LEGISLATIVE ASSEMBLY DEBATES

THURSDAY, 1st DECEMBER, 1932

Vol. VII—No. 3

OFFICIAL REPORT

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NEW DELHI: PRINTED BY THE MANAGER
GOVERNMENT OF INDIA PRESS: 1932.

Price Five Annas.

LEGISLATIVE ASSEMBLY.

Thursday, 1st December, 1932.

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

SHORT NOTICE QUESTION AND ANSWER.

HUNGER-STRIKE OF THE DETENUS IN THE DEOLI CAMP JAIL.

Mr. S. C. Mitra: (*a*) Has the attenion of Government been drawn to the statement published in the *Hindustan Times*, dated the 29th November, 1932, under the caption "Deoli Detention Camp—Is a Hunger-Strike on?". If so, will Government be pleased to state whether the statement of the hunger-strike of the detenus in Deoli Camp is true? If so, how many of them are on hunger-strike and since when have they gone on hunger-strike?

(*b*) Is it a fact that on 2nd November, 1932, there was a serious trouble in the Camp and as a result the Gurkha guards have inflicted heavy casualties amongst the detenus? If so, will Government be pleased to state separately the number of detenus killed and injured as a result of the said trouble on the 2nd November, 1932?

(*c*) Is it a fact that 30 detenus received injuries of a more or less serious nature?

(*d*) Is it a fact that the condition of Phanindra and another detenu is critical? If so, will Government be pleased to state what medical aid was rendered to them?

(*e*) Is it a fact that Mr. Satyendranath Sen has been transferred to Ajmer Jail from the Deoli Camp? If so, what are the reasons of such transfer?

(*f*) Will Government be pleased to state the causes that led to the trouble, and do Government propose to appoint a Committee of Enquiry to inquire into the causes of the trouble? If not, why not?

(*g*) Will Government be pleased to state whether they have any objection to the Non-Official Members of the Legislative Assembly visiting the Camp? If so, what are the reasons?

The Honourable Mr. H. G. Haig: The facts are as follows:

During October, some of the detenus at the Deoli Camp disregarded the rules about roll-call. On the 26th October, two detenus were found absent from roll-call, and subsequently refused to obey the orders of the Superintendent summoning them to his office. The Superintendent awarded punishment to the senior detenu for absence from roll-call and deliberate and obstinate disobedience of his orders. The punishment awarded was reduction of diet allowance and personal allowance for 14

[Mr. H. G. Haig.]

days and the cancellation of the privilege of writing and receiving letters for a period of two months. On the morning of the 29th October, the Superintendent received a general communication from a number of detenus threatening that they would cease to attend roll-call unless the punishment was withdrawn. On the 30th, only 9 or 10 detenus attended the roll-call, and similar disobedience of orders occurred on the 31st October, and the 1st November. Later on that day one detenu, who had not only refused to attend the roll-call but for a long time could not be found at all, was summoned to the Superintendent's office, but refused to obey, he was again summoned to attend on the morning of the 2nd, but again refused. The detenus' Manager had been asked to persuade the detenu to proceed to the office, but he replied that he could give no help in the matter. Guards were, therefore, sent to bring the detenu to the office, whereupon some 50 detenus crowded round the entrance of the room blocking the way and adopting a threatening attitude towards the Superintendent. The guards were ordered to make a passage for the removal of the detenu. They forced back the crowd and a scuffle ensued. The detenus abused the jail officers, seized the Deputy Superintendent round the waist and tore the uniform of the Superintendent and others. Two detenus received small cuts on the head, and a number received contusions. There is no truth in the suggestion that 30 detenus received injuries of a serious nature. On the 5th November, two of the detenus commenced a hunger-strike, and four others followed their example on various dates between the 10th and 15th. On the 25th November, all six abandoned the hunger-strike, and their condition is understood now to be quite satisfactory. The hunger-strikers were looked after by the Medical Officer of the Camp, and the Additional Civil Surgeon of Ajmer was also specially sent out to Deoli and remained there superintending their treatment.

Mr. Satyendranath Sen has been transferred from the Deoli Jail, as he was the prime instigator of these organized attempts to defy authority. The Government are satisfied that the facts are as stated above, and they do not propose to appoint a committee of enquiry.

Mr. S. C. Mitra: May I take it that the condition of no detenu is very critical or serious at present there?

The Honourable Mr. H. G. Haig: Yes; the Honourable Member may certainly take that.

Mr. S. C. Mitra: Will the Honourable Member please explain why telegrams inquiring about the health of detenus of the Deoli Camp Jail are not being replied to by the Commandant? Because of the rumour in the Press, there is anxiety and there were some telegrams sent inquiring about the health of the detenus, but no reply has yet been received. Is it the policy of the Government that no reply should be given of telegrams?

The Honourable Mr. H. G. Haig: I have not heard about these particular inquiries. Did they relate to the detenus who were at the time on hunger-strike?

Mr. S. C. Mitra: The relations of detenus do not know who are on hunger-strike: they complain they wired to the Commandant, but these wires are not answered and, as a matter of fact, correspondence has been

stopped with these detenus for the last fortnight. Will the Honourable Member make an inquiry about that in order that relations of detenus may be appeased and they may have some information about the detenus?

The Honourable Mr. H. G. Haig: I will certainly find out whether inquiries are being answered or not.

Mr. Lalchand Navalrai: May I know from the Honourable Member whether in the scuffle on the other side, that is, the Government side also, anybody received a beating or any injury or bruises?

The Honourable Mr. H. G. Haig: I have stated that the uniform of two or three persons was torn including that of the Superintendent, and the Deputy Superintendent was seized round the waist.

Mr. Lalchand Navalrai: That is to say, there was no injury: I was asking about injury in the sense of bruises or contusions.

The Honourable Mr. H. G. Haig: I do not think so. I am told that one of the detenus came along armed with a large stone, but that they succeeded in preventing him throwing it.

Mr. Lalchand Navalrai: May I know if this Deoli Jail is intended to be a temporary one or a permanent one, because there is a rumour or rather a report in the papers that it is going to be made permanent?

The Honourable Mr. H. G. Haig: I hope the terrorist problem is not going to be permanent, but there is certainly no intention of any early discontinuance of the Jail at Deoli.

Mr. C. S. Ranga Iyer: Will Government be pleased to state how the roll-call is conducted?

The Honourable Mr. H. G. Haig: I understand that the roll-call is conducted by the detenus being present beside their beds in the evening.

Mr. C. S. Ranga Iyer: Will Government be pleased to state if any humiliation is involved in the roll-call?

The Honourable Mr. H. G. Haig: Absolutely none.

Mr. C. S. Ranga Iyer: Will Government then explain why this scuffle took place between the detenus and the guard?

The Honourable Mr. H. G. Haig: I have already explained that it was part of an organised movement to defy authority.

Mr. C. S. Ranga Iyer: Do all the detenus subscribe to this organised movement or only a small number of them?

The Honourable Mr. H. G. Haig: The greater proportion of them, I think.

Mr. C. S. Ranga Iyer: How many detenus are there and how many subscribe to this?

The Honourable Mr. H. G. Haig: There are something under 100 detenus in the camp and this crowd consisted of about 50.

Mr. C. S. Ranga Iyer: The Honourable Member was saying that one detenu could not be found. Will Government be pleased to state if he had run away from the camp?

The Honourable Mr. H. G. Haig: No; he did not; but he was apparently concealing himself. The Honourable Member will surely recognise that it is most important that at least once in every 24 hours the authorities should assure themselves that all the detenus are present.

Mr. C. S. Ranga Iyer: Are there facilities for concealment in the Detenu Camp?

The Honourable Mr. H. G. Haig: There obviously are facilities for concealment in any camp.

Mr. S. C. Mitra: May I take it that the rumour that Phanindra and Jnan Majumdar were severely assaulted on the head is not correct?

The Honourable Mr. H. G. Haig: I have not the names of the detenus, but as I have already informed the House, two detenus received small cuts on their head.

Mr. C. S. Ranga Iyer: Is there any truth in the rumour that the Government may at some stage deport these detenus to the Andaman Islands?

The Honourable Mr. H. G. Haig: No, Sir; I have already informed the House that no such proposal is under consideration.

Mr. R. S. Sarma: Would it not be a good policy for the Government to issue communiqués explaining the exact position so that such rumours may be discounted?

The Honourable Mr. H. G. Haig: I thought, Sir, it would be more agreeable to the House if information were given in the form of an answer to a question in the House rather than that it should be conveyed in the form of a communiqué. The result, I think, is precisely the same.

Mr. C. S. Ranga Iyer: What is the difficulty of Government to allow some representative men from this House to visit the Detenu Camp?

The Honourable Mr. H. G. Haig: No, Sir; I see no reason to agree to that proposal.

Mr. S. C. Sen: What is the nature of the inquiry and by whom is it made which satisfies the Government to say that no further inquiry is necessary?

The Honourable Mr. H. G. Haig: There is no difficulty in ascertaining the facts. The Superintendent reported and the matter has also been inquired into by the Commissioner.

Mr. C. S. Ranga Iyer: The Honourable Member stated "I see no reason why representative men from this House should be allowed to visit the camp". Will he please say why he sees no reason?

The Honourable Mr. H. G. Haig: Will the Honourable Member please explain why representatives from this House should go to the Camp?

Mr. C. S. Ranga Iyer: Obviously because there seems to be a good deal of misapprehension and anxiety, and, if responsible representative Members go there, they will be able to make a statement.

The Honourable Mr. H. G. Haig: The Honourable Member is well aware that anything in the nature of a Committee of Inquiry would have an unfortunate effect on the discipline in the Deoli Jail which, as the story I have just given to the House shows, has been already somewhat unsatisfactory.

Mr. H. P. Mody: Is there any special reason why a Non-Official Visitors' Committee should not be set up in connection with the detention of State Prisoners on the lines of the Non-Official Visitors' Committees for ordinary prisoners?

The Honourable Mr. H. G. Haig: I have already informed the House last Session that a Visiting Committee has been appointed.

Mr. H. P. Mody: Who comprises this Visiting Committee with regard to this particular detention camp?

The Honourable Mr. H. G. Haig: I would ask the Honourable Member to refer to the answer which I gave during the Simla Session.

Mr. H. P. Mody: Perhaps the Honourable Member will be good enough to repeat it for us, as we have short memories.

The Honourable Mr. H. G. Haig: If the Honourable Member will put down a question, I will look up the answer, but I should have thought it might have been more convenient if he looked up the answer for himself.

Mr. C. S. Ranga Iyer: Is Diwan Bahadur Harbilas Sarda a member of that Visiting Committee?

The Honourable Mr. H. G. Haig: No, Sir.

Mr. C. S. Ranga Iyer: Will Government be pleased to consider the desirability, as Ajmer-Merwara comes under the control of the Central Government, of including the representative of Ajmer-Merwara from this House in that Committee so that this House may know at any rate in the lobby, if not on the floor of the House, as to what is happening in the Camp?

The Honourable Mr. H. G. Haig: The Visiting Committee, Sir, is appointed by the Chief Commissioner, but the Honourable Member's suggestion will be conveyed to him.

Mr. S. C. Mitra: Is it a fact that the Visiting Committee merely consists of a Government contractor?

The Honourable Mr. H. G. Haig: I have no information, Sir, as to the particular qualifications of the members of the Visiting Committee. I have only been informed of their names.

Mr. S. C. Mitra: Will he kindly make inquiries and see that independent men like Diwan Bahadur Harbilas Sarda are included in that Committee and that the Committee does not consist of one man as at present?

The Honourable Mr. H. G. Haig: I have already stated that a copy of these questions and answers will be forwarded to the Chief Commissioner on whom lies the responsibility of forming the Committee.

Mr. H. P. Mody: Can a Committee be composed of one man?

The Honourable Mr. H. G. Haig: There are also official members.

Sardar Sant Singh: In view of the fact that the non-official members who are appointed by the Local Government do not enjoy the confidence of the people, is it not in the interest of the administration that the policy of appointing non-official members from the nominees of District Magistrates should be changed and elected Members should be appointed?

The Honourable Mr. H. G. Haig: That, Sir, I do not think arises out of this question. I understand the Honourable Member is putting to me a general proposition.

STATEMENTS LAID ON THE TABLE.

The Honourable Mr. H. G. Haig (Home Member): Sir, I lay on the table the information promised in reply to starred question No. 1385 asked by Mr. M. Maswood Ahmad on the 22nd November, 1932.

BURGLARY IN THE DILKUSHA AND ARAMBAGH SQUARES IN NEW DELHI.

*1385. (*a*) Yes;

(*i*) the neighbourhood can scarcely be described as frequented by thieves, though there have been burglaries within the last two months;

(*ii*) Patrols visit these localities but with the present inadequate staff regular patrolling cannot be provided.

(*b*) The offences mentioned have been thoroughly investigated and all possible action has been taken to check their recurrence and to arrest wrong-doers.

(*c*) and (*d*). Petitions were received by the Superintendent of Police and I understand that suitable action to safeguard the neighbourhood has been taken. Government do not consider it necessary to issue any further instructions in the matter.

Mr. H. A. F. Metcalfe (Foreign Secretary): Sir, I lay on the table the information promised in reply to starred questions Nos. 1119 to 1126 asked by Mr. S. C. Mitra on the 14th November, 1932.

REMISSION OF ONE MONTH'S SENTENCE TO A CONVICT NIGHT WATCHMAN FOR BEATING A POLITICAL PRISONER IN THE CENTRAL JAIL AT AJMER.

*1119. It is not a fact.

STANDING HANDCUFFS GIVEN TO ONE JUGRAJ IN THE AJMER CENTRAL JAIL.

*1120. The answer to both parts of the question is in the negative.

BEATING OF A POLITICAL PRISONER BY THE JAILOR OF THE AJMER CENTRAL JAIL.

*1121. It is not a fact.

DENIAL OF FACILITIES TO POLITICAL PRISONERS IN THE AJMER CENTRAL JAIL.

*1122. (*a*) Blankets, mats and books are invariably supplied according to the Jail rules. Prisoners are not allowed to borrow books from other prisoners. No books, which could suitably be allowed, have been confiscated.

(*b*) Ladu Ram Joshi was punished for using insulting language.

(*c*) There has been no such confiscation of books or blankets. Government have no information of any such incident.

SLAPPING OF A LAME POLITICAL PRISONER IN THE AJMER CENTRAL JAIL.

*1123. No.

LOSS OF WEIGHT OF CERTAIN POLITICAL PRISONERS IN THE AJMER CENTRAL JAIL.

*1124. (*a*) No. It is not a fact.

(*b*) Hospital diet is given according to the scales prescribed in the Ajmer-Merwara Jail Manual. There is no necessity to alter these scales. The quantity and quality of food supplied are in no way insufficient. The diet is varied in individual cases to suit medical requirements.

ILL-TREATMENT OF CERTAIN POLITICAL PRISONERS IN THE AJMER CENTRAL JAIL.

*1125. (*a*), (*b*) and (*c*). The answers to all these questions are in the negative.

SUPPLY OF ONLY ONE MEAL TO "C" CLASS PRISONERS IN THE AJMER CENTRAL JAIL.

*1126. A certain number of prisoners were, at their own request, allowed to take food only once a day.

Mr. P. R. Rau (Financial Commissioner, Railways): Sir, I lay on the table:

(i) the information promised in reply to starred question No. 671 asked by Shaikh Fazal Haq Piracha on the 23rd September, 1932; and

(ii) the information promised in reply to starred question No. 1136 asked by Khan Bahadur Haji Wajihuddin on the 14th November, 1932.

RETRENCHMENT OF MUSLIMS IN THE RAILWAY CLEARING ACCOUNTS OFFICE, DELHI.

*671. (*a*) The total number of men retrenched between 3rd February, 1931, when the discharge started and 1st November, 1932, was 76 out of which 15 were Muslims.

(*b*) The total strength of the staff of Muslims before and after reductions, including discharges and other casualties such as normal retirements, transfers, etc., was as follows:

	On 3rd February, 1931.		On 1st November, 1932.	
	Total strength.	Muslims.	Total. strength.	Muslims.
Permanent and temporary employees appointed before 1st January, 1929	1,246	143	1,152	135
Temporary employees appointed after 1st January, 1929, who were on a purely temporary footing without claim to confirmation ..	30	16	14	7
Total ..	1,276	159	1,166	142

PURCHASE OF BAGS FOR HAYMAN-MOHINDRA PUNCHING MACHINES.

*1136. (*a*) A bag has been supplied to Travelling Ticket Examiners for purposes other than carrying Hayman-Mohindra Punches, *viz.*, for keeping excess Fare and Journal Books, Distance Fare Tables, Pocket Guide, Time-table and Carriage Keys, etc.

(*b*) The cost of one satchel is Rs. 2-8-0. The total cost of satchels supplied was Rs. 2,032-8-0.

(*c*) In view of reply to item (*a*) this question does not arise.

(*d*) No such bags were supplied before on the East Indian Railway. Information regarding other State Railways is not available.

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

"That clause 8 do stand part of the Bill."

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

"That clause 8 of the Bill be omitted."

This clause deals with the power to order a parent or guardian to pay fines imposed on young persons under the age of 16 years. I admit that this principle of guardians being made liable to pay fines for their minor wards is not a novel one. It has been in existence in other countries, and even in our country in the four major provinces a similar law exists. My amendment is made with a view to seeing that such a provision should not exist in an emergency legislation like this, because I find that in Bombay, Bengal, Madras and C. P., which are all big provinces, there is the Children's Act, and, in sections 25 and 26 of that Act, there is a provision analogous to this, and if any fine is imposed, it can be realised under that section. So if really there is a necessity, let the provinces undertake the legislation where the "superstructure" is being built, and it need not be incorporated in the "foundation Bill" itself in the Assembly. I agree that the clause has been much improved in the Select Committee, and the parent will not be liable to imprisonment under the amended clause, but I oppose it on the ground that it is useless.

Pandit Ram Krishna Jha (Darbhanga *cum* Saran: Non-Muhammadan): Sir, I beg to support this amendment, not in the hope that it will be carried, for I have seen the fate of 101 amendments already proposed, nor in the hope that any reasons advanced from this side will convince the Honourable the Home Member to change his views, because we know that he has already made up his mind to pass this Bill, without any alterations. But what I want to point out is, is there really any difference of opinion between Members on this side of the House and the Government as to the necessity of having some law to control the boys? There is none. In fact, no Member on this side of the House disagrees with the Government that the civil disobedience movement should not be allowed to continue in its present form. There is also absolutely no difference of opinion between the two sides of the House that the boys should not be allowed to develop a mentality which amounts to disobedience to law and order, because that will embarrass not only the Government but the family, society and everybody.

