

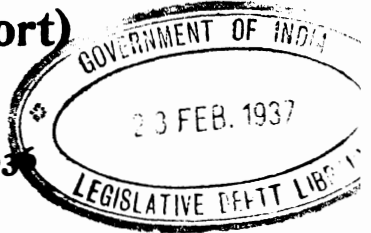
21st September 1936

THE

# LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

Volume VII, 1936



(15th September to 28th September, 1936)

## FOURTH SESSION

OF THE

## FIFTH LEGISLATIVE ASSEMBLY, 1936



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1937.

# Legislative Assembly.

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## *Deputy President :*

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**MAULVI SYED MURTUZA SAHIB BAHADUR, M.L.A.**

**MR. N. M. JOSHI, M.L.A.**

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## LEGISLATIVE ASSEMBLY.

*Monday, 21st September, 1936.*

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### SPEECH DELIVERED TO THE COUNCIL OF STATE AND THE LEGISLATIVE ASSEMBLY BY HIS EXCELLENCY THE VICEROY.

His Excellency the Viceroy having arrived in procession with the Presidents of the Council of State and the Legislative Assembly took his seat on the Dais at Eleven of the Clock.

**His Excellency the Viceroy :** Gentlemen, I wish on this, the first occasion on which as Governor General I address the Indian Legislature to say how great a pleasure it is to me to extend my greetings to the Members of that Legislature, and in particular to the distinguished Presidents of the Council of State and of the Legislative Assembly, both of them, I am glad to say, well known to me.

It has, I think, in the past been the custom of my predecessors, in addressing the Legislature, to deal in some detail with the various measures from time to time under the consideration of the Government of India. The occasion on which I now address you is, however, one of a wholly special character and significance. Not only is it the last occasion on which this Legislature will meet as a whole ; but my words today are spoken at a time when the elections for the Provincial Legislatures are close upon us, and when we are within a very short distance of the inauguration of Provincial Autonomy. It is my intention therefore to make only a relatively brief reference to those questions which have come under the direct consideration of the Legislature or of the Departments of the Government of India, and to lay before you at somewhat greater length than might otherwise be appropriate the reflections of a general character that suggest themselves to me at this critical juncture in the political development of India.

But before I pass to those matters, since the Session now about to begin will be the last Session of the present Council of State, I would like to take the opportunity to pay a tribute to the invaluable work which the Council of State has done under the sage and experienced guidance of its President, Sir Maneckji Dadabhoy. Consisting as it does of Members of proved experience in many walks of life, its balanced judgment on the problems that have come before it and the pains which it has invariably taken to reach a just and objective decision on the many controversial issues with which it has been faced, entitle it in a high degree to our gratitude and our esteem.

I do not, in the circumstances to which I have already referred, propose to do more than touch on one or two of the more important matters which are at present under the consideration of my Government, and my reference

[H. E. the Viceroy.]

even to these will be brief. The first in importance among these matters is unquestionably the problem of middle-class unemployment. I have spared no effort since I assumed office to familiarize myself with the various aspects of this problem and with the possible methods of grappling with it. It is one with the complexity and the difficulty of which you are familiar. My Government are actively investigating the avenues opened up by the very valuable Report of the Sapru Committee, and they are leaving nothing undone to devise methods of dealing with what is one of the fundamental issues of the present day in most countries of the world.

The position and the difficulties of Indians overseas have always been matters in which Indian public opinion and this Legislature have shown the keenest concern. The past months have been marked by several developments of interest and importance. Representatives of the Government and the Parliament of South Africa are already in India, and I take this, the first public opportunity that has presented itself, of extending to them the warmest of welcomes on behalf of India as a whole. My Government have, I am glad to say, been able to afford Indians in Zanzibar the expert guidance and advice of one of my officers in connection with the difficulties which they have been experiencing. The question of the reservation of the Kenya Highlands has been settled on a basis which represents the admission of a principle for which India has consistently contended. The decisions taken as to the future composition of the Legislative Council in Fiji may be regarded as satisfactory from the Indian standpoint. The Transvaal Asiatic Land Tenure Amendment Act of 1936 will be of material benefit to Indians in the Transvaal. It is but natural that India should display a continuing and active interest in the problems affecting her citizens overseas. And it is a source of keen satisfaction to me on this, the first occasion on which I address the Legislature, that the recent record of achievement in safeguarding those interests should have been so encouraging.

Negotiations, as you are aware, are in progress with Representatives of the Japanese Government for the conclusion of a new commercial agreement. It is my earnest hope that those negotiations may in the very near future reach a fruitful outcome. You will, I am sure, welcome the decision which my Government have taken to appoint in the near future an Indian Trade Commissioner to Japan, and, with a view to assisting the development of Indian trade with East Africa, to Mombasa.

The separation of Aden from India will coincide with the inauguration of Provincial Autonomy. The association has been a long one, and I am glad to think that, on its determination, His Majesty's Government have given full weight to Indian feeling in the matter of safeguards for the special Indian interests connected with the Aden Settlement.

As you are I think aware, two problems to which I attach the utmost importance are that of public health, and the problem of nutrition as affecting human beings and animals alike. The problem of nutrition is at all times one of vital concern to any country, and on its solution hinges essentially the future of India as a whole. No effort that can be made to ameliorate

conditions and to assist in the solution of this problem can be too great; and you may rest assured of my own continued and abiding personal interest in it. Hardly less material in its relation to the development and progress of India is the problem of Public Health. In this field, in particular, co-operation and the maximum degree of continued and co-ordinated effort between the Central and the Provincial Governments is essential. I am most anxious that all possible assistance should be available to those concerned with the investigations of the many difficult issues that arise, and with the practical application of such remedial measures as may be required. I am accordingly taking active steps for the establishment of a Central Public Health Advisory Board which, in collaboration with the Provincial Governments, and with a constitution somewhat analogous to that of the Central Advisory Board of Education shall apply itself to the realisation of this ideal.

I have, since I assumed my present office, done all that lies in my power to stimulate and encourage rural development, and the response after even so short a time has in my judgment been most encouraging. But in devoting my attention to agriculture and its problems, I have not ignored the legitimate claims of Industry, and I am taking a close interest in the problems of Industry and in particular in the co-ordination and development of industrial research. In this connection I cannot but affirm my conviction that no steps can be taken which will be more effective in promoting the expansion of commerce and industry than those designed to enhance the purchasing power of the rural population.

Before I pass to a consideration of the great constitutional developments which lie before us, it is proper that I should take the opportunity to mention the debt under which we labour to Sir Laurie Hammond and his Committee, and to Sir Otto Niemeyer. The investigations of Sir Otto Niemeyer have left us fully seized of the financial position of the Centre and the Provinces alike, a state of things essential to the introduction of Provincial Autonomy and of Federation. To Sir Laurie Hammond and his Committee we owe the well-balanced and carefully considered recommendations on which the constituencies for the future legislative bodies will essentially be based.

The stage is now set for Provincial Autonomy, and on the 1st April 1937 that fundamental constitutional change will come into being. With its inauguration takes place the first of the stages in the transmutation of the Indian constitutional position. The second stage, the stage of Federation, lies ahead of the stage of Provincial Autonomy. But, as I have endeavoured on various occasions to make clear, I am myself of opinion that the interval between Provincial Autonomy and Federation must inevitably be a very short one. I am not blind to the difficult and delicate problems which arise in connection with the inauguration of the Federation, and in particular with the accession to it of the Ruling Princes. But I am taking all possible steps to expedite the investigation and disposal of those problems, and to lighten the burden of those on whom there falls the responsibility of a decision so important as that which accession to the Federation constitutes. The question, in all its aspects, is receiving day by day my own close personal attention, and you can rely upon me, Gentlemen, to leave nothing undone that lies within my power,

[11. E. the Viceroy.]

to remove any misunderstandings or misapprehensions which may exist, and to facilitate the task of those on whom there fall the momentous responsibilities involved.

Of the intricacy of the problem I am, in the light of my own experience, fully conscious. Indeed I am moved on occasions to ask myself whether those of us who have laboured in India and in London, upon the three Round Table Conferences, upon the Joint Select Committee, or in Parliament itself, as supporters or as critics of the great scheme of constitutional reform enshrined in the Act of 1935, whether we are not in some danger of finding ourselves so engrossed in the multifarious details of the plan as to lose sight of the essential outlines of the structure and, at times, even of the splendid vision that has moved and inspired its inception. And in truth the moment has come for a due appraisal of the fabric as a whole, for we may number by weeks the time that now separates us from the commencement of Provincial Autonomy, while the strong probability is that the transitory period between the achievement of Provincial Autonomy and the inauguration of the Federation of India, will be of short duration.

As we attempt such an appraisal, the spectacle that confronts our eyes is rendered the more impressive by reason of its contrast with the dark and ominous background of contemporary world events. In Europe we see an array of dictatorships risen from the ashes of those liberal systems of government which preceded them, each arming feverishly against a possible crisis that all fear and none desire; while civil war, in its cruellest and most destructive shape, despoils a nation once supreme alike in the Old World and the New. Again, in many parts of the world, we become aware of the recrudescence of the rule of force, and in one guise or another, of the exploitation of the weak by the strong.

These are the world conditions in which, by the joint statesmanship of Britain and India, there is about to be initiated in this country an experiment in representative self-government, which for breadth of conception and boldness of design is without parallel in history; these the circumstances in which the British People and Parliament have seen fit to offer to India a constitution which by its liberal principles, stands in such impressive contrast to those political tendencies which are evident over wide areas of the World. And if the constitutional changes now impending predicate the remarkable growth of Indian political consciousness in terms both of the desire for self-government and of a growing realisation of the essential unity of India, so also those changes connote a profound modification of British policy towards India as a member of the Commonwealth. For indeed by their very nature they involve nothing less than the discarding of the old ideas of Imperialism for new ideals of partnership and co-operation.

In April of next year there will come into being eleven autonomous Provinces, some of them as extensive in area and with populations as large as many European countries. Over these great areas Indian statesmen will be called upon to bear the heavy burden of responsibility for the entire field of civil government in the provincial sphere. When the vast electorates,



aggregating some 35 million persons, go to the polls to choose their representatives in their respective Legislatures, to which those Ministers will be responsible. The individual voter will have a new duty and a new opportunity. For by their choice the electors will be deciding not merely upon the person to represent them in the Legislature, but they will be contributing directly towards shaping the course of public policy in their Province. For the trend of government, legislative and administrative, must needs move in the direction indicated by the will of a majority of the electorate.

We are witnessing at the moment in every Province in India that which is an essential preliminary to the successful working of democratic constitutions, namely, the formation or development of political parties. Having myself had some share in party management in my own country, I am observing with no little interest the progress of events. My own experience suggests that it is easy, at such a juncture, to over-estimate the power of the party manager to influence the course of party evolution, and to fall into the capital error of forgetting that in these matters it is the electorate that shapes parties as well as policies.

I do not doubt that there will emerge, at the outset of the change, points of difficulty and uncertainty. That in all the circumstances is inevitable. But I am confident that such minor difficulties will early be surmounted. The essential fact is that upon the 1st of April next year we are destined to embark upon the first stage of this remarkable political adventure. From that moment these great political entities will move forward into the future, the objects—we may be sure—of intense local patriotism proud of their history, confident in their future, determined, each one of them, to play a worthy part in that new India which is now taking shape before our eyes.

Such, then, are the eleven autonomous Provinces which, in union with such of the Indian States as may choose to accede, will constitute the Federation of India, that majestic structure which by the statesman like vision of the Indian Princes was transmuted in a moment from what was no more than a dim and uncertain outline into a project firm and practicable—a project which now appears as an essential part of the scheme of constitutional development. Here again, I feel doubt as to whether those of us in day-to-day contact with the complex problems attaching to the launching of such a project are able so far to detach ourselves as to envisage, in all its impressive mass, the mighty work upon which we are privileged to labour. The unitary system of government for so long the supreme authority in India is disappearing as we watch. In its place great autonomous Provinces make their appearance: and finally comes the Federation, crowning the entire structure and embracing and unifying within its bold and ample scope the common life and aspirations of one-fifth of the human race, dispersed over a sub-continent as large as Western Europe. Such will be the structure of government in India which, when the task is completed, will meet the gaze of a watching world: a spectacle whose dignity and grandeur will be not unworthy of this great and famous country.

