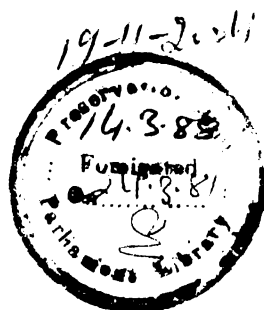


THE COUNCIL OF STATE DEBATES

VOLUME I, 1936

(15th February to 25th April, 1936)

ELEVENTH SESSION OF THE THIRD COUNCIL OF STATE, 1936



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BAR.-AT-LAW.

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THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR.
THE HONOURABLE SIR DAVID DEVADOSS, KT.

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THE HONOURABLE MR. SHAVAX A. LAL (*from 17th April, 1936*).

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MR. A. W. CHICK.

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THE HONOURABLE MR. SATYENDRA CHANDRA GHOSH MAULIK, } *Members*.
C. I. E.
THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD. }

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COUNCIL OF STATE.

Monday, 24th February, 1936.

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

MEMBERS SWORN :

The Honourable Captain Maung Aye (Burma : General).

The Honourable Mr. Bijay Kumar Basu, C.I.E. (Bengal : Nominated Non-Official).

The Honourable Prince Afsar-ul-Mulk Mirza Muhammad Akram Husain Bahadur (Bengal : Nominated Non-Official).

QUESTIONS AND ANSWERS.

UNIVERSITY TRAINING CORPS ATTACHED TO THE BENARES HINDU UNIVERSITY.

17. THE HONOURABLE MR. P. N. SAPRU : (a) Is Government aware whether the University Training Corps attached to the Benares Hindu University has been winning the efficiency cup year after year for the last nine years in the annual competition with the University Training Corps attached to the other Universities in the United Provinces ?

(b) Has the Benares Hindu University been asking the Government or the military authorities to allow the University to maintain a full company of the University Training Corps for many years ? Do Government propose to grant that request ? If not, why not ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : (a) Government have no information but I am prepared to take it from the Honourable Member that this is the case.

(b) An application for expansion was rejected in 1931 on financial grounds. A similar application received recently is now under consideration by the military authorities.

INDIANISATION OF THE ANCILLARY SERVICES OF THE INDIAN ARMY.

18. THE HONOURABLE MR. P. N. SAPRU : (a) Is it the policy of Government to Indianise the ancillary services of the army ?

(b) In pursuance of this policy did Government sanction the formation of a civil wing of the Indian Army Ordnance Corps ?

(c) In pursuance of the above policy, were any civilian storekeepers and assistant storekeepers appointed in place of the British other ranks ?

(d) If so, what is the total number of civilian storekeepers and assistant storekeepers appointed ?

(e) Was the proportion laid down for civilians in the Indian Army Corps one-third of the existing strength of the British other ranks ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : (a) Yes, by stages.
(b) and (c). Yes.

(d) Twenty-six assistant storekeepers by direct recruitment. Of these 20 are still serving.

(e) No. One-quarter.

INAUGURATION OF A SCHEME IN 1930 FOR THE APPOINTMENT OF STOREMEN.

19. THE HONOURABLE MR. P. N. SAPRU : (a) Was a fresh scheme for the appointment of storemen inaugurated in 1930 ?

(b) Were the assistant storekeepers under this scheme to be recruited from among such storemen as were graduates ?

(c) Was any assurance given to duly qualified Indian storemen that they would be eligible for promotion to the rank of assistant storekeepers ?

(d) Was any examination, known as the trade test, and held half-yearly, introduced to attract the right type of candidates for the position of storemen ?

(e) Has the experiment of appointing storemen in the Indian Army Ordnance Corps been a success ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : (a) Yes.

(b) No. Recruitment was to be from non-graduates as well.

(c) No, but the scheme catered for the promotion of storemen to assistant storekeepers under certain conditions.

(d) Trade tests were introduced as a means of judging the merits of individual storemen.

(e) The direct recruitment of civilian storemen has proved only partially successful since previous military experience is desirable in the storemen and still more in the storekeeper.

INTRODUCTION OF A SCHEME IN 1933 FOR THE APPOINTMENT OF MILITARY ASSISTANT STOREKEEPERS.

20. THE HONOURABLE MR. P. N. SAPRU : (a) Was any scheme for the appointment of military assistant storekeepers introduced in 1933 ?

(b) What was the proportion of recruitment of military assistant storekeepers to that of the British other ranks ?

(c) Was any assurance given to the civilian storekeepers that the scheme for the appointment of military assistant storekeepers would in no way affect the conditions of service on which civilian assistant storekeepers were recruited ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : (a) Yes.

(b) Eight and a third per cent.

(c) Yes, but without due authority. Considerations of efficiency are always liable to lead to changes which may affect the prospects of serving personnel.

PROMOTION OF INDIAN STOREMEN AS ASSISTANT STOREKEEPERS.

21. THE HONOURABLE MR. P. N. SAPRU : (a) Was no Indian storeman appointed to the position of assistant storekeeper for over a year and a half, and are positions originally intended to be reserved for civilian assistant storekeepers now given to military assistant storekeepers ?

(b) If so, why has no civilian storeman been promoted to the position of an assistant storekeeper ?

(c) Have a number of storemen, who have put in several years service in the Corps, not yet been confirmed in service ? If so, why ?

(d) Have storemen, on their promotion to the rank of assistant storekeepers, to serve a year's period of probation ?

(e) Have assistant storekeepers and storemen generally done better at the I. O. C. School of Instruction Turkey Examinations than the British other ranks ?

(f) Have assistant storekeepers been allotted certain extra duties without any further allowance and extra remuneration ?

(g) What is the initial salary of a civilian assistant storekeeper ? What is the initial salary of a British other rank assistant storekeeper ?

(h) What is the ordinary period which it takes for a civilian assistant storekeeper to rise to the position of a storekeeper ? What is the period of service which it takes for a British other rank or military assistant storekeeper to attain the position of a storekeeper ?

(i) Are any free quarters provided for storekeepers recruited from among the British other ranks and the Military Engineering Service ?

(j) Are free quarters provided for civilian assistant storekeepers also ? If not, why not ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : (a) It was found in practice that, in order to initiate the military storekeeper scheme, the promotion of civilian storemen and the direct recruitment of civilian storekeepers had to be held up.

(b) Fourteen have been promoted.

(c) Yes. Confirmation was delayed while the rates of pay were under reconsideration. These have now been settled and confirmation is being carried out.

(d) Yes.

(e) If the Honourable Member is referring to the Kirkee examinations, the answer is in the negative.

(f) The scope of their duties has gradually increased as they attained more experience, but they have not been employed on any duties which were not performed by the British other ranks whom they replaced.

(g) The answer in the first case is Rs. 100 and in the second Rs. 210 plus allowances amounting to about Rs. 125.

(h) The time in the case of the civilian assistant storekeeper is about 17 years. The British other rank becomes a storekeeper after about 16 years and the Indian military assistant storekeeper after eight years, the periods in these two cases being additional to their military service before transfer to the Indian Army Ordnance Corps.

(i) They are provided for the former, but not for the latter.

(j) No. Free quarters are not included in their terms of service.

PLATFORM TICKETS IN INDIA.

22. THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA : (a) Is one anna each charged for platform tickets in India ? If so, what are the reasons ?

(b) Was half an anna per ticket charged previously ?

