

Wednesday, 28th September, 1932

THE

LEGISLATIVE ASSEMBLY DEBATES

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(20th September to 30th September, 1932)

FOURTH SESSION

OF THE

FOURTH LEGISLATIVE ASSEMBLY, 1932



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Legislative Assembly.

President :

THE HONOURABLE SIR IBRAHIM RAHIMTOOLA, K.C.S.I., C.I.E.

Deputy President :

MR. R. K. SHANMUKHAM CHETTY, M.L.A.

Panel of Chairmen :

SIR HARI SINGH GOUR, Kt., M.L.A.

SIR ABDUR RAHIM, K.C.S.I., Kt., M.L.A.

MR. G. MORGAN, C.I.E., M.L.A.

MR. MUHAMMAD YAMIN KHAN, C.I.E., M.L.A.

Secretary :

MR. S. C. GUPTA, C.I.E., BAR.-AT-LAW.

Assistants of the Secretary :

MIAN MUHAMMAD RAFI, BAR.-AT-LAW.

RAI BAHADUR D. DUTT.

Marshal :

CAPTAIN HAJI SARDAR NUR AHMAD KHAN, M.C., I.O.M., I.A.

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LEGISLATIVE ASSEMBLY.

Wednesday, 28th September, 1932.

The Assembly met in the Assembly Chamber at Eleven of the Clock, Mr. President (The Honourable Sir Ibrahim Rahimtoola) in the Chair.

QUESTIONS AND ANSWERS.

†847 *—902.*

CENSORSHIP OF CINEMATOGRAPH FILMS.

903. *Mr. K. O. Neogy : (a) Is it a fact that Government are in communication with the Secretary of State for India regarding the question of censorship of cinematograph films, and safeguarding British interests in regard to films exhibited in India ?

(b) If so, will Government be pleased to make a statement on the subject explaining the points under examination ?

The Honourable Mr. H. G. Haig : (a) The Government of India have been in correspondence at different times with the Secretary of State in connection with the questions referred to in the report of the Cinematograph Committee, the terms of reference to which included the censorship of films and the desirability of encouraging the exhibition of films produced within the British Empire generally, and the production and exhibition of Indian films in particular.

(b) The consideration of these matters is at present in abeyance.

†904 *—1013.*

CONFIRMATION OF ASSISTANT CONTROLLERS ON THE NORTH WESTERN RAILWAY.

1014. *Mr. Lalchand Navalrai : (a) Will Government be pleased to state if they have considered the case of 51 Assistant Controllers whose confirmation was in question, as promised in reply to my starred questions asked at the last session of the Assembly ?

(b) Is it a fact that out of 51 men, 14 have been left over and the rest confirmed ?

(c) Is it a fact that the North Western Railway have further taken five new men from other branches of the Railway to the Controller's line ?

(d) Is it a fact that in deciding the confirmation of the Assistant Controllers, the principle adopted was that the incumbent should have had long service experience in the Railway Department ?

Mr. P. B. Rau : I have called for certain information and will lay a reply on the table in due course.

†1015 *—1019.*

†These questions will be answered later.

(1485)

SITE FOR STATIONING OF A BATTALION OF BRITISH TROOPS AT DACCA.

1020. ***Mr. K. C. Neogy** : (a) With reference to Government decision to station a battalion of British soldiers at Dacca, are Government aware that the site provisionally selected for their camp is in the proximity of an ancient and well-known Hindu temple which is resorted to by a large number of people, including women, every day ?

(b) Are Government aware that this has caused a good deal of apprehension in the minds of the Hindus of Dacca, and that a deputation of the Dacca People's Association waited on the District Magistrate to place the views of the local residents before him ?

Mr. G. R. F. Tottenham : Government have no information. I have made inquiries from the Bengal Government and will lay a reply on the table in due course.

RE-APPOINTMENT OF SOME MEMBERS OF THE INDIAN CIVIL SERVICE WHO HAD RESIGNED FROM THE SERVICE.

1021. ***Mr. K. C. Neogy** : (a) Is it a fact that some members of the Indian Civil Service who had resigned from the service, have again been provided with appointments by Government recently ?

(b) If so, will Government be pleased to state, with reference to each such case, when and why the officer had resigned ; and why and on what terms his services have been re-entertained by Government ?

The Honourable Mr. H. G. Haig : (a) One such officer, Mr. Prance, has been re-employed in Bengal recently.

(b) Mr. Prance retired on proportionate pension in 1924 after 18 years' service. On hearing of the murders of British Officers he volunteered to come out to his old province of Bengal and his offer was gladly accepted by the Government of Bengal and the Government of India. It is obviously in the public interest to make up the deficiency in experienced district officers caused by terrorist outrages by re-employing retired officers who volunteer for service. He has been appointed on contract for a period of two years on a pay of Rs. 2,250 a month and overseas pay at the rate of £30 a month. His contract also contains provision for leave and a return passage to England. His proportionate pension will be held in abeyance during the period of his re-employment.

REFUSAL BY THE CENTRAL PROVINCES GOVERNMENT TO PERMIT MEDICAL MEN TO JOIN THE INDIAN MEDICAL ASSOCIATION.

1022. ***Mr. S. C. Mitra** : (a) Are the Government of India aware that some of the Local Governments, particularly the Central Provinces Government, have refused to permit the medical men in Government services to join the Indian Medical Association ?

(b) Is it a fact that medical men in Government services are permitted to join the British Medical Association and its branches in India ?

(c) Is it not a fact that the British Medical Association is an institution composed of all sections of medical practitioners and has no Government control over it ?

Mr. G. S. Bajpai : (a) Government have no information, but are making enquiries.

(b) Yes, if they are eligible under the rules of the Association.

(c) Yes.

INDIAN AND BRITISH MEDICAL ASSOCIATIONS.

1023. ***Mr. S. C. Mitra :** (a) Is it not a fact that the British Medical Association has standing committees to safeguard the interests of the Indian Medical Service and other services and also criticise Government whenever necessary ?

(b) Is it not a fact that most members of the Indian Medical Service and Royal Army Medical Corps are members of the British Medical Association ?

(c) Are the Director General, Indian Medical Services, and the Director of Public Health members of the British Medical Association and the Indian Medical Association ?

(d) Are Government aware that the Indian Medical Association like the British Medical Association is a purely medical organisation, composed of medical men only, the membership of which is open to independent practitioners as well as to medical men in Government services ?

Mr. G. S. Bajpai : (a) There is a Services Committee of the British Medical Association, which deals with questions concerning Government Medical Services.

(b) Yes.

(c) The present incumbents of the posts of Director General, Indian Medical Service and Public Health Commissioner, are members of the British Medical Association, but not of the Indian Medical Association.

(d) Government regret that they have no detailed information as to the constitution and membership of the Indian Medical Association, but are making enquiries.

DISCRIMINATION IN ALLOWING MEDICAL MEN TO JOIN THE INDIAN MEDICAL ASSOCIATION.

1024. ***Mr. S. C. Mitra :** (a) Will Government please state why they make a discrimination against medical men in Government service by refusing to permit them to join the Indian Medical Association ?

(b) Do the Government of India propose to take necessary steps to remove this ban on Government servants joining the Indian Medical Association ?

Mr. G. S. Bajpai : (a) The Government of India have not refused permission to medical men in their service to join the Association.

(b) Does not arise.

RESOLUTIONS PASSED BY THE ALL-INDIA MEDICAL CONFERENCE.

1025. ***Mr. S. C. Mitra** : (a) Are Government aware of the resolutions passed by the last VIII All-India Medical Conference ?

(b) If so, do Government propose to take any steps on the resolutions ? If so, what ?

Mr. G. S. Bajpai : (a) Government have not yet received copies of the resolutions officially.

(b) Does not arise.

†1026 *—1031.*

EXPIRY OF CONTRACT FOR THE CARRIAGE OF MAILS BY THE BRITISH INDIA STEAM NAVIGATION COMPANY, LIMITED.

1032. ***Mr. K. C. Neogy** : (a) Will Government be pleased to state when the present contract for the carriage of mails with the British India Steam Navigation Co., Ltd., will expire ?

(b) Will Government be pleased to state whether public tenders were invited for the last contract for the carriage of mails made in 1924 ?

(c) If the answer to part (b) be in the negative, will Government be pleased to state the reasons ?

Mr. T. Ryan : (a) The 31st January, 1934.

(b) Yes.

(c) Does not arise.

TENDERS FROM STEAMSHIP COMPANIES FOR THE CARRIAGE OF MAILS.

1033 ***Mr. K. C. Neogy** : Will Government be pleased to state if they propose to invite public tenders from steamship companies for the new contract for the carriage of mails on routes referred to in the existing contract with the British India Steam Navigation Co., Ltd., dated the 26th May, 1924 ?

Mr. T. Ryan : Yes, in respect of such of the services and routes as may be required.

PARTICIPATION OF INDIAN SHIPPING IN THE COASTAL AND OVERSEAS TRADE OF INDIA.

1034. ***Mr. K. C. Neogy** : Will Government be pleased to state whether in view of their expressed policy of providing for " an adequate participation of Indian shipping in the coastal and overseas trade of India ", they propose to give preference to Indian steamship companies for the carriage of mails, and whether it is intended to call for tenders for the carriage of mails separately for different routes or groups of routes ?

†These questions will be answered later.

Mr. T. Ryan : The suggestion in the first part of the Honourable Member's question will receive due consideration. The answer to the second part is that it is proposed to call for tenders separately for different routes as well as for group of routes, so as to obtain the best possible terms.

PARTICIPATION OF INDIAN SHIPPING IN THE COASTAL AND OVERSEAS TRADE OF INDIA.

1035. ***Mr. K. C. Neogy :** (a) Will Government be pleased to state if they have received any representation on behalf of the conference of the small Indian steamship companies as well as from the Indian Merchants' Chamber, Bombay, intimating to them that an unfair rate-war was being carried on by the British India Steam Navigation Co., Ltd., by reducing rates of freight far below the economic level which was hitting the small Indian steamship companies very hard, and that if no immediate steps were taken by Government to prevent such an unfair rate-war, the small Indian steamship companies would be wiped out of existence ?

(b) If the answer to part (a) be in the affirmative, will Government be pleased to state what steps they have taken or propose to take to prevent the small Indian steamship companies from being driven out of the field, in view of the professed policy of the Government of India to provide for "an adequate participation of Indian shipping in the coastal and overseas trade of India" ?

The Honourable Sir C. P. Ramaswami Aiyar : (a) The Government of India have received the representations referred to.

(b) The matter is receiving the attention of the Government of India.

SECURING EMPLOYMENTS FOR THE CADETS OF THE TRAINING SHIP "DUFFERIN".

1036. ***Mr. K. C. Neogy :** (a) Will Government be pleased to state if it is not a fact that the Governing Body of I.M.M.T.S. *Dufferin* have, after careful and prolonged consideration come, to the conclusion that the prospects of employment as officers for the present number of cadets taken by the training ship were uncertain after they obtain their certificates of competency ?

(b) If the answer to part (a) be in the affirmative, is it a fact that Government stated as follows in the Prospectus of the I.M.M. Training Ship *Dufferin*, namely :

“ The Government of India consider that apprentices who give satisfaction should be able to obtain employment ” †

(c) If so, will Government be pleased to state if they propose to legislate on the lines recommended in the report of the Indian Mercantile Marine Committee for securing employment for the cadets of the Training Ship *Dufferin* who have obtained certificates of competency at least on ships plying in the coastal waters of India ?

The Honourable Sir C. P. Ramaswami Aiyar : (a) and (b). Yes.

(c) The position in regard to the prospects of employment of ex-“Dufferin” cadets is being closely watched by Government. In their opinion the uncertainty of the position arises largely from the present abnormal depression in shipping. They do not consider that the need for giving effect to the recommendation of the Indian Mercantile Marine Committee referred to by the Honourable Member has arisen.

†1037*—1046.*

DEATH OF MRINAL KANTI RAY CHAUDHURY, A DETENU IN THE DEOLI DETENTION CAMP.

1047. *Mr. K. C. Neogy : (a) Will Government be pleased to make necessary inquiries and state as to whether a petition signed by seventy-two detenus in the Presidency Jail, Calcutta, and dated June 11, 1932, was addressed to His Excellency the Governor of Bengal, in which the accuracy of facts stated in the Government communiqué regarding the death of detenu Mrinal Kanti Ray Chaudhury at Deoli was questioned, and a detailed account was given of the serious state of health of the said detenu while in Bengal ?

(b) Will Government be pleased to state whether any notice was taken of the said petition by any responsible official ; and, if so, by whom and with what result ?

(c) Will Government be pleased to lay a copy of the said petition on the table ?

(d) Is it a fact that one of the said seventy-two detenus addressed a telegram to His Excellency the Viceroy on the 14th June last, to the following effect :

“ Already petitioned His Excellency Governor of Bengal. Your Excellency’s personal attention solicited to discover truth about alleged suicide of Mrinal Kanti Roy, late detenu, Deoli jail.....” †

If the answer to this be in the affirmative, what action was taken on this telegram ?

(e) When did the detenu Mrinal Kanti Ray Chaudhury arrive at Deoli and on which date was he kept in separate confinement ?

(f) What was the state of his health when he arrived at Deoli ? Will Government be pleased to lay on the table any records of any medical examination of him at Deoli prior to his death ?

The Honourable Mr. H. G. Haig : (a), (b) and (c). I have no information.

(d) No.

(e) and (f). The Honourable Member is referred to the finding of the Magistrate, a copy of which was laid on the table of the House.

ASSOCIATION OF FEMALE CIVIL DISOBEDIENCE PRISONERS IN JAIL WITH PROSTITUTES, ETC.

* 1048. *Mr. K. C. Neogy : (a) Are Government aware that there have been complaints in different Provinces that female civil disobedience prisoners are associated in jail with prostitutes and other women convicted of heinous crimes ?

(b) Has the attention of Government been drawn to the following observations made in a report of the committee appointed by the Social Service League, Bombay, for investigating complaints of released prisoners :

“ Female political prisoners have bitterly complained of being associated with prostitutes and murderesses. This association appears to have been deliberately forced upon them ” ?

The Honourable Mr. H. G. Haig : (a) and (b). I have made enquiries from Local Governments, and will furnish a reply in due course.

CLASSIFICATION OF CIVIL DISOBEDIENCE PRISONERS.

1049. ***Mr. K. C. Neogy :** Are Government aware that near relations, such as brothers or father and son, have been placed in different classes of civil disobedience prisoners, in different provinces, and that there is no uniformity of policy followed by the different Provinces in the matter of classification ?

The Honourable Mr. H. G. Haig : I do not think, even if the Honourable Member's statement is correct, as to which I have no information, that there is necessarily any justification for the suggestion that the classification rules are not being properly applied. Classification in each case is a matter for decision by the Courts in the first instance and, as stated by me on the 7th September, 1932, in reply to supplementary questions on Mr. Lalchand Navalrai's starred question No. 108, the replies received to a recent reference to Local Governments in this matter indicate that there is no misapprehension about the general principles.

†1050 *—1085.*

INTRODUCTION OF SECOND CLASS RAIL MOTORS ON THE KALKA SIMLA RAILWAY.

1086. ***Mr. S. C. Mitra :** Are Government aware that most of the second class passengers travel from Simla to Kalka and *vice versa* by road motors in the absence of second class rail motors ? If not, do they propose to inquire into the matter ? If they are aware, will they be pleased to state what steps, if any, have been taken to introduce second class rail motors for such passengers ? If no steps have yet been taken in the matter, do they propose to do it now ? If not, why not ?

Mr. P. R. Rau : Government are aware that many persons prefer to travel by road rather than by railway between Simla and Kalka. I am asking the North Western Railway Administration to examine the Honourable Member's suggestion to run rail motors for second class passengers.

APPOINTMENT OF SIR DAVID PETRIE AS CHAIRMAN OF THE PUBLIC SERVICE COMMISSION.

1087. ***Mr. S. C. Mitra :** (a) Will Government please state on what grounds Sir David Petrie has been appointed as the Chairman of the Public Service Commission ?

(b) Is it a fact that he is not the seniormost member of the Commission ?

(c) Will Government please state what are the educational qualifications of Sir David Petrie and other members of the Commission ?

(d) Is it a fact that he belonged to the Criminal Intelligence Bureau of the Home Department before he was appointed in the Public Service Commission ?

(e) Is it the policy of Government not to appoint any Indian as Chairman of the Public Service Commission ? If so, why ?

(f) Is it a fact that the Public Service Commission, in spite of the recommendation of the General Purposes Sub-Committee of the Retrenchment Committee, consists of four members, two of whom are Indians and two Europeans ?

The Honourable Mr. H. G. Haig : (a), (b), (d) and (e). I have already dealt with these matters in reply to questions supplementary to question No. 507.

(c) A statement is laid on the table.

(f) Yes. Government were unable to accept the recommendation of the Retrenchment Committee that the strength of the Commission should be reduced from five to three.

Statement showing the educational qualifications of the Chairman and Members of the Public Service Commission.

1. Sir David Petrie, M.A. (Aberdeen).
 2. Mr. J. C. Weir, B.A., and LL.D. (Dublin).
 3. Mr. B. P. Varma, B.A. (Allahabad), M.R.S.I., M.I.M.E.
 4. Mr. L. K. Hyder, B.A. (Allahabad), B.A. (Cambridge) Ph.D. (Heidelberg).
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CASTING VOTE OF THE CHAIRMAN OF THE PUBLIC SERVICE COMMISSION.

1088. ***Mr. S. C. Mitra :** Is it a fact that when opinions of Indian and European Members of the Public Service Commission are divided, the casting vote of the European Chairman is always cast in favour of the European members ? If not, will they be pleased to state the number of such cases during the last three years, where Europeans and Indians were divided and the casting vote of the Chairman had to be exercised and the number of cases where the casting vote of the Chairman was cast in favour of Indians ?

The Honourable Mr. H. G. Haig : The proceedings of the Commission are confidential, and I am not prepared to discuss the highly improper surmises of the Honourable Member.

APPOINTMENT OF THE CHAIRMAN OF THE PUBLIC SERVICE COMMISSION.

1089. ***Mr. S. C. Mitra :** Is it a fact that it was decided at the time of the creation of the Public Service Commission that service men will

not be appointed as Chairman of the Public Service Commission ? If so, will Government be pleased to state the reasons for over-riding the above decision in favour of a police officer ?

The Honourable Mr. H. G. Haig : The reply to the first part of the question is in the negative. The second part does not therefore arise.

UNSTARRED QUESTIONS AND ANSWERS.

RECRUITMENT TO CLERICAL APPOINTMENTS IN POST OFFICES.

138. **Mr. Bhuput Sing :** (a) Is it a fact that the Director General of Post Offices has ordered that recruitment to clerical appointments in post offices should be made only from among the natives of the respective revenue districts ?

(b) If the answer to part (a) is in the affirmative, will Government please state whether Lieut. Shujat Ali Saib, Superintendent of Post Offices, Salem, provided one Mr. S. Gopalakrishnan with a post of clerk in the Salem Division, even though the latter belonged to Valavanur, a place in the South Arcot revenue district ?

Mr. T. Ryan : (a) Yes, in 1926. But the present position is as stated in the reply to Khan Bahadur Sarfaraz Hussain Khan's unstarred question No. 29 in this House on the 14th July, 1930.

(b) Government have no information. The matter is within the competence of the Postmaster General, Madras, to whom a copy of the question is being sent.

CLAIMING OF THE RAILWAY FARE AT HIGHER RATES BY THE INSPECTOR OF POST OFFICES, DHARAMPURI.

139. **Mr. Bhuput Sing :** (a) Has the Director General of Post Offices directed during December, 1930, that his subordinate officers of the department should, for their journeys on duty, claim, when travelling by railway, fares for the class by which they actually travel and that it would constitute a fraud to claim fares of a higher class after actually travelling by a lower class ?

(b) If the answer to part (a) is in the affirmative, will Government please state whether, during the year 1931, the Inspector of Post Offices, Dharampuri, in the Salem Postal Division, was not habitually travelling in the third class and claiming railway fares at first or second class rates ?

(c) Has this act of the inspector been brought to the notice of the Postmaster General and, if so, what action was taken in the matter ?

(d) What disciplinary action do Government propose to take to check such acts on the part of officers ?

Mr. T. Ryan : (a) No.

(b), (c) and (d). Do not arise ; but a copy of the Honourable Member's question is being sent to the Postmaster General for enquiry.

NON-ADMISSION OF INDIAN OFFICERS TO THE PRINCE OF WALES SEAMEN'S INSTITUTE.

140. **Mr. K. O. Neogy** : (a) Will Government be pleased to state if they have received any letter from the Indian National Steamship Owners' Association in connection with the non-admission of Indian officers to the Prince of Wales Seamen's Institute and if so, will Government be pleased to state if any reply has been sent to that letter and, if so, the nature of the reply given ?

(b) Are Government aware that the institute was established out of public subscriptions, and that large contributions were made by Indians to its funds ?