One word more. It is axiomatic that the spirit in which a constitution is worked must in the long run count for more than the letter in which it is written. For myself I am able to assure you that, for such time as I may hold my present office, it is my intention to interpret my duty with a liberal and sympathetic

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mind. It has been my privilege, through a long and arduous period of work, to apply my mind to every aspect of the new constitution. I am well aware that there are those in this country who are dissatisfied with certain of its provisions. I accept the sincerity of their opinions even though I find myself unable to endorse their views. For my part I shall be found ready and anxious, when the time comes, to work to the best of my power, with any and every political party willing to work the constitution, that may succeed in winning the confidence of the electorates. My heartfelt plea to every man and woman of goodwill and public spirit is that they may give these Reforms a fair and reasonable trial, and that they will join with me and with the Governors of Provinces in an earnest endeavour to work the new Constitution in a spirit of tolerance and co-operation, for the honour and good of their motherland. (Cheers and Loud Applause.)

The Assembly met in the Assembly Chamber at Half Past Two of the Clock, Mr. President (The Honourable Sir Abdur Rahim) in the Chair.

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MEMBER SWORN.

Sir Girja Shankar Bajpai, K.B.E., C.I.E., M.L.A. (Secretary,  
Department of Education, Health and Lands).

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SHORT NOTICE QUESTIONS AND ANSWERS.

SYSTEM OF VOTING AT THE COMING PROVINCIAL ELECTIONS BY MEANS OF  
COLOURED BOXES WITH OR WITHOUT SYMBOLS.

**Mr. Mohan Lal Saksena :** (a) Will Government state what action, if any, has been taken to give effect to the unanimous recommendation that for purposes of elections under the new Government of India Act, the system of voting should be by means of coloured boxes with or without symbols ?

(b) Have the Government of the United Provinces been consulted in this connection ?

(c) If so, will Government be pleased to state what opinion they have given ?

(d) Will Government be pleased to state which other Local Governments, if any, are not agreeable to accept the system of voting as recommended by the Legislative Assembly, and what are their reasons therefor ?

**The Honourable Sir Nripendra Sircar :** (a) The Government of India have carefully considered, in consultation with the Local Governments and the India Office, the recommendation of the Legislative Assembly that the system of voting at elections should be by means of coloured boxes with or without symbols. It has been decided that in this matter Provincial Governments should be given latitude themselves to select the system of voting suited to local conditions.

(b) Yes.

(c) and (d). Since the decision has been left to the Provincial Governments, the Government of India would be reluctant to make any statement prior to the announcement by the Provincial Governments of their own decisions. I am, however, able to inform the Honourable Member that he may expect the very early publication by each Provincial Government of its Rules for the conduct of elections, and that it is in those Rules that the arrangement approved by each Provincial Government will be embodied.

**Mr. Mohan Lal Saksena :** Have the Government of India made any suggestions to the Local Governments ?

**The Honourable Sir Nripendra Sircar :** The Government of India have received no information about the final decision, and, as regards the negotiations which took place between the two Governments, a final decision not having been arrived at yet, I do not propose to give that information, as I doubt if it is in the public interest.

**Mr. Mohan Lal Saksena :** Did the Government of India make any recommendation on the recommendation of this Assembly to the Local Governments ?

**The Honourable Sir Nripendra Sircar :** That is a question which I have answered,—*viz.*, that those recommendations are part of negotiations which I objected to disclosing, and I think I told my Honourable friend—if not, I will do so now—that we have no information about the final decision which has been recommended or adopted by the Local Government.

**Qazi Muhammad Ahmad Kazmi :** Do the Government of India think that there is any such difference in the local conditions of the Punjab and the United Provinces on the one hand and Madras on the other hand that coloured boxes will not be useful in the United Provinces and the Punjab ?

**The Honourable Sir Nripendra Sircar :** How does that question arise ? After all, that is a matter of opinion ; and I have said in my answer that the opinion of Local Governments, having regard to the local conditions, will be given effect to by the Government of India. I said that in the first part of my answer to this question.

**Qazi Muhammad Ahmad Kazmi :** What I want to know is—does any difference lie in the local conditions between the Punjab and Madras according to the Government of India themselves ? Do the Government of India think that the local conditions in the Punjab and the United Provinces are such that coloured boxes cannot be useful, as they are useful in the Madras Presidency ? I want to know the recommendations of the Government of India.

**The Honourable Sir Nripendra Sircar :** I have answered that question, and as regards the recommendations of the Government of India, I have answered that question also, already.

**Pandit Govind Ballabh Pant :** Is there any likelihood of the elections to the Federal Legislative Assembly taking place some time during the next five years after the formation of the provincial Legislative Assemblies ? Is there any chance of their coming off within five years of the constitution of the Provincial Assemblies ?

**The Honourable Sir Nripendra Sircar :** It may be five years, it may be more, it may be less ; we are hoping it will be less.

**Pandit Govind Ballabh Pant :** Is it possible that it may be less ?

**The Honourable Sir Nripendra Sircar :** Oh, yes.

**Pandit Govind Ballabh Pant :** In that case will the Provincial Assembly elect representatives for the Federal Assembly ?

**The Honourable Sir Nripendra Sircar :** Of course.

**Pandit Govind Ballabh Pant :** In that case the constitution and composition of Provincial Assembly is sure to affect the structure of the Central Legislature ?

**The Honourable Sir Nripendra Sircar :** Certainly.

**Pandit Govind Ballabh Pant :** Is it not a fact that in the United Provinces there are not excluded or backward tracts, as in Bihar and Madras ?

**The Honourable Sir Nripendra Sircar :** I will accept that from the Honourable Member. I have not looked into it.

**Pandit Govind Ballabh Pant :** Is it a fact that the people of the rural areas of the United Provinces are not more backward than the people in Bihar or even in the advanced Presidency of Madras ?

**The Honourable Sir Nripendra Sircar :** Sir, I would not indulge in any invidious comparisons.

**Pandit Govind Ballabh Pant :** I wanted you to say that they are better.

**The Honourable Sir Nripendra Sircar :** That is a matter of opinion.

**Pandit Govind Ballabh Pant :** Is there anything to suggest that the people living in the rural parts of the United Provinces are colour-blind ?

**The Honourable Sir Nripendra Sircar :** I have very little knowledge of the rural population of the United Provinces, and have never tested their sights.

**Mr. President (The Honourable Sir Abdur Rahim) :** Next question.

#### DAMAGES DONE TO RAILWAY LINES IN THE DISTRICTS OF GAYA AND PATNA.

**Mr. Ram Narayan Singh :** (a) What is the latest and most accurate account of the damages done to the Railway lines on (i) the Gaya-Patna Branch, (ii) the Grand Chord, and (iii) the Main Lines owing to the recent floods in the districts of Gaya and Patna ?

(b) What is the extent of the damages referred to in part (a) above ?

(c) What steps are being taken to immediately restore the regular services of all the trains running on the lines mentioned in part (a) above ?

(d) When do Government expect the services to be restored ?

(e) Has any of the trains on the Grand Chord Line been diverted through Barkakana and Daltonganj ? If not, why not ?

**The Honourable Sir Muhammad Zafrullah Khan :** Sir, I might indicate that the reply I am about to give to this question will also cover question on the same subject by Babu Kailash Behari Lal of which short notice has been given and which is due to be answered today. With your permission, Sir, that question might also be read out.

**Mr. President** (The Honourable Sir Abdur Rahim) : Yes. Babu Kailash Behari Lal.

**Babu Kailash Behari Lal :** (a) Has the attention of Government been drawn to the serious flood situation in Bihar and the consequent threatened inundation of Patna and Gaya towns and the dislocation of traffic by breaches in the Railway line on the Grand Chord between Gaya and Moghul Sarai and between Mokamah and Fatwah on the Chord Line ?

(b) How long is it since the railway traffic on the Grand Chord line stopped ?

(c) What steps have been taken by the authorities to restore the communication and improve the situation ?

**The Honourable Sir Muhammad Zafrullah Khan** (a), (b) and (d). On the Gaya-Patna Branch, minor wash-outs occurred on the 12th September and through running of trains was resumed at 3 o'clock in the afternoon on the 15th.

On the Grand Chord line, there were minor wash-outs and serious breaches on the morning of the 12th September. The breaches were between Sone East Bank and Rafiganj, both lines between Palmerganj and Sone East Bank being affected. The wash-outs were repaired within 48 hours. The Agent, East Indian Railway, reporting on the 17th instant, stated that all breaches had been repaired, except near Palmerganj station where a single line diversion was being put in owing to the depth of the scour at this breach, the Agent did not expect that through running over the Grand Chord could be resumed much before today.

On the main line, no actual breach occurred, but due to high water levels between Fatwa and Patna and track subsidences, night running was suspended at 11 o'clock in the night on the 13th September and trains were held up at Mokamah and Patna. Through running on the main line was resumed at 7 hours on the 14th.

(c) and (e). Trains booked to run over the Grand Chord were diverted via the main line. Since the 15th, trains have also been diverted over the Barkakana-Daltonganj-Sone East Bank section up to the capacity of that branch. This diversion could not be arranged earlier as the section was breached on the 11th and repairs were not completed till the 14th. One train only, viz., No. 13 Up on the 13th was diverted over the Bengal Nagpur Railway's route.

**Pandit Lakshmi Kanta Maitra :** Have Government made inquiries into the causes of these floods which have caused damages to the line ?

**The Honourable Sir Muhammad Zafrullah Khan :** Excessive rain.

**Pandit Lakshmi Kanta Maitra :** Is the Honourable Member aware that Major William Wilcox reported a few years ago that it is due to the indiscriminate bridges and dams that these frequent floods are caused which give rise to famine and pestilence ?

**The Honourable Sir Muhammad Zafrullah Khan :** I am not so aware.

**Pandit Lakshmi Kanta Maitra :** Is the Honourable Member aware that the late Rai Bahadur Ralia Ram, Executive Engineer of Eastern Bengal Railway, was deputed by the Government to hold an inquiry into the frequent floods consequent on light showers—not heavy showers—and the damages done to the railway line and to the people of the surrounding villages ?

**The Honourable Sir Muhammad Zafrullah Khan :** I would require notice of that question.

**Pandit Lakshmi Kanta Maitra :** May I know if Government have not applied its mind to the question of preventing these floods in the future ?

**Mr. President (The Honourable Sir Abdur Rahim) :** That question does not arise.

**Mr. Ram Narayan Singh :** Is it not the old practice of the Railway Department that when a particular line is broken or is disturbed in any other way, the passengers are allowed to travel to their destination through the longer route by paying the fare of the shorter route ?

**The Honourable Sir Muhammad Zafrullah Khan :** There is a short notice question with regard to that which I shall answer the day after tomorrow.

**Babu Kailash Behari Lal :** May I know whether there was any temporary arrangement for the transshipment of passengers so long as the traffic was held up on account of the breaches ?

**The Honourable Sir Muhammad Zafrullah Khan :** On which particular line ?

**Babu Kailash Behari Lal :** Between Mokamah and Fatwah ?

**The Honourable Sir Muhammad Zafrullah Khan :** I have said that certain trains had to be held up on the main line, because the line was not considered safe. That being so, there was no question of transshipment on that line.

**Pandit Lakshmi Kanta Maitra :** Is the Honourable Member in a position to give us some idea in money of the damages caused to this Railway ?

**The Honourable Sir Muhammad Zafrullah Khan :** I am afraid it is absolutely impossible to make any estimate.

## MOTION FOR ADJOURNMENT.

### PROHIBITION OF THE ASSEMBLING OF FIVE OR MORE PERSONS WITHIN A RADIUS OF TWO MILES OF CERTAIN COTTON MILLS AT CAWNPORE.

**Mr. President** (The Honourable Sir Abdur Rahim) : I have received notice of a motion of adjournment from the Honourable Member, Mr. Mohan Lal Saksena, to this effect :

“ The promulgation by the District Magistrate of an order under section 144, Criminal Procedure Code, prohibiting the assembling of five or more persons within a radius of two miles of certain cotton mills at Cawnpore.

The report of the order was published in the *Hindustan Times*, dated the 20th September, 1936.”

I should like to know from the Honourable Member if he is aware that an order passed in the ordinary administration of law cannot be the subject of an adjournment motion ?

**Mr. Mohan Lal Saksena** (Lucknow Division : Non-Muhammadan Rural) : Sir, it is a question which affects labour. There was a report in the newspaper that for the enforcement of this order meetings were dispersed by baton charge. This is a question which affects labour, and, therefore, it is the concern of the Central Government as well.

**Mr. President** (The Honourable Sir Abdur Rahim) : Many orders are passed under section 144 to prevent certain meetings.

**Mr. Mohan Lal Saksena** : This is not one of those orders. It is an order which affects the labour.

**Mr. President** (The Honourable Sir Abdur Rahim) : That makes no difference : it may affect other people as well. I, therefore, rule that the motion is out of order.

