

Thursday, 1st October, 1931

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THE
LEGISLATIVE ASSEMBLY DEBATES
(Official Report)

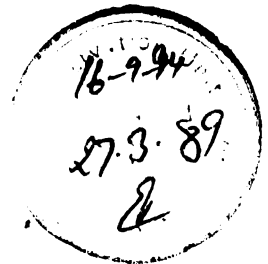
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(23rd September to 3rd October, 1931)

SECOND SESSION

OF THE

FOURTH LEGISLATIVE ASSEMBLY
1931



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Legislative Assembly.

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MIAN MUHAMMAD SHAH NAWAZ, C.I.E., M.L.A.

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LEGISLATIVE ASSEMBLY.

Thursday, 1st October, 1931.

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

ELECTION OF MEMBERS TO THE ADVISORY PUBLICITY COMMITTEE.

Mr. President : Honourable Members will now proceed to elect seven Members to the Advisory Publicity Committee. There are eleven candidates whose names are printed on the ballot papers which will now be supplied to Honourable Members in the order in which I call them.

(The ballot was then taken.)

THE INDIAN PRESS (EMERGENCY POWERS) BILL—*contd.*

Clause 2 was added to the Bill.

Mr. President : The question is :

“ That clause 3 be added to the Bill.”

Dr. Ziauddin Ahmad (United Provinces Southern Divisions : Muhammadan Rural) : Sir, I beg to move that clause 3 be omitted and consequential amendments be made in clauses 4 and 5.

The reason for this I gave partially yesterday, and I would now like to explain it. Clause 3 clearly provides that as soon as a press comes into existence and before it has committed any offence whatsoever, it will be required to pay a security which may go up to Rs. 1,000. Sir, we know that a large number of presses which are doing small job work in towns and cities live from hand to mouth. Their prices very often do not exceed a few hundred rupees. The owners usually purchase a small press ; they employ local men to carry on the work and thus give some kind of employment to about a dozen persons. If this clause is enforced, I am afraid that all the small presses, which are providing some kind of livelihood for people, and which are meeting a local demand, will soon come to an end, and the result of this will be that the printing trade will be monopolised by capitalists. In the words of one Honourable Member I may say that mushroom presses will come to an end. Sir, we have been fighting all along that trade should not be the monopoly of big capitalists. They should not be permitted to capture and practically finish those persons who are carrying on a similar trade on a smaller scale. If we become very harsh on these small presses, the result will be that most of these presses in the small towns will come to an end and the printing trade will be confined to large capitalists in the big towns who will be able to deposit any amount of security on account of the large capital at their back. This is a question of policy, and I do not think that any one of us who represents the poor taxpayers and those of us who do not represent the big capitalists can

[Dr. Ziauddin Ahmad.]

ever agree for a moment to Government undertaking a measure by means of which the small printing presses may come to an end. In addition to depriving a large number of people of their livelihood, they will be put to additional trouble to go to big towns for the printing of local business. for printing the proceedings of the municipalities and various other job work we do require local printing presses in order to carry out the work quickly ; and it will certainly be very inconvenient to the people if, even for a small work, they have to go to a big town and meet the expense of travelling and the delay it must involve. Therefore in the interests of safeguarding this cottage industry of printing, and in the interests of carrying out printing locally, I strongly appeal to Government not to take any measure by means of which these printing presses may cease to exist.

The second point that I should like to make is this, that it is against all principles of law to consider a man as guilty before he has committed any offence. We are violating that principle in this clause by saying that in the case of any printing press, however *bona fide* it may be and for whatever purpose it may come into existence, even though it may belong to a very loyal class, it should be assumed that it would commit an offence and be required to pay security before it came into existence. I do not object to the demand of security after the commission of an offence, but I certainly do object to the demand of any kind of security before the offence is committed. It may be argued from the Government Benches that this particular provision was introduced for the reason that a printing press may commit a first offence without security, and as soon as security is demanded it may close, and subsequently at night time the printing press may move to the other corner of the street. Next day an application may be filed under another name and a new press may be started, and the second offence may be committed in the same manner. I admit that this apprehension has some force. But one can naturally overcome this difficulty by considering whether the printing press in a *bona fide* press or a press which has already moved after committing the first offence. This is a thing which anybody can easily find out and it is quite possible that you may provide for remedying this particular objection.

Speaking now from the Muslim point of view, I oppose it still more strongly than I oppose it as an Indian, because a large number of Muslim presses come under this category, and any person who takes a communal view in this particular case is not playing the right game. It will be giving a wrong impression to say that this particular clause will not affect Muslims but only non-Muslims. I join issue with all those persons who hold that opinion. I was told by some supporters that probably Magistrates will take a lenient view of this favoured class. The law does not provide anything of this kind, and I do not think we should make any provision in which a distinction is made between a favoured class and an unfavoured class. These words are sometimes used in diplomatic relations "most favoured nations". I strongly object to this particular idea being introduced in any legislation passed by this Assembly. In the first place, I do not know whether the Muslims are really the most favoured people. Experience has shown just the reverse. Therefore from the communal point of view I oppose this particular clause

in stronger words than as an Indian. I consider that this particular clause is a great injustice to innocent people ; it is really killing a cottage industry and it is a provision under which innocent people are being punished without committing any offence.

With these words, Sir, I beg to move my amendment.

Sir Hari Singh Gour (Central Provinces Hindi Divisions : Non-Muhammadan) : I hope I shall be able to simplify a great deal of what has been tabulated here under the various amendments. My friend, Dr. Ziauddin, wants to omit clause 3 which deals with old presses. Sub-clauses (1) and (2) deal with new presses. I think that so far as new presses are concerned, in ordinary cases no security should be demanded unless the Magistrate, for reasons to be recorded by him in writing, finds that it is a case in which security should be demanded and one such case would arise when the declarer of a new press comes in the guise of keeper of a new press and who really is an old printer who has offended against the Press Act. That is the whole crux of the case. My Honourable friend, Dr. Ziauddin Ahmad, merely meant to draw the attention of the Treasury Benches to this flaw in clause 3 of the Bill, namely, that ordinarily no security should be demanded from the keeper of a new press unless the Magistrate, for reasons to be recorded by him in writing, finds that security is necessary. There are some other amendments dealing with the quantum of security. The security that is to be demanded from the keeper of a new press is not to exceed Rs. 1,000. But there are a large number of amendments, and in order to save time, I would ask the Honourable Members to recast these amendments so that, point by point, we may go on and finish the work as soon as possible. Point No. 1 is that ordinarily no security should be demanded from the keeper of a new press unless, for reasons to be recorded in writing, he suspects that the new press is really an old offender coming in the guise of a new press. The second point is that in such a case the security should not exceed the sum of Rs. 500. That will dispose of clause 3, sub-clauses (1) and (2). Then there is sub-clause (3), namely, whether the security to be demanded from an old press which has offended against the Act is not less than Rs. 500 or more than Rs. 3,000. Honourable Members desire that the minimum should be cut out and the maximum should be reduced to Rs. 2,000. If my suggestion is accepted, it will cover a very large number of amendments on the paper and it will finish all the amendments right up to page 4. If the occupants of the Treasury Benches have no objection to clarify the issues on these points, we shall be able to get through this work very quickly.

The Honourable Sir James Orerar (Home Member) : I do not know whether, after what has fallen from the Honourable gentleman from Nagpur, Dr. Ziauddin Ahmad will be prepared to push his amendment. I do not propose to speak at any length on this point. But I should like to make it clear that the complete omission of the clause, which he proposes, would, so far as presses are concerned, completely nullify the whole of the structure and purpose of the Bill. If, therefore, the House were prepared to accept the Honourable Member's amendment, it would mean that all the labour which has been devoted to this measure, that all the decisions at which the House has already arrived on general questions of principle, would be directly negatived. I think the Honourable Member showed in his argument a complete misconception of what would

[Sir James Crerar.]

be the result of his amendment. He said that what he had in mind was the new press, the new press which has not offended. He objected to the principle which he said was inherent in the clause, and on that point I join issue with him. He went on to say that he had no objection in principle to security being taken from a press which has offended. He apparently omitted to observe that sub-clause (3) of the clause makes precisely that provision to which he himself says he has no objection, but which would be abrogated by his amendment. I do not think I need deal further with this particular amendment.

Sir Hari Singh Gour : What has the Honourable the Home Member to say to the suggestion which I have just now made by which we might be able to simplify the procedure ?

The Honourable Sir James Crerar : I cannot invade the functions and discretion of the Chair.

Sir Hari Singh Gour : I appeal to you, Sir, for the acceptance of my suggestion.

Mr. President : There are other amendments on the Order Paper. When those amendments are moved, it will be open for both sides of the House to consider how far there is a possibility of a compromise. This is not the occasion for it.

The question is :

“ That clause 3 be omitted and consequential amendments be made in clauses 4 and 5.”

The motion was negatived.

Mr. B. Sitaramaraju (Ganjam *cum* Vizagapatam : Non-Muham-madan Rural) : Sir, I move :

“ That sub-clause (1) of clause 3 be omitted.”

Sir, we have been discussing this Bill for four days and everything that can be said in a general way has been said on several of these important clauses. It is not my purpose therefore to dwell at length on this clause. All that I would like to say is this. My objection to sub-clause (1) of clause 3 is an objection based on a principle. That principle has been already stated before the House and that is, that no person should be presumed to be guilty unless the contrary is proved. No doubt, Sir, the clause, as is now drafted in the Bill now under discussion, has been greatly modified and it is a great improvement, I must admit, on the clause that was originally proposed by the Honourable the Home Member. If I have ventured to move this amendment to-day, it is because of that sympathetic consideration which the Honourable the Home Member has shown in coming to an agreement on several of the important clauses of this Bill and in modifying the old Bill to a large extent to suit the wishes of the non-official Members. But there are still a few more objectionable features permitted to be retained in this Bill and it is with a view to state the desirability of removing those objectionable features on the floor of the House and to try and convince the Honourable the Home Member that if he could see eye to eye with the non-official Benches in this matter, it would be quite possible for us to have a Bill which would be less objectionable and which at the same time would serve the purpose which he has in view that I have brought

in this amendment. The improvements that have been made in this clause are, it will be seen, that a probation period of 3 months is given to the keeper of a new press and the Magistrate, when ordering security, is required to put on record his reasons for so doing. That is a great improvement, I admit ; but still the principle is not conceded. It is open to a Magistrate to call upon any keeper of a new press to deposit security without his having done anything to deserve that penalty. The powers vested in a Magistrate are so wide, and knowing as we do the way in which discretion has been exercised by Magistrates under section 144, and other sections of the Criminal Procedure Code, notwithstanding the provisions provided for judicial control, has made me think that these powers are too wide, and it is not possible to believe that the Magistrate would eliminate the possibility of innocent people suffering under a clause like this. The exercise of these powers by the Magistrates, as we all know, are based generally on information received from subordinates on whom they place great reliance. Neither the Magistrate nor his subordinates would be prepared to take any risk. It may be that the keeper himself has not offended, but his associates may be such that the Magistrate may think it prudent to take some security from this man either on suspicion or in view of his antecedents. It is not difficult for the Magistrate to put on record his reasons for stating why a security should be demanded from these people, notwithstanding the fact that the man has not actually committed anything to deserve the penalty. It must be remembered also that there is no judicial control over these proceedings. I venture to submit, under these circumstances it is not fair to degrade the profession of printers, and it is not worthy of the Government that a clause which is the negation of the principle that all persons must be presumed innocent until proved guilty, should be permitted to be placed on the Statute-book. With these few words I move this amendment.

Pandit Satyendra Nath Sen (Presidency Division : Non-Muhammadan Rural) : Sir, I rise to support the amendment moved by my Honourable friend, Mr. Sitaramaraju. The keeping of a press is no longer a lucrative business. It is pursued now often as a supplementary source of income. The keeper of a press generally works in an office where his income is perhaps insufficient, and he therefore starts a printing press by investing a capital of a few hundred rupees from his own pocket, or by scraping it together, or by procuring a loan or an advance on mortgage, and he wishes to do that in the hope that it will fetch him some income, say Rs. 50 or Rs 100 a month. I admit, Sir, that it does fetch him some income, but sometimes, in these days of economic depression and keen competition it is just the other way. The head compositor is often left in charge of the business, his only qualification being that he can read and write without much difficulty, and the keeper of the press comes back from his office seldom before dusk, and when he comes back tired, he is not in a position to look after the business ; he does not know what is going on in the press. Under the circumstances, I think that it will be a great hardship to him if he is asked to deposit any sum, big or small, especially because in these days business has to be carried on with much difficulty and under most adverse circumstances. There is no reason why the keeper of a press should not be presumed to be innocent so long as he has not offended against the law. I am not talking of jurisprudence and so forth, because I am not a lawyer, but I have

[Pandit Satyendra Nath Sen.]

some common sense on which I take my stand and I should like to see which of my Honourable friends will go against common sense. With these words I support the amendment.

Sardar Sant Singh (West Punjab : Sikh) : Sir, I rise to support this amendment. I have myself given notice of a similar amendment which comes on later, so I would like to say a few words on this.

My main objection against the provisions of this Bill is that, instead of introducing the rule of law in this country it introduces the rule of executive. We have been accustomed to hear from the Treasury Benches the phrase that if an administration wants to govern, it must maintain law and order at any cost. Thus law always takes precedence to order. All eminent authorities agree to this. No civilised State maintains order at the cost of law. Therefore the first point which ought to be taken into consideration in my humble opinion is whether, by introducing this new legislation, we are maintaining the rule of law in the country or are we substituting the rule of the executive for the rule of law. This clause, as a matter of fact the whole of this Bill, insists upon substituting the authority of the executive for the authority of law. By asking us to enact this particular clause, the executive asks us not only to arm it with power to punish an individual who in its opinion may transgress the limits of this Bill, but it asks us also to declare that whoever intends to keep a printing press, he shall be regarded as a man of doubtful character and that he is not fit to be a free man. As a matter of fact the business or profession of printing has been declared to be a sort of criminal profession. Any person who wants to open or to engage in the profession of printing is to be regarded as a culprit from the very start. If the operation of this clause had been limited to the cases of individuals of known bad or even doubtful antecedents, its authors could have claimed some merit for calling upon him to deposit security. In the absence of such a qualifying phrase we would be justified in concluding that irrespective of the antecedents of the declarant, the Magistrate can call upon him to deposit security. Of course discretion is vested in a Magistrate, but we have seen enough of the exercise of this discretion, the Magistrate entirely subordinates himself to the will of the District Magistrate. The District Magistrate's will is more often than not exercised in restricting the liberties of the people, instead of protecting those liberties, which is the real function of the District Magistrate. With that mentality in the land, my submission is that it will be most dangerous to arm the executive with such a power. If the Press is not wanted in this country, let the executive come forward and openly declare so and we will do without a Press in India. But if the Press is wanted, and if it is considered to be of very great help in the administration of the country, then it is nothing short of tyranny to ask the keeper of a press to deposit security. I do not agree with my friend the Mover of the amendment that the clause provides any probation of three months for good behaviour of a new press. There is no such provision. As I read sub-clauses (1) and (2) together the Local Government is given power to order a refund of the deposit money by not confirming the order of the Magistrate but heaven knows how that power is to be exercised. It is really no safeguard at all. The person who wants to open a new press will have to

deposit security in the very beginning. Therefore, my submission is that there is no rule of justice or of equity in demanding security from a new press. A new press should be considered to be innocent till the keeper or printer is found guilty, and we do not know why that rule, which has been introduced by British jurisprudence in India, should be abrogated here when we are passing such legislation as this. With these few remarks, Sir, I support this amendment.

Mr. E. Studd (Bengal : European) : Sir, I have listened very carefully to the arguments of those Honourable Members who have supported this amendment, but I am afraid I cannot agree with them. It seems to me that, in the first place, they have refused to recognise the fact that this Bill is intended not to deal with the whole Press but to deal with only one specific section of the Press which admittedly has been doing a great deal of damage by eulogising murder and instigating violence. I do not think any of the arguments of my Honourable friends opposite can hold water. If they admit that there has been a section of the Press which has been eulogising murder and violence, surely they must admit that steps must be taken to deal with.....

Mr. Gaya Prasad Singh (Muzaffarpur *cum* Champaran : Non-Muhammadian) : What about the new press ?