(c) Does this institute receive any financial assistance from Government ? If so, to what extent and on what conditions ?

The Honourable Sir C. P. Ramaswami Aiyar : (a) Yes, a letter has been received from the Indian National Steamship Owners' Association on the subject and is still under consideration.

(b) Government are aware that the building was raised from public subscriptions but have no information as to the exact amount subscribed by Indians.

(c) The Institute receives grants-in-aid from the Customs Department out of the Sunday Fees Fund. The amount paid last year was Rs. 2,390 and the amount sanctioned this year is Rs. 2,400. No express condition is laid down but the grants are made on the understanding that the work of the Institute is conducted on the same lines as in the past.

CARRIAGE OF GOVERNMENT AND RAILWAY MATERIALS BY INDIAN SHIPPING COMPANIES.

141. **Mr. K. O. Neogy** : (a) Will Government be pleased to state the quantity of Government and Railway materials carried during the last two years from any ports to India and the names of the steamship companies by which the said materials were carried giving separately the tonnage carried by each company ?

(b) Will Government be pleased to state, in view of the following resolution passed by the Council of State on the 15th March, 1922, and accepted by the Government of India :

“ This Council recommends to the Governor General in Council to issue instructions in the departments concerned to give Indian Shipping Companies an opportunity of quoting for the carriage of Government and Railway materials from any ports to India and to give them preference if their quotation is approximate to that of other Companies.”

if any preference for the carriage of Government and Railway materials referred to in part (a) above, was given to Indian shipping companies and if so, the extent to which such preference was given and the quantity of cargo-carried by such companies in pursuance of such preference ?

Mr. A. G. Clow : (a) The stores shipped by the India Store Department, London, from European and American ports to India amounted in 1930-31 to 106,865 tons. The total for 1931-32 is not yet available and

the Government of India have no particulars of the distribution of the tonnage among the shipping companies engaged in this trade.

(b) The answer is in the negative.

CARRIAGE OF GOVERNMENT AND RAILWAY MATERIALS BY INDIAN SHIPPING COMPANIES.

142. **Mr. K. C. Neogy** : (a) Will Government be pleased to state if the Burma Railways recently invited the rates of freight for the carriage of scrap rails from Rangoon to Calcutta not by open tender but by verbal negotiations ?

(b) Will Government be pleased to state whether the Burma Railways actually carried on negotiations with the British India Steam Navigation Company, Limited, intimating to them that a certain rate of freight only would be suitable for the carriage of such scrap rails from Rangoon to Calcutta, and no such negotiations were carried on with the Scindia Steam Navigation Company, Limited, whom they had also asked to quote for the carriage of such scrap rails ?

(c) Will Government be pleased to state if it is not a fact that while the British India Steam Navigation Company, Limited, as a result of negotiations with the Burma Railways, quoted Rs. 7 per ton for the carriage of scrap rails from Rangoon to Calcutta, the Scindia Steam Navigation Company, Limited, quoted Rs. 6 per ton for the carriage of such scrap rails from Rangoon to Calcutta and wired to the Honourable the Commerce Member and the Railway Board accordingly on the 8th August, 1932 ?

(d) Will Government be pleased to state if it is not a fact that in spite of the lower rate quoted by the Scindia Steam Navigation Company, Limited, the Burma Railways accepted the rate of the British India Steam Navigation Company, Limited, and actually booked space with them for the carriage of 2,000 tons 41½ lbs. of scrap rails from Rangoon to Calcutta ?

(e) If the answer to part (d) be in the affirmative, will Government be pleased to state if such action on the part of the Burma Railways is in consonance with the resolution passed by the Council of State on the 15th March, 1922, and accepted by Government, whereby departments concerned were to give Indian shipping companies preference for the carriage of Government and Railway materials if their quotation was approximate to that of other companies ?

Mr. P. B. Rau : I have called for particulars of the case from the Agent, Burma Railways, and, on receipt, will lay a reply on the table.

CARRIAGE OF GOVERNMENT AND RAILWAY MATERIALS BY INDIAN SHIPPING COMPANIES.

143. **Mr. K. C. Neogy** : (a) Will Government be pleased to state if the Railway Board wrote to the Scindia Steam Navigation Company, Limited, on the 15th August, 1932, intimating to them that the freight rate of Rs. 7 per ton for the carriage of old rails from Rangoon to Calcutta belonging to the Burma Railways was accepted by the Agent, Burma Railways ? Is it a fact that both the Agent, Burma Railways and the

Railway Board, had then before them the lower quotation of the Scindia Steam Navigation Company, Limited, of Rs. 6 per ton for the carriage of such rails ?

(b) Is it not a fact that the Scindia Steam Navigation Company, Limited, in their letter to the Secretary, Railway Board, dated the 27th August, 1932, stated that Messrs. Mackinnon Mackenzie advised them (the Scindia Company) on the 22nd August, 1932, that the Burma Railways had booked no cargo so far ? How do Government reconcile this statement with the statement in the letter of the Deputy Director, Railway Board, to the Scindia Company, dated the 15th August, 1932, that the freight rate of Rs. 7 per ton for old rails of the Burma Railways for shipment from Rangoon to Calcutta had been accepted by the Agent, Burma Railways ?

(c) If the answer to part (a) be in the affirmative, will Government be pleased to state if this action of the Agent, Burma Railways and of the Railway Board is in consonance with the resolution passed by the Council of State on the 15th March, 1922, and accepted by Government ?

Mr. P. R. Rau : I have called for particulars of the case from the Agent, Burma Railways, and, on receipt, will lay a reply on the table.

BILL PASSED BY THE COUNCIL OF STATE.

Secretary of the Assembly : Sir, the following Message has been received from the Secretary of the Council of State :

“ I am directed to inform you that the Council of State has, at its meeting held on the 27th September, 1932, agreed without any amendment to the Bill further to amend the Code of Criminal Procedure, 1898, for a certain purpose, which was passed by the Legislative Assembly at its meeting held on the 21st September, 1932 ”.

THE CRIMINAL LAW AMENDMENT BILL.

Mr. President (The Honourable Sir Ibrahim Rahimtoola) : Further consideration of the following motion moved by the Honourable Mr. H. G. Haig on the 21st September, 1932 :

“ That the Bill to supplement the Criminal Law be referred to a Select Committee consisting of Mr. Muhammad Yamin Khan, Mr. S. C. Sen, Mr. Gaya Prasad Singh, Mr. S. G. Jog, Mr. B. R. Puri, Mr. S. C. Mitra, Mr. Muhammad Azhar Ali, Mr. B. V. Jadhav, Sir Leslie Hudson, Sir Muhammad Yakub, Mr. N. N. Anklesaria, Captain Rao Bahadur Chaudhri Lal Chand, Mr. C. W. Gwynne and the Mover, with instructions to report on or before the 7th November, 1932, and that the number of Members whose presence shall be necessary to constitute a meeting of the Committee shall be five.”

Sir Hari Singh Gour (Central Provinces Hindi Divisions : Non-Muhammadan) : Sir, in moving his motion the other day, the Honourable the Home Member referred to a debate that took place in this House on the 1st February, 1932, in the course of which he quoted me as saying that I, on behalf of the non-official Benches, had asked the Government to bring before the Legislature the Ordinances for its consideration and that, though belated, he admitted, with a blush, he is doing it now. Sir, that reminds me of a story of a gentleman whose wife ran away and the husband wrote to her and said : “ Darling, come back ”. After two or three years, she came back, and said : “ Darling, I have come back ”, and she presented

him two kids. What my Honourable friend has done here now, is, he has come back and presented five kids.

Mr. K. Ahmed (Rajshahi Division : Muhammadan Rural) : What is the interval here ?

Sir Hari Singh Gour : In the course of less than one year. For, if Honourable Members will look at the Preamble to the Bill, they will find that by one fell swoop, the Honourable the Home Member wishes to reform, amend and repeal parts or whole of no less than five substantive laws including the one which, after mature consideration and full discussion, was enacted in this House only last year, namely, the Press Emergency Act. I should have expected, Sir, that the Honourable the Home Member would have profited by the discussion that took place in this House on that day. I myself then pointed out as to how far several other provisions of these Ordinances had transgressed the fundamental laws to which I referred. If Honourable Members will read what I said at page 213 of the Assembly Debates of the 1st February, 1932, they will find that I devoted a considerable portion of my argument to showing that there were several provisions in the Ordinances that were repugnant to the common law of England, and would, therefore, be repugnant to the provisions of the Indian Constitution Act, section 65, which places the limitation upon the power of the Legislature that it shall not enact any law which affects in any degree the allegiance of any person to the Crown of the United Kingdom. Sir, what the Honourable the Home Member has done is merely to use paste and a pair of scissors and cut out all the Ordinances, if I may be permitted to say so, some of its ugly and obnoxious provisions and paste them on a piece of paper and he says : " Here, you are, you wanted me to bring them before the House. Here, I have brought them now before you, enact them ". The Honourable the Home Member will probably recall that this is not the first occasion when portions of the Ordinances had been brought before this House for its concurrence. Honourable Members will remember the provisions of the Foreign Relations Bill and the Press Bill, and if they will see the Bills, as they came before this House and as they were finally enacted by it, they will hardly realise that the Bills that they had passed bore no shape or form of identity to the Bills as they were introduced. I am afraid that the Honourable the Home Member will find that this Bill, if it ever goes to the Select Committee and emerges from it in the shape in which it would be acceptable to this House, would equally lose its identity in the wholesale revision to which it would be subjected by that body. The Honourable the Home Member makes no secret of the fact that his object in enacting this measure was to cope with three-fold movements that are at the present moment disturbing the peace of the country. He said, we have the civil disobedience movement, we have the communistic movement, and, last of all, we have the terrorist movement, and that the combined effect of the consolidated measure, which he wants this House to enact, is to cope with these three-fold movements. Now, Honourable Members will at once ask themselves one question. Take for example, first of all, the civil disobedience movement. This movement was started for the purpose of bringing pressure to bear upon the executive Government of this country and in England to give this country self-government, a self-government which will make the nationals of this country self-respecting, not only within their own borders, but also abroad.

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Now, I am not one of those who consider that repression or repressive laws will, in the slightest degree, cope with the mischief with which the Government of India are, at the present moment, confronted. I pass before my eyes the history of revolutionary movements in all countries of the West and, last of all, of the neighbouring island of Ireland and I feel, Sir, that if history repeats itself, conciliation and not repression is the cure for this civil commotion that is at the present moment engaging the attention of a very large section of the people in this country. The Honourable the Home Member will reply : " We are dealing with both aspects of the question. While we are engaged in considering the best means of establishing a peaceful and progressive constitution for this country, we, as the Government of India, have our duty to see that law and order is respected during the interim that we are in power ". That is a perfectly just and legitimate wish ; but are you sure that you are not over-legislating for this evil which, at the present moment, is, as I have said, disturbing the peace of the country ? I shall very presently point out that the throwing into legislative shape of the Ordinances that have been at work for a period of 10 or 12 months will certainly not deal with that one aspect of the civil disobedience movement ; and I shall presently point out, that so far as the right of forfeiture of property is concerned, I have, as I pointed out on the last occasion, very serious doubts whether this Legislature has power to enact a measure in favour of the confiscation of private rights without a right of indemnity. That, I submit, is what I have to say on the general aspect of the civil disobedience movement.

The second evil, to which the Honourable the Home Member referred, was the growing strength of communism in this country. Now, I do not think any Honourable Member of this House has got even a lurking sympathy for blatant communism, but, at the same time, I think there is no Member of this House who would arm the Government with plenary powers which, while checking the growth of communism in this country, will be a serious menace to the life, liberty and property of peaceful citizens. You have to hold the balance between the checking of lawlessness and revolutionary spirit and the protection of rights of person and property of the vast bulk of the people who are anxious to be peaceful and law-abiding and who, at any rate, would not furnish fresh recruits to these unlawful associations, by the very reason that your drastic and, may I say, Draconian laws will immediately recoil upon the sympathies of the people who otherwise would be for the preservation of law and order in this country.

Thirdly, we come to the terrorist movement. We have already expressed our views upon the lamentable recrudescence of the terrorist movement in this country. Honourable Members know the history of the movement which is about 30 years old. I do not wish to dilate upon its cause, but I do say that while this House will be at your back in suppressing the terrorist movement it would not be at your back if, under the guise of suppressing the terrorist movement, the effect of your legislation is to terrorise the people.

That, Sir, is what I have got to say with reference to the objective which the Honourable the Home Member says he had in introducing this

piece of legislation. It has been asked that if the convictions under the Ordinances are illegal, how is it that nobody has gone to the High Court for the purpose of questioning their legality. If the Honourable the Home Member will turn to the provisions of the Ordinances, now sought to be perpetuated in the Bill, he will find that he has added a clause to the effect that nothing therein contained shall give the civil or criminal Court any jurisdiction to question the legality of anything purported to be contained in those Ordinances. And further, Honourable Members will observe that it is the policy of the people engaged in the civil disobedience movement to fill the jails and they have professed as possessing no confidence in the law Courts. But whether they have or have not, and whatever may be the view of the Courts, we, as legislators, guided by what is the precedent and principle underlying the policy of British legislation and the Parliamentary Act which guides and controls the powers of this Legislature, have also to use our discretion and our judgment when we place upon the Statute-book a law which would deprive the subject of the ordinary remedy he possesses of safeguarding his rights in the usual way through the instrumentality of the Courts. And that fact must not be ignored when we are going to place our imprimatur upon an Act which shall be the Act of our own making.

Now, Sir, if we have in view these facts, facts to which I have adverted, we shall have no difficulty in commenting upon the piece of legislation on which we are called upon to give our verdict. Honourable Members, who have preceded me, have gone into the details of the various clauses of this Bill and criticised them. I do not propose to follow in their wake, because I think that we can easily sub-divide all these clauses into four main heads and, if we can attack these four main heads and understand each one of them, we shall probably have given a useful lead to those upon whom shall be cast the duty of revising this measure. In the first place, Honourable Members will find that this composite Bill seeks with one fell stroke to amend five Acts of the Indian Legislature. Now, Sir, Honourable Members are aware that these five Acts of the Indian Legislature, which are sought to be amended, are, with the exception of the Code of Criminal Procedure, independent of one another, and, while I concede that, while you are amending the Penal Code, you will be justified in amending, at the same time, the processual law dealing with those offences. I cannot bring myself to realise the necessity of having five Bills in one, because it would give this House no clear idea as to what each Bill is intended to subserve. Let me give each one of them in its turn. First of all, and the most important of them all, is the amendment of the Indian Penal Code. Honourable Members will find that a very large number of sections—140A, 164A, 164B, 188A and 507A—are sought to be added to the provisions of the Indian Penal Code. Now, I ask the Honourable the Home Member one question : from the very start by your own confession this is an emergency piece of legislation intended to deal with the recrudescence of three political evils to which you have adverted. Therefore, your action must be primarily preventive and not punitive. The fundamental and primary object of the Indian Penal Code is punitive and not preventive ; the primary object of the Indian Penal Code is to punish people for offences committed and the one underlying principle of the Indian Penal Code is that nothing is an offence unless it is accompanied by, what lawyers call, the *mens rea*, that is, the guilty mind, criminal intention, criminal knowledge. That being

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the fundamental principle of our standing criminal jurisprudence, have you got that principle in any of the sections which you wish now to add to the penal armoury of the country ? You have not. You read your sections and you will find that they are what an English lawyer would call *not mala per se* but *mala qua prohibita* ; they are not offences, because they carry with them a certain criminality, but they are offences because for the purposes of *populus salus* you want that the members of the public shall conduct themselves in a certain fashion. Consequently, they cannot possibly fall within the category of penal laws to be added to the criminal law of the country. That, I submit, is one reason for objecting to the motion which the Honourable the Home Member has asked this House to endorse. But my more serious objection to it is this : that not only do you propose to create a new jurisprudence, you are prescribing a new procedure, you are creating a new jurisdiction and you are adding a new punishment. All these four things which are foreign to the fundamental principle of established criminal jurisprudence of this country as regards the offences, my friend, Mr. Puri, has passed in review, and I endorse every word of his when he points out how large and sweeping were the terms in which your offences were described, and I have no doubt that Honourable Members, by looking at random to any of the sections, will immediately find that the criticism that has been made against the definition of these offences is abundantly justified. The second point and the third and fourth seem to have escaped the notice of most critics of this Bill. The second point that I wish to draw the attention of the House to is that you have prescribed a new procedure ; that new procedure is...

Mr. President (The Honourable Sir Ibrahim Rahimtoola) : The Chair does not want to interrupt the Honourable Member ; but ever since he started to speak, he is addressing Government Benches and not the Chair. Will he please address the Chair ?

Sir Hari Singh Gour : I apologise, Sir. I did not know. I was always addressing the Chair and I was speaking through you to the House. The second point I wish to draw the attention of the House to, is that the new procedure, which has been prescribed, makes at one fell stroke a clean sweep of the existing procedure. My friends, who do not follow the profession of law, will understand that the principle of the Indian Penal Code is that all offences are classified according to the degree and gravity of their crime into cognisable, that is to say, where the police may arrest without the warrant of a magistrate, and non-bailable, that is to say, where the accused is sent to jail without the option of giving security for his release on bail, and what is known as summons cases and bailable cases. Now a very large number of cases which were bailable have been made non-bailable. These offences are all contained in clause 12 of the Bill. I need not detain the House by reading through that clause. But Honourable Members will find that no less than ten offences, which were bailable, have been made cognisable, that is to say, where the accused is liable to be arrested by the police and non-bailable, that is, where the police may lock him up on their own authority. I submit, that is a startling departure from the existing procedure and I should like to have an explanation as to why the Government are altering the existing procedure dealing with ten offences which are not added to by the proposed Bill, but which are

part of the *corpus juris* of the existing Statute. Then, with regard to the new procedure dealing with the special offences in the Bill, the general provision is that the police have been given a free hand ; but if that were all, it would be a very serious encroachment upon the rights and liberties of the people. But that is not all. The offences, every one of them proposed to be enacted by the new measure, are triable by any magistrate. Now, this is a most startling procedure,—that offences which require a certain mentality, offences of a highly technical character requiring weighty judgment, offences which furnish no precedents and created for the first time by this Bill, are to be tried by a magistrate of the third class or second class, which seems to be a most startling departure from the existing procedure. And what would be the result ? A District Magistrate is the head of the district police and the custodian of peace and order in the district. As it is, he is also the criminal appellate authority over the decisions of second and third class magistrates. Therefore, if these cases are sent up by the police to a second class magistrate and he imprisons a man for six months, the appeal would lie to the District Magistrate who is the head of the district police, and, as such, he finally disposes of the appeal, and there is an end to such judicial redress as this Bill gives to the aggrieved party. No doubt, there is a right of revision, but most of the High Courts have now laid down that, except on a point of law, they are not free to interfere with a finding of fact, so that it seems to me that this is a startling innovation in the matter of procedure and jurisdiction.

Now, I come to the last point, and that is about the forfeiture of property of all persons who may be suspected of being privy to aiding or abetting the civil disobedience movement. I wish to ask Honourable Members to recall the words of the Honourable Mr. Gwynne only the other day in connection with the motion that was made by the Honourable Pandit Sen asking this House by a Resolution to add the punishment of forfeiture to the existing punishment in the case of abduction, and the Honourable Mr. Gwynne, replying on behalf of Government, did me the honour of citing a few passages from my book in which he pointed out that the Indian Legislature had repealed the punishment of forfeiture from the Statute-book. Sir, the history of this forfeiture is a long one, and I do not wish to tire the House by giving it. But let me say to this House that in the first Assembly almost one of the first acts of that Assembly was to write off the Statute the punishment of forfeiture which visited not only on the guilty but also upon the innocent relations of the guilty man, and, as such, being repugnant to the modern notions of punishment, it concurred in repealing it, as no longer in consonance with the principles of modern criminal jurisprudence. Having said that, I find now to-day a resurrection of this dead and buried provision regarding punishment in this Bill. What justification is there for it ? I quite understand, the Honourable the Home Member would say that the ramifications of the civil disobedience movement are widespread, and, therefore, they must lay by their heels not only those who are taking part in the civil disobedience movement, but also those who feed and nourish it by giving it material support. Sir, let me ask the Honourable the Home Member that while the fire is being fed from below, a few buckets of water thrown upon it from the top would not extinguish the growing conflagration. On the other hand, the result of this would be that people, whose property has been confiscated, without indemnity or without recourse to the law, would

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become recruits to the ranks of the civil disobedience movement. And what is more and what is worse, revolution, as we all know, is the result of a revolutionary mind, of a revolutionary psychology. You may kill and destroy the recrudescence of lawlessness ; but far more dangerous, far more destructive is the onrush of the revolutionary spirit, and you will be encouraging that spirit and making it widespread by making people feel that their property has been confiscated and that they have no redress against the action of the executive. Can this House, at any rate I am speaking on behalf of the popular section of this House, can I expect one solitary Member on the popular Benches supporting such a reactionary proposal ? Pause and consider ; think of its unconstitutionality, think of its far-reaching effect, think of what it would lead to, and you will have your answer.