THE HONOURABLE SIR GUTHRIE RUSSELL : (a) Yes, on the majority of railways, with a view to prevent overcrowding of platforms which would inconvenience both incoming and outgoing passengers.

(b) I believe this was the case on some railways.

PLATFORM TICKETS IN BURMA.

23. THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA : Is one-quarter of an anna charged for platform tickets in Burma ?

THE HONOURABLE SIR GUTHRIE RUSSELL : At five stations the charge is three pies and at 24 other stations the charge is six pies.

WAITING ROOMS AT RAILWAY STATIONS.

24. THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA : (a) Will Government be pleased to state the number of railway stations in India where only first and second class waiting rooms have been provided ?

(b) Why have no arrangements been made for inter-class waiting rooms at such stations ?

(c) How many railway stations are there in which first and second class waiting rooms have been combined ?

(See reply under question No. 25.)

WAITING ROOMS FOR INTER-CLASS PASSENGERS.

25. THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA : (a) Have many inter-class passengers to go to third class sheds for want of waiting rooms ?

(b) If so, what facilities do Government propose for them ?

THE HONOURABLE SIR GUTHRIE RUSSELL : With your permission, Sir, I propose to reply to questions Nos. 24 and 25 together.

Government have no definite information on the points raised, but their policy is to leave it to the discretion of the railway administrations concerned to provide waiting rooms at stations where the traffic offering justifies their provision and such matters might suitably be brought to the notice of the Agent concerned direct or through a member of his Advisory Committee.

SUPPLY OF GOODS WAGONS ON THE BENGAL AND NORTH-WESTERN RAILWAY.

26. THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA : Does the Bengal and North-Western Railway provide sufficient wagons for transit of goods ?

THE HONOURABLE SIR GUTHRIE RUSSELL : Under normal conditions the number of wagons available is sufficient. At present, however, exceptionally heavy traffic is offering and the daily average loading is greatly in excess of previous years. The heaviest day's loading was just under 3,000 wagons, which is a record. Since this heavy traffic started, 20,000 more wagons have been loaded this year as compared with the same period last year. About 1,200 wagons of other railways are at present being utilised on the Bengal and North-Western Railway, and 200 additional new wagons will be turned out by next month. The Agent reports that every effort is being made to cope with the present exceptional conditions.

SUPPLY OF CANE TRUCKS ON THE BENGAL AND NORTH-WESTERN RAILWAY.

27. THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA : (a) Does the Bengal and North-Western Railway possess sufficient number of cane trucks and supply closed wagons for transit of cane ?

(b) Are the largest number of sugar factories located on this line ?

THE HONOURABLE SIR GUTHRIE RUSSELL : (a) Government is aware that 200 additional wagons suitable for the carriage of sugar cane were ordered by the Bengal and North-Western Railway in October last.

(b) Government is aware that there are 62 sugar factories located on the Bengal and North-Western Railway.

STARTING OF DEMONSTRATION BREEDING FARMS FOR CATTLE IN PROVINCES, ETC.

28. THE HONOURABLE RAJA RAGHUNANDAN PRASAD SINGH : (a) Will Government be pleased to refer to the debate on the Resolution moved in the Legislative Assembly in January, 1930 on the subject of the protection of milch cows and say what steps have since been taken to implement the promise to start demonstration breeding farms in different provinces for imparting instruction to agriculturists as to how to breed good quality cattle yielding more milk ?

(b) What steps have they taken to abolish the *phooka* system ?

(c) What has been done to provide pasture lands for milch cattle in urban areas when they go dry periodically ? Has the railway freight been reduced to facilitate the sending of such cattle to areas where sufficient pasture lands are available ?

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD : (a) No promise or undertaking appears to have been given but the improvement of the quality of cattle in India has received continuous attention from the Imperial Department of Agriculture which maintains for this purpose an Imperial Dairy

Expert, a Dairying Institute at Bangalore and Cattle Breeding Farms at Karnal and at Pusa. Special attention is paid to the following :

- (i) Improving the efficiency of milch cattle by selective breeding, proper feeding and management.
- (ii) Development of the supply of milk and dairy products.
- (iii) Practical training of students in dairy methods.

As a result considerable improvement has been effected in several breeds of milch cattle. A number of pedigree cows and bulls have been supplied to different parts of India and a large number of students trained in practical methods of dairying. With the object of assisting private breeders to obtain better prices for pedigree animals, the Advisory Board of the Imperial Council of Agricultural Research has recently approved a scheme for the establishment of official herd-books for the most important dairy breeds of India. Local Governments also maintain special herds of dairy cattle at various provincial centres.

Some provincial agricultural departments are also engaged in developing the industry by improvement in the local breeds, distribution of pedigree bulls and encouragement to co-operative societies for supply of pure milk to towns at reasonable rates.

(b) The *phooka* system is penalised under the Prevention of Cruelty to Animals Act, 1890, the administration of which rests with Local Governments.

(c) The measures taken by Local Governments and Administrations for improvement of grazing facilities are described in the report showing the progress made in giving effect to the recommendations of the Royal Commission on Agriculture in India which are available in the Library of the House. As regards the second part the reply is in the negative as the freight rates for cattle are already very low.

STATEMENT LAID ON THE TABLE.

DELAY IN DELIVERY OF LETTERS POSTED IN UPPER ASSAM.

THE HONOURABLE MR. A. G. CLOW (Industries and Labour Secretary) : Sir, I lay on the table the information promised in reply to question No. 128 asked by the Honourable Mr. H. P. Barua on the 28th September, 1935.

(a) and (b). Yes.

(c) There are three trains from Upper Assam which the public can utilise for their journey to Gauhati or Shillong. By two of these, passengers can reach Gauhati and Shillong on the second day. The conveyance of mails by two trains would involve a heavy addition to the costs. The possibility of substituting one of the other two trains for the present one is ruled out by the fact that it does not stop at all the mail changing stations, while the substitution of the other would mean a delay of over 24 hours for nearly all the mail matter for places on the Eastern Bengal Railway. Government do not therefore consider it desirable to change the existing arrangements.

STANDING COMMITTEE ON EMIGRATION.

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD (Education, Health and Lands Member) : Sir, I move :

"That this Council do proceed to elect, in such manner as the Honourable the President may direct, four non-official Members to serve on the Standing Committee on Emigration."

The Motion was adopted.

STANDING COMMITTEE FOR THE DEPARTMENT OF INDUSTRIES AND LABOUR.

THE HONOURABLE MR. A. G. CLOW (Industries and Labour Secretary) :
Sir, I move :

“That this Council do proceed to elect, in such manner as the Honourable the President may direct, two non-official Members to serve on the Standing Committee to advise on subjects, other than ‘Roads’ and ‘Posts and Telegraphs’, dealt with in the Department of Industries and Labour”.

The Motion was adopted.

STANDING COMMITTEE FOR ROADS.

THE HONOURABLE MR. A. G. CLOW (Industries and Labour Secretary) :
Sir, I move :

“That this Council do proceed to the election, in such manner as may be approved by the Honourable the President, of three Members to serve on the Standing Committee for Roads which will be constituted to advise the Governor General in Council in the administration of the Road Account during the financial year 1936-37”.

The Motion was adopted.