### THE INDIAN TEA CONTROL (AMENDMENT) BILL.

**The Honourable Sir Muhammad Zafrullah Khan** (Member for Commerce and Railways) : Sir, I move for leave to introduce a Bill to amend the Indian Tea Control Act, 1933, for certain purposes.

**Mr. President** (The Honourable Sir Abdur Rahim) : The question is :

“ That leave be granted to introduce a Bill to amend the Indian Tea Control Act, 1933, for certain purposes.”

The motion was adopted.

**The Honourable Sir Muhammad Zafrullah Khan** : Sir, I introduce the Bill.

### THE INDIAN LAC CESS (SECOND AMENDMENT) BILL.

**Sir Girja Shankar Bajpai** (Secretary, Department of Education, Health and Lands) : Sir, I move for leave to introduce a Bill further to amend the Indian Lac Cess Act, 1930, for a certain purpose.

**Mr. President** (The Honourable Sir Abdur Rahim) : The question is :

“ That leave be granted to introduce a Bill further to amend the Indian Lac Cess Act, 1930, for a certain purpose.”

The motion was adopted.

**Sir Girja Shankar Bajpai** : Sir, I introduce the Bill.



THE CANTONMENTS (AMENDMENT) BILL—*contd.*

**Mr. President** (The Honourable Sir Abdur Rahim) : The House will now resume consideration of the Bill further to amend the Cantonments Act, 1924, for certain purposes, as reported by the Select Committee for the second time.

**Mr. G. B. F. Tottenham** (Defence Secretary) : Sir, when the House discontinued discussion of this Bill, we were engaged on clause 67 and the amendment moved by my Honourable friend opposite asked for the deletion of that clause. I may say that I am prepared to accept that amendment, but I think I must say just one or two words, especially with reference to what my Honourable friend, Mr. Satyamurti, said regarding the future constitutional position. I do not, I am afraid, accept the statement of the constitutional position as set forth by my Honourable friend, Mr. Satyamurti, for he seems to have overlooked the fact that, at present, so also under the new constitution, cantonments will be a central subject, exclusively within the executive and legislative authority of the Federation. However, Sir, the future constitutional relations between the Centre and the Provinces in the matter of cantonment administration will be settled by the Constitutional Act and it is perfectly true that this particular clause in the Bill is merely a statement of the existing constitutional position. As such, it is not of great value and will cease to operate from the 1st April 1937. I do not think it is necessary to retain it.

**Mr. President** (The Honourable Sir Abdur Rahim) : The question is :

“ That clause 67 stand part of the Bill.”

The motion was negatived.

**Mr. President** (The Honourable Sir Abdur Rahim) : The House will now go back to clause 10.

**Mr. N. V. Gadgil** (Bombay Central Division : Non-Muhammadan Rural) : Sir, I beg leave to withdraw my amendment\*.

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

**Mr. N. V. Gadgil** : Sir, I beg leave to withdraw my amendment†.

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

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“ That for sub-clause (a) (i) of clause 10 of the Bill, the following be substituted :

‘ (i) for sub-clause (iii) of clause (b), the following shall be substituted :

‘ (iii) is entitled to be on the electoral roll of the Provincial Assembly, by virtue of educational qualifications prescribed for the particular province concerned ’.”

†“ That after sub-clause (a) (ii) of clause 10 of the Bill, the following new sub-clause be inserted :

‘ (iii) after clause (c) the following shall be inserted :

‘ (d) Every person whose name is entered on the current electoral roll of the constituency of which the particular Cantonment forms a part for the purpose of the Provincial Legislative Assembly ’.”

**Mr. N. V. Gadgil :** Sir, I beg to move :

“ That in sub-clause (a) (i) of clause 10 of the Bill, the words ‘ and ’ be omitted, and, after the sub-clause, the following be added and the existing sub-clause (a) (ii) be re-numbered as (a) (iii) :

‘ (ii) sub-clause (iv) of clause (b) shall be re-numbered as sub-clause (v) and the following shall be inserted as sub-clause (iv), namely :

‘ (iv) is a person whose name is entered or is entitled to be entered on the current electoral roll of the constituency of which the cantonment forms part for the purposes of the Central or Provincial Legislatures ; or ’ ”

Sir, the other day, when these amendments were moved and were under consideration, it was by agreement decided that this clause should stand over to find out some common formula. I submit that the amendment I have moved now is an all-covering general amendment. In clause 10 (a) (i), the literacy qualification of the Matriculation examination remains. I am only adding another clause to the section. All those persons whose names have been entered upon the electoral roll for provincial Assembly or for the Central Legislatures will be automatically put on the electoral roll for the purposes of Cantonment Boards election. The addition of voters will be considerable. Not only will the names include persons who are qualified to be there on account of the literacy qualifications, but what is far more important, members of the scheduled castes will be there on the electoral roll of the Cantonment and also women by virtue of their being the wives of those who are qualified to be voters of the Central as well as the provincial legislatures. There is one part of the amendment which I understand the Honourable Member in charge of the Bill does not want to accept. It is this : “ or is entitled to be entered on the current electoral roll ”. My justification for putting in these words is this. The current roll that is prepared either for the provincial Legislative Assembly or for the Provincial Legislative Council or for the Central Legislatures which may come hereafter, will remain in force for at least five years. Those people who earn the qualifications after these current electoral rolls are prepared will go unrepresented. Therefore, I have put in those words so as to enable them to be put on the electoral roll for the Cantonment concerned otherwise for five long years they will not be there on account of their literacy qualification unless they are Matriculates for which provision has already been made. For these reasons, I hope the Honourable Member in charge will accept my whole amendment. Sir, I move.

**Mr. President (The Honourable Sir Abdur Rahim) :** Amendment moved :

“ That in sub-clause (a) (i) of clause 10 of the Bill, the word ‘ and ’ be omitted, and, after the sub-clause, the following be added and the existing sub-clause (a) (ii) be re-numbered as (a) (iii) :

‘ (ii) sub-clause (iv) of clause (b) shall be re-numbered as sub-clause (v) and the following shall be inserted as sub-clause (iv), namely :

‘ (iv) is a person whose name is entered or is entitled to be entered on the current electoral roll of the constituency of which the cantonment forms part for the purposes of the Central or Provincial Legislatures ; or ’ ”

**Mr. G. R. F. Tottenham :** Sir, I am prepared to accept the amendment moved by my Honourable friend if he would agree to omit those

words which he referred to, that is if he confines the amendment to those persons whose names are entered on the current electoral rolls, instead of those persons who are entitled to have their names entered on the current electoral roll. It may be that for a short time some inconvenience may be caused, as he suggested, but I do submit it would be wrong to put on the statute book permanently a provision making Cantonment authorities responsible for settling disputes whether a person's name ought or ought not be entered on the electoral roll of a Provincial or Central Legislature. I think if any individual is anxious to vote in a Cantonment election, he ought to take the trouble himself to get his name put on the Provincial or Central electoral roll, and then there would be no dispute about it in the Cantonment itself. I do submit that it is entirely outside the province of the Cantonment authority to have to settle questions of entitlement to a place on the electoral roll of a provincial or a central legislature. If the Honourable Member would be prepared to omit those words, I shall be very glad to accept this amendment.

**Mr. N. V. Gadgil** : I am prepared to accept the suggestion of the Honourable Member and to amend my amendment by deleting the words "or is entitled to be entered". These words may be omitted from my amendment.

**Mr. President** (The Honourable Sir Abdur Rahim) : The question is :

"That in sub-clause (a) (i) of clause 10 of the Bill, the word 'and' be omitted, and, after the sub-clause, the following be added and the existing sub-clause (a) (ii) be re-numbered as (a) (iii) :

'(ii) sub-clause (iv) of clause (b) shall be re-numbered as sub-clause (v) and the following shall be inserted as sub-clause (iv), namely :

'(iv) is a person whose name is entered on the current electoral roll of the constituency of which the cantonment forms part for the purposes of the Central or Provincial Legislatures ; or '."

The motion was adopted.

**Mr. Mohan Lal Saksena** (Lucknow Division : Non-Muhammadan Rural) : Sir, I beg to move :

"That in sub-clause (b) (i) of clause 10 of the Bill, after the word and figure 'clause (v)' the words "for the words 'six months', the words 'two years' shall be substituted and " be inserted."

Sir, my object in moving this amendment is to bring the electoral roll of the Cantonments in conformity with the electoral rolls of the provincial Assembly or the Central Assembly under the Government of India Act. If you refer to section 27 of the Cantonment Act, you will find that under this section there are certain conditions by which a person may be debarred from having his name entered on the electoral roll and among these conditions. Section 27 (2) (v) says :

"A person, notwithstanding that he is otherwise qualified, shall not be entitled to be enrolled as an elector if he on the aforesaid date :

has been sentenced by a Criminal Court to imprisonment for a term exceeding six months or to transportation or has been ordered to find security for good behaviour under the Code of Criminal Procedure, 1898, or has been sentenced by a Criminal Court for any offence under Chapter LX-A of the Indian Penal Code."

[Mr. Mohan Lal Saksena.]

By this amendment I want to make the operative sentence from six months to two years. That is a person who has been sentenced to more than two years, transportation or imprisonment, shall not be eligible to have his name on the electoral roll. Sir, there is another section in the Cantonment Act, section 28, in which it is laid down that persons subject to certain disqualifications shall be debarred from nomination or election to Cantonment Boards. We have passed the clause of this Bill covering this section. Honourable Members are aware that under the Government of India Act, there are no disqualifications on the ground of conviction for registration of voters, I desire that we should also make this Act on a par with the Government of India Act. In Schedule VI of the Government of India Act, 1935, we find that there is no provision like this by which a person may be disqualified from having his name entered on the electoral roll on these grounds. And just now our Honourable friend has accepted an amendment by which any person whose name is entered on the electoral roll of the provincial Assembly shall automatically be a voter for the cantonment. Therefore, I submit that this amendment should be accepted by Government. As a matter of fact I did not notice it before, but the entire clause (v) of sub-section (2) of section 27 of the Cantonment Act should have been deleted. But since I have not given any notice of that I move this amendment that from six months the period of sentence of transportation should be raised to two years.

**Mr. President** (The Honourable Sir Abdur Rahim) : Amendment moved :

“ That in sub-clause (b) (i) of clause 10 of the Bill, after the word and figure ‘ clause (v) ’ the words ‘ for the words ‘ six months ’, the words ‘ two years ’ shall be substituted and ” be inserted.”

**Mr. G. B. F. Tottenham** : Sir, the Honourable Member has read out the clause in the Bill and explained the object of his amendment. I should like to draw the attention of the House to the wording of the section of the Cantonments Act as it stands at present. It reads that a person is disqualified from being on the electoral roll if he has been sentenced by a Criminal Court, provided that the Local Government may, by order in writing, remove any disqualification incurred by a person under the above clause.

At the instance of the All-India Cantonments Association, the Select Committee agreed to amend the existing provision of the law by, in the first place, inserting the words “ for an offence which is declared by the Governor General in Council to be such as to unfit him to become an elector ”. We have also added a proviso that in any case such a disqualification, if it is not removed by the Local Government before that time, shall cease to exist after three years. That, Sir, seems to me a perfectly satisfactory provision and one that ought to be acceptable to all reasonable persons. I have also taken the trouble to look up the more important municipal Acts, and I find that in every Act, i.e., Central Provinces, Madras, Bengal, Bombay and the Punjab, the law is exactly the same as our provision in the Cantonment Act. In the United Provinces it is true that the period of imprisonment is one year instead of six months, but it is certainly not two years. I cannot really understand, Sir, why the Honourable Member should wish to

enfranchise a larger number of criminals than at present. (*Mr. Mohan Lal Saksena* : " We are all criminals ".) He must remember that the qualification of entry on the electoral roll in a cantonment is also the qualification for membership of the board. That is to say, in section 28 (1) it is laid down :

" Save as hereinafter provided, every person whose name is entered on the electoral roll of cantonments shall be qualified for election as member of the board in the cantonment."

That means that under my Honourable friend's amendment a person who has been convicted to two years' imprisonment would be eligible to be a member of the board ; and I really do not think that we want to have bad characters like that as members of the board. I, therefore, regret that I cannot accept this amendment.