The question is this. Who is responsible for this mentality which we now find in the young boys? My submission is that it is not the parents. The parents have to send their boys to the schools. There you impart such godless education that the boys develop that kind of mentality. You pay no heed to the popular demand that the education should be on religious lines. If you impart religious education, I have no doubt that the boys will never develop that mentality. My submission

[Pandit Ram Krishna Jha.]

is, when you are responsible for this defective education, why should the parents be blamed? If there is anybody who is responsible for all this, I should say, it is the educational policy of the Government of India, and if anybody has to pay the fine it should be the Education Minister, Sir Fazl-i-Husain, and not the parents. What can the poor parents do? I am sure, nobody will like that his son or nephew should go and take part in the civil disobedience movement and thereby bring on them the penalty of fine or imprisonment. Nobody likes that. Is there any remedy for this? The parent has to send his boy to the ordinary school in the village in which he is living. The boy does not get any religious education. The boy then argues with the elderly people and says, this is my conviction, this is what my conscience says. Things like this go on. How is the parent responsible for that? It is for you to find some means of giving such sound education that this mentality may not be formed. As I said, no parent would like his son should go and take part in the civil disobedience movement. In fact, parents of that mentality will not be here at all, will not care to come here at all. They may be right or wrong, I am not criticising them, but what I mean to say is that there should be absolutely no difference of opinion between the Government and this side of the House as to the need of it, but the remedy suggested, is, I submit, not right. I would ask the Honourable the Home Member to consider this aspect of the question and then see how far the parent or guardian should be made liable for all this. There is another very objectionable feature in this clause. The definition of a guardian is very wide—it says, anybody having the care of the boy. Out of pure generosity, suppose, I am maintaining some poor boys who have no means of living. They reside with me. I am here, they are there. They are all impressionable boys of the age of 11, 12 or 14. They go to the school and they are led away by the Congress people, and then they are hauled up. A fine is imposed. Am I to pay the fine? Is that the reward for my generosity? I submit, the definition is too wide, and the phrase "care of" should be deleted. In any case, I submit, if you are not prepared to do away with the clause, it should be so modified that there may not be any undue hardship to any parent or guardian or anybody else. As I have already said I never disagree with you that this mentality should be stopped.

Mr. B. V. Jadhav (Bombay Central Division: Non-Muhammadan Rural): I rise to support the amendment. The Mover of the amendment, Mr. Mitra, has paid a compliment to the Government for diminishing the rigours of the clause as it was originally in the Bill. The punishment of imprisonment in default of payment of fine which was in the original Bill has been taken away, but as has been pointed out by the previous speaker, the definition of the word "guardian" is too wide and is likely to lead to great hardship. Take this case. The superintendent of a hostel is in control of the boys in the hostel. The boys go out for a walk and if they mix themselves up in some Congress activity or other undesirable activity, is that superintendent to pay the fine? As a matter of fact, at the time the boys go out, they are not under his control. They go out for a walk or play or to do some such innocent thing, and one cannot expect that the superintendent of the hostel should always be in charge of the students and should be held responsible for each and every mischief that the boys commit. Of course, sub-clause (2) gives an opportunity to the parent or guardian for being heard, but it does not mean that his

responsibility on that account will cease, because he is the guardian liable for payment of the fine, and that is very objectionable. For these reasons, I think that the whole clause should be omitted.

Mr. K. P. Thampan: (West Coast and Nilgiris: Non-Muhammadan Rural): I also wish to support this amendment. In the first place, I take strong objection to this kind of vicaricus punishment. It is an unusual thing. In this Bill clauses 4 and 7, which are the most important, deal with boycott of public servants and picketing. This clause deals with such offences committed by minors below the age of 16. I cannot for a moment believe that these youngsters have got sufficient powers of persuasions to prevent people joining the Government service or carry on an effective campaign of boycott. But even if they are in a position to persuade them, and the guilt is proved, the best punishment would be to cane them. I do not mind if the remedy is altered and a corporal punishment is given instead. But here it is contemplated that a fine should be levied, and that it should be recovered from the guardian. It is a heavy responsibility imposed on the guardian and I take strong objection to that kind of punishment. Now a days boys live in college hostels and other institutions in distant towns while the guardians themselves live in their villages. As my Honourable friend, Mr. Jha, said, it is absolutely impossible under modern conditions of life for the guardian to exercise that kind of control over them as would keep them safe. It often happens that on account of associations and surroundings these boys take part in political agitations, and the guardians living miles away in the villages cannot be held responsible for the activities of these boys, however much they may wish that the boys should not participate in these things. Of course, there is this provision:

"No such order shall be made if the parent or guardian satisfies the Court that he has not conduced to the commission of the offence by neglecting to control the offender . . ."

But, I submit, it is halting and vague. After the boys leave their homes, the parents cease to have any connection or contract with them. They are only called upon to make monthly remittances to the boys until their return to their homes after the annual examination at the end of the year. Till then they are not in actual touch with the boys and cannot be held responsible for their activities. That is the real situation. I, therefore, support this amendment.

Sardar Sant Singh (West Punjab: Sikh): The provisions of this clause, it may safely be conceded, are consistent with its drastic sister provisions that have already been discussed on the floor of this House. Though the Opposition has tried to explain that the situation in the country, if attempted to be controlled by this Ordinance, is likely to become more serious, yet the Treasury Benches insist upon enacting this measure in its original form. The present clause provides the penalty for the boy's parent or guardian for the offences of his children. It is against all the fundamental principles of criminal jurisprudence to visit the sins of sons on the heads of their guardians. The provision does not stop there alone, but throws the onus upon the guardian to prove his innocence. It first dubs a citizen as criminal when he has no criminal intention and has committed no act which breaks any law, then throws the onus on him to prove his non-liability. In actual practice, Sir, such a provision is likely

[Sardar Sant Singh.]

to lead to curious results. Take, for instance, the case of a father who sends his son for education to a central place. The son is out of the control of the father for the time being and is living under the control of the Superintendent of the hostel or the Principal of the college where he is studying. He commits an offence of the kind mentioned in the Bill when residing there. According to the definition of guardian in this clause, namely, "guardian includes any person who in the opinion of the Court has for the time being the charge of or control over the offender" the person made liable is either the Superintendent of the hostel or the Principal of the College, because either of them or both have the control of the offender. Is he to pay the fine? (*Sir Muhammad Yakub*: "Certainly.") Very good. That is the opinion of an able lawyer. The clause is surely open to this interpretation. If the superintendent is liable to pay the fine, why not the institution? (*An Honourable Member*: "Director of Public Instruction.") The Director of Public Instruction probably is too remote a person. That is an aspect of the subject that cannot be ignored. Difficulty of a different sort may arise for the guardian when he attempts to control the activities of his ward. Suppose, for instance, I discover that my son has been influenced by an unlawful association and he decides to go to picket a liquor shop. I at once take hold of the son and shut him up in a room and would not let him out, for I do not want to run the risk of being made liable to pay the fine if he commits an offence. An associate of my son comes to know of this confinement and lodges a complaint with a Magistrate and asks for a search warrant under section 100 of the Criminal Procedure Code. The Court is bound to issue such a warrant. In execution of this warrant, the police secures the release of my son. Thus I lose control over my son. He goes and commits an offence. I find him in the lock up and ultimately he is convicted and fined. The fine falls on me though I committed no fault. This is not all. The son may go and prosecute me for having illegally confined him. In such a case, I may be doubly punished once for not exercising the control over my ward and, second time, for attempting to exercise it. If the Honourable the Home Member still insists on the retention of this clause, I will venture to make a suggestion to add an *Exception* to the Indian Penal Code to the effect that "nothing will be an offence, when a parent or a guardian controls his son for the purpose of preventing him from joining an unlawful association". Otherwise the situation will become very unpleasant and embarassing. In the alternative the only way of escape would be to advise young parents to practise birth control.

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): A similar amendment stands in my name, and I support this. Before this Bill went to the Select Committee, the House knows that this particular clause was protested against and it was considered to be an unnatural one and likely to be worked in an unnatural way. Hopes were entertained that in the Select Committee this clause would be amended in a manner as to suit the purpose for which this measure was to be enacted. Some of the Members who spoke were keen on seeing that this clause did not find a place in the Bill. I do not know what attempts were made there, but I submit the amendment made there has not mitigated the rigour with which this clause will be worked. We find that the parents are clearly going to be punished for the sins of their children. The clause is so wide in its

scope, that it will make liable any parent. This will be certainly putting a premium upon the harsh enforcement of this clause against innocent and co-operating friends. Much reliance is sought to be placed on the fact that there are similar provisions in two or three Provincial Acts, such as the Bombay Children Act of 1924 and the Madras and Bengal Children Acts. Now, it should be realised what was the object of those Acts when they were enacted. And what is the object of the present Bill? There is a vast difference between the times when those Acts were enacted and the present times. It will be observed by reading those Acts that they were made at a time when the non-co-operation and the civil disobedience movements were not in force, and it will also be realised that in those days the children were under the control of the parents. There was no wave of unrest of the present nature operating to take away children from the control of their parents. It was only intended in those days to punish those parents who would not take care of or support their children or who would fail to act in such a manner as to leave the children uncared for. Those Acts were intended to provide punishment for defaulting parents who neglected their children. But what is the condition now? You all know that the present wave is too strong. It has got hold of the youngsters, many of them have left their parents, and several parents have lost control over these youngsters. Neither the parents nor the Professors, while the youngsters remain in schools and colleges, are heeded much. Sir, these are the days of freedom, and, especially, with this wave, the provisions of those Children's Acts could never serve as precedents for framing an Act like the present one. Now, going further, we find that the provisions of even those Acts are more satisfactory than the provisions contained in the present clause. I should like to read section 25 of the Bombay Children Act, 1924, which says:

"Where a child or young man 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 man, 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."

I am laying stress upon the last proviso that has been added which throws the burden upon the prosecution. Now, compare this with the provision that has been made in the present Bill. Here, the Court is not to convict a person unless it is satisfied—not that the accused has to satisfy the Court. That is quite plain. Therefore, coming to the clause that has been added,—I do not know if the attention of the Select Committee Members was drawn to the fact that the clause as proposed to be added is meaningless when it throws the burden on the accused. I will read the sub-clause. It says:

"Before making an order under this section the Court shall give the parent or guardian an opportunity to appear and be heard, and no such order shall be made *if the parent or guardian satisfies the Court* that he has not conduced to the commission of the offence by neglecting to control the offender, or that the offence was not committed in furtherance of a movement prejudicial to the public safety or peace."

Thus it is quite plain that the burden is thrown on the accused. This cannot possibly be denied, but if you read the former legislation, there the satisfaction of the Court was dependent primarily on the evidence of the prosecution. There is a vital difference, and we should not be deceived by

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the fact that an *Explanation* has been put which says that the parent could satisfy the Court that he had not been neglectful. It must be shown by the prosecution that the parent either acquiesced in the doings of his son, or that he did not take prompt measures, and, it is then only, that he should be made amenable to this clause. Therefore, this clause has not at all been improved upon; on the contrary, the burden has been put upon the parents, which is absolutely unjust. Then, proceeding further, the other difference is that in the present clause, no appeal has been provided against any order of fine imposed on the parent, whereas we find that clause (4) of section 25 of the Bombay Children Act, 1924, provides that the parent or guardian may appeal against such order as if it had been an order passed in proceedings against himself. Now, no such provision has been put in, and people would be misled as to whether the Criminal Procedure Code does apply to this clause and whether there will be an appeal or not. I have put in certain amendments, which will come on later to elicit fully from the Honourable the Law Member as to whether punishments and convictions under this Bill are liable to appeal and open to revision or not. With regard to the present clause, I would like to get a clear statement from the Honourable the Law Member as to whether the Criminal Procedure Code applies to this clause or not, and whether the omission of this clause about appeals, which appears in the former Acts, and its non-incorporation in the present Bill, is deliberate, or that it is because the Criminal Procedure Code provides it . . . .

The Honourable Sir Brojendra Mitter (Law Member): Sir, the Criminal Procedure Code does apply,—because it will be an order of an ordinary Magistrate: and an order of an ordinary Magistrate is always appealable or subject to revision, as the Criminal Procedure Code provides.

Mr. Lalchand Navalrai: I am thankful to the Honourable Member, but the point is this. In section 408 of the Criminal Procedure Code, it is said:

"Whoever is convicted of an offence will have a right of appeal."

The words are general no doubt, but where, in a particular matter like this, the conviction is against the child or young man, and the fine is going to be recovered from the parent, I want to know whether that would really be a conviction or sentence or not. I cannot, therefore, understand, if that is the intention, why is it that proviso No. 4 to the former Bombay Children Act is not incorporated here in order to remove all misunderstanding. Sir, I would also like to submit that many instances have been cited in order to show that the parent will be unnecessarily punished and made to pay a fine where the children are not living with him, but are living at long distances from him in different parts of India. One cannot possibly understand how a parent is negligent in allowing his sons to join such a movement when they have been sent elsewhere either to receive education or to join some avocation. Therefore, I submit that cases of that nature would be very hard cases and one does not know if such a distinction will be made by Magistrates. As the clause is at present, it makes the parent punishable for the crime of the son. Even if the fine is not paid by the child, it will be recovered from the parent. The clause is very oppressive. I, therefore, support the amendment.

Rao Bahadur B. L. Patil (Bombay Southern Division: Non-Muhammadan Rural): Sir, I have several objections to this clause as it has emerged from the Select Committee. However, I am prepared to congratulate the Honourable Members who worked on the Select Committee for the improvements they have done in this clause, but unfortunately the improvements are very few and not substantial. Sir, the author of this clause seems to have assumed that all guardians can control all the actions of their children. He seems to have thought that children are like toys whose movements can be controlled by means of wires, pulling them whenever they like to pull them. Unless the author of this clause is under this kind of assumption, I think no reasonable person would have drafted it in the form in which we see it. Even if we look to the provisions of the Indian Penal Code, we will see that the liability of a child is exempted if the child is below seven years of age. Such a child is altogether exempted from punishment. Why should not the corresponding period be fixed in this case? We know, as a matter of common sense, that children, as they begin to grow, come in contact with outside people. Is it possible for any parent on this earth to control each and every influence that is likely to come upon a child who is allowed to go in the streets, who is allowed to go to his school and play ground and who is allowed to come in contact with the people in the street. Therefore, if the author of this clause had exercised a little practical common sense, certainly the clause would not have found any place in this Bill. I am prepared to call this clause only a money-making clause.

Then, Sir, I come to the wording of sub-clause (*2*) of this clause. The words are: "a movement prejudicial to the public safety or peace". It is very difficult to know beforehand what are the movements that are prejudicial to the public safety or peace in their very nature. Unless there is a movement for committing rebellion or unless there is a movement to commit organised dacoities, and so on, it is not possible to say beforehand what movements are likely to lead to the breach of the public peace. Therefore, it is not proper that such vague terms should be used in this clause and parents should be held responsible for the acts done by their children. For these reasons, I support the amendment.

Mr. Uppi Saheb Bahadur (West Coast and Nilgiris: Muhammadan): Mr. President, I rise only to make a suggestion to the Treasury Benches. We have been reading in Aesop's Fables the story of the lion and the kid. It will be well if the Bureaucracy revise the Aesop's Fables and tell the world that there was a Bureaucracy which ruled in India and which told Indians that, if you have not committed a sin, your son has; so you must suffer and be punished. With these observations, I support the motion.

Pandit Satyendra Nath Sen (Presidency Division: Non-Muhammadan Rural): Sir, I rise to support the amendment. This clause, I think, is a very wide one. I understand that vicarious punishment is in vogue in Western countries as well as in some parts of this country. But I refuse to believe that the law of Western countries is our Gospel, and it has been shown very ably by my Honourable friend, Mr. Lalchand Navalrai, that the law prescribed in other parts of India materially differs from that which is proposed to be enacted here. Sir, the political condition of Western countries and the condition of India are widely different from each other. Their peace has not been disturbed so vitally as ours. And, as to the genesis of the trouble, Pandit Jha has made a true diagnosis.

[Pandit Satyendra Nath Sen.]

It was the Government who introduced into the country a system of Godless education and it does not lie in their mouth to say that a parent or an accidental guardian is liable for the acts of his ward over whom he may have no control. I would have been prepared to support such a measure if it were brought forward, say, 50 years ago, but I am not prepared to support it today. And what can I do? How can I restrict the activities of my son? If I restrict his activities, I come under clause 7, and if I do not, I come under clause 8. So I am between Scylla and Charybdis. I am helpless and so I support the amendment.

Mr. S. G. Jog (Berar Representative): Sir, in the old programme of this Bill which purports to combat the civil disobedience movement, from my point of view and from the point of view of all parents who have children, I think this clause is of vital importance. Probably those who have no children or who are not likely to have any children in future are not in a position to judge the consequences of the implications in this clause and, to that extent, I can excuse some of those who cannot realise the consequences of this measure. It is no doubt true that this particular clause is to some extent an improvement on the section as it was incorporated in the Ordinance Act. For the information of the House, I will read out the section in the Ordinance Act.

"(*1*) Where any young person, under the age of sixteen years, is convicted by any Court of an offence under this Ordinance or of an offence which, in the opinion of the Court, has been committed in furtherance of a movement prejudicial to the public safety or peace, and such young person is sentenced to fine, the Court may order that the fine shall be paid by the parent or guardian of such young person as if it had been a fine imposed upon the parent or guardian:

Provided that no such order shall be made unless the parent or guardian has had an opportunity to appear before the Court and be heard.

(*2*) In any such case the Court may direct by its order that in default of payment of the fine by the parent or guardian, the parent or guardian shall suffer imprisonment as if the parent or guardian had himself been convicted of the offence for which the young person is convicted."

I must sincerely offer my congratulations to the authors of the Bill because we have been saved from the punishment of imprisonment.

12 NOON.

Mr. K. Ahmed (Rajshahi Division: Muhammadan Rural): What did you do in the Committee?

