain before the Court, the cause being immaterial. You have got two

courses open. Either a separate trial of those incapable of attending may be ordered and the trial of those who are capable of attending continued, or the whole trial may be postponed. These are the only two courses. Now, it is sought to introduce a third course, *viz.*, that the Court may do away with the presence of the accused as well as of that of his counsel or pleader—a contingency which is neither contemplated by the law of India nor by the law of any other country. The essential condition of a trial is that you must confront the accused with his accuser before you can sentence him or even before you can proceed against him. That is why every accused has got to be present, if the proceeding is to be a trial. Every witness who comes into the box and every little piece of evidence that is tendered against him must be adduced in his presence. The commencement of the trial needs the presence of the accused. The continuation of the trial equally needs the presence of the accused. If there is incapability to remain in attendance, from whatever cause arising and there is no pleader to represent the accused, there can be no trial at all unless we read section 540-A, as the Law Member has done, with additions and subtractions of his own. I trust nobody in this House will lend himself to such a course.

Another fine argument is advanced in the case of absconders. It is said that the accused must be under the custody or the control of the Court. Now, there is no provision of law under which any evidence can be adduced against an absconder or the case can be proceeded with without him, until he appears sooner or later. All that can be done is to have recourse to proceedings in the nature of perpetuation of evidence. I congratulate the Law Member for the use of the correct legal term "perpetuation of testimony". Now, Sir, the whole point of the analogy of the absconder put forward by my Honourable friend Mr. Abdul Haye has been missed by the Law Member. The point of his argument is this. Here is a man who, by his own voluntary act, in order to save his skin, does something which is in itself an offence and defies both the executive officers and the Court. He effects his escape and remains in hiding and never comes before the Court. The machinery of the law is held up. Nothing can be done until this man appears again. If there is any apprehension of some of the witnesses dying before the accused appears, then their statements are taken down and those statements are, in the words of Mr. Jinnah, preserved, not perpetuated. All that can happen is that those statements can be used against the accused when the accused appears if the witnesses have died meanwhile. Nothing can be done on those statements. No order can be made on those statements. It is only when the accused appears that these statements can be used against him, but if the witnesses are all available everything else that has gone before counts for nothing and cannot be referred to.

It is only then that the trial begins. Well, what my Honourable friend Mr. Abdul Haye says is, here are men who have not rendered themselves incapable to attend to save their skin but who are sacrificing themselves for a very noble object. You cannot deal with them, and the law says you shall not deal with them. Why do you invent this internal machine in order to deal with them? That is the point, because, without inventing this machine you cannot touch them. That is a patent fact. Now, Sir, let us examine the argument and see what it comes to. The Government say that, so far as the existing provisions concerning trials are concerned, we cannot carry on this trial and therefore we want additional

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powers. If they were honest enough, as my Honourable friend, Mr. Jinnah has pointed out, they would say, "Well, we want some sort of power, some sort of procedure which will take the place of a trial because we cannot try these men". It is impossible for you to come and say, "Let us try a man without complying with the fundamental, with the very essential condition, namely, the presence of the accused. Now my Honourable friend, the Law Member, said that, if the remedy is to appoint, to take power to appoint, a pleader for a man who has not appointed a pleader, then he is willing to meet us half way ; and he said that he would give the Courts the power to inflict a pleader upon an unwilling client who, most probably, has no confidence in this pleader and to whom he does not wish to entrust his case. That, Sir, is the favour that the Law Member is willing to grant. I have here, Sir, a pronouncement by one of the distinguished Judges of England in the case of *Reg. v. Yscuado* which was referred to in this very case by the Lahore High Court. In this case the prisoner was indicted for wilful murder. When he was called upon to plead, no word or sign could be elicited from him, and the jury were sworn to try whether he stood mute of malice or by the visitation of God. The jury found that it stood out of malice. Then it was suggested by the prosecution that, under the peculiar circumstances of the case, counsel should be assigned to the prisoner and one of the counsels present at once volunteered to defend him. The prisoner was asked whether he wished to have the services of counsel to defend him, but no reply was given.

The Honourable Sir Brojendra Mitter : Sir, I think the Honourable the Pandit has misunderstood me. What I said was that the Crown would be prepared to pay for a pleader of his own choice, that is, the choice of the accused, not against his wish. I never suggested that. That was a misapprehension.

Mr. Amar Nath Dutt : That is tainted money.

Pandit Motilal Nehru : I am very glad, Sir, that my Honourable friend admits that Government have no right to force a pleader upon a client who does not wish to have him.

The Honourable Sir Brojendra Mitter : I fully accept that.

Pandit Motilal Nehru : I quite appreciate the force of the great offer, the liberal offer that he has made. Nobody however has gone to him begging money to pay for pleaders. He knows that these people are being defended by a Defence Committee which has ample funds at its disposal.

The Honourable Sir Brojendra Mitter : I was not thinking of this case or that case. I was thinking generally of the provisions of the law.

Pandit Motilal Nehru : It is this case which has brought the Government before this House and if anything does not apply to this case, we can reserve it for future consideration. (Laughter.) Now, Sir, my whole point is this, that I cannot conceive of a trial either being commenced or being continued without the presence of the accused or the presence of his lawyer where his personal attendance can be dispensed with. Now there is one instance to the contrary which has been given and that is from Stephen's "Criminal Procedure". Mr. Jinnah has

pointed out that that was in the exercise of the Common Law jurisdiction which the Presidency High Courts had inherited from the Supreme Courts and that that Common Law jurisdiction had its origin in an ancient and obsolete rule no longer followed. Now the present Bill, if passed into law, is not going to apply only to those courts which have inherited their jurisdiction from the Supreme Courts.

Mr. M. A. Jinnah : Sir, may I point out to the Honourable Member that it is not only that, but that this Bill is not going to bring the party before the Court and the question of contempt of Court does not arise here.

Pandit Motilal Nehru : That is exactly what I am saying. I say, even so, that procedure which has been mentioned by Stephen in his book will not apply to any part of India except in cases of contempt when tried by the High Courts which have inherited jurisdiction from the Supreme Court.

The Honourable Sir Brojendra Mitter : Sir, all I submitted was that the principle was not unknown, not unheard of.

Pandit Motilal Nehru : We are now, Sir, passing a law of general application and we must exclude from consideration all special cases and special applications of special rules. Now if that is so, then my challenge stands. I want to ask, can there be any trial under any system of law, or can a trial be continued without the accused being present except when the presence of the accused who is represented by a pleader is dispensed with under the provisions of section 540-A ? Well, I submit, Sir, it is a misnomer to call a proceeding, a trial at which the accused is not present either personally or by pleader. Whether it is by his own voluntary act that he has incapacitated himself from appearing, or whether it is by a visitation of God is immaterial. The law makes no distinction whatever because in no case can there be a trial without the presence of the accused. When you say there can be a trial without the accused, you go again all notions of criminal law. Under the pretence of removing a lacuna in the law, you sap the very foundation of criminal justice. You may ask us for any special executive powers that you may need, but do not slander the principles of criminal jurisprudence. There is no justification for asking any Legislature to so amend the law that it ceases to answer to the description of any law whatever. Sir, if that well-known expression of my colleague, the late Mr. C. R. Das, was ever applicable to any law, namely, a lawless law, it certainly is applicable to the measure which is now before this House.

I will leave the legal aspect of the case at that and will now deal briefly with the facts and circumstances which have induced the Government to come before this House to ask for special legislation. Previous speakers have used strong language and indulged in severe condemnation of the Government for their action or inaction in this matter. That I submit is fully deserved by the Government, but there is another aspect of the case which appeals to me more, and it is that the present action of the Government excites more pity and commiseration than anger. The Government comes before the House and says : " We have blundered ; we have not done our duty ; we have blundered in our treatment of these accused people. The matter has gone so far and we are in such a mess now that we come to this House to help to extricate us from that mess by some sort of a special procedure which, whether known to the law or unknown to the law, will save us ". That is the position. The

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only answer to this position can be : You have done these things in spite of repeated warnings of this House. I will not go into the long history of these warnings because my Honourable friend Mr. Jinnah has already referred to them. By your persistent conduct you have brought all these things upon yourselves, and you have to take the consequences ; we cannot help you. That is the plain answer. But have the Government done their duty ? They say, they have. By the courtesy of the Honourable Mr. Emerson I am provided with certain papers, which show the exact nature of the demand of the accused. Much has been said on the floor of this House as to the reasonableness of those demands. In opening the debate, the Honourable the Home Member relied upon the extravagance of the demands; which, he said, were made not only for themselves by the present accused people, but also for the convicts in the Kakori case and the Ghadr case, and in order to impress the House both the Honourable the Home Member and the Honourable Mr. Emerson read a long list of the most violent and diabolical crimes that could be imagined which these men were found guilty of. And it was said that the demand made by the Kakori prisoners and the Ghadr prisoners was for preferential treatment, and that it was a demand which was far too extravagant to be looked at. That is not my reading of it. It is true that the letter or the application which was read by the Honourable Mr. Chaman Lall does mention the Kakori case and the Ghadr case, but, I take it, as only illustrating the general principle. When we look at the demand, we have to see what these prisoners want for themselves. Can it be pretended that if all that these prisoners wanted for themselves had been conceded and this special treatment had been withheld from the Kakori and the Ghadr prisoners, still these Lahore prisoners would not have broken their hunger-strike ? There can be no suggestion of that kind. But, in point of fact, the real demand of these people was a very reasonable and a very simple one. Now, the first is a letter or application of the 17th June, 1929, by Bhagat Singh in which he puts his demand like this :

“ My demands are—special diet, including milk, ghee, rice and curd. No forcible labour. Toilette soap, oil, shaving, etc. Literature, history, economics, political science, poetry, drama or fiction.”

He wants something to read, something to live upon, some decent food and something to keep himself clean ; some soap and water and towel. That is the first demand.

Then Dutt, his co-accused, in another letter without date says this :

“ My demands are the following : Better food, including loaf and milk in the morning ; rice, dal and vegetables and curd and sugar in the noon ; and bread, meat and *chauni* at night. No labour ; all kinds of literature and papers ; toilette, including soap, oil, comb and bath. Better accommodation ; and civil dress. I used to get all these things in the Delhi jail before and after my conviction from the jail expenses.”

Honourable Members will remember that the Honourable the Home Member said when some other Member was speaking, that all these concessions were made when these men were under-trial prisoners, but here is the statement of this man Dutt who says :

“ I used to get all these things in the Delhi jail before and after my conviction from the jail expenses.”

I will not read all the other papers I hold in my hand, but will go to the very last which must have been received about the 7th or the 8th of September. It is dated the 6th September. This is directed to the Chairman, Punjab Jail Inquiry Committee and Members of the Hunger-Strike Sub-Committee. It is most important to know what is the version of these accused persons in regard to what the Jail Inquiry Committee or rather the Jail Sub-Committee, which visited them, actually promised them when they induced them to break the strike as, the Jail Inquiry Committee say, or suspend it, as the strikers put it. It is not a very long document and I shall read it. I see it is not signed by anybody, but I find that it was sent through the Jail Superintendent. So there can be no mistake that one or more of these people must have vouched for this document.

“ Dear Sirs,—We beg to bring the following to your kind notice :

- (1) That we did not abandon hunger-strike, but merely suspended it pending the decision of the Government. We think we made this point clear to you, and further repeatedly requested you to make it clear to the public and the Government alike. We are surprised to note that this point has not been even mentioned in the Press statement given by the members of the Hunger-Strike Sub-Committee as published in the *Civil and Military Gazette*, dated the 4th September, 1929. However, we hope you will do so at the earliest opportunity.
- (2) We suspended the hunger-strike, but only on the assurance ”

—this is important. This is what they claim was the assurance given to them—

“ that you and the remaining members of the Inquiry Committee will make unanimous recommendations practically meeting all our demands to our satisfaction. One of us pointed out to you that Government in most of the cases in the past did not accept such recommendations of the Inquiry Committees as it did not serve their purpose, and as an instance cited the glaring instance of the Skeen Committee. He feared that the recommendations of your Committee as well might be treated in the same manner.”

“ In reply you said that you had consulted the Local Government before coming down to us, and that you were therefore in a position to assure us that Government would not do so in this case.

It was on this clear and most important assurance that we agreed after full nine hours discussion to suspend the hunger-strike.

Besides you gave us further assurance that in compliance with our strong desire comrade Jatindra Nath Das would be released immediately and unconditionally, in view of his critical state of health. Secondly that our demands as under-trials, the most important of which was to keep all of us together (including Comrades Bhagat Singh and Dutt) in a general association barrack, would be accepted by the Government within a day or two.”

These are the three points upon which, according to these men, a definite assurance was given to them and thereupon they suspended the hunger-strike. The letter proceeds :

1 P.M.

“ But our fears came true when, despite the strong and unanimous recommendations of all the members of the sub-committee, the Government did neither agree to release Comrade Das nor to keep Comrades Bhagat Singh and Dutt with us. Thus we have been furnished with immediate proofs of the fact that the Government does not care for your recommendations, and we hope you will excuse us when we say that we believe that all the Government wanted was to exploit your individual positions as public men in getting hunger-strikes broken. We may further mention that before we suspended our hunger-strike we carefully considered how far we could rely on the promise of the Inquiry Committee. On that, Comrades Bhagat Singh and Dutt suggested that the present occasion would serve as a test case. Now that we find that the Government has not paid any heed to even two of the most ordinary recommendations of yours.”

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—that shows the spirit in which the Government is working. It is not that they have given a long list of impossible demands. Every one of their conditions is quite reasonable. What they say here is that the Government have not heeded even two of the most ordinary recommendations of the Sub-Committee. They continue—

“ we have been forced to resume hunger-strike immediately.”

Now comes the most important part of it, as to what they intend to do :

“ The condition of Comrade Das is now absolutely hopeless, and if the Government thinks that after his death we will shirk our duty it is a fatal mistake.”

Unfortunately, as we all know Jatin Das is no more :

“ Let us all state that we are all prepared to share his fate. For the sake of convenience, however, and keeping the idea of continued fight in view, we are dividing ourselves into two groups, the first of which is resuming hunger-strike at once. It is resolved that, as soon as a member of the first group meets his death, one member from the second group will come forward, to fill the gap. We have arrived at this decision in full realisation of its gravity. There is no other proper and honourable course left to us now but to follow in the footsteps of our Comrade Das. We regard our cause as just and honourable, which any fair Government would have conceded without forcing the necessity of such a serious step. We repeat that we are going into this fight with a firm conviction that nothing can be more glorious and honourable than to fight till death for a just and noble cause. In conclusion we feel that we fail in our duty if we do not express our heart-felt thanks for the sincere interest and great trouble that you have taken to uphold our cause before the Government.”

These are the demands that were made by these men, and this is the character of the men whom you do not want to treat properly. What is the answer that the Government give ? The Government say, “ Well, these men want to have the privileges of political prisoners. We recognise no such category as political prisoners. All that we know is first division, second division, and so on ”. How are those classes determined ? Those classifications are made according to the mode of life, the position in life, education and things of a like nature. But the species known as the political prisoners is a thing which the Government cannot conceive. Examples are given of the jail rules prevailing in England, in France and in America, and it is said that even in those advanced countries there is no such thing as “ political prisoners ”. There are prisoners of the first division, the second division, and so on. Now, Sir, there is an initial fallacy underlying all that argument. Is there anything analogous between India on the one hand, and England, France and America on the other ? Are the people of England, France and America struggling for their liberty against an alien occupation ? It is in India that we are thus struggling. The political situation in India is one which cannot be found in France, America or England, unless you take the Reds or the anarchists in those countries who are called criminals. Even against the anarchists and the Reds in those countries, have they asked for a law such as the one you are asking this House to sanction ? There is no doubt that the Reds have been compelled to leave the country and otherwise been summarily dealt with. But when it came to a trial, there is not a single case which anybody can cite in which a man was tried in his absence as is sought to be done under the provisions of the Bill. I agree with my Honourable friend Mr. Jinnah, who said that it would be more in accord with common sense if the Government had asked for executive authority to deal with these people in a certain way, and then the House might consider whether the Government deserved to have that authority or not.