**Prof. N. G. Ranga** (*Guntur cum Nellore : Non-Muhammadan Rural*) : Sir, I rise to support this amendment. I am glad to be able to associate myself with all those bad characters and criminals whom my Honourable friend does not wish to become members of the board. If the only justification for his opposition to this amendment is that criminals ought not to be allowed to become even voters, or what is more, become members of the cantonment boards, then he will have to go to the Secretary of State for India and Parliament and get a special law passed in order to get rid of a large number of us on this side. Sir, we are all proud to have become in the eyes of this Government, some day or other, criminals as well as bad characters. We were honoured guests of His Majesty's Government.....

**Mr. G. E. F. Tottenham** : Sir, may I intervene for one moment to explain what perhaps I did not make quite clear before ? The Honourable Member is no doubt referring to what are known as political prisoners. We have actually put an amendment to this clause the intention of which is to enable us to allow persons of that kind to be free from this disqualification.

**Prof. N. G. Ranga** : Yes, Sir. I noticed that even earlier, during his speech. But even that does not go anywhere to satisfy us. It makes it necessary for every political prisoner to approach the Local Government and get its consent. The only justification for this invidious discrimination shown against us, one set of political agitators, as distinguished from the other set of political agitators known as *Aman Sabhaites* or Liberals, is that in various provincial Acts such a provision exists ; and whenever the necessity arose, the Local Governments had seen it fit to remove that disqualification and enable us to be voters and later on legislators. Sir, all those laws and all those Acts of the provincial Governments had been passed a long time ago without our co-operation and in spite of us in many places. There is no justification really for the Honourable Member to come here now and ask our co-operation for helping him to pass this particular Bill in this fashion.

**Mr. G. E. F. Tottenham** : Sir, if I may intervene again, I may say that we are not making any alteration whatever in this clause. It is my Honourable friend opposite who wanted an alteration to be made. We are merely maintaining the existing position in the Act.

**Prof. N. G. Ranga :** We protest against the existing position ; we will have nothing to do with the existing position. And if we can possibly do it, we will try to improve the existing position. We cannot be a party to a law which will make it absolutely necessary for every one of us who has become a criminal in the eyes of this Government some day or other in order to get our deserts and wrest from them the Swaraj that we have been dying for all these years, to get their sanction, and it is for that reason that we want that this amendment should be supported by every Honourable Member of this House. Sir, disqualifications there will have to be and disqualifications there are bound to be. But there is no reason why, even if there were to be a disqualification, such a harmless amendment as my Honourable friend has proposed should not be accepted by this Government. My Honourable friend, Mr. Saksena, does not even seek to remove the whole of that clause from the Bill ; he does not even try to get rid of this disqualification completely. He only wants this particular period to be extended from six months to two years. Where is the objection, where is the harm ? Really speaking, it compromises us even to have to accept this amendment and with that amendment to pass this particular Bill. It puts us in the wrong, in the eyes of our own comrades and thousands of them ; and I can assure you, Sir, that in future there have got to be many more struggles in this country, and every time we expect and confidently hope that many more people will come forward to take part in the struggle that we have got to go through before we can achieve our goal of Swaraj. And are we to be told that even this harmless amendment is not going to be accepted and that this amendment being opposed by this Government we should be prepared to accept this particular Bill ? Certainly not. We cannot make it necessary for our comrades in the country to go to the Local Government and seek their permission. We know what sort of Local Governments we are having. It may be said that we are soon going to have provincial autonomy but we know what sort of provincial Governments are going to be created by this Government and its agents. And it is no self-respecting thing for any warrior of the country, for any hero and patriot, to come forward and say that he is not going to support this amendment. It is really a harmless amendment, it is a moderate amendment and it does not go anywhere to satisfy anybody here on this side.

**Mr. K. Ahmed** (Rajshahi Division : Muhammadan Rural) : Sir, I do not know whether my friend is labouring under a misapprehension or it is his case which I have to support. If he means that if anybody within the cantonment area who has been sentenced, not for moral turpitude, but for political reasons, and, according to them, for the uplift of the country, there is a provision from the Secretary of State's office or from the House of Commons as it is in ordinary cases that any such person who has been convicted for not more than the period of one year, he is entitled to get the benefit in the jurisdiction of a non-cantonment area. If that is his amendment, I do not think the Government of India have got any valid ground to raise any objection to uplift their status from six months to one year. But if he meant, as I understood him, to raise it to two years, is it not too much to think of, instead of limiting it to one year's rigorous imprisonment ? May I follow him if he is right ? Let him, in that case, rise from his seat and make

it clear to the House, whether he will be satisfied with what suggestion I have made with regard to his amendment.

**Prof. N. G. Ranga** : The amendment, as it stands, wants it to be raised to two years. If Government are prepared to extend their period from six months to a year, then I will consult my Honourable friend, the Mover of the amendment, and then submit to you, Sir, our proposal.

**Mr. Ram Narayan Singh** (Chota Nagpur Division : Non-Muhammadan) : Sir, many members of the Congress Party have been sentenced for more than six months, and for more than once. They may be allowed to be Members of the Central Legislatures, but they cannot be members of a cantonment board. . . . .

**Mr. G. E. F. Tottenham** : That is wrong, as I have already pointed out. There is a clause in this amending Bill under which the Governor General in Council will be able to remove the disqualification in the cases which the Honourable Member has in mind.

**Mr. Ram Narayan Singh** : Sir, we know the Honourable gentleman wishes us to approach the Local Government in order that the disqualification may be removed, and we know cases how the Local Government have behaved therein. My friend, Mr. Dwarka Prasad Misra, of the Central Provinces was not allowed to contest this election for the Central Legislature. As my friend, Prof. Ranga, has said, we know what sort of Local Governments we have, and what form of Provincial Autonomy we are going to have : and whether we shall have to approach them or whether our disqualification may be removed or not is a matter for imagination. Sir, this is a very reasonable amendment, and I think the reasonable section of the Government ought to accept this amendment.

**Pandit Govind Ballabh Pant** (Rohilkund and Kumaon Divisions : Non-Muhammadan Rural) : Sir, I want to invite the attention of the Army Secretary to the difficulties that will arise if he does not consider the suggestion seriously. He has accepted the amendment moved by my friend, Mr. Gadgil, which entitles every person whose name is entered on the electoral roll of the provincial assembly to be an elector in the cantonment. Now, let us see what are the qualifications which entitle a person to be an elector for a provincial assembly. A conviction for six months, or for a year or for any term not exceeding two years is not a disqualification, with the result that all persons who may have to their credit these convictions will be qualified electors for the provincial assembly. . . . .

**Mr. G. E. F. Tottenham** : May I just draw the Honourable Member's attention to the wording of section 27 (2) which deals with disqualifications ? It says :

“ A person, notwithstanding that he is otherwise qualified, shall not be entitled to be enrolled as an elector if he, etc., etc.”

that is, if he has any of these disqualifications : therefore I do not think any difficulty will arise legally.

**Pandit Govind Ballabh Pant** : What I am submitting is this : that having accepted that amendment, it will simplify matters very much if you remove this sub-clause (v) altogether from section 27 ; and if you consider it necessary, insert it in section 28 : that is, you might make it a disqualification for membership or candidature, but remove it so far as

[Pandit Govind Ballabh Pant.]

a person's right to vote is concerned : this arrangement will not affect in reality the constitution of the board for the disqualification will nevertheless attach to candidature if not to a person's right to vote. Otherwise it is bound to give rise to difficulties and complications. If all these names appear in the provincial electoral rolls and they are sought to be removed therefrom on the ground of conviction, an inquiry will have to be made and objections will have to be filed. But I feel that the idea is that a person who is already an elector in the electoral roll of the provincial legislative assembly should be allowed to exercise his vote also in the matter of election of a member of the cantonment board without further enquiry. So it is obviously inconsistent in spirit with the amendment of Mr. Gadgil which the Army Secretary has been pleased to accept. I accordingly suggest that if he considers it essential, he may shift it on from section 27 to section 28. So far as the electoral roll is concerned, the process will be greatly simplified if this disqualification is not attached to anybody. That is the only suggestion I make.

**Mr. President** (The Honourable Sir Abdur Rahim) : The question is :

“ That in sub-clause (b) (i) of clause 10 of the Bill, after the word and figure ‘ clause (v) ’ the words ‘ for the words ‘ six months ’ the words ‘ two years ’ shall be substituted and ” be inserted.”

The Assembly divided :

AYES—52.

Abdul Matin Chaudhury, Mr.  
Abdullah, Mr. H. M.  
Aney, Mr. M. S.  
Asaf Ali, Mr. M.  
Ayyangar, Mr. M. Ananthasayanam.  
Bhagavan Das, Dr.  
Chaliba, Mr. Kuladhar.  
Chattopadhyaya, Mr. Amarendra Nath.  
Chettiar, Mr. T. S. Avinashilingam.  
Chetty, Mr. Sami Vencatachelam.  
Das, Mr. Basanta Kumar.  
Das, Pandit Nilakantha.  
Datta, Mr. Akhil Chandra.  
Desai, Mr. Bhulabhai J.  
Gadgil, Mr. N. V.  
Giri, Mr. V. V.  
Govind Das, Seth.  
Hans Raj, Raizada.  
Hosmani, Mr. S. K.  
Jedhe, Mr. K. M.  
Jehangir, Sir Cowasji.  
Jogendra Singh, Sirdar.  
Kailash Behari Lal, Babu.  
Khan Sahib, Dr.  
Khare, Dr. N. B.  
Lalchand Navalrai, Mr.

Laljee, Mr. Husenbhai Abdullabhai.  
Maitra, Pandit Lakshmi Kanta.  
Malaviya, Pandit Krishna Kant.  
Mangal Singh, Sardar.  
Mudaliar, Mr. C. N. Muthuranga.  
Muhammad Ahmad Kazmi, Qazi.  
Paliwal, Pandit Sri Krishna Dutta.  
Pant, Pandit Govind Ballabh.  
Parma Nand, Bhai.  
Raghubir Narayan Singh, Choudhri.  
Raju, Mr. P. S. Kumaraswami.  
Ranga, Prof. N. G.  
Saksena, Mr. Mohan Lal.  
Sant Singh, Sardar.  
Satyamurti, Mr. S.  
Sham Lal, Mr.  
Shaukat Ali, Maulana.  
Sheodass Daga, Seth.  
Siddique Ali Khan, Khan Sahib Nawab.  
Singh, Mr. Ram Narayan.  
Sinha, Mr. Satya Narayan.  
Som, Mr. Suryya Kumar.  
Sri Prakasa, Mr.  
Thein Maung, Dr.  
Thein Maung, U  
Umar Aly Shah, Mr.

NOES—44.

Abdul Hamid, Khan Bahadur Sir.  
Acott, Mr. A. S. V.  
Ahmad Nawaz Khan, Major Nawab Sir.  
Ahmed, Mr. K.  
Ayyar, Diwan Bahadur R. V. Krishna.

Bajpai, Sir Girja Shankar.  
Bhat, Mr. M. D.  
Buss, Mr. L. C.  
Chapman-Mortimer, Mr. T.  
Craik, The Honourable Sir Henry.



## NOES—contd.

Dalal, Dr. B. D.  
 Das-Gupta, Mr. S. K.  
 Ghuznavi, Sir Abdul Halim.  
 Grant, Mr. C. F.  
 Griffiths, Mr. P. J.  
 Grigg, The Honourable Sir James.  
 Hudson, Sir Leslie.  
 James, Mr. F. E.  
 Jawahar Singh, Sardar Bahadur Sardar  
 Sir.  
 Khurshaid Muhammad, Khan Bahadur  
 Shaikh.  
 Lloyd, Mr. A. H.  
 Metcalfe, Sir Aubrey.  
 Mody, Sir H. P.  
 Morgan, Mr. G.  
 Mudie, Mr. R. F.  
 Mukherjee, Rai Bahadur Sir Satya  
 Charan.

Naydu, Diwan Bahadur B. V. Sri Hari  
 Rao.  
 Rajah, Rao Bahadur M. C.  
 Rau, Mr. P. S.  
 Robertson, Mr. G. E. J.  
 Sarma, Sir Srinivasa.  
 Scott, Mr. J. Ramsay.  
 Sen, Mr. Susil Chandra.  
 Sharma, Mr. D.  
 Sher Muhammad Khan, Captain Sardar.  
 Singh, Rai Bahadur Shyam Narayan.  
 Sircar, The Honourable Sir Nripendra.  
 Spence, Mr. G. H.  
 Thorne, Mr. J. A.  
 Tottenham, Mr. G. R. F.  
 Witherington, Mr. C. H.  
 Yakub, Sir Muhammad.  
 Yamin Khan, Sir Muhammad.  
 Zafrullah Khan, The Honourable Sir  
 Muhammad.

The motion was adopted.