Mr. S. G. Jog: My Honourable friend wants to know what we did in the Select Committee. There we did our best to get rid of this clause. We suggested several amendments, but we were quite helpless in the matter. As regards the point suggested by my Honourable friend, Mr. Navalrai, as regards the burden of proof, we tried our best to throw it on the prosecution. I have got in my hand a draft which will show how we tried to meet the question of the burden of proof. I will read out the draft:

"Where any young person, under the age of sixteen years, is convicted by any Court of an offence under this Act or of an offence which, in the opinion of the Court, has been committed in furtherance of a movement prejudicial to the public

safety or peace and such young person is sentenced to fine, the Court may order that the fine shall be paid by the parent or guardian of such young person as if it had been a fine imposed upon the parent or guardian :

Provided that no order shall be made under this section unless—

(*i*) the parent or guardian has had an opportunity to appear before the Court and be heard ;

(*ii*) the Court is satisfied that the offence was committed in furtherance of a movement prejudicial to the public safety or peace ;"

So it will be seen that we distinctly suggested that the burden of proof should be on the prosecution. So long as the prosecution has not proved that the offence was committed in furtherance of a movement prejudicial to the public safety or peace, the Magistrate cannot impose the fine on the parent.

Another safeguard is :

"The Court is satisfied that the parent or guardian has conduced to the commission of the offence by neglecting to exercise due control over such young person."

This clause definitely and distinctly throws the burden of proof on the prosecution before the parent or the guardian can be called upon to pay the fine. It is the prosecution alone that must establish that the offence was committed in furtherance of a movement and that the parent has not done anything by which it can be said that he neglected his duties, responsibilities and obligations. We tried our best in the Committee to throw this burden of proof on the prosecution, but to my surprise we could not carry this point. I still press that if this improvement is not made in the clause, I, for one, would like that the whole clause should be deleted. It is no doubt a great encroachment upon the rights of the guardian or parent and, in future, the prospective parent must be more careful that he does not come within the operation of this clause. I think it is also an encroachment against the commandments of God, "live and multiply" and there is great danger in carrying out the instructions of God. I submit that this should have no retrospective effect, but it should be applied only to the future children and I hope that those who will vote for the retention of this clause will do so with a full sense of responsibility. I support the amendment.

Major Nawab Ahmad Nawaz Khan (Nominated Non-Official): I oppose the amendment. Many Honourable Members do not realise the necessity for this clause, because they have had no personal experience. In 1930, when the civil disobedience movement was started, some of the lawyers in Dera Ismail Khan instigated the young children to take part in this movement. There were processions and young children of six, seven, or eight years of age went through the streets crying "Long live Revolution". They did not say so in English, but they cried *"Inqilab Zindabad"*.

Pandit Satyendra Nath Sen: Does the Honourable Member deny that there may be innocent guardians or parents?

Major Nawab Ahmad Nawaz Khan: I will come to that. Through the bazaars it was very difficult for an official to pass. Batches of children would crowd round motor cars and cry *"todi bacha hai hai"* and *"Inqilab Zindabad"*. Naturally the men who felt insulted would not beat the young children. On the Circular Road, ladies—European and Anglo-Indian—were stopped by small children.

Pandit Satyendra Nath Sen: And the parents are liable.

Major Nawab Ahmad Nawaz Khan: The Deputy Commissioner invited Hindu and Muhammadan gentlemen and said: "You are the Leaders, and the City Fathers of this City, you had better exert your influence". Many people came after two or three days and said they could not exert any influence. This was the reply. Mr. Yog Raj, an Extra Assistant Commissioner, was specially deputed to exert his influence among the Rai Bahadurs and Rai Sahibs and the Hindu Congressite members. After a few days' efforts, he came and plainly told about the wickedness of these people. They can stop these things, but they did not intend to do so. Outwardly they come before you and tell you, they are all with you, but when they go home, they tell their children to do as usual. So, may I ask the Honourable Members, if tomorrow such a thing is started in Delhi and passengers are hooted, jeered, by small children, what do you propose to do.

Pandit Satyendra Nath Sen: Are we to meet these hypothetical cases?

Major Nawab Ahmad Nawaz Khan: Naturally we cannot send these small children to jail; we cannot beat them so much as to make them unconscious. We thought the teachers and other people would at least tell the policemen the names of the fathers or mothers of these children, and it was requested by both Hindu and Muhammadan gentlemen that policemen should be allowed to slap or cane these boys. After four days, the whole trouble stopped. I think, after all this sad and bad experience, it is necessary that parents should be made responsible for these children. I oppose the amendment.

The Honourable Mr. H. G. Haig (Home Member): Sir, I think it is common ground on both sides of the House that children have been used in this movement in a very undesirable way. I think we all equally deplore this use of children, this bringing of children into the political movement. My Honourable friend, Mr. Lalchand Navalrai, has drawn a very melancholy picture of indiscipline in the younger generation. In fact he thinks that indiscipline has gone so far that there is no remedy at all. I shall return to that in a moment, but at this point I will merely say that I cannot accept that extremely gloomy picture. But admittedly there is a certain amount of indiscipline and steps have got to be taken to deal with this problem.

An Honourable Member: With the children or with the parents?

The Honourable Mr. H. G. Haig: I am coming to that in a moment if the Honourable Member will only exercise a little patience.

My Honourable friend, Pandit Ram Krishna Jha, while admitting and deploring these conditions, suggested,—and I do not want to differ from him,—that to some extent these conditions may have arisen from a defective system of education. For that he blames Government. Government are blamed always and for everything; but I would just like to remind him that for the last ten years education has been a provincial transferred subject and that, therefore, during that time one would hope that the Honourable Member might have done something to effect the improvements that he considers so desirable. But, Sir, the problem cannot be dealt with merely by blaming either the Government or the

responsible Ministries in the Provinces. We have a practical problem which has got to be dealt with now. It is quite true that some improvements in the educational system may gradually bring about a change in the conditions, but we have to do something now.

Well, Sir, when children commit offences of this kind it is of course possible to punish them. My Honourable friend, Mr. Thampan, suggested that they should be punished by whipping. Well, Sir, we, the British people, I think a great many of us, have a considerable belief in the utility of corporal punishment on proper occasions. But I do not think that on the whole public opinion in this country goes with us and I cannot help feeling that if Mr. Thampan put up this proposal before this House, he would secure very little support from the Opposition Benches to the suggestion that these children should be whipped. What other punishment remains? Imprisonment. Now, surely, it is most undesirable that young children should be sent to jail; I cannot imagine anything more undesirable. Therefore, we are driven to give up the attempt to find suitable punishment and we try instead to do what is always far better and that is to prevent. How can these activities be prevented? Our case is that they can be prevented by enforcing parental responsibility. Honourable Members opposite suggest that parental control has ceased to exist, that they are utterly powerless over their children and that the children do precisely what they like. Sir, if that is the present state of affairs, it has clearly got to be remedied. It is a deplorable social condition in any country, and some real effort has got to be made to remedy it. And this clause will do something to bring home to parents that they have a responsibility for looking after their children; and, I think, when they apply their minds to it, they will find that they can control their children and that they are not so powerless as some Honourable Members opposite suggest. Facts indeed bear out that contention. At the beginning of the civil disobedience movement, this nuisance from children was very serious. After this provision had been introduced, it diminished in a most marked manner. We have had reports from a number of Local Governments saying that as soon as this provision was introduced, the nuisance from children decreased to a very marked extent. Now, what had happened? Obviously the parents had applied their minds to the problem and had been able to exercise control and prevent their children taking part in these activities. That, Sir, is a very full justification for this provision. I oppose the amendment.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That clause 8 of the Bill be omitted."

The motion was negatived.

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

"That in sub-clause (*1*) of clause 8 of the Bill, for the word 'sixteen' the word 'fourteen' be substituted."

My main ground is that due to climatic conditions in this country, youths attain maturity much earlier than elsewhere and sometimes they are precocious. So the age of sixteen is too high. Referring to the various Children's Acts, I find that a child has been defined as a person below the

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age of 14 years. So if it is necessary to have a provision like this, at least the age should not be sixteen years, but fourteen years. With these words, I move my amendment.

Mr. N. R. Gunjal (Bombay Central Division Non-Muhammadan Rural): (Speaking in the vernacular, the Honourable Member supported the amendment.)

The Honourable Mr. H. G. Haig: Sir, as the House is aware, there are various precedents in local legislation for provisions of this nature, and, in every case, the definition of young person is one who is under the age of 16. I think it is a very reasonable age limit to fix. We certainly do not want young persons between the ages of 14 and 16 sent to jail. Sir, I oppose.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in sub-clause (*1*) of clause 8 of the Bill, for the word 'sixteen' the word 'fourteen' be substituted."

The motion was negatived.

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

"That in the *Explanation* to sub-clause (*1*) of clause 8 of the Bill, the words 'the charge of or' be omitted."

My purpose is that in the *Explanation* "guardian" has been defined to include any person who, in the opinion of the Court, has for the time being the charge of or control over the offender. I think anybody who has control over the offender or the young person might be punished; but the words "to have the mere charge of" are rather wide. It will be difficult for the headmaster of a school, having hundreds of students who are technically in his charge, if he has to pay the fines that might be inflicted on the students of the school: it will be really an impossibility. I think, on these considerations, the words "the charge of or" might be omitted, and the only element that has to be considered in making the guardian responsible for the conduct of his ward is when he has control over the offender.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Amendment moved:

"That in the *Explanation* to sub-clause (*1*) of clause 8 of the Bill, the words 'the charge of or' be omitted."

The Honourable Sir Brojendra Mitter: Sir, this is a drafting point; there is really not much substance in it and I refer my Honourable friend, Mr. Mitra, to the English drafting. I know he has Stroud with him (*An Honourable Member*: "Halsbury."), and if he will look at page 842, "guardian includes any person who, in the opinion of the Court, has for the time being the charge of or control over the child". It is, as I said, a drafting point and both these expressions have got definite meanings and they ought to be there.

Mr. B. V. Jadhav: With all due deference, Sir, I may point out that the word in the clause is not "guardian", but whether a person who is to be fined for the offence committed by a young person is to be the person in charge of or under whose control he is. And as the two persons,—one in whose charge he is, and the person under whose control he is, may be two different persons,—and, to be in charge of a boy merely makes the clause penal, I think I ought to support the amendment moved by Mr. Mitra.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in the *Explanation* to sub-clause (*1*) of clause 8 of the Bill, the words 'the charge of or' be omitted."

The motion was negatived.

Mr. Amar Nath Dutt (Burdwan Division: Non-Muhammadan Rural): Sir, I move the amendment that stands in my name, although from the attitude of the Government it were better not to put in any amendment; but only to register my protest and to show to the public at large the attitude of the Government that I have put down the amendment. I know full well that the Government will not accept any amendment whatever to what they think ought to be the law of the land under the present conditions. Still I move:

"That for sub-clause (*2*) of clause 8 of the Bill, the following be substituted:

'(*2*) No such order shall be made if the young person is not under the control of parent or guardian and maintained by such parent or guardian'."

If I were to give reasons for the proposed amendment and attempt to try to convince the House of the reasonableness of this amendment, I think I would not take much time if they were really prepared to be convinced and really prepared to accept any argument or listen to any arguments on our side. As I have found from day to day that they will not listen and it is useless and futile for us to advance any argument, I shall refrain from doing so. But at the same time I submit that I do move my amendment knowing it to be a forlorn cause and I do not expect that the Government will accept even a reasonable amendment like mine. If it were necessary I have not got that precious little book about which my friend over there had a hit against me—he would not dare hit my Honourable friend, Mr. S. C. Mitra—but he knows that he can well hit me often and about the precious little book of Sir John Salmond which was read by the Honourable the Law Member the other day . . . .

Mr. K. Ahmed: Which volume?

Mr. Amar Nath Dutt: I have not got that book with me, nor do I care to go through the book, because I know only such passages will be picked up by the Honourable the Law Member which will support his own argument and he would not care to look to the argument on the other side. That is really the duty of an advocate; in fact, even after becoming the chief law officer of the Crown, he has not forgotten that he was one of the most brilliant advocates of the Calcutta Bar . . . . .

Mr. President (The Honourable Sir Ibrahim Rahimtoola): It is desirable that the Honourable Member should come to the point.

Mr. Amar Nath Dutt: It is to the point in this way: I do not like to put in all the arguments in favour of my amendment knowing full well that those will not be acceptable to them; be that as it may, since you have asked me to advance some arguments, I shall do so. In the old story in the fables, we know that the father of the lamb did some mischief and that was the charge against the lamb and, therefore, the lion devoured the lamb. In this case, the process has been just reversed. It is not the father who is the offender, but it is the son and, therefore, you must come down upon the father. I have heard the Honourable the Home Member while opposing the deletion of this clause and, I wonder, with all the pious phrases and the way in which he tried to convince us, really he can refuse to accept the amendment which I have submitted. He began by saying that it was common ground that the children had been used in an undesirable manner. I do not know where he found this common ground that children had been used in an undesirable manner. I for one can say that very few children of responsible parents have been found to be so used. That being so, I submit that it is not common ground, and it is merely assuming things which do not exist.

Then, my Honourable friend a few minutes later contradicting himself said that he would not accept the extremely gloomy picture drawn by my friend, Mr. Jha, about the present day youths. I do not know which of his statements should be accepted. If my friend really believes in the first statement which he made, namely, that children had been used in an undesirable manner, and if that is so, then certainly parents and guardians have control over them, and they are being maintained by them. So I say that they not merely control but also maintain them. One way by which parents can punish their children and prevent them from going wrong is by denying food and clothes. But it is also a fact that children sometimes go astray and parents have no control over them, and so I have used the words:

"no such order shall be made when the young person is not under the control of the parent or guardian and maintained by him."

If the Government were reasonable, I am sure they will not hesitate to accept this amendment. The Honourable Member accused us and said that the Government was always blamed by this side. I submit that they blamed sometimes unjustly, it may be, but mostly they are blamed for their unjust and unjustifiable acts. This is one of the instances in which you inflict vicarious punishment on the father for the sin of begetting a son.

Then, Sir, I would not refer to a casual remark of his when he said that during the last ten years education has been a transferred subject. We all know that, but, I am sure, he will not deny that the effect of the system of education that has been introduced into this country, the modern ideal, especially the ideas of communism, socialism and Bolshevism, all these are imported from the west—is really deplorable. In this land of ours, which is the home of ancient civilization and culture, certainly such wild dreams and wild ideas never existed, and I challenge my friend to point out to any scripture of the Hindus and the Muslims alike which advocates such wild ideas or theories as those advocated by Lennin and others. In fact, if you had not interfered with our civilisation and, if you had not imposed your own ideas upon us with a view to producing

a few clerks under you to serve you and help your administration, I think this class of youth about whom you complain now would not have been produced, and so it does not lie in your mouth to blame us.

Sir, I am really grateful to the Honourable the Home Member for the sentiment he expressed, because he said that in the matter of whipping public opinion will not favour it. Here we are really glad to find that the Honourable the Home Member is paying a homage to public opinion, and if he really pays such homage to public opinion, I do not think he will hesitate to accept this amendment.

Then, Sir, my friend also spoke of the deplorable social condition which he said was responsible for all this trouble. I say, it is not merely the deplorable social condition, but it is also the deplorable political and economic condition for which you are responsible . . . .

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

Mr. Amar Nath Dutt: No, Sir, not you (Laughter), because you are also a victim like myself. I mean the Government which are responsible for our present political and economic condition. This is neither the place nor the occasion to discuss that aspect of the matter. Here I am in the position of an advocate or an appellant before the Government to lessen the rigours of that Draconian law, and I do once more appeal, and I hope Government will accept this amendment.

Mr. B. V. Jadhav: Sir, I think equity will induce Government to accept this amendment. I support it.

The Honourable Sir Brojendra Mitter: Sir, what my Honourable friend, Mr. Amar Nath Dutt, is seeking to do is to give a new definition to "guardian". His definition has two elements, control and maintenance. Sir, it is a risky business to play with drafting which has been recognised in Statutes for many years without causing any difficulty or confusion. As I pointed out a short while ago, the definition of "guardian" in the Bill has been taken from the English law. It has been on the Statute-book for many years and it has given no trouble. Sir, I shall now show how my Honourable friend's definition would lead to absurdities. I mean no offence. Supposing there is a child or a young person, whose home is in Burdwan. His father lives in Burdwan and he sends that child to Calcutta for education, and the child lives with the father's brother in Calcutta, under the control of the latter. The father month by month sends Rs. 50 to his brother for the maintenance of the child. There the uncle has got the control, but the child is being maintained by the father. If my friend's definition is accepted, there must be both control and maintenance. In that case, the uncle would be excluded, although he has got the control, because the child is being maintained by the father. My friend's definition would certainly exclude the uncle, whom we want to get at. His definition is: "No such order shall be made if the young person is not under the control of parent or guardian and maintained by such parent or guardian". It is conjunctive. That will defeat the purpose of this clause, because in this case we want to enforce that guardianship authority is exercised by the uncle under whose

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care and control the child is living in Calcutta. But under my Honourable friend's amendment that uncle would be immune. That is the absurdity which I wanted to point out. Sir, I oppose the amendment.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That for sub-clause (*2*) of clause 8 of the Bill, the following be substituted:

'(*2*) No such order shall be made if the young person is not under the control of parent or guardian and maintained by such parent or guardian'."

The motion was negatived.

Mr. Lalchand Navalrai: I move:

"That in sub-clause (*2*) of clause 8 of the Bill, the words 'satisfies the Court that he' be omitted."

Sub-clause (*2*), as it now stands, reads as follows:

"Before making an order under this section, the Court shall give the parent or guardian. . . and no such order shall be made if the parent or guardian satisfies the Court that he has not conduced to the commission of the offence. . ."

If the words "satisfies the Court that he" are taken away, the clause would read as follows:

". . . no such order shall be made if the parent or guardian has not conduced to the commission of the offence. . ."

If the words proposed are taken away, it will be upon the prosecution to prove that the parent or guardian has not conduced to the commission of the offence. I am only asking that the fundamental principle that burden of proof should always be on the prosecution should be maintained. The present clause is an un-British law and I want to make it British by the deletion of these words.

