5th February1930

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OF THE

THIRD LEGISLATIVE ASSEMBLY, 1930

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Legislative Assembly.

President :

THE HONOURABLE MR V. J. PATEL.

Deputy President :

MAULVI MUHAMMAD YAKUB, M.L.A.

Panel of Chairmen :

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MR. M. A. JINNAH, M.L.A.
SIR DARCY LINDSAY, KT., C.B.E., M.L.A.
SIR ZULFIQAR ALI KHAN, KT., C.S.I., 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.

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LEGISLATIVE ASSEMBLY.

Wednesday, 5th February, 1930.

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

QUESTIONS AND ANSWERS.

PROSECUTIONS FOR DISAFFECTION AGAINST INDIAN STATES.

232. ***Dr. B. S. Moonje:** (*a*) Will Government be pleased to state the entire procedure adopted in giving sanction to prosecutions under the Indian States (Protection against Disaffection) Act of 1922?

(*b*) On whose initiative is the matter started and what channels does it pass through before the final sanction of the Governor General in Council is accorded?

(*c*) Is the whole material for a prosecution submitted to the Law Officers of the Crown and their opinion in writing taken before the final sanction?

(*d*) Who represents the Crown in these cases? Is it a fact that outside persons not in Government service and not under Government control are allowed to represent the Crown in these cases? If so, why?

(*e*) Who pays the cost of these prosecutions?

(*f*) Who selects the place where a prosecution is launched, and on what considerations?

Mr. E. B. Howell: (*a*), (*b*) and (*c*). On receipt through the Political Department of an application on behalf of a Ruling Prince or Chief for authority to institute proceedings under section 5 of the Act, the Governor General in Council obtains the advice of the Law Officers, which is recorded in writing after examination of the whole material before them, and if he is satisfied that there is ground for thinking that a prosecution is justified, sanction to prosecute is accorded.

(*d*) Where the Governor General in Council is of opinion that the case is one in which the Government of India should launch a prosecution, the services of the Public Prosecutor would ordinarily be employed. In cases in which the complaint is filed with the authority of the Governor General in Council, it is for the complainant to make his own arrangements for representation.

(*e*) The complainant.

(*f*) The complainant. The complaint must be filed in a Court having jurisdiction under sections 177 and following of the Code of Criminal Procedure.

Dr. B. S. Moonje: May I know, Sir, who makes the first complaint and who looks to the first complaint before the Viceroy gives his sanction?

Mr. E. B. Howell: May I ask the Honourable Member kindly to repeat his question?

Dr. B. S. Moonje: I want to know who makes the first complaint and who looks into it to see that it is *bonâ fide* before the Viceroy gives his sanction for prosecution?

Mr. E. B. Howell: Presumably the person who makes the first complaint is the person who feels aggrieved, and the complaint is brought to the notice of the Viceroy through the officers of the Political Department, who deal with the relations of the Government of India with the particular State from which the complaint came.

Dr. B. S. Moonje: Is it a fact that the complaint first goes to the Political Agent of the State and afterwards to the Agent to the Governor General, and then through him it goes to the Viceroy?

Mr. E. B. Howell: I imagine, Sir, that would be the normal course of procedure. I have no definite information.

Mr. B. Das: With reference to the reply to part (*j*) of the question, will the Honourable Member please state whether the Court where the prosecution takes place will be in the town where the paper is published or will it be in a town which the Prince suggests?

Mr. E. B. Howell: The place where the trial is held is governed by the ordinary rules of the Code of Criminal Procedure on the subject.

Dr. B. S. Moonje: Is it a fact that in similar previous cases the cases were tried in the place where the papers were published?

Mr. E. B. Howell: If the Honourable Member would mind waiting till the next question is answered, I can tell him where as many prosecutions as there have been under this Act have taken place.

Dr. B. S. Moonje: Why I ask the question now is because it arises from part (*f*) of my main question as to how the place was selected in this case?

Mr. E. B. Howell: Which case, Sir?

Dr. B. S. Moonje: The present case.

Mr. E. B. Howell: I am not aware to which case the Honourable Member refers.

Dr. B. S. Moonje: The case in which Mr. Diwan Singh Maftoon, Editor of the *Riyasat* is being prosecuted?

Mr. E. B. Howell: That case is still pending. It was first tried in . . .

Dr. B. S. Moonje: I want to know how the place for prosecution was selected. Is there any procedure for selecting the place for prosecution?

Mr. E. B. Howell: Well, Sir, that question does not arise out of the present question.

PROSECUTIONS FOR DISAFFECTION AGAINST INDIAN STATES.

233. *Dr. B. S. Moonje: Will Government be pleased to furnish the information required in the following table showing details in each of the cases instituted under the Indian States (Protection against Disaffection) Act since its coming into force:

1	2	3	4	5	6	7	8
Year of the case.	The Prince in whose interest the prosecution was launched.	The name and details of accused.	The place of publication of paper if the accused was a Newspaper Editor.	Government Officer or other Gentleman with full description who represented the Crown.	Total costs incurred in the prosecution.	Who paid the costs in the case.	Result of the case.

Mr. E. B. Howell: With the Honourable Member's permission, may I lay this on the table? It is rather a complicated thing to read out, but I will read it out if the Honourable Member wants me to do so.

Dr. B. S. Moonje: It would be better if the Honourable Member would read out his statement, because it would help us to put certain supplementary questions if necessary.

Mr. E. B. Howell: I should be sorry to disappoint the Honourable Member.

Mr. President: Is it a long statement?

Mr. E. B. Howell: Yes, Sir.

Mr. President: Is it a very long statement?

Mr. E. B. Howell: That much, Sir.

Mr. President: I think the Honourable Member might read it out.

Mr. E. B. Howell: The particulars required are as follows:

Year of the case.	The Prince in whose interest the prosecution was launched.	The name and details of accused.	The place of publication of paper if the accused was a Newspaper Editor.	Government officer or other gentleman with full description who represented the Crown.	Total costs incurred in the prosecution.	Who paid the costs in the case.	Result of the case.
1	2	3	4	5	6	7	8
1. (*a*) 1927.	His Highness the Maharaja of Patiala.	Santa Singh, Editor, Printer and Publisher of the *Sachcha Dhandhora*.	Amritsar .	The Government Advocate and Public Prosecutor, Amritsar.	Particulars are not known but enquiries are being made and the Honourable Member will be informed.	Government.	Accused sentenced to three months' simple imprisonment.
(*b*) 1928 .	Do. .	Dalip Singh, Editor, Printer and Publisher of the *Sachcha Dhandhora*.	Do. .	The Public Prosecutor, Amritsar.	Do. .	Do. .	Do.
2. 1929 .	His Highness the Nawab of Bhopal.	Nawazish Ali Khan, Editor, Printer and Publisher of the *Taqat*.	Delhi .	The Public Prosecutor, Delhi.	Rs. 1,033-2-0	Do. .	Proceedings withdrawn after apology by Defendant.
3. 1929 .	Do. .	Diwan Singh Maftoon, Editor of the *Riyasat*.	Do. .	..	I have no details as to the total cost.	..	The suit is now pending.

Dr. B. S. Moonje: If in previous cases the places where the prosecutions were launched were the places where the papers were published, what special reasons were there for changing the place in the present case?

The Honourable Sir Brojendra Mitter: In Criminal Law, wherever a paper is published, the Court of that place has jurisdiction. Publication does not mean printing. If a paper is circulated in five different districts, then the paper is published in each of these places, and a prosecution might be launched in any of these places.

Dr. B. S. Moonje: If the two papers in the previous cases were prosecuted in the place where they were printed, why was it that, in the present case, the prosecution was launched in a different place?

Mr. E. B. Howell: What reason has the Honourable Member for saying that the prosecution was not brought in the place where the paper was published?

Dr. B. S. Moonje: I said printed.

Mr. E. B. Howell: I gather that it was in Delhi all along.

Dr. B. S. Moonje: I could not catch the Honourable Member.

Mr. E. B. Howell: I ask what reason the Honourable Member has for saying that the prosecution was in one place, while the printing of the newspaper was in another?

Dr. B. S. Moonje: So far as my information goes, the paper is printed in Delhi.

Mr. E. B. Howell: And the case is being tried in Hoshangabad.

Dr. B. S. Moonje: It is being tried in Hoshangabad?

Mr. E. B. Howell: The case is still pending. Does the Honourable Member wish to press his questions?

Dr. B. S. Moonje: I do not know if there are any special reasons for trying this case in Hoshangabad even though the paper is printed in Delhi.

Mr. E. B. Howell: I am not aware of any special reasons.

Dr. B. S. Moonje: Then I suppose it is only a matter of autocratic choice as to the place to be selected for trying the case, irrespective of the fact that the printing and publishing establishment and office of the paper be somewhere else.

The Honourable Sir Brojendra Mitter: The choice of forum always lies with the complainant.

Munshi Iswar Saran: Will the Honourable the Law Member try to understand the object of the question of my Honourable friend? It is perfectly open to the prosecutor to select his own forum, but the point is why that particular forum was selected. It is a question of policy and not of legality.

The Honourable Sir Brojendra Mitter: If a prosecution is launched in a court of competent jurisdiction, then it is perfectly in order, but why a complainant chooses place "A" instead of place "B", that is for the complainant to answer.

Mr. B. Das: Is the Honourable Member aware that, at the time of the passing of the Princes Protection Act, an assurance was given by Sir William Vincent that there would be an appeal to the High Court? In the present case of Hoshangabad, there is no appeal to a High Court.

Mr. E. B. Howell: I think an identical question has been put down for future answer.

Mr. Abdul Haye: Are the Government aware that, in the past, highly defamatory statements have been published against His Highness the Maharaja of Patiala in certain papers, especially the *Riyasat* and the *Akali*? Have the Government considered this matter, and will the Honourable Member be pleased to state why no prosecutions were launched against these papers?

Mr. President: I do not think that question arises from this.

Munshi Iswar Saran: Will the Honourable the Law Member kindly state the reason why the prosecutor in this case selected that forum? It is perfectly open to the prosecutor to select the forum he pleases, but we wish to know the reason why that particular forum was selected, and the prosecutor should give an answer to the members here who want to elicit the information.

The Honourable Sir Brojendra Mitter: I have already answered that question. It is for the complainant, who is generally the aggrieved person, to choose his forum. I understand the aggrieved person in this case is His Highness the Nawab of Bhopal. It is for him to answer that question, not for us.

Pandit Thakur Das Bhargava: Was this forum chosen with a view to . . . .

Mr. President: The Honourable Member has stated that it is the Nawab of Bhopal who is the complainant and it is not for the Government of India to answer.

Mr. Vidya Sagar Pandya: Did the Nawab of Bhopal select that forum?

Mr. President: How can the Government of India answer that question?

Mr. Abdul Haye: Did he apply to the Governor General?

Mr. E. B. Howell: I have no information. I must have notice of that question.

Pandit Hirday Nath Kunzru: When sanction for the prosecution is asked for, is the place where the complainant wishes the case to be tried also stated?

Mr. E. B. Howell: I imagine there is no general rule.

Pandit Hirday Nath Kunzru: The Honourable Member speaks on behalf of the Political Department here. Will he tell us what the practice is?

Mr. E. B. Howell: It cannot be said that there is a general practice when there have been only four cases since the Act was passed.

Pandit Hirday Nath Kunzru: What has been the practice in those four cases?

Mr. E. B. Howell: Will the Honourable Member give me notice of that question?

Pandit Hirday Nath Kunzru: With pleasure.

Mr. M. S. Aney: Was there any communication between the Nawab of Bhopal and the Political Department before this case was instituted in the Court at Hoshangabad?

Mr. E. B. Howell: I must ask for notice of that question also.

RECRUITMENT OF INDIAN TRADE COMMISSIONERS.

234. ***Mr. Sarabhai Nemchand Haji:** (*a*) Will Government be pleased to state whether continuity of personnel is one of the grounds for confining the selection of Trade Commissioners to Government services? If so, do Government propose to take guarantees from the officers appointed as Trade Commissioners that for the remaining period of their service with Government they will not seek employment in other branches of Government where their prospects would probably be better?

(*b*) If not, will Government please state how else the recruitment from the services will lead to continuity?

The Honourable Sir George Rainy: (*a*) and (*b*). It is certainly desirable to secure reasonable continuity of personnel in the appointments of Trade Commissioners, and probably this result might be more easily achieved by the appointment of officials than of non-officials. Government do not think that any special measures will be necessary to ensure continuity if officials are appointed, but they will consider the suggestion made.

Mr. Sarabhai Nemchand Haji: What has led Government to believe that recruitment from among non-officials will lead to a want of continuity?

The Honourable Sir George Rainy: I have not said so. What I said was that probably continuity might be more easily secured by the appointment of officials than of non-officials.

Mr. Sarabhai Nemchand Haji: Will the Honourable Member accept my statement that probably equal continuity could be achieved by taking men from the non-official side?

Mr. President: That is a question of opinion.

RECRUITMENT OF INDIAN TRADE COMMISSIONERS.

235. ***Mr. Sarabhai Nemchand Haji:** (*a*) Will Government please state the difficulties in the way of the realisation of the whole scheme of Trade Commissioners in a shorter period than the one contemplated?

(*b*) Have Government received any protest from commercial bodies before or since the publication of the scheme under which the recruitment of Indian Trade Commissioners will be confined to the services?

The Honourable Sir George Rainy: (*a*) The difficulties are mainly financial.

(*b*) A representation has recently been received from the Indian Merchants' Chamber, Bombay, on the subject.

CARRIAGE OF MAILS TO COX'S BAZAAR.

236. *Mr. Anwar-ul-Azim: (a) Will Government be pleased to state whether it is a fact that the Postal Department is not allowing the Bengal Burma Steam Navigation Company at Chittagong to carry the mails to Cox's Bazaar?

(b) Is it a fact that the income of the Department has undergone a great diminution since a non-official agency has been carrying letters and messages to Cox's Bazaar and other islands of that area?

Mr. H. A. Sams: (a) No. Negotiations between the Bengal Burma Steam Navigation Company and the Postmaster General Bengal and Assam, on the subject are still in progress.

(b) No.

RESIDENCE IN THE POST OFFICE BY THE SUPERINTENDENT OF POST OFFICES, CHITTAGONG DIVISION.

237. *Mr. Anwar-ul-Azim: Will Government be pleased to state how much money was realised by Government from the Superintendent, Post Offices, Chittagong Division, who was transferred to Sylhet, for using the office as his home, referred to by Mr. Rogers in reply to my questions during the last Simla session of the Legislative Assembly?

Mr. H. A. Sams: It is not clear to which of his questions the Honourable Member is referring. But the Postmaster General, to whom the question was sent, reports that Rs. 62 were recovered from the salary bill of a Superintendent for January 1929. If the Honourable Member will give more precise details of his question, further information will be obtained and communicated to him.

RECENT APPOINTMENTS AND PROMOTIONS IN THE SECRETARIAT.

238. *Pandit Hirday Nath Kunzru: (a) Will Government be pleased to state whether any posts, permanent or temporary, have been created in the Secretariat since the 31st March, 1929? If so, what are their designations and salaries?

(b) Will Government be pleased to state whether the salaries of any of the existing posts in the Secretariat have been increased since the 31st March, 1929? If so, to what extent have they been raised?

(c) If the answer to parts (a) and (b) be in the affirmative, will Government kindly state what is the additional expenditure that will be incurred in the current year?

The Honourable Sir James Crerar: Yes. The information is being collected and will be supplied to the Honourable Member in due course.