**Mr. Mohan Lal Saksena :** Sir, I beg to move :

“ That in sub-clause (b) (i) of clause 10 of the Bill, for the words “ for the word ‘ under ’ the words ‘ in consequence of proceedings taken under section 109 or section 110 of ’ shall be substituted ” the following be substituted :

“ the words ‘ or has been ordered to find security for good behaviour under the Code of Criminal Procedure, 1898 ’ shall be omitted ”.

Now, Sir, if we refer to clause 5 of sub-clause (2) of section 27, we find it is stated there as follows :

“ has been sentenced by a Criminal Court to imprisonment for a term exceeding six months or to transportation or has been ordered to find security for good behaviour under the Code of Criminal Procedure, 1898, or has been sentenced by a Criminal Court for any offence under Chapter IXA of the Indian Penal Code.”

Under the existing Act, all those, who have been ordered to find security under the Criminal Procedure Code, are debarred from being enrolled as voters, but in the amending Bill they have provided that only those who have been ordered to find security under section 109 or 110 will be debarred from being enrolled as voters. Sir, the object of my amendment is to bring the provisions into line with those under the Government of India Act. Just now Mr. Tottenham pointed out that this section is exactly on the lines of the Municipalities Acts in the Punjab, Central Provinces and other provinces, but he must remember that those Acts were passed long ago, and since then much water has flown under bridges, and it will not be proper for a popular House like this to be a party to any enactment which is not on the lines of the Government of India Act which itself we consider to be retrograde, and therefore, Sir, I move that those words disqualifying a person “ who has been ordered to find security under the Criminal Procedure Code should not be registered as a voter ” should be deleted. One thing more, Sir. Those of us who have been to jails know how these sections have been misused. We know that hundreds and thousands of persons are rotting in jails today simply because of the abuse of sections 109 and 110 of the Criminal Procedure Code. We also know that in these days of unemployment it is not very difficult to lodge any person in jail under section 109. If I may inform the House, our revered

[Mr. Mohan Lal Saksena.]

leader and friend, Dr. Bhagavan Das, was ordered to find security under section 107, Criminal Procedure Code. So if a man of that sterling worth and character, a man who is respected by all parties and all sections can be ordered to find security under the Criminal Procedure Code, the less said about smaller persons the better. With these words, I move my amendment, and I hope the House will unanimously support it.

**Mr. President** (The Honourable Sir Abdur Rahim) : Amendment moved :

“ That in sub-clause (b) (i) of clause 10 of the Bill, for the words “ for the word ‘under’ the words ‘ in consequence of proceedings taken under section 109 or section 110 of ’ shall be substituted ” the following be substituted :

“ the words ‘ or has been ordered to find security for good behaviour under the Code of Criminal Procedure, 1898 ’ shall be omitted ”.

**Mr. G. R. F. Tottenham** : Sir, I regret that I am unable to accept this amendment of my Honourable friend for exactly the same reason as I was unable to accept the previous amendment. I would also point out that this particular clause in the Bill is based on the provisions of the United Provinces Municipal Act, an Act of a province from which the Honourable Member comes. Local self-government has been a transferred subject for many years.....

**Pandit Lakshmi Kanta Maitra** (Presidency Division : Non-Muhammadan Rural) : That is an anachronism now.

**Mr. G. R. F. Tottenham** : ...and if the arguments that my Honourable friend has produced had really carried weight with the Ministers in the provinces, it is very difficult for me to understand why they did not amend these particular provisions in the Municipal Acts long ago.

**An Honourable Member** : They are all your creatures !

**Mr. G. R. F. Tottenham** : In the provinces it has been thought necessary to retain a provision of this kind for municipalities, and it is our policy generally to base our cantonment practice on municipal practice. I see no reason to depart from that principle which I consider is a sound principle.

**Sir Cowasji Jehangir** (Bombay City : Non-Muhammadan Urban) : May I ask my Honourable friend how it compares with the Government of India Act ?

**Mr. G. R. F. Tottenham** : I think that the new Government of India Act deals with the qualifications of voters for the provincial and central legislatures. That is one thing. This section deals with the qualifications of voters for cantonment boards but it also provides the same qualification for membership of cantonment boards. I think that that may be one reason—that we want a higher standard of moral probity in those who are going to be members of our cantonment board. That I think makes a certain amount of difference.

**Mr. M. S. Aney** (Berar Representative) : The ground on which the Army Secretary tried to defend the distinction between the provision of this Bill and that existing in the Government of India Act is my main excuse for getting up. He told us that the provisions that are laid down in the Government of India Act are for voters for the provincial and central legislatures and that the provisions of this Bill are intended for

voters and members of the cantonment boards. According to him a greater degree of probity is required in the case of persons who are serve on and who are to be enfranchised as voters for cantonment boards than in the case of those who are going to be voters for the provincial and central legislatures I think this argument only requires to be stated to be rejected by this House, as it carries with it its own condemnation. For this very reason I hope the House will accept this amendment.

**Mr. President** (The Honourable Sir Abdur Rahim) : The question is :

“ That in sub-clause (b) (i) of clause 10 of the Bill, for the words ‘ for the word ‘ under ’ the words ‘ in consequence of proceedings taken under section 109 or section 110 of ’ shall be substituted ” the following be substituted :

“ the words ‘ or has been ordered to find security for good behaviour under the Code of Criminal Procedure, 1898 ’ shall be omitted ”.

The Assembly divided :

AYES—53.

Abdul Matin Chaudhury, Mr.  
Abdullah, Mr. H. M.  
Aney, Mr. M. S.  
Asaf Ali, Mr. M.  
Ayyangar, Mr. M. Ananthasayanam.  
Azhar Ali, Mr. Muhammad.  
Bhagavan Das, Dr.  
Chaliha, Mr. Kuladhar.  
Chattopadhyaya, Mr. Amarendra Nath.  
Chettiar, Mr. T. S. Avinashilingam.  
Chetty, Mr. Sami Vencatchelam.  
Das, Mr. B.  
Das, Pandit Nilakantha.  
Datta, Mr. Akhil Chandra.  
Desai, Mr. Bhulabhai J.  
Fazl-i-Haq Piracha, Khan Bahadur  
Shaikh.  
Gadgil, Mr. N. V.  
Giri, Mr. V. V.  
Govind Das, Seth.  
Gupta, Mr. Ghansham Singh.  
Hans Raj, Raizada.  
Hosmani, Mr. S. K.  
Jedhe, Mr. K. M.  
Jehangir, Sir Cowasji.  
Jogendra Singh, Sirdar.  
Kailash Behari Lal, Babu.

Khan Sahib, Dr.  
Khare, Dr. N. B.  
Lalchand Navalrai, Mr.  
Laljee, Mr. Husenbhai Abdullahai.  
Maitra, Pandit Lakshmi Kanta.  
Malaviya, Pandit Krishna Kant.  
Mangal Singh, Sardar.  
Mudaliar, Mr. C. N. Muthuranga.  
Muhammad Ahmad Kazmi, Qazi.  
Paliwal, Pandit Sri Krishna Dutta.  
Pant, Pandit Govind Ballabh.  
Parma Nand, Bhai.  
Raghubir Narayan Singh, Choudhri.  
Raju, Mr. P. S. Kumaraswami.  
Ranga, Prof. N. G.  
Saksena, Mr. Mohan Lal.  
Sant Singh, Sardar.  
Satyamurti, Mr. S.  
Sham Lal, Mr.  
Shauknt Ali, Maulana.  
Sheodass Daga, Seth.  
Siddique Ali Khan, Khan Sahib Nawab.  
Singh, Mr. Ram Narayan.  
Sinha, Mr. Satya Narayan.  
Som, Mr. Suryya Kumar.  
Sri Prakasa, Mr.  
Thein Maung, U

NOES—46.

Abdul Hamid, Khan Bahadur Sir.  
Acott, Mr. A. S. V.  
Ahmad Nawaz Khan, Major Nawab Sir.  
Ayyar, Diwan Bahadur R. V. Kriahna.  
Bajpai, Sir Girja Shankar.  
Bhat, Mr. M. D.  
Boss, Mr. L. C.  
Chapman-Mortimer, Mr. T.  
Craik, The Honourable Sir Henry.  
Dalal, Dr. R. D.  
Das-Gupta, Mr. S. K.  
Dey, Mr. E. N.  
Ghuzaavi, Sir Abdul Halim.

Grant, Mr. C. F.  
Griffiths, Mr. P. J.  
Grigg, The Honourable Sir James.  
Hudson, Sir Leslie.  
James, Mr. F. E.  
Jawahar Singh, Sardar Bahadur Sardar  
Sir.  
Khurshaid Muhammad, Khan Bahadur  
Shaikh.  
Lloyd, Mr. A. H.  
Metcalfe, Sir Aubrey.  
Mody, Sir H. P.

## NOES—contd.

Morgan, Mr. G.  
 Mudie, Mr. E. F.  
 Mukherjee, Rai Bahadur Sir Satya Charan.  
 Naydu, Diwan Bahadur B. V. Sri Hari Rao.  
 Noyce, The Honourable Sir Frank.  
 Rajah, Rao Bahadur M. C.  
 Rau, Mr. P. S.  
 Robertson, Mr. G. E. J.  
 Roy, Mr. S. N.  
 Sarma, Sir Srinivasa.  
 Scott, Mr. J. Ramsay.

Sen, Mr. Susil Chandra.  
 Sharma, Mr. D.  
 Sher Muhammad Khan, Captain Sardar.  
 Singh, Rai Bahadur Shyam Narayan.  
 Sircar, The Honourable Sir Nripendra.  
 Spence, Mr. G. H.  
 Thorne, Mr. J. A.  
 Tottenham, Mr. G. R. F.  
 Witherington, Mr. C. H.  
 Yakub, Sir Muhammad.  
 Yamin Khan, Sir Muhammad.  
 Zafrullah Khan, The Honourable Sir Muhammad.

The motion was adopted.

**Mr. President** (The Honourable Sir Abdur Rahim) : The question is :

“ That clause 10, as amended, stand part of the Bill.”

The motion was adopted.

Clause 10, as amended, was added to the Bill.

**Mr. President** (The Honourable Sir Abdur Rahim) : The House will now go back to clause 22.

**Mr. G. R. F. Tottenham** : This amendment\* was moved by Mr. Saksena on the last occasion and it was left over to see whether we could devise some formula which would meet the purpose which the Honourable Member had in view. In accordance with that undertaking, we have examined the matter and, as I thought, we have found it impossible to devise a satisfactory amendment to give effect to what was the Honourable Member's intention, namely, that the classes of taxation permissible in different classes of cantonments should correspond with the classes of taxation permissible in different classes of municipalities. We have looked through the municipal Acts and we find that only in certain provinces are municipalities divided into classes. In no province are the classes into which municipalities are divided the same as the classes into which cantonments are divided ; and in no province that I can discover is there any limitation on the classes of taxation that may be imposed in different classes of municipalities ; and therefore, Sir, it is impossible for us to accept the amendment proposed by my Honourable friend. At the same time, as I said before, I understand that the Honourable Member's real intention is that the incidence of taxation in cantonments should not be largely different from the incidence of taxation in municipalities ; and if the Honourable Member wishes I am quite prepared to bring that to the attention of cantonment authorities. It is a matter of fact the actual principle on which cantonment taxation is based at the present moment. I think last year we made detailed inquiries and found out how the incidence of taxation in cantonments compared with the incidence of taxation in neighbouring municipalities. We discovered that in quite a large number of cases the incidence of taxation in cantonments was lower than the incidence of taxation in the neighbouring municipalities. There

\* “ That in clause 22 of the Bill, in the proposed section 60 (1), after the words ‘ any municipality ’ the words ‘ of the same class ’ be inserted.”

were a few cases in which it was higher, but the general average was about the same and in a good many cases it was lower. If it will satisfy the Honourable Member I will certainly bring the point to the attention of cantonment authorities ; but they must, of course, be responsible for seeing that the standard of municipal administration in cantonments is not lowered in this Bill as she may desire. Sir, I move.

**Mr. Mohan Lal Saksena** : In view of the Defence Secretary's statement, I withdraw my amendment.

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

Clause 22 was added to the Bill.

**Mr. President** (The Honourable Sir Abdur Rahim) : The House will now take up clause 68.

The question is :

“ That clause 68 stand part of the Bill.”

**Mr. Mohan Lal Saksena** : Sir, I move :

“ That in sub-clause (a) of clause 68 of the Bill, after the word ‘ other ’ the word ‘ civil ’ be inserted.”