When you come to the classification based upon social status, the position in life and the manner of living, what does it come to ? You are prepared to give preferential treatment to a miserable wretch who, for his own benefit, through sheer dishonesty, commits a disgraceful offence, such as theft, robbery, embezzlement, and so on. So long as he is a bank director, or manager who has been living in a princely style, you think he deserves to have special treatment in the jail. But when it comes to the case of selfless patriots, they have, according to you, no station in life, and are men in low positions in life. According to us they really occupy a station in life, life far above that of an ordinary human being. And when it comes to the question of these noble souls, who suffer not for the pleasures of their flesh, but who sacrifice their flesh for the well being of others when it comes to the case of such people, you deny them a fair treatment. You think that when a robber or a thief who lived well and who, in order to live well got the means of doing so by doubtful means and is detected and sent to jail, then he deserves to be treated better than these selfless patriots, who have nothing to gain for themselves, who have no axe to grind, and who simply offer themselves as a sacrifice to better the conditions of their fellow prisoners. They do not ask you not to try them. They do not want you to release them or to withdraw the case against them, except in the case of the late Jatin Das whose condition of health undoubtedly demanded that he should have been released. They only demanded necessary conveniences. The Government decided that these offences, for which they were being tried, were offences of such a serious nature that there could be no question of the withdrawal of the case. They decided that these men must be left to their fate, but a conviction and sentence must be secured before they die. I should like to know what you want to do with them. What would it matter if these hunger-strikers died a day or two before their conviction or a day or two after their conviction ? Will it be enough for the Government to have the satisfaction of securing a conviction against these people ? Is that the reason why this House has been approached for this law ? Conviction or no conviction, these men have declared that they are not going to stop their hunger-strike. If they do they would do so of their own accord, but the threat of conviction will not force them to stop the strike. Two of them are convicts in another case, it is true, but they are under trial in this case. I submit that when a person is an under-trial prisoner there is no occasion to go into the offence with which he is charged, because it is admitted both by the Honourable the Home Member and the Honourable Mr. Emerson that the presumption is that he is not guilty. It is on that presumption that you deal with him. If that is so, where is the necessity of your citing a long list of the offences which were proved to have been committed in the Kakori case ?

Mr. H. W. Emerson (Home Secretary) : Sir, may I just, with your permission, correct a misapprehension ? Under-trial prisoners are never classed as special class prisoners, but only convicted persons. All under-trials are assumed to be innocent whatever the nature of the offence charged against them, and whatever may be their status and education, and so on. There is no distinction made between under-trials on the ground that the offences with which they are charged happen to be of a certain character.

Pandit Motilal Nehru : I am very grateful to the Home Secretary. I never misunderstood him on that point. What I said was exactly what he said just now, that there is no distinction made, and yet they are not

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allowed even the comforts of an ordinary European convict who, according to Government, have better ways of living and whose health is more delicate than that of these people, and for various other considerations. But so far as this hunger-strike is concerned, the question arises what is to be the attitude of Government? As I said, France and England and America are not at all analogous cases. Let us take an analogous case, the case of Ireland. In Ireland the first case of hunger-strike was that of Thomas Ashe. That was in 1916, and after five days of fasting, he was reduced to the very last stage of weakness. Forceful feeding was resorted to and on the sixth or the seventh day he actually died in the hands of the prison doctor. There were others also who were on hunger-strike and why? Exactly upon the same grounds and for the same cause as these people at Lahore are now on hunger-strike. I will beg your forbearance to read a few passages from this book that I have in my hand. It is a recent book in two volumes, "The Life of Michael Collins". This is what happened in Ireland, I am reading at page 164 of Volume I :

"In August Thomas Ashe, Austin Stack, and Fionan Lynch were arrested and tried by court-martial on the charge of making speeches calculated to cause disaffection."

Mind you, Sir, this is a court-martial, with far more drastic powers than ordinary criminal courts :

"A number of Volunteer officers were also arrested on the charge of illegal drilling. It had now become the practice of Volunteers or Sinn Feiners, when charged before an English court, whether military or civil, to refuse to plead or to recognise the right of their captors to try them. In this case Thomas Ashe was sentenced to a year's imprisonment, Lynch to eighteen months and Stack to two years.

The three leaders were imprisoned in Mountjoy Prison with about 40 others. And now the fight which had been started in Lewes was renewed. The prison authorities endeavoured to subject the men to the same treatment as criminals. They resisted and asserted their right to be treated as prisoners of war, or, at least, as political prisoners. The English authorities, with stubborn obtuseness, persisted in the attempt to classify these men with thieves and murderers; and, all other means of protest having failed, the prisoners went on hunger strike on September 20th. Austin Stack was their elected leader.

The prison authorities, confronted with this revolt, resorted to the cruel device of forcible feeding. The hunger-strike, and the circumstances that had given rise to it, stirred public feeling in Ireland profoundly. Even those, who had no sympathy with Sinn Fein, sympathised with the men's demand to be treated as political prisoners. A huge meeting of protest in Dublin was followed by similar meetings all over the country, and there were daily demonstrations outside Mountjoy Prison.

On the 25th of September, after five days of hunger-strike, Thomas Ashe was removed to the Mater Hospital in a sinking condition, and he died a few hours later. The death of this brave and gifted young man thrilled the Irish people with grief and indignation."

What happened was this :

"The death of Ashe resulted in the victory of the hunger strikers. Two days later the English authorities in Ireland conceded the claims of the prisoners and a new series of rules for the treatment of 'political prisoners' was introduced. The men then desisted from their hunger-strike."

So the class of political prisoners did exist in Ireland. Next I will read two or three sentences from the verdict of the jury at the inquest on the body of Ashe :

"We censure the Castle authorities for not acting more promptly, especially when the grave condition of the deceased and other prisoners was brought under their notice on the previous Saturday by the Lord Mayor and Sir. J. Irwin.

That the hunger-strike was adopted against the inhuman punishment inflicted, and as a protest against the men being treated as criminals and demanding to be treated as political prisoners in the first division.

We condemn forcible or mechanical feeding as an inhuman and dangerous operation, which should be discontinued.

We tender our sympathy to the relatives in this sad and tragic occurrence."

Then what followed is this :

"Stack, Lynch and the other prisoners were removed to Dundalk about this time. Here fresh complaints led to another hunger-strike, as a result of which all the prisoners were released on November 17th."

This was war time. The great war was then going on. I have reason to believe that one of the reasons now assigned for this kind of treatment is that this was done under pressure of war. But we know for a fact that this Irish trouble continued till the year 1921, long after the close of the war. The conflicts between the Sinn Feiners, or the Irish Republican Army on the one hand, and the Royal Irish Constabulary, the Blacks and Tano and the regular English force on the other hand, the various acts of violence and arson committed by both sides in the name of reprisals continued until sometime in May or June 1921 when there was no pressure of war conditions. But although these men were guilty of the gravest crimes according to the English laws in force in Ireland they were, according to themselves, only doing what any people would have done situated as they were. They were taken, more often than not, before the military courts. But never was a trial of these men,—even by a court-martial,—conducted without the presence of these men.

I shall not go further into this point. My submission is this : There is no justification for the Government not to have conceded the demands of these men at once. As it now turns out, there was nothing extravagant in those demands so long as these men were only under-trial prisoners, though it was first said that their demands were extravagant and preposterous, I think I have established to the satisfaction of the House that they were nothing of the kind. They merely wanted the same treatment as was extended to European prisoners ; these not being granted they went on hunger-strike. Now it is said by Government, "We cannot apply the general rules to under-trial prisoners ; we are not concerned with convicts here. The Bill deals with under-trial prisoners only." Every body knows the distinction between under-trial prisoners and convicted persons. But while dealing with under-trials, all that the Home Member and Mr. Emerson did was to cite rules relating to convicts and not to under-trial prisoners. I have yet to see the rules obtaining in England, France and the United States, which apply to under-trials, and which are more rigorous than those adopted here by the Indian Government. My point is simply this, that there is no precedent, no warrant in law for a measure like this to be brought before the Assembly, and that what the Government want is not an improvement of the law to provide for an omission ; but to ride roughshod over the very first principles of criminal jurisprudence, and that is a thing which I do hope this House will not tolerate.

Now, Sir, when we come to the difficulty in which the Government find themselves, I submit that they do not deserve any sympathy whatever at the hands of this House. They have brought it all on themselves by stubbornly and arrogantly refusing the most reasonable demands of a set of people whom they knew were not serving any purpose of their own, but

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simply wanted in the interest of their fellow-prisoners and incidentally for themselves, to be allowed only such privileges as you allow to every European convict, whatever may be the offence he has committed. You say that you apply the same rules to persons who are not Europeans if they come up to the same standard. Sir, I have no respect for the man or for his mode of living or for his colour or for his station in life if he has been convicted of theft or embezzlement or some such disgraceful crime. On the other hand, I have every respect for the man who—it may be he is misguided, it may be he has acted as I would not have acted—has acted under the best of impulses and in the fullest belief that he was acting for, and in the cause of, his country. I should certainly take off my hat to him, and I should not even look at the other man, however high his position in life may have been. Therefore, there has been no reason shown to justify this Bill. The remedy is only this : forsake your fetish worship of prestige ; look at things as they are ; try to meet the legitimate demands of these men. Sir, the sort of crime alleged against these men may be very deplorable, but is not the last of the kind ; there may be other cases of such crime. You will only be multiplying those cases by the treatment which you are according to the accused in this case. You are certainly not preventing such crime by the treatment you are giving to these people.

For all these reasons, I submit that there is no occasion for this House to pass this law, and I may mention that I am not only opposing the motion of the Home Member, but also the other two motions, namely, the motion for circulation and the motion for reference to Select Committee ; but if it is the desire of the other Members of the House, then out of consideration for their opinion we shall vote with those who ask for the circulation of this Bill.

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

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Mr. President in the Chair.

Mr. E. L. Price : Sir, I rise to support the amendment of Mr. K. C. Roy and to oppose the dilatory motions. Mr. Kelkar seemed to me entirely to miss the factor of time in the administration of justice. I suggest to Mr. Kelkar that from the earliest times the matter of delay in justice has been admittedly the denial of justice. This was recognised so far back as 1215 A. D. and in the *Magna Charta* the Barons rightly extorted from the King that to no man would he *deny*, to no man would he *delay*, justice. Now, Diwan Chaman Lall, unlike Mr. Kelkar, had no constructive proposals to make. He devoted himself to a great *strafe* of, I understand, the Punjab Government, delivered however to the Government of India. I learnt the other day from a slight alteration that took place in this part of the House that the baiting of the Treasury Benches was a " legitimate sport ". All I can say is that Diwan Chaman Lall had undoubtedly a good run, and I am sure he enjoyed his lunch the better. But I suggest, however, that he always talks to the Government Benches as Hamlet talked to that unfortunate woman his mother. And if he must continue in the strain of high tragedy, it would be rather pleasant for Members of this House if he could vary the play. I should like to hear him very much in the role, say, of Romeo. Or he might temporarily abandon high tragedy and try

comedy, and I recommend in that respect the little play "The two Gentlemen of Peshawar". Sir, Mr. Jamnadas Mehta also had his little bit of "legitimate sport", and, like Diwan Chaman Lall, he had no constructive proposals to make. But I did catch this from him, and I should like to thank Mr. Jamnadas Mehta for making the physical effort necessary to make himself heard in this part of the House—a courtesy that we do not often enjoy from those Benches. Sir, he made this admission, that the responsibility is on the Government. Quite so, Sir. But does he suppose that, in coming up here, he takes no part in that responsibility also? I suggest essentially he does, and that, where he finds it necessary radically to turn down Government proposals in any emergency, there is a moral obligation on him not merely to turn them down but to propose alternatives.

Diwan Chaman Lall (West Punjab : Non-Muhammadan) : Concede the demands. That is the alternative.

Mr. E. L. Price : Mr. Jinnah did not err that way, because he did suggest an alternative to Government, and, as I understood it, his alternative was that Government in order to meet the wishes of those prisoners under trial who wish to go on hunger strike, and to meet the quite legitimate case of those prisoners who do not want to hunger-strike, should re-arrange the charges, and proceed now only against those who were not hunger-striking. But the objection to that course seems to me to be this, that in any case where the Government have joint charges against a number of accused, it would finally leave to the prisoners under trial the right to dictate to the prosecution the procedure and joinder of charges. Mr. Jinnah unfortunately has not come. I put it to Mr. Jayakar that it would not be a fair course for any prosecution—let me take even a civil case. It is not fair to the plaintiff that the defendant should be allowed to say how the plaintiff's case should be put forward. I say distinctly it is not fair to the prosecution that those prosecuted should be allowed to dictate the procedure and joinder of charges, and if my Honourable friend Mr. Jayakar likes to answer that I should be glad to hear him.

Sir, Mr. Jinnah delved into English law, its old barbarities, and it seemed rather research *ad hoc*, an expression which I believe is highly unpopular in this House. But I think he missed the point of that barbaric procedure. The whole thing was that the "Majesty of the Law" refused to put up with anything like contumaciousness on the part of the prisoner. The law said he must plead. If he refused to plead, then *peine forte et dure*,—I believe it was only formally abolished by statute in the beginning of the nineteenth century,—he was tortured, if necessary, to death, or till he did plead. But at a later era, of course, it became possible for the judge to say that when he did not plead at all or was mute, he was pleading "not guilty", and that is the law now. Sir, the point of this was the insistence of the law that it would not be trifled with. If there was a thing that had to be done by the prisoner, he must do it or suffer, and in many cases the suffering was terrible. Members of this House seem to be tremendously impressed by the physical courage of hunger strike. I cannot say that of myself. I happen to be an Englishman, and some countrywomen of mine adopted this trick, for trick it is, to avoid the consequences of their misdeeds some sixteen years ago. As a matter of fact, this hunger-striking did not affect their trials as far as I can remember any more than it did MacSwiney's. It affected their imprisonment. The British are a practical people and they were prepared

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to meet a little contingency like that. They recognised that forcible feeding was a loathsome and nasty procedure in the case of men, and that in the case of women it was simply unthinkable. So what did they do? The lady who committed some silly anti-social act, something like obstructing the traffic, or making false fire alarms, breaking windows, and things like that,—she was promptly sentenced by the magistrate, but she refused to pay the fine and went to gaol. The hysteria that had driven her to the police court, in gaol turned into sulks, and she sat there and would not eat her breakfast. When this went on for some time and her health looked like being impaired, they promptly let her out, and the poor girl ran back to her mother. Mother comforted her and fed her well, and after a few days she became as healthy and robust as ever. Then the heavy hand of the police came on her again and led her back to gaol to do a few more days. I believe there were some suffragettes that took about six months to do a month's imprisonment. But at all events, whatever happened, the hand of the law was not stayed. The trial was held, the sentence carried out. And I consider, if we look back to the essentials of things, that you will find that in England law insists on taking its course. I have noticed that there is a tendency to rag in this House everything that is English; but there is one English thing that they are prepared to die in the last ditch for and that is the principles of English law. (*An Honourable Member*: "English law is borrowed from Roman law.") It does not matter where it comes from. These principles as they understand them are held so dear by my friends here, that they are prepared to die in the last ditch to maintain them. I found it difficult to get the relevant books in the Library, possibly Mr. Jinnah had been there before me, but I found the Norwich murder case to which he referred, in another book, Archbold's 28th Edition. In that case, I take it, the Judge said to a prisoner who was making himself rather disgusting, "My man, if you do not behave yourself you will be taken to the cells and this trial will proceed without you." But things did not go to that extremity. I cannot find a case in which they did. Mark you, the judge in England is not so much bound by code law, is not so much driven to seek verbal formulae as in India. He is working on the system of old common law which is a matter not of verbiage but of principles. The Judge in that case was taking the line, "Whatever you may do my man, I am commissioned by His Majesty for gaol delivery and nothing shall deter me from carrying out my duties". The fact that things were not pushed to extremities is no argument at all against the judge's stand but for it. He was carrying His Majesty's Commission for gaol delivery and I believe that no English judge would tolerate the obstruction of justice by means of a trick done by a prisoner. He would not allow it. *Fiat justitia ruat coelum*. Now, Sir, we have come to a practical position in India where we find a revival of the old feminine trick in a new form. (*Honourable Members*: "Try it and die".) These interruptions are extremely irrelevant. It is not a question of my dying, or of my wilfully making myself unfit for any of the obligations of life. I have never done so. I have always tried to keep myself fit for my obligations. But, Sir, we have come to a practical position in which justice is flouted. It is impossible to carry on the trials owing to the feminine, sulky trick adopted by prisoners under trial. In these circumstances Government come to the House in the exercise of a statutory right, nay, I think

it is an obligation. They ask Members of this House to consider their proposals. The law must follow circumstances, must be made able to meet all contingencies.