PERIOD OF OFFICE OF THE FINANCIAL COMMISSIONER OF RAILWAYS.

239. *Pandit Hirday Nath Kunzru: With reference to the reply given to starred question No. 461 regarding period of appointment of officers of the Finance Department, on the 11th September, 1929, will Government be pleased to state whether they have fixed the period of office of the Financial Commissioner of Railways?

The Honourable Sir George Rainy: Before arriving at a decision regarding the tenure of the Financial Commissioner of Railways, Government thought it desirable to obtain the considered opinion of the new Chief Commissioner, Mr. Russell. That opinion is now before Government, and it is hoped that a decision will be reached at an early date.

Mr. K. C. Neogy: How is it that this matter did not engage the attention of Government before this?

The Honourable Sir George Rainy: I think, Sir, that I said when I answered the Honourable Member's question last September that the omission appears to have been accidental.

Mr. K. C. Neogy: Accidents do happen on railways?

Pandit Hirday Nath Kunzru: If the omission was only accidental, why was it necessary to consult the new Chief Commissioner of Railways on a settled question of policy?

The Honourable Sir George Rainy: Because, Sir, on important matters one likes to have the opinion of one's constitutional adviser.

Pandit Hirday Nath Kunzru: In a matter of this kind will Government decide the question, or will they be guided by the opinion of the Chief Commissioner of Railways?

The Honourable Sir George Rainy: The Chief Commissioner of Railways is the adviser of Government on all important questions affecting the organisation of the railways.

Pandit Hirday Nath Kunzru: May I ask what was the point on which the opinion of the Chief Commissioner of Railways was invited? Was it with regard to the tenure of the Financial Commissioner, or was it with regard to his permanent occupation of his office?

The Honourable Sir George Rainy: As regards the tenure of the Financial Commissioner.

Mr. K. C. Neogy: Having regard to the fact that the Financial Commissioner has also some relation with the Finance Department, is the opinion of the Finance Department also being obtained in this matter?

The Honourable Sir George Rainy: Naturally the Finance Department are very closely concerned in this matter.

Mr. K. C. Neogy: Has the opinion of the Finance Department been obtained in this matter?

The Honourable Sir George Rainy: A decision has not yet been arrived at. The matter is under consideration by myself and by the Honourable the Finance Member.

Pandit Hirday Nath Kunzru: Is the Finance Member deferring his decision till he receives the opinion of the Chief Commissioner of Railways?

The Honourable Sir George Rainy: The answer I have given is the answer on behalf of the Government of India and not on behalf of a particular Department.

Pandit Hirday Nath Kunzru: Are the Government of India in this matter represented by the Railway Department or by the entire Executive Council?

The Honourable Sir George Rainy: The decision will be the decision of the Government of India, in which both the Railway and the Finance Departments will participate.

REQUISITION OF VILLAGERS TO GUARD THE RAILWAY LINE.

240. ***Pandit Hirday Nath Kunzru:** (*a*) Has the attention of Government been drawn to the statement published in the *Hindustan Times* of the 25th January, 1930, under the heading "H. E. the Viceroy's Safe Arrival—Villagers' Complaint"?

(*b*) If the answer to part (*a*) be in the affirmative, will Government be pleased to state if villagers were required by the executive authorities to guard the railway line at night and to perform other duties? If so, under what law was action taken?

(*c*) If the answer to part (*b*) is in the affirmative, will Government be pleased to state whether the villagers referred to in (*b*) were paid? If so, at what rate?

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

(*b*) It has been ascertained that no villagers were required to guard the railway line in the Delhi Province.

(*c*) The question does not arise.

Pandit Hirday Nath Kunzru: I did not say that, Sir. Did I say that it concerned the Delhi Province? The complaint referred to the action taken somewhere in the Bombay Presidency, probably when the Viceroy visited the Baroda State.

The Honourable Sir James Crerar: I understood the question referred to arrangements made in connection with the arrival of His Excellency's train at Delhi. If it refers to other matters, I should like the Honourable Member to give me notice.

Pandit Hirday Nath Kunzru: What is there in this statement to indicate that it was put with special reference to the arrival of His Excellency's train here. The statement in the *Hindustan Times*, to which I have referred, deals only with the question of guarding the railway train when His Excellency went to Baroda.

The Honourable Sir James Crerar: I understood the Honourable Member's question to refer to the arrival of the train at Delhi. If that was not his intention, I should be glad if he will give me notice of the specific particulars on which he desires information.

Pandit Hirday Nath Kunzru: The Honourable Member said his attention had been drawn to the statement which appeared in the *Hindustan Times*. If he has read that statement and not answered my question correctly, why should it be necessary for me to give notice again?

The Honourable Sir James Crerar: I have seen the article referred to, but the impression I derived from it was that it did refer specifically to the arrival of the train at Delhi.

Pandit Hirday Nath Kunzru: Would the Honourable Member mind giving me the correct information desired without any further notice?

The Honourable Sir James Grerar: The Honourable Member's question is of a general character and I should desire him to be somewhat more specific as to the particular information he required. If he will be good enough to do so, I shall endeavour to make inquiries and provide him with the information.

GRIEVANCES OF THE STAFF OF THE RAILWAY CLEARING ACCOUNTS OFFICE.

241. ***Mr. Muhammad Rafique:** (*a*) Is it a fact that a committee with Mr. Mitra as its Chairman was appointed by the Railway Board to frame detailed rules for fixing the seniority in different grades of subordinate establishment of the Railway Clearing Accounts Office?

(*b*) Are Government aware of the fact that the work of inquiry was carried out only by the Chairman of the Committee in the absence of other members?

(*c*) Is it a fact that Rai Bahadur Faqir Chand was throughout present when the members of the staff presented themselves before the Chairman to place their grievances, and are Government aware that there was great discontentment among the staff for this action of the Chairman, and that as a result of this a certain section of the staff (specially North Western Railway) boycotted the Committee as their grievances were generally against Rai Bahadur Faqir Chand?

(*d*) Do Government propose to appoint another committee to inquire independently into the grievances of the staff? If not, why not?

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

(*b*) The business entrusted to the Committee was conducted by it. The detailed investigation of representations made personally by the man on invitation to do so was made by the Chairman, as desired by the Committee at a preliminary meeting. The results of this investigation were placed before the Committee and accepted by them.

(*c*) Rai Bahadur Faqir Chand was present when the detailed investigations referred to were made. As far as the Chairman can ascertain, there was no discontent. Opportunity was offered to any member of the staff to see the Chairman alone and some availed themselves of it. The Committee were not boycotted.

(*d*) No. The Committee and the Chairman were absolutely independent of any influence.

APPOINTMENT OF MUSLIMS IN THE RAILWAY CLEARING ACCOUNTS OFFICE.

242. ***Mr. Muhammad Rafique:** Will Government be pleased to state whether there is a single Muslim in the Establishment and Procedure Sections of the Railway Clearing Accounts Office? If not, why not?

Mr. A. A. L. Parsons: Communal representation is not provided for in the rules of recruitment for each section of an office.

OPPOSITION TO THE CLEARING HOUSE EXPERIMENT AT LAHORE.

243. *Mr. Muhammad Rafique: (a) Will Government be pleased to state what the severe opposition was at the commencement of the Clearing House experiment at Lahore, as mentioned by Mr. Mitra in his report?

(b) Is it a fact that the staff was threatened to be bombed, and machines to be burnt down?

(c) If the reply to part (b) be in the affirmative, will Government be pleased to state what steps were taken, and whether the matter was reported to the police and if any departmental action was taken?

(d) If the reply to part (c) be in the affirmative, will Government be pleased to lay on the table a copy of the record proving these fears?

Mr. A. A. L. Parsons: (a) and (b). The opposition manifested itself in the shape of agitation in the Press, circulation of pamphlets containing wild allegations against the experiments, meetings held in the office of the Chief Auditor, North Western Railway, to dissuade the clerks from working for the experiment, and numerous anonymous letters threatening to burn the machines.

(c) The matter was not reported to the police, but precautions were taken to guard the machines by employing extra chowkidars and by allowing only reliable men to work the machines under strict supervision.

(d) If the records referred to are the pamphlets, anonymous letters and articles in the Press written four years ago, they are not available now.

RECRUITMENT OF THE STAFF OF THE RAILWAY CLEARING ACCOUNTS OFFICE.

244. *Mr. Muhammad Rafique: (a) Is it a fact that according to Mr. Mitra's report 150 men were recruited in the Railway Clearing Accounts Office as a portion of nucleus staff for special, educational and other qualifications?

(b) If the answer to part (a) is in the affirmative, will Government be pleased to state how many were recruited (i) for aptitude, (ii) for outdoor work, (iii) as being men from minority communities, and (iv) for special reasons?

(c) Will Government be pleased to state what are the criteria to find out that a man has the abovementioned qualifications when he is taken direct from outside?

(d) Will Government be pleased to state what the special reasons were which led Government to take these men?

(e) Will Government be pleased to state why there is not a single Muslim among (i) 11 Officers (ii) 8 Superintendents and (iii) 18 Assistant Superintendents of the Railway Clearing Accounts Office?

Mr. A. A. L. Parsons: (a), (b), (c) and (d). Yes, this number had to be recruited from outside as all the staff required for the Clearing House experiment office were not available from existing Audit and Accounts offices, and in doing this the rules of recruitment in force at the time were observed, with due regard to the requirements of the experiment.

(*e*) The Honourable Member is referred to the reply to a similar unstarred question (No. 202) asked by the Honourable Member, Mr. Abdul Haye, in the September, 1929 Session of the Legislative Assembly.

RECRUITMENT OF STAFF FOR THE RATES SCHEME IN THE RAILWAY CLEARING ACCOUNTS OFFICE.

245. ***Mr. Muhammad Rafique:** (*a*) What connection has Rai Bahadur Faqir Chand with the Rates Scheme?

(*b*) Is it one of Rai Bahadur Faqir Chand's duties to recruit men for this scheme?

(*c*) Will Government be pleased to state what will be the source of recruitment in this scheme? Will some examination be held as a qualification test or will recruitment depend on the choice of Rai Bahadur Faqir Chand?

Mr. A. A. L. Parsons: (*a*) Rai Bahadur Faqir Chand is in direct charge of the Rates Scheme.

(*b*) The recruitment is made under the direction of the Director, Clearing Accounts Office.

(*c*) Partly from the Clearing Accounts Office and partly from outside. No examination has been prescribed, as the appointments are purely temporary.

APPOINTMENT OF MUSLIMS IN THE OFFICE OF THE CONTROLLER OF RAILWAY ACCOUNTS.

246. ***Mr. Muhammad Rafique:** Will Government be pleased to state what is the procedure adopted in the competitive examinations held by the Controller, Railway Accounts? Have Muslims got to compete with Muslims or with others as well? Has any percentage been fixed for them, and if so, how many candidates were taken on communal grounds in the last examination as (i) clerks and (ii) accountants?

Mr. A. A. L. Parsons: The examination is open to all and is conducted according to rules framed with the approval of the Standing Finance Committee for Railways.

Muslims compete with numbers of other communities. No percentage has been fixed for them. Thirteen candidates, of whom four are Muslims, will be taken in as clerks on communal grounds as a result of the last examination.

No competitive examination is prescribed for accountants.

APPOINTMENT OF MUSLIMS IN THE OFFICE OF THE CONTROLLER OF RAILWAY ACCOUNTS.

247. ***Mr. Muhammad Rafique:** Will Government be pleased to state the total establishment of the Controller, Railway Accounts Office, and how many of them are Muslims?

Mr. A. A. L. Parsons: There are four officers, none of whom is at present a Muslim. Of the 46 permanent and temporary appointments, five permanent appointments are at present held by Muslims.

APPOINTMENT OF MUSLIMS IN THE OFFICE OF THE CONTROLLER OF RAILWAY ACCOUNTS.

248. *Mr. Muhammad Rafique: (a) Have Government always refused to give the figures about the staff of the Controller, Railway Accounts Office, on a communal basis in spite of the repeated demands made by the Members of this House, and in face of the fact that it has done so in other Departments of the Government of India? If so, why?

(b) If the answer to part (a) be in the negative, will Government be pleased to state the total strength of the staff of the Controller, Railway Accounts Office, in different grades and the number of Muslims therein?

Mr. A. A. L. Parsons: (a) and (b). The Honourable Member is referred to the answer to his question No. 247. Of the five Muslims, one is an accountant, one a stenographer, one a typist, and two are clerks.

UNSTARRED QUESTIONS AND ANSWERS.

REST HOUSES FOR RAILWAY GUARDS AT OUTSTATIONS.

149. Mr. Muhammad Ismail Khan: (a) Will the Honourable Member in charge of the Department of Industries and Labour kindly state if rest houses and attendants are provided for mail guards who are detained at outstations?

(b) Is it a fact that the mail guards of S./34 line S. Division, Eastern Circle, are being detained at the out-station at Patuakhali for nearly 24 hours since the 15th June, 1929?

(c) Is it a fact that no rest house or attendant has been provided at the out-station at Patuakhali and that the mail guards have been greatly inconvenienced and put to great hardship for want of an attendant and accommodation?

(d) Are Government aware that the mail guards arranged accommodation and conveyance of articles with a local shop-keeper?

(e) Is it a fact that the Superintendent, Railway Mail Service, S. Division, refused to sanction the monthly bills of hire of the shop-keeper which have been paid by the mail guards?

(f) Are Government aware that the local shop-keeper has turned the mail guards out of his room, one of whom sent a telegram to the Superintendent, Railway Mail Service, S. Division, for immediate arrangements?

(g) Is it a fact that the amount of telegraphic charge has been ordered to be recovered from the mail guard, but no arrangement for rest house has been ordered to be made by the Superintendent?

(h) Is it a fact that the Superintendent informed the mail guards that they had no right to occupy the rest house without his previous sanction?

(i) If the answers to the above questions be in the affirmative, will Government be pleased to state what notice, if any, they intend to take, of the action of the Superintendent?

(*f*) Have Government considered the question of the desirability of immediately ordering the arrangement of a rest house and attendant to the mail guards, S./84 at the out-station of Patuakhali and ordering the refund of the telegraphic charge if recovered and the payment of the shop-keepers' bills from July to December?

The Honourable Sir Bhupendra Nath Mitra: The reply to part (*a*) of the Honourable Member's question is in the affirmative. As regards the remainder of the question, Government have no information, but inquiries are being made of the Postmaster General, Bengal and Assam Circle, and the result will be communicated to the Honourable Member in due course.

HOURS OF DUTY OF SORTERS IN THE RAILWAY MAIL SERVICE.

150. **Mr. Muhammad Ismail Khan:** (*a*) Will the Honourable Member in charge of the Department of Industries and Labour be pleased to state the number of hours a sorter is required to perform (i) day duty, (ii) night duty and (iii) combined day and night duty?

(*b*) Is it a fact that the sorters in stationary Railway Mail Service offices are required to perform night duty on alternate days which means that they have to keep awake fifteen days in a month of 30 days?

(*c*) Is the sick list among the officers performing night duty in the Railway Mail Service heavy as compared with those working in the Post Office or other Departments of the Government?

(*d*) If the answer to part (*c*) be in the affirmative, have Government considered the question of the desirability of obtaining expert medical opinion on the point and of reducing the night duties by introducing a third set in all stationary offices?