Mr. T. N. Ramakrishna Reddi (Madras ceded Districts and Chittoor: Non-Muhammadan Rural): I support this amendment. In this case it is not the offender that has to pay the fine. You are asking the parent or guardian to pay the fine, and that parent or guardian has not committed the offence himself. So the burden of proof must be on the prosecution that such a parent or guardian had a hand in the commission of the crime by the boy. What is the quantum of proof that is expected by the Government that the parent or guardian has to prove that he had no hand in the commission of this crime? The Courts will come with a determination that the boy has committed the crime, and any amount of proof by the parent will not avail them. For the last so many days we are trying by moving amendment after amendment, some very reasonable, to convince the Government to accept at least some amendments. They have come with a determination not to accept any amendment, and that will be exactly the position in regard to the Court. Though the parent has proved that he had absolutely no hand and that he was not at all in the know of what the boy had done, in spite of that, the Court will say, "No, no, without your connivance the boy would not have committed the crime". So, it is impossible for any guardian to prove that he was not responsible for the crime and it is no use simply asking the guardian that he should satisfy the Court that he has not

conduced to the commission of the crime. This is a case of vicarious suffering and hence the burden must always be on the prosecution to prove that the guardian had conduced to the commission of the crime. I beg to support the amendment.

Mr. S. C. Sen (Bengal National Chamber of Commerce: Indian Commerce): I support this amendment. In the Select Committee, we had a long discussion over this clause on whom the onus will lie. Precedent after precedent was cited. The Bengal Act, Bombay Act, C. P. Act, and Madras Act were also cited. They were all in one way and the clause, as drafted by the Select Committee, was put before the Select Committee which also shows that the onus was on the prosecution. But somehow or other that was subsequently changed and we now find the clause as it is now here. I will refer you to the Bengal Children's Act. There it says:

". . . 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. . ."

That has been improved here by stating "unless the parent or guardian satisfies the Court that he has not conduced to the commission of the offence . . . ". There the Court is to be satisfied; and here the onus is expressly put on the guardian to satisfy the Court that he has not conduced. Under these circumstances, I submit that the amendment which has been moved is in conformity with all the local Acts which are now in existence and also the English Act to which the learned Law Member referred in this House. I, therefore, support the amendment.

The Honourable Sir Brojendra Mitter: I hope the House will bear with me if I deal with this matter of onus in some detail. From the debate I gather that there is a good deal of confusion of ideas with regard to this question of onus. It is undoubtedly the law that onus in the first instance must be on the prosecution. It is also an accepted principle of the law of evidence that ordinarily the onus of proving the negative should not be imposed upon any party. But as Honourable Members are aware, all these principles are subject to exceptions and I shall come to the exceptions when I deal with the question of proving the negative. My learned friend, Mr. Lalchand Navalrai, as well as my learned friend, Mr. Sen, assumed that under the Children's Act the onus is upon the prosecution. I shall show that it is not so. The Children's Act says this:

"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."

Sir, the Court has to be satisfied that the parent or guardian has not conduced to the commission of the offence. Very well. Who is to satisfy the Court? The test is this. The onus is on the party who would fail if no evidence were given. Supposing the prosecution gives no evidence as regards the parent's conduct and the parent also gives no evidence, then the Court is not satisfied one way or the other. Therefore, if no evidence is given, the parent loses. (Interruption by Mr. Lalchand Navalrai.) If you will kindly allow me to go on, I shall make the point perfectly clear. In section 102 of the Evidence Act, it is laid down that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. Now, in this case,

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what happens? The prosecution succeeds in establishing the guilt of the child. The child is fined and the prosecution further satisfies the Court that the offence was committed in furtherance of the civil disobedience movement. The onus of all this was upon the prosecution. If the Court is satisfied, then the Court says, this is a case in which the fine will be recovered from the father. The prosecution gives no other evidence. The father gives no other evidence. What happens? The father has to pay. In the absence of evidence, the father fails and it follows that the onus is on the father. Sir, that is the law in the Children's Act despite what my friend, Mr. Navalrai, said: "Unless the Court is satisfied that the parent or guardian has not conduced to the commission of the offence."

Mr. S. C. Sen: Why not put the phraseology in that form?

The Honourable Sir Brojendra Mitter: That is another matter. I am dealing with one of your fallacies. I shall deal with the second fallacy now. I have shown that we are doing nothing extraordinary or in variance with the Children's Act. Then comes the question—on whom should the onus be placed? I say, the onus ought to be placed upon the parent or guardian. Here comes this question of proving the negative. I shall draw the attention of the House to a passage in Woodroffe's standard work on Evidence. I suppose even my friend, Mr. Amar Nath Dutt, will accept the authority of that book. At page 739, I am reading from the 8th Edition, it says this:

"As already observed, the first exception to the general rule that the burden of proof rests with the party who asserts the substantial affirmative is that it does not apply where there is a *primâ facie* presumption one way or the other."

That is one exception. I am not now dealing with that particular exception of presumption. The obvious illustration of that is this. A man is found in possession of goods recently stolen. The onus is upon him to show that his possession is not guilty possession. That is an illustration of this presumption. The second exception is relevant to the present question. That exception to the above named general rule is stated in section 106 of the Evidence Act, namely, that where the subject matter of the allegation lies peculiarly within the knowledge of one of the parties, that party has to prove it whether it be of an affirmative or a negative character, and even though there be a presumption of law in its favour. As regards the quantum of parental control which is being exercised over a child, who has got peculiar knowledge of that fact—the Government or the father himself? It is within the peculiar knowledge of the father or guardian what amount of control is being exercised over the child. That being so, the onus of proving is upon the parent of the child. Section 106 of the Evidence Act says this:

"When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

Whether it is an affirmative or a negative does not matter. In this case what has got to be proved is that on account of the absence of parental control, the child has gone astray. That is the issue before the Court. The Court says: "Well, here is your child who has been fined and you ought to pay the fine, unless you can show that the child was

not under your control or you have some other excuse". The person who has to prove excuse must have the onus upon him, the excuse being that the child was not under his control, that he lived in a distant place under the care of somebody else or whatever the excuse may be. I have shown that this is the law in the Children's Act and that ought to be the law in any Act. What we have provided for is this, that the parent or guardian can satisfy the Court that he has not conduced to the commission of the offence. The prosecution does not know what the relation between the father and the son is. Sir, the prosecution has to prove two things, first, that the offence has been committed in furtherance of an objectionable movement. That the prosecution must prove before the parent can be called upon to pay the fine and the prosecution must also show that the offence committed is such that fine is the appropriate punishment. It is only when these two requirements are satisfied, that the parent can be called upon to pay. When the parent is called upon to pay, he can come to the Court and prove that he has not conduced to the commission of the offence by any negligence on his part. That is within his knowledge. He alone can prove it. He can prove further that the offence for which he has been called upon to pay was not committed in furtherance of an illegal movement. We have given the parent two defences. One defence is that he was not guilty of any negligence, and the second defence is that the offence was not in furtherance of any such movement. Sir, where is the objection, either in theory or in law or in common sense to this provision? We have considerably modified the provisions of the Children's Acts and that was in deference to the wishes of the Members . . . . .

1 P.M.

Mr. S. C. Sen: How have you modified the provisions of the Children's Acts?

The Honourable Sir Brojendra Mitter: The point raised by my Honourable friend is not strictly pertinent to the amendment before us, but still I shall answer him. Sir, under the Children's Acts, all that is necessary for calling upon the parent to pay is that the young person is convicted of an offence punishable with fine. That offence need have no connection with an illegal movement. Now, we have restricted this clause to offences *in furtherance* of illegal movements. That is a material modification. Under the Children's Acts, whenever a child is fined, the parent can be called upon, but here we say, "a parent can be called upon to pay only if the offence was committed in furtherance of—(not even in connection with)—an illegal movement". Is not that a modification and a substantial modification?

Mr. S. C. Sen: That was already in the Ordinance.

The Honourable Sir Brojendra Mitter: What is the relevancy of that remark? If my Honourable friend thinks he will annoy me, he will fail in that. Sir, so far as onus is concerned, the onus *was* on the parent in the Children's Acts, and the onus is on the parent under this clause. I oppose the amendment.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in sub-clause (*2*) of clause 8 of the Bill, the words 'satisfies the Court that he' be omitted."

The motion was negatived.

Mr. K. P. Thampan: Sir, I move:

"That in sub-clause (2) of clause 8 of the Bill, after the words 'to control the offender' the words 'or that the offender was not in his charge at the time of the commission of the offence' be inserted."

Sir, the object of my amendment is obvious. I want to extend the scope of the exception a little further, and that a guardian who has not got the offender in his charge at the time of the commission of the offence should not be liable to the punishment. Sir, the Honourable the Law Member, in reply to amendment No. 69, moved by my Honourable friend, Mr. Amar Nath Dutt, said that the word "guardianship" postulated two things: "the liability to maintain, and also the liability to control". Sir, my difficulty arises out of that explanation; otherwise I should not have cared to move this amendment after the disposal of my friend, Mr. Amar Nath Dutt's amendment. Now, in my part of the country, under the Marumakkathayam and Aliyasantanam laws, the legal guardian of a boy is his uncle. Thus my sons' guardians are their uncles. (*An Honourable Member*: "Not the father?") No. Now the boy of course lives with me or in the hostel and not in the Tarawad or uncle's house, because under modern conditions wife and children generally live with the husband and the father of the children. The uncle or legal guardian never maintains nor controls them. Of course, legally they are entitled to maintenance from the Tarawad, but very few give it, and cases for maintenance are instituted . . . . .

Sir Muhammad Yakub (Rohilkund and Kumaon Divisions: Muhammadan Rural): Then mend your own ways.

Mr. S. C. Mitra: Yes, mend your own nose first.

Mr. K. P. Thampan: What I mean to say is that so far as the parent or father with whom the children live is concerned, there is neither the liability to maintain nor the legal control which the Honourable the Law Member thinks the guardians have. So what I wish to say is that unless this clause is explained further and guardians in the circumstances mentioned are excluded from the scope of the clause, there will be trouble. Sir, I move.

The Honourable Sir Brojendra Mitter: Sir, I think my Honourable friend, Mr. Thampan's apprehension is not well-founded. If you look to the definition of the word "guardian", it includes "any person who, in the opinion of the Court, has for the time being the charge of or control over the offender". It is a question not of legal guardianship at all; we are talking of guardianship in fact,—that is one who has got the control of the child, who can control the movements of the child. We are not thinking of the legal right of guardianship.

Mr. K. P. Thampan: Then my trouble is more fancied than real?

The Honourable Sir Brojendra Mitter: I should think so. Then, further, in the defence that has been given under sub-clause (2), if the parent or guardian can satisfy the Court that he has not been negligent—and when there is no duty, there cannot be any negligence . . . .

Mr. K. P. Thampan: Sir, under our Marumakkathayam law, the uncle is the legal guardian.

The Honourable Sir Brojendra Mitter: What I mean to say is that if the child remains under the care and custody of A—B may be the legal guardian, but we are dealing with A under whose care and control the child was living when he committed the offence—then A has to satisfy the Court that he has not been negligent. We are dealing with the *de facto* guardian, not the *de jure* guardian and that is quite clear from the definition of the word "guardian". We never used the words "legal guardian".

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in sub-clause (*2*) of clause 8 of the Bill, after the words 'to control the offender' the words 'or that the offender was not in his charge at the time of the commission of the offence' be omitted."

The motion was negatived.

Mr. S. G. Jog: Sir, the amendment which stands in my name substantially aims at the same object which my friend, Mr. Lalchand Navalrai, has in view, but in a different way. The amendment runs thus:

"That in sub-clause (*2*) of clause 8 of the Bill, for all the words occurring after the words 'to control the offender, or' the following be substituted:

'until the Court is satisfied that the offence was committed in furtherance of a movement prejudicial to the public safety or peace'."

While making my speech in support of the amendment to delete the clause, I made my position perfectly clear as regards the burden of proof. The Honourable the Law Member charged this side of the House with a little confusion as regards the legal aspect of the point of burden of proof. So far as the other point is concerned, namely, that the parent has not taken due care or has neglected his ward, to that extent I feel inclined to concede that the section quoted by him is right. When the offence is in the knowledge of a party, then in that case the burden of proof lies on the party who is in possession of that particular knowledge. But as regards the other point, I should like to make the position clear. When the case goes on against the child the element of offence, so far as the child is concerned, is not that the particular offence with which he is charged was committed in furtherance of a movement which affected the public peace, etc. That element is not necessary to prove so far as the liability of the child is concerned, but when you want to hold the parent responsible for the fine imposed upon the child, then a further element is incorporated. If the offence for which the child is charged is done in furtherance of a movement which is prejudicial to the public peace and safety, then in that case alone the responsibility and the liability attaches to the parent. He is held responsible, because the child has committed a certain offence which is positively in furtherance of a movement which affects the public safety. That is a condition precedent in order to make the parent liable to pay the fine. Is it not necessary, is it not incumbent on the prosecution to prove that before the liability of the parent is established, that particular element ought to be proved against him? How can the Honourable Member say that this fact is particularly within the knowledge of the guardian, so that when the guardian comes forward, it is for him to raise that point by way of defence or by way of exemption that the offence was not committed in furtherance of a movement prejudicial to public safety or peace. I think it is doing the thing in a wrong way. The confusion, so far as this particular point is concerned, I submit, is not on this side of the House,

[Mr. S. G. Jog.]

but it is more with the Honourable the Law Member. Before attaching the liability to the parent, the prosecution must establish that the offence with which the child is charged was committed in furtherance of a movement prejudicial to the public safety and, therefore, the parent is responsible to pay the fine. I can concede that the fact that the child was fined need not be proved, because we can take it for granted that the child was fined, but there is a further element which is essential for imposing or fixing the liability to the parent.

Under these circumstances, I submit that the prosecution must prove that fact and in that case the burden of proof must lie with the prosecution. To that extent, I submit, that the wording of sub-clause (*2*) must undergo a change. I have already explained what transpired in the Select Committee. We press for it. Not only that, but we had a draft on the lines I have suggested in which it was distinctly said that the prosecution must prove that the offence was committed in furtherance of a movement prejudicial to the public peace. So far as the other element is concerned, namely, that the parent should take the proper care of the child, etc., that burden should lie on the parent.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Amendment moved:

"That in sub-clause (*2*) of clause 8 of the Bill, for all the words occurring after the words 'to control the offender, or' the following be substituted:

'until the Court is satisfied that the offence was committed in furtherance of a movement prejudicial to the public safety or peace'."

The Honourable Sir Brojendra Mitter: Sir, if I have understood my learned friend, Mr. Jog, correctly, his point is that the fact that the offence was committed in furtherance of an illegal movement should be proved by the prosecution before the parent or guardian can be called upon to pay the fine. Sir, under sub-clause (*1*), the onus is upon the prosecution. Sub-clause (*1*) says this:

"Where any young person, under the age of sixteen years, is convicted by any Court of an offence which, in the opinion of the Court, has been committed in furtherance of a movement prejudicial to the public safety or peace."

Sir, unless the prosecution can prove that the offence was committed in furtherance of an illegal movement, this clause does not come into play. Therefore, under sub-clause (*1*), the onus is upon the prosecution. Why my learned friend, Mr. Jog, thinks that the onus is not on the prosecution, I cannot understand. It is only when the prosecution has satisfied the Court that the offence was committed in furtherance of an illegal movement that the Court can ask the parent to pay the fine.

Mr. S. C. Sen: Sir, there is a similar amendment standing in my name also.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The Honourable Member is entitled to speak and the Chair has called upon him to do so.

Mr. S. C. Sen: Sir, we had a full discussion about this matter in the Select Committee and I then pointed out that the onus ought to be on the prosecution to prove that the offence was committed in furtherance

of a movement as mentioned in this clause. The Honourable the Law Member has now referred to the earlier portion of this clause, namely, sub-clause (*1*), where it is said:

"Where any young person, under the age of sixteen years, is convicted by any Court of an offence which, in the opinion of the Court, has been committed in furtherance of a movement prejudicial to the public safety or peace."

Now, Sir, before the Court can order or before the Court can call upon the parent to appear before it, the Court must be satisfied upon *ex parte* evidence given in the absence of the guardian. A guardian does not come in until he is being called upon to come before the Court to show cause, whatever it is. Therefore, the onus, even in the presence of the guardian, ought to be on the prosecution to prove as against the guardian, in his presence, the affirmative that the offence has been committed in furtherance of such object. How is the onus discharged? On the other hand, sub-clause (*2*) says:

"before making an order under this section, the Court shall give the parent or guardian an opportunity to appear and be heard, and no such order shall be made if the parent or guardian satisfies the Court that he has not conduced to the commission of the offence by neglecting to control the offender, or that the offence was not committed in furtherance of a movement prejudicial to the public safety or peace."

How is the onus then on the prosecution? Whatever the Magistrate may say, it has upon *ex parte* evidence not taken before the parent. The sentence of fine is there, the fine against son, and the parent is then called upon to pay as if he is the guilty person and, therefore, the onus must be on the prosecution to bring home the guilt to the parent, namely, that the offence was committed in furtherance of an illegal object. I, therefore, say that the amendment moved by Mr. Jog is perfectly in order, and the Honourable the Law Member admitted a few minutes ago that the onus was on the prosecution to prove this fact. But this is *ex parte*, it is in the absence of the accused. Is that a proper discharge of the onus? The Law Member states that when the guardian is called upon to pay there would be two issues. Firstly, the committal of the offence, and secondly, that the offence has been committed in furtherance of this object. These are to be proved by the prosecution. Thereafter, he said, if the parent wanted to get rid of his liability, he must disprove the presumption of parental control, the onus to disprove is on the parent himself. We want all these things to be clearly put. That is the object of the amendment.

The Honourable Mr. H. G. Haig: Sir, my Honourable friend, Mr. Sen, has developed apparently a very learned argument, but the point, as far as I understand it, is perfectly simple. It is provided in sub-clause (*1*) of this clause that if in the opinion of the Court an offence has been committed in furtherance of a movement prejudicial to the public safety or peace, the Court may order that the fine should be paid by the parent or the guardian, that is to say, the Court must have certain definite reasons put forward by the prosecution for coming to that conclusion, but before reaching its final conclusion and when merely a *primâ facie* case has been established, it is provided that the Court before making its order should give the parent or the guardian an opportunity to appear and rebut that presumption. That appears to me to meet in every way the requirements of justice. I oppose the amendment.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in sub-clause (*2*) of clause 8 of the Bill, for all the words occurring after the words 'to control the offender, or' the following be substituted :

'until the Court is satisfied that the offence was committed in furtherance of a movement prejudicial to the public safety or peace'."

The motion was negatived.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That clause 8 stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

The Assembly then adjourned for Lunch till Thirty-Five Minutes Past Two of the Clock.

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

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Clause 9.

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

"That clause 9 of the Bill be omitted."