Mr. E. Studd : I am coming to it now. It does not seem to me that it matters very much whether it is a new press or an old press. They all assume that everybody has got to pay this deposit, but I cannot agree with that assumption. I do not think that there are any grounds for believing that this clause would be operated unduly harshly by Magistrates who have to deal with applications. But, Sir, all my Honourable friends opposite complain that they object to this clause on principle because it is condemning a man before he is found guilty. I do not know how they can justify that claim. All that is asked is that the keeper of a press may be required to put down a deposit which he will have returned to him if there is no complaint against his press after three months. Now, Sir, I think I am right in saying that every Honourable Member of this House, when he stands as a candidate for election, is called upon to put down a deposit. Can anybody honestly maintain that he has been condemned as a defaulter ? It seems to me, Sir, that the two cases are very much on the same footing, and therefore, I do not think that that claim can possibly hold water. I can understand Honourable Members disliking the provisions of this Bill—I do not like them myself very much—but when an emergency arises, sometimes unpleasant measures have to be taken. Perhaps Honourable Members will remember that a year or two ago France was very much afraid of small-pox being introduced into their country, and they therefore laid down very strict regulations that no one must be allowed to land in France unless he was either vaccinated then or could produce a certificate that he had been vaccinated quite a short time before. It seems to me therefore that the present case is rather on a par with that. There is an evil in existence in this country which it is sought to eradicate and stop spreading, and therefore measures that we might not consider justifiable in ordinary times are perfectly justifiable under the present circumstances. Therefore, it seems to me that my friends opposite have made out no case for this amendment, and I strongly oppose it.

Mr. Gaya Prasad Singh : Sir, I am really surprised at the arguments advanced by my Honourable friend who has just sat down. My friend stated that this clause is intended to be directed against that section of the Press which is known to have a tendency to incite to violence and things like that. Let us assume that it is so, but what about the new printing press which is just going to be started? Why should any such presumption be raised against a new printing press? Why should this new press, which has in no way offended against the law or is not in any way guilty of incitement to violence or murderous activities, be required to give a deposit in the first instance? That is my first point which I want to place before the House, because every man must be presumed to be innocent, and the keeper of a new printing press must be presumed to be innocent till he is proved to be guilty. This is the fundamental proposition of criminal jurisprudence, which is sought to be violated by the insertion of this sub-clause.

In the next place, the right of appeal to the High Court is also sought to be denied by this particular clause. Apart from the provisions prescribed in the Criminal Procedure Code, the High Court has inherent powers of superintendence, direction and control. Now, this sub-clause seeks to deprive the High Court of that particular power. Therefore, my suggestion is that Government might, without impairing the object which they have in view, agree to the deletion of this sub-clause.

Sir Abdur Rahim (Calcutta and Suburbs : Muhammadan Urban) : Sir, I support the amendment that has been moved by my friend, Mr. Sitaramaraju. He has made out a very strong case in favour of the amendment, and I should like the Honourable the Home Member to consider the position so far as this sub-clause is concerned a little more carefully. I am perfectly conscious—we are all conscious—of the fact that the Honourable the Home Member has gone a long way to conciliate public opinion in favour of this Bill, but I do think that this sub-clause cannot be justified having regard to the object of the Bill, with which we on this side of the House have expressed our entire sympathy. The object of the Bill as now presented to the House is to provide against the publication of matter inciting to or encouraging murder or violence. That object can be fully attained without having a sub-clause of this character. Under this sub-clause every press that is started has to deposit security....

The Honourable Sir James Crerar : No, Sir.

Sir Abdur Rahim : Yes, unless the Magistrate chooses to dispense with it at his own discretion. Now, I contend that no such discretion ought to be given to Magistrates in the case of a new printing press. The question I would ask the Treasury Benches to consider is this,—is a printing press a legitimate business or not? If it is, is the Government entitled or justified, or is it necessary for them to ask, before a legitimate business of this character is started, that the man who starts it must be prepared, if the Magistrate so wishes, to deposit a certain amount of security? Why do you not ask for security in the case of any other business? What is the reason then that in the case of printing presses only you should ask for security beforehand, or the Magistrate should have the power to ask for security? What is the reason? The only reason apparently, so far as one can guess, is this. There is a sort of presumption in the minds of the framers of the Bill that printing is a more or less dangerous business.

Is that so ? Is that the proposition that the Government want to support—that there is a possible danger to the public if a printing press is started ? Unless that proposition is supported, I submit to the House that this sub-clause cannot be justified at all. Not only a printer, but every man may be liable to offend against the law of the land. Why should the printers be singled out for security ? One can well understand that if a printing press is printing matter which offends against clause 4, which offends against the object of this Bill, then in that case the Magistrate should have the power to call upon the keeper of that press to deposit security. But until that has happened, what justification is there for saying to a man who wants to start a business of printing, “No, you shall not be allowed to do that unless you deposit a certain amount of security”. And, as has been pointed out, and very rightly pointed out, that will cripple printing business in this country a great deal.

There are a very large number of small printing presses in this country which will not be able to deposit any security at all. Why should you hamper such men at all ? You can only do that if you really accept the proposition, if you believe in the proposition that printing is a dangerous business. Surely, it is not necessary for my Honourable friend the Home Member to go so far as that. Let him lay down that if there is any press which offends against the provisions of clause 4, that press will be called upon by the Magistrate to furnish security. But why should presses, which have not yet started or rather which have just been started, be called upon to furnish security ? I submit that the Treasury Benches cannot justify this provision at all.

Mr. K. Ahmed (Rajshahi Division : Muhammadan Rural) : I cannot quite appreciate the views of my Honourable friends Mr. Gaya Prasad Singh and Sir Abdur Rahim, and I do not agree with them in their arguments. They ask why the business of printing should be made to deposit security. Mr. Gaya Prasad Singh stated that every one in the eye of criminal jurisprudence, not only of Britain but of the Romans, I believe, is supposed to be innocent unless there is a trial held and the guilt is proved.

Sardar Sant Singh : You will find an illustration to support your view from the French jurisprudence where a man is presumed to be guilty till he is proved to be innocent.

Mr. K. Ahmed : If my Honourable friend will go to his own town—I do not know the district he comes from (*An Honourable Member* : “Lyallpur.”)—but if he comes to my town the City of Calcutta, he will find there is a Corporation there for which my Honourable friend, Mr. Amar Nath Dutt, has great respect because many gentlemen of his class make their living out of it and are very busy with regard to the public life of the country. Sir, we have got an avocation of life, the same avocation that Sir Abdur Rahim had 20 years ago, namely, the profession of a lawyer. (*An Honourable Member* : “He is still a member of the Calcutta Bar.”) But I do not think he takes out a licence from the Corporation of Calcutta. Sir, before we start our profession, we have to pay a deposit of Rs. 50 to the Municipality and take out a licence ; otherwise you cannot carry on your trade.

Sir Abdur Rahim : Is that security ?

Mr. K. Ahmed : I will give you another case of security. But will there be any sense if you go and say to the Municipality, “We are all

[Mr. K. Ahmed.]

innocent. We come from England. We are barristers, and why should we take out a licence ? We have got the liberty to practise anywhere we go”.

Sardar Sant Singh : Is there no distinction between taking out a licence and being bound down under a security ?

Mr. K. Ahmed : If you like, take another illustration. Take section 110 of the Criminal Procedure Code. If there is any information that a man is liable to commit an offence, or that it is a bad livelihood case and he is aiding and abetting the commission of certain offences, even though there is no proof, but only a rumour or information, then a First Class Magistrate or a Sub-Divisional Magistrate can call upon him to show cause why he should not furnish security, in which case will not my Honourable friend go and say, “In that case I stand surety for the man in the meanwhile before his case will be heard” ? The man is innocent before his guilt is proved, and in the eye of the law he is presumed to be innocent, and I fully agree with my Honourable friend in that. The printer here also before he starts his business has to take out a licence and deposit money. That deposit is not a penalty. As my Honourable friend, Mr. Studd. pointed out, do we not deposit before the returning officer at the time of nomination for election to the Legislative Assembly a certain amount of money ? Mr. President, you had also to give a security of Rs. 500 before you filed your nomination paper. (*An Honourable Member :* “Is that surety or deposit ?”) That is surety and security of Rs. 500 but here in the case of the printer it is deposit only and in case of liability arising, forfeiture would follow. Until the guilt of his client is proved under section 110, he has either to deposit Rs. 500 or Rs. 1,000 or Rs. 2,000 or get some

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one to stand surety for him that he will take his trial. Similarly there will be a trial of the printers. Under the law of evidence they could not admit the evidence of the innocence of the printers for whom my friends appear. I ask them to agree with me that this clause is not in contravention of any principle of jurisprudence or criminal law. I am speaking simply as a disinterested person and I have heard the arguments on both sides. I should like to see a happy and prosperous Press in India, but the Government find that the trade is not carried on properly. Suppose a dirty press is started in the slums of Calcutta ; and it has no means to pay the penalty which the Magistrate may impose on it. In that case how are you to punish it ? I should like my Honourable friends to satisfy me on that point. Will they quote any law or principle of jurisprudence to support their view ? I think, Sir, that their arguments have no leg to stand upon, and I challenge my friends from the opposite side to convince me how I can be in a position to agree with them.

Mr. C. S. Banga Iyer (Rohilkund and Kumaon Divisions : Non-Muhammadan Rural) : As one who had served on the Select Committee of the Press Bill I think I must offer a few observations on the very reasonable amendment of my Honourable friend, Mr. Sitaramaraju. At the very outset I must dispose of the last speaker who made a very serious speech which is not in keeping with his usual role as a humorist. I never thought that the expression which has been used could be true in regard to his case, an expression often used very ungenerously in regard to barristers—“Scratch a barrister and you find a bureaucrat”.

(Laughter.) His argument was worthy of a supporter of the Bill and not an interpreter of jurisprudence.

Mr. K. Ahmed : I never was a supporter. I heard both sides. There is no argument to support the other side.

Mr. C. S. Ranga Iyer : I never thought that my friend had the capacity of facing both ways. (Laughter.) That is in keeping with our humorist's role.

Leaving his arguments aside, let me come to the point at issue. So far as any newspaper is concerned, our position is that no new newspaper should start with a millstone round its neck. Why should not every man who wants to keep a press or publish a paper be given an opportunity of starting on a clean slate? That opportunity is not denied under this section, but I do say it is vested in the discretion of the Magistrate and Magistrates being human beings and entrusted with the responsibility of keeping order within their domain, do not always see eye to eye with those who have sometimes to carry on a raging and tearing campaign. Why should the Magistrate be the judge of what is good and what is bad before the press has had an opportunity to sin against even his own opinions in regard to journalistic wisdom or unwisdom. That is our whole case in a nutshell. The Magistrate is a judicial officer too and strictly speaking is under the control of the High Court and in this particular matter the Magistrate is liberated from the jurisdiction of the High Court. When a security is demanded from a new press, there is no provision for appeal against that security to the High Court, and unless and until Government concede this very proper, this very legitimate and this very reasonable demand of ours, that the order of the Magistrate in regard to the demand of security from a new press must be subject to appeal to the High Court, as in the case of the old press, unless and until Government have the reasonableness to concede that demand, we on this side will not only oppose this measure but also press this point to a division. Sir, I hope and trust that the Honourable the Home Member will not take shelter under the argument that this provision is made because it is a provision to prevent masquerading by a new press man because an old press has been suppressed. Sir, after all, by trying to hit at a new press man because he happens to be the agent of an old press man who has already come under the security section of this Bill, by trying to take action in that manner, they are putting in the hands of the Magistrates a weapon which he can with equal facility use against anyone who starts a new press with no old connections, or carries on a constitutional campaign,—and I include, as the late Mr. Gokhale used to do, passive resistance under constitutional campaign. My fear is this, that Magistrates do lose their equilibrium, they are thrown off their balance when there is a movement which they find it difficult to control, which does not give them peace of mind.

Sir, standing as we do between the opening of a new era and the closing of the old, standing as we do at the parting of the ways, the going away of an old bureaucracy and the coming in of a new democracy, there will be agitation, and agitation which will disturb the peace of mind of the best of Magistrates, and this agitation will be carried on by means of the newspaper press; and I would not, Sir, allow the Magistrate to set up the standard of journalistic propriety. It is much better to censor the press, it is much better to stop the publication of newspapers, it is much

[Mr. C. S. Ranga Iyer.]

better to issue a ukase from the Viceregal Lodge, as they often did before, saying that newspapers must not be published until they fulfil this, that or the other condition ; it is much better to do that than to come to us and ask us to put a weapon in the hands of the Magistrate which, judging by our experience in the old days of the Press Act, has not been used satisfactorily. Sir, a tree is judged by its fruits ; and the Magistrate will be judged by his past actions ; and judging him by his actions, we are unwilling to put that power into the hands of the Magistrates. Therefore we request the Home Member to concede this very reasonable demand, the concession of which will not only appease public opinion in this country, but will also go a long way in the direction of ushering in a proper atmosphere for the new constitution, but the non-concession of which will only prove that the Government are unwilling to move with the times, but are willing to be as irresponsible as they have been irresponsible.

Mr. Muhammad Yamin Khan (Agra Division : Muhammadan Rural) : Sir, before we decide whether this clause should be taken away from the Bill or not, we have to see why this Bill has come in. We know, Sir, that in the past the Press or a certain section of the Press has been indulging in something which requires to be stopped, and that thing was incitement to some offence which amounts to murder, or sometimes when they eulogize people who perpetrate the murder of innocent people. When we have got this point of view to remember, then we can only judge whether the Press had been behaving in the past or in the near past in such a way that they could be left entirely alone or could be believed to be absolutely innocent. We know there have been cases which could have been stopped if the Press had not incited them. Now remembering that, and also bearing in mind that this Bill is going to last for only one year—it may of course be extended for another year but that does not matter ; at present it is to be enacted for one year only—we have to judge all the arguments that have been advanced by the supporters and by the Mover of this amendment. The chief point which has been taken by the Mover of the amendment and by the Honourable Sir Abdur Rahim and the Honourable Mr. Gaya Prasad Singh is that this order should not apply to a man who starts a press for the first time, and that it will be a great hardship if any order demanding security is passed against a man who comes for the first time to open a press, as it might stop him from entering upon the enterprise of printing. Well, Sir, when it is remembered that this Bill is going to last only for one year, I do not think that this argument, that it will cause great hardship to new enterprises, has got any force. I think the people who will within one year start printing presses are not going to be very large ; there are already printing presses which are existing and about which the decision can be made in one day as to whether they are really treating their liberty as licence or utilizing their liberty properly. Now people who will come up in the future and start a press within one year can be counted on one's finger's ends, and the whole argument which has been advanced falls to the ground when we take these two elements into consideration. Then, a second thing is, supposing a man starts a press which is quite a new press, but the man is an old sinner, what has my Honourable friend got to say in that respect ? If there is a man about whom we know that he had been exciting and inciting people to commit murder and other offences against which this Bill is aimed, and

this man comes up as the possessor of a new printing press, will my Honourable friend want that security should be asked from this man, or should not be asked? I am certain, Sir, that my Honourable friend has not got this object in his mind. He will come up at once and say that this is not the proper man; but although he starts a new printing press, he is the same man who had been committing this crime in the past and he should be asked for full security. Sir, if this clause (i) of sub-clause (3) is taken away as a whole, what is left with the Government to enable them to judge whether they should ask security from a man of that character who starts a new enterprise? This is the only clause which can give power to the District Magistrate to demand a security that this man may behave properly. He of course has got a certain period within which to pay, and if the Local Government do not make any order in this respect, then the whole security will be refunded. Then another objection which has been raised by Honourable Members on the opposite side is this, that the security which may be demanded may be very high for a poor man. But I must point out that the security which may be demanded may not exceed Rs. 1,000—that is the maximum. If a poor man starts a little printing press which may be worth about Rs. 500 or Rs. 600, a security of Rs. 10, Rs. 15 or even Rs. 50 or Rs. 100 may be demanded from such a press, and there will be no hardship I think. So if the press is worth lakhs of rupees—and you cannot get a press for less than Rs. 7,000 now-a-days—the demanding of a security for Rs. 100 or Rs. 200 from this man to ensure his behaving properly for one year—because this Bill is not going to last after a year—is not too much in present circumstances when we are having murders in all provinces and everywhere. I think, Sir, this point has been too much stressed and only a pathetic scene has been sketched where there is no real foundation for it.

The second is the legal difficulty. My friend wants that the whole of sub-clause (1) should be deleted. That means that the proviso in sub-clause (1) should also go with it. The proviso reads :

“ Provided that if a deposit has been required under sub-section (3) from any previous keeper of the printing-press, the security which may be required under this sub-section may amount to three thousand rupees.”