The Honourable Sir Bhupendra Nath Mitra: (*a*) The duty which a sorter is ordinarily expected to perform in a week is:

In the mail van: 36 hours day duty, 30 hours night duty; or 33 hours combined day and night duty; while in stationary mail offices the hours are 49, 35 and 42, respectively.

(*b*) Yes. In those Railway Mail Service stationary offices which work at night and where there are only two sets.

(*c*) Government understand that night duty does not involve a heavy sick list because sorters working at night get more rest.

(*d*) Does not arise.

STATEMENT LAID ON THE TABLE.

REPORTS ON THE DAMAGE DONE BY FLOODS IN THE NORTH WEST FRONTIER PROVINCE AND BALUCHISTAN.

Sir Frank Noyce (Secretary, Department of Education, Health and Lands): Sir, I lay on the table the information promised in reply to starred question No. 941 asked by Mr. K. C. Neogy (on behalf of Mr. B. Das) on the 25th September, 1929, regarding the reports on the damage done by floods in the North West Frontier Province and Baluchistan in 1929.

Report on the Damage done by Floods in the North West Frontier Province.

Information has now been collected regarding the damage caused by the recent floods in the North West Frontier Province and will be found summarised in the four statements attached.

2. By reason of the nature and of the widespread extent of the damage in the areas most affected, the estimates framed, except in the case of the damage done to road communications and irrigation works, are of necessity only roughly approximate and in some cases are no doubt exaggerated, as for instance in the case of damage done to lands and standing crops, more so perhaps in the Dir and Swat States where the figures given are less susceptible of check. Even so, the figures serve to present a picture true enough in its main features of the very extensive and costly damage that has been done, from the effects of which, in many cases, it will take the province some considerable time to recover The total damage under the main heads is estimated as follows:

(a) Human life		121
		Rs.
(b) Damage to private property		93,27,154
(c) Damage to property of local bodies		57,000
(d) Damage to buildings and communications		14,12,558
(e) Irrigation works		2,10,200
	Total	1,10,06,912

3. *Hazara.*—The damage done in this district was to some extent, due to the heavy rainfall itself but chiefly to the consequent floods in the Haro, Daur, Siran, Kunar and Indus Rivers. In some villages large parts of the village lands were swept away and have completely vanished. There was, so far as can be ascertained no loss of human life. In addition, roads and buildings maintained by the District Board have suffered considerably and it is estimated that some Rs. 30,250 will be needed to make good the damage. A further sum of Rs. 10,000 will probably be required for repairs to minor irrigation works in this district.

4. With regard to the loss of buildings, nearly all the houses which collapsed were built of mud and, except in a few villages where lands together with the houses on them were swept away, materials for rebuilding are in the main still available. The loss, therefore, though considerable in the aggregate, is, if taken individually, comparatively slight. Such collapses are, moreover not infrequent in the Hazara District where heavy rains occur from time to time and the loss therefore is not so serious or abnormal as the figures might at first indicate.

5. *Peshawar.*—The damage in the Peshawar District was particularly confined to:

(1) The area of the Charsadda Tahsil bordering on the Swat River.

(2) The areas in the Nowshera and Swabi Tahsils situated on the Kabul River below Nowshera.

(3) Certain tracts of the Peshawar Tahsil on the banks of the Bara River, which also came down in exceptionally heavy flood.

A careful inquiry has been made into the damage caused to landowners and cultivators in these tracts. It will be observed from statement "A" that the total damage to private property is estimated at Rs. 23,21,431. The Deputy Commissioner considers that these figures are somewhat exaggerated, but that the abnormal damage caused may safely be estimated at between 15 and 20 lakhs. Much of the land which was submerged has been covered with sand and also broken up by freshly formed nullahs. Before, therefore, cultivation can again be undertaken considerable expenditure will be required.

6. The special damage due to floods and excessive rainfall to District Board works is approximately Rs. 10,000. A proportion of this will, however, be covered by annual repairs which would in many cases have to be undertaken. The district canal system suffered very heavily in the Bara area, where Rs. 8,000 will be required to repair the head works, and also in the Doaba-Sholgira canal and in the various drains recently constructed. The total damage to district canals is estimated at Rs. 20,000.

7. *Kohat.*—On the whole this district has suffered but comparatively slight damage and the loss in crops is far less than the benefit likely to accrue in dry areas. The damage to private property has been confined to the riverain tract. District Board property and minor irrigation works have, however, suffered to the extent of some Rs. 15,000.

8. *Dera Ismail Khan.*—Thanks to the timely warning given to the inhabitants of the riverain tract, the damage has not been so extensive as was at first feared. There was no loss of human life and the losses of livestock and property were comparatively slight.

9. Immediately on receipt of information that a very heavy flood was coming down the Indus, steps were taken to ensure that villages likely to be effected were evacuated in good time and that relief measures were available on the spot. The entire riverain tract was divided into six circles, each of which was placed in charge of a Revenue Officer, who was authorised to supply food and firewood to the more indigent victims of the flood. In the riverain area practically all the houses have been destroyed, but here, as in the Hazara District, the materials, are available on the spot and the work of re-building is already proceeding rapidly. The general feeling throughout the riverain tract is that the loss of houses and standing crops will be of comparatively little consequence, provided that a sufficiently liberal grant of "taccavi" for the "rabi" crop can be given, and it is hoped that the grants of "taccavi" that have been made on a generous scale will convert what might have been a calamity into a definite blessing for the district. The soil is in excellent condition for the "rabi" crop and considerable areas have been irrigated which had hitherto remained dry.

10. The protective bund at Dera Ismail Khan stood the test well, but there has been a good deal of scouring and other damage, and the bill for the repairs will be heavy. The damage to irrigation works represents chiefly the repairs which will be necessary to the Paharpur Canal and the Kot Hafiz Distributary.

11. *Malakand.*—The heaviest damage in the province, both in human life and in property, occurred in this Agency.

Heavy floods occurred in the Panjkora and Swat rivers on the 7th August. The bridges at Chutiatan and Darora were carried away and the traffic on the Chitral Road held up. The Balambat Suspension Bridge, built by the Nawab of Dir, was also carried away. At Chakdarra the Swat River rose six feet above the highest known flood level, protective bunds were breached and the road approaches to the bridge carried away, while the road from Jalawan to Chakdarra was flooded for two and a half days. The Chakdarra Levy Post was also destroyed. In the Swat area the road at Landaki has ceased to exist and heavy damage has been caused elsewhere to roads and bridges, including the bridge over the Swat river at Mingaora. Many acres of land and crops near the rivers have either entirely been carried away, or have come under mud and stones.

12. Up to the time of the flood, the promise of harvest was a good one, but nearly all the water channels have been damaged, and in places scour and a change in the course of the river have made it impossible to repair the channels. There was consequently some withering of crops due to the breakdown of the irrigation system.

13. *Relief.*—A sum of Rs. 15,000 was immediately placed at the disposal of the Deputy Commissioner, Peshawar, and steps were at once taken to provide emergent relief in the form of food, medical attendance and blankets to villagers in the affected areas. Relief funds were also opened at Peshawar and Dera Ismail Khan. An application has been made for a grant of Rs. 50,000, from the "Indian People's Famine Trust Fund" for the relief of cases of genuinely poor people who have lost their means of livelihood, and in addition an extra "taccavi" grant of Rs. 4,50,000 over and above the annual budget grant of Rs. 2,25,000 has been sanctioned by the Government of India.

"A".

Damage to Private Property.

	Human life.	Land.	Standing crops.	Buildings.	Water Mills.	Live stock.	Grain.	Other property.	Total.	Remarks.
		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	
Hazara . .	..	2,70,000	29,000	47,000	86,000	3,000	1,400	..	4,36,400	
Peshawar . .	..	..	18,85,387	3,46,930	12,908	3,881	9,357	(a)62,968	23,21,431	(a) (1) Household equipment 21,211
Kohat . .	..	..	..	7,000	..	..			7,000	(2) Feries destroyed . 2,200
Bannu . .	..	..	..	..	..	..	..	..	..	(3) Wells destroyed and
Dera Ismail Khan	..	..	9,355	64,085	..	12,395	51,657	9,260	1,46,752	demaged . 39,557
										62,968
MALAKAND.										
(a) Protected Area	3	7,84,000	2,15,200	43,700	4,700	440	..	..	10,48,040	
(b) Swat State .	113	18,58,800	1,80,320	2,28,900	42,300	4,311	..	(b) 4,70,000	27,84,631	(b) Roads and bridges . 30,000
										. Logs carried away . 4,40,000
(c) Dir State .	5	..	25,19,900	..	..	..		(c) 63,000	25,82,900	(c) Suspension bridge at Balambat . 23,000
										Destroyed live stock buildings and bridges. 40,000
Khyber . .	..	..	..	..	..	..	..	..	..	
Kurram . .	..	..	..	..	..	..	..	..	..	
North Waziristan .	..	..	..	..	..	..	..	..	..	
South Waziristan .	..	..	..	..	..	..	..	..	..	
Total .	121	29,12,800	48,39,162	7,37,615	1,45,908	24,027	62,414	6,05,228	93,27,154	

"B".

Damage done to Local Bodies' Property.

	Rs.
District Board, Kohat	10,000
District Board, Hazara	30,250
District Board, Peshawar	10,000
Local Bodies, Dera Ismail Khan	6,750
Total	57,000

"C".

Damage done to Buildings and Communications in the North-West Frontier Province.

Peshawar District.	41—Civil Works Central.	29-A.—Frontie Watch and Ward.	Total.
Peshawar Sub-District.	Rs.	Rs.	Rs.
Buildings	14,952	14,400	29,352
Communications	3,56,459	1,63,000	5,19,459
Hazara Sub-District.			
Buildings	20,500	..	20,500
Communications	4,57,000	..	4,57,000
Kohat District.			
Buildings	..	..	..
Communications	20,550	46,930	67,480
Waziristan District.			
Buildings	35,000	7,500	42,500
Communications	1,01,080	1,75,187	2,76,267
Grand Total	10,05,541	4,07,017	14,12,558

"D".

DAMAGE DONE TO IRRIGATION WORKS.

Major Works in charge of Irrigation Department.

	Rs.
Swabi-Division	9,000
Malakand Division	71,000
Lower Swat Canal	40,000
Loss on crops about	50,000

Minor Works in charge of Deputy Commissioners.

Peshawar Canals	20,000
Hazara Irrigation Works	10,000
Dera Ismail Khan Irrigation Works	5,200
Kohat Irrigation Works	5,000
Total	2,10,200

Report on the damage done by floods in Baluchistan in 1929

The floods occurred in the Nasirabad Tahsil of the Sibi District first about the middle of July, then during the latter part of August and again during the first week of September. The July floods broke the earthen *bund* round the Civil Station of Jhatpat, the Headquarters of the Nasirabad Tahsil, and did considerable damage to the Government buildings there. Private buildings are few. The Military Engineer Services, Baluchistan, were immediately asked to depute one of their experts to inspect the place and submit a report on the measures for preventing such damages, in future together with an estimate of the cost of such measures. An officer of the Military Engineer Services inspected the place and has prepared an estimate amounting to about Rs. 12,000 for making good the damages to buildings as well as repairs to the bund. This has been sanctioned.

The floods of August and September were due to sudden hill torrents of unprecedented volume coming down the Desert Canal and its distributaries. Owing to the unexpectedness of the calamity, no preventive measures could be taken before-hand but when the danger was known all the zamindars were warned and all available labour, which though not sufficient, was placed at the disposal of the Executive Engineer, Begari Canals, who was on the spot throughout, for the patrolling of the bunds and the closing of the various branches. As a result of these efforts, the flood water was distributed to the waste lands and danger to Jacobabad and as well as to the Nasirabad lands was greatly minimised. Apart from this, the Extra Assistant Commissioner, Nasirabad, in co-operation with the Military Engineer Services, strengthened the bunds protecting the Jhatpat Civil Station and took all possible steps to drain off flood water. As a result little or no additional damage was done to the buildings there.

Loans to cultivators and landholders are being freely given under the Agriculturists and Land Improvement Loans Acts for the purchase of seed grain and plough bullocks and for repairs to the bunds.

An officer of the Military Engineer Services visited Jhatpat Station and submitted a report on the damages done to the buildings and bund and their repairs. A copy of his report is attached.

The Desert Canal is in charge of the Executive Engineer Begari Canals, an officer of the Bombay Government who was on duty in the flood affected area throughout the critical period.

Report on damages done to Public Works Department buildings and protective Bund at Jhatpat.

On the 13th and 14th July, exceptionally heavy rains fell on a large area of the flat country on the north of Jhatpat and resulted in floods, which rushed towards Jhatpat. A portion of these floods broke the earthen bund which exists on all sides of the civil station and the bazar for the protection of the buildings. The breaches occurred on the northern bund, and water either flowed rapidly or kept standing near the buildings. A pool of water varying in depth from 1′ to 2′ 6″ was formed in whole of the town. The remaining portion of the floods ran alongside the western bund till it was obstructed by the banks of an old nullah which is abandoned and out of use. It then changed its direction, broke the south western bund at two places and entered the civil station. Both breaches of the floods ultimately breached the southern bund in two places and escaped gradually. Water kept standing in the civil station and the bazar for a week and did considerable damage.

The plinths of most of the buildings are low and are built in B. B. in mud. In certain buildings water rushed through and in others kept standing near the plinths. Mud mortor was softened and washed out from most of the joints of plinths. Some walls of certain buildings have entirely fallen down and some are undermined. Remarks on damages done to each building are given on the attached statement.

Average section of the existing bund is 8′ at the bottom 2′ at the top 18″ deep. This is not strong enough and is being increased to a section 13′-6″ broad at bottom, 3′ at top and 3½′ deep. The banks of the old nullah will be cut and levelled up to a length of 1,000′ to afford free passage to flood waters in future.

The cost of making good the damages to the buildings will be Rs. 6,000 and repairing the bund will cost Rs. 5,700 aggregating to a total sum of Rs. 11,700 to meet the requirements.

(Sd.) RIKHI KESH, R.S.,

for *Garrison Engineer, Civil and Outstations Division.*

Statement showing damages done to Buildings at Jhatpat.

I. Rest House Buildings.

1. *Servants quarters.*—Compound wall of servants' quarters in a state of collapse and requires rebuilding.

II. Hospital Building.

1. Compounders' quarters in a state of collapse and requires reconstructing.

2. *Ward servants quarters.*—Rebuilding front compound and latrine walls necessary.

3. *Female Ward.*—Repairing plinth and making plinth protection all round the building.

4. *Mortuary.*—Repairing plinth and making plinth protection all round the room.

5. *Male Ward.*—Repairing plinth and making plinth protection all round the building.

6 *Contagious Disease Ward.*—Rebuilding west side well, repairing plinth and making plinth protection all round the building.

7. Rebuilding portion of main compound wall which has fallen.

8. *Sub-Assistant Surgeon's quarters.*—Rebuilding purdah wall.

III. Police Buildings.

1. *Cattle pound.*—Rebuilding compound wall which has fallen and north west side wall of stables which is in a state of collapse.

2. *Single men's barrack.*—Repairing plinth and making plinth protection all round the buildings, and rebuilding drains for B. rooms.

3. *Sub-Inspector's quarters.*—Repairing plinth and making plinth protection all round the building.

4. *Stable for Sub-Inspectors.*—Repairing plinth and making plinth protection all round the building.

5. *Head Constables quarters.*—Repairing plinth and making plinth protection all round the building.

6. *Constable quarter.*—Rebuilding two side compound walls, 3 purdah walls, repairing plinth and making plinth protection all round the buildings.