One could understand the anxiety of Government to punish a man who was trying to do some mischief. When a man is found guilty, the Courts will no doubt inflict adequate punishment, but why should the ordinary procedure laid down for trial of cases be departed from? There are four parts in this clause. In the first sub-clause, trial is confined to the Court of a Presidency Magistrate or a Magistrate of the first class. It may be said that it is a precautionary measure and only experienced and able Magistrates should try these cases. But I find that, as a matter of practice, it cuts the other way also. If these petty cases are brought before second class or third class Magistrates, whose power to inflict severe punishments is limited, there is some chance of the offences being visited with lighter punishments. So, why should there be this provision that for these minor offences the trial should be confined to Magistrates who can inflict heavier punishments? Sub-clause (*ii*) says that an offence punishable under section 2, 3, 5, 6 or 7 shall be cognizable by the police, As regards section 2, which deals with dissuasion from enlistment in the Military, Naval or Air Forces or even as regards section 3 which deals with tampering with public servants, I have not much to say. But as to the other three sections, I do not see why it should be cognizable by the police. It means that the police, even under these sections, will arrest without warrant. Section 5 is dissemination of the contents of a proscribed book, section 6 is dissemination of false rumours and section 7 is picketing.

In these cases I do not see why there should be arrest by the police without warrant and why this provision has been specially made. In sub-clause (*iii*), it is said that an offence punishable under section 4, that is, boycott of public servants, shall be an offence in which a warrant shall ordinarily issue in the first instance. If it is not with the purpose of prejudicing the mind of the Magistrate that Government are anxious to secure a conviction, why is there this special provision that warrants shall ordinarily issue? It should be left to the Magistrate to issue a summons or a warrant. And now the fourth sub-clause says that an offence punishable under section 7, that is, the picketing section, shall be non-bailable. It is nobody's case that the civil disobedience people or the Congress people are anxious to escape trial or conviction. So I do not see why it should be particularly made non-bailable. For all these reasons I think there is no special case made why in this emergency legislation the ordinary criminal procedure should not be followed. Sir, I move the deletion of this whole clause as I think it is unnecessary.

Mr. B. V. Jadhav: Sir, I support the amendment.

Mr. N. R. Gunjal: (Speaking in the Vernacular, the Honourable Member supported the amendment.)

The Honourable Mr. H. G. Haig: Sir, it has been said in the course of these debates that it is difficult to please the Opposition. We had an illustration of that yesterday when the Opposition criticised very severely the *Explanation* to clause 7, and then, when we said, by all means delete it, they preferred to retain it. Now, in the same way, with reference to the first sub-clause of this clause, in the debates in Simla, a great point was made of the fact that these new offences,—some of them requiring careful examination and discrimination,—were triable by Magistrates of any class. We met that criticism, and provided that they should be triable only by Magistrates of the first class, only to find my Honourable friend, Mr. Mitra, criticising us on another ground. It is obvious that we can do nothing which will satisfy all sections of the Opposition. With regard to sub-clause (*ii*), these are offences the continued commission of which it is most important to put a stop to, and for that reason, in order that the powers can be really effective, it is most important that the offences should be made cognisable by the police. Take for instance the case of picketing. If the police are not able to arrest the picketer, it is very difficult for them to take effective action to stop picketing. With regard to sub-clause (*iii*), owing to the special nature of the offence of boycotting, we have provided a special procedure so that a Court should not take cognizance of an offence unless upon complaint made by due authority. That makes it impossible for the offence to be cognisable. But the offence in itself is a serious offence and I submit that it is entirely justifiable that when the complaint is duly authorised, a warrant should issue. And, finally, sub-clause (*iv*) makes the offence of picketing non-bailable. There, again, if the picketer immediately he was arrested could offer bail and go on with his picketing, it would make the task of the police a difficult one. Sir, I oppose the amendment.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That clause 9 of the Bill be omitted."

The motion was negatived.

Mr. Lalchand Navalrai: Sir, I move:

"That in part (*ii*) of clause 9 of the Bill, the figures "2, 3, 6" be omitted."

Figure 2 refers to clause 2 which relates to dissuasion from enlistment, clause 3 refers to tampering with public servants and clause 6 refers to the dissemination of false rumours. My amendment aims at requesting that offences under these three clauses should not be made cognisable. During the debate on this, the Honourable the Home Member said that if these offences were not left to the police to be dealt with as cognisable, false or malicious complaints might be made by particular persons out of grudge. Now, my reply to that is very clear. If a complaint is made by a private man which is false or frivolous, the first opportunity for the Magistrate before whom the complaint will be lodged, will be to follow the procedure of satisfying himself whether the complaint is true or false by examining the complainant under section 200 of the Criminal Procedure Code; and then, later on, if he finds that it is false or frivolous, he can fine such a man under section 250, Criminal Procedure Code. In a like manner there is a section in the Indian Penal Code—section 211—under which a man can be prosecuted and punished for making a false complaint. So these are the safeguards already and, therefore, it will on the contrary be easier for private complaints being made to the police out of grudge. It is hardly expected that the police officer would satisfy himself in such a way as to be sure that the complaint is not false. The second ground, in my submission, with regard to this, is that these offences are made very heinous and very drastic, and they are of a novel character. I think it is for the first time that the Legislature is making laws like this: of course we know that laws like this have been in this country under the Ordinances, but that is a different question altogether. When the matter comes now before a responsible Legislature to consider whether they should give sanction to these offences, at any rate it lies very heavily upon this House to consider whether any safeguards which are reasonable should be put or not. Then, my third reason is that I find that more serious offences when actually committed—here only attempts or fears are made punishable,—against public servants are non-cognisable and bailable. I would only refer to Chapter X of the Indian Penal Code which comprises of offences committed against public servants. I find section 186—obstructing a public servant in the discharge of his public functions—is not cognisable and bailable. Then, again, the next section 187 deals with omission to assist a public servant when bound by law to give assistance, a much more serious offence. This is also non-cognisable and bailable. Then we have wilful neglect to aid a public servant for the purpose of execution of process and disobedience of an order lawfully promulgated by a public servant if such disobedience causes obstruction, annoyance or injury to a person lawfully employed, and then threatening a public servant with injury to him or to one in whom he is interested, and then threat of injury to induce a person to refrain from applying for protection to a public servant—these are all offences more heinous; yet they are all bailable and non-cognisable. Thus there is absolutely no reason why the offences under the clauses of this Bill should be made cognisable.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Amendment moved:

"That in part (*ii*) of clause 9 of the Bill, the figures "2, 3, 6" be omitted."

The Honourable Mr. H. G. Haig: Sir, I have already by anticipation dealt generally with the points made in this amendment. The general answer to the contentions of the Honourable Member, Mr. Lalchand Navalrai, is that these are all offences the immediate stoppage of which is very essential and, unless the offence is made cognisable, it is not easy to provide an effective and immediate deterrent to its continuance. In regard to some of the sections of the Penal Code which the Honourable Member suggested were of a somewhat similar character and were now non-cognisable and bailable, I would invite his attention, if he is at all concerned with our lack of consistency, to the next clause, clause 10, and he will find many of them included there. Sir, I oppose the amendment.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in part (*ii*) of clause 9 of the Bill, the figures "2, 3, 6" be omitted."

The motion was negatived.

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

"That Part IV of clause 9 of the Bill be omitted."

Clause 4 deals with an offence punishable under section 7. By this emergency legislation we are creating new offences. Clause 7 deals with picketing, and in future even peaceful picketing will be prohibited. Therefore, there is no reason why this offence should be made non-bailable. As I have said previously, it is very unlikely that offenders will try to escape, and there is no reason why section 7 should be made non-bailable.

Mr. B. V. Jadhav: Sir, I rise to support this amendment. When the previous amendment was moved by my friend, Mr. Mitra, for the deletion of the whole clause, the Honourable the Home Member dealt with the various sub-clauses of this clause and said that in order to stop picketing, the offence should be made non-bailable. I do not think it is necessary to make this offence non-bailable, because when a picketer is arrested by a policeman, he has to be taken to the nearest police station, because the policeman cannot afford to accept bail at the place where the man is arrested, and, therefore, the offender will have to be taken to the nearest police station and there the bail has to be arranged, and, in the ordinary course, it will take some time. Therefore, the fear that is entertained that the same man will offer himself for picketing and thus create an interminable amount of work for the police is without foundation. The maximum punishment for this offence is only six months, and, therefore, such an offence does not deserve to be made non-bailable. I, therefore, heartily support this amendment.

Raja Bahadur G. Krishnamachariar (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural): Sir, I wish to say only very few words in support of this amendment. It has been held in all the High Courts that the only criterion upon which an offence should be declared bailable or non-bailable, the only standard on which a person, even though arrested for a non-bailable offence, should be released on bail or not is whether he would appear at the trial and stand it. That is the only condition on which the Courts say they would either grant bail or

3 P.M.

[Raja Bahadur G. Krishnamachariar.]

refuse it. Now, whatever may be said in favour of or against these picketers, one thing is clearly declared by them, that is, they are not the people to run away. They come to the Courts and stand their trial. The trying Magistrates ask them if they have anything to say. They say "No". They make no defence; they do not trouble the police or the Courts by any elaborate arguments in justification of their action, and they are not persons who are afraid of Courts. Therefore, why make this offence non-bailable at all?

Then, Sir, I was surprised to hear the Honourable the Home Member saying,—I hope I have heard him properly,—I was surprised to hear my friend say that if you release this man on bail, you will never be able to have a proper inquiry. I know in the Courts of some Magistrates invested with first or second class powers, when a person is arrested and brought before them, the police always get up and say: "Oh, don't release him; if you release him, our business is gone". Those of my friends who are lawyers will support me when I say that this is invariably the argument which is advanced by the police. They have nothing else to say. A man is arrested; the Counsel appears and applies for bail, and the only reply that the Public Prosecutor or the police have to say is: "Oh, don't release him, because our business will be spoiled". Now, what is this business? In Hyderabad, there was an old Commissioner of Police who specifically wanted time, that is to say, extending the remand of the accused person for Mollama Gowaan, that is to say, tutoring witnesses, and they put that in black and white there. I am not exaggerating. If, therefore, you want to have Molloma Gowaan, it is all right, otherwise what do you want to harass him for? You arrest him for things which are of a doubtful nature over which we have had long discussions. Now, you take him into your custody

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The Chair does nothing of the kind.

Raja Bahadur G. Krishnamachariar: I am afraid, Sir, that something has gone wrong with me that I have always to appeal to the Chair to support me and the Chair will not support me and leave me to the tender mercies of the official block. I apologise to you, Sir. Really speaking, the whole argument is addressed to the Government. There is one clause which I have not been able to understand, and that clause says, always address the Chair. If I address the Chair, the Chair says: "I don't want to hear you". I do not know what to do.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The Honourable Member's long judicial experience should tell him that when he is addressing the Chair, he has to follow the simple procedure of using the third person instead of the second.

Raja Bahadur G. Krishnamachariar: Very well, Sir, I will try. When I make the mistake, I would ask to be excused, but I don't do it wilfully or out of any disregard for the dignity of the Chair.

Sir, I was speaking on the question of harassment to the picketer. I did not speak on the first amendment, because I wanted to see how the Home Member was going to support clause 4. What he said was, this argument of a second grade pleader before a second class Magistrate on

behalf of the police saying that he will not be able to offer Mollama Gowaan. I hope that is not the ground that compels you to make this offence non-bailable. Therefore, it is not that you want to bring the man to justice, but it is pure and simple harassment. Sir, I have no sympathy for these people. I do not belong to their party. I have severed all my connection with them long long ago, but when I find that you are enacting a law in the highest tribunal here, and when you are enunciating a proposition which, I very respectfully submit,—and I ask the Law Member to say whether I am right or wrong,—is dead against every principle that has been laid down by the High Courts, I feel that you are not doing the right thing, and, therefore, I support this amendment.

The Honourable Mr. H. G. Haig: Sir, my friend who sits behind me as usual has treated the House to various reminiscences dating, I suppose, from the time when he was not, as he described myself, a second grade pleader, but no doubt a first class Advocate. At the same time, Sir, when this first class Advocate is quoting the arguments which have been used, he might have been pleased to do me justice by quoting them with some approach to accuracy. He said that I had supported this provision on the ground that otherwise the police would never be able . . . .

Raja Bahadur G. Krishnamachariar: I spoke subject to correction. I did not hear properly.

The Honourable Mr. H. G. Haig: I said nothing of the sort. My argument never approached that point. And I would suggest that when my friend does not hear me in future, he should at any rate refrain from misrepresenting me. The reason for making this offence non-bailable I have already explained in my answer to the first amendment on this clause. It is that if the offence is bailable, the picketer arrested goes off after getting bail and is back again either the same day or the next day engaged once more on picketing. That is not the way in which it will be possible for the police effectually to deal with this curse of picketing. I do not think, Sir, there is any other point that I need make, and I oppose the amendment.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question I have to put is:

"That Part IV of clause 9 of the Bill be omitted."

The motion was negatived.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That clause 9 do stand part of the Bill."

The motion was adopted.

Clause 9 was added to the Bill.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That clause 10 do stand part of the Bill."

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

"That clause 10 of the Bill be omitted."

In the previous clause we were dealing with newly created offences and we tried to induce Government to make the offences not cognisable by the police or make them bailable. This clause deals with the old sections of the Indian Penal Code which have been in operation for a number of years, and an attempt is now being made to make them more rigorous by making them cognisable and some non-bailable. Section 186 deals with obstructing a public servant in the discharge of his public functions. Section 188 deals with disobedience to duly promulgated orders; section 189, threat of injury to public servants; 190, threat of injury to persons to refrain them from applying for protection from a public servant; and section 228 deals with intentional insult to public servants sitting in judicial proceedings. That is one group. Another group is section 295A which deals with outraging religious feelings; section 298, wounding religious feelings by uttering words. Section 505 deals with public mischief, and 506 and 507 with criminal intimidation. All these sections were so far non-cognisable; that is to say, the police had no right to arrest the alleged offenders without a warrant of arrest from the Court. I do not know what special evidence the Government have now that all these sections have failed to attain their object during all these years. Again, offences under section 188 or section 506 are made non-bailable. I do not know what fresh facts in connection with the Congress movement or the civil disobedience movement have come to light for a change in the established law which has served the purpose for all these years. So, whatever may be the reasons for creating new offences, at least the old law should not be unnecessarily tampered with. Sir, I move the deletion of the whole clause.

Mr. S. C. Sen: I have no desire to take part in this discussion but for the fact that I want to point out to the Honourable the Home Member that whatever attempt he may make to supplement the provisions of the local Acts, the Local Governments do not require his help at all. I refer to section 22 of the Bengal Suppression of Terrorist Outrages Act, 1932, passed by the Bengal Government only recently. The section says:

"Notwithstanding anything contained in the Code, an offence punishable under section 160, 186, 187, 188, 189, 227, 228, 505, 506, 507 or 508 of the Indian Penal Code, or under section 17 of the Indian Criminal Law Amendment Act, 1908, shall be cognizable and non-bailable."

Mr. S. C. Mitra: That is more comprehensive.

Mr. S. C. Sen: Here with the greatest difficulty we make the Home Member see that these offences should not be made non-bailable, but in the Bengal Act they are all made non-bailable. We are, therefore, in this dilemma whether the Bengal Act is the correct one, or the Imperial Act. We believed that the Home Member brought these forward because he thought that the Bengal Government had no power to change the Criminal Procedure Code, but we now find that the Bengal Government are quite capable of looking after their own interests irrespective of the help of the Government of India. I ask the Honourable the Home Member to let us know which one will prevail so that we may know our position in Bengal.

The Honourable Mr. H. G. Haig: The object of this clause is to secure that offences which are almost without exception those that are likely to be committed in connection with the civil disobedience movement, or movements of that character, should, if the Local Governments so require, be made cognisable and non-bailable, and the general justification for that is that which I have already explained in relation to the clause that has just been passed. With regard to the point made by my Honourable friend, Mr. Sen, I have not with me at the moment a copy of the Bengal Suppression of Terrorist Outrages Act, but my recollection of that Act is that it was passed for a very definite purpose, namely, to deal with terrorist offences in Bengal. Here we are dealing with a much wider and more general purpose. So far as conditions in Bengal are concerned, I take it that it is only in connection with offences of that type that section 188 and so on are non-bailable. I should be glad to be corrected if I am wrong. If that is so, I do not think that the dilemma which my Honourable friend has presented to me is a real one.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question which I have to put is:

"That clause 10 of the Bill be omitted."

The motion was negatived.

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

"That sub-clause (*2*) of clause 10 of the Bill be omitted."

Having failed to carry the deletion of the whole clause, I confine my motion to sub-clause (*2*) alone. Here offences under section 188 and section 506 of the Indian Penal Code have been made non-bailable. Section 188 deals with disobedience to order duly promulgated by a public servant, and the punishment provided is simple imprisonment for one month or fine of Rs. 200 or both. The other section, 506, deals with criminal intimidation. That is also a compoundable offence. So I think that these two sections should not be non-bailable and my amendment is for the deletion of this sub-clause.

Mr. B. V. Jadhav: I support the amendment.

The Honourable Mr. H. G. Haig: I do not think I need add anything to the considerations I have already referred to in connection with clause 9. I oppose the amendment.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That sub-clause (*2*) of clause 10 of the Bill be omitted."

The motion was negatived.

Clause 10 was added to the Bill.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Clause 11.

Mr. S. C. Mitra: In clause 11, provision is made to the effect that the Governor General in Council may, by notification in the Gazette of India, declare an association to be unlawful. Under section 16 of the Criminal Law Amendment Act of 1908, the Local Governments had that power. Now attempt is made to give the same power for the Governor General in Council also. In the areas that are directly under the Government of India, I think there are local authorities and the Chief

[Mr. S. C. Mitra.]

Commissioners have the right to promulgate these orders. I shall be glad to know what are the special reasons after so many years for providing that the Governor General in Council should have that power also.

The Honourable Mr. H. G. Haig: The Criminal Law Amendment Act, as originally passed, provided that associations should be declared unlawful by the Governor General in Council. At a later date, by a general Devolution Act, provision was made devolving these powers on Local Governments but, through what I think was inadvertence, while delegating these powers to Local Governments, steps were not taken to retain them for the Governor General in Council. That is an obvious omission in the law and the object of this clause is to remedy that omission. It may well be that a particular unlawful association is not confined to one province alone and it may, therefore, be necessary for the Governor General in Council to take action in particular cases as well as for Local Governments to have the same power.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That clause 11 do stand part of the Bill."

The motion was adopted.

Clause 11 was added to the Bill.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Clause 12.