THE HONOURABLE THE PRESIDENT : With reference to the Motions which have just been adopted by the Council, I have to announce that nominations for these three Committees will be received by the Secretary up to 11 A.M. on Wednesday, the 26th February, 1936, and the dates for election, if necessary, will be announced later.

PAYMENT OF WAGES BILL.

THE HONOURABLE MR. A. G. CLOW (Industries and Labour Secretary) :
Sir, Honourable Members may have heard occasional suggestions that the speed of labour legislation might be somewhat slower than it is. If any Honourable Member in this House shares that view, the history of the measure now before us must give him considerable gratification. For it has taken a period of over ten years' examination, deliberation and revision to reach the stage we have reached today. The matters with which this Bill deals first came to the notice of the Government of India prominently in 1925, and in the following year they addressed Local Governments both on the question of the prompt payment of wages and on the question of fines. A substantial amount of information was collected : some of it was published and Government proceeded to formulate legislative proposals. These had reached a fairly advanced stage by 1928 when it was decided to appoint the Royal Commission on Labour, and legislation was naturally deferred until Government could have the advantage of their advice. The matter was reviewed by them between 1929 and 1931 and their proposals necessitated a revision of the original scheme. That revision was completed by 1933 when a Bill was introduced in another place. The Bill was circulated for opinions, and a large mass of opinions, including a number of useful criticisms and suggestions, was received. Unfortunately it was not possible to proceed further during that Assembly and the Bill consequently lapsed. But Government used the opinions they had collected to revise the proposals, and a substantially modified Bill was introduced in 1935 in the Assembly. That Bill has undergone further revision there and it is that Bill which is before Honourable Members today. I might add that if

[Mr. A. G. Clow.]

the Bill is accepted, it can hardly come into force, on account of the administrative arrangements which will be necessary, before 1937. So I think Honourable Members will agree that, whatever the merits or demerits of the Bill, the measure has not suffered from lack of deliberation.

I regret personally that it was not possible to deal with the graver abuses somewhat more promptly but on the whole the delay that has occurred has had distinct advantages. For it has considerably increased our knowledge and increased therefore the experience on which we have to move. For example, I might allude to a paper which is in Honourable Members' hands giving an account of investigations made at the instance of the Government of Bombay in 1934 and revealing a state of affairs of which the Labour Commission certainly had very imperfect knowledge.

Now, there are two main objects underlying this measure. The first is to secure that wages are paid reasonably promptly. The second is to secure that they are paid reasonably fully. And in both directions we have to deal first with the infrequent occasional grave abuses and secondly with an unsatisfactory state of affairs which, though not general, is somewhat more widespread. To deal first with delays in payments, the matter came to our notice initially because of a number of strikes in which workmen struck for their wages and it transpired that they had not been paid for long periods, up to two and three months. These cases, I am glad to say, are very rare but they do occur, and so to a larger extent does the habit of systematically delaying payment of wages to an unreasonable extent. For example, in quite substantial sections of industries it used to be the custom to pay 15 days after the end of the month, and in some unimportant industries much longer delays are quite frequent.

In the same way, with deductions from wages, we have again to deal with grave and serious abuses which, fortunately again, are by no means general and with a more widespread unsatisfactory state of affairs. As regards the serious abuses, I cannot do better than refer Honourable Members to the extremely interesting report which was circulated to them with the opinions and gives the result of an inquiry made by Mr. Mehrban of the Labour Office, Bombay, at the instance of the Local Government. I would like, with the permission of Honourable Members, to read a few short passages from it which deal with possibly the worst cases; these are in the Ahmedabad cotton mills. It says for example:

"Two weaving masters took me into the folding department in order to show me the practice which was adopted. In one of these mills which employs 420 weavers, the value of the total amount of cloth handed over during the year 1932 amounted to Rs. 18,025-15-0 and in 12,996 instances in addition to fines amounting to Rs. 7,899 for bad and negligent work. In the other mill which employs 180 weavers the value of the cloth handed over in 1932 amounted to Rs. 15,698 in addition to fines."

That means that in addition to direct cuts from a man's wages in the form of fines, he has to take a substantial part of the rest in the form of cloth which is spoilt or which is alleged to be spoilt. Further he goes on to say:

"I asked the weaving master whether he or his assistants examined the pieces of cloth before the weaver was fined or before the damaged cloth was handed over. He remarked: 'Look through these two huge piles'. (One of these piles I may say was of cases in respect of which the workers would be fined and the other was of cases in respect of which the cloth was to be handed back to them.) 'Look through those two huge piles. I would not be able to go through that cloth if I were to work day and night for a whole month'."

Later on Mr. Mehrban makes an estimate, which he describes as a conservative estimate, of the amount of spoilt cloth handed over to weavers in the Ahmedabad mills at Rs. 7½ lakhs and says it might easily amount to Rs. 10 lakhs. He

has in addition estimated that the total amount of fines inflicted on weavers in the Ahmedabad mills amounts to Rs. 5 lakhs. I am sure the House will agree that conditions like that are little short of scandalous and I am glad to say that that is not by any means a typical picture of industry. There is, however, on a somewhat more widespread scale a practice of fining and of making deductions in a somewhat arbitrary fashion, and the real difficulty is that in imposing fines or such deductions, the workman is given at present no effective means of redress. The employer may be justified in imposing a fine or deduction or he may not, but in either case there is no satisfactory means open to the workmen of resisting it. In fact, in this extreme case which I mentioned to the House just now, one of the weaving masters said that generally speaking the men do not complain. And if you think it over, you will see that they have no real means of complaining short of a strike, because the average workman has neither the money nor the time to pursue a civil suit. This must be an individual suit to recover an amount which though it may mean a good deal to him is really a small sum. The expenses of the suit would be out of proportion to the results, and the time that it would occupy he cannot spare from his work.

I think I have said enough to show that there is a real need for this measure, and before going on to explain how we propose to deal with the difficulties, I would like to repeat that I do not want the Council to suppose that the abuses or the minor inconveniences to which I have referred are widespread and general throughout industries. They are not. This is primarily a Bill designed to deal with abuses where they exist and it is our hope and belief that to the ordinary reasonable employer it will give the minimum of inconvenience or none at all.

Now the Bill, as the result of the various stages that it has gone through, is a somewhat complicated measure, but Honourable Members will find the essence of it in clauses 5 and 7. The fundamental points are there. Clause 5 deals with the period within which wages must be paid. There is an amendment, I see, on the agenda relating to this clause, and so I will not go into it in further detail now except to say that in the normal case we are asking employers to pay the wages within a week. Clause 7 deals with deductions, and it begins by making all deductions illegal except those which are subsequently sanctioned. There is a long list in sub-clause (2) of clause 7 of possible deductions. These fall into two classes, fines and other deductions, and the subsequent clauses—clauses 8 to 13—regulate the deductions alluded to in clause 7. The essential difference between a fine and any other deduction is this, that the other deductions correspond to some charge or to some service. For example, they may take the form of income-tax due from the employee or of a contribution to his provident fund or of a contribution to a co-operative society or of the rent he has to pay for his house or for other valuable services which many employers render to workmen. A fine corresponds to no definite charge in the form of money. It is a disciplinary measure, and in respect of fines a number of safeguards are provided which do not apply to deductions. For example, the maximum amount of a fine is limited, no fine can be imposed upon children, the period within which a fine may be recovered is prescribed and, most important of all, no fine can accrue to the benefit of the employer. Fines must be credited to funds which are applied to the benefit of workmen. Thus, if this Bill is passed into law, an employer will have no reason for imposing a fine except the perfectly valid and sincere one of maintaining discipline in his factory; and he cannot profit from the fine which he imposes. In respect of deductions, clauses 9 to 13 impose certain restrictions. They are mostly fairly straightforward. Clause 9 which relates to deductions for absence is perhaps a little more difficult but there will be, I understand, a little further discussion of that at a later stage.