IV. Tahsil Building.

1. *Tahsil Sweeper's quarter.*—Rebuilding compound walls and latrines.

1. *Tahsil Main Building.*—Under pinning back and west walls, and pillar of arches of verandah.

Under pinning west and south side walls of shed for water (Eastern).

Rebuilding west and south walls of shed for water (Western).

2. *Petition writer's shed.*—Repairing plinth and making plinth protection all round the building.

3. *Tahsildar and Naib-Tahsildar quarters.*—Repairing plinth and making plinth protection all round the building.

4. *Sweepers quarters.*—Rebuilding compound walls, and latrines which have fallen.

5. *Levy Muharrir quarters.*—Rebuilding front compound wall, and making plinth protection all round the building.

6. *Tahsil officials quarters.*—Rebuilding purdah walls and front wall of east side quarters, and underpinning back wall.

7. *Tahsil Menial quarters.*—Repairing plinth, and making plinth protection all round the quarters.

8. *Patwari and Topedar's quarters.*—Rebuilding sides, and front compound walls.

9. *Patwari and Topedar's stable.*—Under pinning compound wall, and rebuilding pillar of gate.

10. *Patwari and Topedar Office.*—Rebuilding east wall, and south west corner of verandah underpinning portions of other walls.

Statement showing damages done to buildings at Jhatpat—contd.

V. SCHOOL BUILDING.

1. *Boarding House.*—Rebuilding west side room, and portion of south and back walls. All are in a state of collapse.

2. Rebuilding compound wall.

3. *School.*—Making plinth protection all round the school building.

VI. LEVY BUILDINGS.

1. *Levy lines.*—Mangers require rebuilding.

2. *Levy Muharrir quarters.*—Rebuilding portion of a wall.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

(AMENDMENT OF SECTION 552.)

Pandit Thakur Das Bhargava (Ambala Division: Non-Muhammadan): Sir, I beg to move that the Bill further to amend the Code of Criminal Procedure, 1898 (Amendment of section 552), be referred to a Select Committee consisting of the Honourable the Law Member, Mian Mohammad Shah Nawaz, Mr. M. S. Aney, Mr. Abdul Haye, Mr. Rang Bihari Lal, Mr. Mukhtar Singh, Mr. Lalchand Navalrai, Raizada Bhagat Ram and the Mover and that the number of Members whose presence shall be necessary to constitute a meeting of the Committee shall be four.

Sir, the present section 552 runs thus:

"Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of fourteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary."

It would appear that abduction or unlawful detention by themselves will not bring the case of a female child or woman under the present law. To attract the provisions of this section it must further be proved that such abduction or unlawful detention was for some unlawful purpose. Moreover, the Courts empowered in this section are the Presidency Magistrate or the District Magistrate. Further, the cases of such women and female children are only provided for who have got a husband, parent, guardian or some other person having the lawful charge of such child. Then, again, the procedure adopted in this section is only to pass an *ex parte* order and set the persons in respect of whom these provisions are enforced at liberty. The present Bill is more extended in its scope and would empower not only the Presidency Magistrate or the District Magistrate with such powers, but Sub-Divisional Magistrates as well as Magistrates of first class especially empowered in this behalf. The persons who would come under the Bill are children under the age of 18 years and all persons, be they males or females. Thirdly, the words "for any unlawful purpose" are sought to be deleted, and, fourthly, the procedure which this Bill provides is quite different from the procedure which we find in the present section 552. The Bill provides that, as soon as such a complaint is made and an order is passed by the Magistrate concerned, he will send for the person for whose liberty he is out to make an order, and after hearing that person or any other person whom he desires to hear, the ultimate order shall be made by the Magistrate. As a perusal of this section will show, at present there

is no provision for orphans. This Bill makes a provision for those persons also who have neither a husband, parent, nor any other person to look after them.

These are the main changes which the second section of the present Bill seeks to make in the present law. The present Bill is divided into two parts. Clause 2 deals with the substitution of section 552, and a further provision under section 552A is sought to be made. As regards section 552A I would even at this stage submit that the purpose of that amendment is rather broad-based and, in the opinions that have been received that part of the Bill has been adversely criticised. I can give this undertaking, even at this stage, that if the Select Committee propose to delete that portion, I would agree to such a deletion, not because such provisions are unnecessary, but on the ground that the Government should bring in another measure, perhaps much more broad-based than the present one, and which may apply to the whole of India. At present there are provincial Acts which deal with a part of the subject covered by the present Bill; so far as they go they may be salutary, but they do not aim at the eradication of the evils which this Bill seeks to remedy. I have gone through these opinions that have been received on part II of the Bill, and I feel that the provisions of part II as they stand at present, are rather wide. I cannot however refrain from submitting to the House that those provisions can be so remodelled that the objectionable portion can be taken away and the rest can become part of the law. But if the Select Committee should decide that this subject is one for which a special law is necessary in the nature of a Children's Protection Act, I would even agree to such a course. Thus the opinions that have been received on this Bill are to be considered so far as clause 2 is concerned.

Now, Sir, so far as the principle of the Bill is concerned, I may deal with it shortly. I know that no person can take any exception to the principle of the Bill. The principle of the Bill, shortly stated, is this, that all unlawful detentions, all improper detentions, are such for which the law should provide a speedy remedy. Unlawful detention is by itself an evil and it is the business of the Legislature or the State to see that there is a handy and prompt remedy for such unlawful detentions. Whatever may be the purpose of the detention—the purpose is absolutely immaterial—detention by itself, if it is improper or unlawful, is an evil which ought to be remedied. Now, Sir, the principle is embodied in the *Habeas Corpus* Act of 1816, and a perusal of 56 George III Chapter 100, section 1, shows that the words there are, "any person confined or restrained of his liberty". So that I need not dilate on the principle involved. No Englishman will be true to the best traditions of his country if he wants to question even this principle. The whole of British constitutional history has been spun out on the basis of this principle. This principle has been recognised in the Criminal Procedure Code in three sections. Section 491 deals with this principle, and the High Courts are authorised to set persons at liberty in cases of improper or illegal detentions. Then section 100, where such a detention amounts to an offence, also provides a remedy. Barring these two sections, section 552 is the only section which provides a restricted remedy in cases of this nature. As I have pointed out, the persons in respect of whom such proceedings can be taken are restricted only to females under the age of 16 and women. Secondly, the Courts which are empowered are restricted and, thirdly, detention must be for an unlawful purpose. These are the

[Pandit Thakur Das Bhargava.]

restrictions. The question arises why these restrictions should be there. The reply that has been given so far is that, as section 491 provides for a summary remedy by the High Court, such a provision as the present one is unnecessary. The criticism received from the High Court of Calcutta is to this effect, that such provisions ought not to be made as give the subordinate Courts powers of this description. In the words of the opinion, "it will be an unwarranted interference with the liberty of the subject". I beg to submit before this House that, looking at it from a different angle, this is exactly the reason why there should be a change in the law. In a poor country like India where the average income of an Indian is Rs. 0-1-6, where railway connections do not exist for each and every village, and where it might happen that a case might occur hundreds of miles away from the High Court, does the existence of section 491 afford any the lest protection to a poor man? My humble suggestion is that, if the Presidency Magistrates and District Magistrates are competent to decide cases under section 304 of the Indian Penal Code and other sections, is the administration of a provision like that of section 552 so exceptionally difficult that they cannot be entrusted with powers under this section? These powers under section 491 may be powers in the interests of the rich people and in the interests of those who can reach the High Court. In the High Court the Court language is English and the law is so technical that, unless you engage counsel and pay them fees, it is beyond the reach of an ordinary man and of a poor man to be properly heard. If you want that the protection of the *Habeas Corpus* provisions be real and genuine in the case of poor Indians, it is absolutely necessary that it must be within the easy reach of every person to have recourse to the provisions contained in section 552, as amended by this Bill. I would therefore submit that, if it be conceded that the poor man needs protection, and I claim, Sir, that the poor man is entitled to greater protection, it would follow that, if there is a provision in section 491, there ought to be a provision in section 552 that the Sub-Divisional Magistrates and the Magistrates of the first class be specially empowered with the power of setting persons at liberty. In the case of second class or third class Magistrates there may be some reason for withholding such powers from them. I do not think it is too much to wish that in every taluqa, there should be a first class Magistrate specially empowered under this section, so that every person living in a particular taluqa may be able to avail himself of these provisions. It is very good to have these powers vested in courts on paper and to say to the world that Indians enjoy so much liberty, but in point of fact it will be interesting to inquire as to how many applications have been made by poor people by going to the High Courts. In my experience of about 20 years, I can submit that I have not known any ordinary village man taking advantage of this section. I submit that these provisions relating to the personnel of the magistracy—Presidency Magistrate and District Magistrate—should be enlarged, and there is a consensus of opinion in these opinions received on this Bill, nay almost all of them opine, that there should be a change in the law so far as the personnel is concerned.

Now, Sir, coming to the second part, as regards the question of unlawful purpose, I would submit that the opinions received are diverse. Some of the opinions are very clear in saying that these words should be

deleted. Others say that, having regard to the past history of this section, it is necessary to keep these words. When I made a motion in this House for the circulation of this Bill, I referred to a case reported as 16 Calcutta, page 487. With your permission, Sir, I will refer to that case again. In that case a Hindu girl of 14 years was taken to a Mission and subsequently her husband and mother applied to the District Magistrate under this section. The District Magistrate held that, in so far as the detention of the girl was against her will, it constituted unlawful detention, and as the purpose of that detention was conversion it was an unlawful purpose also. The District Magistrate consequently held that, as the case came within the ambit of section 552, the girl should be made over to the husband and the mother. Then the case went up to the High Court and the learned Judges of that Court held that the words "unlawful purpose" meant "immoral purpose", and as conversion could not be said to be an immoral purpose, the District Magistrate was not right in applying the provisions of section 552. It is true that the learned Judges did not in their discretion think it right to restore that girl to the missionaries again. Yet the interpretation of this section was that the words "unlawful purpose" would not cover a case of this nature. Now, Sir, in cases of this character where a Hindu girl is taken away by Christian missionaries or girls of any one religion are taken away by missionaries of different religions, generally religious hatred and fanaticism are excited, which lead to communal conflicts. Further, I do not think anybody would assert that boys and girls under the age of 18 should be forced to change their religion, or that even if they agree they should be allowed to change their religion before they arrive at an age of maturity or majority. I would therefore submit that these words, "unlawful purpose" have a meaning and, if the House will excuse me the expression, a sinister meaning. They impose a greater burden on the prosecution than it should be the policy of law to impose. Take the case of a brothel. A girl is found in a brothel, and as soon as the arm of the law reaches that girl and wants to set her at liberty, the defence of the prostitute mother comes in to the effect that she wants to adopt that girl, and then the District Magistrate or the Presidency Magistrate will have to decide whether this detention is for the purpose of adoption or for any other purpose. Instances can be multiplied in which unlawful detention for an alleged lawful purpose would certainly defeat the ends of law. The very words "unlawful detention" possess a meaning which is transparently clear. Unlawful detention as held by the Calcutta High Court clearly means detention against the will of the person detained or the will of those who are the guardians of that child. These words "for any unlawful purpose" should not be kept any longer in this section; and as a matter of fact, unless and until this provision of section 552 applies to cases in which the facts found do not constitute an offence, this provision clearly overlaps the provisions of section 100. The only difference between these two sections is that, whereas section 100 contemplates cases in which unlawful detention amounts to an offence, section 552 contemplates cases in which unlawful detention does not amount to an offence. Therefore, these words "unlawful purpose", which restrict the scope of section 552, detract from the value of this section as a giver of liberty to the person abducted or unlawfully detained.

Now, Sir, as regards the persons who can be protected by this section, the age of 14 was raised to 16 by Act XVIII of 1924, or perhaps 1923. As

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the House knows, the Age of Consent Committee have made a suggestion in paragraph 422 of their Report, recommendation No. 37, that this age should be increased to 18. Moreover, a perusal of the opinions would make it quite apparent that the general tenor of the opinions is that this age should be raised. Exception has been, however, taken that this section should not include the case of boys and men. In regard to this, I would refer the House to the recent kidnapping scare of boys which took place in Bombay and some time back in Lahore. It is not rare that even boys are abducted or unlawfully detained. As regards men I do not know whether the experience of many of the Members here would warrant their inclusion in this section. But any person conversant with the conditions of rural life will have to admit that cases occur in which tenants or persons belonging to the depressed classes are impressed into service and are unlawfully detained by big landlords and those interested in taking forcible labour from them.

(At this stage Mr. President vacated the Chair, which was taken by Mr. Deputy President.)

It is exactly these persons who cannot go to the High Court and it is for them that this amendment should be allowed.

Now, Sir, I come to the fourth change which I seek to make in this section, that is, relating to orphans. Nobody in this House would deny that this section does not provide for the case of orphans. In many cases a question of this nature has arisen and the Courts have been found quite impotent to dispose of persons who have neither husband, parent, guardian or other persons having lawful charge. Now with regard to orphans, may I humbly inquire from Government whether any section exists in the Criminal Procedure Code which affords them protection? Are they not exactly the persons who should be protected by Government? What provision is there in the Criminal Procedure Code, under which the orphan can be made over to a society or for the matter of that to any person, because no person can be said to have been in lawful charge of such a child? The foundlings, the waifs and the parentless young children should be given every protection by every right-minded man and by every Government which calls itself civilised or responsible. In fact it is unfortunate that we Indians are in this plight. Every child is an asset of priceless value to every State, and there is no Government or State in the whole world which has not made provisions for persons born or found as orphans in their territories except perhaps this Government. Now, Sir, in the opinions received I find that almost all of them favour the idea that there should be a provision in the law for the protection of orphans. I myself have found some difficulty in some cases when the question of making over of orphans came before the Courts. The Courts were helpless, and by providing a change in the existing law, I want to make provision for orphans.

Now, Sir, as regards procedure, you will be pleased to see that the wording of the present section does not contemplate any sort of inquiry before any order of setting a person at liberty is made. It is absolutely necessary that some sort of inquiry should be made and no order passed without an inquiry. The first person who has a right to be heard and in whose welfare it is absolutely necessary that an inquiry should be made,

is the person who is sought to be set at liberty. The person who sets such an unfortunate being at liberty must be brought face to face with the liberator, and occasion should be afforded to find out what is the best asylum for that unfortunate being. If need be, other persons should also be examined, and after that has been done, the ultimate order should be passed. I have provided for that in my Bill.

Now, Sir, exception has been taken to the fact that the words "on oath" do not appear in this Bill. So far as that point is concerned, I am sorry for the omission. At the time when this Bill was drafted, it did not occur to me that these words were omitted and I am disposed to agree with those whose opinion is that these words should appear.

So far as the first part of the Bill is concerned, I have submitted before you, in brief, the reasons why the present law should be amended. I have only one more remark to make in this connection. At present there are many societies and institutions existing in this country which have been very highly spoken of by the public and even by officials. I know of some institutions which have been visited by Governors and other big officials also and they have been very highly spoken of. Is there any big city where an orphanage does not exist? There is no reason why advantage should not be taken of such orphanages and why such waifs and foundlings and such unfortunate children, in respect of whom these provisions are intended, should not be made over to those institutions. There is the further provision in this Bill to the effect that bonds should be taken from those societies or institutions to produce such children if they are required by any Court at any time before they attain majority. This is to secure obedience to the final orders of the guardianship Court before a child attains majority and to issue that institutions which might at one time have been doing very good work and are subsequently found wanting, may be ordered to produce the children.