I believe Government are quite open to accept alternative suggestions, if sensible alternative suggestions are put forward. Here is a possible one. It happened the other day a woman tried to flout the law in France by standing "mute of malice", but they solved the difficulty by appointing counsel against her will; at all events without her consent, to represent her at the trial. Now, Sir, there was an Honourable Member who laid great stress on the absconding of a man. I quite agree with the principle—No prisoner, no trial. In the same way in a coroner's inquest, no corpse, no quest. But having once viewed the body, the coroner and his jury are not compelled to abide with the malodorous corpse all the time. So long as it is established that there is a corpse, the inquiry goes on. But if an actual prisoner in custody, by a trick, evades coming into court, I certainly consider that he should not be allowed to benefit by his performance, still less to put the other co-accused to disability, who may very well have a chance of winning their freedom. Sir, the necessity of carrying on with justice in civil cases is clear enough. Now, suppose these legal gentlemen were appearing in a case, and the defendant, by some new trick, tried to evade service, or by any other new and unforeseen procedure to prevent the plaintiff getting justice, every one of them would at once say, "The law is defective and must be amended". They would say, as has been repeatedly said, that the latent defects of the law should be remedied as soon as they become patent. And that is exactly the position now. Sir, I am not defending Government. I have no use for a Government that does not defend itself. Government can defend itself. I am simply speaking here as one of the public, a Member of this body, a citizen, and I demand that the law shall be enabled to take its course. I refuse to have anything to do with palliating a trick which has got the object of defeating the administration of justice.

Mr. M. E. Jayakar : Sir, I rise to support the amendment moved by my Honourable friend Mr. Kelkar. I should have liked to go further and entirely oppose this Bill. But like my Honourable friend, Pandit Motilal Nehru, I am quite agreeable to the middle course suggested by the amendment of Mr. Kelkar. If it is supported by the bulk of the non-official Members in this House, I shall certainly do likewise. Sir, I do not propose to follow the Honourable Member who spoke last. I do not propose to reply to his disquisitions on law, because, among other things, they are old-fashioned. I would rather follow a more up-to-date exponent of the law, the Honourable the Law Member. (Hear, hear.)

Mr. Amar Nath Dutt : Is he very young ?

Mr. M. E. Jayakar : I understand, Sir, that the Honourable Member who spoke last was called to the Bar some years ago. But judging by what he has stated before this House, he has apparently not been pursuing his legal studies during the intervening years. Sir, a little learning is a dangerous thing. He used words like "latent", "patent" and "researches *ad hoc*". Sir, when he used those words I felt as if the shadow of his former knowledge had remained with him but the substance had gone. Sir, I wish to leave the Honourable Member who spoke last severely

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alone so far as his legal disquisition is concerned, I only wish to say that, when he has finished his career as a businessman in this country, it will be time for him then to think of legal disquisitions. It is dangerous to confuse avocations. But there is another aspect of the Honourable Member's speech which is more general and on which I wish to reply to him. Sir, speaking of the hunger strikers, the Honourable Member used an offensive expression. I am very sorry he permitted himself to use it three or four times. Possibly he did not realise what he was saying. He said that these hunger strikers, for whose incarceration this Bill has been devised by Government, were practising "feminine tricks". As I proceed with my argument, I propose to show to my Honourable friends that the purpose of this Bill is nothing more nor less than the incarceration of the persons who have been practising hunger strike.

My Honourable friend, the Law Member, seems to have persuaded himself that this Bill is based on sound legal principles. Sir, I do not agree with my Honourable friend. One of the anomalies which I noticed when I first came to this House, Sir, was the distinction between the Home Department and the Legislative Department. I marvelled at that distinction. I asked myself what is the function of the Legislative Department and of the Home Department. I felt that there ought to be one Department which looks after legal questions. I was told of a distinction in their functions—and that distinction came very clearly to my mind today when my Honourable friend, the Law Member spoke. I was told that the Home Department looked after the *political* aspects of legal questions and my Honourable friend, the Law Member's Department looked after their dry *legal* aspect. On this basis the distinction was justified. The effect of that distinction was brought home to me today when my Honourable friend, the Law Member spoke. When I heard him, I felt as if the real political aspects of this Bill had completely escaped him. He wanted to persuade this House that this was a purely legal measure, designed for no purpose except to supply and fill in certain lacunae which exist in the law. I am surprised that my Honourable friend should have so easily been deceived. Well, it is a most extraordinary way of filling in lacunae to destroy the very structure and foundation of the system which is sought to be made more complete. Lacunae, Sir, are gaps and omissions and these have always to be filled in in such a way as not to destroy the substratum, the very structure and edifice, which is being rendered more complete. If my engineer, Sir—to illustrate by analogy—said to me, "I want to supply certain lacunae in your bathroom", a window for instance or an electrical geyser, or tiles or things of that kind which are wanting in my bathroom, and if, in the name of supplying these omissions, he started destroying the bathroom itself, I would promptly ask the engineer to go away. Sir, in the name of lacunae—and it is a very specious phrase which I want my Honourable friends to guard against—the Government today are destroying the first principles of criminal jurisprudence. Before I proceed with this argument further, I just want to refer to a question which I left half-touched with reference to what my Honourable friend, Mr. Price, spoke. Whether we agree or whether we do not agree, I hope Honourable Members will realise this, that to speak of the people who are practising hunger strike as if they were practising a trick, and withal a "feminine trick", is to misuse words. Sir the Honourable Member who used these insulting words does not realise that India may be politically subject, but she has not lost her

self-respect yet. (Hear, hear.) I was surprised and struck by the temerity of my Honourable friend in referring in the way he did to the young man who died yesterday. He died slowly, inch by inch; one hand gone paralysed for want of sustenance, another hand gone atrophied for want of nourishment, one foot gone, another foot gone, and the last of nature's precious gifts, eye-sight, gone; the fire of those orbs slowly quenched, inch by inch, not by the sudden and merciful death of the guillotine, but with the slowness with which nature builds or destroys. Oh, the anguish of this slow torture! And yet, my Honourable friend, opposite, well-fed as he is, says of this young student in the presence of so many of his countrymen that he practised a feminine trick. (*Loud cries of "Shame, shame, shame"*.) Sir, I and many of my friends here may not share the political views of those who are practising the hunger strike. But that is not the question here. The question is what was the reason for which the hunger strike was taken up. That is a question, and from the way in which these boys took up the question and boldly agitated it at the sacrifice of life, no sensible Indian can withhold his sympathies. I am deeply grieved, Sir, that a Member of the European Benches, a Group for which I have always had the utmost cordiality and friendliness during the three years I have been in this House, and whose desire and endeavour ought to be, as is ours on this side of the House, not to insult the feelings and sympathies of their associates,—I say, that for a new Member of that Group, who has not been in this House for more than two weeks to get up and use such expressions even before the body of the young student is burnt is an insult to the feelings of the Indian Members in this part of the House.

Mr. E. L. Price : Sir, on a point of personal explanation, if I make a description of the act of one or two or three individuals in a country of over 300 millions, can I be said to insult the whole country?

Some Honourable Members : You do, you do.

Mr. M. B. Jayakar : I will not pursue this unpleasant matter. All I will say is that my Honourable friend, Sir Darcy Lindsay the Leader of that group, after this debate is over will mention silently into the ears of Mr. Price that he sinned against the good manners and decorum of this House. (Hear, hear.) I will leave the matter there.

My Honourable friend, the Law Member, was unfortunately led into two or three errors. He said that this is merely a procedural change. He went into a very long disquisition, and I do not wish to follow him into his distinction between adjective law and substantive law. Sir, as I listened, I was reminded of the days when I was learning law in the Government Law School in Bombay. The Honourable the Law Member talked about his experience of the Calcutta Sessions Court. I know he was a great figure at the Bar in Calcutta. His experience of the Sessions Court must also be very wide. But may I ask him one simple question? Will he and the Honourable the Home Member be more frank about this Bill? I wish the Government Benches had said in so many words: "This is, speaking frankly, a lawless law, but the circumstances of the country today demand it". I can understand that argument if it is so frankly put. "Yes, it is rather an extraordinary piece of legislation, but so are also the political circumstances of the country. Extraordinary circumstances demand extraordinary measures". If such a plea were made out on behalf of the Government

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Benches, I could have understood it. I will not accept it, but I will certainly give the Government the credit of being absolutely frank with this House. The plea then would be, "Today the circumstances of this country have become extraordinary; there is a defiance of the law everywhere and Government think that this spirit must be checked. The latest manifestation of that spirit is the hunger strike and Government want to get at it by any means they can. If this House does not give them the power, they will seek it elsewhere". If such a frank statement of the position were to be made, we would at least give credit to the Government that they were frank. But the Honourable the Law Member gets up and tries to cloak this measure with legal soundness. He ignores the wide terms of the Bill:

"If any accused.....has voluntarily rendered himself incapable of remaining before the Court, the Judge or Magistrate may, whether such accused is represented by a pleader or not, dispense with his attendance and proceed with the inquiry or trial in his absence."

Does the Law Member justify this provision on any rational principles of law? He really takes my breath away. I do not wish to tell the Government in detail where this Bill has gone wrong and can be improved. I do not think that is my business, but may I ask the Honourable the Law Member to turn to the Statement of Objects and Reasons, where he will find that the reason and principle of this Bill are stated as follows:

"It is, therefore, possible for an accused person to bring the administration of justice to a standstill by a voluntary act by which he renders himself incapable of attending Court. The provisions of this Bill are intended to prevent the delay and defeat of justice by empowering Judges or Magistrates to proceed in the absence of an accused."

If the Bill is brought to frustrate such intention, is it not a very curious omission that there is not a single word in this section speaking of the intention to defeat and obstruct justice? If I were to comment on the details of the flaws of this Bill, I would take an hour to point out mistakes in the phraseology of the section, but without proceeding to do all this, may I ask my friend opposite how is it that the most material thing, namely, the intention of obstructing the trial and defeating the ends of justice has not been mentioned in the section? The onus is on the prosecution to make out that intention, but not a word has been said about it. The only words are: "has voluntarily rendered himself incapable of remaining before the Court". There are no words, *e.g.*, to the effect that the Judge is to be satisfied, for reasons to be recorded in writing, that such voluntary incapacity has been caused with the intention to obstruct and delay the trial. Well, I can imagine many cases where a man may voluntarily make himself incapable without having any such intention in his mind. Supposing a man overeats himself and thereby voluntarily renders himself incapable of being present owing to indigestion. Another man may go out and expose himself and get pneumonia, and by his voluntary act render himself incapable of attending the trial. Is this section to be applied to such a man because the words are loose and wider than they need be? I do not wish to go into the legal side of this matter, but may I ask the Honourable the Law Member, who has a great reputation at the Bar and even here, whether he does not agree that the whole phraseology of the Bill is hopelessly defective?

Again my Honourable friend spoke as if he was speaking without the Criminal Procedure Code being before him, and he referred to a certain

section (section 512), and he laid down what I thought to be an astounding proposition, if I may say so, while he was speaking. I put to him the analogy of the case of an accused person who is arrested, brought to trial before the Court, but before the trial is completed, somehow or other manages to abscond. What happens in such a case? Does not section 512 apply? If so, why cannot the same principle be made applicable to hunger strikers? My Honourable friend replied that section 512 was not intended to cover the case of such an absconder at all, but only that of an absconder never brought to trial. Well, I must say with great respect that I was surprised at his explanation. Is there any other section in the Criminal Procedure Code which covers the case of a person who is arrested, brought to trial and then absconds from jail custody before the trial is completed? There is no other section to cover such a case and all cases of absconders, at whatever stage, must fall within section 512. I shall therefore take the liberty of differing from the Honourable the Law Member. But what is more important in this connexion is sub-section (2) of that section. I wish it had not escaped the attention of my Honourable friend the Law Member. I wish to invite the attention of the Government Benches to the provisions of that section. Indeed, it ought to serve as a warning which the Government should remember in these days. That sub-section refers to the case of an accused who is *unknown*, which is politically a far less serious case than that of the hunger strike. Of course, if we accept my Honourable friend Mr. Price's estimate of the hunger striker, then I have nothing to say. But I take the view, that from the point of view of the citizens' rights, the case of a hunger striker is far more serious than the case of the unknown offender. And yet how does the law deal with the unknown offender? I will just read that section without making my remarks too technical:

“ If it is proved that an offence punishable with death or transportation has been committed by some person or persons ‘ unknown ’ ”—

Honourable Members will mark the precaution that follows—

“ the High Court may direct that any Magistrate of the First Class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence.”

The words are “ the High Court ”. No subordinate Judge or Magistrate is given the power not only of not convicting the man, but even of recording evidence against him in his absence. This is the safeguard which is provided in the Criminal Procedure Code even in the case of an unknown accused who cannot be found. The framers of the Criminal Procedure Code laid it down that, even for the limited purpose of proceeding to record evidence against the unknown accused in his absence, the prosecution has to go to the High Court and take its direction before it can proceed one step further. Yet, in the present Bill, which practically permits the whole trial to go in the absence of the accused, the High Court is not at all spoken of. It is only a judge or a magistrate who is empowered. It may be a Second Class Magistrate, or even a Third Class Magistrate. The subordinate judicial official often under the thumb of the executive is given the power of convicting the accused in his absence, without the intervention of the High Court. I am, therefore, surprised, Sir, that the Honourable the Law Member should have found it possible to satisfy his legal conscience. My Honourable friend, Pandit Motilal Nehru, pointed out a circumstance which I just wish to touch. Honourable Members are aware that a typical summary trial in modern jurisprudence is a court martial trial. And yet even in this form of trial, a drastic provision like the present Bill

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does not exist. This will appear from the King's Regulations, Army and Army Reserve, 1928, paragraph 647 of which says :

“ An accused person for trial will be examined by a medical officer on the morning of each day the Court is ordered to sit, and the Commanding Officer is responsible for ensuring that no accused person is brought before the Court Martial if in the opinion of the medical officer he is unfit to undergo his trial.”

I have looked into this compilation carefully, and summary as the trial is, I do not find any provision here, Sir, that if any soldier accused, by his voluntary act, renders himself incapable of attending the court, the court can proceed in his absence and convict him. Therefore I submit, Sir, that there is not much of legal soundness in this Bill. Speaking frankly, in my opinion, it is purely a political measure.