Sir, to one interjection of my friend, Mr. Neogy, the Honourable the Home Member had vouchsafed the reply that he had consulted the officers of the Crown, and their opinion was favourable in regard to the second object. The question I had raised and which this House had raised was, that you have section 72 of the Government of India Act which lays down that the Governor General may, in cases of emergency, make Ordinances. Now, there must be for the making of an Ordinance one emergency, a fresh case of emergency ; no fresh emergency, no fresh Ordinance. Did the Honourable the Home Member refer to the Law Officers of the Crown the question whether it is competent of the Government of India to make Ordinances after Ordinances to deal with a single case ? That is the whole question. Your emergency is one continuing emergency.....

Mr. President (The Honourable Sir Ibrahim Rahimtoola) : I have already pointed out to the Honourable Member that he must address the Chair.

Sir Hari Singh Gour : This is the impersonal " you ", I submit. I do not want to offend anybody's susceptibilities, but I thought it was the Parliamentary method of expression. My submission is that here we are not concerned with emergencies and fresh emergencies, but we are concerned with one single continuing emergency, and the question is whether it is competent of the Government of India to issue a consolidated Ordinance to extend the operation of the original Ordinances to deal with exactly the same emergency treating it as a fresh Ordinance dealing with a fresh emergency. That is the question and the Honourable the Home Member need not require the advice of the Law Officers of the Crown to give an answer to such a simple proposition which is clearly provided for in the Statute law. That is my submission. With regard to what the Honourable the Home Member may have been guided by, namely, the opinion of the Law Officers of the Crown, whatever that may have been, we are sitting here as a Legislature and it is our duty to see not merely that our enactment is legal, but that it is just, and it is from that aspect of the question that I am addressing this Honourable House. I cannot bring myself to accept the provisions of this Bill and though I am aware that at the present moment we are merely concerned with the main principle of the Bill, let us for a moment advert to what is the main principle of this Bill. If the main principle of this Bill be to modify the Indian Penal Code, our answer is clear and decisive. We are not in favour of it. If the

object of this Bill be to change the Criminal Procedure Code, our answer is equally clear and decisive that so far as the processual sections dealing with the main offences, which you have now added or propose to add to your penal law, is concerned, we are not in favour of it. The next point is this. Does this House approve of some legislation of a transitory character limited in its scope and making due safeguards to deal with a case of emergency that undoubtedly exists? My Honourable friend, the Home Member, would say that that is exactly what we are providing against, and if they are to be provided against, such a case of transitory emergency cannot be met by altering the *corpus juris* of the country. I have already pointed out the objections that exist to the change of substantive and adjectival law on this score.

One more word and I have done. I shall now refer to the Press Act of 1931. This House would be stultifying itself if, after long and careful deliberation in enacting the measure of 1931 and overriding those identical provisions culled from the Ordinance which have found a place in the Bill when it went to the Select Committee, it were to consent to the re-insertion of the rejected provisions of that Bill. Need I remind the House, how anxiously this House has considered the provisions of the Press Emergency law which we enacted last year. Those who sat in the Select Committee will remember that that emergency law was the outcome of a compromise between the Government and the other members of the Select Committee. Those who will read the discussions in the open House will require no further reminder that this House has given the Government power, exceptional power, to regulate and control the Press and the Government have not come forward, nor indeed have they stated it in the Statement of Objects and Reasons, nor has the Honourable the Home Member in the course of his speech even alluded to the fact that the Act of 1931 was put to the test and has been found in any degree wanting. I, therefore, submit that this House cannot, within 12 months, reinforce the penal provisions by restoring those very provisions which they had cut out last year, unless fresh experience has been gained and new reasons are given for the purpose of justifying such an extraordinary course. I have always looked upon the freedom of the press as one of those civic rights to which every free citizen and every free country attaches the greatest importance. A country, without a free press, is like a street without lights or a room without windows. The press serves the purpose of focussing and disseminating public views by guiding public opinion, and indeed it is the watchdog of the people against the actions of the executive Government. A free press has been the subject of defence for centuries. Did not John Milton, a great poet of my friend's own country, write that celebrated book, "Areopagitika", in defence of the press? He was nurtured in a free atmosphere, enjoying that freedom for which we are all anxious. He must have some sympathy, at any rate, with the desire on this part of the House that so far as the press is concerned, you shall not muzzle it in the manner in which it is sought to be muzzled under the proposed enactment.

Before I close, I wish to refer to the very large number of motions of which notice has been given by Honourable Members for the circulation of this Bill. Honourable Members will find that the present Bill is nothing but a re-enactment of the Ordinance which had been in force for the last nearly 10 or 11 months and, if Honourable Members will examine carefully every one of the sections contained in this Bill, they will find that it deals

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with an actual case, either boycott or picketing of liquor shops, and every one such act occurring or likely to occur against which the measure provides. If the Bill is sent out for the purpose of eliciting public opinion thereon, I think it would require no prophet to inform this House that, so far as the popular side of the country is concerned, the opinions would be strongly against the Bill. So far, of course, as the Local Governments are concerned, their opinions would be equally in favour of the Bill. Sir, the executive naturally do not wish that their unfettered powers should be in any way controlled either by the judiciary or by the Legislature. We know very well, then, as to what such opinions would be. In giving notices of their dilatory motions, Honourable Members were inspired by a feeling that the adoption of such Fabian tactics might at least lead to a reconsideration of the whole question on the part of the Honourable the Home Member. Sir, I have too high an opinion of the Home Member to think for one moment that he requires any pressure from the outside public to bring him to a reasonable frame of mind. I know in what high esteem the Honourable the Home Member is held on this side of the House and the fairness and impartiality with which he meets the just criticisms by the popular Members of this House (Hear, hear), as was apparent on the last two or three occasions when controversial measures were sent to the Select Committee and returned to this House, and I feel the assurance that he would reconsider the whole situation and look to the opinions expressed in this House and calmly and dispassionately weigh them in that judicial balance of his mind which he possesses and see whether the whole Bill does not require to be recast from beginning to end. If that be his opinion, then why not withdraw this Bill and re-draft the whole thing, and having re-drafted it, why not bring it up in the November Session,—because you have now got the accumulated opinions of the various sections of the House? One of these opinions is that they will not tolerate the implementing a permanent Statute by the addition of these sections, while, of course, they would be quite prepared to help the Government by enacting an *ad hoc* measure to serve a temporary purpose. My Honourable friend may say: "We desire to hand over to the new Government an oiled and well-lubricated machinery of Government". Well, Sir, this oiled and well-lubricated machinery of Government will be thrown into the scrap heap if there is not a really reasonable measure of responsibility in the Centre. The new Government will look at the question from a new angle, and they will decide for themselves as to how to cope with the evils by which the country and its Government will be confronted. "Enough unto the day is the evil thereof." Decide for yourself and for the transitory period only, before the advent of the new Government, upon such measures as you consider necessary for the purpose for the preservation of law and order; but beyond that, let not your ambition go. (Hear, hear.) If you do that, you will perhaps find that a very large section of opinion will be ready to help you.

Mr. President (The Honourable Sir Ibrahim Rahimtoola) : Order. order.

Sir Hari Singh Gour : I mean to help the Government. I wish, therefore, Sir, to appeal to the Honourable occupants of the Treasury Benches to adopt the only course that seems to be reasonable, in view of the numerous weighty objections to which the Bill under reference is open.

Sir, with these remarks, I would ask the Honourable the Home Member once more to take a long view and see how far he is prepared to meet the very serious objections to which this Bill is exposed. (Applause.)

Mr. H. P. Mody (Bombay Millowners' Association : Indian Commerce) : Mr. President, we have before us a measure thoroughly unsound in principle, but introduced in a speech admirable in its tone and temper. It sometimes happens that one cannot honestly congratulate a bride-groom upon a bride, but one is able none the less to congratulate him upon the way in which he has gone through the ceremony. In like manner, while I cannot compliment the Honourable the Home Member upon the Bill that he has sponsored, I can honestly compliment him upon the way in which he has presented his case to the House.

I am against this Bill, because it seeks to establish the principle that for the purpose of meeting an abnormal situation, it is necessary to embody abnormal provisions in the ordinary law of the land. Holding as I do that opinion, I do not propose to discuss a single detail of the measure. I propose to apply myself very generally to the main purpose of the Bill. It is possible that some of my Honourable friends may find my remarks too general in character, but in view of the fact that my Honourable friend, Mr. Puri, dissected every clause of this measure, limb by limb, and artery by artery (Hear, hear), and there are probably 50 other Members of this House who are anxious to perform similar operations, and, in view, again, as I have said, of the fact that my whole objection is against the principle of this measure, I shall not be tempted into discussing a single provision.

If I may begin my observations by stressing the obvious and the elementary, I would say that there is nothing like absolute liberty anywhere in this world. The liberty of the individual is always conditioned by the state of the society in which he lives ; and, paradoxically enough, the greater the measure of civilisation that he enjoys, the greater the restrictions put upon his liberty. There is a very wide range of restrictions covering almost every human act and omission. Not only, Sir, may I not steal, or lay violent hands on another, or pinch my neighbour's wife (Laughter), but I may not also drink when I like, or read what I want to, or even attempt to take my own life. These restrictions upon the liberty of the individual have got greatly to be enlarged in the interests of society in general in times of emergency. One ordinary and most familiar instance is when, during times of civil disturbance, the arm of the law requires to be lengthened, and the curfew order is promulgated. Not only does the individual accept the necessity of such measures, but

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in the case I have mentioned, he often actually demands it in the interests of himself and of society in general. That really is the principle of the Ordinances under which we live. They were designed to meet a special emergency, and were also, I hope, designed to be limited in their duration. Now, Sir, it would be idle to pretend that these Ordinances have met with the acceptance of people even outside the ranks of those who are associated with the civil disobedience movement or who have any sympathy with it. There is a large body of opinion which has regarded these Ordinances as having gone far beyond the necessities of the case, and as having been administered in a manner which cannot possibly meet with the approval of even the most law-abiding citizens. But, Sir, it is equally true that there is a large body of opinion which has regarded

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during these two or three years of unrest and disorder that some special measure was necessary for the purpose of meeting the emergency with which Government were faced. That, I repeat, is the justification in principle of the Ordinances which have been imposed upon the country. That principle is now sought to be extended, and the Government seek to incorporate most of the provisions of these Ordinances in the Statute-book. I say that such an extension of the principle is utterly wrong. What, then, is to be done ? The remedy is obvious. If Government feel that these special powers are necessary—I am not going to discuss the necessity here to-day,—let them carry on as they have carried on. They imposed these Ordinances without consulting public opinion. They have gone on with these Ordinances for two years and more. Let them continue with these until the movement against which they were designed has been suppressed. I shall again emphasise that I am not here to say one way or the other as to how far the emergency still exists, and how far the whole range of armoury of Government still requires to be kept intact. All that I say is that if a state of affairs continues which, Government, in their wisdom, believe, justifies the continuation of the Ordinances, let them carry on with the Ordinances. They will say : We are coming to the Legislature for the purpose of carrying public opinion with us, for the purpose of giving the representatives of the people an opportunity of expressing their opinion, and the Legislature shirks its responsibility and turns down the very request that some Members of the Legislature have during the last couple of years voiced on the floor of the House. My reply is that if that is the position of Government, they should have come forward with a measure strictly limited in duration, and especially designed to meet whatever emergency still exists. Government might use another argument and say : Why should any one object to the embodiment of these provisions even in the ordinary law of the land, since whatever the construction put upon them, they affect only the disturbers of the public peace ? I say that such an argument is entirely idle and untenable in view of our experiences during the last few years. Laws are enacted by human machinery and they are administered by human machinery ; and both their enactment and their administration are subject to the weaknesses which are inherent in the human machinery. I might remind my Honourable friends, Sir, of what took place when the Press Act was enacted in 1909. The Press Act was welcomed, at least accepted, by some of our best men on the non-official Benches of those days. It was agreed to by no less a man than the late Mr. Gokhale, than whom India has produced few greater statesmen. But Mr. Gokhale himself was constrained to recognise the imprudence of his approval in later years when the Press Act was applied in a way that went far beyond the necessities of the case. I would remind my Honourable friends of the historic judgment of one of the greatest Judges of our time, the late Sir Lawrence Jenkins, in a case which is well-known to all. Sir Lawrence Jenkins then observed that, as the Act was constituted, it was possible to bring within its purview almost any expression of opinion, however honest and however innocent. That being the case, it is impossible that we on this side of the House can accord our approval to a measure which seeks to embody in the ordinary law of the land penal provisions of this character, provisions which may be designed for special purposes, but which are capable of application to purposes widely different.

Sir, the Government are asking the Opposition to share their responsibility. I want the Government to realise the very peculiar and difficult position of the Opposition as it is constituted to-day. The Opposition has not been consulted with regard to the situation and how it should be handled. It has had no hand in the shaping of the policy which has dictated the acts of Government during the last few years. Now the Opposition are asked to give their blessings to a penal measure which seeks to suppress a movement in the handling of which Honourable Members of this House have had no lot or part. In other countries, the position of the Opposition is very different, and responsibility is readily shouldered, because of the fact that what is an Opposition to-day becomes the Government to-morrow. Here, the Opposition can only protest and criticise ; it can go on expressing its views ; but the Government remains immovable and the Opposition remains the Opposition. In spite of this, I would say we are perfectly willing to shoulder responsibility in the proper spirit, provided the Government come forward with a proper measure, namely, a measure designed for a special emergency, and limited strictly in its duration. When such a measure is brought forward, we shall be glad to appraise it on its merits.

Mr. K. Ahmed : You may move for an amendment for 10 years.

Mr. H. P. Mody : I do want to move any amendment. I object to the whole principle. I am in the same position as the fellow who was being court-martialled, and on being asked whether he objected to anything, said : " I object to the whole proceeding ".

Sir, let not my friends on the Government Benches imagine for a moment that, so far as I am concerned, my opposition to investing them with these powers arises because the Government are constituted as they are at the present moment. I would object to vesting in any Government such a wide authority. Whether it is a brown bureaucracy or a white bureaucracy, I would oppose its acquiring the powers proposed in the Bill. In any event, I would leave the future Government of the country to take the decision. The new legislatures may come into being some time during the next two years, and let us hope they will be very different in their constitution and complexion, and when those legislatures are in being and when the nominated and the official blocks do not exist in their present strength, then, I say, it will be right and proper to place the responsibility on the non-official Benches.

We have heard, Sir, a great deal in the last few years of the safeguards which the minorities require. People have been quarrelling about a seat here and a seat there, a few jobs and positions in the public services. But as my Honourable friend, Sir Muhammad Yakub, pointed out yesterday, the safeguards, which the minorities want and which it is hoped they will receive in full measure, are likely to be considerably neutralised if the Government of the future are entrusted with such wide powers. I do not question the honesty or the motives of anybody, but I say, when you vest in a majority Government an excessive power of this description, then whatever safeguards you may have devised for the minority are capable of being neutralised, to a certain extent at any rate. (Hear, hear.) These, very briefly and very generally, are my objections to the Bill. But I would like to say one word by way of suggestion as to how the present emergency could be met. It is obvious that no Government in the world

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can be carried on by means of Ordinances. Ordinances can suppress unlawful and violent movements. They cannot administer or govern the country. That is a truism which, I have every confidence, my Honourable friends on the Government Benches appreciate as well as any one of us. Therefore, Sir, what is the position? How are you going to carry on the administration of the country? Are you going to perpetually promulgate one Ordinance after another? Or are you going to bring about reconciliation?

Mr. President (The Honourable Sir Ibrahim Rahimtoola) : The Chair does not impose any Ordinances.

Mr. B. R. Puri (West Punjab : Non-Muhammadan) : So, I am not the only culprit.

Mr. H. P. Mody : I would rather wish, Sir, you had the power of imposing Ordinances, than the Members on the Government Benches opposite. We could be in a much more formidable position to argue with you than with the Government Benches. I was saying, it is impossible for Government to be carried on by means of Ordinances. There is only one way in which the situation can be met. It must have been stressed times without number during the last couple of years, but it requires to be stressed over and over again. That way is to give the responsible section in the country what it wants. It is only when Government place themselves behind the responsible section of opinion in this country, and wholeheartedly support its demand for a full measure of self-government, that we shall be able to handle this movement. (Applause.) I recognise, Sir, that there are elements in this country, very vocal, very powerful, whom Government are not going to change, no matter what they may do. These elements, at any rate, will never be pacified, and the attempt would be thoroughly useless. But, at the same time, there are elements, which, if not equally large, are really powerful whom it is necessary that Government should conciliate at the earliest opportunity. All that I wish, Sir, is that at the next Round Table Conference a scheme of reforms may be evolved which will give satisfaction, if not to those irreconcilable elements which are to-day fighting the Government, to those other elements which stand for a stable Government. It is these elements that require to be won over, and if Government succeed in doing that, they will rally a very influential section of public opinion to the standard of the Empire. In such a direction lies the security of the Government of India, and the happiness and the prosperity of the people. It may seem very obvious, but it requires saying over and over again that there is no possibility of remedying the situation, unless a wholehearted attempt is made to conciliate the classes which stand in every country for order, progress and good government. (Cheers.)

The Honourable Sir Brojendra Mitter (Law Member) : Sir, I have no desire to minimise either the genuineness or the intensity of the opposition which has been voiced in the course of this debate, but in order that we may bring to bear upon the measure before the House a proper consideration, it is necessary to know what that opposition amounts to. Sir, I am more encouraged by the degree of agreement which has been displayed in the course of the debate than embarrassed by the degree of disagreement. On most fundamental points there has been general

agreement, but on matters of detail there have been wide differences. Sir, there is one thing which is certain and that is that there is a general desire on the part of the House that the motion should be carried....

Several Honourable Members : No, no.

The Honourable Sir Brojendra Mitter : If Honourable Members will please wait, I shall be able to show that there is a general desire in the House that this measure should go to Select Committee for proper consideration.

Several Honourable Members : No, no.

Mr. Gaya Prasad Singh (Muzaffarpur *cum* Champaran : Non-Muhammadan) : Of course among officials and their henchmen.

The Honourable Sir Brojendra Mitter : Honourable Members do not realise what they have committed themselves to by their speeches. Honourable Members do not seem to realise how much they agree with us.

Mr. C. S. Ranga Iyer : (Rohilkund and Kumaon Divisions : Non-Muhammadan Rural) : The non-officials condemn the measure.

The Honourable Sir Brojendra Mitter : I do not know if the Honourable Member can be so sure. Honourable Members have agreed to serve on the Select Committee....

Mr. C. S. Ranga Iyer : I rise to inform the Honourable Member that though some of them have agreed to serve on the Select Committee, yet there are others who are opposed to it.

The Honourable Sir Brojendra Mitter : Honourable Members' overwrought enthusiasm is blinding them to the fact that they agreed to most things. Sir, the first thing is this. This measure, as has been pointed out by my Honourable colleague, the Home Member, in his opening speech, has been brought to combat the civil disobedience movement. It is recognised by the leading speakers on the Opposition Benches that the civil disobedience movement exists, it is not dead. It is recognised also on the Opposition Benches that it is an evil which has got to be suppressed.

Mr. Gaya Prasad Singh : Not necessarily.

The Honourable Sir Brojendra Mitter : I shall presently quote the exact words, if Honourable Members will do me the courtesy of not interrupting me. They will see that I make good every word that I say. (Hear, hear.) My Honourable friend, Mr. Reddi, recognises the existence of the civil disobedience movement and he also recognises that it is an evil, and his remedy was, these are his exact words : " remove the root cause by giving us responsibility ". (Hear, hear.) My present claim is this. The evil exists and this I make out through the mouth of my Honourable friend. I shall soon come to the remedy suggested by him. According to my Honourable friend, Mr. Reddi, the evil is there and it has to be removed and it has to be removed in a particular way, that is to say, " do not treat the symptoms, but go to the root cause and you will remove the root cause by giving us responsibility ". He further said that Government are not expected to

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stand with folded arms and see the spread of the civil disobedience movement.

Mr. T. N. Ramakrishna Reddi (Madras ceded Districts and Chittoor : Non-Muhammadan Rural) : Sir. May I give a personal explanation ? I said that when the civil disobedience movement at first started, nobody would expect Government to sit with folded hands, and then I said that by issuing Ordinance after Ordinance they have put down the movement and now the movement does not exist and has been almost suppressed, and that there is no necessity for this legislation.