Now, Sir, as regards part two of this Bill, as I have already indicated, if two small amendments are made in this Bill, the greater part of the criticism which has been made against this Bill falls away. The magistracy who ought to exercise power in regard to section 552A, should be the same as in the substituted section 552, and the operative part of the section should apply to those minor children who have got no guardian, parent or husband, etc. With these two minor changes I think section 552A, will certainly answer the requirements which the adverse body of opinion, which has been received, have in view.

I submit, Sir, that if I am right in the enunciation of the principles which I have submitted before you, this House should accept the reference to the Select Committee. It would not do to say that such and such an opinion received from this Government or that Government is against this Bill. I know that some Governments give their opinions against this Bill. But there is a specific reason for it. In Calcutta there is a Child Protection Act and they do not require this law there. In other places the opinions received have been affected by the fact that this Bill contained two parts and many do not like part two to appear in this Bill. In their opinion it is a better subject for the Protection of Children Act rather than for the Criminal Procedure Code (Amendment)

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Bill. That criticism may or may not be correct. But even if it be correct, it does not follow that the first part of the Bill should be condemned on that account. In regard to these opinions, I will submit in brief how they affect the first part. As regards the second part, I have already indicated that the general consensus of opinion is against it. Coming to opinions, the first paper relates to Coorg, and it shows that the Coorg people, including their Government, are not opposed to the first part of the Bill, and they are opposed only to the second part. Some other opinions in this paper show that the Bill is definitely favoured, for instance the opinion of Mr. Reddy, District and Sessions Judge; so that I can claim that the first paper from the Coorg people does not go against this Bill. As regards the second paper, received from

12 NOON. Delhi, Sir, it will be found that the Bill is generally favoured. The Deputy Commissioner of Delhi says in his opinion that there are many excellent institutions in Delhi run by Mussalmans, Jains, Arya Samajists and others, and he is in favour of this Bill. Similarly, the District Judge of Delhi has also given qualified support. The Bar Association of Delhi have given their full support to the first part of the Bill. Therefore, I can claim that this Bill is favoured by the Delhi people.

The third paper relates to the European Association from Bengal. While some sympathy with the object of the Bill has been expressed, generally the provisions of the Bill have not been liked by the General Secretary of the European Association, and a very strange reason has been given, the reason being that there would be a congestion of criminal work in regard to this matter which, according to that opinion, is more in the nature of test rather than of crime. I do not wish to deal further with this opinion.

Now, Sir, the fourth opinion relates to the North-West Frontier Province, and though part two of the Bill has been opposed, no opinion has been expressed on part one of the Bill.

As regards the fifth paper, that from the United Provinces, part two has been opposed by the Country League, but part one has been partially supported. Similarly, Sir, in the sixth paper, part two has not been favoured, and part one has not been seriously considered. In the 7th paper from Assam, you will be pleased to see that, while part two is opposed, part one is generally favoured in respect of three main amendments. The Commissioner of Surma Valley has also given qualified support, and mainly speaking the Assam people have given their qualified support to the first part of the Bill. Ajmer is opposed to the Bill, as paper No. 8 would show. Paper No. 9 relates to the Central Provinces, and the Central Provinces have given their qualified support to the Bill, and I can claim that they are more favourably disposed towards this Bill than the Ajmer people. I do not want to refer in detail to the opinions given, and I presume Honourable Members have read those opinions but generally speaking, they will be pleased to note in regard to all these opinions that, whereas persons who have to work in the mufassil, the District Magistrates, generally speaking, have favoured the Bill, those who have to live in central places in big cities, are not favourably disposed towards the Bill, and the reason is obvious. The bar associations generally have favoured this Bill.

Now, coming to the 10th paper, Sir, relating to the Bengal Government, the Bengal Government have given a reason which, but for that reason being peculiar, I would not discuss. They say that the civil law of the land is quite sufficient, but then this is apparently a reason for abrogating the entire law contained in section 552. As I have already intimated, Sir, those people living in rural areas, and District Magistrates in Bengal—the District Magistrates of Midnapore, Bankura, Burdwan, and Hoogly, the Commissioner of Burdwan—all have favoured this Bill. But I cannot claim that the Bengal Government, according to this paper which contains their opinions, have given unqualified support to the Bill.

As regards the 11th paper relating to Bihar and Orissa, the increase of age and the empowering of sub-divisional officers have been favoured; otherwise the Bill has not been favoured. Similarly, in regard to paper No. 12 relating to Burma, the House will be pleased to see that, though the Bar Association have given their support, the Burma Government have not done so, the chief reason being that the second part relates to the Child Protection Act. This one point has really affected the entire body of opinion which has gone against the second part of the Bill. As regards paper No. 13, from Madras, the District Magistrates have generally favoured this Bill.

As regards paper No. 14 from Bengal again, as I have submitted, the High Court of Calcutta have not favoured this Bill, and the reason advanced is that inexperienced magistrates will have powers of unwarranted interference with the liberty of the subject, and that the powers contained in section 491 should not be delegated to the subordinate magistracy. In fact these are exactly the reasons which have prompted me to make this change, and I think there is a difference on fundamentals on this point. I claim that the power should be given because a person cannot go to the High Court, and much larger powers are today being exercised by this subordinate magistracy than are contained in section 552.

Then, again, Sir, in paper No. 15 coming from the United Provinces, their opinion does not favour the Bill. The United Provinces Government seem to think that there is no provision in the Bill to meet cases where the civil Court decision does not agree with the decision of the criminal Court. This, Sir, is again a wrong reason. I have made a provision in the Bill indicating that ultimately it is the civil Court which will decide, about the guardianship. This Bill makes no change on this point in the law as it stand today. Another objection is that the country does not possess many institutions. It may be that many institutions do not exist, but if there is even a single institution which can give protection to a single orphan, I think a provision like this is worth having in the Bill.

The Punjab Government have not seriously considered the Bill. They only favour it so far as it relates to increase in age. The Bombay people and the Bombay Government, I can claim, are distinctly favourable to the Bill. The Bombay Government have supported part one of the Bill, and the opinions received from bar associations in Bombay are also in favour of the Bill. Especially the opinions from the Dekhan Mahratta Education Association and the Honorary Secretary, Bombay Vakils'

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Association and the Childrens' Aid Society generally favour this Bill. I would, therefore, submit, Sir, that so far as the opinions go, they generally favour the first part of the Bill and they go against the second part on account of these provisions being sought to be incorporated in the Code of Criminal Procedure and not in a separate Act. The solution for this lies in the hands of the Government. Let the Government bring forward another Bill containing the provisions of section 552A, and I shall be quite content. As regards section 552, as I have already submitted, I think a strong case is made out for reference to Select Committee. I know that it is likely that the Government will oppose the reference of the first part also to the Select Committee, but in doing so the Government will be going, at least in respect of the five or six matters regarding which a change in law is necessary, against the almost unanimous opinions that we have received. I feel, Sir, that the House is not full, and we would certainly have carried the day if the House was full in regard to a measure of this character, as it deals with the liberty of the subject in general and with the protection to be given to orphans and poor people in particular. I would therefore appeal to the Government to give the first part of this Bill the consideration which it deserves, and I hope that they will see their way to accept this portion at least.

Mr. C. W. Gwynne (Home Department: Nominated Official): Sir, I rise, on behalf of Government, to oppose the motion before the House that this Bill be referred to a Select Committee. The House will perhaps recollect that when a motion for circulation was agreed to on the 20th of February, 1929, about a year ago, Mr. Shillidy, on behalf of Government, while accepting it, suggested several reasons why the provisions of the Bill might not meet with a favourable reception, and that anticipation has been abundantly fulfilled. On that occasion the motion was merely for circulation, and the acceptance of such a motion in no way committed the House to the acceptance of any principle. But the present motion, Sir, is of a very different character, and if it is adopted, it means, by the convention which governs these matters, that the principle of the Bill meets with acceptance by the Assembly. I am afraid that Government cannot be a party to such acceptance. The opinions which the Honourable the Mover has quoted in support of his own point of view, justify from my point of view an entirely different conclusion. But I do not for a moment suggest that there is not a good deal to be said, at any rate, for a portion of the Bill, and the Honourable the Mover, in so far as he desires to afford a larger measure of protection to orphans and minors, will have the general approbation of the House, because it is a beneficent and a humanitarian object. But our objection is that the means he has chosen to secure that object are not in any way suitable, and the measure of support which has been accorded to his Bill is not to its more vital principles. There is, I agree with him, a fair degree of support for the proposals that Sub-Divisional Magistrates and first class Magistrates should be empowered under this section as well as District Magistrates, with a view to rapidity of action in emergent cases, and also that the age should be raised from 16 to 18 years. As regards the first proposal, namely, the empowering of Sub-Divisional Magistrates, my own experience as a District Magistrate is that such extension is unnecessary. Very few applications are in fact filed under this section, and those which are submitted, come to nothing and tend,—

that is my own experience—to be frivolous and vexatious. Genuine cases can always be dealt with under section 100 of the Criminal Procedure Code, under which any Presidency Magistrate, Sub-Divisional Magistrates and Magistrates of the first class specially empowered, who have reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, may issue a search warrant and the person, if found, shall be immediately taken before the Magistrate, who shall make such order as in the circumstances of the case seems proper. This section thus gives wide powers, ample powers, for any first class Magistrate to exercise in regard to what is *ipso facto* a criminal matter.

Now, Sir, as regards the question of raising the age, at any rate, as far as girls are concerned, the matter is already under consideration with Local Governments in reference to one of the recommendations of the Age of Consent Committee. Local Governments have been consulted, and the matter in due course will come again before the Government of India. Now, these two matters, which the Honourable Member describes as part one, and which do receive some support, are of far less importance and relevance to the general principle and framework of the Bill than the second portion of his proposed amendment to section 552 and his new section 552A. It is this portion of the Bill which contains the Honourable the Mover's substantive proposals and which must be examined with particular attention. It does not seem to me to be sufficient to say, as the Honourable the Mover has declared, that because opposition has been raised to that portion of his Bill, that portion of the Bill may be entirely withdrawn. We have to deal with the Bill as it stands now before the House.

I do not wish to weary the House with an elaborate discussion of details, though from the point of view of detail the Bill is open to objections,—the Honourable Member himself has suggested one or two points in which amendments might be made,—but I wish to confine myself to stating our main grounds of objection to proceeding with a Bill of this nature and in this form. The Bill itself touches a very wide subject and one which, in the opinion of most authorities consulted, requires a different kind of treatment. Our objections are that, in the first place, the Bill may give very wide powers to Magistrates who are possibly inexperienced and who would find considerable difficulty in solving some of the problems which are likely to arise, particularly in connection with the new section 552A, where the Magistrates may deal not only with a witness or an accused person, but with any person who happens to come before the Court below a certain age. He then may make a suitable order regarding the commitment of that child, to an orphanage or society with due regard to its age, religion and so on; but all those matters will in practice create very real problems for the Magistrate who has to deal with them.

Our second objection is that the Bill involves an extension of the powers exercised by criminal Courts beyond what they should appropriately undertake. The existing sections of the Criminal Procedure Code, sections 100, 491 and 552 as they stand already confer on the criminal Courts adequate powers for speedy action in emergent cases, which are the only occasions on which criminal Courts should deal with such matters.

Thirdly, we have a root objection to the Bill in the form in which it stands, and the Honourable the Mover has already anticipated that in suggesting that he is prepared to drop this portion of the Bill on an assurance

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from Government that another Bill will be introduced in its place. I, Sir, am concerned with the Bill which is before the House and I must state clearly that our root objection is that this Bill in effect would import into the Criminal Procedure Code a measure which is really concerned with child protection. Now, however laudable and desirable measures of that nature may be in themselves—and I am sure that every one will appreciate the object of the Honourable the Mover—yet it is not appropriate that they should find a place in an enactment relating to the procedure of the Courts and the technical machinery of our criminal administration. And in these contentions I find very general support from the opinions which have been submitted to the Assembly. I will not weary the House with a lengthy citation of these opinions. The Honourable the Mover himself has referred to many of them, but I would refer to them very briefly in a manner which will indicate a somewhat different perspective from that of the Honourable the Mover and because I wish to make it clear that our opposition is based on advice received from very different sources. Nearly all the Local Governments are definitely opposed to the Bill. The Chief Commissioner of Delhi criticises its details and thinks that separate legislation will be more appropriate. The Chief Commissioner of the North-West Frontier Province considers that the Bill is dangerously wide in its scope and that the proposed amendment is unnecessary. The United Provinces think that no amendment is called for. Baluchistan and Coorg, if any action is to be taken, are in favour of a separate enactment. The Central Provinces are opposed to the Bill. The Honourable the Mover said in his speech that the Central Provinces Government were inclined to support it, but what is actually said is that the Governor in Council agrees with the majority of the opinions received, which are opposed to the principle of the Bill, and the Central Provinces Government are particularly opposed to the new clauses. The Government of Bengal are also opposed to the amendment. The Honourable the Mover has referred to the criticism made by that Government that there is ample remedy in the civil law, and has said that he cannot understand it, but the statement of the Government of Bengal refers to remedies provided by the civil law in cases of detention without criminal intent. The Criminal Procedure Code applies to cases where there is criminal intent. The Bihar and Orissa Government refer to the portion of the Bill to which I have taken exception as undesirable. The Burma Government are again opposed to the Bill. The Madras Government are opposed to the amendments on the ground that the Bill goes very far and that it represents a new departure in legislation and gives too much power and discretion to Magistrates. The Punjab Government are of opinion that the existing law is satisfactory and that no change is required. Turning to the Bombay Government, the Honourable the Mover claims that he gets very substantial support from that Government I admit that the Bombay Government are prepared to accept the proposals to give jurisdiction to Sub-Divisional Magistrates and selected first class Magistrates. They consider, however, that the new section obviously goes far beyond the Mover's purpose and would be dangerous in practice.

That is a fairly complete summary of the objections taken by Local Governments, but I would like to refer for a moment to the opinions of the High Courts on this matter as the opinions of high judicial officers must

obviously possess very great weight on a subject of this kind. The High Court of Allahabad are opposed. The Calcutta High Court are of opinion that the new section is objectionable on the ground that it confers too wide powers on Magistrates. The High Court of Bihar and Orissa are opposed to the section on the ground that it gives Magistrates too wide powers and might be exercised arbitrarily and without evidence. The Burma High Court, while agreeing with the principle of the Bill and thinking that the object of the Mover is commendable, consider that Central legislation is undesirable, and that provincial legislation is more appropriate, and that the provisions of the Bill itself are open to objection. The Judges of the Madras High Court are unanimously opposed to the amendment. The Bombay High Court are opposed to this new section. Even the Bombay Vakils' Association is of opinion that the subject requires separate legislation.

Finally, I would refer to the opinions, neither judicial nor executive, of societies and organisations not concerned with the administration of law and justice but with the practical problems, the solution of which the Honourable the Mover, to his credit, has so much at heart. The Country League of Cawnpore, while strongly in favour of measures which will effectively protect orphans, waifs and foundlings, is of opinion that legislation should be undertaken in a more direct way and not by attempting to change a Code which deals with matters of procedure. The European Association, Bengal, is opposed to the Bill. It points out that nothing would be easier under new section 552A than to contrive that a child should be summoned in a case in a criminal Court and that the Magistrate would find himself in a very delicate position. The Bombay Presidency Women's Council does not favour the provisions of the Bill on the ground that cases which the Honourable the Mover has in view would be more appropriately dealt with under a Children's Act. The Children's Aid Society, Bombay, considers that the new section should not be enacted. It would be possible to cite many more opinions to the same effect, but I think, Sir, that I have said quite enough to show to the House that this is a Bill which should not be referred to Select Committee in view of the very definite objections which are felt by the Government of India, and which have received the strongest confirmation from nearly all the authorities consulted, whether executive or judicial. I therefore ask the House to reject this motion.