Honourable Members will note that by the present Bill the Officer Commanding-in-Chief has been authorised to delegate his appellate powers to any other authority. Up till now, because of the long experience of the Officer Commanding-in-Chief there was a safeguard against miscarriage of justice and therefore if this power is to be delegated to subordinate military officers who will not have as much experience as the Officer Commanding-in-Chief, it will be prejudicial to the interests of the litigants. Therefore I have moved that the word ‘ civil ’ be substituted. If he is going to delegate the power to anybody, it should be to a civil authority and not a military authority. With these words I move my amendment.

**Mr. President** (The Honourable Sir Abdur Rahim) : Amendment moved :

“ That in sub-clause (a) of clause 68 of the Bill, after the word ‘ other ’ the word ‘ civil ’ be inserted.”

**Mr. G. B. F. Tottenham** : I am afraid I shall be unable to accept this amendment.

**Mr. S. Satyamurti** (Madras City : Non-Muhammadan Urban) : This is the last amendment. Accept it.

**Mr. G. B. F. Tottenham** : To anyone who reads the Cantonments Act it will be quite clear that the supreme controlling authority of cantonments is the General Officer Commanding-in-Chief, the Command, and therefore it is only right theoretically that the General Officer Commanding-in-Chief, the Command, should be the supreme appellate authority from orders passed by the Cantonment Board. In practice, however, and especially in the Northern Command, where there are a very large number of cantonments and where the Army Commander is an extremely busy man and has most onerous military duties to carry out, it has been found almost a physical impossibility for him to give a personal hearing to every appellant who appeals against an order by a cantonment authority. Therefore, Sir, after considerable discussion in Select Committee, we agreed upon this formula that the appellate authority should be

[Mr. G. R. F. Tottenham.]

the General Officer Commanding-in-Chief, the Command, or such other authority as the Government of India may appoint. That of course does not mean that in future the General Officer Commanding-in-Chief, the Command, is not going to hear any appeals at all. I imagine he will still hear important appeals and possibly, in some commands, he may be able to hear a considerable proportion of the appeals. But some relief is absolutely necessary if the work is to be carried on properly, and I may add if the appeals themselves are to be given a careful hearing. The proposal is, not that the power should be delegated to some subordinate military authority, but that it should be delegated to the Inspecting Officer of Military Lands and Cantonments who is a military officer in civil employ and is the chief adviser of the Army Commander on cantonment affairs. He is a senior officer, and one advantage of this proposal is—and this I may say is an advantage that has appealed particularly to the All-India Cantonments Association as being in the interests of the appellants—that if we make use of the Inspecting Officer to hear appeals, and especially petty appeals, he may be able to hear them in the cantonments in which they arise and thus avoid the necessity under which appellants suffer at present of having to undertake long journeys to the headquarters of the Command in order to get a personal hearing from the Army Commander. For these reasons, Sir, because there was an agreement reached in Select Committee after considerable discussion, in the course of which Mr. Saksena's proposal was fully canvassed and discussed, and because that agreement I think was a reasonable agreement, I regret I am unable to accept this amendment.

**Mr. President** (The Honourable Sir Abdur Rahim) : The question is :

“ That in sub-clause (a) of clause 68 of the Bill, after the word ‘ other ’ the word ‘ civil ’ be inserted.”

The motion was negatived.

**Mr. President** (The Honourable Sir Abdur Rahim) : The question is :

“ That clause 68 stand part of the Bill.”

The motion was adopted.

Clause 68 was added to the Bill.

Clause 69 was added to the Bill.

**Mr. President** (The Honourable Sir Abdur Rahim) : The question is :

“ That clause 1 stand part of the Bill.”

Mr. Spence.

**Mr. G. H. Spence** (Secretary, Legislative Department) : Sir, with your permission, in moving this amendment I will omit the words “ and the Sonthal Parganas ” which have been included by an oversight. Sir, I move :

“ That after sub-clause (1) of clause 1 of the Bill, the following sub-clause be inserted and sub-clause (2) be re-numbered as sub-clause (3) :

‘ (3) It extends to the whole of British India, including British Baluchistan but excluding Burma.’ ”

The object of this amendment is to exclude the application of the Bill to Burma, as it is desired that the separated Burma should have a free hand to make such amendments, if any, corresponding to those made in this Bill as she may desire. Sir, I move.

**Mr. President** (The Honourable Sir Abdur Rahim) : The question is :

“ That after sub-clause (1) of clause 1 of the Bill, the following sub-clause be inserted and sub-clause (2) be re-numbered as sub-clause (3) :

‘ (3) It extends to the whole of British India, including British Baluchistan but excluding Burma.’ ”

The motion was adopted.

**Mr. President** (The Honourable Sir Abdur Rahim) : The question is :

“ That clause 1, as amended, stand part of the Bill ”

The motion was adopted.

Clause 1, as amended, was added to the Bill.

**Mr. G. H. Spence** : Sir, I move :

“ That the clauses be re-numbered, and that all corrections consequential on the amendments now made be carried out.”

Sir, the object of this amendment is to authorise the officer who will prepare the Bill for printing to re-number the clauses and carry out consequential corrections. Sir, I move.

**Mr. President** (The Honourable Sir Abdur Rahim) : The question is :

“ That the clauses be re-numbered, and that all corrections consequential on the amendments now made be carried out.”

The motion was adopted.

**Mr. President** (The Honourable Sir Abdur Rahim) : The question is :

“ That the Title and the Preamble stand part of the Bill ”

The motion was adopted.

The Title and the Preamble were added to the Bill.

**Mr. G. R. F. Tottenham** : Sir, I do not propose to move that the Bill be passed today in view of the amendments that have been carried against Government. Government will have to take time to consider the position.

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#### THE INDIAN COMPANIES (AMENDMENT) BILL—*contd.*

**Mr. President** (The Honourable Sir Abdur Rahim) : The House will now resume consideration of the Bill to amend the Indian Companies Act, 1913, for certain purposes, as reported by the Select Committee.

**The Honourable Sir Nripendra Sircar** (Law Member) : Sir, I think the House was considering amendment No. 124\* in the old Final List which is, I think, No. 10 in the revised Final List. Sir, during the week end I tried to look up the law on the subject and the proposal which is contained in paragraph (a), *viz.*, that :

“ the directors of a public company or of a subsidiary company of a public company shall not, except with the consent of the company concerned in general meeting :—  
(a) sell or dispose of the undertaking of the company ; ”

is one which I have no hesitation in accepting. As a matter of fact, I do not want to go into a series of cases, and so on. I have great doubts as to what they have been doing so far is strictly legal or not. But to make the matter absolutely clear, I would welcome the inclusion of part (a) sell or dispose of the undertaking of the company. Sir, I do not agree to parts (b) and (c), and I will tell the House my reasons. As regards the issue of the unoffered capital of the company, I admit that there are arguments which can be advanced both ways. Arguments which can be advanced in support of this amendment, part (b), have been put before the House by my Honourable friend, Pandit Govind Ballabh Pant, the main argument being that instances have occurred where unoffered capital has been offered by the directors not in the interests of the company but from some indirect or improper motive. For instance, a case where you do not really want Rs. 5 lakhs for your business but that has been done from other motives. We know of two cases at least where extra capital was issued simply to give the directors and the managing agents additional voting rights, so that abuses have occurred and that there are arguments in favour of it, I am not prepared to deny. But what I have got also to consider on the other side is this. I do think that in the case of dishonest directors it is a good argument, but assuming that the directors are a body of honest men who have the interests of the company at heart, then it will lead often to difficulties as also to embarrassing positions. I will give an example.

Supposing a sugar company has come to know that a thousand acres  
4 P.M. of land on the riverside are available on fairly good terms. The directors want to close the bargain and these things have got to be done by delicate negotiations which do not allow of time being wasted over it. Now, if a matter like that comes before the shareholders, then the whole object may be frustrated. Another point which strikes me is this that if the matter comes before shareholders—I am not thinking of the particular example which I gave, but I am speaking generally—as to whether they should issue an unoffered capital or not, a shareholder is likely to be influenced by the point of his immediate interest, his immediate interest being that capital should not be issued

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\*“ That in clause 40 of the Bill, after the proposed section 86F, the following be inserted :

‘ 86FF. The directors of a public company or of a subsidiary company of a public company shall not, except with the consent of the company concerned in general meeting :

- (a) sell or dispose of the undertaking of the company ;
- (b) issue the unoffered capital of the company ;
- (c) write off any debt due by a director ’.”



because, as we know, that has an effect on (at any rate to start with), the shares by lowering their value, he is confronted with the situation that if he agrees to this he may be faced with the depreciation of the shares. That is a matter which I also ask the House to consider seriously. Then, it is also to be remembered that the directors are also shareholders. They must have some qualifying shares which depends on the nature of the articles which govern the company. If it is not in the shareholders' interest, then they will to that extent not issue the unoffered capital unless really wanted for the development of a scheme and so on. Therefore, if their immediate interests are against the issue of a new capital and if they still desire or intend to issue new capital, then that should be some guarantee of necessity of issuing fresh capital. In the average normal case of fairly honest directors it will be really putting on fetters which are not required. I do not brush aside my Honourable friend's argument by saying that this is not liable to abuse but balancing the two opposing considerations, I have personally come to the conclusion that I would not agree to (b). About part (c), writing off any debt due by a director, the point which strikes me is this. Now, what is a writing off? A writing off means that in your books you record a debt as doubtful. Supposing Rs. 5,000 is due from a director and, as my Honourable friend pointed out, we are now confined to directors of banks, loans to other banks not being permissible. Suppose a sum of Rs. 5,000 is not realisable from a particular director A having regard to his financial embarrassment or whatever may be the case. Now, it is proposed to write it off. Writing it off means that in his books he writes that, at any rate for the time being, it is an unrecoverable debt. That does not give any right to the debtor, to claim remission, after the writing off has taken place. Supposing the next day the debtor gets a rich legacy from his widowed aunt or he wins the Derby, there is nothing to prevent the directors from proceeding against the debtor in spite of his having treated the debt as a bad debt in his own books. What my Honourable friend's amendment means is this. The directors meet before the shareholders and say: "We propose to write this off." The shareholders say: "No; we will not allow you to write it off." What would be the effect of that? The books will be really inaccurate; they will give a false impression. A debt which the directors have decided is doubtful, unrealisable, will be continued to be shown as a good debt. Secondly, in a matter of this kind, is it likely that the shareholders would be in a better position to know whether any assets will be realisable from this particular director rather than the directors themselves? I submit it is not really necessary to have part (c). If I may explain the position which I am taking up, it is this. I wholeheartedly support part (a) and I object to parts (b) and (c). It will be for my Honourable friend's consideration—he is the Mover of the amendment—whether he will insist on putting the whole amendment as it has been drafted including parts (a), (b) and (c) to the vote or whether he would be prepared to be satisfied with part (a) only. That is a matter which is entirely for my Honourable friend to decide. I have only pointed out what my personal opinion is. That, Sir, is my position. But I must say one word about the arguments which were advanced by one member of the European Group, I believe it was Mr. Chapman-Mortimer. I think those arguments are, with all respect to him, entirely fallacious. He opposed part (a) on the ground that issue of capital is very often wanted for reconstruction or amalgamation. As anyone will find from

[Sir Nripendra Sircar.]

any standard book on company law, neither amalgamation nor reconstruction is a technical word of art, although their meanings are well understood. How do you propose to have a reconstruction? What is the normal way of having reconstruction and amalgamation? Surely by voluntary liquidation. If it is by voluntary liquidation, you must come up before the shareholders. I submit to the House, therefore, that there is really no force, at any rate according to my submission, in the arguments which have been advanced, I believe, by Mr. Chapman-Mortimer and I am unable to agree with him that the deletion of (a) is very necessary. On the other hand, I think it is a very salutary measure. That is all I have to say.

**Mr. Bhulabhai J. Desai** (Bombay Northern Division : Non-Muhamadan Rural) : Sir, in this matter I find myself in complete disagreement with what has fallen from the Leader of the House as regards items (b) and (c). As regards item (a), I would not have thought it necessary to occupy some time of the House but for a real difficulty which presents itself to me and which I ask the Leader of the House to seriously consider. I invite his attention to section 5 of the English Act which runs this way :

“ subject to the provisions of this section a Company may by special Resolution alter the provisions of its Memorandum in respect of the objects of the Company so far as may be required to enable it :

(f) to sell or dispose of the whole or any part of the undertaking of the company ;

(g) to amalgamate with any other company or body of persons.”