[Mr. A. G. Clow.]

The remaining clauses—in fact, the greater part of the Bill—deal with administration and procedure and these have attracted little comment. The surprising thing about this Bill is that comment seems to have been concentrated on details which I personally regard as unimportant. But these provide an experimental and interesting form of procedure, both civil and criminal. We provide special tribunals. We propose to go further than that and provide for joint applications from workmen where they have substantially the same grievance. Clause 16 permits of a joint application from as many as 2,000 or 3,000 workmen and we provide through these tribunals for summary and speedy recovery not only of the sums that may have been wrongfully withheld from workmen but of limited amounts of compensation. In addition to that, criminal penalties are provided ; but these will be imposed only secondarily and in some cases. We do not propose to allow a case for deduction to go to a civil court until the first proceeding has been held, and until the authority presiding over the first civil proceeding is satisfied that it should so go and has given sanction. In other words, the intention is that these powers of criminal prosecution should be used for the graver and the more deliberate violations of the law.

I think I have said enough to make the method proposed clear, and I would just add one word on a consideration which is always present to our minds in dealing with labour legislation, and that is the question of cost. So far as administrative costs are concerned, we have tried to reduce these to the lowest possible extent. The Bill, as Honourable Members will see, applies in the first instance only to factories and railways. I do not say that abuses cannot be found in industries that are not covered by the Bill, but we do not propose to apply the Bill or any part of the Bill in the first instance to other forms of industry. We propose to leave it to Local Governments to apply the Bill as and where it is required and as and where they have the means to enforce it effectively. It would be a simple matter to say that this shall cover wide sections of industry, but I suggest to the Council that it would be a mistaken policy to pass legislation which you cannot make effective, to give, in other words, to workmen a right which they would not really be in a position to enforce. I hope that the powers given to Local Governments will be used to check serious abuses as and when they arise, so that the limited administrative action that can be taken will be directed where it is most needed.

Then there is also the cost to the employer. In regard to that I can only say that I know of no measure of the importance of this that is likely to cost the employer so little, and I believe it is likely to cost the good employer, who I think is in the majority, practically nothing at all. In fact the lead has been shown to us in some respects by employers. I would refer to the control of fines of the Bombay Mill Owners Association, for example, and on the side of delays I would refer to the action taken under the inspiration of the Railway Board by certain railways. As Honourable Members will realise, prompt payment is a more difficult matter on railways than in other forms of industry, but by measures designed to divide the workers into different groups receiving payment at different times of the month, the Railway Board have achieved substantial success and have reduced greatly the delay—and some delay I am afraid is always inevitable—which takes place in securing wages to railway workers. I commend the Bill to the consideration of the House.

Sir, I move :

“ That the Bill to regulate the payment of wages to certain classes of persons employed in industry, as passed by the Legislative Assembly, be taken into consideration ”.
(Applause.)

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan) : Sir, as the Honourable Mr. Clow has pointed out in the very lucid speech which he has made, the Bill is the result of several years of hard work in the Department of Industries and Labour. The Bill was first introduced in the last Assembly in 1933. It could not be dealt with by the last Assembly and it was introduced again in February, 1935. Thereafter it was referred to a Select Committee and the Select Committee spent several weeks over this Bill. It went into all details and it was able to present a report which would have improved the Bill in several respects from the workers' point of view. To the Bill as it had emerged out of the Select Committee it would have been possible to give an enthusiastic reception. Unfortunately however, in respect of one important matter, to which I shall come later in the course of my speech, an amendment was carried in the Lower House which has to an appreciable extent chilled the enthusiasm which workers feel for this measure. Meanwhile, I propose briefly to examine some of the more important provisions of this Bill.

The Bill deals with payment of wages and deduction of wages. The object of the measure is to see that the employee gets his wage promptly and that deductions are not made by the employer from his wages without sufficient cause. I think the Bill so far as it goes in this respect is very good, but I would like the Government of India to go a little further and to set up a minimum wage machinery at as early a date as possible. I know that the Bill has a limited scope and purpose. It deals with certain grave abuses in certain industries and it may be that Government feel that they must keep this question of payment of wages distinct from the question of a minimum wage machinery. But I would here stress that there is need for some machinery which would see that employees get a fair and suitable wage. There is need for some machinery which would enable the workers, without resorting to the extreme weapon of the strike, a weapon which we thoroughly detest but which in our present system of individual economy is perhaps inevitable, which would, I say, enable the workers to maintain their standard of living. I do not grudge the protection which our employers are getting. But if I stand for protection for our employers, I also stand for protection for our workers. The Whitley Commission went into this question of the minimum wage carefully and their recommendations are to be found in paragraph 173 and at page 214 of their report. They advised a cautious policy, as the summary of their conclusions on page 128 of the Government Report on action taken on the Report of the Whitley Commission would show. Now, Sir, I do want the Government of India to request Local Governments to undertake the inquiry which they have suggested in regard to certain industries. I am dissatisfied in going through the report which has been supplied to us with the attitude of certain Governments in regard to the proposed inquiry, notably the United Provinces, Bengal and Burma Administrations. So much for this minimum wage machinery.

I should like also to say that there is a necessity for some system of standardising wages. Something should be done to standardise wages in certain industries.

Now, Sir, coming to the provisions of the Bill, I am glad to find that the Bill lays down that all payments must be made on a working date. I am also glad to find in clause 5 that the Bill lays down that payment must be made within a period of seven days in respect of establishments which employ less than 1,000. I should have liked the Government of India to have one uniform rule for both factories which employ 1,000 and those which employ more than 1,000 men. As regards deductions, the position is that deductions from wages

[Mr. P. N. Sarru.]

will only be permitted in certain specific cases which are detailed in section 7 of the Bill, and so far as that section is concerned, I think it is a very carefully drafted section and I am in general agreement with the framework of that section. I am glad that fines are prohibited in the case of children and this is in accordance with the recommendations of the Whitley Commission. I am also glad to find that the recovery of fine is not to be spread over a too long period. This again is in accordance with the recommendations of the Whitley Commission. While, Sir, I am not a believer in fines—I should really have liked to see fines abolished altogether, I do not think that they serve any disciplinary purpose at all—I gladly recognise that the clauses in regard to the fines follow the recommendations of the Whitley Commission and the Bill in this respect will distinctly improve the position of the workers.

Sir, there is one clause with which I am not satisfied and that is the clause which says that no wage period shall exceed one month. In paragraph 189 of their Report the Whitley Commission suggested that employers should adopt a system of weekly payment. I will just read out from page 238 the case as they put it for weekly wages :

“ The reduction of the wage period itself, on the other hand, would have important effects. Long intervals between wage payments invariably add to the embarrassments of the poor, and have an appreciable influence in binding the worker to the money-lender. The mere purchase of goods on credit is not necessarily equivalent to running into debt and the shopkeeper (who is often the money lender) frequently does not charge interest on the current account for provisions ”.