The Revd. J. C. Chatterjee (Nominated: Indian Christians): Sir, although I compliment the Honourable the Mover on the very laudable motives that have prompted him to promote this measure of legislation, it seems to me that it is very difficult to accord support, especially to section 552A, wherein he tries to provide for the custody of persons whose liberty he wishes to restore and especially that of orphans and children. He provides that a person or a child who is to be set at liberty should, in the discretion of the Magistrate, be committed to the care of a person or of a society or of an orphanage. Then, again, he also provides in section 552A, or desires to provide in that section, that children involved in criminal cases should also be committed to the care of orphanages and societies and suitable persons. He has referred to the excellent work done by various orphanages, and he opines that there are orphanages in large towns all over the country which are competent to take care of these children and which can be trusted to produce them whenever they are summoned by the Court which committed them to the care of these orphanages. Sir, I have no pretensions to any legal

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knowledge. My only excuse for taking part in this debate is this, that I have had a good deal to do with the looking after of orphans and waifs and strays, not only of any particular religion or belonging to any particular society, but I have for several years, on behalf of the Delhi Municipality, conducted annual and periodical inspections of orphanages in this city belonging to all communities. It may well be argued that an orphanage or a properly constituted society is the right and natural agency to take care of waifs and strays, or of children concerned in criminal cases, but one's practical experience does not warrant that view in a great many cases. I gladly bear testimony to the excellent work done by various societies in this direction. Such good societies exist in many places and especially in large towns. I understand in places like Poona and Calcutta excellent societies are in existence. I would also bear testimony to the good work of some orphanages that are looking after children in this city. But when I think of the condition of a large number of orphanages that I have not once, but several times, visited I sometimes wonder whether the remedy that is suggested by the Honourable the Mover will not be very much worse than the disease, and whether those very children that he desires to protect or provide for will not be subjected at least in some cases, to a worse form of tyranny and to a confinement which may be more tyrannical than the one from which he wishes to release them. In this city itself there are orphanages about which every one must have read most ugly reports. These orphanages have been concerned in criminal proceedings, which do not reflect any credit on them. Only the other day, the members of the Municipal Committee of Delhi or, at any rate certain prominent members were shown certain police reports about an orphanage in this very town where the children are kept under the very worst form of tyranny and are very much worse off than any children in a jail would be.

Mr. B. Das (Orissa Division: Non-Muhammadan): What do the Munipal Councillors do? Why did they not visit these orphanages?

The Revd. J. C. Chatterjee: They do visit them, but the difficulty is that these orphanages have a wonderful organisation on paper, and for certain reasons they have powerful supporters, and it is impossible, in view of communal prejudices, to bring any direct action against these orphanages.

Now, Sir, what I am trying to say is this, that by giving the power to Magistrates to confine children or orphans in these orphanages, we are putting a very heavy responsibility on inexperienced Magistrates and perhaps may defeat the purpose which the Honourable the Mover wants to achieve. Take, for instance, the case of a child that is concerned in a criminal case, or the case of an orphan who is to be disposed off by the Magistrate by sending him to an orphanage. Now, the average Magistrate is a busy person and he may or may not have the local knowledge that is necessary of the inner working of any particular orphanage. He looks at the organisation, as given on paper, and he commits the child to a certain orphanage. Now, I know from my own experience that there are certain orphanages here that to a very great extent starve the children and keep them in virtual imprisonment. In one or two cases I have seen an armed guard placed on the door and the children are not allowed to go out. Now, it may be said that these children can always be sent for by the Magistrate, who will require a bond to be executed. If

a child is concerned in a criminal case and he is confined to a certain orphanage, that child may be produced in a court of law when required, but what is there to prevent the greatest pressure, or even coercion being brought to bear on that child? He may be made to say exactly the things which he did not do, or give tutored evidence.

Then, again, the Honourable the Mover himself referred to the difficult case of a child who was received in a missionary orphanage for the purpose of conversion. I do not want to enter into the details of this aspect of the case at all, but the instance quoted shows that most of these orphanages and societies have a very strong religious leaning and bias. It is also known, at any rate in this city orphanages belonging to different religious persuasions or even different sections of the same community are always trying to steal the orphans belonging to each other. All these cases will show that the religious protection which the Honourable the Mover desires to provide may be not only nullified but even entirely destroyed by the committal of minors to the care of orphanages.

After all, I believe, that in a country like India where so many religious persuasions and so many faiths and so many communities, exist, the proper agency to run these orphanages is the State. In my opinion the right people whose duty it is to look after the orphans and the waifs and the strays should be the State. Till such time as a sufficient number of well run orphanages are available, it seems to me that it would be very dangerous to give powers to a Magistrate, or to make it obligatory for him in any way to confide these children to the care of any particular orphanage.

I entirely agree with the opinion expressed by certain High Courts and by some Provincial Governments that the proper method of dealing with these cases, especially in the case of orphans and children, is a carefully drawn up Child Protection Act. That is what we require, and I do not see any provision made in the Bill in the direction. What the Honourable the Mover desires to do would have been done much better in the Provincial Councils, who are better suited to provide for conditions prevailing in each province. Moreover, it is only the provincial Legislatures who are competent to say whether they have got orphanages and societies competent to take care of such people. My submission is that such a Bill should be promoted in the provincial Legislatures, and at all events, what is required is a Children's Protection Act and not a Bill of such very general and wide nature as has been brought forward by the Honourable the Mover.

Mr. M. K. Acharya (South Arcot *cum* Chingleput: Non-Muhammadan Rural): I just want to say this. We have had enough of my Honourable friend Pandit Thakur Das Bhargava's mountain in labour and it is high time we got the mouse out. I therefore move that the question be now put.

Pandit Thakur Das Bhargava: Sir, in reply to the two speeches which have been made in opposition to this motion, I have to thank the Honourable Members who have spoken in appreciation of my motives. Sir, I had enough appreciation when the motion to circulate the Bill was adopted by this House. I do not want any appreciation of the motives that actuated me in bringing forward this measure, not that I do not appreciate the kind-heartedness of those who have given the appreciation,

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but what I want is a bigger thing. I requested the Government to consider this Bill on its merits, and I am sorry to say that I feel disappointed in the replies that have been given. Much breath has been lost on Part two of the Bill, in respect of which I already submitted that, if the Select Committee so desired, I was willing to drop it, not because it was unnecessary, but because it may better form the subject of a separate Children's Protection Act. Now, it is no use lashing a dead horse. All these criticisms have been concentrated upon Part two of the Bill. Now the arguments that I submitted while moving the motion have not been met. The only argument or better expression of opinion in regard to those points was that which I got from the Honourable Member who spoke on behalf of the Government, when, he referred to his own experience as a District Magistrate, and said that such applications were generally frivolous . . . . .

Mr. C. W. Gwynne: Not that all applications are vexatious or frivolous, but that such applications filed before me have been of that nature.

Pandit Thakur Das Bhargava: His experience warrants him in the statement that such applications are frivolous. But I do not think this advances his case. Anyhow his statement that section 100 is quite sufficient for such cases is one which cannot be accepted, for the simple reason that there is a section 552 also in the Criminal Procedure Code. As I submitted already, these two sections provide for different contingencies. Section 100 is applicable to cases in which unlawful detention or confinement amounts to an offence. Section 552 applies to cases in which abduction or unlawful detention does not amount to an offence. Abduction, as many Honourable Members are perhaps not aware, is by itself no offence under the Indian Penal Code. It is abduction with some purpose, unlawful purpose of course, which is an offence. The reasons that I gave, I do not want to repeat now. I would submit that the Government seem to have been affected by the reasons that I gave, and in so far as they have not even attempted a reply to those reasons, I take it that they want to take advantage of their numbers and they want to defeat this motion by sheer numerical force.

Coming to the second speaker, I sympathise with him in his sad experience of these institutions, but this argument cannot hold water. If there are bad orphanages, if the Magistrate is inexperienced, the remedy lies not in having no orphanages at all or not empowering the magistracy —the remedy lies in having good orphanages and in improving the magistracy. It is a poor argument that our magistrates are inexperienced and therefore they cannot be empowered. As I submitted already, why do they empower them in all other particulars, in much more serious matters? This power of making over a child to an orphanage is discretionary. It does not bind the Magistrate to make an order of this nature, and therefore, unless and until the Magistrate is satisfied that such and such an orphanage or association is working well, he may not make an order making over the child to the orphanage.

The Revd. J. C. Chatterjee: May I ask, in case the Magistrate is not able to find in any particular town any orphanage which satisfies him, what is he to do?

Pandit Thakur Das Bhargava: I am glad that my Honourable friend has put that question to me. He and I are at one in this matter. He

suggested that it was the duty of the State to provide for such orphanages and I already submitted that no State could absolve itself from such responsibilities until and unless it took care of every foundling or stray child. So that it seems to me that my Honourable friend, the Revd. Chatterjee's objection to this Bill is that there are not many orphanages. But he ignores the fact which I mentioned in the last part of my speech, that if there is a single orphanage, and if a single orphan could be protected in this way, we should have this Bill. This Bill does not impose any duty upon any Magistrate to hand over every child to any orphanage, good, bad or indifferent. On the contrary, this Bill gives discretion to the Magistrate.

Under these circumstances, I leave the matter entirely in the hands of the House. But I would make this appeal to the House. The provision in the Bill, so far as the second part goes, may or may not be considered; it may be deleted. But in so far as the first part of the Bill is concerned, it makes provision for protection of orphans and it empowers the Sub-Divisional Magistrates and the Magistrates of first class with powers which can be utilised for the better protection of the poorer classes of people who cannot afford to go to High Courts. In so far as that first part is concerned, this Bill is decidedly an improvement upon section 552. If the House agrees in these two main facts, I think it will agree with me in referring this matter to the Select Committee.

Mr. Deputy President: The question is:

"That the Bill further to amend the Code of Criminal Procedure, 1898, (Amendment of section 552), be referred to a Select Committee consisting of the Honourable the Law Member, Mian Mohammad Shah Nawaz, Mr. Abdul Haye, Lala Rang Behari Lal, Mr. Mukhtar Singh, Mr. Lalchand Navalrai, Mr. M. S. Aney, Raizada Bhagat Ram, and the Mover, and that the number of Members whose presence shall be necessary to constitute a meeting of the Committee shall be four."

The motion was negatived.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

(AMENDMENT OF SECTIONS 205 AND 540A.)

Pandit Thakur Das Bhargava (Ambala Division: Non-Muhammadan): Sir, I move that the Bill further to amend the Code of Criminal Procedure, 1898 (Amendment of sections 205 and 540A), be referred to a Select Committee consisting of the Honourable the Home Member, Mian Muhammad Shah Nawaz, Mr. Abdul Haye, Mr. Lalchand Navalrai, Mr. Rang Behari Lal, Mr. Mukhtar Singh, Raizada Bhagat Ram, Mr. M. S. Aney, and the Mover and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be four.

Sir, section 205 of the Criminal Procedure Code runs thus:

"(1) Whenever a Magistrate issues a summons, he may if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided."

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A perusal of this section makes it clear that the personal attendance of the accused can be dispensed with only by a Magistrate and not by the Sessions Judge or by the High Court, and in the second place, only in cases where summonses are issued and in no other case. Now, there are different ways of bringing an accused before the Court. Ordinarily, under section 170 of the Criminal Procedure Code an accused is brought into Court in custody, or if he has been bailed out by the police, he is directed to appear in Court on a certain day. The accused who is already present in Court is dealt with under the provisions of section 91 of the Criminal Procedure Code. As regards the rest of the accused, they are brought into Court in obedience to summons issued under section 204 or under warrants. Now, this power of dispensing with the presence of the accused is only exercisable in a very small number of cases; firstly, in cases in which originally a summons is issued; secondly, in cases in which the accused is charged only with an apprehension of committing a breach of the peace; and there is a third provision, also contained in section 540A of the Criminal Procedure Code, in which, during any trial or inquiry, the presence of an accused can be dispensed with in special circumstances, *viz.*, when he becomes incapable of remaining before the Court and has got a counsel who can proceed with the case, if there are two or more accused in that case. Barring these three cases, there is no provision in the Criminal Procedure Code which arms a Court with the power of dispensing with the presence of the accused. Now I wish to make it clear that the fact that a summons has been issued in a particular case originally does not make that case a summons case.

Mr. Anwar-ul-Azim (Chittagong Division: Muhammadan Rural): Mostly does.

Pandit Thakur Das Bhargava: My friend says: "Mostly does". I can only submit to him many sections in which, in warrant cases, summonses are issued in the first instance according to the fourth column of the Second Schedule. I will refer to such sections later on. But the difference between a summons case and a warrant case is not the difference between cases in which summonses are to issue or warrants are to issue to start with. A summons case is a case which is not a warrant case, and a warrant case is a case in which the punishment awardable is death, transportation or imprisonment for more than six months. Now, I will quote sections in which the punishment awardable is much more than six months and yet summonses issue in the first instance, and I will also quote the sections in which the punishment awardable is less than six months and yet warrants issue in the first instance. In fact, this distinction of cases, in which summonses are to issue in the first instance as opposed to cases in which warrants are to issue in the first instance, is quite arbitrary and does not proceed on any valid grounds. As example of cases in which the punishment is more than six months and yet summonses are issued in the first instance, I will quote sections 162-165, 172, 177, 180, 217, 223, 225A, 229, 270, 295-298, 323-325, 326 (in which the punishment is transportation for life), 335, 338, 343-348, 376 (where again the punishment is transportation for life), 484-486 and so on. As an illustration of cases in which the punishment is much less than six months and yet warrants are to issue in the first instance, I will mention sections 510 (where the punishment is 24 hours' imprisonment), 509

(where the punishment is simple imprisonment for one year), 417, 356, 263 (in which the punishment is only Rs. 200 fine), 292 (in which the punishment is only three months), 294 (in which the punishment is six months); so that it is clear that the punishment is not the basis of this distinction. Now the question is, what is the basis of this distinction? The seriousness of the offence is not the factor to be considered. I have been unable to discover on what grounds this distinction was made; in fact I do not know if this distinction was made consciously. In the old Acts of 1861 and 1872 there are provisions which empowered Courts trying warrant cases or inquiring into cases which are triable by Sessions Courts whereby the Courts could dispense with the personal attendance of the accused, and a perusal of sections 151, 190 and 214 of the Code of 1872 and sections 261, 249 and 182 of the Code of 1861 will bear me out. It follows therefore that the present distinction of making the original sin of a process other than a summons having been issued came in some time when the Criminal Procedure Code of 1898 came into force. Now, Sir, every legal practitioner knows that it may happen that a case in which a summons is originally issued may turn out to be a very serious case, whereas a case in which warrants are issued to start with may turn out to be a case much less serious.