If you turn to the relative corresponding section of the Indian Act, you do not find these two provisions at all and the addition is now sought to be made by the present clause (6). The only question, therefore, is whether this could be objected to at all having regard to the opening part of our clause (6) to which (f) and (g) have been added. Any provision to the contrary would have been inconsistent. In fact, I would respectfully submit that this really was not required at all, and any opposition to it would have been contrary to the terms of the Act, and, therefore, would not have been allowed.

So far as parts (b) and (c) of this amendment are concerned, the position stands in this way. I wish to make one or two general observations with regard to the approach which has hitherto been made towards the consideration of this amending Bill. I beg leave to do so, because hitherto I have rarely intervened in a debate except for the purpose and to the extent to which it was possible to reconcile two apparently opposing views. But it must be distinctly understood that the mere instance of experience of a company “ A ” or a company “ B ” was the mere inconvenience of a particular managing agency or a board of directors is an entirely wrong point of view from which to approach any measure of general legislation. I think it is time that the House was warned that most of these questions are brought up and decided by reference to some possible logical absurdities of that kind, or to make this Act the means for legalising a practice which has been going on for some time. That, I submit, should never be the object of a legislation of this kind and the matter must be approached from larger and broader principles underlying the company law and the rela-

tions of the shareholders so far as they are concerned in the matter of their rights and obligations. It is in that light and it is in that spirit and not in any attempt to meet what a particular agency finds it inconvenient or attempt to meet what a particular board of directors might find inconvenient that the matter has got to be looked at. After all is said and done, as I have pointed out, this idea of agents, who have hitherto regarded themselves as the owners of concerns, must be completely set aside before we can get to the reality of the discussion in measures of this kind. It may easily be that particular managing agents or particular board of directors may find themselves in a very difficult position as a result of the provision of law which is made solely and entirely in the interests of those who have invested their money in that concern. After all, it is difficult to be persuaded by the fact that whereas those who are true owners of the concern should have no say in the matter because those for the moment who dominate or control say "it is very inconvenient to ourselves and it is not in your interest"—this is a kind of argument which I have repelled in larger aspects of life, where I refuse to be allowed to be told, "you do not understand your interests, I will look after them, if you leave them to me". This is a form of argument which, I think, is entirely wrong and in the consideration of the remaining provisions of the Act, this matter should be very carefully borne in mind. It is with these observations that I bring myself to part (b) of this amendment.

Part (b) of this amendment says : " issue the unoffered capital of the company ", and for this purpose I respectfully submit that the opinion of the company in a general meeting should prevail over whatever may be the contrary opinion of the board of directors. That is the short and neat issue before the House. It often happens that you have three or four lakhs of rupees capital which has been subscribed and another three or four lakhs capital which has not yet been offered. The result very often is that the company starts working, and it is during the course of the working that a question of that kind is likely to arise, and when it arises, who is it to judge whether the money is required by offering those shares either for the purpose of expanding business or for the purpose of any other requirement which must be a matter of permanent utility. If money is merely required for the purpose of working capital of the company, it may or may not be necessarily required for all time. It may be a temporary need which may easily be satisfied by a borrowing, and, therefore, it ought not to be made easy to get money except for the purpose of what I may call the more permanent requirements of the company by offering a capital which has not been offered, the very argument which the Honourable the Law Member advanced is an argument, which, I respectfully submit, points to the opposite conclusion. He said it is true to say that perhaps when you consider the immediate necessities, the shareholders, who are then the shareholders of the company, finding perhaps that their dividends may suffer in quantity may not want to agree to this proposition. But assuming, for the purposes of argument, that that motive was their impelling or even a compelling motive, who are the directors to tell them, " your concern is such that notwithstanding your opinion to the contrary, I wish to expand by getting more money into it by offering shares to the public ". I think a time always arises when the rights of these shareholders have been so crystallised that they are the only fit persons to judge whether further money is to be brought into the com-

[Mr. Bhulabhai J. Desai.]

pany by offering further capital amount for payment by the public. For if it were otherwise done, the directors in their discretion may easily improve you out of what may be a very beneficial concern. They may easily over-capitalise it, they may easily take in capital which may not be necessary, and I am not one of those who is obsessed with the idea that the directors are the persons who have a monopoly of wisdom, and, even if they had it, it is not so much a monopoly of wisdom as the question as to whose rights are being affected. Assuming that directors are able to convince the shareholders that expansion is useful *pari passu* with the new comers,—the old shareholders will have not only the then advantage, but future growth of the company there should not be any difficulty ; on the other hand, if they are so unable to persuade the shareholders that their interests are likely to advance, there is no reason why the further capital should be offered. I have heard the argument that this is a measure for the purposes of protection to the ignorant shareholders, but unfortunately so far as this particular case is concerned, even that argument cannot be used. The stick has been used long enough, but in this particular case, it is not a question of the ignorant whom you are protecting, because if you mean to advance the argument, you must mean this, that the shareholders have put the money at the disposal of the directors in order that they may add to the capital, whenever they wish to do according to their judgment of the matter.

I do respectfully say that the House would be committing a grave blunder in allowing the directors to add to the capital of the company without the consent of the shareholders in a general meeting. It is a very serious matter in which you affect the rights, it is not a mere matter of daily administration, it is a matter of permanently affecting the rights of those who have already put in money into the concern, as already going. I, therefore, respectfully submit that to tell me that the shareholders may not understand their own interests, and, therefore, may vote against an increase of capital is not an argument that appeals to me. And, if they so wish it, it is not for the directors to tell them, " You have given us four lakhs. We, in our wisdom, say that if you put in another three lakhs, the business would prosper better, and whether you like it or not, whether your money increases or decreases, we want to add another three lakhs to it as a speculative concern ". I, therefore, suggest and respectfully submit to the House to pause here and consider whether the argument based on the supposed protection of the ignorant in this particular case would not be carried too far, unless you submit to this proposition that all that the shareholders have got to do is to leave the money to the managing agents and the directors on the view, as used to be said in the early days in a very popular topical song in my part of the world, the trustees are the owners of the properties of their beneficiaries. And if that is going to be the future situation of shareholders, I for one would be no party to it. And I may also tell them that I am in a position to fully consider the effects of rights of this kind. Conferring drastic powers on a body of men who may err in their judgment at the cost of other people. To be told that they have qualifying shares means nothing, because qualifying shares may be in some cases five or ten out of perhaps several thousands. So that that again is not really the

matter that clinches this particular issue. The true issue is this. Are the shareholders going to leave their money at the mercy of those who are going, so to say, to improve them out of their own money, if their view was different to those who have put in money. It should not be required for any other purposes except addition to permanent capital, and having regard to the conditions of business or the expansion of the business. There is no third possible object that I can imagine for issuing a further lot of shares after the first lot has been offered to the public and the business has commenced.

As regards (c), I recognise the force of the argument of the Honourable the Law Member. I agree that the proper word there should have been "remit" and not "write off". I agree that to write off is more a matter of mere auditing. It is also true to say that notwithstanding the fact that a debt may be written off,—though there has been an argument in one or two cases to the contrary,—that notwithstanding the fact that a debt has been written off, the creditor does not lose the right of enforcing it against the debtor, the creditor in this case being the company. But so far as the substance of that particular objection is concerned, the substance is whether a debt of a director should be remitted by his brethren; and whether, representing the class of shareholders to which I belong, and never having been or wanting to be a director of a company, we are to be told that we are the only people who cannot be trusted to look after ourselves. But supposing a director owes a debt, with all the care that is taken, of which a picture was given the other day, is it not very likely that the fellow directors even sub-consciously, having to associate themselves every day, having to work with them every day, are sure to have a bias; I think you must remember that there is such a thing as an unconscious give and take without imputing dishonesty. And there is a considerable amount of facility in these matters, where more firmness is required than I know it to exist in many boards of directors.

**The Honourable Sir Nripendra Sircar** : Sir, may I put in a word? If the word "remit" is substituted for "write off" I would not object. But I am still objecting to (b).

**Mr. Bhulabhai J. Desai** : If the word "remit" is there, I have nothing more to say.

**Mr. T. S. Avinashilingam Chettiar** (Salem and Coimbatore *cwm* North Arcot : Non-Muhammadan Rural) : Sir, may I make one small suggestion? I do not know whether this suggestion will satisfy the Leader of the House. His only point was that there may be occasions when delicate negotiations may be necessary or it may not be profitable to put it before the shareholders. Will it suit him if it is made subject to the ratification of the shareholders in general meeting? The idea is that instead of putting it before the shareholders beforehand, this will give them an opportunity of negotiating afterwards.

**The Honourable Sir Nripendra Sircar** : I venture to submit that that makes no difference, because, if it comes up for ratification, it may be rejected.

**Mr. Sumi Chandra Sen** (Government of India : Nominated Official) : Sir, as we are now more or less agreed about clauses (a) and

[Mr. Susil Chandra Sen.]

(c), I will only confine my remarks to clause (b), on which both sides have had their say. The point of view from which I want my Honourable friends opposite to look at it is first of all that once a company is incorporated, there is in the memorandum an indication of what the capital is to consist of, the shares or the classes of shares into which it is to be divided, so that any prospective shareholder when he goes in to buy the shares of a company knows exactly to what extent the capital may expand and in what classes of shares it may be divided. I quite admit, Sir, that for purposes which we need not speculate about, the promoters may fix that out of the total authorised capital a certain amount is to be offered to the public for the present. The question is when necessities occur, who are the best persons to judge whether the rest of the authorised capital is to be let off in the market. The question has to be judged regard being had to the fact that we have now adopted in this Bill the principle that a company is to be managed by directors. What I mean is the compulsory adoption of article 71 in Table A which was not there in the old Act. Once having done that we are committed to the principle that the business is to be ordinarily left to the directors to carry on, and it would be an utter inconsistency to say that in matters like this, namely, whether a certain amount of more capital is to be needed or not, the directors are not to be trusted. Although for all purposes you have by statute put them in charge of the business, and then to say that it is the shareholders who are the owners of the business and therefore they must be resorted to in the matter of issue of the unsubscribed capital. It is said it is necessary to do so in order to avoid probable abuse. But let us analyse whether the directors are at liberty under the law as it now stands to act indiscriminately in the matter of raising the capital. My answer is, no; and I will refer my Honourable friend, Mr. Desai, to the last case on the point, the decision of Lord Justice W. Renbury reported in 1903, 2 Chancery, 506, where the learned Lord Justice laid down this salutary principle that if in any particular case the directors who did not want capital for purposes of the business *bona fide* but merely for the purpose of increasing their voting rights or any other ulterior objects issued new shares, they would be guilty of a breach of trust. Any ulterior motive is thus put out of action altogether. If that is a fetter which already remains in the existing law on the rights of the directors to issue fresh capital, what is the apprehension? I again ask, what is the apprehension which you want to provide against? It may possibly be said that although it may be *bona fide* wanted for business purposes, the directors may possibly limit the new shares in a coterie of which they and their confederates are the members. But as against that I beg to remind my Honourable friend that in every decent business company, any company worth the name, the articles provide that in the matter of a new issue of shares they have got to be offered in the first instance to the existing shareholders in proportion to their holding, and it is only in the case when they do not want to utilise their offer and choose not to avail themselves of this opportunity of acquiring further shares, that it goes out to outsiders. Looked at from this point of view, I submit that there is practically no case made out for this provision.

To sum up, in my humble judgment firstly it is inconsistent with the principle to which we are committed by the adoption of Article 71 in Table A, namely, that the carrying on of the business is to be left to the directors; secondly, having regard to the existing fetters which already exist in law,

I submit that there are proper safeguards already in existence against possible abuses of this power and the change which is sought is not really necessary.

**Mr. Akhil Chandra Datta** (Chittagong and Rajshahi Divisions : Non-Muhammadan Rural) : Sir, I rise to meet only one point made by Mr. Sen. He points out that this amendment to clause (b) would be inconsistent with Article 71 of Table A, which has been made compulsory. My submission is, it will not be inconsistent. In article 71, it is distinctly laid down that although the business of the company shall be managed by the directors that power is expressly subject to all such powers as are required to be exercised by the company in general meeting. Therefore, there is no inconsistency at all.