Supposing a man has got a printing press to-day and incites to murder; he is then asked to give security and then sells the press and starts another with the same management, what are you going to do? How are you going to cope with the situation in these circumstances? You cannot, unless you have this provision. Another thing is that when you make a law, you must take into consideration all kinds of things which might happen. The point is, do you want to stop murder or not? Do you want to stop the incitement to murder? If you want to do it, you must do it frankly and openly. If you do not want to do it, throw it out, I do not mind at all.

Mr. B. Das (Orissa Division : Non-Muhammadan) : Can you stop murder by this Bill?

Mr. Muhammad Yamin Khan : You can certainly stop the incitement. Theft and murder are punishable under the Indian Penal Code, but you have not been able to stop them. So you cannot stop murder by this Bill but you can stop the incitement to a certain extent.

[Mr. Muhammad Yamin Khan.]

Then, Sir, if you take out sub-clause (1) from clause 3 what is left ? Sub-clause (2) will be left and it reads like this :

“ Where security required under sub-section (1) has been deposited in respect of any printing press, and for a period of three months ”, etc.

Now, Sir, take away this sub-clause (1).....

Mr. B. Sitaramaraju : But there are other amendments.

Mr. Muhammad Yamin Khan : I am not dealing with them. But supposing the other amendments fail and this amendment is carried then what is left ? My friends ought to have given one amendment which would be comprehensive. But I do not find any amendment in the name of my Honourable friend there. There are amendments in the names of other Members.

Mr. B. Sitaramaraju : Look at No. 19.

Mr. Muhammad Yamin Khan : Supposing that fails and this amendment is carried, then the Bill will be an absurd Bill.

Mr. Gaya Prasad Singh : Even this will not be carried. (Laughter.)

Mr. Muhammad Yamin Khan : Yes, this should not be carried. Therefore, even besides the legal difficulty I find that the amendment which has been proposed by my Honourable friend cannot be supported on its merits and I oppose this amendment.

Dr. F. X. DeSouza (Nominated Non-Official) : Sir, as one who served on the Select Committee of this Bill I should like to make a very few observations. The principal argument of the other side as to why sub-clause (1) of clause 3 should be deleted from the Bill was based, as I understand it, on the universally accepted principle of criminal jurisprudence that every man should be presumed to be innocent until he is proved to be guilty. It is that very principle of criminal jurisprudence, Sir, that impressed itself upon the members of the Select Committee when they altered the original provision of the Bill into the provision as it now stands. You are aware, Sir, that in the original Bill the Magistrate as a matter of course demanded security from every keeper of a printing press unless for reasons to be recorded in writing he chose to dispense with that security. That may be a contravention of the principle of jurisprudence that every man is presumed to be innocent until he is proved to be guilty. But the Select Committee have altered this provision. The present provision says that the Magistrate would, as I understand it, ordinarily dispense with security except for reasons to be recorded by him in writing. Therefore instead of violating the general principle of criminal jurisprudence which has been so often enunciated on the other side, I beg to submit that the clause as altered by the Select Committee emphasises that principle. But it may be asked, if a Magistrate in the exercise of his discretion demands security to be furnished, why should not that order demanding the security be appealable in the High Court ? Sir, we are aware that there is a clear distinction in matters of administration, between matters which are justiciable and matters which are not justiciable. The Magistrate who would pass such an order would pass it upon information supplied to him or upon evidence placed before him which it would not be prudent or discreet to publish to the world. In such circumstances what materials would the

High Court have, assuming the matter was made appealable ? Only the other day I think this Assembly by a very large majority rejected a motion that all orders passed by a Magistrate under section 144 of the Criminal Procedure Code should be appealable or should be open to revision by the High Court. And all the reasons that prevailed in this Assembly then are precisely the reasons that can now be urged in support of this measure.

Sir Hari Singh Gour : May I ask my Honourable friend if he means to imply that orders under section 144 are not revisable by the High Court ? If he says that, he has forgotten his law.

Dr. F. X. DeSouza : My point is this that whenever a Magistrate acts upon evidence which it is not prudent to disclose, then I say it would be wrong to allow an appeal to be made or a revision to be filed in the High Court for the simple reason that the High Court will have nothing before it upon which to base its interference. After all, why should we presume that every District Magistrate should act so arbitrarily or simply on a mere whim ? The District Magistrate is a person in authority entrusted by Government with the maintenance of peace and order in the district. As it happens, Sir, a large number of districts are now administered by Indians who may be supposed to be in touch with the public feeling and public opinion in their districts. Why should you assume that the Magistrate always acts harshly and arbitrarily and if he acts arbitrarily, is there no check on his arbitrary orders ? I understand—I am speaking subject to correction—any order passed by the District Magistrate under this clause would be appealable to the Local Government. Shall we assume that the Local Government will always endorse any arbitrary or hasty action passed by the District Magistrate ?

Mr. Gaya Prasad Singh : The Bill does not provide for any appeal or anything of the sort to the Local Government.

Dr. F. X. DeSouza : It is the inherent power of the Local Government to revise all orders passed by the District Magistrates or other officers subordinate to it. Mr. Ranga Iyer spoke in very eloquent terms that this is an inopportune time—just when we are on the parting of the ways between a bureaucratic Government and a democratic Government. I entirely agree with him. It is that very consideration which will influence the District Magistrate and the Local Government which will make them, entering as they do on the threshold of a new era, refrain from passing an order hastily and arbitrarily without due caution. After all, taking security from a keeper of the press for publishing a matter inciting to violence, is it such a severe penal action as Honourable Members on the other side seem to make out ? In the course of a career which I venture to say is not dishonourable, I do not know how many times I have been called upon to furnish security. When I joined my College in Cambridge, I had to deposit caution money. What was that for ? For fear that I should make default in payment of College bills. When I joined the Inns of Court in London I was asked to deposit a large sum of money by way of caution money. Nobody could regard that as anything derogatory or as anything savouring of penal action. Sir, with all deference to the arguments urged on the other side, I venture to think that the clause as now amended by the Select Committee is a very mild clause and is necessary at a time when there is a great danger

[Dr. F. X. DeSouza.]

of irresponsible presses publishing articles of violence. I think it is the least that the Legislature can provide.

Sir Hari Singh Gour : Sir, my Honourable friend who spoke last spoke of the impeccability of the District Magistrate. If that had been his real and true opinion, he would not have filled the position of distinction on the Bench in and for so long correcting the vagaries of the District Magistrates. But, Sir, circumstances alter cases. To-day he stands as a spokesman of Government and he says that when he was in college he had to pay caution money. When he was in the University he had also to pay certain caution money. So where is the harm in taking a security ? Sir, according to that argument if you are to take security from my Honourable friend against a possible pick-pocketing by him, he would have no objection and that, I submit, is his whole argument. Where is the harm if you take security ? Sir, the taking of a security is in itself a disgrace, and no self-respecting man, no self-respecting member of society will submit to it unless a proper cause is shown against him. The reason why we on this side of the House oppose the going in of this clause as a part of the statute is that you take security from a man who comes before you as an innocent keeper of a public press, and what right have you to take security from him ? My Honourable friend says that the Magistrate has been given the discretion to dispense with security. Now I will ask the Honourable Member and his other protagonists in this view as to what is meant by the words, "The Magistrate may, for reasons to be recorded in writing". What are going to be the reasons which the Magistrate will record for dispensing with the security ? Will he say, "This man has come with a red turban and consequently he is painted red and I shall demand security" ? Supposing the Magistrate passes an order of this character, is it or is it not open to appeal or revision by the High Court ? The whole thing may turn upon one narrow issue. The executive are calling upon the aid of the judiciary for the purpose of upholding the integrity of the Press. It is a fundamental principle of law, and I am sure my Honourable friend must have learnt it in his school days, that if you apply the judicial machinery, you can only do so subject to judicial control. That, I submit, is the principle. That, I submit, is the fulcrum of the whole case. Here the executive are calling into requisition the services of the Judge. Is that Judge a subordinate Judge ? Is that Judge to act independently of the High Court ? Can my friend say that that is a principle which he can tolerate for a single moment ? The whole judicial principle administered by the British Government in this country, and indeed by all civilised countries, is that all subordinate judiciary shall be subject to the superintendence, direction and control of the supreme judicial authority. You have, therefore, in this case, enlisted the services of a judicial officer freed from that control which the High Court exercises and must exercise under the British Act of Parliament over all judicial officers. That, I submit, is the point. My friend says if the District Magistrate commits an error, the man can appeal to the Local Government. Sir, I have still to learn that the Local Government is a judicial authority. I have still to learn that there is any provision in this Bill to that effect. I would give way to my Honourable friend if he will point out to me any clause in the Bill which permits the person against whom an order for security is made, to appeal to the Local

Government. He might just as well have said that the man against whom a wrong order is passed will take his revenge in heaven. That is exactly what it will come to. (Laughter.) The Local Government is the moving machinery in this matter. The Local Government in many cases—I do not say in all cases—receives confidential reports from their C. I. D. and in a mechanical fashion passes them on to the District Magistrate. The District Magistrate has a dual capacity. He is the head of the district police and he is also a District Magistrate and as such a Judge. In his one capacity as a policeman he says, this fellow is a bad fellow. At any rate if he is not a bad fellow, he is the son of a bad fellow because I knew his father. So he comes up and says, "Well, I knew your father. Your father was a bad fellow and you give security". There he is using his knowledge of the policeman for determining the case as a Judge. In his character as Judge he passes an order, which amounts to abuse of authority. Can he give me any redress at all or not? That is the whole short question. Speakers on this side say that when you find that any matter is made justiciable by having recourse to a judicial authority and you want the co-operation of a Judge, that co-operation will be only forthcoming subject to the salutary rule that the co-operation is subject to final judicial control. That being the principle, a principle which I enunciated yesterday and against which nothing has been said and nothing indeed can be said, how can you possibly resist the motion that has been made before the House?

I therefore submit that the apologists of Government have no reason on their side; they merely rely upon the fact that at the far end of the session, the ranks of the Opposition are thin, and you with your disciplined cohorts are able to carry everything before you. If you rely upon that, you rely upon main force; you do not rely upon reason. We are asking you to rely upon reason and if there is going to be a decision on these questions upon the fundamental principles of reason and fairplay, then I say you have got no case at all. This is one of the four points I made yesterday; this is one of the four points which I asked the Government to consider seriously. They have not yet considered it; it will be too late for them if they do not consider it now. It may be that you may defeat this motion, but what will be the result? The whole of the intelligentsia in the country will feel seriously aggrieved that you have put into service your majority on the last or a few days before the last day of the session, and taken advantage of the absence of the elected representatives of the people, and placed upon the Statute-book a Bill which as far back as 1878 was the subject of popular clamour. That is the Bill which you have re-introduced with, I admit, some difference. I was in the Select Committee and I then pointed out to you, and in our dissenting note you will be pleased to observe, that five elected Members representing this side of the House have pointed out the serious defects which still lurk in the Bill as it has emerged from the Select Committee. Those are the defects you have got to remedy and rectify. If you do not rectify them to-day, I am sure you will be repenting that you did not act upon the counsel which you profess to follow, namely, to do right, no matter whether you have a majority at your back or whether we have a majority at our back. You are now trampling under foot a fundamental and cardinal principle of English law and Indian law, that whenever you apply for the co-operation of a judicial officer, that judicial officer being subordinate must be subject to correction by the highest

[Sir Hari Singh Gour.]

judicial authority in the country. You cannot deny that. Section 107 of the Government of India Act gives the High Court power of superintendence over all courts subordinate to itself. As such the power of superintendence over the proceedings of the District Magistrate exists in the High Court ; and we have no power to modify, much less abrogate, an Act of Parliament. So, whatever you may do, I submit you will be running counter to the very spirit and the very letter of the British Act of Parliament.

Some of my friends who have made a study of the constitution of this country will remember that in 1919 Sir Courtney Ilbert appeared before the Joint Parliamentary Committee and gave a list of nearly 50 Acts of the Indian Legislature which he said had been passed in violation of the fundamental principles and were otherwise *ultra vires*. This might perhaps add one more item to that list. Do not err with your eyes open on a principle, the recognition of which is now universal and will not in the slightest degree impair the utility and the function of this Act. It will only give the District Magistrate a real judicial power ; he will have to record such reasons as will stand the scrutiny of the High Court. That is all the difference. When the District Magistrate knows that his word is law and that his orders are not open to appeal by the High Court, he may pass any order he likes, and the mere fact that you have asked and the members of the Select Committee have asked that he will record his reasons is not enough. Who is going to read those reasons ? Who is going to weigh those reasons ? Who is going to pronounce upon the validity of those reasons ? He may record any reason he likes. The reasons may be good ; they may be bad and they may be perverse. It is for that reason that the principle of law is that all subordinate judicial officers' orders and judgments must be open to appeal and final revision by the High Court. How can you make this section an exception to that rule ? That is the point we have been labouring ; and amongst the various scattered amendments on this Bill you will find that you always run against this great principle. Are you going to obtain the assistance and co-operation of a judicial officer free from that judicial control which is a recognised principle of the British and Indian constitution ? (Applause.)

The Honourable Sir James Ormer : Mr. President, I am not surprised at, nor do I make any complaint of, the fact that the attention of Honourable Members opposite and of the critics of the Bill has been concentrated upon this particular provision, because indeed my own case is that this particular provision is vital to the whole Bill ; and that if it is not included in the Bill, I should not consider it worth while to proceed any further with the measure. In the criticisms which have been made of this particular provision, it seems to me that there has been on the part of Honourable gentlemen opposite a singular misconception of the position and a singular failure to face the plain facts of the position. The suggestion broadly has been that in perfectly normal times Government have gratuitously and deliberately undertaken a piece of superfluous and exceptional legislation. I shall advert to that point later. But my immediate purpose is to point out that even if we make the absurd assumption that the circumstances are normal and proceed from that proposition to the further proposition that this Bill is a com-

plete violation of the fundamental rules of jurisprudence and of administration, then I join issue at once on that preliminary issue.

Mr. K. Ahmed : Hear, hear.

The Honourable Sir James Crerar : The Honourable and learned gentleman from Bengal, who at one time occupied and decorated a seat on the Bench of His Majesty's High Court of Judicature at Fort St. George, alleged that there was an obvious defect in this Bill in that it proposes to select one particular trade, a legitimate trade, a harmless trade, by invidious discrimination from all other trades. Now, let me examine that proposition in the first instance and consider whether it really is a complete or even a reasonable approximation to the position. Is it a fact that the law does not recognise differences mainly based on whether a trade is or may be dangerous to the public? Are there no prescriptions of law? Are there no practices of administration based upon the practice of law which do lay special restrictions on trades and occupations which are noxious or dangerous to the public?

Sir Abdur Rahim : May I know if this is a noxious trade?

The Honourable Sir James Crerar : I would merely point out, and I think the Honourable Member will admit the fact that the law does make discriminations in the interests of the public.

Now, we come to the question of the printing trade. That trade is no doubt one of the most valuable trades which can contribute very greatly and which has contributed very greatly many public benefits, but what we are asserting in this particular context is that a certain section of that trade, under circumstances which are quite exceptional, and which we hope will be temporary, is quite definitely dangerous to the public and ought therefore to be controlled. Now, Sir, is the general proposition that a person who may be dangerous to the public should be required to give security, although he has not been convicted of some specific offence, entirely unknown to the criminal law.....

Sir Hari Singh Gour : Who is going to be the judge of it?

The Honourable Sir James Crerar : My reply is to the contention which is alleged against the whole of this Bill, that it is completely and fundamentally opposed to all principles of law, on the ground, that a conviction for an offence must in all cases precede reasonable precautions in the public interests. I deny that is an unreasonable principle of law, and I deny that the main principle, the fundamental principle of jurisprudence to which the Honourable Member has referred is violated by this Bill.....

Mr. B. Das : A matter of opinion.

The Honourable Sir James Crerar : Now, Sir, I pass on to the second proposition. It has been suggested, as I remarked before, that Government are proceeding gratuitously, quite unnecessarily in perfectly normal circumstances to introduce a measure, violating, as Honourable Members opposite suggested, every decent principle of administration or of legislation. Do Honourable Members completely close their eyes, do they entirely deny the circumstances which compel Government to bring forward this measure? As I listened to the arguments of the Honourable and learned gentlemen opposite, I felt by some curious attraction or repulsion,—I do not know which—they had ceased to regard themselves as statesmen in this House, but as lawyers engaged in special pleading not on a public cause but on some private

[Sir James Crerar.]

issue. Every argument which has been adduced by Government and the evidence which has been laid before the House to convince it that we are faced with a very serious emergency in this matter, was not seriously traversed, but they have been completely neglected by nearly every Honourable gentleman who objected to this provision.