My Honourable friend, the Home Member, will excuse me if I unclouk the true intent of this Bill. The whole attempt is, under the cover of legal process, to get at the hunger strikers and to put a stop to such strikes. The Government are afraid that if this spirit of strikes were to spread, it would become very difficult to conduct trials. I can understand that apprehension, but the difficulty of justifying this measure on that ground is that its drastic provisions are based upon one instance only, namely, that of Lahore, and that too arising from causes not beyond the remedial power of Government. It cannot be said that the hunger strikers' object is to obstruct the trial. That may be the effect of their behaviour, but the intention is very different. Government should therefore have waited until other clearer cases arose and the necessity became more apparent. It is here pertinent to ask, when Government ask us to help them to punish the hunger striker by drastic means, what is the grievance of the hunger striker. Honourable Members are all aware—and I do not wish to go into details—that their main grievances are such that every Indian Member on this side of the House will sympathise with them, whatever shade of political opinion he may belong to. An attempt was made in this House to show that these young men, some of whom are very bright spirits, are fighting for a selfish purpose. May I here say—though some of us may not agree with their political views—that if India today were a self-governing country these intrepid and brave men would have been the material out of which were created captains of ships and commanders of armies. (Hear, hear.) I am therefore sorry that even some responsible persons made an attempt to prove that these young men were seeking some personal benefit for themselves. The Honourable Member (Mr. Emerson) who has recently come from the Punjab, and who made a speech on this question, is—fortunately for him—immune from harsh criticism on the ground that he spoke for the first time in this House. I shall therefore deal with him gently and say that if the manners and tone which he introduced into this House are indicative of the temper and methods of the Punjab Government, I am indeed very sorry for that Government. (Hear, hear.) With these words, I shall leave him. I shall respect the sentiment that an Honourable Member who makes his maiden speech should be immune from drastic criticism. But I cannot help saying this, that it is a futile attempt on the part of the Government to try to make out that these young men were wanting something for their own selfish comfort, that these men who are voluntarily laying down their lives were asking for some little conveniences here and there. It is an absolute travesty of the true facts to say so. How does this grievance arise? I want my Honourable friends

to realise that. These young men are fighting for a principle. They say, and I want my Honourable friends to note this, that as long as Government maintain in their jails racial discrimination of a most extraordinary character, their strike will go on.

Referring to this racial discrimination, may I say that I remember, when I was a young boy just out of school, I came across the Jail Manual which applies to the Bombay Presidency, and young as I was then—who knows similar things have possibly happened to other boys—the iron went into my soul when I read of these racial distinctions in the Jail Manual. These young men have been provoked by this racial discrimination, they are not asking for comforts from selfish motives. They ask these on account of the principle involved in the question. I am just reading from the statement of B. K. Dutt. He says :

“ I must mention that when a European breaks the ordinary law in order to fulfill his selfish motive, he gets all kinds of privileges in the jail, he will get a well ventilated room with electric fittings, the best food, such as milk, butter, toast, meat, etc., good clothing, while we are deprived of such things.”

This is the point. I wish the Government had the imagination and intelligence to understand it in the right spirit. It is a mistake to suppose that these young men are asking for any selfish comforts. They say that they are making this matter a test question. I can assure my Honourable friends opposite that no Indian, whatever his political views may be, will ever withhold his sympathy in their fight on that question, whether he is a Congressman, or a Nationalist or an Independent. It is the question of all questions. I wish the Government would realise the significance of this question. They cannot lightly dismiss it, as the Honourable Member from the Punjab did with the remark, : “ Oh, it is a racial question ”. I could not understand the relevancy of his remark that the Europeans in this House would agree with his sentiments. Of course they would. But the Government are not governing Europeans alone in this Country.

(Mr. H. W. Emerson rose to intervene.)

Mr. M. E. Jayakar : I refuse to give way to my Honourable friend. He did not show yesterday the courtesy of giving way to many Members on the Front Bench on this side.

Mr. B. Das : He does not know what courtesy means.

Mr. M. E. Jayakar : Although my Honourable friend, Mr. Rangaswami Iyengar, got up several times to ask questions, Mr. Emerson refused to give way and I wish to imitate his manners. The point is this. As long as this racial distinction exists, it will create great embitterment. What is this distinction, Sir ? I do not want to go into details on this point, because it may become the subject of the next adjournment motion. May I here refer to the Report of the United Provinces Jail Inquiry Committee ? This is a Committee, which as Honourable Members are aware was not made of revolutionaries. There were three members, one an Indian, one a Muhammadan and the Chairman a European. I am quoting from the latest Report, showing that in 1929, this vestige of a barbaric code of jail rules, which possibly started a century ago, still

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prevails. I can understand the Government having these rules a century ago when they were consolidating their rule in this country by race superiority. But these rules exist even now in the year of grace, 1929. I ask whether there is any Indian Member here who is so degraded that he will not show the utmost resentment when he listens to what I am sorry to read to him. Why do Government still persist in this barbaric racial discrimination? I can assure the Honourable the Home Member that, if there is any question in this country on which Indians of all classes feel the greatest resentment, it is the question of race stigma. The sooner Government do away with this distinction, the better for them. Sir, I may go further and say that, if Government had come to this House with clean hands, if the Honourable Member had got up and said: "Yes we have totally done away with race distinction between Europeans and Indians in jail discipline," this measure would have had some support. This racial distinction is not based on any rational principle, such as standard of living. It is pure race arrogance. Government want us to help them, but as Government have not come with clean hands, they cannot have our support. Government stand thoroughly discredited. They have pursued vile methods of racial discrimination. Government cannot therefore get the help of this House. My Honourable friends will excuse me if I read something which may stir up feelings. I have no desire to do so, but I cannot avoid it. The Jail Committee, I mentioned above, say in their Report:

"No self-respecting Indian can agree to any differential or special treatment being meted out to any one in Indian jails on the ground of his race, creed or colour, and if he finds that such treatment is sanctioned by the Government, then it is his duty to raise his voice in protest, even if his cry may be a cry in the wilderness and nothing may come out of it."

This was not the view of any political agitator, but of a sedate Committee of two members, one of whom was a Muhammadan and the other a Hindu. The Honourable Member from the Punjab said yesterday that a European is defined as a man who has adopted European manners. May I tell him,—possibly he does not know,—that in many places in this country the word "European" is interpreted so as to give the benefit of these humane jail rules to Chinese silk hawkers who wear a topee, and to white complexioned loafers? Is that the definition of a European? It has now come to this practically, and I will say so frankly for the benefit of the Honourable Member from the Punjab,—the sole test is in practice the presence or absence of a certain quantity of pigment in the skin of the individual. Let him accept this definition of the term European and I shall thank him for his frankness. May I further point out to him what this Committee says, that these humane provisions are common to European and Eurasian prisoners. My Honourable friend Colonel Gidney will forgive my referring to the Eurasian community. May I know what is the principle under which Europeans and Eurasians are classed together in the same category? What is it except the absence of pigment in the skin, in other words, the white complexion? That is the plain truth. It is a pure apotheosis of the white complexion.

Now what are the privileges? Sir, let us look at the prison menu of

the European and Indian prisoners. This is the menu of the Sunday and week day diet of European prisoners :

	Chota Hazri.	Breakfast.	Dinner.
Sunday	One cup tea, three slices bread and butter.	One plate dal and rice, a slice of bread with jagree.	Three meat outlets, vegetables, one loaf, one cup of tea.
Monday.. ..	One cup tea, three slices bread and butter.	One plate dal and rice, three slices bread with jagree.	One plate mutton curry, one loaf, one cup of tea.

And so it goes on inclusive of Irish stew on some week days. Now coming to Indians you will find that their diet is chapatis, 14 *chataks*, dal, one *chatak*, vegetables, three *chataks*, oil, chilli and salt. Then an improved diet is given ; it is not very much of an improvement.

The Honourable Member from Punjab asked, " Do you want the Europeans to die in this country, even if they are murderers ? " I should like to ask him, " Do you want the Indians to die, if they are murderers ? " If an Indian commits an " excluded crime ",—I am quoting his expression,—and is not accustomed to live on jail chapatis, do the jail authorities want him to die on the rough food supplied to him ? I am taking my Honourable friend's own argument. He says, " Do you want that a European murderer should die ? " I ask him, " Do you want an Indian murderer to die ? "

Well, now we will look at the *clothing* of a European prisoner.

In summer—2 coats, 2 pants, 2 garha shirts, 1 mattress, 1 pillow, 1 pith helmet, 1 blanket, 2 pairs white socks and so on. Then there are nearly 20 articles for the winter of a better character.

Now the Indian's clothing is, one kurta, one langot (Laughter), one jangiah, one cap, one tikoni, one towel and one blanket.

In winter, two blankets and one *blanket coat*, whatever that may mean.

Furniture for Indians,—one *moonj* matting, two earthen pots for answering the calls of nature in a corner of the same cell. (*Cries of " Shame, shame ! "*)

Look at the cells for Europeans and their furniture :

" Europeans are kept in separate cells. These cells have verandahs on both sides " :

which even my hotel here has not got. (Laughter.)

" the sanitary arrangements are not in the cell proper where the prisoner sleeps and works. It has a cot, one water stand, two small tables, one jug of water and one also fibre matting, besides the articles of bedding mentioned in list E and one lamp or lantern for reading. On our visits to jails we saw these things with our own eyes inside cells occupied by Europeans.

The Indian prisoners generally sleep in Association Barracks.

They are allowed only two blankets and one *moonj* matting and sleep on raised platforms arranged in straight lines. When placed in cells two earthen pots are placed close to them on the ground for the purpose of answering the

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calls of nature. The cell contains nothing else but one matting and even that cannot be used during the day time."

Comment on this state of affairs is needless. All that I can say is that, if this Government has any sense left, even now, let them remove this discrimination. The Honourable Member from the Punjab said, "Oh, but we have issued a circular to the Provincial Governments." I was wondering whether I should read from that circular which I obtained through the courtesy of the Honourable Member from the Punjab, but as he has himself said that there is nothing confidential in that circular, I take the liberty of referring to a few sentences before I close. That is a circular which no doubt has gone from the Government of India to the Provincial Governments. Before I read that circular, I just want to make one brief comment. From one end of that circular to the other there is not one suggestion that the Government of India think that these racial distinctions as such should go. The circular talks of many things, of standards, of tests, of classifications, but there is not one word in this circular, which suggests that the Government of India look with abhorrence upon the racial discrimination which I have referred to. In brief what the circular says is this :

"Subject to legislation by the Indian Legislature, prisoners and prisons are a reserved provincial subject. The last revision took place in 1922. In the classification of convicts as special class prisoners, the criteria adopted are"—

of which the Honourable Member from Punjab made a great deal,

"the character of his offence, social status, education and the character of the prisoner."

But the Honourable Member will agree that reasonable as these criteria, standards and classification may appear to be, they are not applied to Europeans. Every European automatically, whatever his crime,—it may be murder, it may be theft, it may be the most heinous of all crimes involving the greatest moral turpitude—whatever his social status, education and character, gets these privileges. The iron goes into our soul when we find that automatically, every European, irrespective of his social status, irrespective of his crime, irrespective of anything else, by reason of his mere complexion, is entitled to be treated as a superior person. I would therefore suggest to Government that they should remove all these distinctions and adopt one simple common test, applicable to all, Indians and Europeans alike, which takes note of all the circumstances, the nature of the offence, the education, social position and habits of the offender, etc. If one such principle is made applicable to all the subjects of His Majesty in this country, a considerable amount of irritation would be avoided. If Government want to exclude certain graver offences or the motives of offences, let Europeans also be subjected to the same rules. If it is thought desirable that offences which involve violence or moral turpitude should prevent offenders from getting light treatment, regardless of their social position, habits or manner of living, let this rule be made applicable to Europeans too. Let not a European murderer get things which an Indian murderer does not get. Have some such reasonable rules and classification. I am quite agreeable that there should be a strict classification based on the nature of the crime, on the social standing, previous habits and surroundings of the offender. But whatever tests Government adopt, let them apply them to all offenders ; do not make any distinction of colour. Whatever value complexion may have in the matrimonial market, it is not a

rational principle to be adopted in jail rules. The hot rays of the merciful sun are responsible for the colour of the skin. Nothing in culture, nothing in civilisation is responsible for it. Let the Government accept my suggestions and this irritation will disappear. Even yesterday when we heard some members on the Government Benches, no clear assurance was given by them that these distinctions as such will go. All that the Government spokesmen said was that they had made a reference to the Provincial Governments, a reference in which no condemnation or disapprobation is expressed of this obnoxious principle. The attention of Provincial Governments should have been pointedly drawn to the irritation this distinction has caused, and they should have been asked to find ways and means of removing it.

Before I conclude I wish to say this. Let Government show more wisdom. They may of course give effect to the law of the land. I am one of those who have always held the view that the law must prevail. But let the law be just and humane. Let the Government on the one hand punish those who are proved to be guilty, but let them on the other hand examine what is really at the bottom of this widespread defiance of the law. If they merely go on punishing those who are guilty, it is only a partial remedy. Let them examine the causes which really make so many young men defiant. I find, Sir, that Government have been guilty of so much un-wisdom of late and that when I turn to my morning newspapers, morning after morning I read of some prosecution or other. The other day I read of a prosecution in my Honourable friend the Law Member's province, Bengal, and an ugly rumour outside says that the Advocate General of Bengal was not consulted when these prosecutions were started. Is this a fact? Whereas Government are coming down with a heavy hand upon those who break the law, they are not applying their mind at all to the solution of the prime mischief. I say to the Government in all earnestness : supplement the efforts that Lord Irwin is said to be making in England. I hear that he is making his best efforts in England in order that the political situation in this country may be eased. Supplement his efforts ; try and create in this country, before it is too late, an atmosphere of peace and goodwill which will bring success to his efforts. If Government cannot do that, at least let them not create a contrary atmosphere ; if they cannot help, let them not hinder. Let Government remember that the Labour Leader in England is expected to make before long a statement relating to India. Let Government here not add to the difficulties which may prevent the acceptance of that statement in India. The Government must help and co-operate in the proper spirit to create good will and harmony during the next two or three months, so that when the statement is made, this country may be in a fit atmosphere to accept or reject it on its merits. If Government are strong, let them not be vindictive. I submit, Sir, that if Government are actuated by the spirit I have suggested, let them withdraw this Bill or at least accept Mr. Kelkar's motion for consultation.

Mr. M. Keane (United Provinces : Nominated Official) : Sir, Mr. Jayakar is always frank. Ever since I have heard him speak in this House, the one principal notable characteristic of his speech is frankness. I am glad that he came out into the open today, because honestly after hearing my Honourable friend, Mr. Jinnah, and my Honourable friend, Pandit Motilal Nehru, and others speaking with reference to the Bill on the direct legal issue which is before the House, as distinct from the

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political aspect of it, I think genuinely I never heard a weaker case made out by the Opposition. (Laughter from the non-official Benches.) Alone the Law Member seemed to me to stand up against that bowling and he played it all round the wicket and carried his bat easily. It is enough to make one a cynic to hear all this discussion regarding the legal merits of this Bill. Frankly and openly it is political issues that are involved here ; every one in this House knows it. There is not one who does not know that legally there is not a single thing to be said against this Bill. (Laughter.) There is a political issue and there is a sentiment abroad that makes it difficult to deal with this measure ; and I sympathise very genuinely with Honourable Independent Members in this House who have to deal with this measure in face of this sentiment. It is not easy to follow reason alone. It is a bold spirit who can always afford to follow reason alone. I know and every one knows that in every country, in every age, men who have been prepared to lay down their lives for a cause have always been able to command the overflowing sympathy of their fellow countrymen. The man in the street is not able to assess the reasons and the causes and circumstances that surround each case ; he cannot see what is inside the case ; what he does know or thinks he knows is that men are prepared to lay down their lives for love of their country—and greater love than that no man can show.—That is the difficulty in dealing with this measure. There is a sentiment abroad which it is difficult for Honourable Independent Members to ignore. Every one a short time ago spoke of Bhagat Singh and Dutt ; and every one is aware that our streets were full of processions and shoutings in commemoration of Bhagat Singh day. The young men who engaged in those processions were not thinking of the rights and wrongs of the case ; their attitude was entirely different ; they had only one thought, and that was that Bhagat Singh and Dutt had struck a blow, some blow ; and they were not critical in their appreciation. That attitude of mind is what I would call the school boy's attitude of mind, the attitude of mind of the school boy or the fanatic or possibly of the knave which likes to fish in troubled waters ; but that is not the attitude that this House should adopt towards this measure. It is not the attitude of legislators or thinkers ; their attitude must be a very different one. They are faced with a problem of government. If the school boy attitude regulates their vote, all I can say is that they are not voting on the issue, that their vote is a fraud and a sham.