**Babu Baijnath Bajoria** (Marwari Association : Indian Commerce) : Sir, I want to speak only about one point which was touched by my Honourable friend, Mr. Sen, about the issue of unoffered capital by the company. He has mentioned that in decent companies when new shares are issued they are offered in the first instance to the existing shareholders in the proportion of the shares held by them. But this is not always the case. If this provision is made compulsory, then it will meet the case of the existing shareholders. Otherwise, the existing shareholders will be hard hit. I will give one small instance : suppose the present value of a Rs. 10 share is Rs. 40 : and suppose the same amount of capital is issued and offered at Rs. 10, then the value of the share will go down to Rs. 25—Rs. 40 plus Rs. 10 divided by 2. I say, if those shares are not given to the existing shareholders or if they are not given the first refusal of these shares, then the existing shareholders will lose Rs. 15 per share, whereas the new shareholders will gain Rs. 15 per share. We have got this apprehension that the fresh shares may be issued to a coterie of the friends of the directors—the apprehension which my Honourable friend, Mr. Sen, has—friends or relatives of the managing agents. If this provision is made clear that the newly issued capital should be offered in the first instance to the existing shareholders, then I think all sections of this House will agree. If that is not agreed to, I think this right must rest with the shareholders because their interest is greatly at stake. I would request my Honourable friend, the Leader of the House, to consider this point.

**Pandit Govind Ballabh Pant** (Rohilkund and Kumaon Divisions : Non-Muhammadan Rural) : Sir, may I suggest that in place of “ write off ” the word “ remit ” be substituted, and that clauses (a) and (c) of the proposed amendment be put together, and (b) separately ? I understand Government are agreeable to this course.

**Mr. President** (The Honourable Sir Abdur Rahim) : I shall now put clauses (a) and (c) together, substituting the word ‘ remit ’ for the words ‘ write off ’. The question is :

“ That in clause 40 of the Bill, after the proposed section 86F, the following be inserted :

‘ 86FF. The directors of a public company or of a subsidiary company of a public company shall not, except with the consent of the company concerned in general meeting :

(a) sell or dispose of the undertaking of the company ;

(c) remit any debt due by a director ”

The motion was adopted.

**Mr. President** (The Honourable Sir Abdur Rahim) : The question is :

“ That in clause 40 of the Bill, in the new section 86FF, the following be inserted :

‘ (b) issue the unoffered capital of the company ’.”

The Assembly divided :

AYES—50.

Abdullah, Mr. H. M.  
Aney, Mr. M. S.  
Asaf Ali, Mr. M.  
Ayyangar, Mr. M. Ananthasayanam.  
Azhar Ali, Mr. Muhammad.  
Bajoria, Babu Baijnath.  
Bhagavan Das, Dr.  
Chaliha, Mr. Kuladhar.  
Chattopadhyaya, Mr. Amarendra Nath.  
Chettiar, Mr. T. S. Avinashilingam.  
Chetty, Mr. Sami Vencatachelam.  
Das, Mr. Basanta Kumar.  
Das, Pandit Nilakantha.  
Datta, Mr. Akhil Chandra.  
Desai, Mr. Bhulabhai J.  
De-hmukh, Dr. G. V.  
Gadgil, Mr. N. V.  
Giri, Mr. V. V.  
Govind Das, Seth.  
Gupta, Mr. Ghanshiam Singh.  
Hans Raj, Raizada.  
Hosmani, Mr. S. K.  
Jedhe, Mr. K. M.  
Jogendra Singh, Sirdar.  
Joshi, Mr. N. M.

Kailash Behari Lal, Babu.  
Khan Sahib, Dr.  
Khare, Dr. N. B.  
Lalchand Navalrai, Mr.  
Maitra, Pandit Lakshmi Kanta.  
Malaviya, Pandit Krishna Kant.  
Mangal Singh, Sardar.  
Mudaliar, Mr. C. N. Muthuranga.  
Muhammad Ahmad Kazmi, Qazi.  
Paliwal, Pandit Sri Krishna Dutta.  
Pant, Pandit Govind Ballabh.  
Raghubir Narayan Singh, Choudhri.  
Raju, Mr. P. S. Kumaraswami.  
Ranga, Prof. N. G.  
Saksena, Mr. Mohan Lal.  
Satyamurti, Mr. S.  
Sham Lal, Mr.  
Sheodass Daga, Seth.  
Singh, Mr. Ram Narayan.  
Sinha, Mr. Satya Narayan.  
Sinha, Mr. Shri Krishna.  
Som, Mr. Suryya Kumar.  
Sri Prakasa, Mr.  
Thein Maung, Dr.  
Thein Maung, U

NOES—55.

Abdoola Haroon, Seth Haji.  
Abdul Hamid, Khan Bahadur Sir.  
Abdul Matin Chaudhury, Mr.  
Acott, Mr. A. S. V.  
Ahmad Nawaz Khan, Major Nawab Sir.  
Ayyar, Diwan Bahadur R. V. Krishna.  
Bajpai, Sir Girja Shankar.  
Bhat, Mr. M. D.  
Buss, Mr. L. C.  
Chapman-Mortimer, Mr. T.  
Craik, The Honourable Sir Henry.  
Dalal, Dr. R. D.  
Das-Gupta, Mr. S. K.  
DeSouza, Dr. F. X.  
Dey, Mr. R. N.  
Fazl-i-Haq Piracha, Khan Bahadur  
Shaikh.  
Ghasuddin, Mr. M.  
Ghuznavi, Sir Abdul Halim.  
Grant, Mr. C. F.  
Griffiths, Mr. P. J.  
Grigg, The Honourable Sir James.  
Hudson, Sir Leslie.  
James, Mr. F. E.  
Jawahar Singh, Sardar Bahadur Sardar  
Sir,

Jehangir, Sir Cowasji.  
Khurshaid Muhammad, Khan Bahadur  
Shaikh.  
Laljee, Mr. Husenbhai Abdullahai.  
Lloyd, Mr. A. H.  
Metcalf, Sir Aubrey.  
Mody, Sir H. P.  
Morgan, Mr. G.  
Mudie, Mr. R. F.  
Mukherjee, Rai Bahadur Sir Satya  
Charan.  
Murid Hossain Qureshi, Khan Bahadur  
Nawab Makhdum.  
Naydu, Diwan Bahadur B. V. Sri Hari  
Rao.  
Noyce, The Honourable Sir Frank.  
Rajah, Rao Bahadur M. C.  
Rau, Mr. P. S.  
Robertson, Mr. G. E. J.  
Roy, Mr. S. N.  
Sarma, Sir Srinivasa.  
Scott, Mr. J. Ramsay.  
Sen, Mr. Susil Chandra.  
Sharma, Mr. D.  
Shaukat Ali, Maulana.  
Sher Muhammad Khan, Captain Sardar.



NOES—*contd.*

Siddique Ali Khan, Khan Sahib Nawab.  
Singh, Rai Bahadur Shyam Narayan.  
Sircar, The Honourable Sir Nripendra.  
Spence, Mr. G. H.  
Thorne, Mr. J. A.

Tottenham, Mr. G. R. F.  
Witherington, Mr. C. H.  
Yamin Khan, Sir Muhammad.  
Zafrullah Khan, The Honourable Sir  
Muhammad.

The motion was negatived.

**Mr. President** (The Honourable Sir Abdur Rahim) : Now, we will take up amendments Nos. 5 and 6 in the Revised Final List, relating to Directors and Contracts.

**Sir Cowasji Jahangir** (Bombay City : Non-Muhammadan Urban) : What about No. 4 ?

**Mr. President** (The Honourable Sir Abdur Rahim) : We will come back to it later. As I have already mentioned, we shall now take up Nos. 5 and 6 in the Revised Final List.

**Mr. F. E. James** (Madras : European) : May I point out one thing, Sir, that in regard to section 86E and the amendments thereto.....

**Mr. President** (The Honourable Sir Abdur Rahim) : We are now discussing Nos. 5 and 6, and these two relate to the same subject. Does Pandit Pant want to move No. 6 ?

**Pandit Govind Ballabh Pant** : No. 6, Sir.

**The Honourable Sir Nripendra Sircar** : Are you taking it up today ? I understood that this matter was not going to be taken up till Wednesday.

**Mr. President** (The Honourable Sir Abdur Rahim) : If you are not prepared to go on with Nos. 4, 5 and 6.....

**The Honourable Sir Nripendra Sircar** : No, Sir, I would prefer not to go on with those today.

**Mr. President** (The Honourable Sir Abdur Rahim) : Then we go on to No. 4 in the Revised Final List.

**Mr. F. E. James** : This was an amendment with regard to which there was some discussion on Friday, and it was decided by general agreement to postpone this until we had an opportunity of submitting another amendment in a more suitable form. That we have done, but it has not so far been circulated. Therefore, I would submit that this may stand over till Wednesday, which, I think, was our original intention.

**Mr. President** (The Honourable Sir Abdur Rahim) : Very well. It will stand over till Wednesday. No. 7 is not moved. No. 8.

**Mr. M. Ananthasayanam Ayyangar** (Madras ceded Districts and Chittoor : Non-Muhammadan Rural) : This follows Nos. 5 and 6, and may stand over.

**Mr. President** (The Honourable Sir Abdur Rahim) : Very well. No. 9.

**Pandit Sri Krishna Dutta Paliwal** (Agra Division : Non-Muhammadan Rural) : I do not move No. 9.

**Mr. President** (The Honourable Sir Abdur Rahim) : I understand that there is an amendment by Sir H. P. Mody.

**Sir H. P. Mody** (Bombay Millowners' Association : Indian Commerce) : It deals with the question of the right of directors to contract with the company in respect of which several amendments have been left over. So, I suggest that this also might stand over, and it will be circulated in the meantime.

**The Honourable Sir Nripendra Sircar** : They are all connected together.

**Mr. President** (The Honourable Sir Abdur Rahim) : Then, No. 11.

**Pandit Sri Krishna Dutta Paliwal** : I do not move No. 11.

**Pandit Govind Ballabh Pant** : Sir, I move No. 12 :

“ That in clause 40 of the Bill, in sub-section (e) of sub-section (1) of section 86G, before the words ‘ without the sanction ’ the words ‘ or any firm of which such director is a partner or any private company of which such director is a director ’ be inserted.”

It is only a consequential amendment.

**The Honourable Sir Nripendra Sircar** : It will shorten matters if I say that I have no objection to that amendment.

**Mr. President** (The Honourable Sir Abdur Rahim) : The question is :

“ That in clause 40 of the Bill, in sub-section (e) of sub-section (1) of section 86G, before the words ‘ without the sanction ’ the words ‘ or any firm of which such director is a partner or any private company of which such director is a director ’ be inserted.”

The motion was adopted.

**Pandit Govind Ballabh Pant** : Sir, I move :

“ That in clause 40 of the Bill, in clause (g) of sub-section (1) of section 86G, before the words ‘ accepts a loan ’ the words ‘ or any firm of which such director is a partner or any private company of which such director is a director ’ and after the words ‘ a loan ’ the words ‘ or guarantee ’ be inserted.”

This is also consequential like the previous amendment of mine.

**The Honourable Sir Nripendra Sircar** : I have no objection to this amendment, Sir.

**Mr. President** (The Honourable Sir Abdur Rahim) : The question is :

“ That in clause 40 of the Bill, in clause (g) of sub-section (1) of section 86G, before the words ‘ accepts a loan ’ the words ‘ or any firm of which such director is a partner or any private company of which such director is a director ’ and after the words ‘ a loan ’ the words ‘ or guarantee ’ be inserted.”

The motion was adopted.

**Mr. S. Satyamurti** (Madras City : Non-Muhammadan Urban) : Amendment No. 18 is consequential. It relates to contracts of directors.

**Pandit Govind Ballabh Pant** : As regards No. 19, my amendment will read thus :

“ That in clause 40 of the Bill, after clause (g) of sub-section (1) of section 86G, the following be inserted :

‘ or (h) acts in contravention of section 86FF ’”

I have changed EEE into FF, because it is now FF.

**Mr. President** (The Honourable Sir Abdur Rahim) : Amendment moved :

“ That in clause 40 of the Bill, after clause (g) of sub-section (1) of section 86G, the following be inserted :

‘ or (h) acts in contravention of section 86FF ’.”

**Pandit Govind Ballabh Pant** : I beg leave to withdraw this amendment.

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

**Mr. President** (The Honourable Sir Abdur Rahim) : No. 20.

**Pandit Govind Ballabh Pant** : I hope No. 19 also stands over. The amendment that I have just been allowed to withdraw is a new amendment, and No. 19, as it stands here as printed, will have to stand over, Sir.

**Mr. President** (The Honourable Sir Abdur Rahim) : No, that won't be allowed. The Honourable Member will have to give fresh notice. Amendment No. 20.

**Pandit Govind Ballabh Pant** : I would suggest that amendment  
5 P.M. No. 20 may also stand over till Wednesday.

**Mr. President** (The Honourable Sir Abdur Rahim) : No. 20 will also stand over till Wednesday.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 22nd September, 1936.