Now, the second point which I wish to take is the one which has already been referred to before. Sir Hari Singh Gour laid great stress on the fact that Government were, as he alleged, taking a highly improper course in placing a certain responsibility upon District and Presidency Magistrates with regard to this particular provision. He said it is a manifestly, fundamentally wrong thing to do. It was indecent, it was improper, because he said in this particular instance the action of the Presidency Magistrate or a District Magistrate was not to be subject to appeal or revision by the High Court. Well, Sir, my plain answer to him is this, that we on this side have never made any disguise of it that in order to meet a great public emergency we are asking for certain executive powers. The action taken, or which will be capable of being taken, by the District Magistrate or the Presidency Magistrate under this provision is definitely executive action, and I know that there is.....

Sir Hari Singh Gour : Don't ask the Judges to help you.

The Honourable Sir James Crerar : If the Honourable Member proposes that there should be no application to the High Court even in matters which we contend are properly judiciable matters, then it is entirely open to him to move for the rejection of all applications to the High Court, and when the Honourable Member is driven plainly, palpably to advance an argument of this character to support his proposition, I ask him whether it is fair to suggest that Government are taking advantage of thinness of attendance in that side of the House rather than on the thinness of their arguments.

Now, Sir, I do not think that I need address the House at much greater length, but there are one or two points to which I must advert and which I wish strongly to impress upon the House. Practically the whole of the arguments which have proceeded from Honourable gentlemen opposite have proceeded upon the assumption throughout that every provision of this Act will be deliberately, continuously and invariably abused by the authorities to whom any discretion is given. Now, if an argument of that kind is to prevail with the House, I suggest to them that it will be quite idle for them to undertake any legislation whatsoever, because all legislation is liable to be abused, and it does not matter whether the power which is capable of abusing such legislation is an executive power or a judicial power. Even High Courts themselves occasionally err, and I believe the Judicial Committee of the Privy Council have been under the necessity of pointing that out, but I say that if this is the principle on which you are going to proceed, if you are going to make extreme assumptions of that character, then we may as well abolish ourselves as a legislative body altogether. I do not rely merely on questions of principle, but I appeal to experience. A similar measure but of a much more extensive character was in force last year. I watched its administration with the greatest care. If complaints were made in regard to it, I have not found complaints in any such considerable volume as would lead to the conclusion either

that the provisions of that enactment were consistently abused or even that in their exercise they inflicted any great hardship or inconvenience upon the printing and the publishing trade.

Mr. B. Das : Again a matter of opinion.

The Honourable Sir James Crerar : The last argument to which I would advert is the one which I first used. Are we to argue this matter as if we were merely debating society or are we to argue it as serious people in a Legislative Assembly ? The main ground which, as I say, has never been traversed or even sincerely criticised on the opposite Benches of this House, regards the necessity, the grave emergency which requires a remedy. Those conditions, Sir, are the fundamental conditions that persist and will persist unless these powers are granted. My complaint against Honourable Members opposite is that at this stage of the debate they have closed their eyes to those facts. They have engaged in purely destructive criticism, 1 P.M.

whereas we have pointed out to them that if we do not have provisions of this kind—I accept my Honourable friend Mr. Ranga Iyer's advice that we should not go into details but nevertheless, as has been pointed out in the earlier stages of the debate—it has been pointed out and I think established that if we do not have provisions of this kind, inevitably there will be a constant stream of the most virulent matter published in certain sections of the Press. Honourable Members close their eyes to facts. They have not even attempted to suggest any remedy. My contention, Mr. President, is that we ought to face those facts and to apply the remedy.

Mr. President : The question is :

“ That sub-clause (1) of clause 3 be omitted.”

The Assembly divided :

AYES—40.

Abdur Rahim, Sir.

Azhar Ali, Mr. Muhamamad.

Bhuput Singh, Mr.

Chandi Mal Gola, Bhagat.

Chetty, Mr. R. K. Shanmukham.

Chinoy, Mr. Rahimtoola M.

Das, Mr. B.

Dudhuria, Mr. Nabakumar Singh.

Dutt, Mr. Amar Nath.

Gour, Sir Hari Singh.

Harbans Singh Brar, Sirdar.

Hari Raj Swarup, Lala.

Ismail Ali Khan, Kunwar Hajee.

Jha, Pandit Ram Krishna.

Jog, Mr. S. G.

Kyaw Myint, U

Lahiri Chaudhury, Mr. D. K.

Maswood Ahmad, Mr. M.

Misra, Mr. B. N.

Mitra, Mr. S. C.

Murtuza Saheb Bahadur, Maulvi Sayyid.

Parma Nand, Bhai.

Patil, Rao Bahadur B. L.

Puri, Mr. Goswami M. R.

Ranga Iyer, Mr. C. S.

Rastogi, Mr. Badri Lal.

Reddi, Mr. P. G.

Reddi, Mr. T. N. Ramakrishna.

Sant Singh, Sardar.

Sarda, Rai Sahib Harbilas.

Sen, Mr. S. C.

Sen, Pandit Satyendra Nath.

Singh, Mr. Gaya Prasad.

Sitaramaraju, Mr. B.

Sohan Singh, Sirdar.

Sukhraj Rai, Rai Bahadur.

Thampan, Mr. K. P.

Tun Aung, U

Uppl Saheb Bahadur, Mr.

Ziauddin Ahmad, Dr.

NOES—55.

Abdul Qaiyum, Nawab Sir Sahibzada.
 Ahmed, Mr. K.
 Allah Baksh Khan Tiwana, Khan Bahadur Malik.
 Anwar-ul-Azim, Mr. Muhammad.
 Azizuddin Ahmad Bilgrami, Qazi.
 Bajpai, Mr. B. S.
 Banerji, Mr. Rajnarayan.
 Bhargava, Rai Bahadur Pandit T. N.
 Cresser, The Honourable Sir James.
 Dalal, Dr. R. D.
 DeSouza, Dr. F. X.
 Dyer, Mr. J. F.
 Fazal Haq Piracha, Shaikh.
 Fox, Mr. H. B.
 French, Mr. J. C.
 Grahani, Sir Lancelot.
 Heathcote, Mr. L. V.
 Hezlett, Mr. J.
 Howell, Mr. E. B.
 Ishwarsingji, Nawab Naharsingji.
 Jawahar Singh, Sardar Bahadur Sardar.
 Knight, Mr. H. F.
 Lall, Mr. S.
 Lalchand, Captain Rao Bahadur.
 Leach, Mr. F. B.
 Montgomery, Mr. H.
 Moore, Mr. Arthur.

Morgan, Mr. G.
 Mukherjee, Rai Bahadur S. C.
 Pandit, Rao Bahadur S. R.
 Parsons, Mr. A. A. L.
 Rafiuddin Ahmad, Khan Bahadur Maulvi.
 Rainy, The Honourable Sir George.
 Rajah, Rao Bahadur M. C.
 Rama Rao, Rai Bahadur U.
 Ram Chandra, Mr.
 Row, Mr. K. Sanjiva.
 Roy, Mr. S. N.
 Sahi, Mr. Ram Prasad Narayan.
 Sams, Sir Hubert.
 Schuster, The Honourable Sir George.
 Scott, Mr. J. Ramsay.
 Shah Nawaz, Mian Muhammad.
 Sher Muhammad Khan Gakhar, Captain.
 Shillidy, Mr. J. A.
 Studd, Mr. E.
 Suhrawardy, Sir Abdullah.
 Sykes, Mr. E. F.
 Tait, Mr. John.
 Talib Mehdi Khan, Nawab Major Malik.
 Todd, Mr. A. H. A.
 Yakub, Sir Muhammad.
 Yamin Khan, Mr. Muhammad.
 Young, Mr. G. M.
 Zulfikar Ali Khan, Sir.

The motion was negatived.

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

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

Mr. S. C. Mitra (Chittagong and Rajshahi Divisions : Non-Muhammadan Rural) : Sir, I beg to move :

“ That in sub-clause (1) of clause 3 for the words ‘ one thousand ’ the words ‘ five hundred ’ be substituted.”

In moving this amendment I do not like to discuss the general principle which has already been debated in this House. I merely wish to raise the point that the amount is very excessive. My Honourable friend Mr. Scott said that even in the case of Members of this Assembly it was necessary to demand a deposit of a sum of Rs. 500. If that is so in the case of rich men who come to this Assembly, the amount should not be fixed at an excessive rate in the case of these owners of presses or publishers of newspapers who are generally middle class men. I think we should also take

into consideration the case of honest people who may start a press as a pure business concern. We should not lose sight of the fact that the average income of Indians is only Rs. 2. My friend Mr. Yamin Khan said that this Bill is only for a year or two and that it will affect only a very few people and that we should not seriously consider these things. When I consider it from the standpoint of a principle, I think that even if it affects a single poor man, that should be a ground for this House to take action. In this connection I had my apprehensions and therefore I once rose up to speak on the main clause itself but unfortunately I could not catch your eye, being perhaps far distant from the Chair. As Mr. Studd said in his speech, my apprehensions are that this clause is meant to judge the past conduct of these people. I would like to know from the Honourable the Home Member if it is in contemplation to give this law retrospective effect as well. There are already rumours that the Delhi Administration is anxious to curb the activities of the *Hindustan Times*. Is it to wreak the vengeance of the bureaucracy on the nationalist press that this Bill is really contemplated. Otherwise I cannot see why the amount should be fixed so high. These people will get no chance to prove their innocence in a court of law. We do not know what will be the scope of the measure. A friend of mine who is Secretary of the Journalists' Association, the most representative institution in India, has asked me to find out from the Home Member whether the non-official reports on the Hijli riot, the Chittagong and the Midnapore riots will come under the scope of this comprehensive measure. Then in the last speech of the Honourable the Home Member he said that this House had degraded itself to the level of a debating club. I agree with him to a certain extent. This is the first occasion I have had to reply to that point ; I think we have really fallen on evil days. The Benches that were adorned by men like Sir William Vincent, who had the goodness and the statesmanship to repeal these repressive laws, are now occupied by my Honourable friend who is anxious to rush this Bill through in a thin House. I really think that the House has come to the level of a debating society. We are fortunate that the leadership of the House no longer vests in Sir James Crerar. We congratulate ourselves that Sir George Rainy is there, showing a conciliatory spirit. Sir, I protest against the statement of Sir James Crerar. What right has he, representing an irresponsible executive, to rush this Bill through in a thin House ? Does it lie in his mouth to make that statement which he did ? I thought there would be protests from the leaders. It may come in time. I think, Sir, it is an abuse of the procedure of this House to bring in such an important measure when the House is thin. He will have his way. The other day my Honourable friend Mr. Ghuznavi referred to Sir James as a " spineless Member of this House " but all of a sudden he has become so strange that he is now adamant enough not to hear a word about compromise. I think we have really fallen on evil days. Sir William Vincent, who adorned those Benches, knew the virtues of compromise. He knew when to yield. This is a House having officials and nominated Members. If the country is to judge the real opinion of this House, the question should be decided by the elected Members. Even in this House no measure is passed without a majority of elected Members. I really feel that the prestige and power of this Government will become less if men like Sir James Crerar sit on the Treasury Benches and carry these measures against the almost unanimous voice of the elected Members. If there is

[Mr. S. C. Mitra.]

any sense left, they will consider that. They must not demand from these people Rs. 1,000 as security when they have done nothing. Let them have a chance to begin their work. If you demand a deposit of more than Rs. 500, it will be really destroying the chance of the future expansion of future presses and newspapers in India. Sir, I move.

Mr. B. Das : Sir, I rise to support the motion of my Honourable friend, Mr. Mitra. Sir, I do hope the Honourable the Home Member, after listening to the cogent argument adduced by Mr. Mitra, will not say that he has brought those arguments forward as a lawyer only. Sir, I will with your permission quote a passage from the Honourable the Home Member's speech delivered this morning. He said :

"As I listened to the arguments of the Honourable and learned gentlemen opposite, I felt some curious attraction or repulsion,—I do not know which—they had ceased to regard themselves in any respect as statesmen in this House but as lawyers engaged in special pleading not on a public cause but on some private issue."

Sir, I deny this charge against the Opposition. Sir, my friend, Mr. Mitra, has adduced his arguments so cogently in favour of the poor printer that I need express no word in support of that. But I shall refute certain arguments which the Home Member used this morning, in language which was quite unparliamentary, and which he would not have tried to do had he been a member of the House of Commons.

Mr. President : The Honourable Member ought to have drawn the attention of the Chair to it if he regarded any expressions as unparliamentary. As soon as any unparliamentary expression is used, it is open to any Honourable Member sitting anywhere in the House to call attention to it. If that were done, the Chair would take action if it was satisfied that the expression was *really* unparliamentary. (Applause.)

Mr. B. Das : Sir, I regret that at the time I did not take objection. Now, Sir, my friend the Honourable the Home Member, while he was dealing with the undebatable hard facts which the Leader of the Opposition put forward this morning, ridiculed my leader suggesting he imputed motives against the executive as to wrong interpretations of the clauses of this Bill in actual practice and that my leader said that in actual discharge of responsibilities laid by these clauses on the executive they are liable to conduct which was indecent or improper. Sir, my leader never laid that charge against the executive or the district officials. Then the Honourable the Home Member suggested that there was a singular misconception of the position, a singular failure to face the plain facts of the position on this side of the House on the main principles of the Bill. Sir, I strongly repudiate that statement. I think, Sir, if the Honourable the Home Member was not backed by his 40 men behind him and also by his friends of the European Group, he would not say so bluntly that we do not understand the principle of the Bill or that we do not appreciate his position. He must pay some respect to us, Sir, and must admit that we do possess some intelligence and that we do understand the plain English language. Sir, we are willing to face the singular situation. We have always faced such singular situations. My friend, Mr. Ranga Iyer, and myself have made various statements in this House that we are here to face a particular singular situation, the singular situation that the Government of India Act of 1919 created, namely, that we should be always facing an irresponsible Government containing 26 Government

Members and 10 nominated Members who always flock like sheep to the Government lobby.

Mr. Gaya Prasad Singh : They are there for that purpose.

Mr. B. Das : Sir, my friend, the Honourable the Home Member made one suggestion which I wish had not come from a responsible Member on the Treasury Benches. He said, speaking like Cromwell—when Cromwell with his Ironsides went to the British Parliament and demanded the impossible and the members of those days did not agree, Cromwell and his Ironsides with sword in hand dissolved the Parliament—Sir the Honourable the Home Member said many nasty things. He may wish to imitate Cromwell. But I know my Honourable friend knows his limitations, his weaknesses ; he knows that if he comes with sword in hand like Mussolini of Italy, he knows that you, Sir, will not permit him to enter this Assembly Chamber. He knows that, although he controls the whole police force in India,—his so-called law and order—he cannot allow his policemen to enter this Chamber, though they are elsewhere located in these premises ; and yet he said that we may as well abolish ourselves as a legislative body altogether ! After this condemnation of the work of this Legislature which the Government sides themselves are party to, let the Honourable Member feel happy with the expressions of views he uttered ; but, Sir, we are here to voice the sentiments, the viewpoint of the people, and we have done that always. There the Home Member is sitting with his ironsides of 26 Government Members backed by his 13 nominated Members. (*An Honourable Member :* “ Fourteen.”) One of them is on this side—backed I say by his 13 nominated Members, and backed by the Anglo-Indian Press and by the Members of the European Group, and also backed by those few Members in this House who do nothing but always think that it suits their self-interest to follow the Government invariably. Well, nevertheless, if he thinks he can ridicule in this way the chosen representatives of the people, he is entirely in the wrong. I should have thrown out the challenge to him, if he was an elected Member, to resign on this very issue, to resign I say on clause 3 of this Bill, and to contest any seat in any part of India—excepting perhaps the European constituency (Laughter) ; and I would tell him that I would any day defeat him, and probably he would lose his security of Rs. 500 (Laughter). Sir, if my Honourable friend wants executive action, he had it six months ago when he advised the Viceroy to pass an Ordinance. Why does he not again have an Ordinance passed, and thus absolve us the elected Members from taking any responsibility ? To-day, Sir, he, with his majority, with his nominated majority, forces the Bill down our throats and involves us in the responsibility ; and the moment we criticise the measure, the moment we suggest something which will help him to appear in the role of a more civilized Government, more representative of public opinion, he says, “ You are not representative of public opinion ”. Sir, I deny that charge which has been levelled against us.

One other thing I find is that the Honourable Member said that we must face the fundamental conditions, the fundamental conditions that persist and will persist in the country unless these powers are granted. What does the Opposition want ? The Opposition is willing to grant Government such powers as are controlled by judicial action of the High Court. It is not going to give Government any executive power, and if the Honourable Member is going to assume that power, let him go and

[Mr. B. Das.]

advise the Viceroy to include this Bill in an Ordinance and the representatives of the people will not be responsible then for such a repressive enactment.