Mr. S. C. Mitra: I move for the deletion of clause 12. My argument is simply the same, that non-cognisable offences should not be made cognisable, nor bailable offences be made non-bailable.

The Honourable Mr. H. G. Haig: We have argued the general question more than once. I would say with regard to this clause that it is a matter of the very greatest importance and has been found to be so in dealing with the present movement—that this particular offence should be cognisable and non-bailable.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That clause 12 of the Bill be omitted."

The motion was negatived.

Clause 12 was added to the Bill.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Clause 13.

Mr. B. V. Jadhav: I move:

"That clause 13 of the Bill be omitted."

That clause provides for the insertion of a number of sub-clauses in the Indian Criminal Law Amendment Act after section 17 of that Act; 17A is power to notify and take possession of places used for the purposes of an unlawful association. Then 17B and 17C, and so on. These are very drastic additions. They take away the liberty of the subject and

in a way are very tyrannical. Then there is the question of movable property being taken possession of and forfeited to Government. These provisions are very objectionable and, therefore, I move that the whole clause be deleted.

The Honourable Mr. H. G. Haig: Clause 13 confers certain powers which I need not specify at length, for they will be dealt with in the amendments put down on the paper. They have been found particularly useful in the Presidency from which the Honourable Member who has just spoken comes. They have been found to be most essential for coping with this movement of civil disobedience. The organisations, particularly in the Bombay Presidency, function from well known headquarters either in the city of Bombay or in various village centres and since those headquarters were openly functioning in defiance of the authority of Government the effect on the population generally was to establish the belief that these organisations were in effect parallel powers to Government and were successfully setting up their authority against the authority of Government. When powers were taken to seize these headquarters and to forfeit the movable property and in other ways to disorganise, what I may call, the headquarters organisation, the effect was very marked and rapid and I would venture to impress on the House that this clause is one of those to which the Government attach the greatest importance.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That clause 13 of the Bill be omitted."

The motion was negatived.

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

"That in clause 13 of the Bill, in the proviso to sub-section (2) of the proposed section 17-A, for the words 'women or children' the words 'any person' be substituted."

Sir, in this clause there is power given to "the District Magistrate or, in a Presidency-town, the Commissioner of Police, or any officer authorised in this behalf in writing by the District Magistrate or Commissioner of Police, as the case may be" to "take possession of the notified place and evict therefrom any person found therein, and shall forthwith make a report of the taking possession to the Local Government". There is a provision that:

"where such place contains any apartment occupied by women or children, reasonable time and facilities shall be afforded for their withdrawal with the least possible inconvenience."

Now, my amendment is that reasonable time and facilities will be necessary not only in the case of women and children, but in the case of any person who may be there. I do not see why Government may not accept this suggestion that reasonable time and facilities should be given to all persons and not women alone.

Mr. B. V. Jadhav: Sir, I rise to support this amendment. In the Select Committee, the Government were very kind to insert this proviso regarding the granting of reasonable time and facilities to women and children. Now, the plea is put forward that the same leniency should be shown to even males also, and I do not see why that concession should not be so given. If any men are found to be offending against the laws, then of course they will be taken away under the non-bailable clauses

[Mr. B. V. Jadhav.]

by the police and the question of giving facilities to them does not arise. The concession is asked for persons who are not concerned at all in the work of the unlawful association; and, so, if women and children are to be given facilities—and they ought to be given facilities of course—the same facilities ought to be extended to men also who are not at all concerned in the work of the unlawful association; and I, therefore, support this amendment.

The Honourable Sir Brojendra Mitter: Sir, when this Bill was introduced, it was not thought necessary that any such provision should be made in the case of the premises to be taken possession of. It was contemplated that such premises should be vacated without delay. But it was pressed upon us that it might be inconvenient for women and children to vacate the premises actually occupied by them, all at once and that special mention should be made of women and children. Not that it is likely that the Magistrate should harass them, but that still, for the sake of greater caution, women and children should be specifically mentioned. We do not think it is at all necessary, but, in order to meet the Opposition, we are quite agreeable to have that provision. The same facilities are not, however, necessary in the case of male adults, and there is no reason why the concession made to women and children should be extended to males also. I oppose the motion.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in clause 13 of the Bill, in the proviso to sub-section (*2*) of the proposed section 17-A, for the words 'women or children' the words 'any person' be substituted."

The motion was negatived.

Pandit Satyendra Nath Sen: Sir, I rise to move:

"That in clause 13 of the Bill, in the proviso to sub-section (*2*) of the proposed section 17-A, for the words 'women or children' the words 'a woman or a child or an invalid' be substituted."

Sir, this amendment seemed to me to be so reasonable that I was hesitating whether I should move it, because, by moving it, I would be giving the Government an opportunity to say that they have accepted some amendment which has been proposed by the Opposition. Sir, the words that occur in the Bill are "women or children". I do not know whether the plural number used there is deliberate. However, I want to put the words in the singular and I have also added the words, "an invalid". Sir, there is no doubt that women and children are deserving of the greatest sympathy and consideration, and Government are prepared to make provision for them, but I beg to point out that owing to the indefatigable efforts of such gallant Knights as Sir Hari Singh Gour and Sir Harbilas Sarda . . . . . (*Some Honourable Members*: "He is not a 'Sir'.") A prospective 'Sir', no doubt. the condition of Indian women has been ameliorated and some of them in fact are growing to be more masculine than men. But invalids are always helpless and utterly helpless. They cannot be expected to vacate immediately if proper facilities and reasonable time are not afforded to them. Suppose

an invalid is suffering from cholera or small-pox. How can you expect that he should be able to vacate forthwith? It would be most unreasonable and inhuman to expect him to do that. Sir, we have been watching the attitude of Government during the last few days and I will not be very much surprised if the Honourable the Law Member or the Honourable the Home Member will stand up and say that there may be some bogus cases of invalidism, and that in order to exclude those bogus cases they are not prepared to make any provision for any such case whatsoever on that ground. If that be their position, I might also tell them that if there might be bogus invalids, there might be bogus women also. (Laughter.) If they are prepared to make consideration for women and children, they should make consideration for invalids also. Sir, I move.

Mr. Amar Nath Dutt: Sir, I have no such nervousness about the reasonableness of my Honourable friends opposite as my friend has. So far as the merits of this Bill are concerned, reasonable or unreasonable, they will have it. Well, that being so, my friend apprehended that in order to appear to show a reasonable attitude, the Government might accept his amendment and, therefore, he said he was hesitating to move it. I can assure him, however, as I have been watching the Honourable Members opposite, that they are not going to accept his amendment, coming as it does from my friends on this side, because the Government fear there must be something in it which probably they might not yet have discovered, but which might occur to them afterwards.

The Honourable Sir Brojendra Mitter: I have discovered that.

Mr. Amar Nath Dutt: Sir, on the merits, there is no doubt that my friend's amendment is an eminently reasonable one, and far more than women and children is the protection to invalids necessary. But I do not expect the Government to accept this motion, however reasonable it may be. Then, again, I do not see any necessity for moving an amendment like that, because you will find that everything has been left to the discretion of the officers concerned. If they do not choose to act as provided in the proviso, there is nothing to prevent them from doing so. That being the case, it is only a pious wish that has been expressed in the proviso or it is meant to hoodwink those who will not see the real meaning of it. The proviso says:

"where such place contains any apartment occupied by women or children, reasonable time and facilities shall be afforded for their withdrawal."

Am I to understand that if this provision was not there, no reasonable time even to women and children would have been given? If the Government assure me that that is their apprehension, then once in my life I shall be with them, because in that case, I would take it that they see eye to eye with the grievances of the people and they know exactly what their subordinates are likely to do. In this state of things, I think I had better lend my support to the amendment of my Honourable friend rather than depend upon the sweet reasonableness of my friends over there.

The Honourable Sir Brojendra Mitter: Sir, I oppose the amendment as wholly unnecessary. We might as well add in this clause a woman, a child, or an invalid, or the blind or the maimed or the deaf and the dumb. We might go on adding to the list. It is wholly unnecessary and I oppose it.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in clause 13 of the Bill, in the proviso to sub-section (2) of the proposed section 17A, for the words 'women or children' the words 'a woman or a child or an invalid' be substituted."

The Assembly divided:

AYES—37.

Abdur Rahim, Sir.	Parma Nand, Bhai.
Aggarwal, Mr. Jagan Nath.	Patil, Rao Bahadur B. L.
Azhar Ali, Mr. Muhammad.	Phookun, Mr. T. R.
Bhuput Sing, Mr.	Puri, Mr. Goswami M. R.
Chetty, Mr. R. K. Shanmukham.	Rastogi, Mr. Badri Lal.
Dutt, Mr. Amar Nath.	Reddi, Mr. P. G.
Gour, Sir Hari Singh.	Reddi, Mr. T. N. Ramakrishna.
Gunjal, Mr. N. R.	Sadiq Hasan, Shaikh.
Harbans Singh Brar, Sirdar.	Sant Singh, Sardar.
Isra, Chaudhri.	Sarda, Diwan Bahadur Harbilas.
Jadhav, Mr. B. V.	Sen, Mr. S. C.
Jog, Mr. S. G.	Sen, Pandit Satyendra Nath.
Krishnamachariar, Raja Bahadur G.	Singh, Kumar Gupteshwar Prasad.
Lalchand Navalrai, Mr.	Sitaramaraju, Mr. B.
Mitra, Mr. S. C.	Sohan Singh, Sirdar.
Mody, Mr. H. P.	Thampan, Mr. K. P.
Muazzam Sahib Bahadur, Mr. Muhammad.	Uppi Saheb Bahadur, Mr.
Murtuza Saheb Bahadur, Maulvi Sayyid.	Yakub, Sir Muhammad.
	Ziauddin Ahmad, Dr.

NOES—47.

Abdul Hye, Khan Bahadur Abul Hasnat Muhammad.	Macqueen, Mr. P.
Acott, Mr. A. S. V.	Meek, Dr. D. B.
Allah Baksh Khan Tiwana, Khan Bahadur Malik.	Metcalfe, Mr. H. A. F.
Amir Hussain, Khan Bahadur Saiyid.	Misra, Mr. B. N.
Anklesaria, Mr. N. N.	Mitter, The Honourable Sir Brojendra.
Bajpai, Mr. G. S.	Moore, Mr. Arthur.
Bhore, The Honourable Sir Joseph.	Morgan, Mr. G.
Bower, Mr. E. H. M.	Mukherjee, Rai Bahadur S. C.
Burt, Mr. B. C.	Nayudu, Rao Bahadur B. V. Sri Hari Rao.
Dalal, Dr. R. D.	Nihal Singh, Sardar.
Dunn, Mr. C. W.	Rafiuddin Ahmad, Khan Bahadur Maulvi.
Dutt, Mr. G. S.	Rajah, Rao Bahadur M. C.
Fox, Mr. H. B.	Rau, Mr. P. R.
Graham, Sir Lancelot.	Ryan, Mr. T.
Greenfield, Mr. H. C.	Schuster, The Honourable Sir George.
Gwynne, Mr. C. W.	Scott, Mr. J. Ramsay.
Haig, The Honourable Mr. H. G.	Sher Muhammad Khan Gakhar, Captain.
Hezlett, Mr. J.	Singh, Mr. Pradyumna Prashad.
Hudson, Sir Leslie.	Smith, Mr. R.
Ishwarsingji, Nawab Naharsingji.	Sorley, Mr. H. T.
Ismail Ali Khan, Kunwar Hajee.	Tottenham, Mr. G. R. F.
James, Mr. F. E.	Yamin Khan, Mr. Muhammad.
Jawahar Singh, Sardar Bahadur Sardar.	Zulfiqar Ali Khan, Sir.
Lal Chand, Hony. Captain Rao Bahadur Chaudhri.	

The motion was negatived.

Mr. B. V. Jadhav: Sir, I move:

"That in clause 13 of the Bill, in sub-section (2) of the proposed section 17B, for the words 'forfeited to His Majesty' the words 'kept in the custody of Government' be substituted."

In this clause 13, certain sections are sought to be added to the Indian Criminal Law Amendment Act, 1908. The first, section 17A, gives power to notify and take possession of a building or a house if it is used by an unlawful association, and the second, 17B, to which this amendment is being moved by me, relates to moveable property found in that notified place. So the whole place is really to be taken over by Government with the moveable property that will be found there. In the case of the immoveable property, Government have made provision that after the association ceases to be unlawful, the immoveable property will be restored to that association. An unlawful association under this Act is not from its inception an unlawful association. It is an association which is carrying on its work lawfully and it is recognised as lawful for a number of years. But for reasons known to Government they come to a decision and declare it to be an unlawful association and take possession of the buildings or offices or whatever there may be. Government are so very hard-hearted that they will not allow any time or concession even to an invalid person to be comfortably removed. Be that as it may, it is certain that they are not forfeiting immoveable property. But when they take possession of the moveable property, let us see how they propose to dispose of it. The method is detailed in this proposed section 17B.

"The District Magistrate, Commissioner of Police or officer taking possession of a notified place shall also take possession of all moveable property found therein, and shall make a list thereof . . ."

I have nothing to say against this.

"If, in the opinion of the District Magistrate, or in a Presidency-town the Commissioner of Police, any articles specified in the list are or may be used for the purposes of the unlawful association, he may proceed, subject to the provisions hereafter contained in this section, to order such articles to be forfeited to His Majesty."

My objection here is to the provision about forfeiture. If the immoveable property is not to be forfeited, but is to be handed over and restored to the association when it ceases to be unlawful, then in the same way the articles and moveable property found therein ought to be restored to the association when it becomes a lawful body in the eyes of Government. Here the provision is that some of the property should be forfeited to His Majesty. I congratulate Government on their not being anxious to forfeit all the moveable property to Government. They are forfeiting to Government some of the property and leaving other property without being forfeited, and they are prepared to restore it to the association when it becomes lawful in their eyes. But, further on, there is a provision that any moneys that will be found there or in the account of the unlawful association at a bank or with a merchant will be forfeited to Government and there is no provision of restoration to the association when it becomes lawful in the eyes of Government. So, my contention is that the clause is not a just clause. Government ought not to forfeit the funds of an association which they declare unlawful. Government may keep possession of those funds and prevent the unlawful association from making use of them in the prosecution of their unlawful objects. But, beyond that, Government ought not to go and ought not to forfeit. Government ought to restore it along with the immoveable property which they take possession of. If Government are going to forfeit the funds of the association, then the association, when it becomes lawful, will be deprived of the funds and will not be able to carry on its lawful activities, as funds

[Mr. B. V. Jadhav.]

do not come in a day. This grabbing system of Government ought to be condemned. In forfeiting the funds of the association, Government are the prosecutor, Government are the judge and Government, at the same time, are the executioner. There is no chance to anybody; the unlawful association to which the funds belong cannot come forward and claim them when the order of forfeiture is passed. They are out of Court; their leaders are rotting in jail and there is nobody to represent their claims or do anything for them. If, on the ground of that association being an unlawful one, Government come forward to forfeit their funds and add them to the treasury, they expose themselves to the charge of looting their subjects and looting the people. In the amendment I suggest that the principle of forfeiture should be abandoned and the moveable property should be kept in the custody of Government. I, of course, agree that the funds ought not to be allowed to be used by any person for any unlawful purpose. I, therefore, move that for the words "forfeited to His Majesty" the words "kept in the custody of Government" should be substituted.

Sardar Sant Singh (West Punjab: Sikh): Sir, I support this amendment. In supporting it, I wish to remind the Government of the sections of the Penal Code which originally contained sentence of forfeiture of property. These sections were 121, 121A, 123 and probably 124. In those sections, as they were originally framed, the offences mentioned therein were punishable with forfeiture of property as well. During the martial law in 1919 in the Punjab, some high placed persons like Lala Harkishen Lal and others were charged with waging war before Tribunals specially set up under the martial law and were convicted of such offences and sentenced to transportation for life and the forfeiture of their property. Soon after, the Government realised their blunder and the Hunter Committee was appointed to investigate into the conditions arising out of martial law. The Hunter Committee's finding resulted in securing the release of all such persons. Then the Government found themselves in an embarassed situation. The sentence of forfeiture was passed by a Tribunal and still stood there. Ultimately the orders of forfeiture were withdrawn, but this led to an amendment of these sections, and, by section 2 of the Indian Penal Code (Amendment) Act, 1921, the sentence of forfeiture was removed. Taking into consideration that only last year the Government had to go to the Congress to enter into a pact with that body, it is not unlikely that the same thing may have to be repeated in the year 1933. Suppose it so happens, forfeitures of property would create unnecessary complications. Just as in the case of Bardoli a difficulty arose and could not completely be surmounted in order to restore the properties to the original owners, the same embarrassment may fall on the Government again. It is not unlikely the press reports of opening negotiations with Mahatma Gandhi to secure his co-operation in the coming reforms are persistent. If so, the present enactment may cause unforeseen difficulties in the way of securing the compromise. It will be an act of statesmanship to foresee the difficulties and to avoid taking any extreme step which may go to create further difficulties in the restoration of good relations between the Congress and the administration. Therefore, I think it would be quite well if, instead of ordering the forfeiture of the property, the property be kept in the custody of the Government so that if the compromise does include such a term as restoration of

property, it may be very easy for the executive to restore it. Therefore, I will support this amendment.

The Honourable Mr. H. G. Haig: Sir, my Honourable friend, Mr. Jadhav, suggested that because we have been, as he would consider, reasonable, in not forfeiting immoveable property, we should, therefore, take precisely the same action with regard to moveable; but, of course, the argument might work the other way: we might, if he wants us to be entirely consistent, forfeit immoveable property as well as moveable. But, on the whole, the view of the Government is that it is reasonable to distinguish between moveable and immoveable property. It is a much more severe and serious matter to forfeit permanently immoveable property than moveable. In the case of these associations, it must be remembered that they exist for an unlawful purpose. My Honourable friend, Sardar Sant Singh, suggested that because we did not in the case of certain criminal offences order the forfeiture of the property of the offender, therefore it is unreasonable that the property of these unlawful associations should be liable to forfeiture. I think it is very easy to draw a distinction between the two cases. In the case of an individual he does not normally devote the whole of his resources to the commission of a particular offence; but these unlawful associations exist for no other purpose than to carry out these unlawful activities and, I submit, that the property which is definitely used for these purposes should be liable to forfeiture, and that the provision is a reasonable one. I do not propose to follow my Honourable friend, Sardar Sant Singh, into his suggestions that it might be embarrassing for Government if they enter into another pact with the Congress and certain arrangements had to be made about the return of this forfeited property, because it has been repeatedly asserted on the floor of this House as well as in the House of Commons that the Government have not the slightest intention of entering into another pact with the Congress. Sir, I oppose.