The Honourable Sir Brojendra Mitter : Probably the Honourable Member spoke so fast that I could not hear him well from this side. **Mr. Sadiq Hasan** said that he would like to see peace restored in this country, which implies that at the present moment there is a disturbance of the peace. **Mr. Puri** said that people were forced into the civil disobedience movement and it was the only possible weapon in the hands of a helpless people. Sir, **Mr. Puri** was dealing with the civil disobedience movement and he was justifying the existence of the movement, because that was the only weapon, according to him, open to the people of the country. My theme at the moment is this. It is admitted by opposition speakers that the civil disobedience movement exists. **Mr. Shah Nawaz**, while admitting the evil of the civil disobedience movement, said that Government were bound to protect their servants and the public. Sir, I now come to the most significant confession made by my Honourable friend, **Sir Hari Singh Gour**, the Leader of the Nationalist Party. He said this morning : " Repressive laws will not cope with the mischief that exists ; conciliation is the remedy ". Then he went to say that we are over-legislating for the evil which is disturbing the peace of the country. From these observations, Sir, it is quite clear that Honourable Members recognise that there is an evil which exists and which has to be met. Now, the question is, how that evil is to be met, on which, I admit, there is a great divergence of opinion. Various nostrums have been suggested by various speakers. Let us see what are the remedies suggested. **Mr. Reddi** suggested, give responsibility ; **Mr. Sadiq Hasan** suggested, remove unemployment ; **Mr. Puri** suggested, abandon coercion and substitute palliation and conciliation. I hope I am quoting them correctly ; I am not quoting the exact words, but merely giving the substance. **Mr. Shah Nawaz's** remedy is a combination of all these three plus the Usurious Loans Act (Laughter) ; and **Mr. Mody's** suggestion was a good constitution acceptable to him and his party. (Laughter.) These are the various remedies which have been suggested. Everyone claims his remedy to be the sovereign remedy. We have considered all these matters and our remedy has been mentioned often and often from the highest quarters to those who have to administer the country here, that is to say, from the Secretary of State downwards. It has been said that our remedy is two-fold ; one is to get along with the reform of the constitution and, secondly, to suppress lawlessness meanwhile. That is our two-fold remedy.

Mr. B. B. Puri : Is that a two-fold remedy or a two-fold object that you have in view ? The remedy might be quite different.

The Honourable Sir Brojendra Mitter : The two-fold remedy for the restoration of peace and advancement of the country. So far as the constitution is concerned, the venue is elsewhere and we are not discussing it on the floor of this House. The other branch of it is in our hands and it is not only in our hands, but it is our duty to see to it and it is with that object that this measure has been brought forward. This measure has been brought forward with the object and in the hope that it will meet the evil which by general agreement exists and which needs to be removed. No one in this House wants the continuance of lawlessness ; no one wants the tyranny of boycott and picketing ; no one here wants a spread of the spirit of defiance of established authority ; and no one wants a steady undermining of the foundations of ordered society. Our objective is the same ; we want to see peace in the country. The question is, how can peace be restored ? We say that one of the things which is disturbing the peace of the country, *i.e.*, the civil disobedience movement, should be suppressed, and this is a measure in that behalf.

Sir, so far as the measure is concerned, criticism has been levelled, and levelled with sincerity and with force, against the details of the measure. The general nature of the criticism is this that we are creating new offences and the definition of these new offences is much too wide. That is one line of criticism. The second line of criticism is that we are giving too much power to the executive and there is great risk of abuse of those powers by the executive. There is another line of criticism which is this that some of the clauses of the Bill transgress the fundamental principles of criminal jurisprudence. These are the criticisms which have been levelled against the measure. Sir, I shall deal briefly with those criticisms clause by clause as my learned friend, Mr. Puri, has done. But I want to make one general observation. We are all agreed that something has to be done to meet the civil disobedience movement, and the criticisms imply that, in the view of my Honourable friends opposite, the Bill is liable to improvement. One criticism is that a measure like this should not be a permanent measure, but should be a measure of limited duration. I see force in that criticism. There are two points of view from which you can look at it. One is this : have a permanent measure, and when the evil disappears you can repeal that measure. That is one point of view. The other view is this. This evil is not likely to last indefinitely : have it for such time as in the normal course of events would be enough to get rid of the evil. There are these points of view. Which point of view is really the sounder, is a matter which we can well discuss in Select Committee : whether it should be a permanent measure or whether it should be a measure of limited duration and, if so, what that duration should be. That is not a matter of principle. As I say, there are these two points of view : when we meet round the table in Select Committee, we shall discuss them. If we are able to convince Members who take a different view, I dare say they will agree with us. If, on the other hand, they convince us, we shall not hesitate to accept their view : so that is a matter for Select Committee ; that is not an argument for throwing out the Bill....

Mr. B. B. Puri : That only shows which way your mind is drifting.

The Honourable Sir Brojendra Mitter : My mind is absolutely open. For the moment I think that a permanent measure should be enacted ; but as soon as the evil, for which the measure is enacted, disappears, we can repeal it : that is how my mind is working at present ; but I am open to conviction that the better course is to have a measure for a limited period. I am open to conviction that the other course is the better course : in that case, what the limit should be is a matter for discussion ; and if we meet round the table and engage in a free, frank and full discussion of this matter, I have no doubt we shall be able to come to some understanding....

Sir Abdur Rahim (Calcutta and Suburbs : Muhammadan Urban) : What are you committed to then, may I ask ? Supposing it goes to Select Committee, what is the exact principle to which we shall be committed ?

Mr. Gaya Prasad Singh : All these different clauses.

The Honourable Sir Brojendra Mitter : I will tell you immediately. We are combating the civil disobedience movement. The manifestations of the civil disobedience movement, in so far as we know at present, are boycott and picketing, dissuasion from enlistment, tampering with public servants, and so on : what we shall be committed to is this....

Sir Abdur Rahim : All the clauses ?

The Honourable Sir Brojendra Mitter : What I say is this : we shall be committed to the principle of the necessity of combating the manifestations of the civil disobedience movement.

Mr. H. P. Mody : By the ordinary law of the land.

The Honourable Sir Brojendra Mitter : In our view, the ordinary law of the land is inadequate.

Sir Abdur Rahim : Can we enact any measure we like to combat that movement ?

The Honourable Sir Brojendra Mitter : The manifestations of the civil disobedience movement I have illustrated : there is picketing, there is dissuading from enlisting, there is boycott of public servants. There are the unlawful associations which are engaged in defying public authority and disseminating defiance of public authority. These are the manifestations.

Mr. T. N. Ramakrishna Reddi : Is the Buy Indian Goods movement unlawful ?

The Honourable Sir Brojendra Mitter : That is irrelevant. The various manifestations of the civil disobedience movement, as we see them in the day to day administration and which we find are dangerous to society, are these : if any better provisions to meet those particular evils can be devised by my learned friend, on the other side, we shall be only too glad to adopt them. The provisions in the Bill are the best that we can devise according to our limited intelligence. If my Honourable friends in their greater wisdom can suggest better methods to fight these particular evils, we shall certainly not hesitate to accept them.

Sir Abdur Rahim : Supposing we can point out that the ordinary law is sufficient to meet most of these things ?

The Honourable Sir Brojendra Mitter : If, with regard to any particular matter of which we are complaining and which is hampering administration and which is undermining authority, if it can be pointed out that the ordinary law is sufficient, we shall certainly drop the special law which we are suggesting. We are here to help in the administration of the country. Every one is anxious that the administration should go on smoothly. Do my friends imagine that we like disturbances in the country or that unrest makes our position easier ? No one likes that. We want the help of Honourable Members opposite ; we want them to help us to devise means which will be adequate for the purpose in view and which will not be in excess of the requirements. We do not want excessive powers ; we want adequate powers. Now, if in any particular matter my Honourable friends can point out that the existing law or a little strengthening of the existing law here and there would be enough, we shall certainly accept it. There has been a good deal of legal argument in the course of this debate, and when I was listening to those arguments, particularly of Mr. Puri, I was reminded of what I learned in my student days : one of the rules of pleading, which I learned then, was confession and avoidance. I confess I do not like every particular detail of this measure : there is room for improvement ; but, at the same time, what I dislike more is the necessity for it. This measure has been forced upon us. It was no pleasure to us to bring a measure like this before the House, a highly controversial measure.

Mr. H. P. Mody : If my Honourable friend will allow me to ask him a question : does not my Honourable friend recognise that the Bill before the House seeks to strengthen the ordinary law of the land, and is something very different from a special measure designed for a special emergency and for a limited period, and which does not form part of the ordinary law of the land ?

The Honourable Sir Brojendra Mitter : My friend is labouring under a confusion of thought. If we concede that a measure for a limited duration is the better course. . . .

Mr. H. P. Mody : That is not the only point.

The Honourable Sir Brojendra Mitter : I am coming to my friend's point. If we concede that a measure for a limited period would be the better course, then that would not be strengthening the ordinary law for all time. That will be strengthening the ordinary law for that period. What my learned friend is apprehensive of is this : that even in such a case, if the measure be for a limited period, it will go into the Statute-book for all time. It will not. It will be in force only for that particular period.

Sir Hari Singh Gour : Is that your Bill ?

The Honourable Sir Brojendra Mitter : My friend knows that is not my Bill ; no one pretends that it is that Bill. As I said, the Bill is a permanent measure ; and there are two points of view which I have explained ; and we are open to conviction that the better course would be to have an Act of limited duration.

Mr. B. R. Puri : Why do you not adopt the better course from the very beginning ?

The Honourable Sir Brojendra Mitter : I do not yet admit that it is the better course, but I am open to conviction.

Diwan Bahadur Harbilas Sarda (Ajmer-Merwara : General) : I hope you will now see that the unanimous opinion on this side of the House is that it is a better course.

Mr. C. S. Ranga Iyer : No, no ; certainly not. We do not want the Bill at all, limited or unlimited.

The Honourable Sir Brojendra Mitter : Whenever an Honourable Member on the opposite side speaks, he seems to say " I am the country and I am the whole public ". It is not the unanimous opinion. . . .

Mr. Muhammad Azhar Ali (Lucknow and Fyzabad Divisions : Muhammadan Rural) : May I know if the Honourable Member would give us details of his bargain on all points to-day ?

The Honourable Sir Brojendra Mitter : There are three main heads of difference between Honourable Members opposite and ourselves, as I could gather from the debate. One is the duration of the measure on which there is a difference of opinion : second, as to the limits of the definitions of the different offences. Honourable Members opposite feel that the definitions are much too wide and the net has been cast much too wide. And the third head of difference is the nature and quantum of punishment, including procedure, e.g., cognisable or non-cognisable, bailable or non-bailable. These are the three main heads of difference. All these are matters of detail which can very well be discussed in Select Committee and as the result of the discussion,—I am sure we are all sensible people (Applause from the Nationalist Benches),—we are,—there is no reason why we should not be able to come to a satisfactory solution. If my Honourable and learned friends come to the Select Committee with their minds made up, that is quite a different matter ; but if every one of us goes to the Select Committee with our minds open, I do not despair of coming to a satisfactory solution on every one of these points.

Mr. Amar Nath Dutt (Burdwan Division : Non-Muhammadan Rural) : Will you be able to do so ?

Mr. President (The Honourable Sir Ibrahim Rahimtoola) : Order, order : The Honourable the Law Member should be allowed to continue his speech.

The Honourable Sir Brojendra Mitter : As my friends know, I am not taking up a hostile attitude. We are confronted with a serious situation, and we have got to meet that situation. The whole question is, how it is to be done in the least objectionable way.

Mr. Gaya Prasad Singh : Yes, in the least objectionable way.

The Honourable Sir Brojendra Mitter : That is our objective. Let us now examine the specific objections which have been taken to the various clauses of the Bill, I may say, by way of general observation, that some of the criticisms have been made without appreciating what the law is and what the fundamental principles of law are. I am now going to criticise my friend, Mr. Puri, and I know he will not take it amiss if I do so in rather plain and blunt language. Now, my learned

friend, Mr. Puri, has criticised clauses 2 and 13 as violating the elementary principle of presumption of innocence. What he says is this, that under clauses 2 and 13, as drafted, you throw the onus of innocence on the accused, and, therefore, that violates an elementary principle of criminal jurisprudence. My answer is two-fold. There is no immutable principle of jurisprudence as suggested. When I am talking of jurisprudence, I am talking of British jurisprudence and Indian jurisprudence, and not like some of my Honourable and learned friends on the opposite Benches who are talking of jurisprudence of all civilised countries. I am not familiar with the jurisprudence of all civilised countries. . . .

Mr. K. C. Neogy (Dacca Division : Non-Muhammadan Rural) : Not with the jurisprudence of Russia ?

The Honourable Sir Brojendra Mitter : I am familiar with the jurisprudence of England and of India, so that my observations will be limited to the British jurisprudence and Indian jurisprudence. . . .

Sir Hari Singh Gour : And not with the jurisprudence of all civilised countries ?

The Honourable Sir Brojendra Mitter : As I said, I am not familiar with the jurisprudence of all civilised countries. I am only familiar with the jurisprudence of England and of India. I am not familiar with the law of Mexico or of Canada or of America or France or Germany or of any other country. . . .

Mr. Amar Nath Dutt : You are familiar with the jurisprudence of Russia.

Mr. President (The Honourable Sir Ibrahim Rahimtoola) : Order, order ; the Honourable the Law Member should have a patient hearing.

The Honourable Sir Brojendra Mitter : Sir, ordinarily it is undoubtedly a principle of criminal jurisprudence that you presume innocence until guilt is proved, but the circumstances of a particular case may be such that you start with a presumption of guilt, and in such a case the onus is thrown upon the accused to prove his innocence. For the benefit of my lawyer friends on the opposite Benches, I refer them to section 114 of the Evidence Act with which they are all familiar. The first illustration of section 114 of the Evidence Act is this :

“ The Court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession ”.

What does it show ? It shows this, that the circumstances of the case are such that you start with the presumption of guilt. The man is in possession of stolen goods soon after the theft. . . .

Mr. B. E. Puri : Will the Honourable Member kindly permit me to interrupt him for a moment ? You do not start with any such presumption, because, even in the illustration taken, it is incumbent upon the prosecution to establish the factum of stealing. The theft has been established before any presumption is allowed to take place.

The Honourable Sir Brojendra Mitter : I am glad of this interruption, because it gives me an opportunity to remove the clouds which are obscuring my learned friend's judgment. Now, Sir, A is prosecuted for

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having stolen goods in his possession. What the prosecution has to prove is that there has been a theft—not that there has been a theft by A. . . .

Mr. K. Ahmed : It has no application or bearing on the point, Sir.

The Honourable Sir Brojendra Mitter : You will not understand it. (Laughter.)

Mr. K. Ahmed : It is rather difficult to understand your reasoning, Sir, I am afraid.

Mr. President (The Honourable Sir Ibrahim Rahimtoola) : Order, order.

The Honourable Sir Brojendra Mitter : Sir, if A is prosecuted for being in possession of stolen goods, all that need to be proved is this, that there has been a theft, and that the goods which are in A's possession are the stolen goods. Directly this is proved, there is a presumption that A is guilty, that is to say, either he is the thief or he knew that these goods were stolen. He has to prove his innocence. Now, if you look at clause 2, what does it say ? It says this :

“Whoever dissuades or attempts to dissuade the public or any person from entering Military, Naval, etc., shall be imprisoned with imprisonment for a term which may extend to one year. . . .”,

and the Exception is :

“This provision does not extend to the case in which advice is given in good faith for the benefit of the individual to whom it is given.”

Sir, from the fact of dissuasion from enlistment, there is a presumption that the man has been doing this to the prejudice of the public good. . . .

Sir Hari Singh Gour : May I interrupt the Honourable Member ? He has taken a wrong illustration, because illustration in section 114 is that the Court *may* presume, and not that it *shall* presume.

The Honourable Sir Brojendra Mitter : I shall deal with that presently. What section 2 says is this, from the circumstances of the case, that is to say, from the mere fact of dissuasion, you can presume that the man did it intentionally to the prejudice of the public good, but he is given the chance of proving his innocence. Therefore, what I say, is this, as in the case of receiver of stolen goods, you start with the presumption that the man is guilty unless he can prove his innocence. You start with presumption that the man has done something against law, unless he can prove his innocence or his good faith. Sir, law does recognise the principle that circumstances may be such that by themselves they give rise to a presumption of guilt which the accused person has to rebut. Therefore, section 2 is not an encroachment upon the fundamental principle of criminal jurisprudence which deals with the presumption of innocence. My point is that circumstances may give rise to a presumption of guilt ?

Sardar Sant Singh (West Punjab : Sikh) : Will the Honourable Member kindly read the section itself instead of the illustration. The circumstances are described there in section 114.

The Honourable Sir Brojendra Mitter : The next point is *mens rea*. It was answered by my learned friend, Sir Hari Singh Gour, in the course of his speech. Mr. Puri was under this delusion that in every offence *mens rea* is a necessary ingredient. It is not so. Now, I shall read a passage from Russell.

Mr. K. Ahmed : What has *mens rea* got to do with this ?

The Honourable Sir Brojendra Mitter : This is much too recondite for you.

Mr. K. Ahmed : I am afraid it is hopeless.

The Honourable Sir Brojendra Mitter : This is what Russell says on page 105, Vol. I, 8th Edition. Dealing with the element of *mens rea*, he says this :

“ In some cases enactments by their form seem to constitute the prohibited acts into crimes even in the absence of the knowledge and intention necessary to constitute a *mens rea* ”.

In many offences *mens rea* is a necessary ingredient, but in every offence *mens rea* is not a necessary ingredient. If the law of the land prohibits a certain thing, then the doing of that thing is wrong, whether you do it intentionally or unintentionally.

Mr. B. R. Puri : You are begging the question.

The Honourable Sir Brojendra Mitter : I would give an illustration. Supposing the law of the country says that you must not be in possession of an unlicensed weapon and if you are in possession of an unlicensed weapon, you commit an offence whatever your intention may be. Your intention may be to make a lawful use of the weapon or an unlawful use of the weapon, but the mere possession of it, irrespective of intention, would be an offence under the law. Thus, there may be laws in which the element of *mens rea* does not come in.

Mr. B. R. Puri : Here you are going to justify the promulgation of such a law. You cannot make use of that argument. No doubt when the law exists in that form, there will be an initial presumption, because all the prosecution shall have to prove is that here is a man who has been detected dissuading somebody else, but I am asking you to justify such a law.

The Honourable Sir Brojendra Mitter : All I am saying is that criminal jurisprudence, both in England and in this country, does recognise cases in which *mens rea* is not a necessary element in the offence. Whether you are justified in adding to the list of such offences is quite a different matter. All I am on is this that the criminal jurisprudence of England and this country does recognize offences in which *mens rea* is not a necessary ingredient. My Honourable friends may very well say that such offences ought to be kept within the lowest possible bounds. That is a different argument altogether. What my learned friend, Mr. Puri, formulated was that clauses 2 and 13 cut across a fundamental principle of jurisprudence. They do not.

The next clause to which I come is clause 8, that is parental liability for a child's offence. Here, again, I am very sorry that a learned counsel of the eminence of Mr. Puri should have overlooked the law on the subject

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in England. There is also a similar law in at least three of the most progressive provinces in India, that is, Bengal, Bombay and Madras. This clause has again been characterised as an outrage on the principles of criminal jurisprudence, that a man who is not an offender himself should be liable for the offence of somebody else.

Mr. B. R. Puri : If the son has committed murder, would you hang the father ?

The Honourable Sir Brojendra Mitter : The principle which was enunciated by my friend, Mr. Puri, was this that it is unknown to the law in any circumstances, that a man should be vicariously guilty. There is no question of murder or anything of that sort. Do not introduce frivolity into this discussion. It is a serious argument which was adduced by Mr. Puri and some other Honourable Members. I wish in this connection to refer to the Children's Act of England, 8 Ed. VII, Chapter LXVII, section 99 which says :

Mr. B. R. Puri : What is the age of the child ?

The Honourable Sir Brojendra Mitter : I think it is 14, I will tell you. This is what it says :

“ Where a child or young person is charged before any Court with any offence for the commission of which a fine, damages, or costs may be imposed, and the Court is of opinion that the case would be best met by the imposition of a fine, damages or costs, whether with or without any other punishment, the Court may, in any case, and shall, if the offender is a child, order that the fine, damages or costs awarded be paid by the parent or guardian of the child or young person instead of by the child or young person unless the Court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of the child or young person.”

Mr. Lalchand Navalrai (Sind : Non-Muhammadian) : The latter portion makes a difference.

The Honourable Sir Brojendra Mitter : I am talking of the English law. It was suggested that this principle was not known to any law. It may be unknown to my Honourable friend who was interrupting. That certainly is not my fault. Then the second clause of this section says :

“ Where a child or young person is charged with any offence, the Court may order his parent or guardian to give security for his good behaviour.”

Mian Muhammad Shah Nawaz (West Central Punjab : Muhammadian) : What is the definition of a child ? Is his age below 14 or under 16 ?

The Honourable Sir Brojendra Mitter : My impression is 14. Now I come to the Indian law, Bengal Act II of 1922, Section 25, which says :

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Section 25 says this :

“ When a child or young person is convicted of an offence punishable with fine and the Court is of opinion that the case would be best met by the imposition of a fine, whether with or without any other punishment, the Court may, in any case, and shall, if the offender is a child, order that the fine be paid by the parent or guardian of the child or young person unless the Court is satisfied that the parent or guardian cannot be found ”,

and so on, the same as in the English Act. That is the law in Bengal.