The Honourable Sir George Rainy (Leader of the House): I should like to submit, Sir, that the Honourable Member is travelling very far from the amendment before the House.

Mr. President : That is perfectly true. The amendment before the House is that the amount provided in the clause be reduced from Rs. 1,000 to Rs. 500. At the same time it must be pointed out that the motion before the House is that clause 3 stand part of the Bill. To that motion this amendment is proposed. I hope the Honourable Member will be satisfied with what he has said already on the general aspect of the question and proceed to deal with the amendment now.

Mr. B. Das : I thank you very much, Sir, and I bow to your advice and suggestion. Sir, when feelings run high we must divert and digress a little to express our denunciation.

The Honourable the Home Member said that we have attempted to suggest no remedy. Here is a remedy suggested by my friend Mr. Mitra that will alleviate not the rich man but the poor man. My friend, Dr. Ziauddin Ahmad, pointed out that he was very anxious for the Muslim press and for the newcomers among the Muslims who want to take up the printing profession. I hope the Honourable Member will see the reasonableness of it and will accept the amendment as moved by my Honourable friend, Mr. Mitra.

Dr. Ziauddin Ahmad : Sir, I rise to support the motion. One of the very important arguments that has been brought forward by the Honourable the Mover of this Bill is that the discussion is reducing the Assembly to the status of a school debating society. I have repeatedly drawn the attention of the House to the fact that the Government are treating the Assembly like a college debating society. But the distinguished Member went one step further. I used the expression, " college debating society " and he considers us a " school debating society ". Of course the Government have got the votes in their pocket. They take advantage of the fact that a large number of Members on this side of the House have already gone down. The Honourable Member in charge of the Bill is intoxicated on account of keeping a majority of votes in his pocket ; he can afford to say whatever he pleases. Sir, we on this side of the House also support the phrase that the Assembly is no better than a " debating society " but on entirely different grounds. We call it such on this ground, that our decisions have no value whatsoever in the eyes of Government, and in that sense certainly Government are treating this Assembly as a school debating society.

Sir, I raised four points of principle when I moved that clause 3 be deleted, and I expected that in the course of the day the Honourable the Mover of the Bill would reply to those points. But he did not touch on any of those points, and the only reply he gave was that our argument was only the argument of a school boy. Of course we have in our younger days followed many debates.....

Mr. President : I hope the Honourable Member is not going to deal in detail with his three points again.

Dr. Ziauddin Ahmad : No, Sir ; I am not going to repeat those points. In college and school debating societies we often indulged in logical fallacy in our replies of this kind, when the speaker advanced one argument and the reply was quite different. In my first speech I very much emphasised the fact that this particular clause is exceedingly hard ; we are really punishing the innocent, and the punishment is also very hard ; because the sum of Rs. 1,000 for a small press, whose value does not exceed Rs. 200 or Rs. 300, is really a harsh punishment, and I strongly advocate that this quantum should be reduced. With these words I leg to support the amendment.

Sardar Sant Singh : Sir, I rise to support this amendment of my Honourable friend, Mr. Mitra. Before coming to the merits of the amendment, I want to add my humble protest against the language used by the Honourable the Home Member. I am new to this Assembly, and when I stood for election I thought this Assembly was not as bad as was suggested by the Congress people. But when I reached here, I found that it was worse, not only because it possesses no power to influence the Treasury Benches, but also because the Treasury Benches, instead of acting in a responsible manner, are showing an irresponsibility which is probably inherent in them. And I think, therefore, that there can be no more condemnation of this Assembly than the words which have been used by the Honourable the Home Member to-day on the floor of this House. I know that, soon after the division when we left the place, feelings were running high. I do not know whether the language used by my Honourable friend was unparliamentary or not, because I am new to the Assembly and he has got more experience than I have. But I know this that it was very undesirable, and instead of getting up and making amends, my friend was laughing in his seat when the ruling was given by the Chair, a laugh which we very rarely see on his face in this House. I am sorry that I have to say, on behalf of the elected Members on this side, that soon after hearing the Honourable Member.....

Mr. President : I would remind the Honourable Member that the amendment before the House is to reduce the sum of Rs. 1,000 in clause 3.

Sardar Sant Singh : Yes, Sir. I was saying that, I am sorry on this account that those Members who after hearing the Honourable Member voted for the Government did a dis-service to the country. In protest also they should have voted with the popular party.

Now, Sir, coming to merits of this amendment, my submission is that in these days of admitted financial stringency, which does not assail Government alone but has depleted the resources of private individuals as well, to demand such a heavy sum as Rs. 1,000 from a new press,—and for reasons which I need not repeat now as the first amendment has been defeated—will be very unjust. It will be an act of justice that the amount should be reduced from Rs. 1,000 to Rs. 500, especially when the press is a new one and the person who applies for a declaration has not any bad antecedents. I, therefore, support this amendment of my friend, Mr. Mitra.

The Honourable Sir James Ocrer : Mr. President, in speaking on this amendment, I think I should be careful not to incur your censure, and I shall therefore restrict myself to the merits of the amendment which is purely arithmetical. The Honourable the Mover and those who supported him were

[Sir James Creer.]

strongly in favour of the reduction of this amount. I should like to point out to the House that in the Bill which was originally introduced, the amount proposed, following the earlier enactment, was a minimum of Rs. 500 and a maximum of Rs. 2,000, and I submit that in response to criticisms made on this point, Government have already gone a very long way to meet them. As the sub-clause now stands, the Magistrate has got a discretion which in the original Bill he had not got, and the intention of the change made in the sub-clause was of course that the Magistrate should exercise that discretion having regard to the merits of each particular case coming before him. It does not follow, nor is it anticipated, that the Magistrate would in all cases demand the maximum security. He has that latitude. His decision is of course subject to revision by the Local Government. I submit, therefore, that we have already gone a very long way to meet criticism on this point and I very much regret I cannot go further. I must oppose the amendment.

Mr. President : The question is :

“ That in sub-clause (1) of clause 3 for the words ‘ one thousand ’ the words ‘ five hundred ’ be substituted.”

The Assembly divided :

AYES—32.

Abdur Rahim, Sir.
Ashar Ali, Mr. Muhammad.
Chandi Mal Gola, Bhagat.
Das, Mr. B.
Dudhoria, Mr. Nabakumar Sing.
Dutt, Mr. Amar Nath.
Gour, Sir Hari Singh.
Harbans Singh Brar, Sirdar.
Jha, Pandit Ram Krishna.
Jog, Mr. S. G.
Lahiri Chaudhury, Mr. D. K.
Misra, Mr. B. N.
Mitra, Mr. S. C.
Mujumdar, Sardar G. N.
Murtuza Saheb Bahadur, Maulvi Sayyid.
Parma Nand, Bhai.

Patil, Rao Bahadur B. L.
Ranga Iyer, Mr. C. S.
Reddi, Mr. P. G.
Reddi, Mr. T. N. Ramakrishna.
Sant Singh, Sardar.
Sarda, Rai Sahib Harbilas.
Sen, Mr. S. C.
Sen, Pandit Satyendra Nath.
Singh, Mr. Gaya Prasad.
Sitaramaraju, Mr. B.
Sohan Singh, Sirdar.
Sukhraj Rai, Rai Bahadur.
Thampan, Mr. K. P.
Uppi Saheb Bahadur, Mr.
Wilayatullah, Khan Bahadur H. M.
Ziauddin Ahmad, Dr.

NOES—56.

Abdul Qaiyum, Nawab Sir Sahibzada.
Ahmed, Mr. K.
Allah Bakah Khan Tiwana, Khan Bahadur Malik.
Anwar-ul-Azim, Mr. Muhammad.
Azizuddin Ahmad Bilgrami, Qazi.
Bajpai, Mr. R. S.
Banerji, Mr. Rajnarayan.
Bhargava, Rai Bahadur Pandit T. N.
Creer, The Honourable Sir James.
Dalal, Dr. B. D.
DeSouza, Dr. F. X.
Dyer, Mr. J. F.

Fazal Haq Piracha, Shaikh.
Fox, Mr. H. B.
French, Mr. J. C.
Graham, Sir Lancelot.
Heatheote, Mr. L. V.
Hezlett, Mr. J.
Howell, Mr. E. B.
Ibrahim Ali Khan, Lt. Nawab Muhammad.
Ishwarsingji, Nawab Naharsingji.
Ismail Khan, Haji Chaudhury Muhammad.
Jawahar Singh, Sardar Bahadur Sardar.

NOES—contd.

Knight, Mr. H. F.
 Mill, Mr. S.
 Lalchand, Captain Rao Bahadur.
 Leach, Mr. F. B.
 Montgomery, Mr. H.
 Moore, Mr. Arthur.
 Morgan, Mr. G.
 Mukherjee, Rai Bahadur S. C.
 Pandit, Rao Bahadur S. R.
 Parsons, Mr. A. A. L.
 Rafiuddin Ahmad, Khan Bahadur Maulvi.
 Rainy, The Honourable Sir George.
 Rajah, Rao Bahadur M. C.
 Ram Chandra, Mr.
 Rama Rao, Rai Bahadur U.
 Rastogi, Mr. Badri Lal.
 Row, Mr. K. Sanjiva.

Roy, Mr. S. N.
 Sahi, Mr. Ram Prasad Narayan.
 Sams, Sir Hubert.
 Schuster, The Honourable Sir George.
 Scott, Mr. J. Ramsay.
 Sher Muhammad Khan Gakhar, Captain.
 Shillidy, Mr. J. A.
 Studd, Mr. E.
 Suhrawardy, Sir Abdullah.
 Tait, Mr. John.
 Talib Mehdi Khan, Nawab Major Malik.
 Todd, Mr. A. H. A.
 Yakub, Sir Muhammad.
 Yamin Khan, Mr. Muhammad.
 Young, Mr. G. M.
 Zulfiqar Ali Khan, Sir.

The motion was negatived.

Mr. S. C. Mitra : Sir, I move :

“ That in the proviso to sub-clause (1) of clause 3 for the words ‘ three thousand ’ the words ‘ one thousand ’ be substituted.”

My arguments are more or less the same as I advanced on the last motion I moved a few minutes before. I would only like to add this. Let not the world or the Government judge the Indians by the high salaries that we Indians pay to our officers. It is a fact, no doubt true, that the Indian Civil Servants get the highest pay in the world ; but that should not be the standard by which we should be judged that we are a very rich people and we can afford to pay Rs. 3,000 as deposit. That is my submission. I move.

Mr. S. C. Sen (Bengal National Chamber of Commerce : Indian Commerce) : Sir, I support this motion of my friend, Mr. S. C. Mitra. I find the proviso says :

“ Provided that if a deposit has been required under sub-section (3) from any previous keeper of the printing-press, the security which may be required under this sub-section may amount to three thousand rupees.”

Supposing the previous keeper had been ill and had to go away for *bonâ fide* reasons, and if another man has to take his place, why should three thousand rupees be asked for ? I want the Honourable the Home Member to consider whether he should ask for three thousand rupees in every case. Why not make it one thousand rupees in all cases ?

The Honourable Sir James Orerar : Sir, I regret to find myself opposing another amendment by the Honourable gentleman from Bengal. But I have drawn the attention of the House to the fact that on every occasion, so far on which an amendment has been moved, I have been able to show him that the matter has been carefully and sympathetically considered by the Government and that important mitigating changes had been made. With regard to this particular proviso, I should like to point out, in reply to what fell from the Honourable gentleman opposite, that three thousand is the maximum, and his suggestion that three thousand rupees would be demanded in all cases has

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no basis. I should like to point out also that this proviso applies solely in the case in which a deposit has been previously demanded from the same press, and that implies of course that the press must have been a source of offending matter. The position, therefore, is entirely different from that of a new press. There are I think clear and good reasons why this maximum should be provided, and I wish to make it perfectly clear that this is a maximum and not a fixed amount to which the Magistrate must in all cases go.

Mr. President : The question is :

“ That in the proviso to sub-clause (1) of clause 3 for the words ‘ three thousand ’ the words ‘ one thousand ’ be substituted.”

The motion was negatived.

Mr. Muhammad Azhar Ali (Lucknow and Fyzabad Divisions : Muhammadan Rural) : Sir, I move :

“ That in the proviso to sub-clause (1) of clause 3 for the words ‘ three thousand ’ the words ‘ two thousand ’ be substituted.”

The reasons have already been given and I do not wish to add any more.

Mr. Muhammad Yamin Khan : Sir, I think this amendment may be accepted (Hear, hear from the Opposition Benches) because as the security demanded in the first instance is one thousand rupees. I think it is but fair that the next time it is demanded, it must be the double of that amount. I think double of that amount will meet the case all right. Three thousand does not seem to be fair. Double the amount is quite sufficient and I support it.

Mr. Gaya Prasad Singh : Very good arithmetic. (Laughter.)

The Honourable Sir James Crerar : Sir, I have very little to add to what I have already said. The amount of three thousand was very carefully considered. It is a very reasonable amount in the circumstances, and I regret I cannot accept the reduction proposed.

Mr. President : The question is :

“ That in the proviso to sub-clause (1) of clause 3 for the words ‘ three thousand ’ the words ‘ two thousand ’ be substituted.”

The Assembly divided.

AYES—32.

Abdur Rahim, Sir.
Azhar Ali, Mr. Muhammad.
Chandi Mal Gola, Bhagat.
Das, Mr. B.
Dudhoria, Mr. Nabakumar Sing.
Dutt, Mr. Amar Nath.
Gour, Sir Hari Singh.
Harbans Singh Brar, Sirdar.
Hari Raj Swarup, Lala.
Ismail Ali Khan, Kunwar Hajee.
Jha, Pandit Ram Krishna.
Jog, Mr. S. G.
Lahiri Chaudhury, Mr. D. K.
Misra, Mr. B. N.
Mitra, Mr. S. C.
Mujumdar, Sardar G. N.

Murtuza Sahab Bahadur, Maulvi Sayyid.
Parma Nand, Bhai.
Ranga Iyer, Mr. C. S.
Reddi, Mr. P. G.
Sant Singh, Sardar.
Sarda, Rai Sahib Harbilas.
Sen, Mr. S. C.
Sen, Pandit Saryendra Nath.
Singh, Mr. Gaya Prasad.
Sitaramaraju, Mr. B.
Sohan Singh, Sirdar.
Thampan, Mr. K. P.
Uppi Sahab Bahadur, Mr.
Wilayatullah, Khan Bahadur H. M.
Yamin Khan, Mr. Muhammad.
Ziauddin Ahmad, Dr.

NOES—54.

Abdul Qayum, Nawab Sir Sahibzada.
 Ahmed, Mr. K.
 Allah Baksh Khan Tiwana, Khan Bahadur Malik.
 Azizuddin Ahmad Bilgrami, Qazi.
 Bajpai, Mr. R. S.
 Banerji, Mr. Rajnarayan.
 Bhargava, Rai Bahadur Pandit T. N.
 Crerar, The Honourable Sir James.
 Dalal, Dr. R. D.
 DeSouza, Dr. F. X.
 Dyer, Mr. J. F.
 Fazal Haq Piracha, Shaikh.
 Fox, Mr. H. B.
 French, Mr. J. C.
 Graham, Sir Lancelot.
 Heathcote, Mr. L. V.
 Hezlett, Mr. J.
 Howell, Mr. E. B.
 Ibrahim Ali Khan, Lt. Nawab Muham-
 mad.
 Ishwarsingji, Nawab Naharsingji.
 Ismail Khan, Haji Chaudhury Muham-
 mad.
 Jawahar Singh, Sardar Bahadur Sardar.
 Knight, Mr. H. F.
 Lall, Mr. S.
 Lalchand, Captain Rao Bahadur.
 Leach, Mr. F. B.

Maswood Ahmad, Mr. M.
 Montgomery, Mr. H.
 Moore, Mr. Arthur.
 Morgan, Mr. G.
 Mukherjee, Rai Bahadur S. C.
 Pandit, Rao Bahadur S. R.
 Parsons, Mr. A. A. L.
 Rainy, The Honourable Sir George.
 Rajah, Rao Bahadur M. C.
 Ram Chandra, Mr.
 Rama Rao, Rai Bahadur U.
 Rastogi, Mr. Badri Lal.
 Row, Mr. K. Sanjiva.
 Roy, Mr. S. N.
 Sahi, Mr. Ram Prasad Narayan.
 Sama, Sir Hubert.
 Scott, Mr. J. Ramsay.
 Shah Nawaz, Mian Muhammad.
 Sher Muhammad Khan Gakhar, Captain.
 Shillidy, Mr. J. A.
 Studd, Mr. E.
 Subrawardy, Sir Abdullah.
 Tait, Mr. John.
 Talib Mehdi Khan, Nawab Major Malik.
 Todd, Mr. A. H. A.
 Yakub, Sir Muhammad.
 Young, Mr. G. M.
 Zulfikar Ali Khan, Sir.