4 P.M.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in clause 13 of the Bill, in sub-section (*2*) of the proposed section 17B, for the words 'forfeited to His Majesty' the words 'kept in the custody of Government' be substituted."

The Assembly divided:

AYES—35.

Abdur Rahim, Sir.	Parma Nand, Bhai.
Aggarwal, Mr. Jagan Nath.	Patil, Rao Bahadur B. L.
Azhar Ali, Mr. Muhammad.	Phookun, Mr. T. R.
Bhuput Sing, Mr.	Puri, Mr. Goswami M. R.
Chetty, Mr. R. K. Shanmukham.	Ranga Iyer, Mr. C. S.
Dutt, Mr. Amar Nath.	Reddi, Mr. P. G.
Gour, Sir Hari Singh.	Reddi, Mr. T. N. Ramakrishna.
Gunjal, Mr. N. R.	Sadiq Hasan, Shaikh.
Harbans Singh Brar, Sirdar.	Sant Singh, Sardar.
Iara, Chaudhri.	Sarda, Diwan Bahadur Harbilas.
Jadhav, Mr. B. V.	Sen, Mr. S. C.
Jog, Mr. S. G.	Sen, Pandit Satyendra Nath.
Lalchand Navalrai, Mr.	Singh, Kumar Gupteshwar Prasad.
Misra, Mr. B. N.	Sitaramaraju, Mr. B.
Mitra, Mr. S. C.	Sohan Singh, Sirdar.
Murtuza Saheb Bahadur, Maulvi Sayyid.	Thampan, Mr. K. P.
Pandian, Mr. B. Rajaram.	Uppi Saheb Bahadur, Mr.
	Ziauddin Ahmad, Dr.

NOES—51.

Abdul Hye, Khan Bahadur Abul Hasnat Muhammad.
Acott, Mr. A. S. V.
Allah Baksh Khan Tiwana, Khan Bahadur Malik.
Amir Hussain, Khan Bahadur Saiyid.
Anklesaria, Mr. N. N.
Anwar-ul-Azim, Mr. Muhammad.
Bajpai, Mr. G. S.
Bhore, The Honourable Sir Joseph.
Bower, Mr. E. H. M.
Burt, Mr. B. C.
Dalal, Dr. R. D.
DeSouza, Dr. F. X.
Dunn, Mr. C. W.
Dutt, Mr. G. S.
Fox, Mr. H. B.
Graham, Sir Lancelot.
Greenfield, Mr. H. C.
Gwynne, Mr. C. W.
Haig, The Honourable Mr. H. G.
Hezlett, Mr. J.
Hudson, Sir Leslie.
Ishwarsingji, Nawab Naharsingji.
Ismail Ali Khan, Kunwar Hajee.
James, Mr. F. E.
Jawahar Singh, Sardar Bahadur Sardar.
Lal Chand, Hony. Captain Rao Bahadur Chaudhri.
Macqueen, Mr. P.
Meek, Dr. D. B.
Metcalfe, Mr. H. A. F.
Mitter, The Honourable Sir Brojendra.
Moore, Mr. Arthur.
Morgan, Mr. G.
Mukherjee, Rai Bahadur S. C.
Nayudu, Rao Bahadur B. V. Sri Hari Rao.
Nihal Singh, Sardar.
Rafiuddin Ahmad, Khan Bahadur Maulvi.
Rajah, Rao Bahadur M. C.
Rastogi, Mr. Badri Lal.
Rau, Mr. P. R.
Ryan, Mr. T.
Sarma, Mr. R. S.
Schuster, The Honourable Sir George.
Scott, Mr. J. Ramsay.
Sher Muhammad Khan Gakhar, Captain.
Singh, Mr. Pradyumna Prashad.
Smith, Mr. R.
Sorley, Mr. H. T.
Tottenham, Mr. G. R. F.
Yakub, Sir Muhammad.
Yamin Khan, Mr. Muhammad.
Zulfiqar Ali Khan, Sir.

The motion was negatived.

Mr. B. V. Jadhav: Sir, I move:

"That in clause 13 of the Bill, in sub-section (*4*) of the proposed section 17B, for the word 'forfeit' the words 'kept in custody of Government' be substituted."

Mr. Amar Nath Dutt: Sir, if an instance were needed of the law of evolution in law, I think here is one, and let us hand it over to future generations to come as a precious piece of legacy for enlightenment as to how the law progresses in lands which are under foreign rule. Here you not only punish parents and guardians for the sins of their children or wards, but you also take away their property and have forfeit it. I knew that law was intended for the protection of the liberty as well as the person and property of human beings. Here, we find that this law is intended for the destruction of the liberty as well as security of person and property of the people. We are placed absolutely at the mercy of those very estimable gentlemen who appear in one garb in decent society and, in another garb, elsewhere when they happen to be heads of districts. We have heard very eminent members of that service speaking with a sense of responsibility and they assume to call themselves public servants, and we have been asked to legalise all sorts of illegal acts for their protection. Now, we have to give our property to them and our properties are at their mercy. The authority that has been given to these high class officers, called District Magistrates or Commissioners of Police, cannot certainly be found in any other part of the world except in this unfortunate country. I can well understand the introduction of martial law, but I do not understand such oppression and tyranny in the name of law, and to ask the representatives of the people here to approve of laws like these, and this is

something which they ought not to do. Sir, they have been doing all these things. They have been destroying property, they have been taking property, they are doing things which I cannot describe without a sense of horror, and, if necessary, they will be described later on. When they are doing all these things, there is no necessity for enacting sub-section (4) of the proposed section 17B. That being so, I ask, in the name of decency, not to press for the word "forfeit". What my Honourable friend, Mr. Jadhav, wants, is that it should be merely detained in your possession, though I do not know how far that detention by the Government officers will be of any real benefit. I submit that we should not be asked to be a party to such a barbarous legislation as this. I support Mr. Jadhav.

The Honourable Mr. H. G. Haig: The point raised by this amendment is precisely the same as that which was discussed and decided on the previous amendment. I, therefore, do not propose to repeat the arguments that I advanced on the previous amendment. With reference to what my Honourable friend, Mr. Amar Nath Dutt, has said, I should just like to remind him that the property which is liable to forfeiture is not, as he suggests, the property of any individual, but it is property which is used for the purposes of an unlawful association.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question which I have to put is:

"That in clause 13 of the Bill, in sub-section (4) of the proposed section 17B, for the word 'forfeit' the words 'kept in custody of Government' be substituted."

The motion was negatived.

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

"That in clause 13 of the Bill, in sub-section (7) of the proposed section 17B, the words 'and the decision of the District Judge or Chief Judge of the Small Cause Court, as the case may be, shall be final' be omitted."

My reason for saying so is this. When the Bill came before the Select Committee, there was only the clause on forfeiture by executive authority without any judicial appeal. After considerable discussion, the Government consented to refer the matter to the District Judge or the Chief Judge of the Small Cause Court for adjudication. But, at the same time, they insisted that the decision of the District Judge or the Chief Judge of the Small Cause Court should be final. Why, I do not know. Probably they were following here the procedure laid down in the Civil Procedure Code for the investigation of claims, under which the decision of the Court is final. But they forgot that that section also provided that a suit might be filed by the person aggrieved for a declaration of his right. If that is given here, there is no occasion to interfere with the sub-section. But that provision has not been made here. I do not see why the decision of the District Judge should be final. Government seem to be very much afraid of Civil Courts and, therefore, they do not want any appeal to be made to the High Court or any other Court. In these circumstances, I submit my amendment for the acceptance of the House.

Mr. Jagan Nath Aggarwal (Jullundur Division: Non-Muhammadan): This clause 17B has been amended in several particulars, but I am afraid that the amendments have only taken the matter half way through. The

[Mr. Jagan Nath Aggarwal.]

House will be pleased to notice that against an executive order of forfeiture a certain judicial remedy has been provided. If moveable property is found in a certain place which is notified and which is likely to be used for the purposes of an unlawful association, then a temporary order of forfeiture is made. This is subject to a reference to judicial authorities—the District Judge in the mufassil and the Chief Judge of the Small Cause Court in the Presidency-towns. So far, well and good. From the executive order the matter is taken to a judicial tribunal. But what do we find thereafter? We find in sub-section (7), the procedure which is adopted is very laconically described as the procedure for the investigation of claims so far as that can be made to apply. The Honourable the Law Member and those responsible for the provisions know very well that when a matter goes to the judicial authorities as a claim petition, the position is that when a claim has been preferred, it is summarily enquired into, but whatever the result is, it is subject to the result of an ordinary suit. I would like to know whether the same procedure as the Civil Procedure Code authorises shall be adopted for the purpose, because the words used in the claim procedure section of the Civil Procedure Code are that the decision shall be final, subject to the result of an ordinary suit as provided by that very section. Sir, we do not find any such word. Now that we are giving a right of recourse to the Civil Court and we are adopting the procedure of the claim investigation section, we should have the whole of that machinery adopted, the point being that no man shall suffer in property without having recourse to the highest tribunal with a right of appeal and second appeal if a law question is involved. On an ordinary petty case of Rs. 5,000 or so, the decision of the District Judge or the Chief Judge of the Small Cause Court is liable to question before an appellate Court, but in a matter where a lakh of rupees may be found in a place—it may be the amount belonging to the association may run to several lakhs—why is it that the claim procedure is allowed so far as one stage of investigation is concerned, but the District Judge or the Chief Judge of the Small Cause Court is clothed with absolute authority and his verdict is not liable to be challenged before any superior Court? This is a matter in which, I submit, the amendment is very logical. I do not know whether logic has much scope for acceptance in the discussion of this measure, but the two-fold remedy which is generally availed of in a matter of this kind, either the remedy of a regular suit, or the remedy of an appeal, should be adopted so far as this provision is concerned. It may be declared that the decision of the District Judge shall be tantamount to a decree, or it may be declared, subject to the result of a regular suit. I commend this amendment for the acceptance of the House.

Mr. S. G. Jog: The remedy provided by this clause, in cases of forfeiture of property, is a drastic one. When making a provision for such a drastic change it is absolutely necessary that facilities should be given to the aggieved party. I must admit that when the original Bill was introduced, there was absolutely no provision even of this sort and they wanted the decision of the executive authority to be final. As the matter was pressed to a great extent in the Select Committee, it is no doubt true that the remedy of making an investigation before a District Judge was given, but, at the same time, we find that the decision of the District Judge shall be final. I think this has no meaning. Whether the District Judge decides the case or the Small Cause Court Judge decides the case, the

High Court has got the power of supervision and revision. I submit that the words "shall be final" should be omitted and the regular Courts of appeal should be open to the aggrieved parties. That will inspire more confidence. There will be many cases of forfeiture and people will be afraid if these cases are not well thrashed out in the civil Courts and the feeling of diffidence will remain. For these reasons, I submit, that the amendment should be allowed.

The Honourable Sir Brojendra Mitter: I oppose the amendment. It will be within the recollection of Honourable Members that in the Bill final adjudication was left in the hands of the executive. They had the last word to say whether a particular moveable property was used for the purpose of an unlawful association or not. It was pressed upon us that since it affected rights of property, there should be some sort of judicial adjudication and it was for that purpose that the change was made in the Select Committee. Then the question arose that if a judicial authority was, upon a claim made, to adjudicate upon this issue whether a property was used for the purpose of an unlawful association or not, what should be the procedure. We cast about to find a procedure. We found that in the Civil Procedure Code there was a procedure for claims in matters between individuals with regard to property. We adopted that procedure. It should, however, be realised that this is not a civil proceeding at all. This is not a dispute for property between two individuals, and all the rights which are given to civil disputants cannot be claimed in a matter like this which is criminal in its nature. I am fully aware that under the Civil Procedure Code a suit may be instituted by the unsuccessful party to a claim proceeding. Title to property is in question there and hence the Legislature has given full rights of appeal to the parties interested; but in this case there is no question of title at all. Why should there be an appeal?. By using the words "the decision shall be final", the intention and the effect are that appeals are barred. These words are not new. They occur in many Statutes and the meaning is quite clear. Mr. Jog says, these words have no meaning, because the High Courts can revise. If the High Court has the power of revision, it will revise, but there shall be no appeal. That there should not be an appeal would be manifest from the nature of the case. If Honourable Members will look at 17B, (2), they will find that the articles which are liable to be forfeited are those which may be used for the purpose of an unlawful association. It is a very simple issue and, in spite of the District Magistrate deciding this issue, we have conceded to this extent that a judicial officer, namely, a District Judge or the Chief Judge of a Small Cause Court should finally adjudicate upon it. When an issue is so simple, why should there be an appeal—for whose benefit, for the benefit of the legal profession? I oppose the amendment.

Rao Bahadur B. L. Patil: I have very little to say in supporting the amendment. The Honourable the Law Member said that these proceedings were in the nature of criminal cases. I beg to differ from him. The question is whether a particular property belongs to A or B. That cannot be called a criminal proceeding and the Court will have to decide whether the property really belongs to the unlawful association or to another person. In such cases, it is but right and proper that an individual putting forth his claim ought to be given an opportunity to take these matters to the highest appellate Courts. For these reasons, I support the amendment.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in clause 13 of the Bill, in sub-section (7) of the proposed section 17B, the words 'and the decision of the District Judge or Chief Judge of the Small Cause Court, as the case may be, shall be final' be omitted."

The motion was negatived.

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

"That in clause 13 of the Bill, at the beginning of the proposed section 17C, the words and figures 'Subject to the proviso to sub-section (2) of section 17A' be added."

My reason for this is that some reasonable time shall be given for the parties concerned to vacate the place. That is all I have to say.

The Honourable Sir Brojendra Mitter: I really do not understand the meaning of this amendment. The proviso to sub-section (2) of 17A says:

"Provided that where such place contains any apartment occupied by women or children, reasonable time and facilities shall be afforded for their withdrawal with the least possible inconvenience."

Now, how does that apply to a person who is not in the premises at all but who is entering those premises? What reasonable facilities should be given to him for withdrawing? There is no question of withdrawing? So, to that portion of 17C the proviso would be inapplicable. In the case where a person remains in a notified place without the permission of the District Magistrate, the proviso may have application. But, Sir, here, again, what happens? In the first place, the District Magistrate comes and takes possession of the house, and he gives reasonable facilities to women and children to withdraw in good time. Then everyone is presumed to have vacated it. But if anyone conceals himself in the house and remains in the house, what reasonable facilities are expected to be given to him? I do not understand this amendment and I oppose it.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in clause 13 of the Bill, at the beginning of the proposed section 17C, the words and figures 'Subject to the proviso to sub-section (2) of section 17A' be added."

The motion was negatived.

Mr. B. V. Jadhav: Sir, I move:

"That in clause 13 of the Bill, in sub-section (1) of the proposed section 17E, for the words 'forfeited to His Majesty' the words 'kept under the control of Government' be substituted."

The proposed section 17E says:

"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."

I claim, Sir, that this provision ought to be modified and the provision for forfeiture should be taken away. An "unlawful association" was not an unlawful association before it was declared to be unlawful, and the

funds collected by that association were lawfully collected. Now this unlawful association is not likely to remain unlawful for ever; and when the declaration about unlawfulness is taken away, the immoveable property belonging to that association is going to be restored to that association. I, therefore, claim that the funds of the unlawful association should not be forfeited, but should be kept under the control of Government so that they should not be used for the furtherance of unlawful objects, but that they should be available for being returned to the association when it is declared once again to be lawful, and, therefore, I move my amendment.

The Honourable Mr. H. G. Haig: Sir, similar considerations arise to those which we have already discussed in connection with moveable property. In regard to funds, Sir, it has been said that these funds are the life-blood of the organised opposition to Government. The power of forfeiture of such funds has been found to act as a very powerful deterrent. It is believed to deter people from subscribing to these unlawful movements. Now, that deterrent effect would be very much minimised, and even perhaps destroyed, if the power of Government stopped short at merely holding these funds for some months or a year and if, at the end of that time, the funds were to be restored to the association. It is in our opinion, Sir, most essential that Government should have the power, subject to the safeguards that we have included in this clause, to forfeit the funds.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in clause 13 of the Bill, in sub-section (*1*) of the proposed section 17E, for the words 'forfeited to His Majesty' the words 'kept under the control of Government' be substituted."

The motion was negatived.

Mr. B. V. Jadhav: Sir, I move:

"That in clause 13 of the Bill, in sub-section (*3*) of the proposed section 17E, for the words 'of forfeiture', wherever they occur, the words 'for keeping under the control of Government' be substituted."

The Honourable Mr. H. G. Haig: Sir, a point precisely the same as the one which arose on the previous amendment arises here, and I oppose the amendment.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in clause 13 of the Bill, in sub-section (*3*) of the proposed section 17E, for the words 'of forfeiture', wherever they occur, the words 'for keeping under the control of Government' be substituted."

The motion was negatived.

Mr. S. C. Sen: Sir, I rise to move the amendment that stands in my name, namely:

"That in clause 13 of the Bill, in sub-section (*1*) of the proposed section 17E, the words 'and the decision of the District Judge or Chief Judge of the Small Cause Court, as the case may be, shall be final' be omitted."

Sir, on the last occasion I spoke about a similar matter in connection with moveable property. This is in connection with monies, etc. The answer to the point which I raised of the Honourable the Law Member was that

[Mr. S. C. Sen.]

it was a case of forfeiture and, therefore, the provisions of the Civil Procedure Code regarding a title-suit would not apply. I do not know whether the Honourable the Law Member will advance the same argument in this case also. Sir, under sub-clause (*3*), what will be the issue before the District Judge or the Chief Judge of the Small Cause Court? "To establish that the monies, securities or credits are not liable to forfeiture". That means that in this case the question is whether the Magistrate or the Local Government have sufficient material before them to justify their action and it will, therefore, be necessary to consider whether the monies, etc., can be forfeited or not. This may involve the question whether the money belongs to me or to the unlawful association, and whether it was or could be used for such association. That is purely a question of title, as is known in the mufassil Courts. In the High Court there is no such distinction between these two matters. I would here also refer to sub-clause (*5*):

"Where the Local Government has reason to believe that any person has custody of any monies, securities or credits which are being used or are intended to be used for the purposes of an unlawful association, the Local Government may, by order in writing, prohibit such person from paying," etc.

and it then goes on to say that the man will be liable to pay. The man in whose possession the money is may say that it does not belong to the association but belongs to him, that it was never used or intended to be used for such association. Therefore, the Local Government, standing in the place of the association, has to prove the claim or I have to prove the claim as against the association that the money belongs to me and not to the association. Under these circumstances, it clearly comes within the purview of a title case and, in such a case, there is always an appeal from the lower Court. Sir, I move the amendment.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Amendment moved:

"That in clause 13 of the Bill, in sub-section (*4*) of the proposed section 17E, the words 'and the decision of the District Judge or Chief Judge of the Small Cause Court, as the case may be, shall be final' be omitted."