Mr. K. Ahmed : That is not in Bengal regarding breach of peace.

The Honourable Sir Brojendra Mitter : Sir, there is a limit to point-less interruption ; at any rate I think there ought to be a limit. (Laughter.) Then, in the Bombay Act XIII of 1924, section 25 begins thus. Well, Honourable Members may take it from me that this is a verbatim reproduction of the English law. Similarly, in Madras, in section 26 of the Madras Act (Act IV of 1920) there is a similar provision. So my point is this, that the liability of the parent for a child is not a new principle in criminal law, neither in England nor in this country. We are not introducing anything new. Of course any Honourable Member may say that the particular clause in the Bill goes beyond necessity. I can well understand that, but all I am submitting at the moment is that this is not a new principle which we are introducing into this measure, and that it is not so outrageous as it was sought to be made out.

Sardar Sant Singh : May I ask, on a point of information, if the Honourable Member can point out any provision in English law or Indian law where a parent is sentenced to imprisonment for not paying the fine as in this case ?

The Honourable Sir Brojendra Mitter : I shall look it up during the mid-day adjournment. My impression is that the parent is liable to pay the fine.

Sardar Sant Singh : If he does not pay the fine, then what are the penalties ?

The Honourable Sir Brojendra Mitter : That I have not yet looked up, but I can easily look it up and inform my Honourable friend. Sir, in answer to my friend, Mr. Shah Nawaz's question, in the English Act a child means a person under the age of fourteen and a young person means a person who is fourteen years of age or above and under the age of sixteen. A "child" is under fourteen, a "young person" between fourteen and sixteen. Sir, that was all the criticism that was made on clause 8,—that it was something new, something outrageous, something unknown to criminal jurisprudence. Then, Sir, in commenting on section 4, my learned friend, Mr. Puri, dealing with the clause concerning the boycott of public servants, said that the clause was intended to promote a "statutory affection" for the police. Sir, our policy is not to promote statutory affection for the police. The policy underlying that clause is to prevent the malicious coercion of public servants to the prejudice of the administration. A public servant goes to a village. The local grocer refuses to sell ordinary groceries to him with the intention of harassing him, embarrassing him. Sir, this is not imaginary. That sort of thing actually happened within our experience during the non-co-operation movement and the civil disobedience movement in Guzerat, and it frequently happens ; and it is for the protection of public servants from this particular form of tyranny that this clause has been inserted in the Bill. It is not for the purpose of promoting what my friend facetiously described as "statutory affection for the police". Then, Sir, the comment on the picketing clause has been that the language is much too wide. To me it seems that the language does lend itself to misapprehension, and the fear which my Honourable and learned friends on the Opposition Benches have expressed, I am not prepared to say, is fanciful. That, however, is a

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matter which can well be discussed in Select Committee in order to improve the language of the section and to make it less wide and more definite.

Sir, in answer to my learned friend, Sardar Sant Singh's question, I may say that in the English Act it is provided in section 99 that "any sums imposed upon or ordered to be borne by the parent or guardian under this section or on forfeiture of any securities aforesaid may be recovered from him by distress or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child or young person was charged". Therefore, Sir, the provision for imprisonment is there in the English Act.

Mr. B. R. Puri : May I know, Sir, if there is anything in the English law corresponding to your proposed provision which says that the imposition of a fine on the parent shall be adjudged in accordance with the nature of the offence committed by the child—whether any offences are specifically mentioned in the English law corresponding to what you lay down here ?

The Honourable Sir Brojendra Mitter : I confess, Sir, I have not looked it up, because I did not anticipate this particular inquiry. The English Act is there and I hope my Honourable friend will be on the Select Committee where we shall have the English Act before us.

Then, Sir, the next point which my learned friend, Mr. Puri, raised was the constitutional point. What he said is this : under clause 15, you are delegating a legislative function which is vested in us, the Legislature, to the Governor General in Council and such delegation is incompetent and, therefore, *ultra vires*. As I understood him, that was his argument. (*Mr. B. R. Puri* : "That is so.") Sir, if my learned friend were to scrutinise that clause, he would see that we are doing nothing of the sort. Clause 15 is the addition of a sub-clause to the existing section 16 of the Indian Criminal Law Amendment Act of 1908. In that Act an "unlawful association" is defined.

Mr. B. R. Puri : Quite right.

The Honourable Sir Brojendra Mitter : The definition in section 15 is as follows :

"It means an association which encourages or aids persons to commit acts of violence or intimidation or the members of which habitually commit such acts or which has been declared to be unlawful by the Local Government under the powers hereby conferred."

Then section 16 gives the Local Government power to declare an association to be unlawful. It runs thus :

"If the Local Government is of opinion that any association interferes or has for its object interference with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the public peace."

It is only on those conditions being satisfied that the Local Government will have the authority to declare the association an unlawful association.

It is the Legislature which is laying down the conditions. It is not that we are delegating the laying down of conditions to the Local Government. The Legislature itself has laid down the conditions and it

says that if the Local Government finds that these conditions are fulfilled, it is then and then only that the Local Government will be invested with the authority of declaring an association to be unlawful.

Mr. B. R. Puri : What is the remedy if the Local Government does not follow and does not take that as a guide and proceeds to declare an association unlawful regardless of what the Legislature has laid down. What is the remedy in that event ?

The Honourable Sir Brojendra Mitter : That is another point altogether. I am now dealing with the constitutional point. What the remedy is for a breach is quite a different question. What I am now submitting is that we are not delegating to the Local Government or to the Governor General in Council any function which is properly vested in the Legislature. The Legislature has laid down the conditions, on the fulfilment of which a Local Government, under the existing law, is entitled to declare an association unlawful. All that we are now doing by clause 15 of the Bill is this. The power which the Legislature has already given to the Local Government we are giving that power to the Governor General in Council. We are doing nothing more than that. All that clause 15 of the Bill says is this :

“ The Governor General in Council, if satisfied to the like effect, may, by notification in the Gazette of India, declare an association to be an unlawful association..... ”

This power is already vested in the Local Government and all that we are now suggesting is that in similar circumstances the power may be exercised by the Governor General in Council. Therefore, we are not doing anything very outrageous. A power which is already in the Local Government, we are extending that to the Government of India.

Mr. B. R. Puri : Even that is wrong ; even that is unconstitutional.

The Honourable Sir Brojendra Mitter : If my friend says that what this Legislature enacted in 1908 and which has been in force for 24 years.....

Mr. B. R. Puri : Why not meet the objection on merits ? Why plead the age of that Bill ? Is it not possible to actually detect an error at a later stage ?

The Honourable Sir Brojendra Mitter : I will appeal to my learned friend, Sir Hari Singh Gour, whether the age of a particular enactment, which has not been challenged for a considerable time, is not a relevant factor in considering the validity or invalidity of it ? And it is only for that purpose that I am saying that this has been the law since 1908. No lawyer, not even a lawyer of the eminence of Mr. Puri, has thought fit to challenge it in a Court of law when occasion after occasion arose as numbers of associations all over the country have been declared unlawful. No one thought it worth his while to challenge it, knowing full well that such challenge would not lead to any satisfactory results. Thus, Sir, the only comment on clause 15 which has been made is that it is unconstitutional and *ultra vires*. My answer is that it is already there in the law and the power, which can already be exercised by the Local Government, is being extended to the Governor General in Council. If the existing law is constitutional and legal, certainly what we are proposing cannot be

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unconstitutional or illegal. It may be said that that is hardly an argument. My further argument is this that we are not delegating the function of defining of what would constitute an unlawful association. The definition is there. It has been made by the Legislature and the circumstances in which that power can be exercised have also been laid down by the Legislature. All that is necessary for the Governor General in Council to do is an executive Act of declaration. That cannot be called delegating a legislative function.

Mr. B. R. Puri : Before you pass on to the next point, might I very respectfully draw your attention to another clause of this very nature which offends against this principle which is contained in clause 12 ?

The Honourable Sir Brojendra Mitter : I am coming to that. My learned friend, Mr. Puri, also objected to clause 12 on the ground that here we are giving the Local Government the power to amend the Criminal Procedure Code. The objection is that by clause 12 we are investing the Local Government with the power of altering the Criminal Procedure Code.

Mr. B. R. Puri : At their sweet will.

The Honourable Sir Brojendra Mitter : At their sweet will. That is the objection. My submission is that we are doing nothing of the kind. Clause 12 says :

“ The Local Government may, by notification in the local official Gazette, declare that any offence punishable under section so and so of the Indian Penal Code, when committed in any area specified in the notification shall, notwithstanding anything contained in the Code of Criminal Procedure, 1898, be cognizable and non-bailable. . . . ”

It comes to this that with regard to certain areas the Legislature is giving the Local Government the power to declare certain offences, cognisable and non-bailable. It is not that the power of amending the Criminal Procedure Code is being delegated to the Local Government. What the Local Government has to do is merely this : to declare an area to which the change made by the Central Legislature should apply. So, all the discretion which the Local Government is being given under clause 12 is to delimit the area where to apply the provisions which we are enacting here. We are not giving the Local Government any power of legislation. It is only the power of application which is given to the Local Government and not the power of legislation.

Mr. B. R. Puri : Is your Criminal Procedure Code applicable to the whole of the country or not ? Is there any Local Government which has got the right to say that your Criminal Procedure Code will not be applicable to a certain territory ?

The Honourable Sir Brojendra Mitter : I never suggested that. What we are saying is this. In certain events the Criminal Procedure Code will be amended. We are doing that in the Central Legislature.

Mr. B. R. Puri : No, you are saying that the Local Governments shall amend, if they are so minded.

The Honourable Sir Brojendra Mitter : My Honourable and learned friend has misread that clause. I will read it out again. It says :

“ The Local Government may declare that any offence punishable under. . . when committed in any area specified in the notification shall be a cognisable and non-bailable offence. ”

That is to say, we are giving, we the Central Legislature who have the power of amending the Criminal Procedure Code, power to the Local Governments to declare that the cognisability or non-bailability of particular offences shall apply to this area, or that area or the other area. It is only the power of application that is being vested in the Local Governments, not that the Local Governments, at their sweet will and pleasure, can change the law. We are changing the law and we say, this changed law you can apply to such areas as you think proper.

Mr. President (The Honourable Sir Ibrahim Rahimtoola) : How long is the Honourable Member likely to take ?

The Honourable Sir Brojendra Mitter : I shall probably finish in quarter of an hour.

Mr. President (The Honourable Sir Ibrahim Rahimtoola) : If the Honourable Member is likely to finish within twenty minutes, the Chair will allow him to continue his speech.

The Honourable Sir Brojendra Mitter : Left to myself, I think I can finish within fifteen minutes. But if anybody interrupts me, I do not know whether I can finish within that time.

Mr. B. E. Puri : As for myself, I undertake not to interrupt.

The Honourable Sir Brojendra Mitter : What about other Honourable Members ?

Mr. President (The Honourable Sir Ibrahim Rahimtoola) : If the Honourable Member prefers to resume his speech after Lunch, I will adjourn the House now.

The Honourable Sir Brojendra Mitter : As you please, Sir.

Mr. President (The Honourable Sir Ibrahim Rahimtoola) : The House will now adjourn till Half Past Two.

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

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Mr. President (The Honourable Sir Ibrahim Rahimtoola) in the Chair.

The Honourable Sir Brojendra Mitter : Sir, I was dealing with clause 12 of the Bill. My submission shortly is this, that in clause 12 of the Bill what we are doing is that we are amending the Criminal Procedure Code in certain respects, and all we are saying is that the Local Government will in proper cases apply the amended provisions to proper areas. That is all we are doing. It is not delegating the functions of legislation to the Local Government.

Then the only other clause which has been criticised is clause 17E, that is, forfeiture of property. That clause has been criticised on the assumption that we are proposing forfeiture of private property of individuals. If Honourable Members were to read this clause carefully, they would see that we are doing nothing of the kind. The property, which comes within the scope of this clause, is the property of an unlawful

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association and not the property of any individual. Individuals are not touched at all. The clause says this :

“ Where the Local Government is satisfied, after such inquiry as it may think fit, that any monies, securities or credits are being used or are intended to be used for the purposes of an unlawful association, the Local Government may, by order in writing, declare such monies, securities or credits to be forfeited to His Majesty.”

It is property which is to be used in furtherance of the objects of an unlawful association which will be liable to forfeiture. Therefore, the criticism which was made is beside the point, and I need not take up the time of the House any longer.

There is one more observation I desire to make and that is my learned friend Mr. Puri's contention with reference to section 84 of the Government of India Act taken with section 65. As Honourable Members are aware, section 65 of the Government of India Act sets out the powers of the Indian Legislature. Our powers are plenary subject to certain limitations. These limitations are set out in sub-section (2), that we may not do anything which will affect the jurisdiction of Parliament. Shortly speaking, that is the limitation. Also we may not do anything to transgress the common law of England, not all common law but such :

“ unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend on any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty or dominions of the Crown over any part of British India.”

Sir, I do not think any Honourable Member, by any stretch of imagination, can say that we are trenching upon either the sovereignty of the Crown or doing anything which may in any degree bear upon the allegiance of any person to the Crown. I do not see how this Bill transgresses the provisions of section 65 of the Government of India Act and I confess that I fail to appreciate the point which my learned friend, Mr. Puri, made upon section 84 of the Government of India Act. Section 84 deals with the validity of Indian laws and it removes certain doubts as to the validity of certain Indian laws. It says that a law made by any authority in British India shall not be deemed to be invalid merely on account of any one or more of the following reasons. The reasons are : firstly, in the case of.....

Mr. B. B. Puri : I referred to the later portion about repugnancy.

The Honourable Sir Brojendra Mitter : That sub-clause reads thus :

“ A law made by any authority in British India and repugnant to any provision of this or any other Act of Parliament shall, to the extent of that repugnancy, but not otherwise, be void.”

I fail to see which part of this Bill is repugnant to any Parliamentary Act.

Mr. B. B. Puri : I endeavoured to make it quite clear in my speech that the Act of Parliament conferred the power of legislation upon the Central Legislature and that power was conferred upon that body exclusively. There is no other agency which has been given that power of legislation. Therefore, if we proceed to delegate our powers to some other agency, we would be violating and going beyond the powers which have been conferred upon us by an Act of Parliament.

The Honourable Sir Brojendra Mitter : I follow now. The argument is that this Bill constitutes a delegation of legislative functions from the Central Legislature to the Local Government or, it may be, the Governor General in Council. Such delegation is incompetent. If it is incompetent, then it violates this provision of section 84 that a law made by authority in British India and repugnant to any provision of this or any other Act of Parliament shall, to the extent of that repugnance, be void. My simple answer is this that if we are acting within the four corners of the powers given by section 65, then we are not doing anything repugnant either to the Government of India Act or to any other Parliamentary Act. And I have endeavoured to show that what we are doing is not delegation. What we are doing is this ; we are changing the law here, and all we are saying is that the Local Government in certain circumstances will apply the changed law to particular areas. That is an executive act ; it is not a legislative act on the part of the Local Government, nor does it constitute any delegation of legislative functions to the Local Government.

These are all the legal points which have been raised in the course of this debate. I have no desire to deal with the political points which have been made. So far as the legal points are concerned, I hope I have been able to satisfy Honourable Members opposite that these points have validity in so far as the provisions seem to go beyond the necessities of the case. But the proposals which we have made in this Bill do not violate any fundamental or even non-essential principle of criminal jurisprudence. Sir, what strikes one is this. We are much too prone to magnify differences, but when you come to examine those differences, you will find that they are all differences in detail and not differences of principles. There is general agreement that an evil exists and that the evil has to be removed. Precisely by what detailed measures those evils are to be removed is a matter which may well be considered in Select Committee. Here all that the House, at the present moment, on the motion moved by my Honourable colleague, the Home Member, will be committed to, is this : that certain manifestations of the civil disobedience movement, which constitute a danger to society, should be removed by appropriate measures. Nothing beyond that. We have suggested what those measures should be. If better methods are suggested by any Honourable Member opposite, certainly they will be considered in Select Committee and considered with sympathy, having regard to the needs of society consistent with individual freedom. It is not our intention to curtail individual freedom ; our intention is to adjust the curtailment of individual freedom to the needs of society at large ; and I do not suppose it will be beyond the combined wits of the members of the Select Committee to devise proper means to achieve the object which we have in common. There is more agreement amongst us than my Honourable friends opposite care to admit. We are agreed on the fundamentals ; we differ on details ; let us examine those details in Select Committee. Sir, to quote the language of an *ex-Prime Minister*, we have had enough of talk ; let us settle down to business. (Applause.)

Mr. F. E. James (Madras : European) : Sir, I have been given the responsible duty of speaking on behalf of my Honourable colleagues and, unlike some of the parties on the other side of the House, we propose to confine our expression of opinion to one speaker from this group. The Honourable the Law Member, who has just sat down, has exploded

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to a very large extent the contention of the Opposition that this Bill contains powers which are either extraordinary or unusual. I would remind the House that this Bill proposes to replace the existing Ordinance, No. 10 of 1932, which is due to expire at the end of this year. If the House examines this Ordinance, it will find that it consists of 80 sections ; nearly 60 of those sections are being dropped ; and the House will find that those sections which are being dropped by the Government are those sections which contain the most drastic emergency powers with regard to suspected persons, buildings, control of traffic, transport of arms, posts and telegraphs, railways, vessels. etc., etc. In other words, by introducing this modified Bill, the Government themselves of their own volition, I gather in response to the improvement in the situation and also in response to public opinion, are dropping from their armoury all the most objectionable features of the present Ordinance—those features to which public objection has been made with the strongest emphasis. I want to stress that point, because I think that point has not been sufficiently emphasised by Members in the House. Now, if the House will look at the Bill by which Government propose to put on the Statute-book certain clauses in the Ordinance, it will find that it ranges itself under four main heads. There is, first of all, provision for the adequate defence of Government servants against social boycott and intimidation. I take it that not one Honourable Member on the other side will venture to argue for one moment that the Government are not entitled to protect to the fullest degree their own servants against this form of intimidation and boycott ; and I find that for once in their lives the Government, in bringing forward this proposal, are in complete agreement with the Working Committee of the Congress. For, if Honourable Members will look at the Resolutions which they passed in the beginning of the civil disobedience movement at the beginning of this year, they will find the following words :

“ Social boycott with the intention of inflicting injury on Government servants, police or anti-nationalists should not be undertaken and is wholly inconsistent with the spirit of non-violence.”

I, therefore, assume, my friends on the other side will not object to this particular provision in the Bill which is now before the House. Then, surely if Government servants are by the admission of the Congress, entitled to protection against this particular weapon, surely the public is also entitled to similar protection. You will observe that in this statement of the Working Committee it distinctly says “ social boycott with the intention of inflicting injury on Government servants, police or anti-nationalists ” ; and I presume that they mean by that phrase “ anti-nationalists ” every person who does not think alike with the members of the Congress itself. Therefore, on the admission not only of the Working Committee of the Congress, but of all thinking persons, there must be not only protection for Government servants against intimidation and boycott, but also protection of the public against similar methods. Then, Sir, the House will find in the Bill itself in the provisions made in clauses 4 and 7 for dealing with intimidation and boycott, that these powers are left to the discretion of Local Governments to apply. I very much hope that in my own province of Madras, the Local Government may not find it necessary to use these particular sections ; but it is a very important point, because the movement itself varies in

intensity in different parts of the country, and it is proof of the assertion of the Honourable the Law Member that this Bill is an attempt merely to meet a particular situation which may arise by the use of these weapons in the civil disobedience movement. The Law Member has already referred to a third defence which is, if I may call it so, the defence of children. There have been many cases in which, in order to circumvent the law, children have been deliberately used in processions, in hartals, in strikes, in schools and colleges, by their parents, so that their parents may escape coming under any legal disability. I suggest that this is a very salutary provision and as the Law Member has pointed out already similar provisions exist in Statute in the provinces and also in the Children's Act of Great Britain. That brings me to the fourth main head of the Bill, and that is the question of the control of the press. I am perfectly well aware that these provisions will lead to a great deal of ill-feeling on the part of those who are responsible for conducting the press in this country ; but I would remind the House that liberty is far more easily destroyed by those who abuse it than by those who oppose it. That is not a quotation from Mr. Winston Churchill, but it is one from Mr. Ramsay Macdonald when he was leader of the Labour Party, and in opposition. I quite admit that it is difficult not to sympathise with the difficulties caused by the restrictions which are placed upon those who conduct the press in a dignified and orderly fashion ; and I would like to say one thing to the Government on this point. We believe that, under the circumstances, it is essential not only to continue the control of the press which is at present exercised under the Ordinance, but possibly even to extend it in some directions. But that is only the negative aspect. . . .