And what is the issue ? This Government, every Government, is charged with the administration of the country and the protection of the law-abiding ; they are required to help the law-abiding and to punish the law-breaker. To the State there is only one question, the crime. To the State, murder is murder, no matter with what motive it is committed ; that is the issue before this House. Where crimes are committed, where murders are committed, is the offender to escape ? I cannot deal in detail with all that was said by those who have spoken already, I must take little by little parts of their arguments. Consider the way in which this case has arisen. A murder or political assassination was committed. One murder. The police constable who tried to seize the murderers was also murdered. A conspiracy was detected, bombs and revolvers were discovered. They are the facts before the State and they are the facts

that the State has to deal with. Eventually certain young men are arrested and they are put on their trial. That was the position reached. A *prima facie* case is put up against them ; they are put on trial, and are to be tried as quickly as possible. That is the essence of the duty of the court. All that the court has to do, as the Honourable the Law Member pointed out this morning, is to give an accused every opportunity of meeting the *prima facie* case that is put up against him. I need not point out that the courts cannot force the accused to prove his innocence. They give him every opportunity, as the Honourable the Law Member said, and he must take those opportunities. If he fails to take them, the law must find a means of proceeding with trial. Surely that is the elemental matter in the whole thing. The law must find an opportunity of proceeding with the trial, and it is to find that opportunity that this Bill is brought forward, a sensible, reasonable Bill, to fill a definite lacuna in the law. If political issues were not involved in it, there could be no objection.

Various alternatives have been suggested to the Bill. Mr. Kelkar said, " Oh, well, release two or three of them." Men may be accused of murder, assassination, conspiracy, collection of arms, and still Mr. Kelkar will say, " Because they have refused to go before the Court—I do not care under what circumstances they have refused to appear,—release them." No system of Government will stand by such a process, and all I can say is this that you yourselves who may be the followers of this Government, cannot afford to have a precedent like that. No system of law can stand on that principle. Then, Mr. Jinnah, Mr. Kelkar and many others have suggested the expedient of splitting up the case. My Honourable friend Pandit Motilal Nehru read out to the House this morning the action that the prisoners themselves proposed to take to prevent that splitting up. I think Honourable Members will remember that in their own letter to the Punjab Jail Inquiry Committee they have pointed how they will reduce this very splitting up process to an absurdity. They simply say :

" Let us all state that we are all prepared to share his fate. For the sake of convenience, however, and keeping the idea of continued fight in view, we are dividing ourselves in two groups, the first of which is resuming hunger-strike at once.

It is resolved that, as soon as a member of the first group meets his death, one member from the second group will come forward, to fill the gap."

Therefore this process will continue indefinitely. (*An Honourable Member* : " How long will it last ? ") I understand that one of the hunger strikers has been hunger-striking for 83 days. There are 16 of them. Can you multiply for yourselves ?

Mr. A. Rangaswami Iyengar : When he dies what happens ? The prosecution drops.

Mr. M. Keane : Pandit Motilal Nehru made a very great point in regard to that letter from the prisoners. He accused the Government or they did of a definite breach of faith, and the letter was read out by my Honourable friend the Pandit. Now, I have in my hand a copy of the reply which is being published or has been published in the papers from the Chairman of the Punjab Jail Inquiry Committee, Lala Duni Chand. He takes one by one the points made by the hunger strikers, with whom he, at any rate, cannot be accused of being out of sympathy. His reply

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is this. Let us see whether there was the breach of faith, which was so much stressed by the speakers on the other side. What he says is this :

“ Dear friends, Hitherto beyond doing my duty as a member of the Jail Inquiry Committee I did not think it proper on my part to give publicity to my views with regard to what has happened after the cessation of hunger-strike at our instance, even though the varied and conflicting comments of the Press tempted me to do so, but now that I have received a letter presumably censored and passed by the Superintendent, Borstal Institute, from the under-trial prisoners of the Lahore conspiracy case, I have thought it necessary to reply to you and at the same time to publish it. I feel that, in doing so, I am not infringing any rule of propriety that I should observe as a Member of the Jail Inquiry Committee. I would feyly to the questions raised by you *seriatim*.

1. It is quite true that you had from your point of view merely suspended the hunger-strike, but in my opinion there is hardly any difference between the suspension and the abandonment of hunger-strike as you could resume hunger-strike at any time.....

2. It is quite true that it was after full discussion with you as to the concessions that the Government was prepared to grant and even after disclosing to you precisely what the Jail Inquiry Committee had secured for you tentatively that you had agreed to give up hunger-strike. It was at the end of our deliberations with you that you had brought in the question of the release of Mr. Jatindra Nath Das. So far as the concessions other than those of the release of Mr. Das and the association of Messrs. Bhagat Singh and Dutt with other under-trial prisoners of Lahore conspiracy case are concerned, you do not say that they have been withheld or even whittled down.”

(At this stage Mr. President resumed the Chair.)

That is to say, the Jail Inquiry Committee said that, barring those two concessions, that is, the release of Das and the association of Messrs. Bhagat Singh and Dutt,—the prisoners do not say that the other concessions had been denied to them or whittled down. In regard to these two concessions about which they stated that there had been a breach of faith, Lala Duni Chand says :

“ So far as the unconditional release of Mr. Das and the association of Messrs. Bhagat Singh and Dutt with others are concerned, we had not arrived at any understanding with the Government before we left Simla, though we knew the mind of Government as to all other concessions.”

I need not read the whole letter ; it is a very long one, but that much answers the charge of breach of faith which has been so freely made against the Government. The Government of the Punjab were prepared to accept the recommendations of the Jail Inquiry Committee on certain matters, if recommendations of such a nature were made, but Lala Duni Chand definitely says that there was no authority whatever from the Government of the Punjab to make any statement that Das would be unconditionally released.

In regard to the other concessions about food, clothing and so on (I do not know what they were), they had the authority of the Punjab Government behind them, and so far as the Government of the Punjab are concerned, there was no breach of faith.

Mr. B. Das : Why did they not send this to the Press ?

Mr. M. Keane : It has been sent to the Press. This is the letter of Lala Duni Chand. I expect it will appear in today's or tomorrow's papers.

Now, Sir, another point was made in regard to absconders. It was urged as a strong point. Mr. Abdul Haye was the first to raise it. It seems to me that the question of the absconder is exactly a point in favour of this Bill, and I will tell you why. It is contended to be a universal principle of jurisprudence that no use can be made of any evidence recorded if the prisoner is not present, and yet in the case of absconders it is definitely provided that, in certain circumstances, evidence recorded in their absence can be made use of. If the witnesses die or if they are too far away or cannot be discovered, their evidence may be made use of. The principle is there already. Whether it is perpetuation of evidence, or as Mr. Jinnah prefers, preservation, you can use the evidence though the accused were not present. It looks to me that the case of the absconders is a double edged sword, with the sharper edge against the Opposition.

Mr. Jinnah said that no Court will trust evidence recorded in the absence of the accused and come to any conclusion. He said that such a trial would be a farce. Surely Mr. Jinnah cannot have forgotten that in dozens and dozens of cases in our own times, the accused have refused to plead or give an answer and yet the case was carried on. (*An Honourable Member* : "Is that absence of the accused?") The point is whether the accused had the opportunity of answering the case. The men it is true were there, but they refused to answer. They were blind and dumb, and yet the trial in those cases was not a farce.

I confess I did not understand Mr. Jayakar's point that the clause as it stood did not mention the intention. To have intentions inserted in clauses of procedure is surely rather unusual. The absence of an expression of intention in the clause seems to me to be a point of no significance at all.

Mr. Jaykar's speech was almost entirely devoted to the question of racial discrimination. I gathered that Mr. Jaykar was practically prepared to support the Bill : he frankly admitted that there was a lacuna.

Mr. M. B. Jayakar : I never said that. I said that if Government frankly stated that it was lawless law but that if it was justified by the political circumstances of the case it would be a frank statement.

Mr. M. Keane : Mr. Jayakar did not say so in so many words, but the impression left on me was that the Bill in itself was not one to fuss about. He did however lay great stress on the question of racial discrimination. He said that the Government of India letter to Local Governments did not explicitly deal with that question. I cannot deal with that subject now, as I have only two or three minutes left. The Government of India letter says that, in regard to under-trial prisoners, the Government of India consider that the rules adopted should, wherever possible, be at least as liberal for prisoners of similar social standing as those which may be ultimately adopted for special class convicts. As far as I can make out, the rules do require revision and in the course of that revision this question will no doubt have to be considered. Whether the question has been put to Local Governments in so many words I do not know. Possibly Mr. Jayakar is correct there. But I take it that there must be some adjustment in regard to the scales of diet which it

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will be necessary to introduce and the persons to whom they will apply. Whether the word "European" is to be used or not I do not know. I think myself that this question will have to await the consideration of the reports of the Local Governments which are now coming to the Government of India. It is quite obvious that Honourable Members feel strongly on it, and Mr. Jayakar had the pulse of the House with him when he dealt with that question. It is a question which Government must very carefully consider. I cannot pledge the Government in any way, but it is obvious that Mr. Jayakar made out a case which deserves full consideration. The hour for the adjournment motion has come and I think I have dealt with most of the more important points mentioned in the course of the debate.

MOTION FOR ADJOURNMENT.

THE ACTION AND POLICY OF GOVERNMENT *re* THE ACCUSED UNDER TRIAL IN THE LAHORE CONSPIRACY CASE.

Pandit Motilal Nehru (Cities of the United Provinces : Non-
4 P.M. which the House has granted me leave. I have already
Muhammadan Urban) : Sir, I rise to move the motion for
read the motion to the House—to draw attention.....

Mr. President : The motion is that the House do now adjourn.

Pandit Motilal Nehru : I am sorry. The motion is that the House do now adjourn for the reasons stated by me early in the morning. For the benefit of Members who were not present this morning, I will repeat that the motion arises out of the action and policy of the Government regarding the treatment of the accused under-trial in the Lahore Conspiracy Case, which has already resulted in the death of Jatindra Nath Das and is endangering the life of the other hunger-strikers in the said case.

Sir, the speeches that have been made in the course of the day have covered much of the ground of this motion. I do not wish to inflict another long speech upon the House. So far as I am concerned, I have dealt at length with the policy of Government and have given the reasons why this House should censure Government by passing this motion. Sir, it is not a charge of breach of faith against the Government of India or against the Government of the Punjab or any other Government. The charge is that the Government have shown an utter lack of the human element which should always guide them in a case like this. The charge is that the Government have stood still while human life was ebbing away, that they were not taking the steps which it was their very clear duty to take. Sir, I gave the history of this hunger-strike earlier in the morning. The hunger-strike began in the middle of June, and Jatindra Das died on the 61st,—(An Honourable Member : "63rd"),—on the 63rd day of the strike. For days and days the news came that his life was ebbing away, that at any moment he might breathe his last, the news came that there were other hunger-strikers who were in a very precarious condition, and what was the Government doing all this time ? It is said, Sir, that Nero fiddled while Rome was

burning. Our benign Government has gone one better than Nero. It is fiddling on the death-beds of these youngmen, misguided they may be, but patriots they are all the same ! They are watching their precious lives pass away by inches ! What have they done ? It is said they have appointed a committee, they have issued a communiqué explaining the position, and they have followed it up with a circular which my Honourable friend, Mr. Keane, was about to read when he was stopped. I do not want to inflict those documents upon the House. When there was time for action, when there was time for Government to realise that these devoted, high-souled men, however long they may have been hunger-striking, would not surrender their principles, what did Government do to save their lives ? I have already read, Sir, from the " Life of Michael Collins " as to how the English Government in Ireland was prepared to save life at any expense, even at the cost of letting convicts go without serving out their sentences. It is not a question, Sir, of sections or of procedure or of substantive or adjective law. It is, Sir, a question of humanity, of the elementary duty of a Government to save life, to save the lives not only of those who seek its protection, but also of those who want to destroy their own lives. But, Sir, Government did nothing. It is now admitted in this House that the demands, in so far as they related to personal comforts, were not very unreasonable ; but various reasons were given as to why those demands were not conceded. Up to this hour, Sir, we do not know that Government have come to any conclusion as to which of those demands are to be granted and which of them are not to be granted. We are not told what the findings of the Jails Committee are. They have not been published. We are not told what order Government have passed or are going to pass ; and in this dilly-dallying and shilly-shallying one valuable life has already been lost. Others are on the verge of extinction, and yet Government are still considering the question as to what should be done in the circumstances. I submit that, if this is not a case for censure upon Government, there can be no other. Sir, I do not wish to take any more time of the House as I have the right of reply and I shall avail myself of that right if necessary. Sir, I move.

The Honourable Sir James O'Connell (Home Member) : Mr. President, I have often observed that the Mover of a motion for the adjournment of the House has a considerable advantage over those who have to reply, because he has the initiative in the matter. It is very frequently by no means easy for Government, on whom it is proposed by this procedure of the House to pass a vote of censure, to know what case they will be called upon to meet ; and I confess that, even with the advantage of the brief explanation of the grounds on which the Honourable and learned Pandit proposed to move this motion, it was still very largely a matter of speculation to me what precisely would be the case I should be called upon to meet. I should like, however, in the first instance, to say this, that the occurrence which has been the immediate occasion of this motion is a matter which Government do sincerely deplore. Whatever may be the circumstances which resulted in this young man finding himself where he did, whatever the grounds on which he took the rash resolution which unfortunately has terminated his life, all those circumstances cannot fail, having regard to the human aspect of the case which the Honourable Pandit accuses Government of neglecting—an accusation which I

[Sir James Crerar.]

cannot for a moment admit,—having regard to all those things, I say no one can fail to deplore what has occurred. I think, Sir, though I have frequently had the misfortune to be engaged in controversy with Honourable Members opposite, they have always done me the justice, which I am happy to acknowledge, or at any rate I flatter myself that it is true, that, however much we may differ in opinion, they have been prepared to do me the justice of attributing to me honesty and candour in anything I have had to say. I ask the House, Sir, to accept that assurance on my own behalf and on behalf of Government today.

The circumstances to which I have referred, which immediately led up to the position which ultimately has eventuated as it has eventuated, are matters on which I cannot now speak—whatever the facts, whatever the merits may be, they have been removed from any earthly tribunal, and I cannot refer to them, though they might indeed have a very direct bearing on the case to which I have to reply. I will deal only with the specific charge that the Honourable and learned Pandit has seen fit to bring against Government in this case. He said that they have shown a disregard of the human aspect of the case, and that, though for weeks the possibility was not unexpected, they took no action. The Honourable and learned Pandit did not specifically say what action he wanted Government to take. I understand he proposes to refer to it in his reply. It would have been of greater advantage to me if he had stated that while making his motion. I cannot admit, Sir, that the Government of India or the Local Government failed to take a humane aspect of the question. I know personally that the Government of the Punjab and many of its officers watched the progress of the case with the deepest concern. I know that non-official visitors to the jail, who were allowed the freest access to the accused under-trial, have paid the highest tributes to the sympathy and the consideration with which the medical and other officers of the jail carried out their extremely difficult duties. (Applause from Official Benches.)