1 P.M. But what is really astonishing is the utter disregard of reasons justifying the dispensation of the presence of the accused. In my humble opinion, the quantum of punishment and the fact that a case is serious, even these two points, should not influence the judge in deciding whether the presence of the accused on a particular occasion should be dispensed with. The real principle, I think, should be the compelling necessity of the accused, the circumstances in which he wants to be excused. It may happen that, in a case under section 263 or 292—very minor offences—a person has to be present in a Court at a very great sacrifice. Suppose a person is suffering from pneumonia and his wife and children are almost dying. What would the accused do in such a case? After all, the punishment provided is only Rs. 200 fine. But if he is not present, his bail bond may be cancelled and a warrant issued against him, and the Court is not empowered to grant dispensation. After all, the object of the presence of an accused in a trial is for the protection of his own interests. In a majority of cases when the accused is in custody, he will be brought to the Court by the police unless it becomes impossible for the police to bring him up. In cases in which bail has been allowed—and presumably in such cases there is no strong *prima facie* case—it is useless to insist on the presence of the accused when there is a countervailing advantage in his absence. After all, it is his own business to be there, and every accused will find it to his interest to be present and hear the evidence against himself.

Now, Sir, if you take the statistics of cases in which the accused are convicted, and compare them with statistics in which the accused are discharged or acquitted, you will see that, taking India as a whole, the number of acquitted and discharged accused is greater than that of convicted persons. In the Punjab and United Provinces especially, the number of acquitted and discharged persons outnumbers the number of acquittals in other provinces. In the year 1926, in the United Provinces, the number of accused acquitted or discharged was 2,24,871, and the number of those convicted was 1,50,896. In the Punjab, the number of

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acquitted and discharged people was 1,70,438, whereas the number of convicted persons was 78,724. Taking India as a whole, the number of accused acquitted or discharged in the year 1926 was 10,86,894 and the number of convicted persons, 11,14,159. So that in a majority of cases, when you find that ultimately the accused is acquitted, I do not know what reason there is that the law should insist that the accused must be present at all costs. Barring this aside, I would quote as an illustration one or two cases in which this provision works as a great hardship. Suppose there is a riot case in which there are 20 accused. They are charged. Under section 256 they are allowed to consider which witnesses they want further to cross-examine, and the hearing is adjourned for two or three days, after which they must come up before the Court and put in their presence. The accused in this instance come from a village say 30 or 40 miles from the headquarters. Now these 20 accused must remain at the headquarters for the two or three days and spend at the headquarters, say a rupee a day. Now, Sir, those who mix with these people cannot fail to realise the great hardship which is inflicted on these people in a case of this nature, many of whom are likely to be acquitted when the judgment is pronounced. Now take another case. Two of the accused are in jail and 18 are on bail. One of them falls sick and the Superintendent cannot allow him to go to the Court. The case cannot be proceeded and therefore all the 18 accused come every day to the Court and go back disappointed. Even excluding this special reference to section 256, it happens that in every criminal case there are a number of hearings; interrogatories are sent and so on, and the replies are not received. Evidence is given in respect of a particular accused which does not affect the co-accused. Instances of this sort can be multiplied in which an accused person need not be present in the Court and should not appear if he has to consult his own interests. I would, therefore, submit, Sir, that in cases in which summonses are originally issued, there is no knowing what turn the case will take subsequently. It happens that when a person comes into Court, he presents the case to the Court in an exaggerated way, so that warrants may be issued to start with. At that stage of the case the Court has not heard both sides and the accused is not there, and it is likely that when the facts are exaggerated the Court may issue a warrant. As soon as the accused comes on the scene, he satisfies the Court that the case is not serious. But the original sin of the issue of a warrant comes in the way of the accused and he cannot claim dispensation on any particular hearing. Thus, Sir, in many cases a great hardship is inflicted. On reference to the provisions of section 205, I submit he must be a bold lawyer who will be able to say that any person except the Magistrate has got the power to dispense with the presence of the accused. But, Sir, those who administer the law are moved by humane considerations and they interpret the law in a different way.

Now, Sir, I would refer you to Section 353 of the Code of Criminal Procedure. The heading is "Of the mode of taking and recording evidence in Inquiries and Trials", and the section reads:

"Except as otherwise expressly provided, all evidence taken under Chapters XVIII, XX, XXI, XXII, and XXIII, shall be taken in the presence of the accused, or when his personal attendance is dispensed with, in the presence of his pleader."

So that the dispensation of personal attendance can only have reference to section 205, but the Courts have construed this provision as giving them power for dispensing with personal attendance. I can quote several authorities in which, in spite of the provisions of section 205 being there, the Courts have interpreted section 353, which deals with the mode of taking evidence, into a provision which gives them power to dispense with the presence of the accused. Now, Sir, the first authority which I would quote is 24 Indian Cases, page 947. It was a case under section 494. Bailable warrants were issued in the first instance; the High Court discharged the bail bonds and directed the Magistrate to substitute summons for warrant, and thus in a tortuous way, in a way which is to say the least not straightforward and direct, they wanted to evade the provisions of section 205. Similarly in another case—a Bombay case reported in 15 Indian Cases, p. 96, reference was made to section 353, and the High Court held that section 353 conferred powers by implication on Magistrates, and that it was absurd to think that there was any power which that section conferred on a Magistrate which it did not confer also on the High Court. Again, Sir, the Madras High Court also construed from this analogy that, if a Magistrate has got powers, the High Court must have those powers. In a case reported in 66 Indian Cases, p. 880, Mr. Justice Kumaraswami Sastri held, considering the merits of the case, that in the interests of justice, the presence of the accused should be dispensed with. Again, the Calcutta High Court also, in a case reported in 23 Indian Cases, p. 489, held that they could dispense with, or even a Magistrate could dispense with, the attendance of the accused in cases in which warrants were issued in the first instance, where the Magistrate, after careful inquiry and after preliminary investigation, thought fit to issue a warrant. I could quote other cases in this connection, but I think my purpose is served by reference to these cases. It follows therefore that humane considerations, the interests of justice, and the compelling necessities of the case warrant the incorporation of an express provision in the law.

Now, Sir, when we come to the provisions of section 540A, which really is in the nature of an exception to the general rule, you will find that only in a very restricted number of cases this provision in section 540A applies. In the first place, the case must be one in which there are more than two accused. Suppose there is one accused, then this section would not apply, and his presence could not be dispensed with. Under the provisions of section 540A—and this is a point which I specially request the House to consider—unless and until the accused is present in Court, the Court is powerless. The words used are:

"When the accused is incapable of remaining before the Court, and if the Superintendent of the jail reports that the accused is suffering from plague, the Court is powerless and the case must be adjourned."

Only in one contingency, when the accused is there, the Court can order that the accused's presence may be dispensed with. It happens—and it is not a rare case—that a person is unable to come before the Court; as he has to come from a distance where there are no medical men and as he cannot produce a certificate he must come at the cost of his health and at great inconvenience. After he has come, and after the Court has satisfied itself that the man cannot remain there, the Court can dispense with his presence. After that, Sir, even if he recovers after a day or two,

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the Court has to make a special order calling on him to appear. Then, too, Sir, he must be a man who can afford to pay a counsel and must be represented by a counsel. Lately, Sir, Government brought in a Bill for amending the law in relation to hunger strikers, in which a very drastic change was sought to be made in the Criminal Procedure Code, whereby, in the absence of the accused also, the case could go on. When the necessities of the case force the Government to have recourse to a Bill like that, may I submit that the necessities of the case should at least actuate the Government to accept this motion and consider the Bill on its merits, on the ground that if an accused on account of certain difficulties cannot afford to be present on a certain hearing, the Courts should be empowered to give him relief.

Now, Sir, if you compare these provisions with the provisions relating to bail, you will find that disease, infirmity, old age are the considerations which, under the new provisions of section 497, can be considered as circumstances favouring the grant of bail, but these considerations which, even in capital cases can secure bail for the accused persons, cannot according to the present law secure for him dispensation from presence on a particular hearing. The objection usually urged against this change is that rich people will be able to secure such dispensation by corrupt means. Now, Sir, an objection of this sort, if I may venture to say so, is based upon inexperience. If the Courts are corrupt, they have subtle ways of doing things; they will acquit the accused rather than make an inconvenient or lenient order in his favour; and if they are corrupt, the best way is to improve the magistracy and not to run away from doing the right thing. It has been recently held that the period during which an accused remains in the judicial lock-up cannot be taken into consideration at the time of awarding sentence against him. Thus presence at the trial cannot be punitive and undue insistence for the presence of accused at every hearing is not reasonable. The Court may however insist that the accused should be there to receive his sentence. It is the business of the accused person himself to see that he is present at the hearings. Presence to hear judgment can be secured by taking a heavy bond. Generally speaking, this change in the provisions will only affect those who are bailed out in cases in which summonses are not usually issued, and as the provisions of sections 204 and 90 of the Criminal Procedure Code will indicate, in cases in which warrants are issued in the first instance, the Courts are competent to issue summons and *vice versa*. So that this change, if effected, will only straighten the law. It will merely validate what is being done by some Courts even today, but not under the law. Moreover, Sir, this will not be a new change. As I have already submitted, the previous Codes of 1861 and 1872 had provisions of a like nature, and the law will become more humane if my suggestions are accepted. Sir, you have to consider the whole case from the standpoint of the accused, and the privilege which an accused enjoys is one of the criteria for judging whether the law is fair or not. After all, this Bill does not give any right to the accused. It invests discretion in the Court, which can award imprisonment, or acquit him, or do whatever it likes with an accused person. It will give complete discretion to the Court to allow him dispensation from being present for a hearing or two. I therefore submit, Sir, that the exemption from attendance should not be based upon the original sin of a summons or warrant having been issued, but should be based upon the

humane necessity of the absence of the accused. It should not be regarded as an inherent right of the accused, but it should be regarded as one of the discretionary powers of the Court which can make proper orders in certain cases. In the interests of the speedy disposal of justice and convenience of the accused, it is necessary that these two sections, sections 205 and 540A, should be amended in the manner I have suggested. It may be said, Sir, that the words " need not attend " in section 540A are a bit too wide. I have indicated in the illustrations I have submitted that there may be cases in which really the presence of an accused person is unnecessary, and the Court may also, for reasons to be recorded, regard his presence to be unnecessary. In such cases these words are not too wide, but even if they are wide, the Select Committee can consider this point and ultimately decide whether these words should remain or some other words should be substituted.

Now, Sir, I know there will be one more objection urged against this Bill. It will be urged that the very wording of the form of warrant negatives such an exemption. As between a summons and a warrant, Sir, as you know, the difference is, that whereas a summons requires an accused to appear, the warrant gives an order to the police to bring him before the Court. Now, section 205, as it stands, relates to cases in which the accused is to appear for the first time as well as in the subsequent stages of the case, and the fact that the summons was first issued will determine in future whether the accused can be granted any exemption; so that the accused is prejudged and his fate is decided, so far as he is concerned, before he comes before the Court. I quite see, Sir, the force in the objection that a warrant is in the nature of an order to bring the accused to the Court, but there are bailable warrants also; in fact, this objection can also be considered in the Select Committee. I do not know of any other serious objection, otherwise I would have tried to meet it as well, and I think that, so far as the humane considerations go, there ought to be a change in the law. I may refer here to the law in Great Britain. It will be found in Halsbury's Vol. IX, at page 351. The foot-note at page 351 runs as follows:

"In case of an indictment which is found in the King's Bench Division or has been removed there or to the Civil Side of the assizes, if the charge is one of treason or felony, the defendant must appear personally in Court to plead, unless he has obtained the permission of the Court to plead by a Solicitor (Crown Office Rules, 1906, r. 121). If the charge is one of misdemeanour, or if the defendant on a charge of treason or felony has obtained leave to plead by a Solicitor, the defendant may enter a written plea (Short and Mellor, Practice of the Crown Office, 2nd edn. 100). As to prisoners standing in the dock, see R. v. Horne Took (1794), 25 State, Tr. 1, 12. A defendant in misdemeanour who is conducting his own defence may, after arraignment, by special permission of the Court leave the dock and take a seat at the table of the Court. After he has once pleaded, his presence is not indispensably necessary."

From what I have read just now, I understand that such a dispensation can be granted by Courts in Great Britain, but I am not sure on the point, and I expect an elucidation on the point from persons who know better. Whatever be the state in Great Britain, I submit, Sir, that in India when you are considering the case of poor people who have to attend headquarters for criminal cases, it is absolutely necessary that they should not be harassed by insisting on their presence for days together in warrant cases. Really one has to put himself in the position of a poor innocent man who is accused in a criminal case, and then finds that even the ultimate acquittal will not bring him any relief. He may be ruined before the

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case is decided, and it may happen that his absence at the bed of a dying child or a parent will always embitter the rest of his life for having gone to attend a case in which he is ultimately acquitted. I therefore move, Sir, that the Bill be referred to a Select Committee consisting of the persons I have named.

Mr. C. W. Gwynne (Home Department: Nominated Official): Sir, I regret that I am again compelled to oppose, on behalf of Government, the motion moved by my Honourable friend, Pandit Thakur Das Bhargava. I will endeavour to avoid the charge which he brought against us in connection with his last Bill that we wasted breath on that occasion, and I shall try to be as brief as I possibly can. I would like to remind the House that the Honourable the Mover himself was of opinion, so recently as August last, that the next stage after introduction in the case of this Bill should be circulation for eliciting opinions. He himself gave notice of such a motion. If I may say so, that notice was a correct and proper notice in the case of a Bill which affects the administration of criminal law. The Honourable the Mover then recognised that it is only right that the Local Governments, who are so intimately concerned with this subject, should have an opportunity of expressing their views and offering their criticisms and suggestions. My Honourable friend held that view as I say, up till August last, and I suggest that that is the view which should more appropriately be held today. Now, however, he asks the House to dispense with that stage of consultation and pass at once to the stage which implies acceptance of the principle of the Bill. Why has he suddenly become an apostle of haste? I would ask him whether there is any adequate reason for attempting to put on the Statute-book, in a hurry, a piece of legislation which cannot in any conceivable quarter be regarded as a matter of urgency. In the view of the Government, there is no justification for the omission of a stage which is particularly necessary in a Bill of this character on which the opinions of Local Governments, Courts and Judicial officers would be extremely valuable.

To turn for a moment to the provisions of the Bill. I will avoid altogether discussion of details. I have not the capacity for research, which the Honourable the Mover has shown in the matter of statistics, rulings and previous legislation. Nor do I wish to discuss the basis of the difference between the two kinds of cases. Whatever it may be, I am quite sure that it is better than the basis of differentiation suggested by the Honourable the Mover—the probability of a large number of cases resulting in acquittals. Now the provisions of the Bill are designed to give a very wide, and I think unwise, extension of the occasions on which the personal attendance of persons accused in criminal cases may be dispensed with, and to increase still further the opportunities for perhaps unnecessary and inconvenient adjournment. The Honourable the Mover, according to his Statement of Objects and Reasons, in his solicitude to provide for the non-attendance of the diseased and the aged, has proposed amendments which enjoin no such limitation, and their effect would be that any man, especially a man of means charged with an offence in which a warrant could normally issue in the first instance, would make every endeavour to avoid the unpleasantness and the publicity of personal attendance, or to secure an adjournment of the case and postponement of its decision. It is easy to see that the procedure would lead to very grave delay in the disposal of cases.