The motion was negatived.

Mr. President : The next amendment is the one standing in the name of Mr. Sitaramaraju, No. 19.*

Mr. B. Sitaramaraju : I do not propose to move that amendment, Sir.

Mr. President : Then the next amendment is No. 23.

Mr. S. C. Mitra : Sir, I move :

“ That in sub-clause (2) of clause 3 the words ‘ on application by the keeper of the press ’ be omitted.”

I do not know why the Government should not return the money after the period, why it should be incumbent on the owner or the publisher to apply for it again. It is a simple point I think, and I hope the Honourable the Home Member will accept this amendment as a reasonable one.

The Honourable Sir James Crerar : Sir, I regret very much that I cannot accept this amendment. I must point out that my objection is in the interest of the keeper of the press whom Mr. Mitra, I think, proposes to subject to a very serious risk. If the money is refunded otherwise than on the application of the person who has deposited it, it is perfectly clear that there is a very serious danger that the money might get into wrong hands. In any case, merely as an ordinary piece of business, this money will have to be paid out from the Treasury on a

* “ That sub-clause (2) of clause 3 be omitted.”

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chalan in the ordinary way, and the person who is entitled to the money must necessarily sign the *chalan*. I think, therefore, that the Honourable Member's amendment is a bit misconceived and perhaps on reflection he will consider the advisability of withdrawing it.

Mr. S. C. Mitra : I beg to withdraw the amendment, Sir, with the permission of the House.

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

Mr. S. C. Mitra : Sir, the next amendment which stands in my name reads thus :

“ That in sub-clause (5) of clause 3 for the words ‘ Whenever it appears to the Local Government ’, the words ‘ Whenever a Local Government is in possession of sufficient proof ’ be substituted.”

My main point is that the language employed is very vague—“ Whenever it appears to the Local Government ”,—and so I want that the words “ Whenever a Local Government is in possession of sufficient proof ” should be substituted to make the language clearer. The point is quite clear, and I hope the amendment will be accepted.

The Honourable Sir C. P. Ramaswami Aiyar (Law Member) : Obviously the amendment sought to be moved by my Honourable friend is out of place, because the wording of his amendment is very vague. Moreover, it will be remembered that in clause 23 there is a right of appeal given, and that will make it incumbent upon the authorities to consider what the proof is on which the action is proposed to be taken. It appears to me that considering sub-clause (3) of clause 3 with clause 23, the amendment of my Honourable friend is really beside the point and would not serve the purpose which my Honourable friend has apparently in mind.

Mr. C. S. Ranga Iyer : I would suggest to the Honourable the Mover of this amendment in view of what has fallen from the Honourable the Law Member, to withdraw his amendment. Personally I would very much welcome the Local Governments to take action whenever they were in possession of insufficient proof because when our pressmen go to the High Court they will have a chance of winning the case. (Laughter.)

Mr. President : The question is :

“ That in sub-clause (3) of clause 3 for the words ‘ Whenever it appears to the Local Government ’, the words ‘ Whenever a Local Government is in possession of sufficient proof ’ be substituted.”

The motion was negatived.

Sardar Sant Singh : Sir, before I move my amendment No. 25, I want to submit one thing for your kind consideration. As a matter of fact, this amendment, and amendments Nos. 28, 29 and 35 form part of one continuous amendment of the whole of sub-clauses (3) and (4) of clause 3. I hope you will permit me to move them together.

Mr. President : The Honourable Member in moving this amendment may explain the whole position relating to the other amendments also, preparing the House to vote for those amendments in due course.

Sardar Sant Singh : May I submit this for your consideration ? Without the other amendments this amendment would be meaningless. If one is carried.....

Mr. President : I have pointed out to the Honourable Member that he will be allowed to explain the whole position of all the amendments when moving this amendment. He can thus prepare the House to vote with him on each of those amendments. I will not restrict his speech to this amendment only. In his speech he can bring out all the points which he wishes to make out so that the House may be able to follow his whole case.

Sardar Sant Singh : I beg to move :

“ That in sub-clause (3) of clause 3 for the words ‘ Local Government ’ occurring in the first line, the words ‘ District Magistrate having jurisdiction in the place where the press is situated ’ be substituted.”

Sub-clause (3) as it is now worded reads as follows :

“ Whenever it appears to the Local Government that any printing-press kept in any place in the territories under its administration, in respect of which security under the provisions of this Act has not been required, or having been required has been refunded under sub-section (2), is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing to the keeper of the press stating or describing such words, signs or visible representations, order the keeper to deposit with the Magistrate within whose jurisdiction the press is situated security to such an amount, not being less than five hundred or more than three thousand rupees as the Local Government may think fit to require, in money or the equivalent thereof in securities of the Government of India as the person making the deposit may choose.”

Now, in this sub-clause what I want to substitute is a judicial authority instead of the executive authority, and that is why I propose to substitute the words ‘ District Magistrate ’ in place of the words ‘ Local Government ’ in the first line. You have permitted me to refer to the other amendments also. In line 10, I want for the words ‘ Local Government ’ the words ‘ District Magistrate ’ should be substituted (amendment No. 28). In amendment No. 29, I want for all the words occurring after the words ‘ describing such words, signs or visible representations ’ the following to be substituted :

“ call upon the keeper to show cause why he should not be called upon to deposit security to such an amount not exceeding one thousand rupees as the District Magistrate may think fit.”

Then after this notice has been issued, I want, (amendment No. 35), that,—

“ For sub-clause (4) of clause 3 the following new sub-clauses be substituted :

- ‘ (2) When such keeper appears or is brought before the District Magistrate in compliance with, or in execution of, a notice issued, the District Magistrate shall proceed to inquire into the truth of the allegations upon which action was taken and to take such evidence as may appear necessary.
- (8) Such inquiry shall be made as nearly as may be practicable in the manner prescribed for conducting trials and recording evidence in summons cases.
- (4) Pending the completion of the inquiry under sub-section (3) the District Magistrate, if he considers that immediate measures are necessary for the prevention of using the press in the manner objected to, may, for reasons to be recorded in writing, direct the keeper of the press to deposit security not exceeding the amount entered in the notice until the conclusion of the trial.
- (5) If upon such inquiry it is proved that the press is used for the purpose of printing matter described in section 4, sub-section (1) and that the keeper should be made to deposit security in money or the equivalent

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thereof in securities of the Government of India as the person making the deposit may choose, the District Magistrate shall make an order accordingly.

- (6) If on an inquiry it is not proved that the press is used for the purpose of printing matter described above the District Magistrate shall make an order discharging the keeper and ordering the refund of deposit, if any, made under sub-section (4) of this section.
- (7) If the District Magistrate makes an order under sub-section (5) he shall appoint a date, not being sooner than the tenth day after the date of the order on or before which the deposit shall be made.'''

My submission is that this clause gives power to the executive to demand security without giving any opportunity to the keeper of the press who has offended against the Press law to show cause, or even without allowing any hearing to the person aggrieved. I submit this procedure is not in accordance with the principles of criminal jurisprudence. The executive may be very competent ; they may possess exceptional abilities ; but yet there can be no justice unless the person aggrieved has had an opportunity to put his case before some judicial authority. Sir, the penalising of an individual in whatever manner it may be, is not the object of any civilised administration.

If we look at the procedure prescribed in the Criminal Procedure Code of this land, we find that it is not doing the justice that is insisted upon but it is the impression created on the accused that justice has been done to him that is insisted upon. For that reason there is section 371 of the Criminal Procedure Code which makes it obligatory upon the Magistrate to supply a copy of the judgment to the accused. The accused can also insist that the judgment should be translated in the vernacular of the accused, so that he may be able to understand on what material he has been convicted. Now, this system is in vogue in India. Although there are certain exceptions in the Criminal Procedure Code, which were referred to by my friend, Mr. K. Ahmed, when he was quoting sections 109, 110 of the Criminal Procedure Code, I quite see that according to the strict interpretation of the principles of criminal jurisprudence, these sections do not strictly follow those principles. They are rather the exceptions which have been made in the criminal law of India. In England nobody is punished except for doing an act which is regarded to be an offence. Now, these preventive sections are not consistent with the principles of jurisprudence. Therefore, they should not be a guide to us in making future laws. If the practice is permitted to grow that the executive should replace the functions of the judiciary, then the position indicated in the following story will come into existence. An Anglo-Indian of the type of my friend, who sits on the Treasury Bench, was passing by the Houses of Parliament. He inquired what those buildings were and he was told that they were the Houses of Parliament. He was heard to say " Is this rubbish still going on ? " If all the power is transferred to the executive, then we are coming to the days when the executive will virtually rule. As a matter of fact, the principles of democracy demand that no law should be made except with the willing consent of the people. Unfortunately, in this country we have only got an imitation of Parliamentary institutions. The form is observed but the reality is wanting and we are asked to give our opinion in a particular piece of legislation. Under the guise of passing the law through the Legislature, the executive is grasping all the power in its own hands. If the executive is

to perform judicial functions as well, then the sooner the Legislature is abolished the better, because we will not be guilty of hypocrisy at least. Suppose for the sake of argument the necessity for this measure exists. Concede also the objection taken by some of the elected Members that we are not going to assist the murderer to have a free hand in this land. Assuming these two facts to exist in this country, the question still arises—are you going to hang the murderer without trial or are you going to give him a hearing at all. If you hang without trial, then in these days of financial stringency, you had better abolish all the High Courts and posts of Magistrates. That will be giving short shift to all judicial administration. If you want to defend the liberty of the subject, then my submission is that judicial authority should reign supreme. It is an unfortunate state of affairs in this land, that even the judiciary is not independent. In the lower rungs, the Magistrate is not only the judicial but also the executive officer. I have been practising for a quarter of a century in a mofussil court, and my experience is that in trying political or semi-political cases, the Magistrates, with rare but noble exceptions, act on the hints derived from the executive authorities. Not only that, judicial pronouncements amounting to conviction and sending the accused to jail have been made on a word from the District Magistrate. The Magistrates have also said openly that they are helpless in these cases. I wish this House could appoint a committee of inquiry and I can produce thousands of witnesses to say that Magistrates have openly said that they are helpless in such cases. If this state of things will not open the eyes of those who are responsible for the administration of justice, I wonder what will. Knowing these facts and feeling as I do, I would certainly not be a party to legislation which places power in the hands of the executive. For three quarters of a century we have been demanding the separation of judicial from executive functions, but still that reform has not been carried out. These grievances will probably remain till the present form of government is crushed away. Whatever the Magistracy do, let us have at least a form of trial. Give the accused a chance to defend himself. In that case the person aggrieved will have one satisfaction at least, that he has been heard. My submission is that the judicial authority will have the grace to give an opportunity to the accused to defend himself before he is punished. Here security to the extent of Rs. 3,000 is to be demanded without giving any opportunity to the culprit to be heard. My Honourable friend has refused to accept the amendment for reducing the amount to Rs. 2,000. Demanding a security of Rs. 3,000 means the strangulation of the press, the shutting up of the man's shop and sending him away. It means the ruining of the career of a man, and it means restricting the liberty of trade and freedom of action. Under these circumstances, Sir, my submission is that this clause should not stand as it is. Even in respect of the Act of 1910, Sir, I would like to quote our late friend, Mr. K. C. Roy, whose death we all mourn here. Let us see what was his opinion about the Press Act of 1910 and about this executive action? He said :

“ I was present at the meeting of the Imperial Legislative Council on the 4th February, 1910, when the Press Act was introduced and am fully conversant with the discussions both in and outside the Legislature. While admitting that the presence of anarchy and anarchical crime demanded drastic treatment, I was not in favour of the Bill then, and ten years' working of the Act has but confirmed my earlier opinions. I am therefore prepared to ask the Committee to consider its repeal on the following grounds :

- (1) That the Act has failed to achieve the object which its author had in view ;

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- (2) That the loyalty of the press has generally stood the test of a Great War ;
- (3) That the political ideals have changed ("Swaraj", "self-determination" and "rights of subject nations" are now accepted political doctrines. Pressmen prefer taking responsibility to evasion of law) ;
- (4) That it has affected the growth of a healthy press in India ;
- (5) That it has added to the discontent among the Indian people ; and
- (6) That the Act is not in keeping with the spirit of the reforms."

My submission is that herein our late esteemed colleague gave that Committee to understand that the Act had added to the discontent of the Indian people. From the day this Press Act was introduced, there has been protest after protest from all quarters of the country. Not only that, I would like my Honourable friend the Home Member to point out a single opinion of a single individual—of course that of an Indian, not a European or one of European descent—who has blessed this Act. On the contrary even in to-day's telegram it is stated that the Press of Calcutta observed a hartal and did not issue any newspaper on account of this Press Bill. Will my Honourable friend add to the contentment of the people by proceeding in that way ? My submission is that if he wants to win the confidence of the public, then the least that he can do is to substitute judicial action in place of executive action. Similarly, in the written statement of Mr. Kali Nath Roy, the Editor of the *Tribune*, we find him saying :

"The absurdity of making the executive the judge in their own affairs—for they are as much a party to every action taken against the Press as the Press itself—is self-evident. No newspaper need exist if it does not fearlessly criticize the Government, whenever necessary, especially in a country which is not under parliamentary government ; and to place the Press at the mercy of the Executive Government as the Press Act admittedly does, is to say that this function shall either not be performed by the Press at all or at any rate shall be most inadequately and perfunctorily performed. It is no argument to say that in spite of the Press Act there is a good deal of strong and independent criticism in the country. The fact that there are men who are prepared to do their duty regardless of consequences does not divest an arbitrary, obnoxious and totally indefensible measure of its objectionable features."

Herein, too, Sir, the point emphasised by the witness is that the executive authority should not be permitted to keep the destinies of the Press in their own hands. Similarly, further on in his statement he said :

"Any modification of the Act, to be acceptable to the Indian public, must take these salient facts into account. It must restore the principle of liberty to its original position, and it must give the Executive no control whatever over the Press."

Sir, these are views expressed in 1921, after the Press Act had been in working order for eleven years, in the light of its working for eleven years. The Committee gave their opinions in paragraph 7 of their report as follows :

"On an examination of the third aspect of the case, *vis.*, the comparative advantages and disadvantages of retaining the Act, we find that, while many Local Governments advocate its retention in the interests of the administration, on the other hand the Act is regarded with bitter hostility by nearly all shades of Indian opinion. Most of the witnesses examined before us believe it to be indefensible in principle and unjust in its application."

Now in face of this finding of a committee appointed by the executive Government to review the working of the Press Act for eleven years, it is singularly an irony of fate that the same Act, with the same evil, should be brought before this House. Sir, the least that can be expected is that the executive should divest itself of the power of punishing the alleged

guilty party, be it the keeper of a press or the publisher of a newspaper, and substitute for its place an impartial tribunal. The executive Government may themselves come to a conclusion that some one has written something which is an incitement to murder according to them, but according to judicial authority, it may not be an incitement to murder. Why, I ask, should the word of the executive be considered as if it was God's word and cannot be altered? Therefore, my submission is that if they really want to do away with the unfortunate activities of certain young men who commit assassinations of a political nature, they should rather try to produce more contentment in the country than discontent on which such anarchical crimes feed. Therefore, Sir, I move this amendment.

Sir Abdur Rahim : Mr. President, I support this motion ; and I hope the Honourable the Home Member will give it his calm and dispassionate consideration, if that be possible. (Laughter.) Sir, in a matter of this kind which is being debated in this House, it serves no good and useful purpose for anyone to lose his temper. Legislating in a fit of temper cannot be good statesmanship (Hear, hear), and I venture to hope that those who call themselves responsible ministers of Government will consider very carefully what would be the effect if this amendment is negatived. Sir, the Honourable the Home Member, in an earlier stage of the debate, charged us with disregarding the serious position of this country. I am afraid, Sir, he has a very short memory indeed. He has forgotten that we gave every support to him in his endeavour to suppress the terrorist movement in so far as it can be done by controlling writings of a certain character. He forgot that entirely when he brought that charge against us. We, on the other hand, are in a position to charge the Treasury Benches with trying to bring forward a measure really for controlling the Press, for establishing a sort of censorship over the Press, under the guise of preventing incitements to certain kinds of offences.