Sir, the difficulty with a maximum is that it tends to be the minimum, and while I appreciate the difficulties of employers, while I appreciate the difficulties of Government in regard to this matter, I should really have liked to see in the Bill a system of weekly payments embodied.

Then, Sir, I would also refer to the clauses regarding the tribunal and the procedure laid down for that tribunal. Those proposals have my hearty support, particularly the proposal which would enable a number of workmen to present a joint application to the tribunal. Also I find that section 23 would prevent a man from contracting out of the Act. I regard it as a very salutary provision. I shall come now, Sir, to the most controversial clause regarding what are called lightning strikes. While for reasons which I shall state briefly and shortly I cannot approve of the clause—in fact I may say that I am opposed generally to the principle of it—I may state quite frankly that I am equally strongly opposed to lightning strikes. A strike is a weapon not to be used lightly. It is a weapon to be used when all other methods of obtaining redress have failed and when strikers have such legitimate grievances that public opinion will support them. Trade unionists therefore always disapprove of strikes without notice. Sir, I find a trade union leader, Mr. Guruswami, made certain very strong comments about a strike which is going on in Secunderabad just now. The policy of the unions is generally against lightning strikes. In fact, Sir, I do not know that there can be such a thing, strictly speaking, as a lightning strike. A strike very often has a history behind it. It represents in many cases the culminating stage in disputes between employers and employees. Employers know that trouble is brewing and in that case many strikes which are called lightning cannot be described as lightning. It may be that sometimes something may suddenly happen which may upset the mental balance of both employers and employees and you may have a lightning strike. There I quite agree. Therefore the question is not whether lightning strikes ought to be encouraged or discouraged. We all agree that lightning strikes ought to be discouraged. The question is how they can be

best discouraged. Now, Sir, I would submit that they can be best discouraged by the growth of healthy trade unionism. If our employers will look upon labour not merely as an agent in production but as human beings with feelings and emotions very similar to their own, I am sure labour disputes will become less frequent. It is the human touch in industry that will really solve this question of capital and labour. Employers must listen to workers and workers must be prepared to work in co-operation with employers if our system is to function in the way it should function. Industrial peace, Sir, should be our aim. Sir, if our employers and if our employees would live up to the old Indian ideal of *dharma*—it is an untranslatable word and therefore I cannot translate it, this word *dharma* is sometimes translated as duty—if our employers and employees would live up to the old Indian ideal of *dharma*, many of our difficulties would be removed. My real objection then, Sir, to the clause is that it may have the very opposite effect to that which our friends desire. Now I will take a concrete case. Ten men absent themselves on a certain day. Then the employers deduct their wages for 13 days. Then, Sir, this fine itself may become a matter of grievance with the employees and lead to a further strike. We want to prevent strikes. Therefore the real remedy is to be found in conciliation. Enough use has not been made of the machinery provided by the Trade Disputes Act. Sir, it may be said that the clause does not penalise strikes but its aim is to penalise strikes without due notice and without reasonable cause. Now, Sir, here we come to the question of what is due notice and what is reasonable cause. What is due notice? Is it intended that every workman should give individual notice or a notice by the trade union of which he is a member be enough? Why should workers be required to give individual notice when employers can put up only one notice? Then as regards reasonable cause. Is it intended that workers who are fined should go to a court of law and then show that they were not acting in concert and that they had reasonable cause. The onus of proving that they were not striking in concert and they had reasonable cause would be upon the workers, not upon the employer. Would every worker who is proceeded against have to bring a separate suit and how would it help the employer if he had a number of suits against him, if he had a multiplicity of suits against him because of certain action taken by him? Further, Sir, would the courts according to the clause as it stands be able to ascertain the factum and quantum of damages also? Sir, the clause is in the nature of a penal clause and, therefore, one further question that I would like to ask in regard to this clause is this. Would it be open to an employer, firstly, to levy a penalty under this clause and, secondly, also to pursue his common law remedy against an employee for damages for breach of contract? If so, then the clause is open to the objection that it would give to the employer two remedies. Firstly, the remedy of deducting wages; secondly, a suit for damages for breach of contract. But, Sir, I find that according to section 22:

“no court will entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed forms the subject of an application under section 15, etc.”

But this section will not bar a suit for damages for breach of contract when an employer deducts wages under the proviso to section 9. So that under section 23 read with section 7 and section 9, the common law right of the employer to proceed against the employee for damages for breach of contract is not taken away, and what has been done by this clause 9 is to give the employer an additional right. My submission, therefore, is that the common law right of the employer to proceed against a worker for breach of

[Mr. P. N. Sapru.]

contract damages has not been affected by this clause, but an additional right has been given to the employer. Sir, this I would say is not quite a fair arrangement. It is also a fact, Sir, that the clause was inserted at the last moment. It was not discussed in the sub-committee. Opinions of the Local Governments and the various other interests affected by this clause were not taken. A change of this character ought not to have been effected without reference to the various interests involved, without much deliberation and thought. I think, Sir, that Labour has a grievance that in a Bill designed for their benefit there is what they have come to regard rightly or wrongly an anti-strike clause. I am genuinely sorry, Sir, that a measure over which our good-hearted and respected Industries Member, the Honourable Sir Frank Noyce, and his very able and sympathetic Secretary, Mr. Clow, who was a very distinguished member of the Whitley Commission—and Indian Labour can never forget the services which the Whitley Commission rendered—that a good measure over which these two good and sympathetic gentlemen have spent so much thought and care and labour, should have been spoilt by a last-minute change. I would, therefore, Sir,—recognising that it is not possible for us to change the principle of the clause at this stage—appeal to them at least to limit its rigour and severity. Any action taken to mitigate its rigour and severity will hearten and cheer Labour and I am quite sure that they will have an adequate response from Labour circles in any action that they take to mitigate the rigour and severity of this clause. Sir, I would like this House to be wisely conservative. I am not a Conservative myself but I recognise that some of the best labour legislation in England, for example, has been promoted by Tory democrats. I would like the House to be wisely conservative and to hold the balance even between Capital and Labour. Sir, we hear a good deal about communism and the growth of communistic activities in this country. Well, Sir, no one can be more opposed to the principles of communism than a Liberal democrat. Communism is the very antithesis of liberalism. But I think, Sir, there are two ways of dealing with communism. One is the Italian way and the other is the British way and I should like, Sir, a British Government to deal with communism in the British way. Let us be wise and far-seeing in the reforms that we promote. It is only a bold and courageous policy of liberal reform which will stem the tide of communism. Sir, if we can show to our workers that we mean to be fair to them, that we mean to be just to them, that we treat them as human beings, with emotions and feelings very similar to ours, then I am sure that our workers will be loyal to us, will respond to any gesture that we may make to them. We should not get hysterical about communism. We should deal with it in a liberal way. It is by removing the real causes of economic unrest, by promoting wise and far-reaching reform that we can best stem the tide of communism. We should be wise and careful in the employment of our methods.

Sir, these are all the observations that I have to make on this Bill. But before I sit down I would once again make an appeal to the Honourable Mr. Clow to make some gesture to Labour and I am certain that he will meet with response from Labour quarters.