Sir, my time is limited. As I said, I have not had the opportunity of hearing from the Honourable and learned Pandit what action Government ought to have taken.

Pandit Motilal Nehru : It has been clearly indicated all through the debate today from morning to this hour that the plain duty of Government was to accede to the demand of these two accused persons.

Several Honourable Members : To remove the racial distinctions.

The Honourable Sir James Crerar : I shall reply on that point. I take it that the particular demands with which the Honourable Pandit says Government ought to have complied were certain adjustments in what I may call jail comforts. Secondly, the unconditional release of this particular prisoner in question, and, thirdly, I take it, the demand which was made for the association of the convicted with the under-trial prisoners. On the first point, I have already informed the House how matters stand. It has been fully explained in the communiqué of the Punjab Government. So far as jail comforts are concerned, I do not think that, on a close examination of the case, the Honourable and learned Pandit will find good grounds for any allegation of lack of human interest, for any allegations of failure to

take action on the part of the Local Government, which is primarily concerned, or of the Government of India, which is indirectly concerned. The other two points remain. Government ought to have complied with the demand that an under-trial prisoner charged, as I must in this context re-affirm, with very grave offences should be discharged from the case, that is to say that the prosecution should be withdrawn. I maintain, Sir, that the Punjab Government went as far as was possible, having regard to their responsibilities in making it known that they would not oppose an application for bail. The withdrawal of the prosecution against a prisoner against whom very grave charges are pending is a demand which, I think, even the Honourable and learned gentleman from Bombay emphatically said was one with which the Government could not properly be called upon to comply.

Mr. M. A. Jinnah (Bombay City : Muhammadan Urban) : It does not arise now.

The Honourable Sir James Crerar : It does distinctly arise from what the Honourable and learned Pandit has just said. I shall deal with one more point. The last point was this that the under-trial prisoners should no longer be segregated from the convicted prisoners, who are also under-trial prisoners. Sir, it is a very well-established principle of jail administration, and as a general principle I think it will be regarded by the House as humane, proper and salutary, that unconvicted prisoners shall in no case be associated during their confinement in jail with convicted prisoners. On that principle the Punjab Government found themselves unable to comply with that demand, and I venture to say that the principle being a sound one, a sane one and a salutary one, the Punjab Government would have departed from their duties if they had complied with it.

Sir, I do not wish to overstep the period allotted to me, and I have only one or two sentences more to say in conclusion. It has been implied, though it has not been specifically asserted, in the Honourable Pandit's indictment that Government were blind to or unappreciative of or unable to comprehend the assertion of a principle, a principle, which, as I think, he himself was not prepared to contend, had been acted upon in a manner of which he could approve, but nevertheless a question of principle. I am not concerned to deny that there was a question of principle involved. But I must tell the Honourable and learned Pandit and this House that Government also was standing for a principle. That principle is that it is their duty to vindicate the authority of the law, to secure that every man and society itself shall have the protection and the remedy from the law to which they are entitled, and, further, that there is an obligation resting upon every man who may be accused of infringing the law, of answering for it effectively. That, Sir, was the principle on which, in the whole history of this case, Government have been standing and I say that it is a principle which any conceivable Government of this country, whether Swarajist or whatever the future may confer upon this country as a national government, will be at least as closely concerned as the present Government to assert and vindicate.

Pandit Madan Mohan Malaviya (Allahabad and Jhansi Divisions : Non-Muhammadan Rural) : Sir, I am sorry that I have to join with my
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[Pandit Madan Mohan Malaviya.]

Honourable friend Pandit Motilal Nehru in expressing censure of the action of Government and the policy which they have pursued in relation to the hunger-strikers at Lahore, which has resulted in the death of one young man which we most deeply lament, and which threatens the death of several others. The Honourable the Home Member has failed to understand the reasons which justify this censure. That is a matter of greater grief to me. There are cases when a man does not fully realise beforehand the evil which may result from his action or inaction, but when a distressingly sad event like the death of the high-souled young man in question has taken place, we should have expected the Honourable the Home Member and those who are responsible with him for the action and policy which they have pursued in this connection, to feel remorse for what has taken place owing to their failure to do the right thing. I submit, Sir, that they have been guilty of betraying a want of human sympathy with those under-trial prisoners at Lahore. In the first instance, I wish them to remember what the character of these under-trial prisoners was. They are not ordinary criminals. They are persons who—however much one may condemn any act of violence of which they might be proved to be guilty—they are persons who are not prompted by any sordid selfish motive. They are, every one of them, persons who are inspired by a high sense of patriotism and a burning desire for the freedom of their country. (Hear, hear.) I submit that Government should have taken note of this fact and that they should have come to the conclusion early that the character and motive of the men who are accused of a crime should count in judging what treatment should be extended to them. (Hear, hear.) They will of course receive the punishment that they may have earned for any act of violence. But even in dealing out punishment to them, the Courts and the Government have yet to remember that they are not ordinary criminals who are prompted by sordid personal motives. This is the first mistake that the Government made. They failed to give due consideration to the fact that these men who have been brought together for trial at Lahore are men of high ideals, and possessed of a high sense of national self-respect. They are not persons who wanted to run away from the trial. Not one word has been said throughout the discussion to the effect that any of these men wanted to run away from or avoid or delay the trial. They had specific grievances in relation to their treatment as under-trial prisoners and they stated them in letters addressed to the officers of Government. The first of these letters that I have before me is the one which was addressed by Bhagat Singh. It was written on 17th June. What did he say in it? The letter was addressed to the Inspector General of Prisons, Punjab. He said :

“ I have been sentenced to life transportation in connection with the Assembly bomb case, Delhi, and I am obviously a political prisoner. I got special diet in Delhi jail, but since my arrival here, I am being treated as an ordinary criminal. Therefore, I have gone on hunger-strike since the morning of June 15, 1929. My weight has decreased by 6 lbs. less than my weight at Delhi jail in these two or three days. I wish to bring to your kind attention,”

note the word “ kind ”,

“ that I must get special treatment as a political prisoner, my demands being special diet (including milk and ghee, rice and curd, etc.), no forcible labour, toilet (soap, oil, shaving, etc.), literature of all kinds (History, Economics, political, science, poetry, drama or fiction, newspapers). I hope you will *very kindly* consider what I have said and decide favourably.”

The second letter was from B. K. Dutt. He wrote :

"I want to let you know and the higher authorities that I demand the following things on the ground of being a 'political prisoner'. After the bomb incident in the Assembly, Lord Irwin in his last speech said that, 'these bombs were not directed towards any individual but towards the institution'. Again Mr. Middleton in his judgment mentioned that, 'These persons (Dutt and Bhagat Singh) used to enter the Court with the cries of "Long live Revolution", "Long live proletariat", etc., which shows clearly what sort of political idea they cherish. In order to put a check in propagating these ideas I transport them for life.'

Again I must mention that when a European breaks an ordinary law in order to fulfil his selfish motive, he gets all kinds of privileges in the jail. He will get well ventilated room with electric fittings, best food (such as milk, butter, toast, meat, etc.), and good clothing, while we politicals are deprived of such things. The comments of Lord Irwin and Mr. Middleton are sufficient to prove that we are politicals, and on this ground I demand that we (Bhagat Singh and Dutt) should be treated as politicals. I must get better food as it is necessary to keep a man's health."

He does not want it for the love or pleasure of it.

"At the same time I must get all kind of literature and newspaper in order to discuss the different politics. People call us rash, misguided and impatient youths. So we must be given a fair chance of studying the various books in order to see that whether we are really impatient, misguided youths or not, whether our line of work is wrong or right. My demands are as follows :

- (i) better food, including loaf and milk in morning, rice, dal with ghee and vegetable and curd and sugar in the noon, and bread, meat and chatni at night,
- (ii) no labour,
- (iii) all kinds of literature and newspapers,
- (iv) toilet, including soap, oil, comb and barber, etc.,
- (v) better accommodation,
- (vi) civil dress.

I used to get all these things in Delhi jail before and after my conviction from the jail expenses. But here I am deprived of all those things, that is why I have begun hunger-strike since 14th June 1929. My comrade Bhagat Singh in Mianwali jail is also on hunger-strike for these very reasons, and I will not give up my hunger-strike till the Government accedes to our (I and Bhagat Singh) demands.

Expect an early reply and will gladly discuss over this matter with any Government officer who ever comes to me."

I ask the House to note the attitude of these two young men as disclosed in these letters. They show how anxious they were to have the matter considered in a humane way by those who were in power. What response did the Government make? What did Government do in response to these appeals? I want to know if Government made any response to these requests that these two young men had made. I find a third letter was addressed on 8th August, 1929, by Gopal Singh, B.A., "Kaumi", special class prisoner, Mianwali jail, to His Excellency the Governor of the Punjab. He said :

"I beg to bring the following facts to your notice."

It is a long letter and I will not read the whole of it. He said in it :

"The position and the treatment of the political prisoners has been the subject of discussion since a very long time. Times and again protests in various forms and ways have been made to demonstrate their resentment against the

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cruel, humiliating treatment to which the political prisoners are subjected, and the racial prejudice which keeps the machine of the law and the force of the Government pitched against them. The political prisoners after all are not actuated by selfish motives of personal gain, avarice, rivalry, jealousy or enmity. They are the people who, affected by the special conditions of their country and inspired by the divine motive of love, devote their lives to sacrifice, service and suffering. They are what Jesus Christ said: 'The salt of the earth,' and if the powers-that-be have their reasons to differ from their ideas or actions it is enough to put them in detention. But it does not behave the powerful party to ill-treat, disrespect, humiliate or insult them. The Government ought to treat them honourably and respectfully as is the case in all civilised countries inhabiting the surface of the globe. An example of how the political prisoners are treated by the civilised Governments is furnished by France.....'

After reciting the facts of the case which I omit, the letter proceeded :

'That is the latitude given and the treatment shown to political prisoners in those countries. But here in India we find that, contrary to this, the political prisoners are paid special attention in jails, victimised, maltreated and insulted.

In the great years of the non-co-operation movement as a result of the pressure from the public a 'special class' was created.....'

Then he gives a description of the special class prisoners, and continues :

'Now, every political prisoner, be he special or ordinary is given the following diet which is given to the ordinary criminal :

(1) wheat flour during the summer for six months, (2) mixed wheat and gram flour during the six months of winter, (3) bad, rough and inferior vegetables from jail fields in the morning, (4) dal of mash or mong, or grams or moth or masur in the evening, (5) one-fourth chhatak of oil in all for both the meals, (6) parched grams two chhataks for the breakfast.'

'Accommodation : There is no special arrangement. They are kept in the ordinary barracks and unventilated, small and narrow cells. At night they have to use those very cells as latrines and urinals. They have no fans, no special kitchen arrangements they are given. No beds are provided for them. Their beddings consist of ordinary and rough blankets and they have to sleep on earthen berths called khadis. No shoes are supplied to them. Their clothings consist of ordinary shirts whose sleeves do not cover the arms till the wrists but stop short at the elbows, pyjamas which do not cover full legs. They are given only one chhadar which is taken back during the winter and that too is not long enough to cover the body while sleeping. The warm shirts which are supplied to them during the winter are ugly ones which deform him and make him look like a bear. The Sikhs whether political or ordinary prisoners are not supplied pyjamas even in the winter.'

'As compared to this an ordinary European prisoner surely of a lower type and actuated by mean selfish motives and convicted of theft, fraud, pick-pocketing, rape, adultery, desertion and (or) murder is given the following diet : bread, butter and tea for the breakfast in the morning. Half a seer meat to be cooked daily. Rice for dinner. Bread, meat and vegetables in the evening. Besides superior and costly vegetables like peas, dhingri, cabbages, turnips, and potatoes are specially bought for them from the bazaar.'

'Besides this food arrangement special European wards well comparable to bungalows are specially built for them. In Lahore where generally all European prisoners are kept, the buildings are furnished with electric lights and fans. A separate kitchen, a separate store room, a separate dining room furnished with benches and tables is provided to them, and an arrangement for games like tennis is made. Every European prisoner is provided with an iron bed and a decent bedding and every room for them is furnished with a long table. They get canvas shoes, good shirts, trousers and hats are provided for them, and in winter they are given decent warm pantaloons and coats. They get soap, brushes, trays, table lamps and other necessities of life. This is the vast difference in

the treatment accorded to an ordinary European prisoner and a political prisoner. This surely is galling and disgusting".

Then he goes on to say :

"The Government instead of taking a hint of the nation's feeling from it has launched on a policy of repression and has started cases against the dying hunger-strikers as if hunger-strike was not itself a sufficient suffering. As examples of this in the Borstal Institute, Lala Ram Krishan has been sentenced to two months' rigorous imprisonment for this so-called offence, and here our comrade Master Kabul Singh 'Gobindpuri' who is on strike since the last 19 days, has been proceeded against under this very section, and his case is still going on. This is pouring oil over troubled waters (Sic) and (adding) insult to injury. We could not long remain silent spectators of this and the attitude of the Government has forced me to join the grim struggle and throw my life in danger. I therefore had no course left to me but to go on hunger-strike. Accordingly I am on hunger-strike from Sunday, i.e., the morning of the 4th of August, 1929".

Now, Sir, I ask the Honourable Member and the whole House to consider how very reasonable the attitude of these young men was. I am not here to vouch for the truth or the accuracy of everything which the writers of these letters have said, but I take it that the statements made by them of the differences in treatment are fairly, if not quite, correct. And, I again ask every Honourable Member of this House to consider how very reasonable the attitude of these young men was. Is there any word in it to show any contumacy? Is there any word in it to show that they wanted to delay their trial or to defeat justice? Is there anything to suggest that they were playing a "dirty trick",—which one of the previous speakers degraded himself by ascribing to them today? There is nothing of the kind. They are honourable young men, prompted by a desire to free their country, as every honest and honourable man ought to desire to free his country. They are therefore prompted by the very best of motives. They are men of education, possessed of very high ideas, and therefore when they are required to stand their trial, they do stand their trial. They do not want to run away from it. They are willing to take the consequences of the action upon which they have embarked. But they do want fair treatment as under-trials and as political prisoners. That is the main ground of their contention. It is that principle for which they have suffered. It is that for which one of them has sacrificed his life.

Sir, the Honourable the Home Member and his Secretary laid much stress upon the fact that Bhagat Singh and Dutt asked that Jatindra Nath Das should be unconditionally released. But at what period did they ask that Jatin Das should be unconditionally released? It was certainly not at the very commencement of their hunger strike. Dutt commenced his hunger strike on the 14th June; he addressed a letter within a day or two to the Government. Bhagat Singh commenced his hunger strike on the 15th June; he addressed a letter to the Government on the 17th June. Another prisoner addressed a similar letter later on when he joined the hunger strike. I ask the Government, what action did they take upon these letters? Was it not the duty of the Punjab Government and the Government of India to consider the requests made in them and either to explain to the writers why the differences they complained of were upheld, if there was any justification for them, or to accede to their demands? If the Government had acceded to their requests, the fatal deplorable time would not have come when Jatin Das was brought near unto death. It was during that long period which preceded it that Government failed to

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do their duty, that the Government of the Punjab ignominiously failed to respond to the appeals of these young men, which they did there utmost to enforce by undergoing the intense suffering of a long continued hunger strike. But the Government remained callous. After the under-trials had undergone much suffering, the Punjab Jail Inquiry Committee happened to come to certain conclusions regarding the treatment of political prisoners. They thought they should intervene to end the hunger strike. It was not the Government of the Punjab which showed any anxiety to end the hunger strike. The Punjab Jail Inquiry Committee went to interview the under-trial prisoners at Lahore; they told them that their demands would be conceded; they told them that they had seen the Governor and that their demands had been agreed to by him, and they were thereby induced to abandon or suspend the hunger strike. It was at this stage, Sir, that knowing that Jatin Das was dying Bhagat Singh and Dutt asked that Jatin should be unconditionally released. It was not at any earlier stage that they made that demand. It was at the last stage when the Government by their callousness and failure to do their duty as human beings had allowed Jatin Das to reach that hopeless condition, when Jatin Das had been brought to the door of death, it was then that these young men—Bhagat Singh and Dutt—urged that Jatin Das should be unconditionally released. Was it wrong of them to do so? They showed themselves more humane in making that request than Government showed themselves in refusing it.