Sir, what is this new Bill? The former Bill, the House will remember, was frankly one to obtain control over the Press. The present Bill is not of that character,

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I mean, it does not profess to be of that character, and I want the Home Member to stick to the scope of this Bill. The scope of the Bill is to prevent incitement to certain forms of crime, to violence and murder. Now, Sir, if the Home Member is really anxious to confine the provisions of the Bill to its preamble and its title, to what its real scope is, then I ask him in all seriousness to accept this amendment. What is the scope of this amendment? As my Honourable friend, Sardar Sant Singh, has pointed out, this amendment ought not to be read by itself ; there are other subsidiary amendments which ought to be read with it in order to make the position clear. Amendment No. 25 is now specifically before the House and then there are amendments Nos. 28, 29 and 35. If all these amendments are read together, they amount to this : there ought to be some form of judicial inquiry, a proper inquiry before a Magistrate, in which inquiry the person who is charged with having committed an offence, or rather with having violated the provisions of clause 4 of this Bill, should be heard and should be given an opportunity of proving that his action and his writings do not come within the purview of clause 4. Is this asking the Government to concede too much? Government, I understand, are agreeable to provide an appeal to the High Court at one stage or another. Are not Government aware, after all those decisions that have been given under the old Act, that it is no good giving such

[Sir Abdur Rahim.]

powers to the High Court if the very foundation is wanting for the exercise of that power ? What is the foundation as laid down in sub-clause (3) ? The foundation is purely executive. How can the High Court know what is working in the mind of the Local Government ? The Local Government are merely an executive body ; they act upon a certain class of information ; they act upon suspicion and they act upon information which cannot be available to the High Court. They then make up their minds and they may be right. I am not one of those who say that the executive are always in the wrong, nor do I say that the police are always in the wrong. I know that the executive and the police often have information which cannot be placed before judicial tribunals, because it is not admissible under the Evidence Act. But that is a separate matter. But when you ask the High Court to review purely executive action, you are really not treating the High Court fairly. You are not giving them any opportunity to exercise their judicial power, or judicial discretion or judicial judgment. Where are the materials for them ? That is why my Honourable friend, Sardar Sant Singh, has brought forward this amendment. You lay the foundation of a judicial procedure and then there will be very little objection to the provisions of this Bill. If the Magistrate holds an inquiry and finds that a certain press has issued matter which offends against the provisions of clause 4 of this Bill, let him call upon the accused to show cause why his press should not be forfeited, or rather why his security should not be forfeited. He may have good cause to show. Hear him at least and let him produce evidence. But you would not do that. All that you want to do is to act in a purely arbitrary and high-handed manner. What remedy has the High Court against that ? The High Court cannot know the mind of the executive ; it is impossible. The two things are inconsistent. Either you have an entirely executive provision for controlling the press or controlling any writings or speeches on the part of the public, or lay down a judicial procedure. I do not see what answer there can be. This mixture of the judicial and the executive is most unfair to both the parties it is unfair to the judicial authority because it cannot exercise its judicial functions properly, and it is unfair to the executive, which is hampered in its action. It cannot lead to a proper result in any way ; it cannot satisfy the public and it is bound to create discontent. The public will say, " Here are these newspapers which have been suppressed or whose security has been forfeited on no proper grounds whatever because there has been no public inquiry into the matter ". One of the things which this Government can well take credit for, and which we have given them full credit for, is this, that they have established what is called the rule of law in this country. We are indeed asked by no less an authority than Sir John Simon to be very grateful to Britain for having established the authority and rule of law in India. Are you not going to destroy that rule of law in this important matter ? Where is the rule of law here ? I would ask my Honourable friend, the Law Member, if he can tell us, can assure us, that this is the sort of rule of law that Sir John Simon contemplated or which is contemplated by English law and jurisprudence. If he could so assure us, then I should know what the position is. Then we would know where we stand. This is in fact the negation of all rule of law. I have had something to do

with the administration of the old Press Act, and I know what the difficulties are. Every judicial authority has felt that and has expressed it in unmistakable terms. Are you going by this Bill to relieve them of those difficulties? Most certainly not. You are having the same provisions which have been condemned more than once. Cannot Government learn by experience, the experience of the past? We have offered our co-operation in order to enact a measure which would really prevent, as far as it is possible for any such measure to prevent, incitements to a certain class of offences. We are still willing to co-operate with Government to that extent, but we have made our position absolutely clear from the very beginning that we are not inclined to go further; we are not inclined to give the Government control over the entire Press, and that is what they are really seeking to have by a measure of this sort. I ask Government, therefore, to reconsider their position with respect to this clause and to enact a clause which will enable the Magistrate to hold a proper inquiry before declaring any security to be forfeited, even before demanding any security whatever. Why should there be such a demand for security, or why should there be any forfeiture of any security if it has been given, without a proper inquiry? Sir, I suppose it will be said that otherwise, it will mean a prolonged inquiry, it will mean giving further publicity. We are perfectly familiar with this argument. As a matter of fact, if you want any inquiry whatever, it must mean some delay. Otherwise an inquiry would be of little value. Then as regards giving publicity, has not this matter another aspect to it? Are you not exposing to public odium the writings which you condemn? Are you not inflicting a further punishment upon their author, a more deterrent punishment, I venture to think, unless the theory of the Government be that the public at large in India are in sympathy with such writings? Are they prepared to say that? If they are, then they themselves stand self-condemned. Surely in a matter of this sort the best course for Government is to give publicity to such writings at once and to bring them to the bar of public opinion and expose them to the condemnation of the public. I for one cannot admit, and I do hope the Members on the Treasury Benches will not allege, that the public of India are so misguided and so perverse that they will not condemn writings of the character contemplated by the Bill. If so, if I am right that the public condemn such writings as we are condemning them in this House, then what justification is there not to hold a proper enquiry before you mulct a press by forfeiting security or even by asking for security? I submit there is no justification for leaving such a matter entirely to the discretion of the Local Government. I submit there is no justification for leaving it entirely to the Local Government's discretion, which must be exercised in the Council Chamber of the Government to which nobody can have access, a discretion which is exercised on materials which are never placed before a court of justice. This amendment is very reasonably framed and I do hope that the Members of Government will accept it. It may not have been properly worded. That is a matter for the draftsmen to put right. Let it be put right if necessary, but let the public be assured that a press will not be punished unless there has been a proper enquiry.

Mr. C. S. Ranga Iyer : I only want to say one or two words on this amendment. The Honourable the Home Member, in a vigorous speech in which he reminded us that the discussion in the House was below the

[Mr. S. C. Ranga Iyer.]

level to which sometimes interesting debates in the House of Commons rise, stated that Honourable Members have not even attempted to suggest a remedy. To my Honourable friend from the Punjab, the Honourable Sardar Sant Singh, has fallen the opportunity to suggest what I consider to be a sort of judicial remedy to what might otherwise be executive indiscretion. Sir, the Honourable the Leader of the Independent Party to whom the Honourable the Home Member gave a just and appreciative tribute, in his vigorous speech, as an ornament of the Bench when he was living a life of glorious exile from Bengal in the Presidency to which I have the honour to belong, has justified that tribute in an equally vigorous speech supporting the Honourable Member from the Punjab and attempting to judicialise the procedure which we very much wish the Honourable the Home Member had accepted when Member after Member had urged more or less a similar course in the Select Committee. Sir, the defect of this Bill is this. It is more or less an executive measure, clothing the executive with authority, which responsible Members on this side of the House cannot agree to entrust them with—I have already in my previous speech stated my reasons why we could not entrust the executive with that authority. It is natural for the Honourable the Home Member to complain that the Opposition does not give the authority to the executive which he wants. It is even more natural for the Honourable the Home Member to speak as he spoke with the vigour with which he spoke. But it is equally natural for us to feel that, so long as the Government have no responsibility to us but are responsible to a country separated from us by more than half the world, we cannot give the executive the powers which he demands for them, and in the transitional stage it becomes very difficult to grant them. These are not normal times, and therefore it becomes extremely difficult for us to give the executive the power that they want, especially when we are carrying on an agitation to deprive the executive of the power that they possess at present. Therefore, the danger of misuse—men being human—becomes aggravated when you entrust them with unrestrained power. The Government, as I said, are irresponsible—I do not say they are irresponsible, but I do say they are irresponsible. In the Parliamentary sense they are not responsible to us and so long as this system continues, we would seek, as the Honourable the Leader of the Independent Party in his closely reasoned speech pointed out, we would seek to substitute the reign of discretion which this Bill introduces by the reign of law. Sir, especially the reign of discretion cannot be granted to the executive when the executive are not responsible to us. The reign of law prevails in a country where there is responsible government and the reign of law ought to prevail even more in a country where there is irresponsible government.

Mr. K. Ahmed : Irresponsible.

Mr. C. S. Ranga Iyer : I say “irresponsible” because “irresponsible” does not convey the meaning that I want to convey, namely responsibility in the Parliamentary sense. When sometimes my Honourable friend interrupts, he rises to heights which ungenerous Members who do not appreciate his humour would describe as irresponsible. (Laughter.) But when the Government brings forward a measure giving more power to the

executive we are often reminded of the fact that the Government are irresponsible. I believe now my Honourable friend (Mr. Kabiruddin Ahmed) understands exactly what I mean.

Sir, I do not think I need add much more to these few words. I for my part do not resent some of the hard words that the Honourable the Home Member has uttered and I say this because there has been resentment among certain Members and they have given expression to their resentment on the floor of this House. But my unhappiness in this House has always been that it seldom rises to the heights of parliamentary ferocity which the House of Commons often shows. Sir, it has been my good fortune to witness some of those stormy debates, debates in which the Honourable the Leader of the House, Mr. Baldwin, was not sometimes permitted to speak. I have often felt that this House and its reports have not become sufficiently attractive to the country outside because it does not even keep up the Swarajist level of opposition. A country which is supposed to struggle for more power, a country which is supposed to resent the Press Act, ought to show better representation on these Benches than it has been pleased to show. The Honourable the Home Member was pleased to send to this House what I may describe as a new pulse. He sent a new pulse beating through this House because in Gladstone's words it has been "afflicted with the premonitory lethargy of death".

The Honourable Sir C. P. Ramaswami Aiyar : Mr. President, Sir, I do not propose to contribute to the parliamentary ferocity in respect of which an appeal was made by my Honourable friend. Rather would I prefer to bring to bear upon the discussion of this subject—a very important subject indeed—that calm and dispassionate consideration for which my Honourable friend, the Leader of the Independent Party, pleaded. Giving the calmest and the most dispassionate consideration to this particular clause, let us first remember the scope of this Bill as the Leader of the Independent Party asked us to remember it. The intent of this Bill is surely this : that at the present moment a particular emergent situation has arisen in regard to which a special procedure has been found necessary. I lay some emphasis upon that for this reason. This House in its previous vote has given its consideration to that emergency and has come to the deliberate decision that two or three elements are essential : firstly, speedy action, secondly, close scrutiny of that speedy action. The general purport of the Bill might therefore be said to be that, in order to combat the evil which may now be taken to be admitted, speedy and effective action is necessary. Secondly, in order that that action may be tested and properly and adequately tested, the fullest possible safeguards should be given to see to it that that action is neither hasty nor irrevocable, nor subject to those grave objections to which expression has been given in the various speeches. Now, let us analyse not only clause 3 but also clauses 23, 24, 25 and 26, because these clauses must be read in conjunction with the other clause. Before doing so, let me say at once that there can be no mistaking the object and the motive of my Honourable friend opposite who has moved these amendments. Frankly and confessedly the object of his amendments is to judicialise the initial procedure ; in other words, before security is asked for from a press, to go through the form of a criminal trial from first to last. In fact the expressions, used by my Honourable friend in the course of his speech, lead to the conclusion—and that is the inevitable conclusion—that the procedure in a summons case is to be adopted. That being so, the question arises at once is what

[Sir C. P. Ramaswami Aiyar.]

has been attempted by the Bill adequate and sufficient for the ultimate purpose which my Honourable friend has in view, or is it not? Or is there going to be any irremediable evil produced by the various sections of the Bill taken together, remembering always that the primary and immediate object of the Bill is to secure speedy and effective action in a dangerous category of cases? Now, clause 3 undoubtedly clothes.....

Sardar Sant Singh : Clause 4 provides for that.

The Honourable Sir C. P. Ramaswami Aiyar : I am much indebted to my Honourable friend for reminding me of it, and I shall advert to that presently. Clause 3 provides that whenever it appears to the Local Government that any printing press, etc., is used for the purpose of printing or publishing any newspaper, book or other document containing certain things described in clause 4.....

That being so, the first thing that has to be considered by the Local Government is whether this particular publication offends against clause 4. It comes either to the conclusion that it does offend or it does not offend. If it does offend, it takes a certain course of action prescribed in sub-clause (3). That having been taken, what happens next? Clause 23 begins to operate at once and under clause 23 practically the High Court is converted into what, in the language of the British procedure, may be called a *Nisi Prius* Court or in the language of the Indian procedure may be termed a trial court—a trial court vested with this jurisdiction of analysing those publications and seeing whether those publications come within the mischief of clause 4 or not.

Turning to clause 23, what do we find? As soon as this order is made, the person against whom the order has been made can apply to the High Court, and then it must be noticed that under clause 23 (1) the High Court shall decide if the newspaper, book or other document did or did not contain any such words, etc. A definite modification has been made there—I do not propose to enter into it at this juncture—but a definite modification has been made there in Select Committee with a view to get rid of some of the apprehensions felt as to the procedure before the High Court. But that is not all. The Special Bench shall set aside the order if it appears to the Special Bench that the words, etc., were not of the nature described in section 4. And then in section 26 permission is given for the giving of evidence in regard to this matter both on the one side and on the other. Thus, therefore, the objections which were so strongly emphasised as to the abdication of judicial procedure or the elimination of judicial discretion or responsibility—those observations are really out of place. For the purpose of immediate and speedy action, clause 3 begins to operate, and that action is taken. The moment that action is taken, the full armoury of what may be called judicial proceedings is donned both on the one side and on the other; and a judicial procedure begins to operate with liberty to give evidence on both sides and with the further duty laid upon the High Court to consider not only whether the particular publications offended within the mischief of clause 4, but also taking into account any evidence that may be given on the one side or the other. Thus, therefore, the primary and fundamental objection of my Honourable friend that there has been, in his own language, a nullification of all the doctrines of criminal jurisprudence, I submit, does not prevail.

Sardar Sant Singh : May I call the attention of my Honourable friend to the difference ? Regarding my amendment, I have asked for the deletion of this clause 23 which is the High Court clause. One point more. What I complain of is this, that after proceedings before the District Magistrate, the onus of proof as in ordinary criminal cases will be upon the prosecution, who will be called upon, while in the case of a complaint to the High Court, the onus will be shifted on the person of whom security has been required.....

Sir Hari Singh Gour : No, no.

The Honourable Sir C. P. Ramaswami Aiyar : I am indebted to my Honourable and learned friend, the Leader of the Opposition, for having pointed that out. It is perfectly true that under the old Press Act there was considerable doubt as to whether in all cases and necessarily the one party, namely, the party complaining of the order should be the party to begin as having the burden of proof laid upon him. In order to make it abundantly clear that the object of this Bill is to see to it that only those people are hit who have offended against clause 4 and that nobody is put under any disadvantage, it will be noticed by my Honourable friend, if he turns to clause 23, that the High Court shall decide if the newspaper, etc., did or did not contain any words, etc. Therefore, the difficulty or the embarrassment of a definite throwing of the burden or onus of proof on the one party is really eliminated in that manner. It will depend upon the High Court, looking at the document. There may be some documents which on the face of them lay the proof on one party ; here may be some which on the face of them lay the burden on the other : we have left it open therefore under clause 23.

In regard to the earlier portions of the interjections made by my Honourable friend, what I have got to say is this. I do not for a moment deny that my Honourable friend, if his object is to be attained, has completely altered and modified the scope and aim of this Bill. He has not only made clause 3 judicial, but has followed it up in other clauses so as to make it clear that the judicial procedure begins and ends completely judicially. My submission to this Honourable House is that from the point of view of speedy administration in the initial stages, it has been found necessary, and indeed no other course would eliminate the inevitable delays of a summons case dragging its weary length as is contemplated in this amendment,—in the initial stages it is undoubtedly action savouring of an executive character which is found necessary, but in order to rob that executive action of all those features which are objected to by the other side, we have given the fullest possible rights to the High Court which is by the combined operation of the various sections really converted into a trial court. I submit, therefore, that you get the speediness and the efficacy of the executive action, combined with all the safeguards of a judicial trial by the combined effect of the clauses to which I have referred. I submit, therefore, that this amendment is really inappropriate to the scope and the aim of this Bill.