THE HONOURABLE KHAN BAHADUR DR. SIR NASARVANJI CHOKSY (Bombay : Nominated Non-Official) : Sir, labour has achieved considerable progress so far as its interests and rights are concerned through legislation which has been passed by the Indian Legislature. There has been considerable improvement in its prospects. But, Sir, whatever recommendations in the report of the

Whitley Commission may be, the problem of labour in India and in England or other European countries is not the same. India has particular disabilities to face and consequently many of the methods or usages that have become common in those countries cannot with advantage be applied to Indian conditions. The Honourable Mr. Sapru has referred to minimum and standardised wages. I have some knowledge of the working of the Bombay mills, and I can say that, a proper wage for a proper day's work has already been standardised and adopted by most of the mills. For special kinds of work, and turn-out, special wages have been assigned. The workers again are divided into piece-workers and workers who have fixed pay. Such being actually the case, I cannot understand how the system can be improved upon? Every mill and every kind of work cannot possibly have an uniform standard on account of the great diversity of materials manufactured. The question of weekly wages as is the practice in England is a very debatable one. It has been assumed that it will ensure the economic condition and would prevent workers from getting into debt. Anyone who visits the mills in Bombay on pay days will be struck with what he sees. There is a huge crowd of Marwaris, Pathans and other money lenders who actually besiege the workers just outside the main gate in order to get hold of the wages as soon as they have been paid! The result is that men and women go on year after year paying debts from which they are never free. It has been asserted that if weekly wages were introduced the result will be that their fate will be worse even than at present, because they would squander the money and practically be never free from debts. This question has been thoroughly debated and experience has confirmed that the best way of payment of wages is by the month.

With regard to lightning strikes, while this Bill was being debated at
 12 NOON. another place, a lightning strike occurred in Bombay in one
 of the mills. Six hundred weavers who were dissatisfied with some conditions under which they were working went on strike with the result that the looms remained idle. The mill had therefore to be closed. It would thus appear that the grievances of those 600 workers, real or imaginary, deprived the other 5,400 workers, who had no grievances, of their legitimate work and wages. Not content with that, the strikers usually go about in a procession with the view to instigate and exhort other mills to imitate their example in a sympathetic strike. That is the manner in which many strikes in Bombay and elsewhere follow in the wake of one such. Some of those strikes have been found to be based upon unsubstantial grievance. Time after time, they have been found to be based upon puerile or flimsy grounds and yet the workers have been led away by agitators connected with some of their so-called unions. The unions are disorganised. Their membership is very small compared to the total number of workmen in the city of Bombay. They are divided. Some have socialistic tendencies, while others are openly communistic. The result is that it is the poor and ignorant workers who become the victims of their peculiar views or idiosyncracies. The mass of workers is illiterate, unorganised and is easily led away by plausible pleas that benefit, not them but those who lead them astray. Sir, I believe that the progress that has been made in the Department of Industries and Labour, in the interests of workers is due solely to the laudable efforts of the Honourable Sir Frank Noyce. He has done a great deal of good to them and improved their prospects in every possible way. It is to be hoped that labour would now be contented having secured not one but two Magna Chartas.

With these remarks, Sir, I support the consideration of the Bill.

THE HONOURABLE THE PRESIDENT : The Question is :

"That the Bill to regulate the payment of wages to certain classes of persons employed in industry, as passed by the Legislative Assembly, be taken into consideration".

The Motion was adopted.

Clause 2 was added to the Bill.

THE HONOURABLE THE PRESIDENT : The Question is :

"That clause 3 stand part of the Bill".

THE HONOURABLE MR. P. N. SAPRU : Sir, I move :

"That in clause 3 of the Bill after the word 'persons' the words 'or their substitutes' be inserted".

The clause runs :

"Every employer shall be responsible for the payment to persons employed by him, etc."

We know that sometimes temporary substitutes are employed by employees and I want the interests of those temporary employees to be protected. If the wages are paid through the employee, then the tendency for the employee or some other person is to make some deductions from the wages of the temporary substitutes.

THE HONOURABLE THE PRESIDENT : You don't think "persons employed" include their substitutes?

THE HONOURABLE MR. P. N. SAPRU : That is my feeling, Sir. If the employer is not made responsible for the payment to persons——

THE HONOURABLE THE PRESIDENT : "Person employed"—the substitute will be the person employed. A substitute can not be employed without the permission of the employer.

THE HONOURABLE MR. P. N. SAPRU : If that is so, I will not press the amendment.

THE HONOURABLE MR. A. G. CLOW : Sir, I must oppose this amendment. I do not think it is sound in principle. Further, although I am not a lawyer, I very much doubt if it would achieve the object my Honourable friend has in mind. On the question of principle, the substitute is not employed for the employer's convenience. In fact, he is a nuisance from the employer's point of view. The workman goes away and brings a substitute who may be incompetent. If the employer, as a matter of grace, allows the substitute to work, I do not see why he should necessarily have to accept a further liability for him.

On the question of law, if the amendment is carried, the clause will then read :

"Every employer shall be responsible for the payment to persons or their substitutes employed by him, etc."

That means that the employer would only be liable for substitutes whom he had definitely employed. If he has a contractual relation with the substitute, or in other words, if his agent has engaged the substitute, I maintain that he is already liable under clause 3 to the substitute. If he has no contractual

relation with the substitute, then my Honourable friend's amendment would not have the effect of making him liable.

THE HONOURABLE MR. P. N. SAPRU: I do not press the amendment, Sir.

THE HONOURABLE THE PRESIDENT: You have not yet moved the amendment.

THE HONOURABLE MR. P. N. SAPRU: I am not moving it, Sir.

THE HONOURABLE THE PRESIDENT: The Question is:

"That clause 3 stand part of the Bill".

The Motion was adopted.

Clause 3 was added to the Bill.

Clause 4 was added to the Bill.

THE HONOURABLE THE PRESIDENT: The Question is:

"That clause 5 stand part of the Bill".

THE HONOURABLE MR. P. N. SAPRU: Sir, I move:

"That after sub-clause (2) of clause 5 of the Bill, the following new sub-clause be inserted and the subsequent sub-clauses be re-numbered accordingly:

'(3) Where the employment of any person is terminated by the employee with due notice or where he goes on leave with the permission of his employer, his wages shall be paid on the day before the expiry of the second working day on which he terminated his service or his leave begins'."

Sub-clause (2) of clause 5 runs thus:

"Where the employment of any person is terminated by or on behalf of the employer the wages, etc."

If the employee terminates the service with due notice, why should he be in a different position? Where the employer terminates the contract with notice then the wages earned by the employee have to be paid before the expiry of the second working day but if the employee terminates the contract after due notice, then there is no provision in the clause as it stands that the wages earned by him shall be paid before the expiry of the second working day.

As regards the second part, namely, where he goes on leave with the permission of his employer, if he is going on a holiday or on leave, it will be a convenience to him to have the payment made to him before the expiry of the second working day on which his leave beings.

Sir, I move.

THE HONOURABLE DIWAN BAHADUR SIR RAMUNNI MENON (Madras : Nominated Non-Official): Sir, I only wish to enquire—and I hope some Honourable Member will explain—what exactly is meant by the second part of the amendment. The part which I refer to runs as follows:

"... his wages shall be paid on the day before the expiry of the second working day on which he terminated his service or his leave begins".