Mr. Jehangir K. Munshi (Burma : Non-European) : Can you give any reasons for the belief ?

Mr. F. E. James : The reasons for the belief may be seen in the amazing misrepresentation which the House can find in the press all over the country, of Government intentions, of actual facts, and of Government action,—misrepresentations that have been brought to the floor of this House and absolutely refuted when the facts have been placed before us. But my point is that while I think control may be necessary, that is a negative side of the matter. What is also important is the positive side in dealing with this question of the press. I believe, there is greater need to-day than ever for co-operation between the press and the Government, and I wonder whether the Government really escape the charge that they have not, either here or in the provinces, in the immediate past, gone as far as they might have gone in attempting to secure that co-operation. Let me read a short extract from a note written by Lord Burnham, who cannot be accused of being a liberal, in connection with the Simon Commission Report. He says :

“ I think the time has now come (*this was two years ago*) when Indian Governments and their principal departments ought to have special bureaus for dealing with the supply of news, at the head of each of one of which there should be a trained journalist capable of handling news and matter in a most efficient way. It cannot be laid down how this can be done, but the question must be carefully considered by what means the widest publicity can be obtained for the correction of misstatements and for the dissemination of the true facts in regard to the activities of the Central and Provincial Governments.”

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I would also like to remind the House of a statement in the Press Committee's Report of 1921 in which it says :

“ We believe also that the malignant influence of the seditious organs of the press will in future be and in fact is already beginning to be counteracted by the growth of distinct parties in politics, each supported by its own press supplemented by the activities of a properly organized bureau of information, the value of which was admitted by many witnesses.”

My whole point is this, while admitting the need for control,—that is only the negative of this question,—the important thing is that Government should, by obtaining the co-operation of the leading and more stable members of the press, get their own views published not only in the English press, but in the vernacular press as well. I need not remind the House, on the eve of constitutional changes which will greatly extend democratic principles in this country, that the press is the handmaid of democracy, and that more and more will the Governments of the day be dependent upon the press in reaching the widely extended electorates in connection with their views and their policy. The Honourable the Home Member said in the course of his observations that he was anxious that the new Governments should be given the powers, in their initial stages, which it is proposed in this Bill to confer on them. May I also suggest that if these powers are going to be conferred on the new Governments, both provincial and Central, some better arrangement than exists at present for publicity in regard to Government policy and for co-operation between Government Departments and the leaders of the press might be handed on to these new Governments ? By so doing, Government will be rendering an equal service.

Now, Sir, coming again to the purpose of this Bill, I wish to ask two main questions. The first question is ; is the Bill justified ; and the second question is, if it is justified, is it really advisable ? Sir, we take a very serious view of the civil disobedience movement. It is a movement which is dominated by the ideas of revolution. It has nothing to do with constitutional agitation ; it has nothing to do with passive resistance. There is all the difference between the civil disobedience movement and the movement which is known as passive resistance.

Mr. S. C. Mitra (Chittagong and Rajshahi Divisions : Non-Muhammadan Rural) : Do you approve of passive resistance ?

Mr. F. E. James : Without approving of passive resistance, I may say that I have the honour to be the son of one who, twenty-years ago in connection with an educational controversy in England, was a passive resister. (Applause from the Nationalist Benches.) As far as I was able to understand the doctrine of passive resistance, it is that a person obeys a particular law which offends against his conscience under protests, and that he uses every year an opportunity for making his protest known. There is no question of disobeying the law. Those who, with my father, were in the passive resistance movement were unanimous in their determination not to allow themselves to disobey the law. There lies the difference between the passive resistance movement and the civil disobedience movement. Civil disobedience is a movement which is directed to the end of making the administration impossible. It is, in other words, a gospel of direct action. It is an attempt to force

extra constitutional methods upon the Government and to make that Government thereby yield. I claim that it must be made perfectly clear that the functions of Government cannot be assumed by any organisation but that of Government. In the words which were quoted by my friend, Mr. Puri, when Government are faced with a movement of this description, "Government must govern or get out"; they must govern or abdicate to those forces which are trying to bring about their overthrow.

Secondly, Sir, this movement is not only aimed against Government, but it is a movement of aggressiveness against the community at large.....

Mr. Gaya Prasad Singh : We know our own community better than you do.

Mr. F. E. James : I am not speaking of my Honourable friend's community which is a small one ; I am speaking of the whole community in India.

That leads me, Sir, to a letter which was recently written in which the following words occur :

" My whole being rebels against the idea that in a system, called democratic, one man should have the unfettered power of affecting the destiny of an ancient people numbering over three hundred millions and that his decision can be enforced by mobilising the most terrible forces of destruction."

That is our whole case against the civil disobedience movement. That quotation is from a letter written by Mr. Gandhi himself on March the 11th to the Secretary of State for India. In other words, this movement is not only a movement directed to the overthrow of Government, but it is a movement against the community at large. It is directed against those parts of the community which do not hold the views of those who are in the civil disobedience movement. Civil disobedience injures therefore the community. It destroys confidence; it stifles consumption; interferes with trade; and in its effect—I want my Honourable friends opposite to note this—in its effect it brings ruin and distress to the poorer members of the society. It is not the rich man who suffers; it is not the man who by the fact that he is a capitalist is able to manipulate behind the scenes and subsidise the movement for his own financial ends—he is not the man who suffers. The people who really suffer are the poor people who are duped and, in many cases, from my own personal observation, are led to utter ruin and destitution. Therefore, the Government have not only a duty to their own selves, but they have a duty to the community at large. If my Honourable friends do not believe what I am saying, and if they think that I am exaggerating the position and the danger of this movement, I would refer them to the unfortunate and regrettable happenings in Cawnpore and Bombay which were to a very large extent due to the presence of this particular movement in the community.

Mr. Gaya Prasad Singh : It was due to official wirepulling.

Mr. F. E. James : To go on further, admitted that the movement is a movement directed against the Government and against the community at large, is there any sign that the leaders of this movement are prepared to give up this particular weapon? I wish I could answer

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that in the affirmative. As I understand the position of Government, it is that, as long as this threat persists, the Government must fight it, but if this movement were withdrawn by those who began it, the Government would reconsider the whole position, even in regard to this Bill. Now, I find that there is no sign at the present moment that this movement is going to be given up by its authors. I find Mr. Gandhi writing recently in regard to what he calls the embittering of relations between Britain and India. He says :

“ In so far as I am responsible and can help it how am I to arrest the process ? Not by stopping civil disobedience movement. For me it is an article of faith.”

It is one of the most depressing things that I have ever read, and as long as a leader of the Congress like Mr. Gandhi holds the view that civil obedience is with him an article of faith, I find it very difficult to recommend to Government that they should surrender any one of these powers.

There is one other point that I should like to make. Not only is there no sign at present that the Congress and its leaders are prepared to give up this particular weapon ; on the contrary, there are signs that this weapon is likely to be used not merely by the Congress, but by other parties. A policy of direct action in industrial disputes, even in educational controversies, in social movements, in agrarian questions has found a very fruitful ground. I was surprised to find my Honourable friend, Mr. Mody, after speaking in previous debates on the protection of his own vested interests, completely ignoring that point. Surely, if it is the case that this direct action method has come to stay, Government must be given adequate powers to deal with such methods.

There is one further point on the justifiability of this Bill which has not been touched upon, but I think it is a point which should to some extent influence the Members of this House. I refer to the general position of the world at large. No one who is a contemporary student of international movements can but be unaware of the fact that all over the world there is a revolt springing up against constitutional methods, both national and international. I need not remind the House of the unsettled position of the world to-day. I need not stress the point, which I believe to be one of the most important points for consideration to-day, that the dogs of war are straining at the leash both in Europe and in Asia. At this very moment there is a concerted action in defiance of the one constitutional international body, in the world, namely, the League of Nations. My point is this ; India cannot escape these influences. The desire to break contracts, to repudiate agreements, to get back to the direct action of the old days,—this desire is prevalent in a great many countries of the world and is a tremendous danger, and this country cannot escape that danger. India is engaged at the present moment in a tremendous task, and I do not think that any one of us in this House even realises the magnitude of that task. It is the task of radically altering the present administration which has given India order and security and of developing in its widest forms parliamentary and democratic Government. Surely, is it not wise under these circumstances

to take precautions against a movement which is the denial of democracy and an enemy of freedom ?

Now, Sir, it may be admitted for a moment that this movement must be met by special measures and that these special measures are justified by the movement concerned. The further question which arises is, is it advisable at this moment to try and attempt to get legislative sanction for these special measures. As far as I can understand and the many interruptions to the Honourable the Law Member's speech, I gather that there was a general consensus of opinion on the other side of the House that some special measures were justified in dealing with this threat. I assume that that is the case. The only question then that appears to divide us is as to whether these special measures should be brought before this House for ratification, or whether they should be secured by a continuance of the Ordinances. There are only three ways of doing it. The first is to continue the Ordinances, and I was amazed to hear this course advocated by such an old and tried democrat as my Honourable friend, Mr. Puri, or so able an advocate and liberal as my Honourable friend, Mr. Mody. We feel that Government have done the right thing in bringing this measure for legislative sanction. They could have taken no other course, and we certainly would prefer this course to the course suggested by my Honourable friends on the other side that the Ordinances should be re-enacted at the end of their present term. The second alternative is to drop the Ordinances altogether and not bring forward any special legislation. Even that, I gathered, would not be agreed to by my Honourable friends on the other side, who have more or less accepted the position that the Government must have some special measures to deal with this menace. The only alternative, therefore, left to Government is that they should bring forward a Bill seeking the support of the Legislature in securing powers which will enable them to deal effectively with this subversive movement.

The civil disobedience movement has worked in the past by means of discovering loopholes in the existing law. It must not be forgotten that many of the leaders of the civil disobedience movement are clever lawyers, and it takes a lawyer to discover loopholes in the law. They have been exceedingly successful in doing that. As far as I understand the Government's position, it is that they seek to close up these loopholes, so that Government shall not be circumvented in dealing with a movement of this description. There is a view that has been expressed on the other side of the House regarding the permanence of this legislation and here I want to say one word on behalf of the group which I represent. It has been suggested, for example, that it is not necessary to place these special provisions permanently on the Statute-book. One reason is that specially strong powers are always repugnant to some people. The argument has also been advanced that it is not the business of the existing administration to provide these powers for the future administration of the country. Now, Sir, as far as we are concerned, provided the Members on the other side are prepared to agree to the proposition that the Government should be armed with some powers and in that spirit are prepared to go to the Select Committee, then I think that we would not object to the limitation of these powers to a particular period. I think it should be stated that the period should

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be sufficiently long to cover the whole of the transition period, which was referred to by my friend, the Home Member, the transition period during which not only the Provincial Governments, but also the Federal Government in India are established.

Now, Sir, I have only one more thing to say. I want, in closing, to explain the attitude of my own community towards this question of what is wrongly called "repressive legislation". In the first place, we are not committed to every detail of the Bill. Speaking as one, who has had some training in law, it is obvious that some of the provisions need very careful scrutiny at the hands of the Select Committee and I understand from the Honourable the Law Member that that scrutiny will not only be given, but will be welcomed and met by the Government representatives themselves. Secondly, we are committed definitely to the principle that the civil disobedience movement and its allied movements, for I would tell this House that in certain parts of the country it is almost impossible to say where the civil disobedience movement ends and terrorism begins, is one of the biggest obstacles to reform. We are also committed to the view that the reforms which are outlined in the Prime Minister's and His Majesty's Government's statement should be pushed forward with the consent of the largest support possible of the people of the country. We are prepared definitely to support not only this administration, but any future administration which is faced with a similar position, in securing powers to deal with such movements as the civil disobedience movement. We take no special pleasure in doing this. May I speak for one moment not as a representative of a group, but as an Englishman to friends. I belong to a race which has been nurtured for centuries past in the principles of constitutional evolution and in liberty of speech and action. It must never be forgotten, however, that while we are so nurtured, our traditions are also as strongly rooted in opposition to revolution, direct action and coercion.

Mr. Gaya Prasad Singh : What is your own history ?

Mr. F. E. James : My own history is one that will bear the scrutiny of my Honourable friend over there. I am not here to give a historical disquisition. I am merely stating that I belong to a race which is nurtured in those traditions.

Mr. Gaya Prasad Singh : What about Oliver Cromwell ?

Mr. F. E. James : Not once nor twice has our own British Parliament armed the executive with tremendous powers in the face of a threat of direct action and in the face of a movement which is aimed at the community at large. I would refer Honourable Members for a moment to the debates on the General Strike in Great Britain where the executive was armed with powers which this present Government have hardly conceived of, and where those powers were used on the whole with the sanction of the great majority of the British people. It must be remembered that the powers which it is now proposed to give to the administration in this Bill are powers which are going to be administered not by outsiders, but mainly by the people of this country. Under the scheme of constitutional reform, the personnel of those who are to

administer these powers will not be very largely changed. Therefore, when Honourable Members say that they cannot trust Government to use these powers adequately, what this House is really saying, Mr. President, is that Members, on the other side particularly, cannot trust their own countrymen in the administration of justice under this Bill. Sir, this Bill is not an anti-national Bill. The national movement in this country, which was referred to by the Honourable the Home Member, does not depend on intimidation. It does not depend upon boycott. It does not depend upon misrepresentation in the press. It depends on something bigger than that. Even if we stop intimidation, boycott and misrepresentation, the national movement will still go on. Therefore, it is not true to say that this is an anti-national Bill. Nor is it true to say that this Bill, if passed, will be any bar placed in the way of ordered progress. Let me remind the House that the door is still wide open to reforms. My friends on the other side seem to suggest that the only way to meet the civil disobedience movement is to give a further instalment of responsible Government. The door is wide open. If only the people of this country can unite, they can go in at that door and get whatever reforms they want. The only thing that prevents the full fruition of India's hopes is that unfortunately the people of India are not united. Then the door is also open, as I have already said, to the withdrawal of these powers. If the civil disobedience movement is called off, I understand Government are ready to consider the question of dropping this additional legislation entirely and also the existing Ordinances. I wonder if I have misread the message of Mr. Gandhi published in the press this evening. I have made a very careful study of Mr. Gandhi's writings for some years. (I may say in passing that this House will wish to congratulate both Mr. Gandhi and Dr. Ambedkar and Mr. Rajah on an epoch making settlement.) I wonder, if I have misread Mr. Gandhi's statement, when I seem to discern in it a change of tone I wonder if it is possible that out of this settlement of a problem which is essentially a social problem in the political sphere, there may possibly be an opportunity for a settlement on far wider lines than we have at present even imagined it to be possible. As I said before, the door is open for reform, the door is open to the withdrawal of these powers. On the one hand, if our friends in all quarters of the House are determined to enter the door of reform, as indeed I hope they are, they will achieve far more than they ever hoped. On the other hand, if those who are responsible for the civil disobedience movement will but see that the door is open at present, and has been purposely left open even at this late hour, is it not conceivable to hope that a far brighter day may dawn on India, and that the peoples of this country may achieve that liberty and freedom which they have long desired? My own community, Sir, has still a part to play in this country and a great and important part. Some of my colleagues have surrendered many cherished principles in endeavouring to meet the point of view of those who desire freedom for India. I think I can claim that my community has politically advanced to a very great extent in the last few years. (Hear, hear.) But we are frankly afraid of the future, as long as there are people who are willing and it would seem very willing to allow subversive movements to go on unchecked. If once we could be convinced that those who lead this movement would be prepared to give up that movement for the sake of the very reforms they are seeking, I think the House will find, Sir, that the people of my community will

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not be backward in coming forward with their Indian friends and in helping them to achieve their desired goal. (Loud Applause.)

Sir Zulfikar Ali Khan (Nominated Non-Official) : Sir, I am grateful to you for according me this first opportunity in this Session to speak in the Assembly. Sir, I do not propose to go into the details and to examine the Bill, section by section, as others have done, but, with your permission, I shall make certain general observations. The Bill is likely to go out either for circulation or to be entrusted to a Select Committee. In any case, I trust the Bill, when it comes back to the Assembly at Delhi, will be more presentable in shape, and perhaps chastened in spirit. Sir at this momentous juncture in the history of India, when, on the one hand we expect the roseate dawn of a new Indian constitution to appear and on the other hand, the heavy clouds of anarchy threaten to darken the face of the skies, the occasion demands that we must examine the situation most dispassionately and calmly. I regret very much, Sir, the partisan spirit on your right and on your left. I have observed with regret that whenever a speaker on your right-hand side speaks, the general conduct of Members on your right is to ridicule the speaker ; especially I regretted very much that when the Honourable the Law Member was lucidly explaining his point of view, the speakers on this side heckled him very much. Sir, I also observed with regret that whenever a speaker on this side happened to support the point of view of the Government, it was generally the Government Members who gave him applause. Well, I think on this occasion the co-operation of the whole House is most essential to the well-being of this country. India, Sir, is the land of our birth, and whatever there is in this country belongs to us. India also is the scene of British labours. The possession of India has vouchsafed unprecedented prosperity to Great Indian, and it has given Great Britain a dominant position in the world. Therefore, Sir, I assert that it is the object of both sides to save India from ruin. But to save India from disaster, sympathy and wisdom are most essential on both sides. It was in 1919 that sympathy was most needed. When the Rowlatt Act was before the Imperial Legislative Council (I was a Member of that Council then), I noticed with regret that the Government did not realise the gravity of the situation then. Thousands of telegrams came to the Viceroy asking him to withdraw the measure, but the general opinion amongst the officials was, although a great storm was blowing, that still they were prepared to meet it,—and the storm duly came and disaster too ! I remember well—I was then in Lahore when the great movement sprung up against the British. Sir, the Rowlatt Act had been passed in spite of the protest of the people, and the people wanted to show their resentment against the authorities. Great trouble happened in the Punjab, as you all know—I need not go into the details—but I remember one incident. When going amongst the people who were agitating against the British Government, I spoke to them some words of wisdom, if I possessed any wisdom. They said, “ All right. If you are so anxious to restore peace, why don't you ask the Viceroy to come down from Simla, and we shall then have a talk with him and desist from our course ? ” Well, I think the Viceroy knew the desire of the people. Still the Viceroy did not go down to Lahore : and the whole situation exploded and there was the great massacre at Jallianwala Bagh. That showed the lack of sympathy on the part of the Government and showed also that

the people were capable of resenting the action of Government in spite of their protest. I said that sympathy and wisdom were required. Wisdom was found lacking on the side of the Indians.

In 1921, when Lord Reading offered to give a Round Table Conference to the Indians, I am sorry to say that Mahatma Gandhi refused it then. I am perfectly sure that, after showing his strength in the country, if he had accepted the offer, the Indian constitutional movement would have gone very far by now. However, things were in the hands of Providence and what happened has happened. I hope that the experience of the past will teach wisdom to both sides now.

Now, Sir, coming to the causes of the present trouble which has given birth to the measure which we are discussing, I am afraid that only the effect of things is taken into consideration and not the causes. Last year, about this time, we were discussing a measure and we expressed the opinion and advised the Government to take timely warning and do things which would allay the agitation in the country. But Government took no notice of it and paid no attention to our warning. The trouble goes on increasing and the root cause of it seems to be that there is, first, unemployment in the cities and, secondly, there is the agrarian trouble in the rural areas. Civil disobedience movement has come into existence, because Government, instead of dealing with the causes, have dealt with the effect.

Sir, both the Government and the Benches on this side have referred to the French Revolution. Perhaps the analogy is not quite correct, but still it has a remote resemblance to it. In those days the trouble was almost the same, the people suffering and the rulers not caring what was happening to them. The people were starving and yet Government made no provision against famine. I remember having read in history an incident: Marie Antoinette, the Empress, sitting in her drawing room was entertaining some people at tea. She threw a piece of cake to her dog and the dog did not care to eat it. A courtier sitting by her side said : " Madam, you give cakes to your dogs, but you do not know that your subjects are starving ". Marie Antoinette said : " Do my subjects have no cakes to eat ? " " Well ", the courtier said : " Madam, no ; they have not even bread to eat. " Well, Sir, you know the consequence : what happened to France and to the royal family. It was the ignorance of the situation or deliberately shutting their eyes to the distress of the people. I do not imagine that the Government in power in India are so ignorant of the distress and the misery of the people as the Government in France in those days were, but still I say, do the Government take any measure to remedy the evils which are afflicting the people ? Sir, revolution is not the normal condition in India. People are affected as they would be affected in any country by hunger and here, if hunger is added to the resentment against repressive laws, I am afraid trouble would increase. If such a law as this is permanently placed on the Statute-book, people will naturally conclude that it would be better to have a terrible end than a terror without end. It is for Government to show to the people that they are capable of occupying the country with their gifts rather than with the Ordinances and their armies. Let them once show to the people that they are capable of doing this thing, that is to say, government with the consent of the people and according to their wishes, the effect would be electric. I assert, Sir, that the people are not so ungrateful to the benefits which the Government may confer on them and I am perfectly sure that the Indian character is

[Sir Zulfiqar Ali Khan.]

not ungrateful. I am afraid, Sir, that if this measure is made permanent, the remedy would prove to be worse than the disease itself. Political life in this country has practically come to an end and in this connection I may relate an incident which happened to a servant of a friend of mine in Lahore because, in those days, excessive powers were placed in the hands of the police. His servant who happened to come to the city came from outside and he happened to stand before a shop out of mere curiosity. A couple of policemen came along and marched him off. The stupidified man asked them as to what his sin was. The policeman told him that he was picketting the shop. The man said that he did not even know the meaning of the word "picket", and that he was simply standing there looking at the shop and the things it contained. The policeman said: "No, you must come along to the police post. You are a picket and picketing is forbidden by law." When they marched a few paces, the policeman asked him if he possessed any money. The man said that he did not possess much, but that they could enquire of his master whether he was his servant or whether he was a picketter. But the policeman refused to phone up the master of the man, but marched him off some more paces. Afterwards when the policeman saw that the man was very sincere in his declaration, he let him off.