Mr. S. C. Mitra : Mr. President, I should like to ask only one question, and my argument will be based mainly on that. In sub-clause (3) in line 11, I find the word " may ". It is stated there, " That the Local Government may by notice in writing " and so forth. Why has the word " may " been used here ? I shall be obliged if the Honourable the Home Member or anybody else on the Government side will explain this point.

[Mr. S. C. Mitra.]

Why do they make it optional for the Government to give notice in writing for deposit or forfeiture ?

The Honourable Sir C. P. Ramaswamy Aiyar : If I may interrupt my Honourable friend, I think he is under a misapprehension. Notice in writing is not optional. When the Local Government has to proceed, it may proceed in a particular manner after giving notice in writing. I may assure my Honourable friend that by no construction could it be said that under clause 3 the Local Government may take certain action without any notice whatsoever.

Mr. S. C. Mitra : In that case, Sir, what is the objection on the Government side to substitute the word " shall " for the word " may " ? Why do you give option in demanding security or forfeiting it. You make it binding on the Local Government to give notice with reasons thereof. If you use the word " may ", they may give notice, but they may not give the reasons ; it will not be binding on them.

The Honourable Sir C. P. Ramaswamy Aiyar : On calmer reflection, I am sure my Honourable friend will realise that the substitution of the word " shall " would really be more prejudicial to the cause which he has at heart. Let me read the sentence as it would run after modifying it according to his ideas. " Whenever it appears to the Local Government, etc., the Local Government shall ask him to deposit. . . . " Does he want to make it obligatory upon the Local Government in every case to do that ? What it says is, it may do so, but when it does so, it must be by notice in writing. My Honourable friend may take it from me, and I think eminent jurists who are present in this House will agree with me in what I say.

Mr. S. C. Mitra : May I take it then that it is obligatory on the part of the Government to give notice in writing ?

The Honourable Sir C. P. Ramaswamy Aiyar : Yes, that is what I have been endeavouring to point out.

Mr. S. C. Mitra : Sir, if by construction it is clear that it is obligatory on the part of the Government to give notice in writing and the reasons thereof, then I accept it.

Mr. President : The question is :

" That in sub-clause (3) of clause 3 for the words ' Local Government ' occurring in the first line, the words ' District Magistrate having jurisdiction in the place where the press is situated ' be substituted."

The Assembly divided.

AYES—31.

Abdur Rahim, Sir.
Azhar Ali, Mr. Muhammad.
Bhuput Sing, Mr.
Chandi Mal Gola, Bhagat.
Chetty, Mr. R. K. Shanmukham.
Chinoy, Mr. Bahimtoola M.
Das, Mr. B.
Dutt, Mr. Amar Nath.
Gour, Sir Hari Singh.

Harbans Singh Brar, Sirdar.
Hari Raj Swarup, Lala.
Ismail Khan, Haji Chaudhury Muhammad.
Jog, Mr. S. G.
Lahiri Chaudhury, Mr. D. K.
Maswood Ahmad, Mr. M.
Misra, Mr. B. N.
Mitra, Mr. S. C.

AYES—contd.

Murtuza Saheb Bahadur, Maulvi Sayyid.
Parma Nand, Bhai.
Ranga Iyer, Mr. C. S.
Sant Singh, Sardar.
Sarda, Rai Sahib Harbilas.
Sen, Mr. S. C.
Sen, Pandit Satyendra Nath.

Singh, Mr. Gaya Prasad.
Sitaramaraju, Mr. B.
Sohan Singh, Sirdar.
Thampan, Mr. K. P.
Uppi Saheb Bahadur, Mr.
Wilayatullah, Khan Bahadur H. M.
Ziauddin Ahmad, Dr.

NOES—55.

Abdul Qaiyum, Nawab Sir Sahibzada.
Ahmed, Mr. K.
Allah Baksh Khan Tiwana, Khan Bahadur Malik.
Anwar-ul-Azim, Mr. Muhammad.
Azizuddin Ahmad Bilgrami, Qazi.
Bajpai, Mr. B. S.
Banerji, Mr. Rajnarayan.
Crerar, The Honourable Sir James.
Dalal, Dr. R. D.
DeSouza, Dr. F. X.
Dyer, Mr. J. F.
Fox, Mr. H. B.
French, Mr. J. C.
Graham, Sir Lancelot.
Heathcote, Mr. L. V.
Hezlett, Mr. J.
Howell, Mr. E. B.
Ibrahim Ali Khan, Lt. Nawab Muhammad.
Jshwarsingji, Nawab Naharsingji.
Jawahar Singh, Sardar Bahadur Sardar.
Knight, Mr. H. F.
Lall, Mr. S.
Lalchand, Captain Rao Bahadur
Leach, Mr. F. B.
Montgomery, Mr. H.
Moore, Mr. Arthur.

Morgan, Mr. G.
Mujumdar, Sardar G. N.
Mukherjee, Rai Bahadur S. C.
Pandit, Rao Bahadur S. R.
Parsons, Mr. A. A. L.
Rafuddin Ahmad, Khan Bahadur Maulvi.
Rainy, The Honourable Sir George.
Rajah, Rao Bahadur M. C.
Ram Chandra, Mr.
Rama Rao, Rai Bahadur U.
Row, Mr. K. Sanjiva.
Roy, Mr. S. N.
Sahi, Mr. Ram Prasad Narayan.
Sams, Sir Hubert.
Schuster, The Honourable Sir George.
Scott, Mr. J. Ramsay.
Shah Nawaz, Mian Muhammad.
Sher Muhammad Khan Gakhar, Captain.
Shillidy, Mr. J. A.
Studd, Mr. E.
Suhrawardy, Sir Abdullah.
Sykes, Mr. E. F.
Tait, Mr. John.
Talib Mehdi Khan, Nawab Major Malik.
Todd, Mr. A. H. A.
Yakub, Sir Muhammad.
Yamin Khan, Mr. Muhammad.
Young, Mr. G. M.
Zulfiqar Ali Khan, Sir.

The motion was negatived.

Mr. S. C. Mitra : I move :

“That in sub-clause (f) of clause 3 the words ‘less than five hundred or’ be omitted.”

My argument is why do you restrict the discretion of the Magistrate ? Are you suspicious even of your own Magistrates ? You put a maximum that the amount should not go to more than a particular amount. But I do not understand why you should say that it should not be less than Rs. 500. I hope that Government will see their way to accepting this amendment. Sir, I move.

The Honourable Sir James Crerar : I must point out to the Honourable Member that the particular portion of the sub-clause to which he refers deals with a case in which the press has already published offending matter. I think in those circumstances that it is perfectly reasonable

[Sir James Crerar.]

to direct the Magistrate to demand a security not less than the amount mentioned in the sub-clause.

Mr. President : The question is :

“ That in sub-clause (3) of clause 3 the words ‘ less than five hundred or ’ be omitted.”

The motion was negatived.

Mr. President : The question is :

“ That clause 3 stand part of the Bill.”

The motion was adopted.

Clause 3 was added to the Bill.

Mr. President : The question is :

“ That clause 4 stand part of the Bill.”

Mr. S. C. Mitra : I move :

“ That in sub-clause (1) (a) of clause 4 the words ‘ or tend to incite to or to encourage ’ be omitted.”

My main ground is that the scope of this clause is too wide, and it is not necessary for the purposes for which this Bill has been introduced. I think it is sufficient if you have the words “ incite to or encourage ”, and any tendency to incitement to or encouragement of the commission of any offence should be omitted from the scope of this clause, because if there is no effect, the mere tendency should not be punished. So I should like to restrict this Bill only to incitements or encouragements and not to a mere tendency to incite or encourage, the main point to be kept in view being that intention should be the criterion and not mere tendency. Sir, I move.

The Honourable Sir C. P. Ramaswami Aiyar : Having regard to the object of the Bill, I think it will be realised that if a writer attempts to provoke that effect, that must come within the scope of the Bill. In these circumstances, I submit that the words “ tend to incite to or to encourage ” are necessary.

Sardar Sant Singh : I did not move my amendment No. 36 for the simple reason, that I thought that my object would be served by the amendment of my friend, Mr. Mitra. My submission is that, power having been given to the executive, it is absolutely necessary that we should restrict that power as much as possible. The words, “ Or tend to incite to or to encourage ” are so wide that they can embrace anything in the world. If the power is given to the executive whose actions we cannot control, in that case before we can come to the rescue, some injury may have been done to the person against whom the action has been taken. Therefore, it is absolutely necessary that the wording of the law should be restricted to its narrowest limit. A particular paper which in the opinion of the executive offends against the law may find itself in the grip of the executive and it may not be able to move the High Court to get redress. At the same time the object of the Bill has been stated to be that it would be restricted in its operation against those who incite to or encourage acts of assassination or murder. Now, there may be cases wherein a comment may be made by an honest editor in a *bona fide* manner, and that comment may go against certain actions of the executive in punishing the

man who has incited to murder : I will illustrate my point thus. Suppose the executive has abused the legal power vested in their hands and a certain young man tries to take the law in to his own hands and he commits an act of violence against that particular person. It should be absolutely open to the Press to comment upon the high-handedness of the executive officer as well as condemn the action of the young man who has taken the law in to his own hands. If the writer tries to condemn the action of the executive officer, it may be considered as inciting to or encouraging murder. In order to provide against such a contingency, my submission is that the words of this clause should be restricted to the narrowest limit.

Mr. S. G. Jog (Berar Representative) : We are practically at the rag end of the day, and I am quite aware that it will be useless on my part to tax your patience any longer. It will not serve any useful purpose to discuss the provisions of this Bill, which has been introduced with a view to muzzle and gag the Press. Whatever the ostensible object of the provisions of the Bill may be, the real object is to discourage newspapers. However, we have passed that stage now, and although the Bill now before the House is in a much diluted form, still its sting or its poison remains in a virulent form, and even a small dose of it is sufficient to kill the growth, or the healthy growth, of newspapers. When the Bill was introduced, the main attack against the Bill was about its vagueness and its wideness. There is a certain school of thought which believes that there should be some restriction on the liberty of the Press which incites to murder and violence. What the newspapers are really afraid of is the executive action of the Government. It is all right when we sit here and pass this law. Ultimately it will have to go to the executive and there in many cases it will be abused. I am surprised at the statement made by the Home Member yesterday and at his stiff and stubborn attitude and certain allegations made by him, and I think it is my duty to resent those remarks. Yesterday evening, he said that every law is likely to be abused and if no law is to be passed, then it is better that this Assembly should be abolished. We have not come here to hear this lecture. We know our responsibility very well. We know what legislative bodies have got to do. We owe our duty to our constituencies and to the Press of India, and it is our duty to oppose measures which are likely to take away the liberty of the Press. As I have already said, one of the objects of attack on the Bill was its vagueness and its wideness. Unrestricted power should not be given to the executive, and although the provisions of the law should be strict, very little discretion should be left to the executive. With this object in view, I think that the retention of the words, "tend to incite to or encourage" is likely to lead to abuse. I think I shall be justified if I give out a secret. I am told that there was some controversy over the words "tend to incite or encourage". Afterwards a suggestion was made that the proper words should be "have the effect", which will convey the proper meaning. I do not know how the words "tend to incite to or encourage" came to be subsequently introduced. Sir, I support the amendment that these words should be dropped.

The Honourable Sir James Crerar : I do not think it is necessary for me to add anything material after what my Honourable colleague, the Law Member, has said on this subject to explain the necessity for the words 'tend to incite to or encourage'. I merely wish to explain for the information of the House what happened in the Select Committee, as it was

[Sir James Crerar.]

referred to by the learned gentleman from the Central Provinces and Berar. The particular words against which he has directed criticism were accepted on behalf of Government during the examination in Select Committee. The suggestion he referred to was from one of the Members dissenting and it was not the original proposition of Government. I do not wish to add anything more.

Mr. President : The question is :

“ That in sub-clause (1) (a) of clause 4 the words ‘ or tend to incite to or to encourage ’ be omitted.”

The motion was negatived.

Mr. S. C. Mitra : I beg to move :

“ That in sub-clause (1) (a) of clause 4 the words ‘ or any cognisable offence involving violence ’ be omitted.”

My object in moving this amendment is to restrict the very very wide scope of this clause 4. There are any number of punishable offences, and I think the real intention of this law is to restrict this Bill to acts of incitement to murder or abetment to murder. That will serve the purpose of the Government. Even the words under sections 325, 326 come under cognisable offences involving violence. I move that these words be omitted.

Mr. D. K. Lahiri Chaudhury (Bengal : Landholders) : Sir, I seldom stand on my legs on the floor of the House, and at

5 P.M.

the end of the day I do not want to prolong the debate ; but at the same time I feel it my duty to record a word of protest against the action which is being taken in this House in enacting this Bill, and I support the amendment which has been moved by my Honourable friend, Mr. S. C. Mitra. (Mr. K. Ahmed made an interruption which was inaudible.) My friend, Mr. K. Ahmed, seems impatient ; I think he ought to be a little bit patient. Sir, it is only a very legitimate demand which has been put forward by my friend, Mr. Mitra, that in sub-clause (1) (a) of clause 4 the words ‘ or any cognisable offence involving violence ’ be omitted. Sir, the interpretation actually placed in practice on the word ‘ violence ’ is of such wide scope—of which I may say we had such practical experience during the last non-violent movement, and the word was interpreted in such a way that really we are afraid of putting this word on the Statute-book. Sir, if I may be allowed just to read an extract from a newspaper which I had from Bengal, the *Amrita Bazar Patrika* (Mr. K. Ahmed : “ Oh, oh ! ”), I will do so, Members of the House are aware of the fact that during the recent Hijli incident the police were guilty of barbarous action in shooting down non-violent detenus. Now, Sir, if this Bill is passed, then under it the mere quoting of an extract will amount to an incitement to violence. The extract runs, with the heading, “ A Touching Scene. Wife Breaks Down at the sight of Dead Husband ” :

“ It was a pathetic scene to witness when the body of Santosh Mitter was placed in front of his house in Akur Dutt Lane. His young widow came near the body, saw the face of her beloved husband for 2 or 3 minutes with her eyes dried of tears, and declared at the top of her voice, addressing her dead husband,—

‘ you are gone. But I am left behind to fulfil the mission cherished by you up to the last moment of your life.’

With these words, she broke down and was carried away inside the house. The old parents of the deceased were so much overpowered that, at the sight of their beloved

son, they fainted and were removed from the place. Floral wreaths were then placed on the bier by other members of the house. Nobody could help shedding tears at the sight of this pathetic scene. The bier was then taken away from the place."

Sir, this Bill has been criticized by the Press on the legitimate ground that, with the passage of this Bill, anything, even the quotation of the foregoing, will be taken as an incitement to violence. The word "violence" is of such wide scope that, really speaking, in this part of the House, every Member feels that it signifies something which really does not represent the real attitude of the Honourable the Home Member. With these remarks, Sir, I whole-heartedly support the amendment which has been moved by my Honourable friend, Mr. Mitra.

Dr. Ziauddin Ahmad : Sir, I also support the amendment, since the words in question render the scope of this Bill much too wide. We agreed to the words, "incite to or encourage or to tend to incite or to encourage the commission of any offence of murder", and I think that is quite sufficient to meet the purposes for which this Bill is pressed. I should like to have one or two definite cases which are not covered by the first part of this paragraph and for which it is necessary to make the addition of the words, "or any cognizable offence involving violence". I should like the Home Member or the Law Member to give us one or two definite illustrations of what may be called terrorist activities and which are not covered by the first part of this clause.

The Honourable Sir James Ogerar : Sir, I think I may very briefly explain to the House the necessity for these words. In the first place, it would not meet the full scope of the Bill to deal solely with incitements to or encouragement of murder. Terrorist crime resorts to many other forms of violence than murder,—for example, arson, or causing grievous hurt. The threat, or incitement, to break every bone of some man's body, is a form of violence which obviously it is necessary to prevent. But the question, I may say, was very fully considered in Select Committee. Objection was urged that comparatively slight forms of violence, such as common assault and so forth, might conceivably come within the mischief of the Act. Therefore, the phrase "cognizable crimes of violence" was adopted in order to secure that such comparatively trivial offences were excluded. But as regards the necessity of providing for incitements to cognizable crimes of violence, I have no manner of doubt, that that is a very essential purpose of the Bill.

Mr. President : The question is :

"That in sub-clause (1) (a) of clause 4 the words 'or any cognizable offence involving violence' be omitted."

The motion was negatived.

Mr. President : The House is now adjourned to 11 O'clock to-morrow.

The Assembly then adjourned till Eleven of the Clock on Friday, the 2nd October, 1931.