Sirdar Harbans Singh Brar (East Punjab: Sikh): Sir, I rise to support the amendment. In this case it may naturally happen that the money in the custody, say, of the treasurer, which the Government will allege to belong to the unlawful association, may be his own property as an individual. In that case the question involved will be that he should prove his title to it. And when he has to prove his title, the claims procedure will not serve the purpose. The money may run into lakhs. In ordinary cases, when the amount will be over 5,000 rupees, a person can go to the High Court in second appeal but in the present case it may run into lakhs. I do not know why the Government are so much afraid of the civil Courts or the civil authority and why do they fear that the High Courts will not do justice to the cases if an ordinary procedure is resorted to by the person making the claim. In the claim procedure, no doubt the District Judge is the final authority, but it gives the right to the claimant to file a regular suit. I am personally not convinced what fear the Government entertain in allowing the individual concerned to establish his title to the property which the Government desire to forfeit by a measure of an extraordinary nature and by extraordinary means. I think the amendment is very reasonable and Government should accept it.

The Honourable Sir Brojendra Mitter: Sir, I dispute Mr. Sen's proposition that any question of title is involved in these proceedings. In 17E, sub-clause (*3*), what is to be established is that the monies, securities or credits or any of them are not liable to forfeiture. Now, that takes us back to sub-clause (*1*)—what are the monies, etc., which are liable to forfeiture? They are monies, securities or credits which are being used or are intended to be used for purposes of an unlawful association. These are the monies and securities and credits which are liable to forfeiture irrespective of the question of title. The money may belong to A, B, or C; that does not matter. There is no question of conflicting titles there; it is the user of the money which is the criterion and not its ownership. In sub-clause (*5*), it is not a case of forfeiture at all; it is a case of injunction. When can an injunction issue? When the monies, securities or credits are being used or are intended to be used for purposes of an unlawful association. There, again, I say that it is immaterial who the owner of these monies is. It is only the purpose for which the monies are used or intended to be used that counts. Therefore, there is no question of adjudication of title as in a claim proceeding under the Civil Procedure Code and there is no occasion for an appeal.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in clause 13 of the Bill, in sub-section (*4*) of the proposed section 17E, the words 'and the decision of the District Judge or Chief Judge of the Small Cause Court, as the case may be, shall be final' be omitted."

The motion was negatived.

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

"That in clause 13 of the Bill, the proposed section 17F be omitted."

Sir, this section 17F is designed to bar all civil and criminal suits in the case of the forfeiture. I will read out the section:

"Every report of the taking possession of property and every declaration of forfeiture made, or purporting to be made under this Act shall, as against all persons, be conclusive proof that the property specified therein has been taken possession of by Government or has been forfeited, as the case may be, and save as provided in sections 17B and 17E, no proceeding purporting to be taken under section 17A, 17B, 17C, 17D or 17E, shall be called in question by any Court, and no civil or criminal proceeding shall be instituted against any person for anything in good faith done or intended to be done under the said sections or against Government or any person acting on behalf of or by authority of Government for any loss or damage caused to or in respect of any property whereof possession has been taken by Government under this Act."

Sir, it seems that Government are gradually becoming afraid even of their own law Courts. Now, after forfeiture, it cannot be said that the property or money is in possession of the offender. Government have already taken possession of it. Then no mischief could be committed with that property or money or securities. When the object of the Government has been achieved, why should people be debarred from going to the Courts of justice to establish their right or to prove if anything illegal has been done by the officers of Government in securing the forfeiture?

[Mr. S. C. Mitra.]

I think Government are no longer anxious here in India for the rule of law of which they are so proud in England. This piece of legislation makes the position of the ordinary law worse than even that of martial law. In the case of the martial law, the ordinary law is suspended for the time being and, before a Bill for immunity is brought in, the officers are very much afraid that their conduct may be criticised. But here it seems that the Bill of immunity is preceding the martial law. The result will be that Government officers will become simply reckless, because they know that a provision has already been made that no suit, either civil or criminal, can ever be brought against them. If Government think that the times are very bad, let them declare martial law, and suspend all civil law for the time being. But, in the name of law, to have such drastic provisions barring the jurisdiction of all Courts, civil and criminal, even after the forfeiture of property, is, I think, the very limit. Sir, the Leader of the House, whose great knowledge of legal affairs is well known, says today that provisions for appeals are for the benefit of lawyers only. If this is the deliberate opinion of a gentleman who is the Law Member of the Government of India, I think it is no use my arguing the point that even when no mischief can be committed, when the property is already in possession of Government, people should have some right, if they are aggrieved, to go to the British Courts of justice. Sir, it is well known that the judiciary here is to a great extent under executive influence; but even then Government are so afraid, it seems, that in every new piece of legislation in some way or other they are anxious not only to curb the powers of the High Courts, but even of the district and Presidency Courts. So, I move that this sub-clause barring criminal and civil proceedings should be deleted.

Raja Bahadur G. Krishnamachariar: Sir, I support this amendment. I do so with regard to those provisions of the clause which bar the jurisdiction of the civil Courts. There was one leading case upon this matter from Rangoon in which the Privy Council passed very scathing remarks about this removal of the jurisdiction of the civil Courts from acts done by persons who pretended to show that it was done in good faith, but which as a fact, was not so done, or at least could be proved to be such. But it is a colossal and superhuman task to do so in proceedings specially instituted for that purpose. Sir, there is a book,—I do not know if it had a chance to fall into the hands of Honourable Members of Government,—written by the present Lord Chief Justice of England, named "The New Despotism". That book deals with two things; first, in allowing a Government department to frame subsidiary rules which shall form part of the principal Statute and the next and more important item of despotism which the Lord Chief Justice of England describes is the barring of the jurisdiction of the civil Courts. Unfortunately, I have not got the book with me here, but he says,—I believe I am correctly reporting him,—that the officers of the executive department are so sure of the position that they have taken in connection with the various administrative acts which have been entrusted to them that they bar all jurisdiction of the civil Courts; and knowing that the civil Courts cannot take cognizance of them, they have got a *carte blanche* and they go on acting just as they like. I do not say they are so wicked

as that; I do not say that they have got a double dose of the original sin that they want to do that sort of thing. But, Sir, power is so tempting, no matter in whose hands it is kept, that it leads always to the risk and temptation of being over-exercised. And once you begin to over-exercise it, it is so sweet that no one wants to abandon the position, much less does he want to make himself accountable for anything.

Sir, we know that there are certain acts recently passed under which the jurisdiction of the civil Courts has been taken away. The
5 P.M. most important Act that now comes to my mind is the Income-tax Act. In the Income-tax Act, you will find provision after provision each one of which would suffice to create trouble and annoyance to the assessee, if by chance a Government official thinks the man is liable to pay income-tax. These men do it. They have absolutely no ground for taking the action that they do take and they are not called to account by anybody, and they are not bound to give any reasons. For instance, when a man submits his return of income, the Income-tax Officer immediately sends a notice wanting to test the correctness of his accounts. He cannot be asked on what grounds he wants to do it. And yet, even if I can show that the act was not done in good faith, the civil Court is deprived of its jurisdiction. The same thing will happen with reference to this piece of legislation; and, this being a political offence, and at a time when feelings run high, certain classes of public servants may still be under the impression that a subject nation has no right to politics. I do not know if my Honourable friends in this House remember that a very distinguished District Judge of the Madras Presidency made this pronouncement that a subject nation has no politics. Well, Sir, being in this political field and in the midst of all this trouble, it is quite possible that there will be a class of public servants who think that a subject nation has absolutely no business to dabble in politics. And once they get into that mentality, you do not know the excesses to which they will go. And what is the remedy after all? As my Honourable friend pointed out, even in martial law there is such a thing as an Indemnity Bill which is brought forward later when a man is expected to account for what he did. What is the remedy for all the excesses which may be,—I do not say will be,—committed under cover of this clause? Sir, I know there is one clause says, "intended to be done in good faith". Sir, there is a saying,—I hope I am right in quoting it,—that the road to a certain place is paved with good intentions. You get an official doing these acts with a good intention. The result is ruinous to me, but I have absolutely no remedy. The only place which was open to me till now is also being banged against me, against the fundamental principle of British jurisprudence. What is it that I can do after this? It is a most dangerous thing to do. It may please Government to have recourse to this sort of remedy when, in a sort of half-panicky state of mind, they think they require these remedies when really they do not require them. But it is a dangerous principle to introduce in any piece of legislation and I ask that for the sake of peace in the country, Government should delete this provision which takes away the jurisdiction of the Courts and leave us to fight the matter out if we think that we have been penalised for no reason whatever.

The Honourable Sir Brojendra Mitter: Sir, the proposed section 17F has two parts. The first part deals with a rule of evidence. It says that every report of taking possession of property and every declaration of

[Sir Brojendra Mitter.]

forfeiture made shall be conclusive proof that the property specified therein has been taken possession of or has been forfeited as the case may be. It is a rule of evidence. This is necessary in order to obviate the necessity of calling a number of witnesses to prove the simple fact that on a particular day the District Magistrate went to a house and took possession of it and the properties therein or that some properties had been forfeited. In order to avoid that that this simple procedure has been adopted. That is so far as proof is concerned, and I have heard no criticism of this portion of the clause. The next portion is the indemnity portion, indemnity given to officers acting under this section in good faith. If an officer is not acting in good faith, there is no bar to anybody going to any Court. Any one who can prove before a judicial officer that a particular item of property was not being used or not intended to be used for the purpose of the unlawful association, will get back that property. An elaborate procedure has been laid down for establishing *bonâ fide* claims. After those claims are disposed of, what remains? What is forfeited is what is found to be used for the unlawful purpose or intended to be used for such purpose. In this proceeding, when the executive officers have to act under the scrutiny of a judicial officer, there cannot be any objection to give these executive officers an indemnity against harassing proceedings against them. It is only to save the executive officers from harassment that this indemnity has been given. Appeals are not desirable in these cases. I repeat that too many appeals are a curse in our judicial system. It does not conduce to justice. It gives a premium, an unfair advantage to the man with the long purse; he can always wear down his opponent by means of a multiplicity of appeals. I was attacked for saying this. I repeat, that in my judgment we have got too many appeals in this country which do not conduce to justice; they give an unfair advantage to the richer man. (Official Cheers and Nationalist Party Laughter.) The Raja Bahadur asks: "What is the remedy?". The remedy is the abandonment of the civil disobedience movement. (Official Cheers.) Sir, I oppose the amendment.

Mr. Jagan Nath Aggarwal (Jullundur Division: Non-Muhammadan): I am afraid, Sir, I cannot let go this opportunity to challenge two very strange statements made by the Honourable the Law Member. One is that there are too many appeals in this country. I would like to know what has the Law Department of the Government of India been doing that they have not brought forward a Bill to abolish the unnecessary right of appeal. It is only in this Ordinance Bill that they have thought of these unnecessary appeals when the liberties of the citizen suffer. When the ordinary litigants are out to fight and when they spend a good deal of money, the Law Member, who was till recently in the profession and making a bit of money, never made any protest. Now, after coming into a position in which he could remedy the state of the law and amend it, is there any occasion, barring this one of the Ordinance Bill, when he sought to put an end to this state of things for the sake of the long suffering people in this country, by abolishing the right of appeal? I was surprised that the Government Benches behind my Honourable friend raised cheers on the question that the right of appeal had been abused in this country. I should very much like to know what they have done in the matter. It is very easy to indulge in generalities, but if my learned friend had said that he would extend his principle and take away the right

of appeal in general, and not merely as proposed in this Bill, we would bow to him. He is a distinguished member of the legal profession and he is supposed to know the law. But to indulge in vague generalities at the expense of the legal profession or the weakness of the law is certainly neither sport nor anything else. I would, in this connection, beg leave to point out that the right of appeal is not merely for the benefit of the legal profession: that was a statement which I expected that the Honourable the Law Member would withdraw, but he has not taken the slightest notice of it; I take strong objection to the allegation that the right of appeal is only for the benefit of the legal profession. It is not for the legal profession; the right of appeal is for the litigant. The right of appeal is for the aggrieved party; the right of appeal is the right which gives a sense of security to the subject and adds to the respect for law (Opposition Cheers) and which provides a check on the vagaries of a judge. There are too many in this land who make mistakes and judges are no exception to it; and, if my learned friend thinks it is only for the legal profession, I can tell him, it is not so. Is it for my learned friend to turn round and say that the right of appeal is for the lawyer only?

The Honourable Sir Brojendra Mitter: I did not say that. I said it is for the man with the long purse.

Mr. Jagan Nath Aggarwal: That was said now: in the debate on a previous amendment, if the Honourable Member will pardon me for saying so, he said that the right of appeal was for the benefit of the legal profession.

The Honourable Sir Brojendra Mitter: No, Sir. What I did say was this: this right of appeal—for whose benefit? For the benefit of the legal profession? That was the query I made.

Mr. Jagan Nath Aggarwal: I am glad if the Honourable gentleman did not mean that. The reason why we objected to this clause was obviously this. The Honourable the Law Member himself pointed out two things in the clause: the first was a rule of evidence, as he said. But the words are: "It shall be conclusive evidence". That is where the grievance is. Conclusive evidence under the Evidence Act means that that thing shall not be allowed to be contradicted. It means that the thing is non-rebuttable and the man is not allowed to rebut the presumption. In all fairness, the man has a right to say: "You call it forfeiture; no forfeiture took place, and it should be a rebuttable presumption". If you had merely said that the Court shall presume forfeiture took place, the object would be served; but to make it a conclusive presumption is wholly wrong. With regard to the next part, it has been pointed out over and over again that you have given indemnity in advance. Give it in guarded words; give it for anything which is proved to be done *bonâ fide*, but do not give it, as you have given it, to every act done under colour of the Bill.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in clause 13 of the Bill, the proposed section 17-F be omitted."

The motion was negatived.

Mr. S. C. Sen: Sir, I move the amendment standing in my name . . .

Some Honourable Members: Do not move it.

Mr. S. C. Sen: . . . . namely:

"That in clause 13 of the Bill, in the proposed section 17-F, all the words beginning with the words 'Every Report of' and ending with the words 'as the case may be, and' be omitted."

We have heard the Law Member saying that these are very simple matters; this is a matter of evidence only. Is that so? That is very simple. The matter is very simple; and for his edification I may refer to a case which has already been cited twice by him and I may refer to the same judgment which he quoted here where this particular provision was considered, and that is the *Comrade* case, Muhammad Ali's case. I need not read the whole thing; but, as you are aware, in the Press Act, 1910, similar words occur. The words are that a declaration of forfeiture shall be conclusive evidence of that fact. That Act provided for certain safeguards, one of the safeguards being that before you call upon a particular newspaper editor to show cause why his money should not be forfeited, a notice giving details of the offence should be given. That was considered to be a safeguard by the then Law Member, the Honourable Mr. Sinha (afterwards Lord Sinha) when he introduced the Press Act in 1910. That was considered to be a safeguard by the judges in this case, but, in the case, that safeguard was not acted upon, and this is what the Judge says:

"The notification, therefore, appears to me to be defective in a material particular, and, but for section 22 of the Act, it would, in my opinion, be our duty, to hold that there had been no legal forfeiture."

Therefore, the question is not merely a question of evidence, as has been held by Sir Lawrence Jenkins in this case, but it goes against the whole case. He said that if there had not been this section 22 which contained the provision about the forfeiture being conclusive evidence, he would have dismissed the case, but he could not. Why? Because, he says:

"That section, however, provides that every declaration purporting to be made under the Act shall, as against all persons, be conclusive evidence that the forfeiture therein referred to has taken place."

The wording is exactly the same here. The learned Judge goes on to say:

"Though I hold that the notification does not comply with the provisions of the Act, still, we are, in my opinion, barred from questioning the legality of the forfeiture it purports to declare."

That is the effect of this clause, and not merely it bars evidence. It gives the power to legalise and not to question the vagaries of the lower officials. If the District Magistrate does not proceed in the manner provided in the section, if he does not follow the procedure as described in the section, if the Local Government do not follow the procedure laid down in the section, still, as soon as they make an order for forfeiture, I am debarred from questioning any of their acts where the provisions of the Act, have not been complied with and, therefore, my point is that this portion should be deleted. Why should the Government be in a better position than ordinary litigants?

The Honourable Sir Brojendra Mitter: We are not dealing with ordinary litigants in proposing this measure. We are dealing with an unlawful association, and we are dealing with property which is used or which may be used for purposes of that unlawful association. As regards the conclusive nature of the proof, it is undoubtedly true that when the report or declaration of forfeiture purporting to be made under this Act is made, it shall be conclusive proof, that property which is specified therein has been taken possession of by Government or has been forfeited, as the case may be. A great danger is apprehended by Mr. Sen, and what is that danger? A District Magistrate takes possession of a house where an unlawful association was carrying on its nefarious work, he takes possession of the moveable property there and makes a report to Government. Suppose the report is defective. What great harm is caused thereby to arouse the ire of Mr. Sen. Supposing the date on the order of forfeiture which the Government make is wrong or there is some error here or there. What great harm is caused? Sir, we have interposed a judicial proceeding. I could understand that if an ordinary citizen's rights were affected, then even a slight departure from the procedure laid down should be provided for. But, in this case, we are dealing with a particularly obnoxious movement for which this drastic measure has been proposed. It is not the ordinary law of the land; it is not going to be a permanent law of the land; it is a special Act, for a particular purpose and for a short period, and, therefore, whatever the consequences of this conclusive proof may be, the danger is not real. Sir, I oppose the amendment.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in clause 13 of the Bill, in the proposed section 17-F, all the words beginning with the words 'Every Report of' and ending with the words 'as the case may be, and' be omitted."

The motion was negatived.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That clause 13 do stand part of the Bill."

The motion was adopted.

Clause 13 was added to the Bill.

The Assembly then adjourned till Eleven of the Clock on Friday, the 2nd December, 1932.