Now, Sir, if this state of affairs happens frequently in the country, as is likely to happen according to this law, then the exasperation of the people would be terrible and the odium will fall on Government. The law itself would not be so much detested as the persecution which the people meet on account of the law. My Honourable friend, Mr. James, in his speech said and Mr. Puri also referred to the weighty words uttered by a Conservative statesman in England. Addressing the Government, he says, govern or get out. These two words are very pregnant with meaning. Mr. James seems to endorse the significance of these words. What does he mean by governing? Does he advise the Government to govern the country against the consent of the people? Does he want the Government to govern the country in the interests of the minority Europeans in the country? The British Government in this country have governed for nearly two centuries with unchallenged sway and the Indians surrendered every affair of theirs to their safe keeping and, it cannot be denied and even Government officials cannot deny that for two long centuries they had full say in the matter without any interference on the part of Indians. We, Indians, supplied them with money, we supplied them with men to establish their power in India. We gave them men and money to conquer China, Soudan, Egypt and last, but not least, we shed our blood in the service of the Empire in the battlefields of the Great War. Can Mr. James or others say that after doing all this, we should like to make the British change their ways, without any reason? Nobody can deny that trouble exists in the country and there are causes for it. We say that the British Government should remedy those causes and not ask the House to supply them with more weapons to strangle the political life in the country. Mr. James said that social boycott of Government servants would very likely result, if such a measure were not in existence. I can challenge Mr. James to show if laws like these or more stringent laws than these can prevent the people from forcing or persuading those people who think more of the interests of the country than of the classes of people that Mr. James

belongs to. Sir, social boycott and political boycott are the offsprings of resentment of certain course of action and you can only prevent such proceedings and such behaviour on the part of the people by meeting the desires of the people by sympathy and justice and by showing that you can adapt your course of action according to the aspirations of the people. I quite admit that the power of the British to civilise raw people is unique, but I should also say that when those people reach a stage of desiring and feeling, the British do not show the power of adaptability then. It is for the British to cultivate that spirit and to keep India within the Empire, because only then will the British maintain and vindicate their reputation for love of liberty and love of justice.

Mr. K. C. Neogy : Sir, the Honourable the Home Member made such an admirable speech the other day that I thought it right to get a copy of the full text of that speech before speaking on this particular motion. The first thing that he said in his speech was that he was inviting the House to approve of the principle of the Bill. But, I do not find anywhere in his speech anything to indicate as to what that particular principle is, and I am not, therefore, surprised to find my Honourable and esteemed friend, Sir Abdur Rahim, on the third day of the debate putting a pointed question to the Honourable the Law Member and asking him "What is the principle that underlies this particular Bill, to which we are asked to give our assent?" The reply that the Honourable the Law Member gave was not of the usual epigrammatic style, to which we are accustomed from the Honourable the Law Member on such questions, because I remember on another occasion while we were discussing another repressive measure, the Honourable the Law Member very frankly and very concisely described the principle underlying that particular Bill as "seeking to invest the executive with powers to decide certain judicial issues." What he exactly said was that executive judgment was to be substituted for judicial judgment. I had very much hoped that he would give us some such lead on this particular occasion too, but what he said was that the principle of the present Bill was the necessity of combating the movement. That, I dare say, is the object of the Bill and certainly not the principle underlying the Bill itself. The principle, I maintain, has to be deduced from the provisions of the Bill. Now, Sir, if one goes through the Bill,—and, in going through the Bill, one cannot altogether forget the history of the Bill and the history of the predecessor of this Bill,—one is tempted to say that the principle which underlies this particular Bill is the substitution of a rule of law by undisguised and undiluted autocracy and tyranny on the part of Government. That being the underlying principle of the Bill, I do not think Honourable Members opposite expect many of us on this side to support the motion for reference to Select Committee. Now, Sir, the Honourable the Home Member went on to give the history, or rather the origin, of this Bill. He said: "It is very plain, it can be stated in two or three words, the civil disobedience movement." And then, again, he proceeded to say that it was unnecessary to give the history of that movement. I naturally sympathise with my Honourable friend, because I feel that it would not have been very convenient for him to go into the full history of that movement.

The Honourable Mr. H. G. Haig (Home Member) : The House would have been tired, Sir.

Mr. K. C. Neogy : Now, Sir, I do not propose to go further back than 1930 and I propose to be as brief as I can on this particular point. Ever since the well-known Irwin-Gandhi Pact was concluded, there was a section of British people in India, aided and abetted by a corresponding section of die-hards in England, who began to grumble, and their grumblings were given expression to in their press in India as also in England. They did not want any peace to be concluded as a result of any negotiations with Mahatma Gandhi. Then there was the secret support, I am told, of a section of the Indian Civil Service behind them in this particular attitude. Then followed the overthrow of the Labour Government in England and the installation of a die-hard Government in the India Office. And while Mahatma Gandhi was sitting at the Round Table in London, a conspiracy was being hatched in India to counter the peace efforts that he was making, and to launch into a kind of civil war in India. The European Association of Calcutta and the European Association of Bombay went the length of making specific suggestions that Government should deal with the political situation in a particular way, although at that moment the Pact was in operation. There have been several questions during this Session in this House drawing pointed attention to some of the specific suggestions made by these two Associations, and inquiring whether Government have taken any notice of them or whether Government policy was influenced to any extent by these expressions of opinion. Of course, the answer has been that Government did not even read these letters before they decided upon the course of action which they took, towards the end of 1931.

Now, Sir, speaking on the question of the Ordinances, at Delhi last winter I drew attention to a very significant statement made by Mr. Winston Churchill in the House of Commons on the 3rd December in which he said : " What is the use of sending out these committees that you propose to send to India to inquire into the various questions connected with the Round Table Conference when many parts of that country would be under a system akin to martial law ? " I would rather quote his very words in order not to be misunderstood. That is what he said on the 3rd December :

" What are we to do ? We are to send out committees to India ; they are to roam around India, large parts of which may be under something like martial law. They will roam around India in places where ordinary constitutional rights are superseded by measures of enforced protection. They are to be subjected to the same sort of ill-usage as that to which the Simon Commission were subjected by the adherents of the Congress party. India has to be kept in this state of unsettlement perhaps for two or three years."

The inquiry that I made on that occasion was as to how I was to explain to my friends of the Congress as to how Mr. Winston Churchill found it possible to make this statement on the 3rd December when Mahatma Gandhi was yet in London and the proceedings of the Round Table Conference had just closed. Sir, I did not get an answer on that occasion. Then, Sir, Dr. Ansari, a name which is highly respected among Indians of all sections, whatever differences of opinion between him and others there may be, Dr. Ansari, on the eve of his departure for Europe a few weeks ago, made a statement to a press representative in Bombay to the effect that he had actually seen the drafts of these Ordinances when the last Round Table Conference was in session in London. I have not seen any statement on the Government side, no press communiqué, challenging

the accuracy of this statement made by Dr. Ansari. Now, Sir, before Mahatma Gandhi reached the shores of India, the *Statesman*, an official organ of the Government of India for all practical purposes, did not find it difficult to say that Mahatma Gandhi shall not be allowed an interview with the Viceroy this time, and he was not ; because certain conditions were imposed on the interview that he had sought which he could not possibly comply with. I know, under the rules of this House, we are not permitted to discuss the conduct of the Governor General, but may I assume that, in such a very important matter of far-reaching consequence, His Excellency the Governor General was advised by the Members of his Executive Council ? And, if the Members of the Executive Council tendered him any advice on this particular point and, if that advice led to His Excellency's imposing those conditions on Mahatma Gandhi, then I must say, that if the civil disobedience movement followed, it was due directly to that advice which the Members of the Government gave to His Excellency in this matter.

The Honourable Sir Brojendra Mitter : Vicarious liability !

Mr. K. C. Neogy : Yes, of course. Now, Sir, may I be permitted to quote just a few words from the telegram that Mahatma Gandhi sent to the Viceroy, on the 29th December, 1931 ? This is what he said :

“ I do not know whether I am to regard these Ordinances as an indication that friendly relations between us are closed or whether you expect me still to see you and receive guidance from you as to the course I am to pursue in advising the Congress.”

He was in that telegram referring to the Ordinances that had already been promulgated in Bengal, the United Provinces and the North-West Frontier Province.

In his reply on the 31st December, the Private Secretary to the Viceroy stated as follows :

“ His Excellency is unwilling to believe that you have personally any share in responsibility for or that you approve, all recent activities of Congress in the United Provinces or the North-West Frontier Province. If this is so, he is willing to see you and to give you his views as to the way in which you can best exert your influence to maintain the spirit of co-operation which animated the proceedings of the Round Table Conference. His Excellency feels bound to emphasise that he will not be prepared to discuss with you measures which the Government of India with the full approval of His Majesty's Government have found it necessary to adopt in Bengal, United Provinces and North-West Frontier Province.”

That is to say, if you are not guilty, you are perfectly at liberty to come and see the Viceroy and he will tell you whether you can enlist yourself as a special constable and assist Government in enforcing the Ordinances that have been promulgated in the three provinces. Now, what was the reply ? This is dated the 1st January, 1932.

4 P.M. Mahatma Gandhi says that that telegram from the Private Secretary to the Viceroy grieved him : he says .

“ It grieves me that His Excellency has rejected in a manner hardly befitting his high position the advances made in the friendliest of spirits. I had approached as a seeker wanting light on questions while I desire to understand Government version of very serious and extraordinary measures to which I made reference. Instead of appreciating my advance, His Excellency has rejected it by asking me to repudiate my valued colleagues in advance and telling me that even if I became guilty of such dishonourable conduct and sought an interview with him he could not even discuss these matters of vital importance to the nation.”

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The House knows what followed. There was a positive refusal sent in reply to this telegram ; and then was launched the civil disobedience movement. It is very illuminating in this connection to refer to at least one of the Anglo-Indian papers which is supposed sometimes to reflect the Government views in these matters and which certainly is in the closest touch with the Government Members. And, may I, in passing, mention that I obtained a copy of this issue of the *Madras Mail* from the Home Department itself ; I am not ashamed to acknowledge that, though I found a disinclination on the part of some of my Honourable friends yesterday to acknowledge the source from which they obtained their ammunition. This is the *Madras Mail*, dated the 2nd January, 1932, and I am reading a few extracts from the telegram of the Special Delhi Correspondent of that paper, the telegram being dated the 1st January. It says :

“ For the last three days political circles have been speculating as to whether Mr. Gandhi would be in jail in a week or later.”—(*Mahatma Gandhi was still in communication with the Viceroy and yet the political circles in Delhi, which I dare say mean the official circles, were speculating as to when and how soon Mahatma Gandhi would be in jail!*)—“ Speculation now is whether he will survive arrest to-day ”—(*whether the summons will be sent to him as a New Year's Present*)—“ There is no doubt that while there is general regret here at the suddenness of the developments, these developments have not caused surprise and the Government's plans have been ready for some time. (*No one wonders.*) Police forces have been duly apportioned for the purposes of internal safety and troops for their help have been allotted and despatched throughout the country.”

Certainly it must have taken a few weeks at least to do this. Then there is a very significant sentence which the Editor very rightly put in thick types :

“ There is every indication here that the challenge by the Congress is to be accepted at once with all the force that the Government can command, so that, instead of the machinery of the law gathering momentum by the process of use, it is to be started off at full speed so that no risk may be run. According to the official plan, all those, who defy the order and join the Congress, are to be jailed, so that a proper atmosphere may be created for the purpose of discussing constitutional questions.”

With whom ? Jail the congress people and then there will be an atmosphere for a proper discussion of the constitutional questions ! Then :

“ It is argued in these circles that as a result of taking firm measures, the ground will be cleared of obstructionists, and the moderate elements will be enabled to assist Government in devising proper constitutional machinery so that Parliament may enact it.”

An Honourable Member : Not very complimentary to the Moderates !

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“ It is visualised by this school of thought that a constitution thus made will permanently ensure the vital interests of the present Government ”—(*which is very vital necessity indeed*)—“ and that it will enable the British element to set up an Indian Government with the help of British authority enforcing law and order through Indian agency, backed, if necessary, by British troops against such as would defy the new constitution.”

I almost thought I read a paraphrase of this in the Honourable the Home Member's speech itself—when he spoke of the necessity of some such measures being placed on the Statute-book to cover the period of transition.....

Mr. N. M. Joshi (Nominated Non-Official) : This is the co-operation between the Press and the Government.

Mr. K. C. Neogy : Then we come to a rather important passage where the Correspondent is giving an estimate as to the time that will be necessary for dealing effectively with this movement, crush the movement so to say :

“ There is no doubt that the Government of India's determination to face the challenge from the Congress is strong, and that within a fortnight the fight will be over through the elimination of all listed Congressmen from the area of struggle and that only when the alternate leaders step into the breach will the real test come both of the Congress resources and of the Government's authority.”

The Honourable Mr. H. G. Haig : Those are not my views, surely.

Mr. K. C. Neogy : Some are yours. That was the estimate, the very sanguine estimate, which the Government perhaps at the moment had of being able to crush this movement within a fortnight. How many fortnights have passed, we know ; and now we are expected to place some of the most stringent provisions of this Ordinance permanently on the Statute-book. The question has been raised : “ Is the civil disobedience movement a live movement or is it on the decline ? ” Have the Government already secured a victory ? Have the Congressmen been vanquished ? Different replies have been given to these questions. My Honourable friend, the Home Member, is rather cautious in his statement. He says :

“ Though I think I can claim that its supporters have lost a good deal of the impetus with which the movement was started, it is still in existence and no one can prophesy when it will come to an end.”

Now, the Secretary of State, in several of the statements made in Parliament and elsewhere, had been assuring the British public that the situation in India had been improving and steadily improving. His Excellency the Viceroy, the other day, said this :

“ I do not wish to suggest for a moment that the civil disobedience movement is finished or that it does not still remain a very definite menace, against which we cannot afford to relax our precautions. The Congress is an extensive organisation which commands, even outside its own ranks, a certain degree of sympathy among many of the educated classes. It is still pledged to the policy of civil disobedience, and is doing what it can to maintain the struggle. It would be rash to prophesy how long it will be before the Congress leaders realise, or at any rate bring themselves to acknowledge openly, that they have failed.”

That is so say, it will not be merely sufficient if the Congress leaders realise their folly, but they will be expected to acknowledge their defeat openly ; until then the present repressive policy must continue.

Mr. Villiers, in a statement which I saw published in the press, expressed himself somewhat in this form :

“ Unless the Congress leaders now in jail sign a bond of apology, recantation and future good behaviour—and further accept and work out the plan of co-operation that may be set up under the new constitution, they should be deported to the Andamans.” (*Laughter from the Nationalist Benches.*)

Now, Sir, what is the present position so far as the civil disobedience movement is concerned ? As His Excellency the Viceroy very rightly gauged the situation, the civil disobedience movement gets a good deal of support from those educated classes which, though not belonging to the

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Congress, are patriotically inclined, and if anything, the present repressive policy of the Government has been increasing every day by hundreds and thousands the numbers of such sympathisers outside the Congress pale. Either the Ordinance rule has succeeded or it has not. If the civil disobedience movement is as strong as before, though not in certain particular manifestations, if the Congress has got as great a hold upon the people as it had before the civil disobedience movement was started, then certainly the Ordinance rule has failed. If, on the other hand, the Ordinances have succeeded, if the civil disobedience movement is on the wane, then certainly there is no justification for re-enacting these stringent provisions in this measure. The position that I take up, being an impartial observer (Laughter from the Official Benches), is that the Congress movement has gathered strength. (Applause from the Nationalist Benches.) It may be that the number of arrests has declined, but still the fact remains that the Congress has been steadily expanding its own boundaries and that the number of its sympathisers is going on increasing steadily,—thanks particularly to the present policy of repression set in motion by the Government. If that be the position, surely further legislation is no remedy, and you will have to contrive some other nostrum, the Honourable the Law Member's nostrum having failed.....

The Honourable Sir Brojendra Mitter : Ours is the dual nostrum.

Mr. K. C. Neogy : I will deal with that aspect of the question too. I was very glad to hear my Honourable friend, Mr. James, expressing his earnest desire that there should be peace in the country and that some sort of reconciliation should be brought about between the contending forces.

Mr. N. M. Joshi : No, he did not say that.

Mr. K. C. Neogy : Did he not ? He is nodding assent. I was particularly glad to hear that from my friend to-day, in view of the speech he made in the Madras Legislative Council on the 26th January, 1932, when a Motion for Adjournment was moved by an *ex-Minister* of the Madras Council to censure Government on the policy of using force by the police against peaceful picketers. While supporting the Government policy in the matter, my Honourable friend, Mr. James, said this :

“ Whether the method of enforcing the law should be by imprisonment or by the forcible dispersal of those who picket. Does any Member of this House think for one moment that the method of imprisonment will be as efficacious ? What will happen ? The jails will be full. Many youngmen,—and I regret to say,—many young women, will come forward under the impression that it is a glorious thing to go to jail. It costs them nothing, and the Government would be forced to erect more jails for which this Council would be asked to vote more money.”

And he went on to support the use of force as an alternative method, as a measure of economy particularly, and, referring to the cases of excesses in the use of force, he said this :

“ The responsibility for any misuse which may have occurred rests with those who have provoked the use of this arm of the law. Upon them and upon no one else should this responsibility rest ”.

So my friend thought that even if the police had exceeded their authority, even then the Congress was to blame.

Then the Home Member, the *Chota* Home Member of Madras Government, gave a paraphrase of my friend's speech in support of the Government policy, and he brought forward a very practical argument in support of this particular theory. This is what he said :

“ It has also been stated that we should put the offenders in jails. My friend, Mr. James, has given a very effective reply to it. As a measure of retrenchment, we had to cut down the salaries of poor officials and had to send away a large number of labourers employed in Government service. All this retrenchment we have to effect partly on account of civil disobedience movement of last year. If you are going simply to arrest people and to send them to jails, as my Honourable friend, Mr. James, rightly pointed out, this House will have to be asked to vote several lakhs of rupees to construct new jails, and to maintain them.”

So, that was the policy of Government. Now, I will read out a sentence from the speech of the ex-Minister of Madras who moved that adjournment motion. In showing how unlawful assemblies were created by the police themselves, this is what he said :

“ In some cases the police have tried to make out an unlawful assembly as existing, by driving together four or five people who are standing in different places, bringing them together and then beating them.” (*Laughter.*)

That, of course, meets the necessity of the situation and helps retrenchment and economy, and helps incidentally the public officials to save a few rupees which they might otherwise be asked to surrender if further retrenchment was needed for providing jail accommodation for these Congressmen. That is really the policy which the Government have followed all over the country. The strength of the civil disobedience movement is not to be judged by the number of men who are sent to jail at the present time. The number of these people is being deliberately kept down by the Government by resort to this particular policy which was justified on such excellent practical grounds in the Madras Legislative Council.

The Honourable Mr. H. G. Haig : Would the Honourable Member mind telling me whether the Madras Legislative Council accepted those accusations ? What was the result of the debate ?

Mr. Gaya Prasad Singh : The usual result that will happen here.