Mr. President : Order, order.

Pandit Madan Mohan Malaviya : Sir, may I have a minute or two more?

Mr. President : I am afraid I cannot allow the Honourable Member to proceed further.

Mr. Amar Nath Dutt (Burdwan Division : Non-Muhammadan Rural) : Sir, I rise to offer my tribute of tears to the memory of the great departed. We have today met in this House not like on other occasions. We have assembled here today under the shadow of a great national calamity. I wish the Government had the heart to feel instead of being callous to all our sufferings and keeping us in bondage. But it is idle to expect any sympathy from the Government in our struggle for freedom and emancipation from bondage, though this struggle for freedom on the part of the MacSwiney of India ought to have appealed at least to generous-minded men and lovers of freedom. I do not yield to anybody in my appreciation of the candour and honesty of that gentleman named Sir James Crerar, but I have no faith in the candour and honesty of Sir James Crerar as Executive Councillor, for he is the limb of a vicious system which wants to keep one-sixth of the human race in subjection.

Sir, I charge Government with murder of Jatindranath Das, who laid down his life to vindicate the elementary right of political prisoners in India. Government knows of what material these young men are composed of and you will pardon me, Sir, if I remind you of a story of the first Indian Governor, who said that it was Barin's bomb that had given him his special saloon and made him Governor of a province. It is not all the political agitation, all the vociferation which we make here that they are afraid of. They know what we are worth and they prize us at our proper value. But they

know that these men who risk their lives, who would die from day to day and inch by inch, these men who have imbibed in their own lives the immortal teaching of the Geeta :

“ Achchhediyam adahyoyam aklediyoshosha eba cha.”

These men who have imbibed in their heart of hearts this teaching, they are the real dangers of such inhuman institutions as foreign rule in Aryavarta, the sacred land of the five rivers where the Rishis of old preached the highest philosophy and practised in life the highest religion and culture, which is still the admiration of the world.

Sir, I characterise the Government of India and the Government of the Punjab as so many murderers, or how could they remain so callous and indifferent when the Angel of Death was flapping its wings within the hearing of these light-hearted revellers ? There is no court of justice to sit in judgment over them in this world and I do not know whether they believe in their religion, whether they believe in the teaching of Christianity that a day of judgment will come one day. If they do not believe, as I take it, they do not believe, and it is not a Christian Government that we have in this country, still they will have to appear before the bar of history and humanity as murderers, and the day will come when they will have their dues.

Sir, I charge them as murderers. Why ? Because this was an avoidable calamity : they could have avoided it, but they would not. I am reminded of a saying that those whom the Gods want to destroy, first deprive them of their senses. This is one instance of that, and I shall live in that hope, that after depriving the Government of their senses they will precipitate their end and that end is coming.

Sir, the sufferings of these hunger-strikers have been viewed with such callous indifference by Government that they ought to be ashamed ; at least they ought not to have used language which at this moment would have hurt the feelings of Indians. If they had real statesmanship in them, they would have acted otherwise. All these doings of the Government of India and of the Punjab Government, their callous indifference to the sufferings of these young men, show that they want to carry on the administration without the least consideration of the feelings of those whom they happen to rule in this country, and that they will not have any voice raised against their actions and misdeeds ; but that every one of us should submit to whatever they might do and that we must applaud and at times give our sanction to such legislation as they may be pleased to bring forward. I warn them that they should not expect this. They ought to have taken their lessons from the year 1905, the year of the partition of Bengal. But, Sir, it is useless for us to point out the path they should follow in such cases, because I know that they will not follow the righteous path, for robbers and freebooters do not do so, neither do murderers. I only remind them in the words of one of their poets which I read when I was a boy of eight or ten, with slight variation :

“ England shall perish, write that word in the blood she has spilt,

Perish hopeless and abhorred.

Deep in ruin as in guilt.”

And I beg to conclude with the prophetic words of our own poet, Rabindra-nath :

“ Bhojha tor bhari hole

Dubbe tarikhan.”

[Mr. Amar Nath Dutt.]

“ The vessel will sink when the load of sin is great.”

Let me tell you to your face that you are destined to be drowned for your sins of omission and commission and “ *tor dhwaja dhulaê lutbê* ”. “ Thy flag will be laid in the dust.”

Sir Denys Bray (Foreign Secretary) : Sir, I decline to follow the last speaker. His outrageous language I shall treat with the contempt that it deserves. After his fire and fury it is indeed time that the still small voice of reason, of reasoning, of reasonableness should be heard. Ordinarily I should shrink from such a debate ; partly because under the shadow of a tragedy one's spirit is subdued to the silence of thought, partly also because, as Foreign Secretary, I have long held myself aloof from controversy in this House that I might assist in the insensible growth of a tradition that shall keep foreign affairs out of the dust and distortions of party politics. But today I feel that there is a duty upon me. For amongst other failings I am cursed with a defect which will for ever handicap me in party politics. There is upon me the curse of inability to see one side of the question only and to remain blind to the other. There is in me an impulse to see both sides and to try to draw both to a practical unity. And whatever the perplexities of this most unhappy business, one thing surely stands out, stark and clear, and that is that there are and have been two sides and that both clamour for recognition. (Hear, hear.)

I, Sir, have no more knowledge of it beyond what you and I have read in the papers, or you and I have heard during the debates. But across the history of hunger-striking it is writ large that this self-torture can only be self-imposed by those who—whatever *God's* judgment on their cause may be—themselves believe in the fiery justice of it. There is left in me not a shade of a shadow of a doubt that this unfortunate young man has gone to his death for a cause in which he burningly believed. And we are told that the blood of the martyrs is the seed of the Church.

But look at the other side. The blood of the martyrs is surely a very slippery foundation on which to build your Halls of Justice. Look at Government's position,—faced with the discovery of a newly-invented *lacuna* in the law, with a *theoretical* possibility of the paralysis of the whole legal system, confronted with demands for immediate and far-reaching jail reforms—revolutionary some of them in character, some of them possibly beyond Government's direct control—on pain and penalty of the ultimate self-destruction of under-trial prisoners in their jails. Now, Sir, let me confess it. It was not until I heard that these demands went far beyond under-trial prisoners, and were to extend to men convicted of most brutal and abominable crimes under the cloak of politics, that I myself realised how impossible it was for Government to announce a summary acceptance of them, and how essential it was that Government should at once institute a searching inquiry with Local Governments into the whole of this most difficult and complex question. And I was reminded, as one of the speakers spoke, of one obvious difficulty—the very defining of what is a political offence. An offence, so it would seem from what he said, is political so long as it is not actuated by purely selfish motives. Are we to treat with such leniency those ghastly murders which have in times past been so frequent on the Frontier ? Are we to treat the Ghazi, actuated as he is by a motive at least as high as patriotism, actuated as he is by a mistaken belief in the dictates of his very *religion*—are we thus to treat *him* ?

Given, Sir, these two aspects of the case, is this motion not strangely mistimed, utterly belated? We knew these facts, you, Sir, and I, and the whole House, the very day we met. If it is a practical aim we have in view, ought not this motion to have been brought at the very first hour of our very first meeting, when we knew that this unhappy life was hovering on the brink, and knew also that Government were seeking every possible road out of the tragedy? Of course, if the aim of this motion is not practical but sentimental, the matter is very different. But let me not be mistaken. I myself regard sentiment as one of the greatest forces in the world, one of the most potent forces for good,—unregulated, a very potent source of danger in public life. Now, there is perhaps scant danger in allowing sentiment full play in a small homogeneous community or small homogeneous State, for its homogeneity is itself a potent counteracting force. But India,—India, this microcosm of nations and races and cultures and religions, so various and so varying in sentiment,—can India dare give sentiment full play on its march to its future? I cannot conceive it.

I am again free to admit that, to banish sentiment at the dictates of practical wisdom, would be equally dangerous. And drawing as I am to the close of the span of my allotted time, this would be the way I should attempt to bring the two aspects to a practical unity; this would be for me the conclusion and the consolation of the whole matter. From out this tragedy must spring a stirring of the conscience, of people and Government alike, that shall lead on to a searching scrutiny into the whole philosophy of our jail régime. (Applause.)

Several Honourable Members: Let the question be now put.

Mr. G. L. Winterbotham (Associated Chambers of Commerce: Nominated Non-Official): Sir, I should like to say that I fully realise the feelings of Honourable Members in this House on the matter which is now under consideration, and it will be my endeavour, in the very few words which I propose to say, to avoid any possible word which can in any way embitter those feelings (*An Honourable Member*: "Already embittered")—feelings which are already embittered—I fully realise it,—and to abstain from any utterance which can be described in any way as provocative.

Honourable Members will probably realise that much the easiest course for myself, a non-official European, in this matter would be to sit silent and at the end of the discussion to record what the Honourable Mr. Jayakar so aptly described the other day as a silent vote. But I feel, and those other Members of the European Group for whom I am speaking also, feel that, as an independent group in this House, our attitude might be open to misinterpretation unless we explained very briefly how we stood. As we see it, Sir, we find it impossible to believe that any Government, not entirely bereft of its senses, could possibly provoke a controversy of this magnitude without having first explored every possible avenue by which it could have been avoided. That would apply even if we were not in a particularly important stage in the history of this great country. And can it be honestly held by any Member of this House that the present Government would be likely to present to the opposing political parties a plank of this magnitude and of this importance if they had been able to find any way out of their difficulty without sacrificing principles which they felt must at all costs be upheld? That, Sir, was the first thing which occurred to us in our consideration of this question. And we have come to the conclusion, from all

[Mr. G. L. Winterbotham.]

that we have heard from the Government Members and from all that we have been able to discover by our own inquiries—and here I should like to emphasise that whatever Honourable Members may think of this small Group, we are independent, we are not tied to Government and we do, to the best of our abilities. . . . (*An Honourable Member* : “ Question ”.) (*Another Honourable Member* : “ Vote with us ”.) Sir, I have already made it plain that it is impossible for this Group to vote with them, and let me tell my Honourable friends that we have come to the conclusion that in this matter Government have not incurred the blame of this Honourable House. It seems to us, as I was saying, from all that we have heard and from our independent inquiries, which in spite of interruption of Honourable Members, are still independent. (*An Honourable Member* : “ Protesting too much ”)—we are not tied to the Government. . . . (*An Honourable Member* : “ Government are tied to you ”). . . . our conclusion is that Govern-

5 P.M.

ment have throughout been actuated by, what I have always understood was, another basic principle of the law, which I do not think has been referred to—I am not a lawyer—namely, the greatest good of the greatest number. I believe that it would be wrong for responsible people in this House to take up the attitude that Government have been deaf to the call of humanity and have instituted this legislation purely against individuals (*An Honourable Member* : “ Which legislation ? There is no legislation before the House now ”.) I was talking of the legislation which was before the House early in the afternoon. It is not before the House now. In these circumstances I should like to make it perfectly plain that we do not consider Government blameworthy, and we feel it our duty to accord our support to this Government just in the same way as, under similar circumstances, we should feel it our duty to accord our support to any other Government; if we happened to be represented in any Assembly under a new constitution, composed of Honourable Members who sit on the opposite side of the House today.

Sir Purshotamdas Thakurdas (Indian Merchants' Chamber : Indian Commerce) : I rise to speak on this motion after careful consideration and I support the motion before the House. I fully agree with the Honourable the Foreign Secretary that the subject before the House is one of a very grave character, and I feel that nothing should be said or done by this House on this occasion which can possibly put a premium on crime from whatever motive it may be committed. It is one tragedy that the House deplores by this motion ; but there is one more tragedy behind this tragedy, which to a certain extent clouds the issue, the main principle for which the late Mr. Jatindra Nath Das gave his life. It is to my mind a great pity that it was Bhagat Singh, the person who was responsible and guilty of throwing a bomb in the House at Delhi, who took up this cause and ran to the point that he did. I feel that nothing should be done here by responsible non-official representative Members which can possibly make it felt by young men outside that they have only to do something in a similar direction in order to be styled martyrs. Although I do not lag behind my other Honourable friends here in appreciating the sacrifice Mr. Jatindra Nath Das has made and the strong will-power he must have had when he went through the pangs of starvation to death, I do feel that it is up to this House, and especially to the non-official side of the House, that nothing which is said or done today will give the younger generation, with perhaps

lesser equipment than Das, a stimulus to make experiments in this direction. If therefore, Sir, I rise to support the motion before the House, it is for another reason. It is for the purpose of telling the Treasury Benches candidly and frankly that, while I am against putting a premium on crime, from whatever motive it may be committed, we will not stand any vindictiveness which they may show in their policy towards prisoners who are styled political prisoners. I stand out, for that Sir, and I stand out firmly. No more humiliation should be piled on these unfortunate, misguided young men than that piled on them by the Criminal Procedure Code and the sentences of the Courts. I feel that it is up to every self-respecting Indian, whatever his political creed, frankly to say to Government on this occasion, that while we are anxious to avoid the contagion spreading, we are more anxious still that Government should not give any more cause to these misguided men by their repressive policy, for which, it may be, the subordinates and the Provincial Governments are directly responsible, but for which the fullest responsibility must eventually be taken by the Treasury Benches opposite.

Sir, I have in my hand a copy of a letter which Bhagat Singh wrote in June last to the Inspector General of Prisons. His requests have been mentioned before the House several times—special diet, no forcible labour, toilette, literature of several kinds, history, political economy, etc. These are the four things which he asked for. I understand that the Government of India, after protracted consideration, did eventually grant these requests. (*Honourable Members* : "No, no".) I speak subject to correction. If they did grant any of these requests, it is up to Government to tell us today whether they granted these requests to the fullest extent, or if partially, to what extent. Further what I would like to know is what prevented them from granting these requests at an earlier stage to avoid a tragedy which not only we deplore but the Treasury Benches also, as the Home Member has told us today, deplore equally and sincerely. That, to my mind, is an issue on which I would like information. I would also like Government to realise that however much they may dislike these crimes done with political motives, if the atmosphere which the policy of the Government has created during the last few months— even a year—continues, nothing can put a stop to these efforts of our young men, except a substantial change in that policy. Until then, it is up to law-abiding citizens of India, to see that our young men are not misled by anything that we may say here.* It is still more incumbent on the Treasury Benches to secure that they shall not provoke these men to any action of this nature. None, Sir, regrets the unenviable position of the Government today more than a person like me, belonging to the Indian mercantile community. But what we feel is that the Government have not been either responsible to us or responsive to any suggestions, requests, or appeals which we have made in the past ; and it does touch the bottom of the hearts of Indians when they find that a young man of 25 was so stirred, misguided or not, as in every sense of the word, to have sacrificed his life for what he thought was due to him. We need not necessarily endorse the aspect of his case which could not be investigated. In fact, as far as this prisoner was concerned, he was under-trial. I suppose he will not now, after death, be considered in legal parlance to have been guilty. The Government Benches and my friends on the Benches on my left should not be surprised if Indians in this House one after the other get up to say that Government should take adequate steps to ensure that nothing further of a provocative nature is done in this

[Sir Purshotamdas Thakurdas.]

direction until the political situation settles down. I repeat, therefore, Sir, that the lesson of this motion is, at least, as far as I am concerned, that, while Government have all the powers they need for the purpose of dealing adequately with these misguided youths—(*An Honourable Member* : “What? Not misguided”.) I mean misguided in the eyes of Government. Let them not go out of their way a single inch more to pile any extra humiliation on or put any further handicap on these unfortunate men.