Evidently it is intended to provide for the time of payment of wages. If the intention is that the wages shall be paid on the day on which the employee terminates his services or commences his leave, then it is unnecessary to refer

[Sir Ramunni Menon.]

to the second working day after that event. On the other hand if it is intended to fix the expiry of the second working day as the farthest time limit within which his wages have to be paid, then I think we must specify a point of time from which the second working day has to be counted. I venture therefore to suggest that the relevant portion of sub-clause (2) of clause 5 which is quite clear be exactly borrowed for the purpose of this amendment. In other words his wages shall be paid before the expiry of the second working day from the day on which his employment is terminated.

THE HONOURABLE THE PRESIDENT: Then you wish to move an amendment?

THE HONOURABLE DIWAN BAHADUR SIR RAMUNNI MENON: No, Sir, I am only suggesting this. I am not speaking on the merits of the amendment at all.

THE HONOURABLE MR. A. G. CLOW: Sir, I share Sir Ramunni Menon's difficulty as to the meaning of the amendment, but I think I am fairly clear as to the intention. I feel sure from what fell from the Honourable Mr. Sapru that his intention is that, in the two cases he particularises, the employer should be allowed only two days for payment. Now there are two separate cases. The first is the one where the employment is terminated by the employer with due notice. My Honourable friend asks me why we should treat the case where the employee terminates his service differently from the one where it is terminated by the employer. I would put another question to him, and that is—why should the employer be compelled to treat the man who is no longer willing to stay with him more generously than the man who is willing to continue in his employ? I should have thought that there is a very obvious answer as to why there should be different treatment. If the employer terminates the services of an employee then that is an act not within the power of the employee at all, for which the employer must be responsible. The employer may be retrenching or there may be other reasons. But in this other case it is a definite act of the employee and I do not think it is reasonable that the employee should by that act be able to ante-date the date of payment and so secure an advantage over other employees. That would encourage notices for termination of employment.

As regards the second case, where the worker goes on leave with the permission of his employer, if the employer is good enough to give permission and is a reasonable man, no doubt he will give the wages when he gives the permission. But an employer who did not want to pay on that date would have resort to the obvious remedy of refusing leave, and the amendment would discourage employers from giving permission to employees to go on leave.

THE HONOURABLE THE PRESIDENT: Do you wish to press your amendment?

THE HONOURABLE MR. P. N. SAPRU: No, Sir.

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

THE HONOURABLE MR. P. N. SAPRU: Sir, I move:

"That after sub-clause (4) of clause 5 of the Bill, the following new sub-clause be inserted:

'(5) The payment of wages to the heirs of a deceased employee shall be made in the manner prescribed'."

THE HONOURABLE THE PRESIDENT : Do you want to proceed with this amendment ?

THE HONOURABLE MR. P. N. SAPRU : Yes, Sir.

THE HONOURABLE THE PRESIDENT : I am inclined to overrule this amendment, but I will hear Mr. Clow.

THE HONOURABLE MR. A. G. CLOW : I must take exception to this amendment on a purely technical point. I do not think it falls within the scope of the Bill. The Bill, as defined in the Preamble, is a Bill to regulate the payment of wages to certain classes of persons employed in industry, while this amendment is for a different object. It is to pay wages to persons who are not employed and may never have been employed in industry.

THE HONOURABLE THE PRESIDENT : I entirely agree with the objection taken against this amendment. We are legislating under this Bill for people actually employed and in existence, while the amendment refers to the heirs of deceased employees, for whom we are not legislating and who are not within the scope of the Bill. I therefore uphold the objection and disallow the amendment.

Clause 5 was added to the Bill.

Clauses 6 and 7 were added to the Bill.

THE HONOURABLE THE PRESIDENT : The Question is :

"That clause 8 stand part of the Bill".

THE HONOURABLE MR. P. N. SAPRU : Sir, I do not wish to move this amendment.

Clause 8 was added to the Bill.

THE HONOURABLE THE PRESIDENT : The Question is :

"That clause 9 stand part of the Bill".

THE HONOURABLE MR. P. N. SAPRU : Sir, I move :

"That for the proviso to sub-clause (2) of clause 9 of the Bill, the following proviso be substituted :

'Provided that subject to rules made by the Government of India in this behalf, if one third of the total number of employed persons, none of whom is a child or an adolescent (as defined in the Factories Act, 1934) or a woman, acting in concert, absent themselves without notice, (as required under the rules but the length of which in no case will exceed half the length of the period of notice which may be required from an employer) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for six days or for the actual days of absence whichever is lower, as may be due to the employer in lieu of due notice'."

Sir, after I have moved this amendment there is another amendment which I shall beg you, Sir, to allow me to move.

THE HONOURABLE THE PRESIDENT : You can bring it up after this is disposed of.

THE HONOURABLE MR. P. N. SAPRU : I said what I had to say in regard to the principle of this clause in my speech at the consideration stage. I do not propose to go into the question of principle at all at this stage. The

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clause as it is worded accepts the principle of Sir Hormusji Mody's amendment in the other House and it only seeks to mitigate its rigour. The clause of Sir Hormusji says "ten persons or more". I am suggesting that the figure should be one-third of the persons employed. The number "ten" strikes one as being too small. I have suggested a definite proportion of the total number of people employed.

Then, Sir, the second part of my amendment seeks to reduce the period for which wages may be deducted from 13 days to six days. For one day's absence, Sir, a deduction of wages for six days ought to be quite sufficient. If employees cannot be deterred by having their wages cut for six days, they would not be deterred by having their wages cut for 13 days, we ought to make some gesture towards the employees. There is deep and genuine disappointment with the clause as it stands. Sir, I want this Bill to have a really good reception and I think if something is done to make this Bill a little better in this respect the reception it will have from the workers for whom it is meant will be much better.

Then, Sir, about women and children. I think women and children ought to be excluded.

THE HONOURABLE MR. A. G. CLOW : Sir, before I deal with the details of this amendment I would like to take this opportunity of referring to certain remarks which fell from my Honourable friend in his opening speech, because I am quite satisfied that on the subject of this particular proviso there is a tremendous amount of misapprehension. The impression has got abroad and I believe is honestly held by a number of people—Mr. Saprú himself referred to it—that this is a clause penalising lightning strikes. The words "penalising lightning strikes" I have seen in both Indian and European newspapers which are ordinarily very well informed. I have also seen comments in various parts of India by those who have not had access to the Bill and have not had the time to study it who have obviously got the impression that in this proviso we are introducing some form of penalty; and for that reason I would like to try to explain to the House as briefly as I can what this proviso actually does.

I would ask the House to look at the position if the proviso were not there. We have in clause 7 prohibited all deductions from wages except those that are allowed by later provisions. We allow in sub-clause (2) (b) of clause 7 deductions for absence from duty, but we hedge that about further by clause 9. Sub-clause (2) of clause 9, read without the proviso, provides that the employer cannot deduct from wages on account of the workman's absence anything more than the wage he would have earned during the period for which he was absent. In other words, no work no pay; that is all it says.

Now we come to the question of breach of contract. A number of workmen go off without any notice, without any reasonable cause, acting in concert, on a strike. Under the ordinary contract of employment the employer at this moment has a right to damages for the injury caused to him. Normally those damages would be the period of notice which may be up to a month; in many cases it is a month. Further the employer has not merely the right to damages; he has at present the power of deducting those damages from wages. As a matter of actual fact, he can withhold those sums from wages and thereby compel the workmen to sue him in the civil court. And even when that suit is brought the employer can plead "I am entitled, as a set-off to any wages you claim, to the damages that are due to me under the law". So that, if we did not put in a proviso of this kind, the position would be that we would take away from the private employer all legal power to take from

wages any damages which were due. We should not be depriving him of the right to go to a civil court and sue for them ; we should be compelling him to do that if ever he wanted to recover damages for breach of contract. In other words, we would be introducing a very important change and that I think is what was not realised in the Select Committee.