Mr. K. C. Neogy : The motion was talked out. That does not at all affect my position, because in that debate all the responsible Members of the Opposition, including *ex*-Ministers, spoke strongly criticising the Government policy in this matter. But what I was making out was that if the number is on the decline, it is due to the very policy to which expression was given in the Madras Council on behalf of the Madras Government, of not arresting as many people as could possibly be helped, and not sending them to jail. That is the position. And we find that the Secretary of State has been regaling the House of Commons with statistics of persons who have been arrested and sent to prison, to indicate that the movement has lost its strength. We know how that has been brought about. Apart from the lathi charges, when these prisoners are sent to jail, what sort of treatment is given there ? It is part of the same policy ; a most inhuman and brutal policy has been adopted with regard to the civil disobedience prisoners in jail, the object being the same,—to deter people from resorting to civil disobedience. What is the sort of treatment, for instance, that is meted out to very respectable people, people who can claim to occupy at least as high and respectable

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a position in the Indian society here as Honourable Members opposite might in their own homes. I will just read out a few sentences from a letter which has appeared in the press from Mr. Nagendra Nath Sen who was a Member of the Bengal Legislative Council and the President of the Bar Association, Khulna, and who, by the way, is the elder brother of our Honourable colleague, Pandit Satyendra Nath Sen. He was a Class I undertrial prisoner,—a civil disobedience prisoner. He said he was arrested on the 23rd January last when he was escorted to the jail by a sub-inspector of police. This is what he says :

“ On the 25th, an escort consisting of three or four police constables and a havildar came to the jail to escort us to the Court. There were several other political prisoners, civil disobedience prisoners, and there were besides ordinary undertrials including one who was accused in a rape case. Besides myself, the other six civil disobedience undertrials were handcuffed in pairs, and the four ordinary undertrials were also handcuffed in pairs. So there were five pairs and I was alone and odd. When my turn came and the policemen took the irons in their hands, the Deputy Jailor who was in attendance then suggested to the police that as a Division I undertrial, I should not be cuffed, whereupon the havildar wanted written orders. Receiving no response, they handcuffed me and put a rope round the entire company of the eleven undertrials, and we were thus marched off to the Court and deposited in the lock-up.”

Questions were asked with regard to this particular case in the Bengal Legislative Council and it was suggested in answer that this was done as a measure of security, because he might otherwise be rescued by the people. Then he says with regard to that particular answer :

“ No crowd had collected at the jail gate. No attempt has ever been made anywhere during the civil disobedience movement to rescue any prisoner, nor has anybody ever heard of any attempt by a civil disobedience prisoner to escape.”

Then he refers to similar other cases in which respectable people were treated like this—handcuffed just like people accused in rape cases and marched to the Court. This is a fair sample of the policy that is in operation in my province. What about treatment in jail? Now, Sir, so far as the treatment in jail is concerned, I find that the Government of Bengal is under a system of dictatorship of the European Association and the Royalists, because this is what I read in the report of the Calcutta Branch of the European Association for the month ending the 15th April last :

“ Reference was made in the last month's report to the question of the behaviour of political prisoners in Dum Dum jail. In response to the Committee's representations, the Government promised that strict discipline should be maintained, but the Committee has since been informed that there has been no improvement in the state of affairs. The Committee have arranged to approach the Honourable Member in charge of Jails personally, and if no satisfaction can be obtained in this way, the matter will be pressed on Government with the utmost urgency.”

This is what we find in the proceedings for the month ending the 15th April. And, in the *Calcutta Gazette*, dated the 28th April, there appeared a rule under the Bengal Criminal Law Amendment Act which deals with detenus and not, I admit, with the civil disobedience prisoners. But, then, my point is that they make no distinction at all in the treatment that is meted out to the detenus who are detained under the Bengal

Criminal Law Amendment Act in the Bengal jails, and the civil disobedience prisoners, so far as this particular point is concerned. The rule runs as follows :

“ If any detenu—(we might as well, for all practical purposes, substitute the words any civil disobedience prisoner).....declines or neglects to comply with any order made, direction given, or condition prescribed, by virtue of any rule made under.....the authority which made the order, gave the direction, or prescribed the condition may use any and every means necessary to enforce compliance with such order.”

That is the system of jail administration that is in operation in Bengal at the present moment. And here I have an account which was made the subject of an interpellation in the Bengal Legislative Council regarding an assault that was committed by no less a person than an European member of the Indian Civil Service, the sub-divisional officer of the particular sub-division where this assault took place on a civil disobedience prisoner on his refusal to give the usual thumb impression. This particular man was so ill on that day that he had to be carried on a stretcher to the Court. The sub-divisional officer, I understand, was holding his Court inside the jail premises, for the purpose of trying this offence of refusal to give the thumb impression. Now, this man having been carried on a stretcher was convicted to two months' rigorous imprisonment for having refused to give his thumb impression. Having received this punishment, this man, along with another who was not ill, was returning to their ward when the sub-divisional officer called them back. Some jail sentries were also called and the sub-divisional officer then asked them again to give their thumb impression. But they persistently refused. At this he flew into a rage and, snatching a baton from a police officer, struck this sick man on the head, hip, and other parts of his body. The police officer and the sentries also took up the cue and made free use of whatever they could put their hands on. The sub-divisional officer sat upon the chest of this sick man, dislocated his thumb and forefinger joint by applying force and then his thumb impression was taken.

The Honourable Mr. H. G. Haig : Would the Honourable Member kindly state his authority ?

Mr. K. C. Neogy : Some of these facts have been published in the Press. There were also certain questions and answers in the Bengal Legislative Council to which I am coming presently. The mother of this sick man had submitted a detailed representation to Government making definite allegations ; and a petition, I am told, has also been submitted to Government by his fellow prisoner. Now, the thumb impression of this man who had accompanied this sick man was also taken in the same way :

“ His hand was fractured. He was struck on the head with a baton and kicked on the stomach.

Both these men became unconscious, and the sick man's wound was bleeding profusely. Hearing the tumult, the jailor rushed to the place and sounded alarm, but on understanding the situation he stopped the alarm and tried to pacify the prisoners with the assurance that proper steps would be taken. It was found that the sick man had a deep and long wound on the forehead, apart from other marks of assault, and his fingers of both hands had been damaged, and abdomen swollen with kicks.”

Mr. S. G. Jog (Berar Representative) : May I inform the Honourable Member that a similar and parallel incident took place in the Central Provinces where an *ex-M.L.A.* was meted out the same treatment.

Mr. K. C. Neogy : I am very glad that the Honourable Member has referred to this incident. I am not referring to any incident regarding which I do not have definite papers in my hand. A question was asked in the Bengal Legislative Council drawing attention to this particular case and this is the reply which was given by the Member in charge :

“ The prisoner refused to give his thumb impression as required under section so and so of the Identification of Prisoners Act, of 1920. He was informed of the fact that the provisions of the law clearly contemplated that such impression should be taken by force, if necessary, and after every effort was made to make him give his thumb impression, he resisted the officer discharging his duty. A struggle ensued (*mind you, with a man who had to be carried on a stretcher*) and, in the course of the struggle, the prisoner received minor injury. The prisoner was not deliberately assaulted.”

The Honourable Mr. H. G. Haig : This does not seem to be consistent with the very elaborate and highly coloured account which the Honourable Member just read out.

Mr. K. C. Neogy : I would advise the Honourable Member to be a little more patient, because there is another very long extract from the press but I do not want to tire the House by quoting it. I should like to send it on to him if he wants to satisfy himself about the facts relating to this incident. I can also send him copies of the petitions addressed by the mother of this man and his fellow prisoner, if he so desires.

That should serve as a fair sample. Now, Sir, here is another instance of an assault on an under-trial prisoner while he was being removed from the police station. Mr. Dhires Chandra Chakravarti, M.A., Editor, the *New Era*, a Nationalist English Weekly of Calcutta, was convicted at Munshiganj, Dacca, to two years' R. I. for preaching the Congress programme at a meeting on the 25th January last. He was removed from the Munshiganj sub-jail to the Dacca Central Jail on the 27th January in a handcuffed state. A large number of people gathered on the roadside and greeted him with shouts of “ *Bande Mataram* ”. At this, an Assistant Superintendent of Police, who was then at Munshiganj Thana, rushed out and assaulted Dhires Babu with blows on the left eye and temple. Being handcuffed, he could offer no resistance. The spectacles he wore were smashed to pieces. For the time he was rendered unconscious. It was most fortunate that the broken pieces of glass only scratched the lids and did not pierce into the eye which had been narrowly saved. After this, the authorities left him without any glasses for days together and ultimately these had to be supplied from his home. This incident also formed the subject matter of interpellations in the Bengal Legislative Council and this is what the *Chota* Home Member said :

“ Yes, one blow was struck, but there was a certain amount of provocation and the officer was totally unaware that Dhires Babu was handcuffed.”

Then the question was asked :

“ Is it a fact that Dhires Babu became unconscious and the glasses were broken ? ”

The answer was :

“ His spectacles were broken, but he was not rendered unconscious.”

Then some further questions were asked : the Home Member was asked :

“ What was the nature of the provocation ? ”

The answer was :

“ I am not in a position to give details.”

Now, Sir, later on it appears that the Government decided to take some notice of the conduct of this officer. I am sorry my Honourable friend, Mr. Morgan, is not here at the moment, because the action taken against this officer was to transfer him to Narayanganj ; and if my Honourable friend were here, I would have asked him to remember his bachelor days and tell this House whether Narayanganj is considered to be exactly like a penal settlement.

Mr. H. P. Mody : Is it necessary to go to his bachelor days to determine that ?

Mr. President (The Honourable Sir Ibrahim Rahimtoola) : The Chair would like to know if the Honourable Member is going into further instances of the operation of the Ordinance at this late hour.

Mr. K. C. Neogy : I am afraid I shall have to trouble the House . . .

Mr. President (The Honourable Sir Ibrahim Rahimtoola) : The Honourable Member has already given some instances. The question for him to consider is whether at this late hour he need go into further instances of that kind.

Mr. K. C. Neogy : I will certainly abide by your suggestion and I would cut short my observations on this part of the case, but I do not think I will be able to finish to-day, unless the House is prepared to sit till a late hour.

Mr. President (The Honourable Sir Ibrahim Rahimtoola) : The Honourable Member can proceed with his remarks.

Mr. K. C. Neogy : Now, Sir, the position has been very well summed up in his own inimitable way by Mahatma Gandhi in his letter, dated the 11th March to the Secretary of State for India. This is what he says :

“ Repression appears to me to be crossing what might be called the legitimate limit and governmental terrorism is spreading through the land. Both English and Indian officials are being brutalised. The latter, high and low are becoming demoralised by reason of the Government rewarding as meritorious disloyalty to the people and inhuman conduct towards their own kith and kin. The latter are being cowed down. Free speech has been stifled. Goondaism is being practised in the name of law and order. Women who have come out for public service stand in fear of their honour being insulted and all this, as it seems to me, is being done in order to crush the spirit of freedom which the Congress represents. Repression is not confined to punishing civil breaches of the common law. It goads people to break newly made orders of autocracy designed for the most part to humiliate them.”

Now, in the latter part of this, he was obviously referring to that new fangled system of punishing people, to which resort has been taken very largely in Bombay, of letting people out on so-called parole and then imposing humiliating conditions on them, without any justification whatsoever, of reporting themselves to the police several times in the day. And, when, naturally, they refuse to comply with such humiliating terms,

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these people—including in one case the Principal of a first grade Medical College in Bombay, in another case an *ex-Advocate* General of Bombay, and several other eminent and distinguished advocates and several well-known and respected ladies—have been sent to jail for long terms ! Now there are novel systems which have been devised in various provinces to carry out the spirit of the Ordinances. One of them which is in operation in my part of the country, my district, as a matter of fact, is to arrest ladies who defy the laws and are prepared to go to jail, to take them into custody, to lead them some miles away from their places, and to lead them on to island *chars*. I may explain for the benefit of my friends that there are small islands thrown up in the middle of the very large rivers that we have in Eastern Bengal, and these *chars* are in many cases uninhabited and full of jungle. Now they take these ladies to these lonely islands in the midst of these big rivers, set them at liberty there at dead of night.

An Honourable Member : Under what law is this done ?

Mr. K. C. Neogy : I should like to ask the Honourable the Home Member to tell me as to the provision of law under which this is being done. Sir, in making this statement, I have the authority, of no less a person than an Honourable Member of the other House, who wanted to put some questions on this particular aspect of the administration of the Ordinances in the district of Dacca. Of course, under the rules these questions have been disallowed as concerning provincial matters. I shall read out a few lines from these questions which I have got in print in my hand. The first question was :

“ Will Government be pleased to state if there is any provision in the Ordinances that allows the leaving of arrested persons in deserted fields and channels by the police ? Are Government aware that Mrs. so & so, a lady non-co-operator, wife of a retired sub-inspector of police.... (*mark that*)....and niece of Rai Bahadur so and so, C.I.E., M.L.C., Government Pleader, Dacca (*Hear, hear*) was arrested at a certain place within the jurisdiction of such and such police station and was made to pass a dark night in a lonely jungle in a river bank infested with snakes ? ”

Another question was :

“ Will Government be pleased to make a statement on the cases of the said Mrs. so and so and Mrs. so and so arrested in connection with the civil disobedience movement and state why they were compelled by some policemen of Nawabgunge police station of Dacca to go to a lonely jungle on a dark night, to be left there by them without assigning any reason therefor ? ”

Sir, I actually have with me several statements made by some of these ladies in the vernacular, and there have been several other instances of this kind in my part of the country, but I have no desire to trouble this House with any quotations from these statements. Now, that is a very ingenious method of terrorising respectable ladies, so that the number of arrests may not go up, so that the Secretary of State may make the complacent statement in the House of Commons that this movement is under control. Sir, the Honourable the Home Member in one part of his speech stated this :

“ I do not think that an impartial visitor to these shores at this moment would regard the press in this country as being unduly restricted or having much difficulty in saying very plainly what it thinks of the Government. ”

Now, I have in my hand, a statement that was made in the Bengal Legislative Council as regards the action that was taken in that province during a period of six months, I think, under the Press provisions, and from this

statement it appears that there were 31 newspapers and presses from whom security had been taken, and that the securities of three were forfeited, and that warnings had been given to 38 newspapers. And in this list we do not miss one single prominent Indian-edited newspaper in Bengal, and the warnings had been given in some cases on more than one occasion. So, Sir, that is the position which an outsider visiting the shores of India at the present moment would find ! And that is certainly evidence of the great consideration which the Government are showing to the Press in the matter of enforcing the Press provisions of the Ordinances and the Press Act. Now, the Honourable Member says that the Press is not finding it difficult to give expression to their views as regards the Government policy. Certainly, that statement deserves the greatest weight coming as it does from the Honourable the Home Member. But here is another authority I am going to quote, which is entitled to no less respect than that of the Home Member himself, I mean the Bombay High Court. In the *Indian Daily Mail* case, with which they had to deal, a security of Rs. 6,000 had been demanded on account of certain comments. There was an application before the High Court and the Advocate General, on behalf of the Government, maintained that under the law it was no defence that the facts alleged were true, and that whatever might have been the motive of the comments, their effect was to "bring the Government and the administration of justice into contempt". The truth of the allegation made was no defence ! They had not to consider the object, the motive of the writer, but the actual "effect" on the minds of the readers. The object of the comments may be the highest, and the motive the best, but what "effect" did the writing have on the mind of the average reader ? The Chief Justice, on behalf of the High Court, upheld this contention and in the course of his judgment he said as follows :

"The effect of the Ordinance seems to me to bring within section 4 of the Press Act every charge of misconduct of Government, whether such charge is well-founded or not. It has been argued by the Defence Counsel, in effect, that it is better that misconduct, if any such there be on the part of Government, should be publicly exposed in order that it might be argued and that in the long run such exposure will end.... the hostility against Government but in my view questions of that sort are really outside the scope of our inquiry. They are really questions of policy. No doubt the Legislature had such considerations in their mind when they framed the explanations to section 124 of the Indian Penal Code which deals with sedition, but there are no explanations in the Press Act and the words of the Press Act will govern the tendency in the article. In section 124A, the offence must amount either to the creation of hatred or attempt to create such a feeling."

Now, Sir, almost similar were the circumstances in which the Calcutta High Court in a case against the *Ananda Bazar Patrika* had to hold most reluctantly that under the provisions of the Press Act they had no option but to reject the application made by the newspaper concerned. Mr. Justice Charu Chandra Ghosh, delivering the judgment in this particular case, said :

"The provisions of the Ordinance were exceedingly stringent but His Lordship could not engage in any discussion of their drastic character. Such a discussion would be irrelevant or useless especially as the explanation to section 124A of the Indian Penal Code was not reproduced in section 68 of the Ordinance. His Lordship therefore, held, and held most reluctantly, that the petitioners were without any redress and that therefore the petitions must be dismissed."

I do not know whether my Honourable friend, after hearing these two observations, made by the different High Courts, would yet stick to the view

[Mr. K. C. Neogy.]

that the Press in this country was not finding it difficult to give expression to what they thought about the Government policy.

Mr. Jehangir K. Munshi : Who are the two Judges ?

Mr. K. C. Neogy : The three Judges in this particular case were Mr. Justice Ghosh, Mr. Justice Costello and Mr. Justice Remfry.

In the Bombay case, I do not have the name of the other Judge. It might be Justice Nanavati. Here I incidentally refer to an observation made by my Honourable friend, Mr. James, regarding the desirability of having better co-operation between the Press and the Government. Quoting a passage from Lord Burnham's statement, he said that there should be better publicity arrangements of the Government for the dissemination of truth. This is what he said in effect. Now, Sir, truth is a thing which, under the Ordinance, the Press is not permitted to express, as found by the Bombay High Court. The Press is expected to publish official communiqués, but not the truth.

Here is another case from the Calcutta High Court, the well-known case of the *Amrita Bazar Patrika*. Here there was a difference between Justice Ghosh on the one hand, and the Chief Justice and Mr. Justice Mallick on the other, Mr. Justice Ghosh, holding that the article complained against did not come within the mischief of the Ordinance, the other two Judges holding that it did. I daresay, the Honourable the Home Member has gone through the very learned judgment delivered by Mr. Justice Ghosh on this occasion. I have no desire to tire the House with any extracts from these judgments. But this in itself is sufficient that here was the seniormost puisne Judge of the Calcutta High Court, who officiated as a Chief Justice, holding very strong views regarding the state of the law. Although his was a dissentient judgment, certainly it did deserve some amount of consideration at the hands of the Government. Incidentally, I might mention that Mr. Justice Mallick, in delivering a short judgment concurring with the Chief Justice, referred to the fact that the writer in the offending article had advised the members of the Christian community, because the writer himself is an Indian Christian, to take to Khaddar. And he seems to imply that this reference to Khaddar itself is a sufficient evidence of criminality on the part of the writer. I look forward to see the name of this judicial luminary in the next Honours List.

Now, Sir, before I leave the opinions of the High Courts, I should like to refer to an observation made by the Bombay High Court. It is the Chief Justice who delivered his judgment in a case which arose out of the Ordinance. His Lordship said as follows :

“ Experience shows that irregularities and illegalities have been creeping in the administration of the law.”

Now, Sir, my Honourable friend, Mr. Anklesaria, the other day was saying that in his opinion the Ordinances could not be said to have been abused. Sir, entitled as my Honourable friend's opinion is to a very high respect in this House, I think the opinion of the Chief Justice of the Bombay High Court is also entitled to some amount of respect at our hands. It is these illegalities and irregularities to which reference is made by the Honourable the Chief Justice of the Bombay High Court that this Bill, in

effect, seeks to perpetuate, to standardise and to stabilise by re-enacting some of the worst provisions of the Ordinances.

Now, Sir, how have the police been handling the situation ? Here is a very eloquent evidence which is a statement made by the Honourable the Home Member himself in this House showing on how many occasions unlawful assemblies had to be dispersed with the help of firing and how many casualties there were as a result of such firing. I find in this list that Bengal takes the lead with as many as 17 occasions in which 20 were killed and 74 wounded ; United Provinces, 9 killed and 106 wounded ; Bihar and Orissa, 20 killed and 40 wounded ; North-West Frontier Province, 2 killed and 9 wounded. Then, Sir, from a statement in the Bengal Legislative Council we find that during six months from January to June fines were imposed on 1,955 persons for taking part in civil disobedience movement, the properties of 388 of whom were attached for the realisation of fines. The fines amounted to Rs. 1,49,488, a kind of nest-egg for the Finance Department. That shows that even in meeting an admittedly non-violent movement, Government had to resort to the extreme measure of firing in so many cases.

The Honourable Mr. H. G. Haig : It is obviously a violent movement, Sir, and not very creditable to those who have organised it under the pretext of non-violence.

Mr. K. C. Neogy : I do not know what evidence my Honourable friend has to pronounce this whole movement as violent.

5 P.M.

Mr. F. E. James : Murders in Bengal.

Mr. K. C. Neogy : The statements relate to occasions on which unlawful assemblies were dispersed after the present civil disobedience movement was started. I think the reference is to assemblies of unarmed people formed in pursuance of the civil disobedience movement which is undoubtedly a non-violent movement.

The Honourable Mr. H. G. Haig : Professedly.

Mr. K. C. Neogy : Of course, I do not know whether my Honourable friend has any evidence to support this theory of his that the movement had ceased to be non-violent.

Now, Sir, I will come to another aspect of the question under the special powers Ordinances.

Mr. President (The Honourable Sir Ibrahim Rahimtoola) : Before the Honourable Member proceeds further, the Chair should like to know how long he is likely to take.

Mr. K. C. Neogy : It might be about three-quarters of an hour.

Mr. President (The Honourable Sir Ibrahim Rahimtoola) : In that case, the House will now adjourn till eleven o'clock to-morrow.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 29th September, 1932.