I am told that it is very difficult for Government to decide who are actuated by political motives and who are not. I am aware that at times some of these men are so carried away that they do take to methods which are extreme. But at the same time, for practical purposes, it can not be difficult for the Executive to understand who are the men who are actuated by the moral turpitude of the ordinary criminal and who by a high purpose such as impulsive patriotism. And I repeat that if this lesson is taken by the Treasury Benches here, this motion before the House will not be in vain.

Several Honourable Members : The question may now be put.

Mr. H. W. Emerson (Home Secretary) : Sir, after speaking the day before yesterday at inordinate length on the subjects raised in this debate, I hoped that I had finished with the subject ; and I deplore as much as any Member of this House the circumstances which have disappointed this hope. I find it a little difficult to reconcile some of the arguments advanced on the other side of the House. At one time I find that it is the personal position of the hunger strikers, their personal demands that are put forward, and Government are asked, “Why did you not satisfy those demands?” At another time I find that it is the political issues and racial discrimination that are put forward,—the treatment of political prisoners and the racial discrimination shown against them. To my mind the issues are inseparable. From the moment that Bhagat Singh wrote the letter from the Mianwali Jail dated June 14th, the question was not one of personal demands ; it raised the general issues. For myself I have never had any doubt that the young man whose death we deplore was ready to sacrifice and did sacrifice his life for a cause which he believed to be just. His determination to die, his steadfast refusal to take food or help from his friends rendered it particularly difficult for them to deal with his case. But, Sir, as the Honourable the Home Member has indicated, during his life he was the first to recognise that the jail officials and the medical attendants—and in particular I would mention Dr. Chopra—had done everything that was humanly possible in order to save him. Whatever may be the responsibilities which you think Government did not discharge, it is only fair to the medical and jail officials to recognise, as I am sure will be recognised, that no part of the blame attaches to them. Now, Sir, it has been asked, why was there this delay in taking action ? As I have said, it was clear from the first that the demands of the persons concerned could not be isolated from the general demand. (*An Honourable Member* : “Why not ?”) (*Mr. M. A. Jinnah* : “From a general demand for what ?”) For the better treatment of political prisoners and the removal of racial discrimination. Now, Sir, issues of that nature are very properly brought before Government by the force

of public opinion. They are discussed in the Provincial Councils and on the floor of this House. Unfortunately there are very few of our institutions which are perfect ; there are few in regard to which an under-trial prisoner would not be able to point out that something was wrong—something wrong with our land revenue system, something wrong with the constitutional form of Government—something wrong in our jail administration. (*An Honourable Member* : “ There is certainly something wrong in the Punjab ”.) And if, Sir, the principle on which Government are to act is that, whenever an under-trial prisoner puts forward demands on the ground that some institution is defective, that the defects should be put right, Government should take immediate action without any inquiry, then, Sir, I do not think it would be possible for any system of Government to continue. I have said that we do recognise that Jatindra Das died for a principle. It seems to me that the present situation has arisen out of a clash of principles. It is assumed that the Punjab Government and the Government of India have pursued a course out of perversity and blindness to the consequences and in disregard of all feelings of humanity. It would have been an easy course for them to take the path of least resistance, to have accepted the demands as soon as they were made, and thus to have avoided the odium and the bitterness of feeling which the course taken was bound to produce. If with their eyes open—and I can assure the House that for the last two months the situation produced by the hunger-strikers at Lahore has been the cause of the gravest anxiety to the Punjab Government and to the Government of India,—and knowing what the consequences might be, they pursued a certain course of action, I think Honourable Members of the House can believe that they did it because they believed in a principle.

Several Honourable Members : What principle ? Is it the principle of prestige and racial discrimination ?

Mr. H. W. Emerson : The principle was that Government, as trustees of their successors....

Several Honourable Members : Whose trustees ?

Diwan Chaman Lall : That would do for the Punjab Government ; it will not do for the Legislative Assembly.

Mr. H. W. Emerson : The principle was that Government, as trustees of their successors and of society, could not yield to a demand of this kind, involving as it did very great issues, without a thorough examination of the question by the Local Governments who were primarily concerned. Sir, I have been in close touch with the Punjab Government for the past few months and I know the deep concern of the head of the province in this matter. I know he has taken every course short of the sacrifice of what is regarded....

Mr. President : Order, order : the Honourable Member should not bring in the name of the head of the province.

Mr. H. W. Emerson : Every effort has been made by the Punjab Government and the help of non-officials has been elicited in order to find a solution. That solution, I hope, will be found. I must have made myself singularly obscure day before yesterday if the interpretation put upon some of my observations is the one that was conveyed to the House by my Honourable friend Mr. Jayakar. I realise most keenly that there

[Mr. H. W. Emerson.]

are problems to be solved, that public opinion is resentful of the treatment of certain classes of prisoners and that it is offended by the differentiation between Europeans and Indians. I believe those questions are questions which demand solution, and I believe that as a result of the examination by Local Governments, we shall be on a very long way towards a satisfactory solution. I would ask Honourable Members, as I asked on Thursday, if the event which we deplore is to have a practical result—and surely that is the best memorial you can give to the deceased,—to press their views and to ask their friends to press their views on Local Governments.

Pandit Madan Mohan Malaviya : And allow many more young men to die in the interval.

Mr. President : Order, order.

Mr. H. W. Emerson : Sir, the Punjab Government have already appointed their Committee and that Committee has come to its tentative conclusions. Some members of it went down to Lahore. The concessions which they tentatively proposed were given from the day the hunger-strike was stopped, about the 7th September, to the under-trial prisoners. And in the letter that my friend Mr. Keane read, Lala Dunichand, who is a member of the Committee, says, in effect to the hunger-strikers, that they went on hunger-strike to get certain demands of prisoners recognised; that the committee had come to provisional conclusions, that the Punjab Government and the jail officials had given effect in anticipation to those recommendations so far as those prisoners were concerned and that the prisoners had expressed themselves as satisfied. The Honourable and learned Pandit asked, I think, when was a solution going to be found? In reply, I would say that the effect of the inquiry carried out by the Punjab Government has been recognised by a member of the Sub-Committee, a member who I do not think is ordinarily prejudiced in favour of Government, to be satisfactory. I myself see no reason why in regard to other provinces the results should not be equally good and why we should not, within a few months or sooner, if possible, arrive at a satisfactory conclusion. There will be no delay on our part in finding a solution of these questions which are so much disturbing the public mind.

Mr. K. O. Neogy (Dacca Division : Non-Muhammadan Rural) : Sir, I do not think that an Honourable Member who speaks for the second time in this House is entitled to the consideration and courtesy that he is entitled to when he speaks for the first time. Sir, when Mr. Emerson was speaking the other day and today, I seemed to have been transported back to 1919, when from my seat in the Visitors Gallery of the old Imperial Legislative Council at Simla I listened to the debate on the Punjab atrocities. At that time, doughty Punjab officials, worthy predecessors of the Honourable gentleman who has just sat down, tried to defend an indefensible case. No doubt, the O'Dwyers and Dyers have left the shores of India, but, if at any time it is necessary for the Government to put into practice the policy which was initiated by them in those days, I have no doubt that Government will not want for officers of the proper stamp to carry that out. Sir, Mr. Emerson said that the hunger-strikers did not put forward a demand for the redress of their personal grievances. All honour to them that they did not, that they had the

courage to stick out for the redress of general grievances. I think they deserve our tribute of respect for the fight which they have put up in the interests of a great principle for which they are fighting. I may tell Mr. Emerson this, that in putting forward that general demand, they have the fullest support of the non-official Indian section of this House. The Honourable Member said that, "Here was a clash of principles". Certainly a clash of principles, when the Honourable Member is not prepared to yield on the question of racial discrimination. Certainly this clash of principles will continue so long as officials of the stamp of Mr. Emerson continue to be in India. The Honourable Member said that this matter of hunger-strike had been the greatest concern, not merely of the Punjab Government, but also of the Government of India. May I know from the Honourable Member as to why it is that the situation in the Punjab alone had been attracting so much attention of the Home Department of late? In reply to a question which was put by my Honourable friend Kumar Ganganand Sinha the other day relating to under-trial prisoners who have gone on hunger-strike in the different parts of India, the Honourable the Home Member said that particulars only of the Punjab cases were available, and as for the rest of India, the Government had no information and were awaiting replies from the Local Governments. There must be something peculiar to the Punjab cases that they had attracted this much of attention at the hands of the Government of India. When I say this, I am reminded of certain statements that appeared in the Press to the effect that these under-trial prisoners used often to be told that they had better remember that this was the Punjab. Is it because this was happening in the Punjab that the Government of India had been taking so keen an interest in the matter?

As an unworthy representative of the province which has been honoured by the birth of Jatindra Nath Das, I wish to pay my tribute of respect and homage to the memory of that illustrious son of Bengal. Sir, no word of regret that may be expressed on the floor of this House will restore Jatin Das to life. Sir, I know another illustrious son of Bengal is at this very moment on the point of death in similar circumstances. I refer to Satindra Nath Sen, a name which is a household word in Eastern Bengal, an illustrious patriot, a selfless worker in the cause of the country, who is not unknown to many of us here. Sir, he has been on hunger-strike for about 114 days now, with a very short interval. How is it that the Government of India do not possess any information about that matter? Sir, it is not for any heinous offence that he is being tried. He has been rotting in jail for the last four months awaiting trial of a proceeding under section 110 of the Criminal Procedure Code. Repeated applications for release on bail made were turned down. Impossible conditions have been laid down by those in authority, for sureties. The latest telegram that I hold in my hand says this:

"The Magistrate considers all unfit to control, prayer for reduction of surety from twenty thousand rejected."

When sureties are brought forward, the first objection taken is that they have not sufficient financial standing. When solvent people come forward this lack of financial standing cannot hold good; it is then said, "You cannot control the movements of this man". And what is the present condition of this man? One of the latest telegrams about his condition appeared in the Press a few days ago. According to that

[Mr. K. C. Neogy.]

report, the condition of Satindra Nath Sen is worsening from day to day, and he is determined to die if his grievances are not redressed. The latest one which appeared in yesterday's paper says that he remained unconscious for some time and it was with difficulty that consciousness was restored. What are the grievances of Satindra Nath Sen? The Honourable the Home Member does not know; perhaps he does not care to know. But from the papers that I have in my possession it seems that he also is fighting for a very noble cause and he is prepared to lay down his life for it.

Mr. President : Is he in the Lahore jail?

Mr. K. C. Neogy : He is not. But this case illustrates the callous policy that has been actuating the Government in dealing with political prisoners generally, and that is my only excuse for referring to this particular case.

Several Honourable Members : The question may now be put.

Mr. President : Pandit Motilal Nehru.

Pandit Motilal Nehru : I do not wish to say anything.

Mr. President : The question is :

“ That the Assembly do now adjourn.”

The Assembly divided :

AYES—55.

Abdul Haye, Mr.
Abdul Matin Chaudhury, Maulvi.
Aney, Mr. M. S.
Ayyangar, Mr. M. S. Sesha.
Belvi, Mr. D. V.
Bhargava, Pandit Thakur Das.
Birla, Mr. Ghanshyam Das.
Chaman Lall, Diwan.
Chunder, Mr. N. C.
Das, Mr. B.
Das, Pandit Nilakantha.
Dutt, Mr. Amar Nath.
Farookhi, Mr. Abdul Latif Saheb.
Haji, Mr. Sarabhai Nemchand.
Hans Raj, Lala.
Iyengar, Mr. A. Rangaswami.
Jamnadas, Seth.
Jayakar, Mr. M. R.
Jinnah, Mr. M. A.
Jogiah, Mr. V. V.
Kartar Singh, Sardar.
Kelkar, Mr. N. C.
Kidwai, Mr. Rafi Ahmad.
Kunzru, Pandit Hirday Nath.
Lahiri Chaudhury, Mr. D. K.
Lalchand Navalrai, Mr.
Malaviya, Pandit Madan Mohan.
Mehta, Mr. Jamnadas M.

Misra, Mr. Dwarka Prasad.
Mitra, Mr. S. C.
Moonje, Dr. B. S.
Mukhtar Singh, Mr.
Munshi, Mr. Jehangir K.
Murtuza Saheb Bahadur, Maulvi
Suyyid.
Naidu, Mr. B. P.
Nehru, Pandit Motilal.
Neogy, Mr. K. C.
Pandya, Mr. Vidya Sagar.
Phookun, Srijut T. R.
Purshotamdas Thakurdas, Sir.
Rafique, Mr. Muhammad.
Rang Behari Lal, Lala.
Rao, Mr. G. Sarvotham.
Sarda, Rai Sahib Harbilas.
Shervani, Mr. T. A. K.
Siddiqi, Mr. Abdul Qadir.
Singh, Kumar Rananjaya.
Singh, Mr. Gaya Prasad.
Singh, Mr. Narayan Prasad.
Singh, Mr. Bam Narayan.
Sinha, Kumar Ganganand.
Sinha, Mr. Bajivaranjan Prasad.
Sinha, Mr. Siddheswar Prasad.
Triloki Nath, Lala.
Yusuf Imum, Mr.

NOES—47.

Abdoola Haroon, Haji.	Mitter, The Honourable Sir Brojendra.
Abdul Aziz, Khan Bahadur Mian.	Mukharji. Rai Bahadur A. K.
Abdul Qaiyum, Nawab Sir Sahibzada.	Mukherjee, Rai Bahadur S. C.
Abdullah Haji Kasim, Khan Bahadur Haji.	Mulla, Mr. D. F.
Ayengar, Mr. V. K. Aravamudha.	Noyce, Sir Frank.
Bajpai, Mr. R. S.	Pai, Mr. A. Upendra.
Bower, Mr. E. H. M.	Phillip, Mr. J. Y.
Bray, Sir Denys.	Porter, Lieut.-Colonel L. L.
Chalmers, Mr. T. A.	Price, Mr. E. L.
Chatterjee, The Revd. J. C.	Rainy, The Honourable Sir George.
Cosgrave, Mr. W. A.	Rau, Mr. P. R.
Crerar, The Honourable Sir James.	Roy, Mr. K. C.
Dakhan, Khan Bahadur W. M. P. Ghulam Kadir Khan.	Roy, Mr. S. N.
Emerson, Mr. H. W.	Sarma, Mr. R. S.
Ferrers, Mr. V. M.	Schuster, The Honourable Sir George.
French, Mr. J. C.	Singh, Rai Bahadur S. N.
Ghazanfar Ali Khan, Mr.	Stevenson, Mr. H. L.
Gidney, Lieut.-Colonel H. A. J.	Stewart-Smith, Mr. D. C.
Hira Singh, Brar, Sardar Bahadur, Honorary Captain.	Sykes, Mr. E. F.
Jawahar Singh, Sardar Bahadur Sardar.	Tin Tut, Mr.
Keane, Mr. M.	Tottenham. Mr. G. R. F.
Lindsay, Sir Darcy.	Winterbotham, Mr. G. L.
Mitra, The Honourable Sir Bhupendra Nath.	Yakub, Maulvi Muhammad.
	Yamin Khan, Mr. Muhammad.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Monday, the 16th September, 1929.