Now it is perfectly true that this proviso takes away from the workman an advantage which he would have had if the Bill had been passed in the form recommended by the Select Committee ; I admit that at once. What I deny is that it imposes on the workman any penalty to which he is not open at present. In fact, it has the other effect. The clause, read as a whole, places the workman in a more advantageous position than he holds at present, for it limits the power of the employer to recover from wages damages up to the extent of a certain number of days. It also limits it to cases where workmen act in concert, whereas at present he can do it in the individual case. And there are further limitations possible, because the proviso opens with the words "subject to any rules made in this behalf by the Local Government". In other words, we came across a right and a power vested in employers and we have curtailed that power ; we have not curtailed the right. I admit to my Honourable friend that the employer can do what he thinks—go to the civil court and sue for the rest of the damage which he has failed to recover by this means, but I can assure my Honourable friend that I do not believe any employer will ever take that course. We have not in this clause, in other words, conferred on the employer a right to any money which is not his and would not be his independently of this Bill. All we have allowed him to do is to recover, to a limited extent, whatever may be due to him independently of the Bill.

I hope that is clear, because when the clause is described as a clause penalising lightning strikes or a clause imposing a penalty, it is obvious to me that its whole effect has been misunderstood. It is not a clause imposing a penalty. It is a clause restricting the penalty which at present can be imposed and it will not put the workman in a worse position than he is at present ; it will leave the workman in a better position than which he at present holds. If we had not inserted the clause then we would not have been making a very important change, because we would have been saying to the employer : "However unreasonable the strike is, however great the injury that has been caused to you, you shall not recover any damages through wages. You must pay those workmen who have injured you, grievously it may be, up to the time they have worked and if you want to recover any damages you must sue them individually in the civil court". Now, that would have been a very important and very radical change ; and this, taken as a whole, is not a Bill designed to confer certain rights ; it is a Bill designed to secure to persons what are their rights, what we regard as their rights already. Here is a right vested in and exercisable by the employer ; what we have done, I maintain, is to curtail it.

I hope that in the light of that explanation the House will be able to appreciate the reasons why I am in opposition to the amendment which we are discussing. This amendment proposes to fix the number of persons employed before the right can be exercised at one-third. Now the reference to 10 persons acting in concert is not inserted because of any magic about the number 10. It is inserted for quite a different reason. The reason is this. If we have no reference to workmen acting in concert, then the right could be exercised for every occasional absence from work. If a workman went away for one day for a marriage or something else and came back again the next day, then the employer would be in a position to deduct for breach of contract. What we intend is that in the ordinary cases of absence the employer

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should not be entitled to retain for himself more than the wage which he otherwise would have paid during the absence, which is obviously a fair proposition. The reference to concert is therefore inserted to secure that position and to ensure that this proviso will not destroy in the ordinary individual cases, which will form 999 out of 1,000 cases, the safeguard inserted in sub-clause (2) of clause 9.

Similarly as regards six days. My Honourable friend says that the worker will not be deterred more by 13 days than by six. Perhaps not. But I think that his argument has behind it again this idea that this is some new deterrent that we are inserting. As I have tried to explain earlier, it is not. It is merely the retention in a much modified form of a right which the employer has and enjoys. I am ready to concede that cases may arise where employers who exercise this right may thereby tend to prolong a strike. But we have been advised by that Government which has had most experience of conciliation that this is likely to do something better than curtail strikes, and assist in some measure in preventing them, and I believe that to be a sound argument. We can only proceed by experience; we must proceed on the advice of those best fitted to advise. And this clause, which I hope the Honourable Member as a lawyer will realise has nothing repugnant to justice, is a clause designed to promote industrial peace.

THE HONOURABLE THE PRESIDENT: After this full explanation I presume you do not press this amendment?

THE HONOURABLE MR. P. N. SAPRU: It may be put to the vote, Sir.

The Motion was negatived.

THE HONOURABLE MR. P. N. SAPRU: Sir, I move:

"That in the proviso to sub-clause (2) of clause 9 of the Bill for the words in bracket the following words be substituted, namely:

'that is to say without giving the notice which is required under the terms of their contracts of employment'."

By this provision and the omission of the words "impliedly, etc.", it will be possible for the Government to make rules which would require that these contracts should be omitted or to instruct Local Governments to make rules which will require these contracts to be omitted. That will be the effect of my amendment. I hope that the Government will be pleased to accept it.

THE HONOURABLE MR. A. G. CLOW: I am glad to accept this amendment, Sir. I think it improves the clause distinctly. I hope that Local Governments will ensure that terms of this character are in writing. That should provide a very important safeguard for the workers concerned.

The Motion was adopted.

THE HONOURABLE MR. P. N. SAPRU: Sir, I move:

"That in the proviso to sub-clause (2) of clause 9 for the figures '13' the figure '8' be substituted".

Sir, I would make an appeal to our good-hearted and respected Industries and Labour Member, Sir Frank Noyce. Sir, something ought really to be done to mitigate the rigour of this clause. I am sure, Sir, that if he accepts

this clause the Bill will have a better response. I do hope, Sir, that he and his very able and sympathetic Secretary, Mr. Clow, will make some response in this respect.

THE HONOURABLE SIR FRANK NOYCE (Industries and Labour Member): Sir, I may say quite briefly that I am prepared to accept this amendment. My Honourable friend has appealed to me to abate the rigour of this clause somewhat and I am prepared to meet him to the extent proposed in his amendment. I have ascertained the opinion of those specially interested in the Bill in the other House and I find that the acceptance of this amendment here would receive general acceptance in that House.

The Motion was adopted.

THE HONOURABLE MR. A. G. CLOW: Sir, before you put this clause, I would draw your attention to the fact that a consequential amendment is necessary. With your permission I would move:

"That in the proviso to sub-clause (2) of clause 9 the words 'contract or' be omitted".

These words occur in the second last line and as a consequence of altering the form of the words in brackets this change becomes necessary.

The Motion was adopted.

Clause 9, as amended, was added to the Bill.

Clauses 10 to 20 were added to the Bill.

Clauses 21 to 26 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE THE PRESIDENT: The Bill has been amended. Standing Order 48 (?) runs thus:

"If any amendment of the Bill is made any Member may object to any Motion being made, on the same day, that the Bill be passed, and such objection shall prevail, unless the President, in the exercise of his power to suspend this standing order, allows the Motion to be made".

I understand there is no such objection forthcoming from any Honourable Member and therefore I call upon the Honourable Mr. Clow to make his Motion for the third reading.

THE HONOURABLE MR. A. G. CLOW: Sir, I move:

"That the Bill, as passed by the Legislative Assembly, and as amended, be passed".

I have nothing to add to the observations I have already made on the merits of the Bill. I merely wish to thank Honourable Members for the sympathetic reception the Bill has received at their hands.

THE HONOURABLE THE PRESIDENT: The Question is:

"That the Bill, as passed by the Legislative Assembly, and as amended, be passed".

The Motion was adopted.

The Council then adjourned till Eleven of the Clock on Wednesday, the 26th February, 1936.