There is no question of corruption, as the Honourable the Mover seemed to think. If the Magistrate considers, on representations made, that there is ground for adjournment, under the Honourable the Mover's proposals he would have no option but to grant it. There is no question of the Court being corrupt. These provisions would not only lead to delay, but would seem to imply a complete disregard of the convenience and rights of the complainant, who is at least as deserving of as much consideration as my Honourable friend would show to the accused, and for whose convenience alone he seems to have regard. The well-to-do criminal or the well-to-do accused would find it easy to avoid appearance and postpone the conclusion of the trial. The Bill would thus place him in an advantageous position, and would virtually put him in such a position that he could control the procedure of the Courts. It would emphasize a distinction not known in the law between the rich and the poor and, as I have said before, completely ignores the unfortunate complainant who is anxious for his complaint to be heard without delay and expense. I am quite sure that the House will not wish to hear any further on this point. I oppose the motion for reference to Select Committee because the principle of the Bill cannot be accepted without prior consultation and because its provisions, as they stand, are open to grave objection.

(Pandit Thakur Das Bhargava rose in his place.)

Mr. Deputy President: How long will the Honourable Member take?

Pandit Thakur Das Bhargava: I will not take long. I will take about ten minutes.

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

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

Pandit Thakur Das Bhargava: Sir, I am reminded of a story in which a wolf was drinking water up-stream.

Mr. President: Has that anything to do with this Bill?

Pandit Thakur Das Bhargava: Yes, Sir. When he saw a lamb who was taking water down-stream, the wolf accused it of spoiling the water. The poor lamb replied that, as the wolf was taking water which did not flow from the place where the lamb was taking water, there was no good reason why the wolf should accuse it. "But, then", the wolf replied, "if you have not spoilt the water, your father did!" That seems to be the position taken up by the Government in regard to this Bill. Instead of meeting the arguments which I advanced, they have brought forward arguments which cannot hold water. After all, the reply is that, if there was a motion to circulate this Bill for eliciting public opinion, Government would have agreed to such a motion, and, as I happened to table a motion in the Simla Session for circulation, I was not justified in now tabling a motion for reference to the Select Committee. May I submit that the original motion in regard to this Bill which I proposed to make on the 20th February, 1929, was for reference to Select Committee, as would appear from a foot-note on page 1027 of Vol. I of Assembly Debates

[Pandit Thakur Das Bhargava.]

for 1929. When I came to know that the Government did not agree to that motion, I thought that the motion for circulation might be made in the Simla Session. However before making the present motion, I took pains to find out the attitude of the Government and I was informed that the Government were not agreeable even to a motion for circulation. Anyhow, I do not know what restrained the Government themselves from tabling a motion to that effect. In regard to other Bills they have tabled such motions, but in regard to this Bill they have not tabled any such motion. If the Government did really want circulation, it was up to them to make a motion of this kind. In fact, the truth appears to be that the Government feel quite strong and feel that they will be able to defeat this motion, and therefore they have not thought it wise even to table a motion for circulation.

Coming to the merits of the Bill, I had thought that this time some good arguments would be advanced and it would be shown why the Government oppose this Bill. Only two arguments have been advanced, one of them being that such a change in the law would lead to delay. Now, a reference to the Bill, in so far as it relates to section 540A, would show that that change is only designed to effect a speedy trial of cases. The substituted section says that, when an accused person need not attend or cannot attend, the case can proceed on and the Court can dispense with his presence. If that provision is worth anything, it only brings about a speedy trial of cases and the question of delay does not arise. The second point that has been sought to be made out is that the Bill does not consider the case from the point of view of the complainant. Now, Sir, in the majority of cases, the complainant will be the Crown. In all cognizable cases the complainant is the Crown, and the Court, which is the repository of all justice, will weigh the scale between opposing parties and determine if the application of a particular accused is justified. In the law as it existed in 1861 and 1872 and previous to 1898, these provisions were there. And even now, as I submitted, the Courts have interpreted the other sections of the Criminal Procedure Code in this way, that practically they have usurped those powers which did not belong to them under the provisions of Section 552. I only wanted that the interpretation of the law should be straight and just.

The argument that rich persons will take advantage of this law cannot hold water. My complaint was that poor persons were harassed owing to the absence of a provision like this. Instead of meeting that now, the complaint is made that rich people will try to absent themselves and thus defeat the law. In fact this argument comes to this, that the rich people will be able to corrupt the judges and get exemptions. I already met this argument, and the reply is absolutely clear. See that good men are there, that the Magistrate is competent and not corrupt. But it is no use having provisions in the Criminal Procedure Code which make for such conditions that the human necessity of the absence of accused cannot even be considered by Courts. Therefore, I feel that, in relation to this Bill, the Government regard not argument but number as the deciding factor. I would appeal to every Honourable Member of the House to consider the provisions of this Bill dispassionately and see for himself whether these provisions should be incorporated in the Criminal Procedure Code.

Mr. President: The question is:

"That the Bill further to amend the Code of Criminal Procedure, 1898 (Amendment of sections 205 and 540A), be referred to a Select Committee consisting of the Honourable the Law Member, Mian Mohammad Shah Nawaz, Mr. Abdul Haye, Lala Rang Behari Lal, Mr. Mukhtar Singh, Mr. Lalchand Navalrai, Mr. M. S. Aney, Raizada Phagat Ram, and the Mover; and that the number of Members whose presence shall be necessary to constitute a meeting of the Committee shall be four."

The motion was negatived.

THE INDIAN RELIGIOUS PICTURES TRADE MARKS (PREVENTION) BILL.

Mr. B. Das (Orissa Division: Non-Muhammadan): Sir, I beg to move that the Bill to penalise the use of pictures of gods and goddesses, scenes from scriptures or mythology of any religion whatsoever as marks or trade marks on any article imported to or manufactured in India, be referred to a Select Committee consisting of the Honourable the Law Member, the Honourable Sir George Rainy, Sir Hugh Cocke, Rai Sahib Harbilas Sarda, Mr. N. C. Kelkar, Mr. K. C. Neogy, Mr. Fazal Ibrahim Rahimtulla, Sir Purshotamdas Thakurdas, and the Mover, with instructions to report on or before the 28th February, 1930, or as soon as possible thereafter and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five.

Sir, my Honourable friend, Mr. Neogy, has a Bill before the House which is the Indian Merchandise Marks Bill which intends to purify commerce in the country. My Bill is rather a supplement to Mr. Neogy's Bill. I also want in a way to purify trade and commerce in the country, and I do not want trade and commerce in the country to take advantage of religious pictures and use them at a disadvantage to those who belong to that particular religion.

Mr. President: Why not take circulation and be satisfied?

Mr. B. Das: I will accept the motion for circulation. But before doing so, I wish to make a few observations. My own views, I have summarised in the Statement of Objects and Reasons. If I read it, my own views will be laid before the House.

"Many articles imported from foreign countries or manufactured in British India bear on them the stamp or picture of Hindu gods and goddesses, scenes from scriptures or mythology, as marks or trade marks. It is repugnant to religious sentiments that they should be so used and profaned by coming into contact with every day humdrum commercial life. Respect for Hindu sentiments demands that the pictures of gods and goddesses and the scenes from scriptures and mythology should not be used as marks or trade marks on any article sold in the market. In like manner, it is proposed to provide that pictures from life of Buddha, the Koran, the Bible should not be used as marks or trade marks on any article sold in the market. The object of this Pill is to penalise all such imports and manufactures so as to prevent the abuse that has grown up within recent years. Commercialisation of religious sentiments is anti-Indian in tradition, and culture and sentiment."

Sir, there is extensive vandalism going on committed by the trades people all over. My charges apply equally to imported goods as well as

[Mr. B. Das.]

to goods manufactured in India, and my charge of vandalism against the Indian manufacturers is the greater because they being themselves Indians, understand Indian sentiments and the Indian feeling of the Hindu community and other communities, who do not like to see pictures of their gods and scriptures degenerated and commercialised as trade marks. I have got here certain pictures which I have collected from piece-goods, foreign imported piece-goods, which show that these are not the real pictures of the gods and goddesses whom they mean to represent. As a Hindu, I abhor to see God Krishna or any other god being caricatured in the pictures imported from abroad and used as commercial advertisement. I will place those pictures on the table* of the House so that Honourable Members may have an idea what they are like. The trading community in India have also used these pictures in their calendars as a source of advertisement for their profession and trade. At times we find certain pictures which are certainly not of the gods and goddesses, but pictures fit to adorn the night clubs of London or Parisian Saloons. Such pictures of gods and goddesses have certainly a great demoralising effect on the masses of the people. I want that trade and commerce should not tamper with our religion and with the morality of the people. I will pass on the pictures I have to the House, and Honourable Members will see how atrocious they are. It is very disgusting to see the pictures of Radha and Krishna in improper positions of cinema and theatres. Cinema actors' and actresses' photos—with their lustful and lewd faces—are passed off as pictures of Lord Krishna and Radha. Any human being, not to say a Hindu, will abhor seeing it.

An Honourable Member: They might do so on the stage.

Mr. B. Das: I am not discussing here whether such scenes should not be enacted on the stage. In fact I think my Honourable friend, Mr. Neogy, might bring in a Bill penalising such scriptural scenes being enacted on the stage by loose men and women, so that the Honourable the Home Member might have an opportunity of expressing his views in the House on that question. I am now concerned with such pictures being used as trade marks and for commercial purposes, and which have a most demoralising effect on the people. I already said that I welcome the proposition of the Honourable Sir George Rainy to circulate the Bill. But I would like to hear his views in the matter before I accept the motion for circulation, for if I accept his motion, it would mean the guillotine for the Bill during the next Session and I could proceed with the Bill only if I am returned at the next general election.

The Honourable Sir George Rainy (Member for Commerce and Railways): Sir, I desire to move the amendment which stands in my name: "That the Bill be circulated for the purpose of eliciting opinions thereon". I do not wish to take much of the time of this House on this question, but there are three or four points to which I think I am bound to allude. It seems to me that the Honourable the Mover has undertaken the task of initiating legislation on this subject somewhat light-heartedly, and without endeavouring to estimate the difficulties he might encounter, or considering the justification which he ought to give for his proposal.

*The pictures were laid on the table of the House.

The first point I wish to take is this. In the opinion of the Honourable the Mover the application to articles which are bought or sold in India of marks or trade marks representing mythological subjects—pictures of gods and goddesses and other pictures with religious association—is repugnant to Hindu sentiment. Now, the point I would like to put to him and the House is this. If in fact the application of these pictures in that way were repugnant to the sentiment of the majority of the buyers of these goods, is it conceivable that manufacturers and merchants would apply these marks so freely? Is not the natural inference rather this, that these particular marks and pictures attract customers rather than repel them? I think that is a very real and solid point, which sooner or later the Honourable Member will have to meet, if he decides to proceed with his Bill.

3 P.M. The second point that I wish to take is this. Has the Honourable Member considered how, if his Bill became law, it would be possible to enforce it? That is a question which came prominently to notice in connection with my Honourable friend Mr. Neogy's Bill for amending the Indian Merchandise Marks Act. It is practically impossible, as things are in India today, to make a prohibition of that sort effective at the time of sale, and I am afraid that, if the Bill were passed into law, it might to a large extent be a dead letter. You might of course prevent the importation at the customs of goods to which certain marks, or trade marks, were applied; again you could conceivably—I do not know whether that is what my Honourable friend contemplates—have at every factory in India some sort of establishment which would check all goods before they left the factory and see that the marks thought to be objectionable were not applied. That might be possible, though it would be a considereble burden on the industry. But, even supposing we had all these precautions, if in fact it assists the sale of goods to have these marks applied, what is to prevent the merchant or middleman, after the goods have been imported and after the goods have been manufactured and have left the factory, from applying these marks later on? I think these are very real difficulties and it is precisely because they demand close examination that it seems to me necessary that the Bill should be circulated before the House comes to a determination about it.

My third and last point, Mr. President, is this. I quite realise the difficulties which private Members in this House have about the drafting of their Bills and I only mention this point because I want to be quite clear as to what the Honourable Member proposes. The operative clause in his Bill, clause 2, reads like this:

"Any person from whom a customs duty is levied in any place in British India for importing any article, or the manufacture in India of any articles . . . "

That apparently reads: "Any person from whom a customs duty is levied for the manufacture in India of any article . . . .". I am not aware that customs duties are levied for the manufacture of any articles in India at present, but the point I wish to get at is this. Is it definitely the Honourable Member's intention and the intention of his Bill that this prohibition should be applied both to imported goods and to goods manufactured in India?

Mr. B. Das: Yes, that is so.

The Honourable Sir George Rainy: I am grateful to the Honourable Member. It was necessary to raise the point because, if the House decides to circulate the Bill, the Local Governments and others would have been unable to express an opinion if they had regard merely to the terms of the clause as it stands which seemed to me ambiguous and very difficult to construe indeed.

I do not think it is necessary, Sir, that I should take up the time of the House longer.

Mr. B. Das: Sir, I beg to withdraw the motion for reference to Select Committee and I accept the motion for circulation.

Mr. President: It is for the House to accept.

Mr. W. Alexander (Madras: European): Sir, when this Bill first came into my hands, I had considerable doubt as to whether the Honourable the Mover really intended to include the words: "It extends to the whole of India". And after waiting for his explanation, I am left guessing and wondering still. For this reason. In the course of a long business experience, and seeing the use of these pictures of gods and goddesses as trade marks, I can only say that, so far as regards the Madras Presidency, it does not apply at all, and that there is no repugnance, as stated in the Bill, to the use of those marks on the part of the people of that Presidency. In fact it is quite the other way. One has only to go into the bazars and see how those pictures are used in an ornamental way on the walls of shops and houses; and instead of the attitude towards them being one of repugnance, it is really that of admiration, respect, and I might almost say, veneration.

Then there is another aspect which I think requires elucidation. I do not know if the Honourable Member, in trying to stop the use of those tickets by this Bill, remembers that certain marks have been used over a long term of years and have become quite valuable,—owing very largely to the fact that they are usually identified with a reliable and good quality of cloth, or whatever it is,—say colour and general workmanship. They are owned by Indians as well as by other traders. Does the Honourable Member propose to compensate the owners for the loss they would incur through the cancellation of their right to use them? And if he does propose to compensate them, is he aware that the huge amount involved in doing that is a matter which no Government could possibly consider for a moment?

There is another point I would like to make, and this rather concerns the Honourable the Mover himself. I do not know if he is of a very religious turn of mind, but I think, we may assume from the fact that he has put forward this Bill, that he has considerable leanings in that direction. Now, I would like to point out that in this Bill he proposes to uproot very old custom and usage. I would ask him to consider that, in doing that, he may possibly get on to very dangerous ground. The Honourable Member may not be superstitious, but he and I have been friends for some years past, and I do not like to think of his possibly being harassed and worried by hosts of angry gods and goddesses disturbing his peace of mind for the rest of his natural existence, and, for all we know, perhaps far beyond that. I would therefore appeal to this House to vote solidly against this measure. Sir, I oppose the motion.

Mr. President: The original motion was:

"That the Bill to penalise the use of pictures of gods and goddesses, scenes from scriptures or mythology of any religion whatsoever as marks or trade marks on any article imported to or manufactured in India, be referred to a Select Committee consisting of the Honourable the Law Member, the Honourable Sir George Rainy, Sir Hugh Cocke, Rai Sahib Harbilas Sarda, Mr. N. C Kelkar, Mr. K. C. Neogy, Mr. Fazl Ibrahim Rahimtulla, Sir Purshotamdas Thakurdas and the Mover, with instructions to report on or before the 28th February, 1930, or as soon as possible thereafter, and that the number of Members whose presence shall be necessary to constitute a meeting of the Committee shall be five;"

Since which the following amendment has been moved:

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

The question is that that amendment be made.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 6th February, 1930.